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Compliance with EU Law: Why Do Some Member States Infringe EU Law More Than Others?

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COMPLIANCE WITH EU LAW:
WHY DO SOME MEMBER STATES INFRINGE EU LAW MORE THAN OTHERS?

A Thesis

Submitted to the Graduate Faculty of the
University of New Orleans
in partial fulfillment of the
requirements for the degree of

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in
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by

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Abstract

Why do some member states infringe EU law more than others? Based on the quantitative and qualitative analysis reported here, is not because of administrative capacity limitations, but because of political context, policy changes and deliberate opposition by member governments in order to maintain their independence. States in turn, are motivated by domestic politics to seek to avoid implementing EU law. Additionally, I find that richer countries violate the law more often than poorer countries. Further, member states infringe more than others because of a high number of institutional and coalitional veto players. These results suggest that member states are in the EU because the EU serves their national interest over collective ones. Finally, these results suggest new hypothesis. Member states that have a high level of public discontent with the EU are unlikely to tolerate the political costs of implementing EU legislation.

Introduction

Why do some member states infringe European Union (EU) law more than others? Implementation of EU law is an increasingly important problem, as the EU emerges as a political system (Peters, 2000). The task of member states to implement EU law is crucial since compliance is the foundation of cooperation in Europe. Without compliance, the EU is a hollow shell. Yet, as many scholars assert, EU member states have failed to implement EU directives or laws (Abbot and Snidal 1998, Chayes 1993, Huelshoff, Sperling, and Hess 2003, Mbaye 2001, Tallberg 2000, Taylor 1981). We know comparatively little about which states fail to implement EU law. Is this a common problem, or are some states more likely to face infringement cases than others? Which characteristics of states encourage compliance, and which do not?

Three approaches contribute to the analysis of EU compliance: neofunctionalism, multilevel governance, and intergovernmentalism. Neofunctionalism emphasizes the role of international regimes, state actors, and domestic interest groups, in helping states to realize common interests that results in transforming sovereign nation states into supranational entities (Haas, 1961). For neo-functionalists, there should be no infringement problem, other those than occur by accident. Yet member states still fail to complain with EU law.

Multilevel governance, in contrast, suggests that the process of European integration has resulted in policy-making that is shared across multiple levels of government—subnational, national and supranational (Marks et al, 1996). National sovereignty is diluted by collective decision making among national governments and by

the institutions of the EU (Hooghe and Marks, 2001), but what takes its place is unclear—perhaps best described as post-modern mish-mash of conflicting and overlapping responsibilities (Caporaso, 1996). In this case, complying with European law should also be common, although the prospects for failure might be expected to be higher than in the case of neo-functionalism due to the complexity of the policy-making process and to the continuing role of national governments. Infringements of EU law still occur, since member states have not lost their former authoritative control over individuals in their respective territories.

A third view is suggested by the intergovernmental approach. Intergovernmentalism argues that states are pre-occupied with the protection of national sovereignty and that the EU is created by states to be the instrument of the member states. As a result the EU serves only the interests of the member states. Following this approach, infringement of EU law is the result of decisions taken by national political leaders in order to achieve national interests. Thus, infringements might be expected to be more common than in either of the cases described above. As is developed below, this research suggests that last approach may best describe the compliance problem in the EU today.

Institutions in the EU play an important role in the implementation of EU law. As the European Union has expanded in size and scope, the body of laws and policies that constitute the EU has also grown, as have the powers and reach of its institutions (Bradley 2002, McCormick 1999). There are five major actors in the EU, the European Council, the European Commission, the Council of Ministers, the European Parliament,

and the European Court of Justice (ECJ). This research is focused upon the relations between two of these institutions, the European Commission and the European Court of Justice. By the treaties establishing the EU, complaints about compliance with EU law must be brought to the ECJ—the ECJ has no right of independent judicial review. National governments, individuals, and the institutions of the EU can bring complainants, called infringements in EU terminology. As Huelshoff, Sperling, and Hess (2003) note, most of these cases are brought by the Commission, although other actors have the right to do so. The European Commission is responsible for developing proposals for new laws and policies, overseeing the implementation of law, guarding the treaties, and promoting the interests of the EU as a whole (McCormick, 1999). In other words, the Commission's responsibility is to ensure the member states comply with both the applicable treaty provisions and community legislation. These cases mostly address interpretation of the implementation of EU law. When law is not implemented at all, the Commission and the ECJ are almost always involved. In that sense, the primary responsibility for the Commission is to ensure that member states comply with both the applicable treaty provision and Community legislation and the European Court of Justice's role is to ensure that the law is observed in the interpretation and application of the EU Treaty (Voyatzi, 1996).

The European Court of Justice is the place at which these suits are heard. It works to build a common body of law for the EU and to make judgments on the interaction among EU law, national law and EU treaties. Implementation of EU law is crucial for the integration of EU within its member states. Compliance with EU law is not an easy task

for member states since they have their own legislation and sometimes implementation of EU law could raise political conflicts within national governments.

In this research, I conduct an empirical examination of infringement of EU law by the member states. The data sets consist of cases where the European Commission sues a member state for failing to comply with EU law. The dependent variable is an infringement suit brought by the Commission against a member government for failing to implement an EU law, measured by the number of cases of infringement as referred by the Commission to the European Court of Justice. Hence, the unit of analysis of the dependent variable is the country-year. As is developed below, the independent variables include the capacity of national bureaucracies to implement EU law, measured by the level of economic development in each member, and the impact of veto players within EU members.

This research proceeds as follows. First, I review the literature seeking to explain why some member states infringe on EU law more than others. Two approaches to compliance are examined, the management school (Abbot and Duncan 1998; Chayes and Chayes 1995; Mitchell 1994; Young 1994; Downs, Rocke, and Barsoom 1996; Tallberg, 2002) and bureaucratic politics (Knill 1996, 2001). The management approach contends that when problems of compliance occur it is because weak administrative capacity to implement law. Bureaucratic politics theory argues that national administrative traditions affect implementation of European legislation, specifically the pressure for adaptation applied by supranational policies to national bureaucracies, and the susceptibility of administrative structures to change. In accordance with these two approaches, I develop

and test two hypotheses: first, that the rich, northern countries should comply with EU law more than the poor, southern countries because of the capacity of national bureaucracies to implement EU law, and second that as the number of institutional and coalitional veto players increases, the level of a member states' non-compliance is expected to increase as well.

As is developed below, I find that the data do not support the first assertion but the second. Testing the first hypothesis, I find that the results are notably inconsistent with the argument that poor, southern countries will have more problems in comparing to rich, northern countries in complying with EU law because of differences in the capacity of national bureaucracies to implement EU law. I find—in a binomial regression analysis—that the variable of GDP per capita is statistically significant but has a positive relation with the level of infringement of EU law. Thus, infringements seem to be related to the opportunity to violate EU law—richer and more active states break the law more often than poorer and less active states. Testing the second hypothesis, I find that the indicator of veto players is positive related with infringement and is statistically significant, but only at the .10 level. Member states that have larger number of veto players are likely to infringe more than member states that do not.

I also explored these hypotheses in case studies, to examine the hypotheses and the contradictory statistical results in greater detail. The countries studied are Greece and Germany. The main findings support the results of the statistical analysis, and suggest an alternative explanation. First, veto players does play a prominent role in implementation failure and hence is positive related with infringements. Second, as with the quantitative

analysis, economic development does not explain the pattern of infringements. However, the management school's emphasis on the importance of the ambiguity and indeterminacy of EU law is supported in the cases. Additionally, in the cases I find that other factors contribute to failure to implement EU law. These factors are deliberate opposition, political context and policy change, underlying the importance of national governments and national politics in affecting implementation. This re-assertion of the importance of national politics points, as I develop in the conclusions, to the continued relevance of intergovernmental theories of regional integration.

In sum, I draw three conclusions from the analysis. First, some member states infringe more than others because of a high number of institutional and coalitional veto players. Second, member states infringe more than others not because member states have not the resources to comply, but because of deliberate opposition, political context, and policy change. Third, these results suggest that member states are in the EU because the EU serves their national interest over collective ones (intergovernmental theory). The EU as a supranational government has not yet acquired the level of legitimacy necessary to supplant national governments. Thus, failure implementation occurs when political leaders at national level choose to protect their national interests.

Chapter 1: Literature Review

This chapter focuses in the literature on EU law in order to explain the pattern of infringement based on two hypotheses.

Integration of the European Union has been an important topic of discussion among scholars. (Hix 1999, Marks et al. 1996, Burley and Mattli 1993, Tsebelis 2002). In this chapter, I emphasize three major approaches that contribute to explain the phenomena of integration in the EU, since each of them has a different view of supranational organization and what causes infringement of EU law. These approaches are neofunctionalism, multilevel governance, and intergovernmentalism. Further, I analyze EU institutions in the extent that each of them has implications in the implementation process of EU law. These institutions are European Council, Commission, Council of Ministers, European Parliament, and European Court of Justice. Finally, I develop two different approaches in analyzing the implementation process, one based in the management school (Abbot and Duncan 1998; Chayes and Chayes 1995; Mitchell 1994; Young 1994; Downs, Rocke and Barsoom 1996; Tallberg 2002) and one bureaucratic politics (Knill 1996, 2001). In accordance with these two approaches, I develop two hypotheses: first, that rich, northern countries should comply with EU law more than poor, southern countries because of the capacity of national bureaucracies to implement EU law, and second that as the number of institutional and coalitional veto players increases, the amount of a member states' non-compliance will increase as well.

European Union

European integration has produced a set of governing institutions at the European level much like any other multilevel political system, such as federalism. Yet the EU is not thought to parallel the national political systems of well-known federalist nation-states, such as Germany, Switzerland, or the US. Rather, as Hix (1999) notes, the EU is the result of a process of voluntary economic and political integration among sovereign nation-states in Western Europe. The EU is a set of specific institutions that bring together the member states in a variety of ways, usually classified as intergovernmental and as supranational. The distinction is similar to that between a confederation or federation. Confederations make decisions through a process of intergovernmental bargaining. Federations have decision-making bodies that are independent of the member states (Wood and Yesilada, 1996).

Hix argues that the EU can be a “political system” without being a state. Hix claims that there are three elements the EU possesses which makes the EU different from nation-states, and to some extent these differences might affect why some member states in the EU fail to implement EU law. First, he points out that the level of institutional stability and complexity in the EU is far greater than in any other international regime. In fact, the EU probably has the most formalized and complex set of decision-making rules of any political system in the world. Second, the EU governments do not have a monopoly on political demands. Demands in the EU arise from a complex network of public and private groups, each competing to influence the EU policy making process to promote or protect their own interest and desires. Finally, Hix states that EU decisions are

highly significant and felt throughout the EU. As a result, the author argues that EU is not a “state” in the traditional Weberian meaning of the word and asserts that European integration has produced a new and complex political system.

Hence, a redefinition of the role of the state in Europe is necessary. States are no longer fully in control of their societies, yet they remain central actors. Implementation problems could arise because of the complexity of the network of decision-making rules in which multiple levels of government—subnational, national and supranational (Marks, 1992, 1993; Hooghe, 1996)—negotiate, each competing to influence the EU policy-making process.

Complementing Hix’ argument, there has been three major approaches that explain European integration in the EU. These approaches are neofunctionalism, multilevel governance, and intergovernmentalism. These approaches contribute in some extent to the analysis of the EU, and the question of compliance. Each has a distinct view of supranational organization, and what causes infringements of EU law.

The principal contribution of neo-functionalism theory “is its identification of the functional categories likely to be receptive to integration and its description of the actual mechanics of overcoming national barriers within a particular functional category after the integration process has been launched” (Burley and Mattly 1993, p.176). For the neofunctionalism approach, “integration in Europe is proceeding because actors in several distinct national settings are persuaded to shift their loyalties, expectations, and political activities towards a new center, whose institutions possess or demand jurisdiction of the pre-existing national states” (Haas, 1961).

Haas argued that functional integration would most likely occur if influential and powerful elites were motivated to take decisive steps toward it (Wood and Yesilada, 1996). Neo-functionalism also emphasizes the role of international regimes in helping states to realize common interests. The executive leaders of international organizations can play an important role in defining an organizational ideology, to build a bureaucracy committed to that ideology, and to build coalitions of national actors supporting integration (Wood and Yesilada, 1996). Other key actors include national elites, and interest groups. The process by which they solve problems is thought to be self-supporting (spillover), resulting in a transfer of sovereignty from nations to the supranation.

Thus, there should be no infringement problem, other than that occurs by accident. Yet the number of infringements in the EU is large, and growing. There were 1635 infringement brought against EU member between 1962 and 1999, as reported in the Commission's Bulletin. Further, the trend is growing exponentially. In that sense, neo-functionalist theory fails to explain infringement of EU law.

Marks et al. (1996) assert that multilevel governance does not reject the view that state executives and state arenas are important. However, they argue that when the state no longer monopolizes European level policy-making, a different polity comes into focus. In other words, governance does not confront the sovereignty of states directly. Instead, states in the EU are converted to a multi-level polity by their leaders, and by sub-national and supranational actors. Yet, the authors conclude that multi-level governance is unlikely to be a stable equilibrium.

Marks et al. (1996) argue that there is no widely legitimized constitutional framework and there is a little consensus on the goals of integration. “As a result, the allocation of competencies between national and supranational actors is ambiguous and contested” (p. 373). Multilevel governance requires a complex interrelation within different levels of government—subnational, national and supranational actors. One might expect implementation failures among member states resulting of complexity in decision-making across these different levels of actors.

Finally, an alternative view is the intergovernmental approach which combines an emphasis on state power and national interests with the role of domestic factors in determining the goals that governments pursue (Moravcsik, 1991). Integration happens only when, where and to the extent that all member states agree to it. No member state can be forced to agree to integration in a new area against its will. This is because there is no European hegemon that can coerce or force member states to agree to integration. The intergovernmental approach rests on three central premises. First member states are pre-occupied with the protection of national sovereignty. Second, supranational institutions created by states are considered to be the instruments of the member states and as a result they serve only the interests of the member states. Third, the focus is on the “grand bargains” between member states. In other words, increases in integration happen through treaty reform. Inter-governmentalism is in many ways the antithesis to neo-functionalism.

Self-interest still remains the motivating factor, but the focus is on understanding the self-interested motivations behind agreements by the member states to expand integration, since each agreement involves to some extent the loss of some amount of national sovereignty.

On the surface, the intergovernmental approach might suggest that infringements should be rare in the EU. After all, if states only agree to laws they want, they should have no reason not to implement them. Yet there are several reasons why intergovernmentalism predicts a large number of infringements. First, decisions in the EU are taken increasingly by qualified majority. Since the Single European Act, more and more issue areas are decided by qualified majority. This gives states the opportunity to claim that they have been out-voted. Yet, even when decisions were taken by unanimity, the secrecy of EU decision-making (see below) inhibits public input. The Commission's decisions are not open to public scrutiny. This allows governments to hide behind the EU, and claim that they were forced in to unpopular policies. Finally, the off-noted ignorance of the EU in the general population suggests that many may not be aware of the EU's policies until they become law. While interest groups have certainly expanded their representation at the EU level, the general public largely remains poorly informed about the EU. As a result, intergovernmentalism predicts a large number of infringements.

The EU as a *sui-generis* institution is understood as an instrument of the member states and as a consequence the EU serves only the interests of the member states. In that sense, and following the logic of this approach, since member states emphasizes the protection of their interests and because supranational institutions are only instruments of

the member states, infringement of EU law must be understood as the result of decisions taken by national political leaders pursuing national interests. This argument is explored in detail in the concluding chapter.

Yet institutions in the EU are becoming more powerful and significant, and their evolution is having the effect of slowly building a confederal Europe. These institutions do not amount to a government in the conventional sense of the word, as the multi-governmentalists note, since the member states still hold most of the decision-making powers and are still responsible for implementing EU policies (McCormick 1999). Yet, the institutions of the EU are increasingly influential in Europe. Five major institutions work in the EU: The European Council, European Commission, Council of Ministers, European Parliament, and European Court of Justice. While I will concentrate on two of them, the Commission and the European Court of Justice, all play some role in implementation. The Commission and ECJ, though, focus on EU implementation policy and on the failure to implement EU law by member states. Regardless, a brief review of each will detail how each contributes to the implementation problem in the EU.

- *European Council*

The first institution is the European Council, which is the newest of all of the institutions. It was established by the Paris summit in 1974. The European Council consists of the heads of state of the respective governments, their foreign ministers and the president and vice-presidents of the Commission (McCormick, 1999). “This small group periodically convenes for short summit meetings and provides strategic policy direction for the EU” (McCormick, 1999, p. 113). It is the only body to have influence in

all fields of EU activity and to exercise considerable authority over the Council of Ministers. Further, the European Council has tended to take power away from the other institutions. For instance, it often establishes the agenda for the Commission, overrides decision reached by the Council of Ministers and ignores the Parliament altogether (McCormick, 1999). Yet the European Council lacks a legal relation of the other EU institutions. While some argue that the Council is the most powerful of the EU's five major institutions, this power is primarily political, not statutory.

Infringement can be the result of decisions by the European Council. One reason that might encourage infringements is that the European Council works on the basis of consensus. The decisions it reaches are broad in character, which raises the likelihood that the form they take when transferred into EU law may be inconsistent with the Council's wishes. Further, as Peterson and Shackleton note "consensus, as a decision-making procedure, is relatively inefficient. European Councils frequently fail to reach decisions, creating 'left overs' or postponing decisions to a future date." Failures to implement EU law might be a result at the way the Council works and occasionally does not work.

The Commission

The second institution is the Commission, whose members are chosen by joint agreement between the governments of the member states. The commissioners are to be totally independent of their respective governments, and the EEC treaty as revised provides that they may not be relieved of their positions except in mass and by vote of the European Parliament.

Commissioners are also not allowed to hold a parliament position (Austin, 1990). The Commission is vested with the primary responsibility for ensuring the member states comply with both applicable treaty provisions and Community legislation. Thus, one of its main duties is to bring infringement actions under Article 226 of the Treaty of the European Union (TEU). This is one of the most significant manifestations of the Commission's duty to act as guardian of the Treaty. The Commission may pursue a member state before the Court for any breach of Community law, such as failing to apply a treaty rule, a regulation or a decision, or failing to transpose, implement, or apply a directive (Bradley, 2002). Scholars agree that only a small percentage of the cases initiated by the Commission in fact end up in Court, as member states often make an effort to comply with their obligations during the course of the procedure (Borzel, 2001). Bradley (2002) notes that if the Commission wins, the Court can only declare that the member state has failed to respect the particular legal obligation. He argues that unlike most federal supreme courts, the Court does not have the power to strike down national legislation; however, the member state is under an obligation to take the necessary measures to comply with the judgment. Furthermore, the Maastricht Treaty (Article 228 TEU) introduced a follow-up procedure by which the Commission might fine a recalcitrant member state until it has complied. In other words, the process by which laws and policies are made and enforced in the EU begins with the European Commission, and it therefore plays a major role in infringement cases. McCormick (1999) emphasizes that the European Commission has not only encouraged member states to harmonize their laws in the interests of removing the barriers to trade, but has also been the source of

some of the defining policy initiatives of the last forty years, notably the completion of the single market.

There has been a debate among scholars concerning whether the Commission can act independently and autonomously from the member states, when using its powers (Nugent, 2001). There are two different views. One view is from the intergovernmentalist position, which sees the Commission as an agent of the member states, facilitating their ability to take decisions and implementing the decisions they take. Viewing the commission as an agent, infringement of EU law would occur when principal-agent problems arise, the Commission goes beyond what some of the members desire, when members been outvoted in the Council of Ministers (see below), or when national leaders pursue national interests that have either changed or been incompletely articulated at the time the law was passed. This raises an interesting potential paradox. Since, as is noted below, member governments pass EU law, an infringement must be either a mistake or failure, or the original decision to must have been motivated by something other than national interest. The various strategy games that member governments may play in passing law but failing to implement them is a fruitful topic for research, but beyond the scope of this thesis. It is also a difficult topic to research, given that the decision-making process is secret.

A second view is from the supranational position, which acknowledges that member states are the EU's main formal decision-takers but suggests that they are frequently guided and led in what they do by the Commission.

In other words, the Commission is relatively independent. If member states consider the Commission as its guide, less infringements should occur than otherwise.

Nugent (2001) splits the difference. He suggests that although it is certainly true that governments of the member states have been reluctant to allow the Commission too much latitude, the evidence nonetheless indicates that in some policy areas and in some circumstances, the Commission does enjoy a considerable amount of independence and does exercise a significant degree of autonomy. Hence, given the relative independence of the Commission, considering that the Commissioners are to be totally independent of their respective governments, and since its primary role is to ensure member states compliance, we should expect few cases of infringement by member states.

Yet, the possibility exists that the Commission may act strategically with the EU member states. The Commission may treat some member states differently than others because they are more powerful, for instance, or because some member states make significant contributions to the EU budget or dispose of considerable voting power in the Council (Borzel, 2001). Furthermore, Mbaye (2001) suggests a selection bias on the part of the Commission when it decides which cases to take to the Court. She argues that states that have been members since the beginning have few excuses when faced with justifying non-implementation to the Commission. However, new states may be less likely to be taken to the Court, not because they implement well but because the Commission understands the problem of translating a vast existing body of EU legislation into national law and understands that the new member state is trying to comply. I return to the selection bias problem in the next chapter.

- *Council of Ministers*

The third institution is the Council of Ministers which is made up of ministers from the respective member states. The Council decides on new law. Despite its powers, it is less well known and understood than the Commission and the Parliament. Most Europeans tend to associate the actions of the EU with the Commission, forgetting that the Council of Ministers must approve all new laws (McCormick, 1999). There are two main characteristics of the Council of Ministers. First, the ministers are direct representatives of the member states and therefore look out for national interests before European interests. The structure of the Council enhances their capacity to have specific knowledge about national preferences. Line ministers meet in the Council. For example, when agriculture issues are in discussion, agriculture ministers represent their government. Foreign ministers constitute the Council only on general and/or highly controversial issues. Therefore, compliance with EU law might be expected to be high.

Yet the structure of the Council may also constitute a source of non compliance. There is no direct role for heads of government in the Council of Ministers. The devolution of decision making power to line ministers raises a potential coordination problem for national governments that might encourage compliance problems. What a line minister accepts might not be acceptable to other ministers, or to the head of government. This can be a particular problem for governments consisting of coalitions of parties, and in political systems that emphasize ministerial independence.

Thus, the Council by its structure is likely to have highly detailed information about national preferences, and member governments may suffer from a coordination problem internally.

Second, voting has often required unanimity, although since the Single European Act (SEA) decisions are taken by qualified majority in a growing share of policy areas. Unanimity has made it extremely difficult for the Council to pass legislation since one member state can veto a proposal that, while benefiting the EU as a whole, is not beneficial to the individual. A major advance under the SEA was the removal of the unanimous voting requirement in certain areas, areas that were expanded in later treaty revisions. Unanimity was replaced by qualified majority rules, which gives states different numbers of votes based on their size. Roughly, 2/3 of the votes are needed to pass legislation under qualified majority rules. The most significant of these revisions, the Treaty of Nice (2001) proposes a modified majority requirement of the codecision procedure, and introduced a triple majority in the Council. This triple majority requires a qualified majority of votes, a majority of the member states, and a majority of member governments totaling 62 percent of the EU population. This triple majority requirement took effect on 1 November 2004, and is equivalent to increasing the number of veto players in the system.

As a result, decision making in the European Union and implementation of the EU law will become more difficult. Whether decisions are taken by unanimity, qualified majority, or by triple majority, it is generally accepted that the norm of consensus guides the Council (Nugent, 2001). That is, even when voting rules allow members to be

isolated, members try to avoid this if possible. The consequences of this norm include laws that are not as precise as they might otherwise be, and the possibility that members may signal their potential non compliance by voting against legislation. Since debates and most votes in the Council remain secret, it is difficult to judge the prevalence and significance of these potential problems.

- *The European Parliament (EP)*

The fourth institution is the European Parliament (EP), which is the only directly elected body within the European Community. The European Parliament works with the Council of Ministers on amending proposals and represents interests of EU citizens. It has relatively few powers over how law is made. According to McCormick (1999), the European Parliament suffers from three critical weaknesses: it cannot introduce law, pass laws, or raise revenues.

However, EU legislative activity has been accompanied by periodic changes of the EU's institutional framework which have increased the power of the EP relative to the Council of Ministers, and the Commission. The EP has been acquired more power than in earlier times. The original Treaty of Rome provided the EP with a consultation procedure, which allowed the EP to offer its non-binding opinion to the Council of Ministers before the Council of Ministers adopted a new law in selected areas. The Single European Act (SEA) introduced a cooperation procedure, which allowed the EP a second reading for certain laws being considered by the Council of Ministers, including aspects of economic and monetary policy. Finally, the Maastricht treaty introduced a codecision procedure, in which the Parliament has the right to a third reading on specific laws, such

those regarding to the single market and the environment and creating provisions that made it difficult for the Council of Ministers to override the wishes of the EP.

In essence, with the procedure of codecision, the EP becomes a coequal legislative body with the Council of Ministers and has more power to the implementation process of EU law. It has become less a body that merely reacts to Commission proposals and Council votes, and has increasingly started its own initiatives and forced the other institutions to pay more attention to its opinions (McCormick, 1999). Yet, the increased influence of the EP in the policy-making process comes at the expense of the member governments, which might therefore push legislation away from the preferences of the members. Therefore, implementation may suffer and infringements grow.

- *The European Court of Justice*

Finally, the European Court of Justice is the principle judicial organ of the EU. Its role is to ensure that the law is observed in the interpretation and application of the EU Treaty (Voyatzi 1996). Its most important role is to rule on interpretations of the treaties and EU laws, and to ensure that national and European laws and international agreements being considered by the EU meet the terms and the spirit of the treaties. The ECJ can rule on the constitutionality of all EU law, gives rulings to national courts in cases where there are questions about the meaning of EU law, and rules in disputes involving EU institutions, member states, individuals and corporations. The Court's role has been vital to the development of the EU. Without the Court, the EU would have no authority and its decisions and policies would be arbitrary and insignificant (McCormick, 1999).

Bradley (2002) argues that the Court plays a central role within the institutional structure of the EU. He contends that the Court makes a vital contribution to the institutionalization of the Union. Yet, the Court has no direct power to enforce its judgments. Implementation of EU law is left mainly to national governments of the member states. Member states, knowing that the Court of Justice does not have enough direct power to enforce its judgments might ignore Court rulings. Yet, there has been some progress within the treaty establishing enforcement of compliance with the EU law via publishing the infractions of member states and by the possibility of fining non-complying members.

In sum, in this section I have discussed two important points. First, I discuss the phenomena of European integration from the point of view of three approaches: functionalism, multilevel governance, and intergovernmentalism, noting how each approach makes broad prediction about the prevalence and sources of infringement. Table I summarizes these broad predictions.

Table I: Major Approaches and Infringement

	Description of EU decision-making	Implications for Infringements
Neo-Functionalism	Broad coalition of actors solving problems via cooperation, resulting in sovereignty transfer to supra-national institutions.	Few, randomly distributed, resulting from “honest” mistakes.
Multi-level governance	Multi-level decision-making with indeterminant results.	More infringements randomly distributed, resulting from complexity of decision-making.
Intergovernmentalism	State pursuit of national interests via cooperation, resulting in sovereignty pooling.	Large number of infringements, resulting from conflicting national interests.

Second, I noted that institutions of the EU, the European Council, the European Commission, the Council of Ministers, the European Parliament, and the European Court of Justice (ECJ) are becoming more powerful and are complicating implementation. I focus on two institutions: The Commission and the European Court of Justice, since they play an important role in the implementation of Community law within the member states. The Commission develops proposals for new laws and policies, and, since it represents the interests of the EU, its priority is on the implementation and enforcement of EU law. The European Court of Justice just as the Commission, represents the interest of the EU and its primary role is to ensure conformity of national and EU laws. When law is not implemented at all, the Commission and the ECJ are usually involved.

However, the rest of these institutions also play a role in the implementation process. The European Council as a political organ makes broad policy decisions and

might influence to the implementation of EU law. The Council of Ministers, which makes final decisions on Commission proposals can easily influence the implementation process and can encourage non-compliance by national governments. Finally, the European Parliament, which works with the Council of Ministers on amending proposals, is also involved in the implementation process and might encourage infringements.

Impact of Community Law on the Domestic Legal Systems of the Member States.

The key to understanding the effect of European Community law on the member states, and consequently its enforcement, is the relationship between Community law and national law (Hervey, 1996). Scholars have identified two dimensions of this relationship: interaction with community law and national law and conflict between them. Interaction between Community law and national law addresses those areas where the two systems complement each other. The first step is the recognition by all branches of government that the Community legal order is not a foreign system, and that member states and Community institutions have established indissoluble links between themselves to achieve their common objectives (Borchardt, 2000).

Once recognized by national actors, Community law must be observed and applied. In other words, member states must implement Community law into national law. Further, when gaps in Community law occur, national law prevails until the EU develops new law to replace national law. Therefore, Community law both supercedes national law and is superceded by national law when and until new EU law replaces national law. Borchardt states that in any case, national authorities enforce Community law by the provisions of their own legal system.

In that sense, since implementation of Community law requires new and adequate legal structures, infringement of EU law is a possible outcome.

Conflict is the second dimension of the relationship between Community and national law. Conflict arises when Community law imposes rights and obligations conflicting with the provisions of national law. Borchardt (2000) explains that this problem of conflict can be resolved by the application of the two most important principles of Community law: the direct applicability of Community law and the primacy of Community law over conflicting national law. The direct applicability principle simply means that Community law confers rights and imposes obligations directly, not only on the Community institutions and the member states but also on the Community's citizens (Borchardt, 2000). In other words, direct effect means that individuals can reference Community law as such, without a requirement for national implementing legislation (Hervey 1996, Wincott 2001).

The direct applicability of Community law leads to the second principle, supremacy. What happens if a provision of Community law gives rise to direct rights and obligations for a Community citizen that are in conflict with a national law? The conflict between Community law and national law can be settled only if one gives way to the other. None of the Community treaties contain a provision indicating that Community law is subordinate to national law (Borchard 2000, Hervey 1996, Shuman 1998, Wincott 2001). By appealing to the higher principles and intents of the EU treaties, the ECJ has articulated the principle of supremacy, even if in some cases it has granted supremacy to national law. Finally, Borchardt (2000) concludes that the Community and its legal order

can survive only if compliance with and safeguarding of that legal order is guaranteed by the two principles, direct applicability and primacy.

In sum, Community law overrides national law. This dynamic involves two alternatives, one is the interaction between Community law and national law and the other is the conflict between Community law and national law. The former—interaction—means the translation of EU law to the national level, when no prior law exists at that level or when national and EU law are the same. The latter—conflict—occurs when EU law contradicts national law. Finally, this conflict can be resolved and hence achieve implementation via the application of two important principles: direct applicability and supremacy. Yet, infringement of EU law still occurs in both cases, interaction and conflict between Community law and national law.

The implementation of European Union Law

Implementation and enforcement have been a growing focus of attention in the European Union, both because of the problems of uneven implementation by the member states, and because of the recognition that compliance problems can arise even in countries which have relatively strict laws and procedures and good records implementing national law. Implementation has been defined as having two related dimensions: incorporation and application. When the EU adopts new, non-administrative legislation, its member states are required to incorporate the legislation into national law. Yet, legal incorporation does not guarantee that there will actually be effective translation of EU laws and policies into action (application). The Commission has had difficulties monitoring incorporation and application of law by the member states, since its limited

resources (Peters 2000, Wood et al. 1996). Critics of the EU emphasize that an organization such as the Commission that wishes to implement, or monitor the implementation of a variety of policies over a huge territory and population, should have a larger number of employees. Peters (2000) argues that just on the basis of Commission personnel alone, we might expect the EU to have a severe implementation deficit. Further, Peters contends that as the EU is moving from its original competencies into a wider array of issues, implementation problems have grown. “As the range of EU activities increase so too do the commission’s implementation difficulties” (Peters 2000, p.194). These difficulties arise in part through the relative inexperience of Commission officials in new policy areas, and because some policy areas are less tractable for implementation review than the original areas of EU competence. According to Peters, another reason to be concerned about the implementation deficit is that the EU is not a normal political system. The EU is still in the process of state building and therefore its capacity to enforce its policies throughout its territory is poor. Hence, implementation is not a simple process of translating a law from the EU to the national political system (Dimitrakopoulos and Richardson, 2001).

As noted in the introduction, this research focuses on why some member states in the EU incur more infringements than others. There are two different approaches in analyzing the implementation process, one based in the management school (Abbot and Duncan, 1998; Chayes and Chayes, 1995; Mitchell, 1994; Young, 1994; Downs, Rocke, and Barsoom 1996; Tallberg, 2002) and one in bureaucratic politics (Knill 1996, 2001).

- *The Management Approach*

The management approach contends that state compliance with international agreements is good and EU law enforcement has played a minimal role in achieving that record. Rather, states intend to implement the laws they pass at the EU level, and need little or no encouragement. When problems of compliance occur, it is because of administrative breakdowns.

Non-compliance is not intentional, according to this argument. The primary causes of non-compliance for the management approach are (1) the ambiguity and indeterminacy of EU laws, (2) the capacity limitations of states, and (3) uncontrollable social or economic changes (Abbot and Duncan, 1998). Thus, punishment is not only inappropriate given the absence of intent, but it is too costly, too political, and too coercive. Abbot and Duncan contend that the strategies necessary to induce compliance and maintain cooperation involve improving dispute resolution procedures, technical and financial assistance, and increasing transparency. Finally, the principal goal of the managerial school's investigation of compliance is to design more effective strategies for overcoming compliance problems in regulatory regimes. In that sense, the school concludes that it is useful to shift attention away from the relation between cooperation and enforcement to why those compliance problems that do exist have occurred and how they might be remedied.

Managerial theorists stress states' general propensity to comply with international rules, owing to considerations of efficiency, interests, and norms. Non-compliance, when it occurs, is not the result of deliberate decisions to violate treaties, but an effect of

capacity limitations, rule ambiguity, and contextual changes. By consequence, non-compliance is best addressed through a problem-solving strategy of capacity building, rule interpretation, and transparency, rather than through coercive enforcement (Tallberg, 2002). Capacity building is one of the main programmatic activities of international regimes, thus it is legitimate for the EU to try to improve capacity to implement EU law among its members. Additionally, to reduce compliance problems resulting from ambiguous treaty language, the management approach suggests authoritative rule interpretation in international legal bodies. Finally, Tallberg (2002) states that transparency improves compliance by facilitating coordination on the treaty norms, providing reassurance to actors that they are not being taken advantage of, and raising the awareness of the effects of alternative national strategies.

It is reasonable to assume that the effects of ambiguous law are randomly distributed across members, as are the effects of social and economic changes. Thus, state capacity to implement is the primary source of variation in compliance across member states. In this thesis, I use level of economic development as shorthand for capacity limits. I expect that states with relatively poor economies will have administrative capabilities that are weak.

It is presumed that countries with stable, effective political institutions and corporatist systems that include interest organizations into political decision-making are more capable of implementing EU directives. Most of these states are found in the north of the EU. Furthermore, it is easier to implement EU law in northern countries, where political systems have high legitimacy, citizens are satisfied with democracy, the degree

of social fragmentation is low, individual rights are highly respected, and the attitudes towards the EU are positive (Risto and Uusikyla, 1998). In contrast, southern members including Spain, Greece, Portugal, and Italy have particular problems with administrative procedure and competence. Southern member states with small public sectors, inefficient bureaucracies, and systemic corruption should produce higher levels of non-compliance.

Thus, the first hypothesis states that *variation in wealth across countries states, specifically between rich northern countries and poor southern countries, should result in variation in non-compliance of EU law within the member states*. That is, I expect more cases of infringement in southern members of the EU than in northern members because of differences in the capacity of national bureaucracies to implement EU law.

- *Bureaucratic Politics Theory*

Knill's adaptation theory offers a second hypothesis. He argues that national administrative traditions affect implementation of European legislation, depending on the pressure for adaptation applied by supranational policies and the susceptibility of administrative structures to change. Adaptive pressure means the degree to which new EU law is consistent with prior national law. Susceptibility means the extent to which new EU law causes the bureaucracy to change.

Implementation effectiveness depends on the "institutional scope" of European adaptation pressure (Knill, 1996). Knill's first argument emphasizes that national compliance with EU law depends on the level of adaptation pressure perceived in the member states. In other words, effective implementation is dependent on the extent to which national arrangements must adapt to European requirements.

Knill then argues that administrative traditions affect the process of adaptation to new institutional arrangements by affecting not only the strategies, but also the preferences of relevant actors. For instance, new demands are reviewed in light of existing rules and standard operating procedures.

Knill states that effective implementation is more likely in member states with a high potential for administrative reform. Implementation therefore, is contingent in two factors, the extent to which national actors must change, and their susceptibility to change. Using this institutional and dynamic conception of adaptation Knill distinguishes between three levels of pressure. He classifies pressure as high if EU policy is contradicting core elements of administrative arrangements. In that case, implementation is likely to be ineffective, since European policies require fundamental institutional changes, which cannot be achieved easily. Moderate adaptations relate to cases where EU legislation is demanding only changes within the core of national administrative traditions rather than challenging these traditions themselves. Finally, in cases of low adaptation pressure, Knill assumes effective implementation as a result of the full compatibility of European requirements and existing national arrangements. In other words, low adaptation pressures results if member states can rely on existing administrative provisions to implement European legislation.

This thesis tests only the second part of Knill's approach. As noted above, according to Knill adaptation is contingent on both the legal and administrative system of a country, and the degree to which EU law requires the state to change. Measuring adaptive pressure is difficult, since it would require a careful comparison of EU law with

national law in all cases, not just those that become infringements. Such a project would require the examination of data from literally thousands of cases in each member government, and is beyond the scope of this thesis.

Thus, I examine only the second part of Knill's theory. In sum, national compliance with EU law depends on their flexibility in adjusting to new demands.

Measuring the susceptibility of national bureaucratic structures to change is also quite difficult. Ideally, one could want to examine the structure of the bureaucracy, its rules of operation, the extent of interaction across the bureaucracies, etc. A convenient shorthand for these factors is veto players (Tsebelis, 2002) Veto players are defined as actors that exercise a veto right over policy proposals. The more veto players, the more difficult it will be to achieve agreement on new policy. While not a direct measure of Knill's notion of bureaucratic resistance, I argue that veto players are likely to covary strongly with bureaucratic reform possibilities. If nothing else, the presence of a large number of veto players is likely to complicate any effort to reform bureaucratic to meet the requirements of new EU law.

Following Knill, *as the number of institutional and coalitional veto players increases, the amount of a member states' non-compliance is expected to increase as well.* The second hypothesis tests the proposition that as the number of institutional and coalitional veto players increases, the number of cases of infringement should increase as well. The more fragmented the administrative structure, the more difficult it will be for the bureaucracy to comply with the EU law because there will be more actors which enjoy the power to block implementation. Therefore, I assume more cases of

infringement in member states that have more veto players since veto players in large numbers lead to both a lower quality and a slower speed of implementation, and therefore higher infringement (Mbaye, 2001).

Three main points had been developed in this chapter. First, three major approaches contribute to explain EU integration: neofunctionalism, multilevel governance and intergovernmentalism. Each of them has a different view of EU decision-making and hence a different understanding of implications for infringements. Second, the institutions of the EU, the European Council, the European Commission, the Council of Ministers, the European Parliament and the European Court of Justice are becoming more powerful and are complicating implementation. While, all of them play an important role in the implementation process, I focused on two institutions: the Commission and the European Court of Justice, since their participation in the implementation of EU law within the member states is crucial. Finally, I developed two different approaches in the analysis of EU implementation, one based in the management school (Abbot and Duncan 1998; Chayes and Chayes 1995; Mitchell 1994; Young 1994; Downs, Rocke and Barsoom 1996; Tallberg 2002) and one bureaucratic politics (Knill 1996, 2001). In accordance with these two approaches, I developed two hypotheses: first, that rich, northern countries should comply with EU law more than poor, southern countries because of the capacity of national bureaucracies to implement EU law, and second that as the number of institutional and coalitional veto players increases, the amount of a member states' non-compliance will increase as well.

Chapter 2: Research Design, Data and Methods

As noted above, this research focuses on why some member states in the EU incur more infringement than others. Chapter I reviewed the literature on EU law and the various hypotheses offered to explain the pattern of infringements. In my first hypothesis, I expect that wealthy northern countries will have fewer infringements of EU law compared to poor southern countries. In my second hypothesis, I expect that member states which have more veto players will have more implementation problems.

To test these hypotheses, I use two different and complementary methods: quantitative and qualitative. H₁ and H₂ are testing in a statistical analysis of 1635 infringements between 1962 to 1999. To further explore the hypotheses, this thesis analyzes two cases in detail. These cases drawn from the same policy area, environmental policies, and are chosen so as to maximize the variance in the independent variables. This chapter discusses the design of the research, data sources, and methods chosen to analyze the data.

Research Design

Two hypotheses were developed to explain why some member states in the EU incur more infringements than others.

H₁: Variation in wealth across countries states, specifically between rich northern countries and poor southern countries, should result in variation in non-compliance of EU law within the member states.

H₂: As the number of institutional and coalitional veto players increases, the amount of a member state's non-compliance is expected to increase as well.

I expect that poor southern countries will have more infringements than rich northern countries, because of the greater capacity to implement laws enjoyed by rich countries. Second, I expect that as the number of institutional and coalitional veto players increases, the number of infringements within the member states will increase, heightening prospects for failed implementation. These hypotheses are tested using both statistical and case study methodologies. In this section, I discuss the design of both sets of analysis.

Statistical Tests

For the statistical test, the negative binomial technique was employed. Additionally, since the interpretation of this result is limited because measures of explained variance are unreliable as are the values of coefficients, an additional analysis was run. Each variable was set at its mean, and then allowed to vary from its minimum to its maximum values against the other mean values in order to get a sense of the significance of each independent variable in explaining the number of infringements.

The data used here are cases of infringement as referred by the Commission to the European Court of Justice. Infringements are defined as an instance of member states failing to fulfill treaty obligations. Failure embraces non-compliance with binding obligations arising from any Community act, including the Treaties, secondary legislation, international agreements and general principles of law. European Community law imposes extensive obligations on the member states in a very wide range of areas.

In order to comply with these obligations, member states are required, in the vast majority of cases, to take action which may involve the enactment, amendment, or repeal of their national law (Voyatzi, 1996). Infringements, then, are failures to meet these obligations. The process by which the Commission announces an infringement by a member states is highly structured. The Commission, which notoriously is very small and has a tiny budget, must first become aware of a potential infringement. The Commission devotes a small amount of its limited resources to ascertain violations of EU law, and many cases are brought to it by individuals and groups pursuing particular interests. Once the Commission becomes aware of a potential violation, the Commission will open a “dossier.” Mbaye (2001) states that by opening a dossier, the Commission is investigating only whether or not an infraction of treaty obligations has occurred. If the Commission determines that an infringement has occurred, the Commission sends a formal letter to the state concerned. The state then has the possibility to respond and the Commission, if the reply is not satisfactory, will issue a reasoned opinion informing the state what it must do to comply. Compliance thereafter is likely, and most cases never reach the next, judicial phase (Mbaye 2001, Voyatzi 1996). If states fail to satisfy the Commission, the case enters a litigation phase, consisting of referral of the case to the ECJ, and consideration by the ECJ.

As noted above, the process by which infringements move from the initial to the terminal stage is complicated. In the early stages, dossier, formal letter and reasoned opinion, much of the activity consists of bringing political pressure on member governments to recognize that they have violated EU law, and to correct the problem. At

the point at which the case is referred to the ECJ, it should be clear to all participants that there is a conflict regarding the correct implementation of the law.

There is a significant debate in the literature regarding when— meaning at what stage— one should measure infringements. Borzel (2001) analyses all stages up to the referral to the Court. The danger with measuring infringements in this way is that it risks lumping together different phenomena. Borzel (2001) notes some 6200 cases when infringements are measured broadly, but Huelshoff et al (2003)— the source of the data used here—find only 1635 cases of referrals to the ECJ. What happens to the over 4000 cases that do not get to the ECJ is crucially important for the design of this research. There are several possibilities.

First, it may be the case that the infringements that do not make it to the Court are misinterpretations (Mbaye, 2001). The Commission may open a case, but find that there is no violation of EU law. These cases should clearly be deleted from any analysis of infringements. Second, it may be that the pre-litigation phases offer the members an opportunity to correct their failure to implement, or implement properly, EU law. These cases should be included, as they speak to the validity of the management school's interpretation of the causes of infringement. Unfortunately, these parts of Borzel's data are unavailable at this time. There is also no way to know what the ratio may be between the two classes of cases. Thus, we are left to analysis of cases registered from the point at which they are referred to the ECJ, or at the point at which the Court issues on ruling.

Yet, there is another reason for focuses on post-litigation phases only: the potential for strategic behavior of the part of all participants. Garrett (1995) notes that the

highly charged political atmosphere of violations of EU law invites the prospect for strategic behavior. While Garrett's argument is limited to Court rulings, it can be extended to the earlier phases of infringement as well. The Commission, for example, may act strategically in terms at which cases it chooses to investigate. The logics here are varied, and contradictory. It may be that the Commission chooses to start processes against weaker, less influential members because it is more likely to be successful. Portugal or Greece might be expected to be easier to pressure than Germany. Alternatively, the Commission may bring causes against some members because it expects them to comply more readily. Germany, for example, is often thought to be reflexively pro-integration (Goetz, 1996; Katzenstein, 1998), and might therefore be expected to respond more readily to prompts for compliance.¹ If the Commission acts strategically, what motivates it is unclear.

Member governments might be responding strategically as well. Failure to correct infringements in the early stages may be efforts to signal to the Commission that the member government wants the Commission to drop the case. While the Commission's position is stronger than it was immediately after the Luxemburg compromise in 1966, it remains subject to political pressure for the members. Mbaye (2001) argues that in the reasoned opinion stage, the state may simply be testing the Commission's resolve to force implementation in a way that reflects a different interpretation of EU laws than that taken by the state. Thus, only a small percentage of cases reach the ECJ and it stands to reason that those that do must be serious violations of EU law. In that sense, she argues,

¹ Note, however, that Knill (1996) found that domestic factors— some of what is studied here— led Germany to have difficulties implementing EU law, while the less reflexively pro-integration Britain was more likely to implement EU law successfully.

“Measuring in the administrative phase may not be an accurate reflection of true infringement” (p. 267). Therefore, the possibility of strategic behavior on the part of the Commission and on the member governments in the pre-litigation stage is high. Analyzing those cases is problematic. This leaves the two remaining stages in the infringements process, referral to the Court and ECJ rulings.

Measuring infringements as ECJ decisions may add additional sources of bias since the ECJ can act strategically as well. The court understands that its power is not based on the EU’s treaties but rather depends on the continuing compliance of national governments. As a result, “the court’s judicial activism is constrained by the reactions they anticipate from member governments to their decisions. The Court of Justice is also a strategic actor that takes into account the anticipated responses of national governments before it decides cases brought before it” (Garrett, 1995, pg. 180). Additionally, many cases never reach the voting stage. Some are resolved while the case is in the Court’s docket, others are never reported out of the Court.

For purposes of this study, only referrals to the Court by the Commission will be considered. I believe that this minimizes, but does not eliminate potential bias caused by inappropriate cases and strategic behavior. Excluding pre-litigation cases eliminates honest mistakes by the Commission, and the many cases that have been initiated by the Commission are resisted by the members for strategic purposes. Court referrals may still be guided by strategic thinking. The Commission may be signaling by bringing cases that it thinks it can win because of the characteristics of the member targeted, yet the seriousness of the legal process— its visibility, its potential for fiscal punishment—

presumably reduces the severity of the impact of Commission strategic motivations. At this stage, as well, any strategic signaling by the members is likely to be minimal as well. Additionally, analyzing cases at this stage eliminates the possibility of strategic behavior by the ECJ. Clearly, the potential biases caused by strategic behavior on the part of the actors involved is not eliminated by this choice, but I believe that it is minimized. As noted below, part of the reasoning behind the use of comparative cases is to explore the extent of the biases caused by strategic behavior.

Thus, between 1962 and 1999, one thousand sixteen thirty five (1635) infringements—in which the Commission has declared that a failure to fulfill treaty obligations have occurred and refers case to the ECJ— were found. Cases were counted by country and by the year of the filing of the case. All members of the EU were counted, but obviously only for their years of membership. Therefore, not every country is included in the analysis for the entire time period. The data was collected from the Commission's Bulletin.

Case Studies

Qualitative and quantitative method has a different style and specific techniques, but the same logic provides the structure for each research approach. Even if qualitative method usually employs a small number of cases, it provides richer information (King, et al, 1994). There are a variety of reasons for conducting case studies. First, using case studies allows the collection of “as much data in as many diverse contexts as possible” (King, et al, 1994, p. 24).

If there are more observable implications which are consistent with the theory, the explanation is richer, and hence the results more certain (King, et al, 1994).

To conduct case studies, several requirements must be met. First, one must strive for unity homogeneity. Unit homogeneity is “the assumption that all units with the same value of the explanatory variables have the same expected value of the dependent variable” (King, et al, 1994, p. 91). With only two cases, guaranteeing unit homogeneity is difficult. As is develop in the next chapter, I predict homogeneity in the cases chosen here. Second, the cases were chosen to minimize issue-specific sources of variance. It may be that some aspects of EU policy-making are more likely to lead to infringements than others. To eliminate this sort of bias, I chose two cases from the same policy field, environmental regulation. I also control for time specific effect by choosing cases at roughly the same time (1999 and 2000).

Finally, I chose two cases to maximize the variation in the independent variables. The first case, the Greek failure to implement EU law, represents a poor country with comparatively few veto players. The second case, the German failure to implement EU law, represents a rich country with comparatively many veto players. Given space limitations, these cases maximize variation on the independent variables. Yet the cases do not maximize variation on the dependent variable—they are both cases of infringement. Ideally, one would want a case where each country also complied with a similar EU law, in order to assess more accurately the effects of each independent variable. There are several reasons why this was impracticable in this research. First is the difficulty in identifying laws of similar impact. There are no a priori criteria for making this

assessment. While resolvable, this might well necessitate moving out of the time and issue contexts of these two cases, raising unit homogeneity problems. Second is data availability. As is noted below, data sources are extremely limited, without field work. These issues are not the sort that gets wide-spread national attention, and language constraints would limit the utility of such data collection schemes. Finally, given the lack of empirical work in this area, the utility of a large-scale comparative case study design is limited. These cases can at best function as probability probes, suggestive of likely avenues for further qualitative and quantitative research.

Variable operationalization and Sources

As I noted above the dependent variable is an infringement suit brought by the Commission against a member government for failing to implement an EU law. I found 1635 infringements between 1962 and 1999. Cases were counted by country and by the year of the filing of the case. All members of the EU were counted, for their years of membership. The data were collected from the Bulletin of the European Communities. Commission of the European Community.

The first independent variable used here is the level of economic development of the member states. The indicator of gross domestic product (GDP) per capita is utilized to measure wealth. Most of this data are found in Groningen Growth and Development Centre and The Conference Board, Total Economy Database (2003). Additional data is from Angus Maddison, The World Economy and A Millennial Perspective, OECD Development Centre 2001). The second independent variable is capacity to adjust in new EU law. This indicator used here, veto players, has been defined as “individuals or

collective actors whose agreement is necessary for a change of the status quo” (Tsebelis 2002, p.19). The variable measures the number of independent branches of government: executive, legislative, judiciary and sub-federal entities. The veto players’ measure also includes the partisan of the executive and legislative branches of government, divisions in the party control of legislative branches, and coalition governments (Henisz 2002). This indicator is taken from The Political Constraint Index (POLCON 2002).

The indicators of exports to the EU and population are use as control variables. Both attempt to control for the impact of frequency of contact with EU law and the incidence of infringement. Exports to the EU gets at the level of activity in the EU. I assume that more active member states in the EU would have more implementation problems since they should be require to implement more laws. Following the same logic, I assume that member states with more population will have a greater number of diverse interests. The export to the EU variable is found in the Eurostat-External Trade: Statistical Yearbook (1958-1996). Finally, the population data is found in the World Development Indicators (2001).

Chapter: 3 Data Analysis and Observations

As noted in the preceding chapter, H₁ and H₂ have been tested using both statistical and case study methodologies. In the statistical analysis, the negative binomial technique was employed. This chapter has been divided in two sections. The first reports the results of the quantitative analysis, the second the results of the case studies.

The dependent variable in these analyses is an infringement suit brought by the Commission against a member government for failing to implement an EU law (measured by the number of cases of infringement as referred by the Commission to the European Court of Justice). The independent variables are capacity to implement (measured on GDP per capita) and bureaucratic resistance to implementations (measured on the number of veto players). The control variables include intensity of interaction with the EU (measured as exports to the EU as a percent of total exports) and size (measured as population). The two cases chosen for intensive studies focus on waste, and the countries studied (Greece and Germany) were chosen to maximize variation on the independent variables.

Discussion of descriptive statistics

Table II displays descriptive statistics for the variables used in this research.

Table II: Descriptive Statistics

Variable	Observation	Mean	Standard Deviation	Minimum	Maximum
Infringement	371	4.407	7.724	0	70
Population	371	2.92e+07	2.71e+07	322700	8.21e+07
GDP	333	13972.53	3606.017	6822.029	21822.78
Export to EU	371	45347.85	50415.97	1337	293370
Veto Players	371	.7578	.0992	.3494	.8927

Table III displays the summary statistics from the countries that have been chosen in the case studies. Several observations can be drawn for this table. First, Germany has a larger number of observations than Greece has since Germany is a founding member of the EU and Greece entered in 1981. Additionally Germany infringes less than Greece—Germany averaged 3.86 infringements and Greece averaged 8.36. Germany’s GDP and exports to the EU are greater than Greece’s. Finally, in terms of veto players, Germany has more veto players than Greece—Germany’s averaged 0.84 veto players and Greece averaged 0.54.

Table III: German and Greek cases

Country name: Germany					
Variables	Observation	Mean	Standard Deviation	Minimum	Maximum
Infringement	38	3.868	4.708	0	17
Population	38	7.85e+07	2081398	7.39e+07	8.21e+07
GDP	38	14930.03	3352.586	9023.035	19496.51
Export to EU	38	99798.71	87217.84	5951	293370
Veto Players	38	.8415	.0044	.8370	.8556
<hr/>					
Country name: Greece					
Variables	Observation	Mean	Standard Deviation	Minimum	Maximum
Infringement	19	8.368	7.266	0	28
Population	19	1.02e+07	273255.4	9729000	1.05e+07
GDP	19	9934.42	799.4439	8859.957	11640.53
Export to EU	19	3974.895	1080.099	1697	5600
Veto Players	19	.5408	.1962	.3494	.7436

Quantitative analysis

The negative binomial regression technique was use to statistically analyze the data used in this study. Table IV displays the results of the analysis.

Table IV: Negative Binomial Regression

Variable	Coefficient	Significance of p
Population	1.03e-08	0.063
GDP	.0001845	0.000
Exports to EU	5.67e-06	0.000
Veto Players	1.655742	0.104

The negative binomial results indicate that all the variables are significant, at either the .10 or .01 levels. All are also positively related with infringements. The implications of this last model for the first hypothesis are clear. The findings are contrary to the argument that rich, northern countries should have fewer cases of infringements than poor, southern member countries because of differences in the capacity of national bureaucracies to implement EU law. Indeed, the data do not support the argument that because rich northern countries have more stable economies, effective political institutions, and corporatist systems that integrate interest organizations into political decision-making, they would have the best capabilities to implement EU law. Precisely the opposite is found: richer countries violate the law more often than poorer countries. It may be that greater prospects for violating law are what drive the positive relationship between GDP per capita and infringements. Thus, the first hypothesis, from the management school (Abbot and Duncan, 1998), is not supported here. While beyond the scope of this research, it is clear that alternate explanations drawn from other research traditions must be explored.

Hypothesis 2 states that as the number of institutional and coalitional veto players increases, we should expect an increase in the number of infringement cases within member states. According to the negative binomial regression model, the data are

consistent with Hypothesis 2. The results indicate that the number of veto players has a positive impact on the number of infringements. Thus, the second hypothesis from bureaucratic politics (Knill, 1996, 2001) is supported here.

Additionally, both control variables are significant, and positively related to infringements. This suggests that larger countries and countries that are more economically active in the EU violate the law more often. Thus, this analysis suggests that failure to implement EU laws may in part be a function of opportunity—the more times a country comes into contact with EU law, the more likely it is to break the law. This finding will be explored in greater detail in the conclusions.

Since the negative binomial regression does not generate either a measure of explained variance or interpretable coefficients, an additional analysis was run to try to get a sense of the importance of each independent variable in explaining the number of infringements. Each variable was set at its mean, and then allowed to vary from its minimum to its maximum values against the other mean values. Table V reports these results.

Table V: Estimated Effects of the Independent Variables

Variable		Predicted Number of Infringements
GDP	→ Minimum	-1.021
	→ Maximum	1.745
Veto Players	→ Minimum	-.375
	→ Maximum	.521
Population	→ Minimum	.000
	→ Maximum	.843
Export to EU	→ Minimum	.048
	→ Maximum	1.70

Thus, when all the other variables are held at their means and GDP is allowed to vary from its minimum to its maximum value, the model predicts an increase of about 2.7 infringements. Similar values for veto players are about .9 infringements, for population about .8 infringements, and for exports to the EU about 1.7 infringements. Thus, the strongest predictor is GDP, followed by exports to the EU, with veto players and population having about the same level of impact. Taken together, and given the standard deviation of infringements, this model accounts for about a standard deviation in the dependent variable. The exact magnitude of these effects is difficult to estimate given the skewness in the data. Yet at the least these results are neither trivial nor sufficient. Clearly the model is underspecified.

In sum, the results of the statistical analysis do not suggest that some member states infringe more than others because of breakdowns of its administrative capacity—the management school. Member states that have a high GDP are more likely to not comply with EU law. It may be the case that member states that are more active in contact with the EU would have more laws to comply with and hence greater chances for failing to implement EU law. The results also suggest that veto players are involved in the process of policymaking decisions of the implementation of EU law. As the number of veto players goes up, the chance that members will fail to implement also rises. These results will be explored in greater detail below in the analysis of the cases, and in the concluding chapter.

Qualitative analysis

The two cases studied here focus on environment protection, especially waste issues. There was no mention of environmental protection in the 1957 Treaty of Rome. It was not until the 1970s that the emergence of environmental concerns in public opinion started moves in this area at Community level. Environmental policy is a highly Europeanized area (Giannakourou, 2004). The entry into force of the Single European Act (SEA) in 1987 reinforced the EU's role in environmental regulation. An environmental title was added to the treaty. The SEA is generally acknowledged as the turning point for the environment in the EU. Finally, the entry into force of the Maastricht and Amsterdam Treaties—in 1993 and 1999 respectively—brought further progress on environmental issues, such as inclusion of sustainability in the treaties and integration of environmental considerations into different areas of Union activity.

The Environment Directorate-General (DG), which was created in 1981, initiates new environmental legislation and ensures that environmental laws, which have been passed, are actually put into practice in the member states. The Environment DG acts to ensure that EU environmental legislation is applied correctly by the member states. It however suffers from the same general limitations that the Commission faces in overseeing implementation, including a small staff and budget, and ambiguous law.

As noted above, the two cases studied here focus on waste issues. Waste is generated by all forms of economic activity and impact the environment during production and final disposal. Waste results mainly from inefficient processes and the non-optimal use of energy and materials; it arises from industry, agriculture and

household consumption (Wieringa, 1995). Waste minimization from production to consumption has become an important focus of policy. Yet quantities of generated waste continue to rise. Past practices have focused on disposal in landfills and have led to contamination of soil and groundwater. Although improvements in technologies have been made, disposal continues to pose risks to the environmental and human health (Wieringa, 1995).

In the EU waste has been defined in article 1 (a) of Directive 75/442/EEC as:

any substance or object in the categories set out in Annex I which the holder discards or intends or is required to discard. Annex I. Categories of Waste: Production or consumption residues not otherwise specified below, off specification products, products whose date for appropriate use has expired, materials spilled, lost or having undergone other mishap, including any materials, equipment, material contaminated or soiled as a result of planned actions, unusable parts, etc.

The EU's general objective is to move towards sustainable waste management. The strategy for sustainable waste management involves a hierarchy of options, including first prevention, then recycling and reuse, and finally safe waste disposal (Wieringa, 1995).

According to Hypothesis 1, in the Greek case we would predict failure to implement EU law because of Greece's administrative capacity. Greece's average GDP per capita was 9,960 euros, compared to the EU average of about 14,000 euros. Exports to the EU and total population are also low compared to other member states. In contrast, in the German case, according to the first hypothesis, we would predict that failure to implement EU law would not be because of poor capacity. Germany's average GDP per capita—14,930 euros—is above the EU average. Further, exports to the EU and total population are far higher than other member states.

Hypothesis 2, in contrast, suggests the opposite pattern. The sources of Greece's failure to implement should not be found in the number of veto players, since it has a lower—than—average number of veto players. Germany, however, has a larger—than—average number of veto players. Hence, their failure to implement should be explained by large number of veto players in Germany. To be sure, these hypotheses suggest only tendencies—veto players may be important in Greece, and administrative capacity may be important in Germany, but according to the hypothesis, these factors should be less important than the others.

The structure of the analysis in each case is as follows. First is a general description of the politics and policies of each country. Second, the environmental policy of the country is analyzed. Third is a description and analysis of the specific case in which the Commission referred a violation of EU waste law to the ECJ. Finally, the case study concludes with a discussion of the hypotheses.

- *The Greek Case*

Greece's population is about 10.9 million. Under the Constitution of 1975, Greece is a parliamentary democracy with a president as head of state. The single-chamber parliament has 300 seats and members have been elected since 1993 according to a system of proportional representation. Greece is divided into prefectures. The prefects and their council members are directly elected—most recently in October 2002. The Prime Minister, whose government must enjoy the confidence of the Parliament, has extensive powers. Thus, the Prime Minister and the cabinet play the central role in the political process. The President of the Republic is elected by the members of Parliament

for a five-year term, renewable only once. The president performs only limited governmental functions in addition to ceremonial duties (Leach, 2000). Greece uses a reinforced proportional representation electoral system, which eliminates fragmented parties and ensures that the party which leads in the national vote will win a majority of seats (Leach, 2000). A party must receive a 3% of the total national vote to gain representation.

For many years, the party of the Panhellenic Socialist Movement (Pasok) has been in power in Greece. In 1996, after the death of the Prime Minister Andreas Papandreou, founder of the Pasok party, the Greek government marked the beginning of a new political era. The current Prime Minister, Konstantinos Simitis, is known as a pro-Europe reformer. The parliamentary elections of September 1996 and April 2000 gave to the Prime Minister an absolute majority—157 of 300 members of parliament. Simitis is the chairman of his party, Pasok, with more than 71% of the vote. Yet the strongest opposition party, with 122 seats, is the conservative Nea Dimokratia (ND), which gained considerable position on Pasok in the last parliamentary elections but failed to enter into government. The other small parties represented in parliament, the communist party with 11 seats and a left-wing alliance with 6 seats, do not present a threat to the government on matters of policy. Government formation is, thus, normally simple and rapid (Siaroff, 2000).

The Greek government is one of the main beneficiaries of EU structural funds. The government is focused on economic and social reform. With Greece's accession to the Economic and Monetary Union (the euro) on 1 January 2001 the Simitis government

achieved one of its prime goals. The economy has improved considerably over the last few years, yet it has not improved its relative economic situation since entering the Union (Leach, 2000).

Greek environmental policy is relatively new. Yet environmental policy is an area of growing concern in Greece. “This is illustrated by both the production of numerous regulatory acts and the increasing societal mobilization since the early 1990s” (Giannakourou, 2004, p. 52). Further, the environment policy of the EU is significant in the transformation of the domestic pattern of Greek environmental policymaking (Giannakourou, 2004). Scholars (Richardson, 1996; Giannakourou, 2004) agree in distinguishing two periods of implementation of EU environmental policy and its corresponding impact on domestic politics. The first period (1986-1992) has been characterized by the Community’s establishment of hard directives in the area of environment in order to manage the existing domestic levels of pollution. In member states such as Greece, where national legislation either did not exist or was not implemented, the need to comply with EU environmental law became a main focus in this period (Giannakourou, 2004).

The second period has been characterized by the entry into force of the Fifth Environmental Action Plan of the EU (1993-2000). This Plan introduced a new approach to environmental policy, based on substantive and procedural requirements of sustainable development. In this context soft forms of intervention, based on procedural regulation and self-regulation were introduced.

The Greek government with no domestic tradition of self-regulation, negotiation and decentralization viewed this new policy as new pressures for implementation.

One of the environment directives that member states had to transpose into national law before 30 June 1996 was Directive No. 62/94/EEC on packaging and packaging waste. The directive's goal was to prevent or reduce the impact of packaging and packaging waste on the environment, while ensuring the proper functioning of the internal market. The directive contains provisions on the prevention of packaging waste, on the re-use of packaging and on the recovery and recycling of packaging waste. Moreover, this directive gave to a few member states—Greece, Portugal and Ireland—special consideration based on their geography. The large number of small islands, the presence of rural and mountain areas, and the current low level of packaging consumption all significantly raise the costs of recycling in Greece. Thus, the directive included derogations giving the Greek government more time to comply to lower levels of recycling than elsewhere in the EU, as did Portugal and Ireland.

The packaging directive contains provisions that leave some autonomy for regulation to member states. Member states must introduce systems for the return and collection of used packaging to achieve targets that the directive has established. Further member states are free to decide the type of system they wish to adopt in order to achieve their targets. Thus, the treatment of packaging and packaging waste must be considered under the laws of each member states (Jordan et al, 2001).

The directive was transposed late in most member states, since many had preexisting legislation which covered the directive in part. By the end of 1996 only

Germany had notified the EU of its transposing measures. The majority of the member states had transposed the directive by late 1998 (Corbey, 2001). However, in 1999 the Commission initiated infringement proceedings against Greece for its failure to provide notification of transposition measures (Corbey, 2001). The ECJ ruled against Greece in its judgment of 13 April 2000—Case C-123/99—arguing that Greece had failed to adopt transposing legislation by the deadline established in the Directive. In the procedure, the Greek authorities indicated that new legislation was being prepared (Leger, 2000; Corbey, 2001). However, not until August 2001 did the Greek government finally transposed the directive into national law.

This case is about non-transposition of Community law. When the EU adopts new, non-administrative legislation, its member states are obligated to incorporate or transpose the legislation into national law. Nonetheless, Greek government did not comply.

The management approach suggests that problems of compliance are due to administrative breakdowns and hence non-compliance is not intentional. Non-compliance is not a result of deliberate decisions to violate treaties, but an effect of capacity limitations and rule ambiguity. It might be expected that Greek government would have trouble with this directive since its economy is relatively weak, suggesting its inability to implement law. During the period studied here, Greece's average per capita GDP was 9,960 euros, compared to the EU average of about 14,000 euros.

Yet, there are reasons to believe that capacity limitations do not fully explain why Greece failed to transpose the directive. First, other member states had sufficient time to

transpose the directive. Under the directive's original provisions, all member states had one year and six months to transpose the regulations into their national law. The Greek government had around an additional two more years. The letter of formal notice was issued in January 1997 and the Commission referral to the ECJ was in April of 1999, presumably plenty of time to comply before the case would go to the Court. Thus, the Greek government had three and a half years to transpose the directive. All member states—especially poor members such as Portugal, and Spain— transposed the directive into their national laws without any intervention from the Commission. Although, United Kingdom was investigated by the Commission, the Commission decided not to press ahead against the United Kingdom after the later provided notification of its transposition. Thus, the only case that the Commission brought to the Court for non-transposition of this specific directive was Greece.

Nonetheless, the Commission brought to the Court a group of member states that failed in this case not to transpose but to implement Directive 62/94/EEC. In 1999, the Commission brought to the ECJ two cases, involving Italy, and France. In 2000, the Commission brought one case, the United Kingdom. Finally, in 2001 the Commission brought one case to the ECJ involving again the United Kingdom. Thus, member states that have had problems either implementing or transposing this directive included Italy, France, Greece, and the United Kingdom. There is no clear wealth or geography pattern in this group.

Second, Directive 62/94/EEC sets for some member states including Greece less stringent requirements, including extended time to comply to lower levels of recycling

targets. Neither Ireland nor Portugal had any trouble in the transposition and implementation of the directive into national law. Furthermore, statistics from the European Court Reports indicate that of all the failures to transpose waste directives, (7), Greece accounted for over half, (4). Thus, transposition is a specific problem for the Greek government.

Therefore, the Greek government was the only member state that failed to incorporate or transpose Directive 62/94/EEC into its national law, even with the extra time and less stringent standards of implementation targets. It seems that the Greek government deliberately chose to ignore this directive, given that others were able to meet both stringent and similarly relaxed targets.

In the 1990's confidence in the EU, both in Greece and in other member states, declined considerably. Public support for the EU in the member states declined constantly from 1991 until 1997. The general context of the turn down of public support included the introduction of the economic and monetary union (euro), fears of rising immigration as a result of expansion, economic recession, high unemployment, the first Gulf War, the economic collapse of East European countries, initial fears after the unification of Germany, the controversy caused by the Treaty of Maastricht, and the accession in 1995 of two relatively Eurosceptic nations—Austria, and Sweden. Hence, these factors contributed to growing public dissatisfaction with the EU. In sum, the main world events in the last decade of the twentieth century provided to weaken rather than strengthen political support for the European Union (Dimitrakopoulos and Passas, 2004).

In the period 1996-1997 during which most member states incorporated the directive, public support in the member states for the EU dropped to below 50 per cent for the first time in a decade.² In fact, in 1996 (the year of the deadline for transposition of the directive) support for the EU in Greece was very low (Dimitrakopoulos and Passas, 2004). Not surprisingly the Greek government had trouble to comply with other directives during the period 1995-1998. All these facts suggest that it might be possible that the Greek government did not transpose the directive due to the unpopularity of the EU in Greece at that time. In sum, transposition may have been slowed by a Greek government unlikely to bear the political costs of implementing costly EU legislation at a time of public discontent with the EU.

Political factors may be another reason why Greece did not want to transpose the directive. During the period up to the deadline for transposition of the directive, the Greek government faced a number of domestic problems. 1995-1996 were years of public discontent with the country's governance, due to Premier Papandreou's serious illness. Satisfaction with the political system hit its lowest level—30 % percent—in public opinion with Papandreou's retirement from politics and the transition to Constantinos Simitis' leadership (Dimitrakopoulos and Passas, 2004). This slowed down normal law-making in Greece. Additionally, the crisis in Greek-Turkish relations over Imia in January 1996 increased the problem. The government, already struggling to get its feet under it, was badly shaken by the near outbreak of hostilities with Turkey. The failure of the EU to take a strong position in support of Greece during this crisis further soured Greek attitudes toward the EU, and discouraged the government for pursuing a

² Source: Eurobarometer, 1980-2001, Report no.13-55

policy that had significant costs for Greek producers and consumers. Thus, all these political factors at the national level contributed to Greek government's failure to incorporate the directive into national law.

Finally, the entry into force of the Fifth Environmental Action Plan (1993-2000), which introduced a soft forms of intervention based on self-regulation, may have contributed to Greece's problems with this directive. The Plan's guidelines gave to member states considerable autonomy and discretion in achieving the targets established in the directive. For the Greek government the hard regulatory process of implementation was more convenient, because national legislation either did not exist or was weak. The shift from strict rules about implementation to soft rules may have made it easier to avoid compliance. This may have contributed to the huge delay in implementation by encouraging conflict within the central administration (Giannakourou, 2001, 2004). Thus, changing the environmental policy structure may have encouraged non-compliance by the Greek government.

Finally, institutional ambiguities in Greece may have contributed to its failure to implement. The main institution in charge of the formulation and the implementation of environmental policy is the Ministry for the Environment, Spatial Planning and Public Works (YPEHODE). Created in 1985 through the merger of the Ministries for Planning, Housing, and Environment, this new ministry is the main actor in charge of the coordination of national environmental policy and the implementation of EU environmental policy (Giannakourou, 2004). Yet this Ministry does not have exclusive power to manage all environmental issues. It shares power with other ministries

responsible for particular environmental issues including the Ministry of Agriculture—protection of forest areas and agricultural landscapes—the Ministry of Culture—protection of the cultural heritage—and the Ministry of Merchant Shipping—a large industry in Greece. Further, almost all spending ministries and other public organizations are involved to some extent in the formulation and implementation of environmental policy. As a result, YPEHODE is a weak actor, suffering from fragmented responsibilities at the level of the central government. This problem is increased with the absence of independent bodies or agencies capable of effective control and monitoring (Giannakourou, 2004).

In effect, then, Greece's relatively low score as the POLCON (Political Constraint Index) scale of veto players is not suggestive of the actual number, at least in the case of environmental policy. In fact, the fragmentation of policy competence in the environment field is much greater than is suggested in the measure used in the quantitative analysis. This issue is addressed in the conclusions.

In sum, I have argued that contrary to the management school, implementation failure did arise not because of low levels of economic capacity but because of other factors. Such factors include the political context of the national level and the change in administrative context. Thus, Hypothesis 1 is rejected. Second, I noted that the Greek government is characterized by a low number of veto players. Yet, in the environmental policy area, that is not the situation. More than one ministry and others institutions participate in decision-making on the environment.

Hence, this fragmentation may contribute to implementation problems. Thus, Hypothesis 2 is tentatively confirmed by this case.

- *The German Case:*

Germany has a federal system of government. German federalism is especially strong, guaranteeing a significant degree of power-sharing between the central government and the German states (James, 1998). German federalism is often thought to fall somewhere between the US and Switzerland in terms of the strength of the powers granted to its states. Germany's federal system is also characterized by a horizontal separation of powers between the legislature, the executive, and the judiciary. Legislative matters are shared between the center and the individual states, which are directly represented in the upper house of parliament. Administration is the responsibility of states. Each state has its own constitution, (which must conform to the federal constitution), state parliament, and chief executive (James, 1998).

Therefore, the German government has three “constitutional bodies.” The executive branch of the government—the Federal President and the Federal Cabinet—have responsibility for executive tasks. The legislative branch of the government—the Bundestag and Bundesrat—have responsibility for legislation. Finally, the judicial branch of government—the Federal Constitutional Court—has responsibility for determining the constitutionality of the laws passed by the other actors.

The main executive power lies with the Federal Chancellor, who lays down policy guidelines, and chooses his cabinet ministers. The Chancellor and his ministers together make up the federal government. The Chancellor is officially selected by the Federal

President, who is the head of the state, but in practice is selected by the lower house, the Bundestag. The German president has representative and ceremonial functions but no real executive power (James, 1998).

The Bundestag or first chamber represents the interests of the German people and has the task to pass legislation. The Bundesrat or the second chamber represents the interests of the sixteen federal states. It acts as a balance to the first chamber and the government, as well as a channel of communication between the central/federal government and the regional ones. All federal law that affects the states must be approved by the Bundesrat.

Two additional factors tend to fragment the German state. First, many policy areas are dominated by parapublic institutions. These institutions are given significant autonomy from the elected government in administering policy. The German Labor Office, for example, handles most issues associated with unemployment in Germany. Its leadership is appointed by the Chancellor, but its operations and budget are not subject to governmental intervention. Second, Germany has a tradition of ministerial independence. That is, the ministries in the cabinet often act independently from the Chancellor. The Chancellor's capacity to control his or her cabinet is limited.

Thus, the German state is often thought to be highly fragmented. Yet, other factors help to offset some of this proliferation of veto players in Germany. Germany is often thought to be a medium neo-corporatist society, whereby bargaining and an "ideology of social partnership" are characteristic of policy making. While the institutions of neo-corporatism are not as strong in Germany as in, for example, Austria or Sweden,

expectations of regular bargaining, and recognition of the legitimacy of diverse social preferences, overcomes some of the institutional fragmentation.

Political party systems and partial proportional representation in the German government have generated a distribution of power which requires coalitions as the typical form of government. This contributes to the unusually large number of institutional and partisan veto players (Schmidt, 2002). Germany's parliamentary system creates a powerful role for the parties in the selection of the political leaders and in policy-making. "The role of the parties is so powerful that Germany's Second Republic has been classified as a major example of a "party State" that is a state in which all major political decisions are shaped, if not determined, by political parties" (Schmidt, 2002, p.77). The post war era has seen in Germany stable coalitions between a right-center/left-center coalition which have stabilized German democracy and increased governability (Sperling, 2004).

One of the principal forms of movement institutionalization has been the formation of the Green Party in Germany. The German Green Party is a political party founded in the late 1970s. In 1980 the party was founded on a federal level in West Germany. In 1998, the Green party joined the federal government for the first time in coalition with the Social Democrats. The Green Party plays a key role in the government. Some of its members occupy important positions such as foreign minister, minister for consumer protection, nutrition and agriculture, and minister for the environment. Thus, the Greens' presence in the Bundestag and subnational parliaments has given parliamentary representation to social movements since the early 1980's. The SPD-Green

coalition government in power since 1998 points one of the high peaks of the institutionalization of left-libertarian social movements (Cooper, 2004).

Unification has to be considered in German government attitudes towards implementation of EU law. Unification was a huge task for policy makers. At the same time, decisions makers had to regulate how this new German state would act in the international system. In sum, the two German states had different political and economic structures, and they were also members of opposing coalitions that had been main players in the Cold War (McKenzie, 2004).

The election of 1998 produced a shift in German politics (Chandler, 2004). The candidate of the Social Democratic Party, Gerhard Schröder, ran as a moderate reformer, against the Christian Democrat/ Christian Social/ Free Democrat coalition lead by Helmut Kohl. Kohl had been chancellor since 1982 (Clemens, 2004). Schröder won, bringing the SPD back into government after sixteen years in opposition. Further, the SPD formed a coalition with the Greens, moving the German government clearly to the left. The year 1998 also marked the last Bonn election and the transition to the Berlin Republic. Thus, 1998 marked a major change in German politics. Not only was a new government established in the old German capital, but the members of this new government represented a new generation of German political elites.

The importance of the shift in coalitions as a result of the 1998 election should not be overlooked. The fragmentation of the German political system has often led scholars to emphasize the timidity of German politicians, and the resultant slow pace of reform in Germany. Yet the 1998 election significantly shifted the orientation of the German

government. Not only was a Green party in government—a party which grew out of the street violence of the 1960s and 1970s—but also for the first time since 1949 Germany was lead by a class of political elites who were not products of War II and the Holocaust. The “reflexive” pro-Europe attitude of the earlier generation of elites has now been balanced with a significant degree of Euro-skepticism.

With this transfer of power (from Kohl to Schroder) Germany begin to act more self confidently in the international area and toward the EU. The new Germany increasingly stressed its own interests ³(McKenzie, 2004). Germany’s EU policy has changed because of internal and external circumstances. In the domestic arena economic problems with German unification and the absorption of the five new states have brought Germany into confrontation with the EU (Kirchner, 2004). Internationally there were continued fears on the part of Germany’s EU partners that eastern enlargement would disproportionately favor Germany’s interests. There were also pressures on Germany to translate its economic and political strength into greater engagement or commitment in international crisis situations, for instance the Kosovo conflict (Kirchner, 2004). “There can be little doubt that its new found independence, geographic position and size factor, together with its economic difficulties, have had an effect on Germany’s relations with the EU” (Kirchner, 2004, p. 469). In sum, these all political factors contributed to generating skeptical views of the EU in Berlin, and may have encouraged the implementation failure in this case.

³ For instance in early 2003, Chancellor Schroder censured Bush for his policies toward Iraq. Even if Schroder’s challenge was made in the name of “European sovereignty” some European governments had come out in support of US’s decisions.

Germany, as one of the regional leaders and the world's largest economies, is particularly important player in the global environmental movement and in the direction of international environmental protection efforts (Schreurs, 2002). Germany has reached a high level of environmental protection.⁴ The starting point of public interest in environmental issues in Germany dates to the early 1970's, with the rise of environmental activism. Since the mid 1980's the Federal Ministry for the Environment, Conservation, and Nuclear Safety has been responsible for federal environment matters. Since the federal parliament has the power to issue framework legislation only, most German states have their own ministries for the environment. Their main task is to implement the federal framework. Local authorities also influence environmental issues as they are responsible for town planning. One of the most important environmental issues in Germany is waste management. Since 1996 German waste-management laws have focused on recycling waste and developing low-waste products. In the long term, the consumption and production cycles are supposed to develop into a closed circuit that produces no waste.

Given this focus, German governments have taken an increasingly negative view of the use of wastes for other activities. One particular problem is the incineration of wastes in principle. Waste incineration or disposal runs counter to the spirit of German recycling law, although German law tolerates the use of waste to generate energy.

At the beginning of 2003, the ECJ issued an important judgment with regard to the interpretation of the waste shipment regulation No.259/93. The case focused on waste

⁴ According to an Organization for Economic Cooperation and Development survey report in 2001, Germany holds a top position in environmental protection worldwide.

incineration as either a recovery operation, use principally as a fuel or other means to generate energy, or as a disposal operation (Jacobs, 2003). The waste in question was being exported from Belgium cement kilns to Germany to be used as a fuel. Under the waste shipment regulation, when a waste producer or owner plans to ship waste for recovery from one member state to another member state, the waste producer (Belgium) has to notify the competent authority in destination country (Germany). Further, the same regulation allows to the competent authority of the destination country to raise an objection to the notified planned shipment of waste for recovery. German authorities objected to several of these shipments. For the German government the waste was intended for disposal and not for recovery. The Belgian government disagreed. The German government based its objection on its national law.

In July 1997, the Commission sent a letter of formal notice to the German government, a request to present its observations within a period of two months concerning the infringement of the provisions of article 7(2) and (4) of waste shipment regulation No.259/93. According to the Commission, the waste in question was to be used principally as a fuel, and hence was intended for recovery (Jacobs 2003). The German government in December 1997 argued that the waste in discussion was not for recovery but for disposal. Dissatisfied with that response, the Commission sent to the German government a reasoned opinion in February 1999, asserting that the waste shipments in dispute were indeed recovery operations, and that the criteria used by the German authorities for classifying a waste treatment operation did not comply with Community law (Jacobs 2003).

Hence, the Commission stated that it considered that German authorities had infringed the provisions of the waste shipment regulation and gave a period of two months from its notification to comply with the reasoned opinion. Consequently, the German government sent its response to the Commission in July 1999. German authorities noted the same arguments, and highlight the argument that “national authorities must be able to lay down criteria for distinguishing disposal operations from recovery operations in the case of incineration of waste since no precise criteria had been laid down at Community level regarding that matter” (Jacobs 2003). For the German government the waste that the Belgium authorities wanted to export did not comply with all the requirements of the German national laws. In sum, the German government alleged that the waste was for disposal and not for recovery, and therefore the German government could exclude Belgian waste exports. In those circumstances, the Commission brought the case before the ECJ.

The management approach suggests that problems of compliance are caused by administrative breakdowns, which I measure by the level of economic development. It might be expected, in contrast to the Greek case studied here, that Germany would not have trouble with implementing this regulation since its economy is strong. During the period studied here, Germany’s average per capita GDP was 14,930 euros, above EU average of about 14,000 euros. Yet, as in the Greek case, there are reasons to believe that the management explanation does not fully explain why Germany failed to implement the regulation. Hence, Hypothesis 1 is not supported here. Instead, other reasons may explain Germany’s failure to implement the law.

The German government was not the only member to have problems in complying with the waste shipment regulation. The Netherlands (five cases), Denmark (once case), Austria (two cases), Luxemburg (one case), United Kingdom (one case), and Belgium (one case) all ran afoul of the EU on waste shipment. In all, four cases were brought against Germany on waste shipment issues.

Part of the reason why there were so many cases regarding the waste shipment regulation rests with the original EU law. It is widely recognized to suffer from significant ambiguity and loopholes. The chief problem is that the distinction between disposal and recovery is unclear in the law, and members have taken it upon themselves to clarify the distinction. Further, the issue has been studied by the Directorate General for the Environment of the European Commission, the Council of European Municipalities and Regions, and the EP Environment Committee. All of them agreed to provide the Commission with information needed for the preparation of a revision of the lists of disposal and recovery operations and identification of criteria which could help differentiating between disposal and recovery waste standards. Yet, the Commission has not acted on their recommendations. The reasons of the Commission's failure to clarify the issue of this case may results in its small budget and limited resources.

Thus, ambiguity and Commission capacity limitations contributed to the frequent infringements. This is consistent with an aspect of the management school's argument, namely ambiguity of law, but is not consistent with the bureaucratic capacity argument. One of the causes of non-compliance for the management school is the ambiguity and indeterminacy of EU laws. In order to reduce compliance problems resulting from

ambiguous treaty language, the management school suggests authoritative rule interpretation in international legal bodies. Waste shipment regulation needs to be clarified to avoid more infringements. Thus, German government failed to implement the waste shipment regulation not because of its own capacity limitations but because of ambiguity and indeterminacy of EU law—and the failure of the Commission to act.

Further, the German government has a high level of institutional fragmentation and dispersal of political power, and hence it has a large number of veto players. In terms of environmental policy, the German states have their own ministries for the environment. Additionally, local authorities also have influence in environmental issues. Likewise, it is no coincidence that almost all member states (Austria, Denmark, Netherlands, United Kingdom, Belgium and Luxemburg) that had failed to implement the waste shipment directive had a number of veto players above the mean within the EU. Therefore, another cause of implementation failure may be the elevated numbers of actors which participate in policy-making. Thus, Hypothesis 2 is supported.

Finally, the changing political context in Germany after the 1998 election may have contributed to the failure to implement the law. As noted above, the 1998 election represented both a change in leadership from a reflexively pro-European to a more euro-skeptic leadership. Additionally, the inclusion in the new government of a new political party—the Greens—with an aggressive stance on protecting the environment, may have contributed to a more skeptical attitude about waste recovery versus disposal.

Given that the Green Party controlled the federal environment ministry, and that federal ministers have considerable independence in German politics, it is perhaps not surprising that the German government sought to exclude Belgian kiln wastes.

In sum, law ambiguity, veto players, and political factors may have contributed to the implementation failure. The management school's emphasis on level of bureaucratic capacity may not explain the German non-compliance with waste shipment regulation, and hence Hypothesis 1 was partially rejected. Yet, the management school's emphasis on the ambiguity and indeterminacy of EU law seems consistent with this case. Almost all the member states (5/7ths) with a higher average of veto players also failed to implement the waste shipment regulation. Hypothesis 2 has been presumably confirmed, suggested by the high level of Germany veto players especially in the environmental area. Finally, this case also points to the significance of political context in explaining why members fail to implement EU law.

Chapter 4: Conclusions

Why do some member states infringe EU law more than others? I draw from the analysis several causes of infringements of EU law by member states and an overall conclusion. Member states infringe more than others not because member states do not have the resources to comply, but because of political context and policy change. Additionally, I find that richer countries violate the law more often than poorer countries. Further, member states infringe more than others because of a high number of institutional and coalitional veto players. Finally, these results suggest that member states are in the EU because the EU serves their national interest over collective ones (intergovernmental theory). The EU as a supranational government has not yet acquired the level of legitimacy necessary to supplant national governments. Thus, failure implementation occurs when political leaders at national level choose to protect their national interests.

Hypothesis 1 suggests that infringement of EU law within the member states is not intentional. When problems of compliance occur it is because ambiguity and indeterminacy of EU laws, breakdowns of administrative capacity, and uncontrollable social or economic changes. Thus, the variation in wealth across countries states, specifically between rich northern countries and poor southern countries, should result in variation in non-compliance of EU law within the member states

Yet, the findings of the quantitative analysis suggest that rich, northern countries are more likely to infringe than poor, southern countries. Richer

countries violate the law more often than poorer countries. Member states that have a high GDP are more likely to not comply with EU law. It may be that greater prospects for violating law are what drive the positive relationship between GDP per capita and infringements. I return to this below.

Hypothesis 2 states that as the number of institutional and coalitional veto players increases, the amount of a member state's non-compliance is expected to increase as well. The quantitative analysis supports this hypothesis. As the number of veto players increases, so does the number of infringements. Additionally, both control variables proved significant. As both population and exports to the EU increase, so does the number of infringements. This suggests that violating EU law may be as much a function of opportunity as it is of incapacity. This is underscored by the positive relationship found between GDP and infringements. It may well be the case that activity explains infringements, at least as much as does capacity.

As noted above, the limitations of the negative binomial technique make it difficult to assess the degree to which this model fits the data. In an effort to address this problem an analysis of predicted versus actual scores was conducted, as reported above. Roughly one standard deviation in the value of the dependent variable can be accounted for by these independent variables. While modest, this is not an insignificant share of the variance in infringements, and it suggests two observations.

First, opportunity to violate the law seems to account for the lion's share of the variance in infringements explained by these variables. If we interpret the positive relationship between GDP and infringements to suggest opportunity (rather than capacity as a negative relationship would suggest), then most of the variance in infringements is due to opportunity (GDP, population and exports to EU). Veto players only account for about a seventh of the variance explained by this model.

Second, the model remains highly under-specified. While a standard deviation's explained variance is not insignificant, it is also not very much. Clearly, more variables need to be added to the model. I will discuss a few likely candidates below.

Analysis of the case studies helps to clarify these relationships and suggest some news variables. Member states fail to implement EU laws not only because of the ambiguity and indeterminacy of EU law—as suggested by the management school and demonstrated in the German case—but also because the political context at the national level and changes in administrative context.

In the Greek case, infringement may have resulted not from a lack of resources, but from deliberate opposition by the state. In 1996—the year of deadline of transposition of the directive—support in Greece for the EU was very low. It may be that the Greek government did not transpose the directive since at that time there was strong discontent with the EU in Greece. Further, political factors such as the transitional period after Papandreou's retirement from politics, the rise of Simitis to Pasok's leadership and

the crisis in Greek-Turkish relations, may have reinforced national insecurity and preexisting anti-European feelings. Thus, these all political factors at the national level may have brought the Greek government to fail to implement EU law.

Finally, by changing from hard to soft policy implementation, the EU made it easier for some member states like Greece to infringe more. Changing the environmental policy structure may encourage difficulties for some member states in the implementation of EU law. Taken with the findings regarding the impact of rule ambiguity in the German case, this suggests the need to study the law itself.

Political context in Germany is also contributed to failure in implementation. 1998 marked a major change in German politics. A new government was established in the old German capital, and the members of this new government represented a new generation of German political elites. The 1998 election also significantly shifted the orientation of the German government. Not only was a Euro-skeptical Green party in government, but also Germany was lead by a class of political elites who did not have as strong pro-Europe attitude as did politicians in the past.

Further, as noted by the management school, the ambiguity and indeterminacy of EU law encouraged German infringement. One of the causes of non-compliance for the management school is the ambiguity and indeterminacy of EU laws. The waste shipment regulation should have been implemented by the German government. Yet, this regulation presented some indeterminacy in clarifying disposal versus recovery. Thus, the German government may have failed to implement EU law not because of deliberate opposition but because of ambiguity and indeterminacy of EU law.

In terms of veto players, both cases had similar results. The German government is high level of institutional fragmentation and dispersal political power and hence large number of veto players, contributed to its failure to implement the law. In the Greek case, the prediction of Hypothesis 2 was contrary to the German case. According to the POLCON 2002 data, the Greek government is characterized by a low number of veto players. Yet, when analyzing its domestic structure of policy-making in the environmental area, that is not the case. More than one Ministry and other institutions participate in decision-making on environmental issues. Hence, the veto players measure used here may not accurately reflect the true number of veto players in each country and on each issue. This suggests the desirability of disaggregating veto players measures by policy area.

Tables VI and VII summarize the predictions and results of the case studies, respectively.

Table VI: Predictions in the Case Studies

	H1 Administrative Capacity	H2 Veto Players
Greece	Failure because of low administrative capacity	Comply with EU law because of low number of veto players
Germany	Comply with EU law because of high administrative capacity	Failure because of high number of veto players

Table VII: Results with the Case Studies

	H1 Administrative Capacity	H2 Veto Players
Greece	Failure because other factors -political context -change administrative context	Tentative Confirm Environment policy area→ high level of veto players→ Problem of compliance.
Germany	Partially confirm Management school→indeterminacy and ambiguous law and Other factors→political context	Confirm High number of veto players→ Infringements of EU law

Before discussing the avenues for further research suggested by these findings, it is important to emphasize the limitations of this study. First, the measure used to test Hypothesis 1, institutional capacity, is only a rough measure. Ideally, a measure of capacity would examine directly the ability of governments to process demands. GDP is only a rough estimation of such capacity. Thus, the negative findings for Hypothesis 1 remain tentative.

Second, as the Greek case demonstrates, the measure of veto players is inaccurate. Some policy areas might have more veto players than suggested by the POLCON measure. Additionally, it must be emphasized that the case studies suffer from the limitations imposed by reliance upon English-language secondary sources, and limitation in research design. Not only are infringement cases not the type of issues to arise in the press, but they are even more unlikely to be found in the English-language press. Further, in most countries only major government documents are translated into other languages.

These issues do not meet this standard. Ideally, field work would have been conducted to gather the needed information, but this was beyond the scope of this research. Finally, the inclusion of cases with variation in the dependent variable is necessary to draw any hard conclusions from this research, but as noted above this was not possible in this research. Therefore, the observations that follow should be treated as tentative.

Despite these limitations, the results are suggestive of the larger debates in EU studies. The EU has produced a new and dynamic political system, and hence has helped to redefine the role of the state in Europe. The implementation process, and the study of member states' failing to comply with EU law, needs to be considered in the context of the European Union's uniqueness. What does this research contribute to the larger debate about European integration? I noted three approaches, neofunctionalism, multilevel governance, and intergovernmentalism. Neofunctionalism states that broad coalitions of actors solving problems via cooperation result in sovereignty transfer to supra-national institutions. Infringements are few, randomly distributed and resulting from honest mistakes. Multilevel governance argues for a EU characterized by multi-level decision-making. It argues that infringements are also randomly distributed, but resulting from the complexity of decision-making. Finally, intergovernmentalism argues that state pursuit of national interests via cooperation characterizes the EU, resulting in sovereignty pooling. Consequently, a large number of infringements will result from conflicting national interests.

This research emphasizes the important role that this last approach plays in explaining implementation failure. The apparent importance of national politics is a

reminder that member governments continue to play a central role in the EU. The EU is an instrument of the member states and it serves the interests of the member states. In that sense, infringements of EU law are the result of decisions taken by national political leaders in order to achieve national interests. Thus, intergovernmentalist theory is supported in the sense that implementation is blocked not when bureaucracies are inefficient or hesitant to change, but when political leaders choose to protect national interests.

Yet the institutions in the EU play a central role in the implementation process of EU law. And ultimately states comply, thus the intergovernmentalism position is not fully supported. Clearly, the complexity of law is important, as the Greek case suggests and as multi-level governance would suggest. Yet the large number of infringement cases and the relatively poor showing of the variables studied here suggest that other factors are also important in explaining infringements. These include public opinion, the political strength of governments, and the partisan make-up of governments. These findings suggest that all these variables should be included in future analyses.

In sum, why do some member states infringe EU law more than others? Based on the quantitative and qualitative analysis reported here, is not because of administrative capacity limitations, but because of deliberate opposition by member governments in order to maintain their independence. States in turn, are motivated by domestic politics to seek to avoid implementing EU law. Finally, the indeterminacy of EU law further complicates implementation. These results corroborate the argument that member states are in the EU because it serves their national interest over collective ones

(intergovernmentalism theory) and that the EU as a supranational government cannot have complete authority over member states, yet still acts to compel its members to comply with their commitments.

Finally these results suggest new hypothesis. Member states that have a high level of public discontent with the EU are unlikely to tolerate the political costs of implementing EU legislation. Additionally, future implementation research should concentrate upon other factors that may influence compliance. It may be interesting to determine whether or not compliance varies among issues areas, or look if length of membership affects compliance. Moreover, infringements of EU may be explained on the bases of “bad” laws, because of their indeterminacy, or because the laws do not provide sufficient guidance for implementation.

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