

Compliance and Conflict Management in the European Union: Nordic Exceptionalism

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Why and to what extent do states differ in their implementation of international norms? Furthermore, why and to what extent do states differ in their mode of resolving conflicts regarding non-implementation of international norms? In this article the empirical focus is on implementation of Community legislation by the member states of the European Union (EU) and the European Free Trade Association (EFTA). The analysis shows that over time there has been an overall reduction in the deficit in transposition, but the number of conflicts regarding non-implementation has increased in the same period. While states converge on transposition, they diverge regarding their mode of handling conflicts related to non-implementation. In general, the larger member states more frequently use court rulings to settle such conflicts. By contrast, the smaller states, and in particular the Nordic states, pursue a more consensus-seeking approach, with limited use of courts. These observations indicate that domestic traditions and styles of decision making are more important for explaining variation than the enforcement capacity of the European institutions, and the extent of participation and power in decision making at the European level.

Europeanization and Implementation of Community Legislation

This article examines how and to what extent domestic institutions comply with international rules and legislation. Moreover, it examines how and to what extent states settle disputes regarding non-implementation of international norms. The empirical focus is on how member states in the European Union (EU) and the European Free Trade Association (EFTA) comply with and resolve conflicts regarding Community norms.

There is a long-standing tradition in political science and law of examining implementation. Numerous studies in organizational theory and public administration have demonstrated that implementation processes have significant effects on policy outcomes and that institutional arrangements

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impact on implementation processes (Pressman & Wildavsky 1973; Palumbo & Calista 1990). The current literature on the Europeanization of institutions and policies is related to the implementation literature, since it examines how domestic institutions and policies are adapted and changed in order to handle the responsibilities following from European integration (Hanf & Soetendorp 1998; Goetz & Hix 2001; Green Cowles et al. 2001; Olsen 2002). Most of the studies on Europeanization examine implementation in a qualitative manner with the use of case studies, but there is an increasing interest in examining implementation from a quantitative and comparative perspective (Siedentopf & Ziller 1988; Tallberg 1999; Azzi 2000; Dimatrakopoulos 2001; Mbaye 2001; Bursens 2002). This article follows this latter route.

By increasing our understanding of the dynamics of implementation in general, and the patterns of conflict resolution in particular, the article contributes to our understanding of the dynamics of Europeanization and how the European-level institutions and domestic institutions cooperate and mutually adapt in the European unification process. The term 'implementation' refers to the transposition of European norms into domestic legislation, as well as to the adherence to and enforcement of such legislation so that it forms part of the political, legal and social environment. If the European monitoring bodies discover that implementation at the domestic level is incorrect, an infringement proceeding is opened. This is here defined as a conflict between the European level and the domestic level. The modes of settling conflicts are labelled modes of conflict resolution.

The research design is comparative. The empirical focus is on implementation and conflict resolution in the member states of the EU and EFTA between 1995 and 2001. Examining these countries and this time period is justifiable, since there have been few previous attempts to make systematic comparisons of all the member countries, and no attempts to compare the EU and EFTA countries. For instance, in a recent study on implementation some of the Nordic countries were excluded from the sample (Börzel 2001).

The article is organized as follows. First, three theoretical models for explaining implementation and conflict resolution are outlined. Second, the basic principles governing implementation and conflict resolution in the EU/European Economic Area (EEA) are described. Third, the rate of transposition of Community legislation over time is analysed. Fourth, a set of recent attempts to improve implementation through the strengthening of the European-level institutions is discussed. The fifth section examines the variation among the states in how they resolve conflicts with the European-level institutions.

The analysis shows that over time all states have improved their transposition of Community legislation. A pattern of convergence in transposition has emerged. However, simultaneously an increasing number of conflicts

have occurred related to non-implementation of community legislation. While the states converge in regard to transposition, they diverge in how they resolve conflicts. In general, the larger member states have more conflicts and they use court rulings more frequently than the EU average in settling these conflicts. By contrast, the smaller states in general, and in particular the Nordic states, have fewer conflicts and they resolve them at an earlier stage and less frequently through the use of court rulings. These observations support the conclusion that distinct institutional traditions and styles of decision making are important in accounting for variation in conflict resolution; more so than the enforcement capacity of the European regime and the voting powers of the member states in shaping Community legislation.

Dynamics of Implementation and Conflict Resolution

In the general literature on implementation and compliance we can identify (at least) three models that explain implementation and conflict resolution. These models fit the general ideas about the dynamics of European integration.

The Supranational (or Enforcement) Model

This model is related to the idea of implementation as a top-down process. Discrepancy between goals and actual implementation is primarily perceived as a matter of unclear goals and inadequate monitoring and control capacity (Pressman & Wildavsky 1973; Palumbo & Calista 1990). Elements like hierarchy, command and control are seen as important to ensure implementation and to resolve conflicts. The basic mechanism is simple: the more capability to monitor implementation, the better the implementation; the stronger the financial and legal tools, the better the implementation.

In this model, variation is regarded as a result of changing enforcement capability at the European level. Capability can vary across time and space. Variations across *time* indicate that the European institutions are introducing new methods for monitoring, increasing their staffs and capacities or expanding their competencies and instruments for sanctioning non-compliance, etc. Such instruments include the ‘softer’ methods of shaming and blaming, and the ‘harder’ means of economic sanctions and fines. We can expect that increased capabilities at the European level will over time result in improved implementation and that conflicts will be resolved at an earlier stage.

Variations across *space* indicate differences in enforcement capability between the EU and the EFTA institutions. It is assumed that states that are

under the most capable regime will have a higher implementation rate than the states that are under a less capable regime. Through the EEA agreement, the EFTA countries are obliged to implement and act according to the same directives, with some exceptions, as EU member states.¹ In EFTA, the monitoring and sanctioning capacity is delegated to the EFTA Surveillance Authority (ESA). Formally, the ESA has more or less equivalent competencies to the European Commission, and the EFTA Court has more or less equivalent competencies to the European Court of Justice (ECJ), but the EFTA Court has less scope to impose fines. Since the EU institutions have longer traditions and more advanced methods for sanctioning non-compliance than the EFTA institutions, we expect that the EU states will implement more rapidly and that they will resolve conflicts earlier than the EFTA states.

The Intergovernmental Model

This model assumes that the pattern of participation in the shaping of the rule affects the implementation of the rule. This model fits the model that the preferences and powers of the member states are the driving mechanism of European integration (Moravcsik 1998). Two mechanisms are believed to be important: knowledge and influence (Van Meter & Van Horn 1975). First, increased knowledge and awareness of a new legal initiative are believed to ease implementation and reduce conflicts in implementation. Through participation, actors gain knowledge of new rules, they associate more strongly with the rules and they are more competent when interpreting them. We therefore expect that the most experienced states will be better at implementation and have fewer conflicts than the less experienced states. Second, participation allows for influence. We expect that the most powerful actors will be able to shape and influence the legislation in manners that are consistent with their preferences and positions. It has for instance been argued that Germany has been able to model the legislation of the EU in manners fitting German interests (Bulmer 1997). This model leads us to expect that the most powerful states, that is, the states with more voting power in the EU, will have a stronger opportunity to influence decisions in the EU than the smaller states and to shape legislation that provides a good match between Community and domestic norms. Since the smaller states have less voting powers and fewer opportunities to shape Community legislation, we expect a less good fit and therefore expect that they will experience more difficulties in implementation.² The distinction between large and small states is a necessary analytical distinction. In certain aspects participation and power are not always correlated and small states can for instance be influential participants in certain areas, as for instance Denmark and The Netherlands have been in environmental issues.

The Institutional Dynamics Model

The third set of ideas assumes that patterns of implementation and conflict resolution are primarily a result of institutional factors. The model is rooted in a tradition emphasizing institutional dynamics and the importance of traditions, policy styles and identities (March & Olsen 1989; Knill 2001). It is believed that certain institutional structures and traditions facilitate distinct modes of handling problems and solutions. One such institutional factor is the traditions and styles of resolving conflicts (Richardson 1982). In general, there are (at least) two ideal models for conflict resolution: a confrontational model and a consensus-seeking 'sounding out model' (Olsen 1972).³ The terms 'confrontation' and 'consensus' are not meant as a normative concepts, but as two distinct mechanisms of conflict resolution.

The confrontational model is based on the idea that voting or court rulings are key components and often the preferred conflict-resolving mechanism. It is assumed that the actors meet with predetermined and definite views about what they can accept and tolerate in relation to implementation and conflict resolution. It is assumed that there is little communication between the actors and that the situation is characterized by clear stands and positions. The model puts emphasis on preferences and powers, clarity in arguments and principles, and it often looks to majority-voting processes or court rulings to produce winners and losers. The consensus or 'sounding out' model is based upon a different perception of conflict resolution and views decision making as less hierarchical. Here majority voting and court rulings are not the preferred mode. Instead, it is believed that parties often seek to avoid the 'discovery' or creation of disagreements and conflicts of interests. The emphasis is put on the gradual building of consensus. Actors follow a problem-solving approach, which makes power structures and interest conflicts less visible, in order to generate trust and strengthen social and political relationships (Olsen 1972; March & Simon 1993). Through voluntary and informal cooperation and exchange of information – which might be time consuming – acceptance of certain alternatives as preferred solutions is developed.

These two ideal types can be linked to different states. For instance, it has been argued that there is a distinct Nordic model of public administration and of conflict resolution.⁴ Historically, the Nordic states have been more consensus-oriented than other European countries. They constitute a somewhat culturally homogeneous area and they form a distinct family of legal traditions and principles (Olsen & Sverdrup 1998). In the Nordic countries the courts and formal rules have played a far less important role in the daily life of politics than in many other European countries. When resolving conflicts the Nordic countries frequently use 'sounding out' techniques. Voting and legal confrontation are avoided. At the same time the Nordic countries have a high level of trust in the legal system and support for the

rule of law (Gibson & Caldeira 1996). There is some evidence supporting the idea of a Nordic model in the implementation of other kinds of international reforms. For instance, the implementation of international reforms in New Public Management has been less ideological and more pragmatic and stepwise in the Nordic countries than in other countries (Læg Reid & Pedersen 1994; Olsen & Peters 1996; Christensen et al. 2002). It is not always a perfect match, but it is believed that the policy styles and traditions systematically skew administrative practice in a distinct direction.

From the institutional dynamics model, we expect that variation in patterns of conflict resolution will result from varying domestic styles and traditions of conflict resolution. States pursuing a confrontational style will experience more conflicts and will more frequently use courts to settle them. By contrast, states pursuing a 'sounding out' style will experience fewer conflicts and tend to resolve conflicts without using the courts. It is therefore expected that the Nordic states will face fewer conflicts and will more frequently resolve conflicts without the use of the courts than will the non-Nordic countries.

Each of the three theoretical models – supranational, intergovernmental or institutional dynamics – is plausible, but they should not be regarded as mutually exclusive, nor as the only dynamics explaining implementation and conflict resolution. For instance, in a recent effort to explain compliance Mbaye (2001) examined the role of state power and economic strength in explaining patterns of implementation. In addition, it is argued that major cleavages run between unitary versus federal states (Levy 1995), between Southern versus Northern European countries (La Spina & Sciortino, in Börzel 2001) or are delineated by institutional factors such as the ability to allocate attention, energy and resources. One of the main problems in implementation studies has been that the list of factors impacting on implementation is extremely long and complex, making empirical investigation difficult (Van Meter & Van Horn 1975; Kjellberg & Reitan 1997). This article is therefore one attempt to contribute to the understanding of implementation and conflict resolution. In the following sections these three models will be examined empirically. But first, let me provide a brief note about data and methodology.

Data and Methodology

Data have been collected from the European Commission and ESA. In addition, key documents have been used to find information about the enforcement capabilities of the European institutions. The European Commission and ESA collect data and report data according to similar methods and procedures. Each state has one set of legislation that it has to adapt to new

community rules, which makes it possible to compare states. There are no reasons to assume a priori that the larger states, because of their larger economies and populations, should face more difficulties in implementation. Since this study examines the total number of cases, potential sampling errors are avoided.

There are some limitations in the data, but at present they are the best we can get.⁵ The data do not allow us to distinguish between implementation lags caused by administrative mismanagement and more deliberate efforts to prevent implementation. The data are particularly helpful in examining the level of conflicts and the modes of conflict resolution between the domestic level and the European level.

In order to analyse the theoretical models, the data have been stratified. From the *enforcement* model the main cleavage is expected to be between the EU and the EFTA states. The EU average is calculated as a mean of the 15 member states. The EFTA average is calculated as a mean of Norway, Iceland and Liechtenstein, the EFTA states that are members of the EEA. From the *participation* model the main cleavage is expected to be between the large and the small member states. By 'large' states is meant the states that have the largest voting power in the EU (Germany, France, the UK and Italy). All the other states are coded as 'small'. From the *institutional dynamics* model the main cleavage is expected to be between the Nordic states and the other EU states. By 'Nordic' states is meant Denmark, Sweden, Finland, Norway and Iceland.

Principles of Implementation of Community Legislation

Compared with other forms of regional integration, European integration is characterized by the strong role of formal institutions and the rule of law. In spite of recent attempts to increase voluntary cooperation and to reduce governance by law, for instance the Lisbon process, the role of law remains fundamental. When implementing Community legislation, the EU is dependent upon the domestic institutions. In most cases Community legislation is administered and enforced by domestic bodies.

The role of the European institutions is primarily to act as the guardians of the treaties and to ensure that the member states and contracting parties apply legislation correctly. Through the EEA, Iceland, Liechtenstein and Norway are linked to the formal institutions and the rule of law in the EU. The EEA Agreement lacks the supranational traits of the EU. Nevertheless, the EEA Agreement has been authoritatively characterized as 'an international treaty *sui generis* which contains a distinct legal order of its own that is less far-reaching than under the EC Treaty, but the scope and the objective

of the EEA Agreement goes beyond what is usual for an agreement under public international law'.⁶

The basic principle in the EU and the EEA is that Community law should be 'applied with the same effectiveness and rigor as the application of national law' (European Commission 1993). This follows from Article 10 EC, which states that 'Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks.'

In order to secure uniform implementation, the Treaty delegates competence to European institutions to monitor and sanction non-compliance. In the EU, the European Commission and the ECJ hold this competence. The European Commission shall according to Article 211 EC 'ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied'. If the state concerned does not comply with the opinion of the Commission, the latter may bring the matter before the ECJ (Article 226 EC). Under the EEA Agreement (and the EFTA Surveillance and Court Agreement [SCA]) the ESA and the EFTA Court hold more or less the equivalent enforcement competence. In order to ensure the proper application of the EEA Agreement, the ESA shall monitor the application of the provisions of the EEA and SCA agreements by the EFTA states and bring actions before the EFTA Court (Articles 22 and 31 SCA).

The European institutions initiate investigation on the basis of complaint cases and their own initiatives. There are basically five types of breaches that can occur: (1) violations of treaty provisions, regulations and decisions, (2) non-transposition of directives, (3) incorrect legal implementation of directives, (4) improper application of directives, (5) non-compliance with ECJ decisions. (The last type of breach does not apply in the EEA.) If the European Commission or the ESA detect mismanagement or failures in implementation, they can initiate a wide set of informal and formal procedures for securing correct implementation. Whereas the opening of cases for inspection is mandatory, the European institutions enjoy discretion in terms of when and whether to close proceedings.

The infringement procedures cover basically three formal steps: letters of formal notice (LFN), reasoned opinion (ROP) and refer to court (RTC). The procedure is simple. When an infringement case is opened an LFN is sent to the member state. The state then gets the opportunity to present its view. If the European institution still considers the state to be in breach of the obligation it sends an ROP. If the state fails to comply with the ROP within a specified time period, the European-level institution may refer the matter to the ECJ. The Maastricht Treaty gave the ECJ the power to impose fines on a member state that fails to take the necessary measures to comply

with the ECJ's judgements (Article 228). The ECJ has now started to impose financial penalties on member states for failing to implement EU directives.⁷

Patterns of Implementation

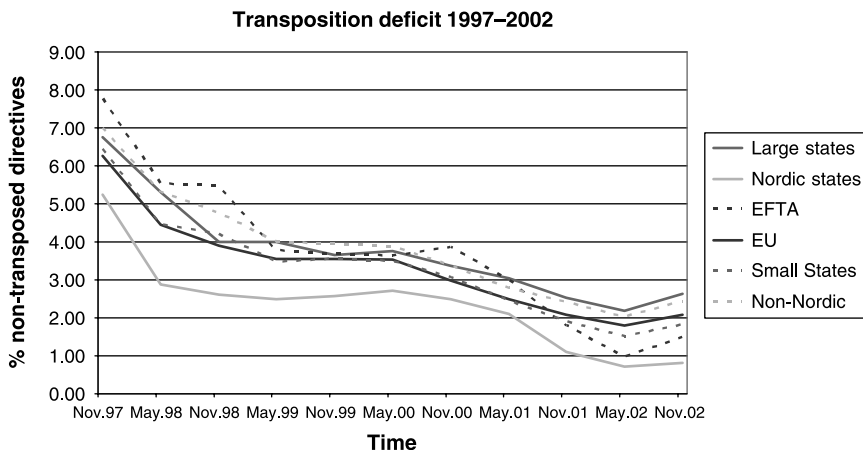
The issue of implementation is at the core of the development of the EU and it raises issues of an administrative and constitutional character. On the one hand, failure to implement the European directives challenges the effectiveness and legitimacy of the European integration process.⁸ It can hinder the potential economic and political benefits of creating a single market. On the other hand, non-compliance can function as a domestic safety valve and increase the legitimacy and the effectiveness of the European integration process (Dimitrova & Steunenbergh 2000; Sverdrup 2000). Ambiguous rules create difficulties for homogeneous implementation, but they often ease negotiations and reduce the pressure for domestic adaptation (Haas 1958).

Historically, the EU has been careful and reluctant in imposing strict interpretations of legislation on the member states, because of such concerns (Tallberg 1999). The European institutions have been tolerant of non-compliance. They have been careful when exploiting their powers *vis-à-vis* the member states and they have been reluctant to demand increased monitoring and sanctioning powers. Typically, the European Commission has often sought informal solutions with member states rather than opening proceedings or letting all initiated cases run the full course (Tallberg 1999, 40–41). Equally, the member states have demonstrated reluctance to give strong enforcement powers to the European institutions and they have carefully monitored whether the European institutions act within their competencies (Dehousse 2002).

There has been an increased interest in examining implementation. However, scholars disagree on the existence and scale of an 'implementation deficit' in the EU. Early studies argued that the deficit in the EU was high and that this was systemic in the EU (From & Stava 1993). More recent studies challenge this view, questioning the methods for drawing such conclusions (Börzel 2001). Rather than portraying a situation of limited implementation of EU rules, data indicate that the states have been surprisingly willing to transpose Community legislation, in spite of the fact that there have been relatively weak monitoring and sanctioning mechanisms in the EU/EEA. Figure 1 shows that over time the member states have become significantly better at transposing EU directives.

The average deficit in transposition of Community legislation into national legislation in the period between 1997 and 2001 has decreased, indicating that all the states transpose more directives now than before. The EU

Figure 1. Transposition of Directives (1997–2002).



Sources: EFTA Surveillance Authority 1997; 1998a; 1998b; 1999a; 1999b; 2000a; 2000b; 2000c; 2001a; 2001b; 2002a; 2002b; European Commission 1997; 1998a; 1998b; 1999a; 1999b; 2000a; 2000b; 2000c; 2001a; 2001b; 2001c; 2001d; 2001e; 2002a; 2002b.

average of non-transposed legislation has been reduced from 7.5 percent in November 1997 to 2.1 percent in November 2002. The EFTA average of non-transposed legislation dropped from 7.8 percent in November 1997 to 2.9 percent in November 2002. We can therefore observe the emergence of a pattern of *gradual convergence*, understood as the reduction of variation among the member states in their transposition deficit. Throughout the period the standard deviation has steadily been reduced.

There is still variation. The ‘worst’ performing country in the EU (France) had a deficit of 3.8 percent in November 2002, whereas the ‘best’ performing countries (Sweden, Finland and Denmark) had a deficit of close to 0.5 percent. Only Finland, Denmark, Sweden, The Netherlands and Spain met the ‘deficit target’ for the spring of 2002 set by the European Council (European Commission 2001d). In addition, some states have acted more rapidly than others in reducing their deficit. Sweden, Finland, The Netherlands and Denmark reduced their deficit at an earlier stage than the EU average and have maintained a consistently lower deficit than the EU average. The larger EU states have been slower in implementation than the smaller states. France scored above the EU average throughout the period, Germany performed above the average at the beginning and the end of the period and the UK performed under the EU average over most of the period. The EFTA states have been slower in reducing their deficit than the EU states, and until mid 2001 they usually had a transposition deficit above the EU average.

When examining the data more closely, we observe some other features. First, there are more problems with new legislation than with older. The deficit in transposition is primarily related to the most recent EU and EEA directives.⁹ Also in this respect we can observe variation among the member states. The larger states have a significantly larger backlog of non-transposed directives than the smaller states. Moreover, the Nordic states Finland, Denmark and Sweden are among the countries with the shortest backlog. Norway and Iceland have a similar performance to their Nordic neighbours. Second, there are more problems with legislation in certain sectors than in others. For instance, the transposition of directives related to transport policy seems to be more problematic than that of directives related to consumer policy, social policy and telecommunications. A measurement of the level of transposition across the sectors is the so-called 'fragmentation factor'. This indicates the share of the total number of directives that are not transposed by all the member states. The fragmentation factor has been reducing throughout the period, from a level of 26.7 percent in November 1997 to 10.0 percent in November 2001 (European Commission 2001b). The data show that the fragmentation factor has been more than halved and that the difficulties are primarily related to a backlog of the most recent directives, indicating that there is no systemic feature in the EU or EEA structure creating legal insecurity.

To summarize, transposition data indicate a trend towards a reduced implementation deficit. There is a pattern of gradual convergence, but the larger states implement somewhat more slowly than the smaller states, and the non-Nordic countries implement more slowly than the Nordic states.

Building the Capacity to Ensure Implementation

In the EU and the EEA there has been an increased effort to build capabilities to ensure implementation of community norms and to reduce the number of conflicts relating to implementation. This development does not result from poorer performance among the states. The renewed interest in implementation has appeared in spite of a general tendency towards improved implementation. The European institutions have improved their monitoring capacity, shifted their attention and introduced new instruments.

First, the European Commission and the ESA have increased their *capacity* to monitor implementation and to sanction non-compliance. They have developed organizational instruments such as data-based systems, rules and procedures in order to monitor and sanction non-compliance by the domestic administrations. Member states are now obliged to routinely report their transposition efforts, and failure to do this is giving rise to the opening of infringement cases. The increased capacity has imposed an obligation on the member states to report on their efforts and has reduced the costs for the

European-level institutions to monitor implementation. In another effort it has been made easier for various groups to report and deliver complaints, for instance by easing access to complaint schemes and providing professional assistance on formulating and completing such complaints.

These are parallel developments in the European Commission and the ESA. According to Article 108–110 of the EEA Agreement, the ESA and the European Commission are supposed to cooperate and consult with each other about problematic cases in order to secure homogeneous interpretation. The ESA has systematically copied the rules and procedures used by the European Commission. In general, the ESA has put considerable energy into securing a good relationship with the European Commission (Martens 2001). When the EU enters a new field, the ESA does the same. The ESA also regularly consults the Commission on specific cases and issues. The expertise and knowledge of the European Commission are systematically exploited, and the ESA regularly gets advice about how to proceed in relation to specific directives and in interpretations. The parallelism is also evident in the way the ESA reports its activities, since it publishes its reports on activities in the same format and at the same time.

Second, *attention* in the EU has shifted from the creation of new rules towards the proper application of existing rules. This is partly a result of the fact that the legislative framework for the internal market is close to being completed. In addition the EU has initiated its efforts to develop soft rules and to create mechanisms for non-rule-based adaptation. For some time, the EU has been less occupied with the creation of new rules and more concerned about sound and efficient management of the current rules (Metcalf, 1999; Craig 2000). For instance, in the recent White Paper on governance, the European Commission stated that it will take measures that will enable it to improve its monitoring and sanctioning policy and that it will pursue infringements with ‘vigour’, and it has indicated certain rules of priority in this process (European Commission 2001d). The ESA has been expressing similar concerns in regard to monitoring and sanctioning. For instance, the ESA has argued that the ‘EFTA states have lost considerable momentum in their efforts to incorporate EEA legislation into their legal systems’ and that ‘their implementation deficits are not improving, and the relative performance of these states compared to the other EEA states is deteriorating’ (EFTA Surveillance Authority 2000a). There are therefore many similarities between the European Commission and the ESA. By design they share the same procedures. However, there are some differences. For instance, a higher share of cases is opened as a result of complaints in the EU than in the ESA. More than 50 percent of the cases opened by the European Commission result from complaints, whereas the comparable figure for the ESA is less than 30 percent. Nevertheless, the EEA and the EU should not in this respect be regarded as two distinct regimes.

Third, related to this development, the European Commission and the ESA have intensified their work on developing alternative and non-legal *instruments* for improving implementation by developing a wider repertoire of organizational instruments involving national administrations. Such attempts involve improving information, stimulating training in European law, developing networks of national administrators, creating databases, developing methods for resolving cases without using legal instruments, and extending the use of scoreboards and benchmarking etc. There is an ongoing search for ‘excellence’ in organizing implementation. Some solutions have been suggested. For instance, the European Commission has recommended to the member states that they establish a central unit for coordination of the application of Community law in the head of government’s department and create a ‘one stop shop’ for rapid information and coordination on any given case (European Commission 2001b, 4). Other initiatives involve the so-called ‘twinning arrangements’ between national administrations, a method initially developed for the applicant countries, allowing the national administrations to share best practices in particular sectors. Yet another initiative is to promote the awareness of Community law among national courts and lawyers in order to make sure that national actors interpret and treat EU law as an integrated part of the national legal order (European Commission 2001d, 44–46).

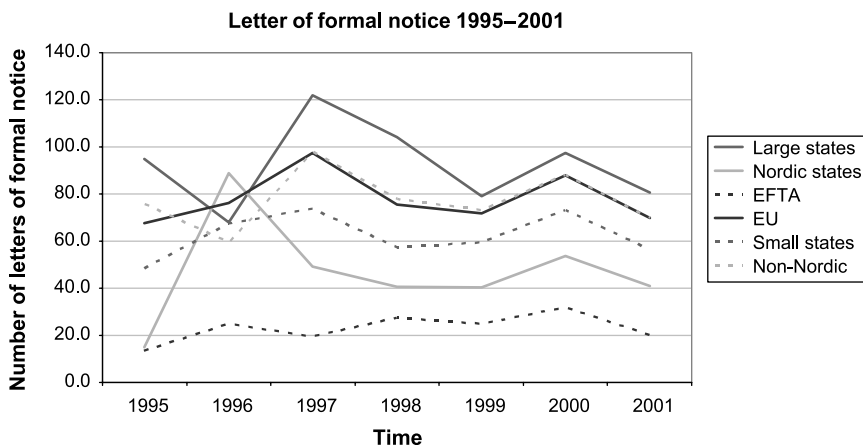
All of these developments constitute a general development of an *encompassing public administration policy* in Europe, which has so far been lacking. The enlargement of the EU stimulates this development further. There is a risk that enlargement may increase fragmentation further (European Commission 2001e) and the applicants are therefore put under considerable pressure to adapt and alter their legislation so that it complies with Community legislation. It is by some seen as a matter of fairness that the new applicants should not be put under a stricter compliance regime than the current member states (Friis & Murphy 1999; Goetz & Wollmann 2001).

Modes of Conflict Resolution

Most of the cases of dispute are settled after an informal exchange of views before a case is formally opened. However, in some cases an infringement procedure is opened. Let us examine the various steps in the infringement procedures and how states respond to such conflicts. Although convergence in transposition may be observed, the patterns of conflict resolution are diverging.

Figure 2 shows that numbers of LFNs have increased slightly during the period under consideration. The total number of LFNs increased from 1,106 in 1995 to 1,412 in 2000, then dropped in 2001. The EU average per state increased from 68 in 1995 to 88 in 2000. The equivalent numbers for the EFTA countries are an increase from 13 per state in 1995 to 32 per state in

Figure 2. Letters of Formal Notice (1995–2001).



Sources: EFTA Surveillance Authority 1997; 1998a; 1998b; 1999a; 1999b; 2000a; 2000b; 2000c; 2001a; 2001b; 2002a; 2002b; European Commission 1997; 1998a; 1998b; 1999a; 1999b; 2000a; 2000b; 2000c; 2001a; 2001b; 2001c; 2001d; 2001e; 2002a; 2002b.

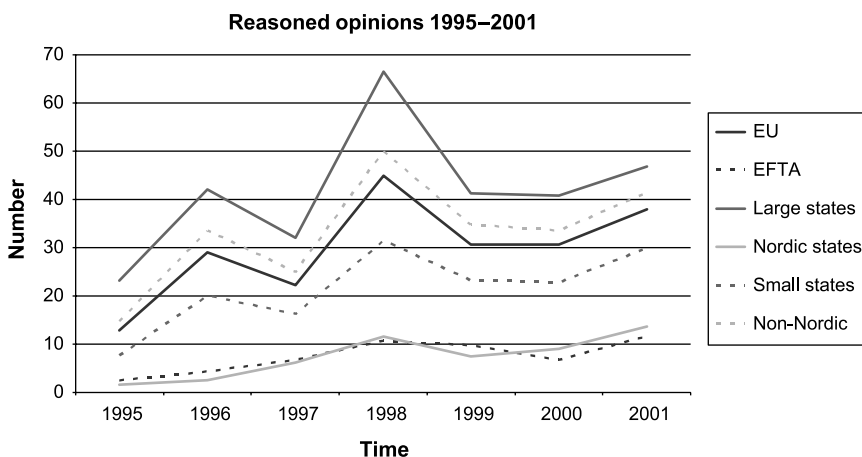
2000, indicating a more rapid increase in LFNs. There is not much variation among the states in the number of LFNs, indicating that the European institutions distribute them fairly equally among the states.¹⁰

However, the larger states receive more LFNs than the smaller states. All the Nordic states receive far fewer LFNs than the EU average. (Note that in 1996, Finland received 290 LFNs – a statistical anomaly). The EFTA states have throughout the whole period received a smaller number of LFNs than the EU average. These data give some support to the notion that there is a Nordic policy style. The Nordic states seem to have a policy style of resolving disputes at an earlier stage. When one examines the numbers of ROPs this pattern becomes more evident.

Figure 3 shows that the number of ROPs has increased throughout the period. In absolute numbers the EU average has increased dramatically from 13 ROPs to 37 ROPs per year per state. In total, the absolute number of ROPs in the EU has increased from 192 in 1995 to 569 in 2001. Although there has also been a marked increase in the number of ROPs sent to the EFTA states, the number is significantly smaller. For the EFTA states the level has increased from two to 12 on average per year per state.

The larger states receive more ROPs than the smaller states. The Nordic states demonstrate a significantly lower level than the EU average. These findings support the observations made regarding the LFNs. There seem to be striking differences between the small, and in particular the Nordic,

Figure 3. Reasoned Opinions (1995–2001).



Sources: EFTA Surveillance Authority 1997; 1998a; 1998b; 1999a; 1999b; 2000a; 2000b; 2000c; 2001a; 2001b; 2002a; 2002b; European Commission 1997; 1998a; 1998b; 1999a; 1999b; 2000a; 2000b; 2000c; 2001a; 2001b; 2001c; 2001d; 2001e; 2002a; 2002b.

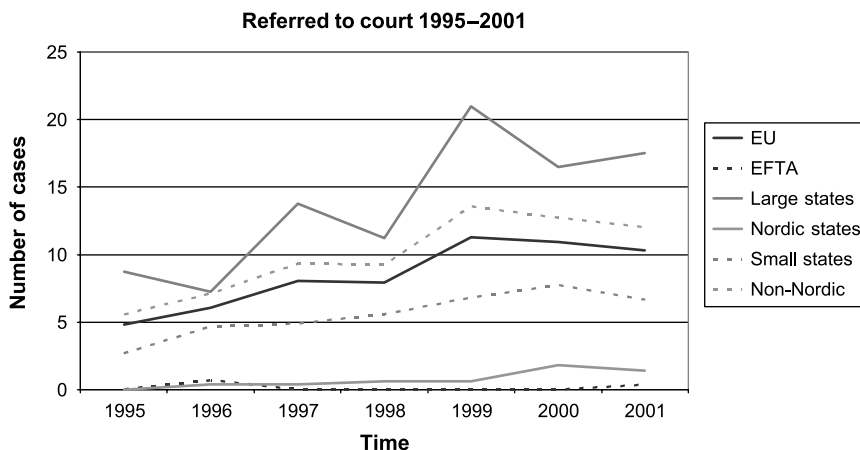
member states and the other EU states in their handling of disputes related to infringement cases.

In principle, one should expect the number of ROPs to be a function of the number of LFNs. However, when controlling for this we find that this is not the case. For the EU the ratio between ROPs and LFNs is 0.45 (lagged by the one year). For the larger states the ratio is above the average, whereas it is consistently lower for the Nordic states. These findings indicate that when a dispute relating to implementation appears, the Nordic states resolve such conflicts earlier than the non-Nordic states. This diverging pattern of conflict resolution become even more visible when one examines cases referred to the courts.

Figure 4 illustrates a gradual increase in the numbers of cases that have been referred to the courts. The total number of cases increased from 72 cases in 1995 to 155 in 2001. This illustrates the overall increase in the number of disputes between the European-level institutions and the states, and that increasingly the courts are settling such conflicts. During the period 1995–2001 the average number of cases for the EU member states increased from five to about 11 per year per state.

However, we observe considerable variation among the states. The large states, and in particular France and Italy, but also Germany, have more cases than the smaller states. The UK has less than the EU average but there is an increasing number of cases involving the UK as well. Again, the

Figure 4. Referrals to Court (1995–2001).



Sources: EFTA Surveillance Authority 1997; 1998a; 1998b; 1999a; 1999b; 2000a; 2000b; 2000c; 2001a; 2001b; 2002a; 2002b; European Commission 1997; 1998a; 1998b; 1999a; 1999b; 2000a; 2000b; 2000c; 2001a; 2001b; 2001c; 2001d; 2001e; 2002a; 2002b.

Nordic states depart radically from this pattern. Very few cases from the Nordic states end up being settled in the courts. There were only, in total, 19 instances where Denmark, Finland or Sweden was referred to the courts in the time period 1995–2001, which is less than for Italy alone for a single year. Among the EFTA states this pattern is even more striking. The EFTA states have even fewer cases in the courts.

Conclusions

How, then, do these observations fit with the three theoretical models? The *supranational or enforcement model* assumed that implementation would result from the capacity of the European institutions to impose changes at the domestic level. The fact that all states are becoming gradually better at transposing community legislation over time and the emergence of a converging pattern in implementation support this model. The increased effort to develop competence and capability at the European level has increased the will and ability at the European level to open cases and investigate issues of non-implementation. Through diffusion of formal procedures the two regimes, the EU and EFTA, are acting according to similar rules, making it difficult to explain variation between the EU and the EFTA states.

The *intergovernmental or participation model* assumed that the larger states would be best at implementing community legislation because they

were able to shape the EU legislation in manners that were consistent with their interests. The data do not fit this model. In fact, the data support the opposite hypothesis, indicating that larger states are more willing and able to delay implementation and postpone adaptation until after a case has been referred to the court. However, this observation should lead us not to suspend this model, but rather to reformulate the hypothesis. The strength of a state cannot be measured only as the bargaining power of that state. The definition should be reformulated to cover not only voting power but also the ability to delay or resist adaptation. If we define power in this way, the findings are to a large extent consistent with the intergovernmental model.

The *institutional dynamic or policy style model* assumed that variation could result from domestic traditions and styles for resolving conflicts. We expected that the Nordic states, with a more consensus-seeking approach, would resolve conflicts at an earlier stage than the states pursuing a more confrontational style. The data analysis shows that the Nordic states are performing more or less at similar levels regardless of their formal organizational ties to the EU (member or non-member) and regardless of that fact that some states have more experience as member states than others (Denmark versus Sweden and Finland). These findings indicate that there is a distinct Nordic exceptionalism in the implementation of legislation. This deviation seems to be less strong in relation to the earlier stages of the infringement proceedings, but more important when accounting for variation regarding ROPs and court rulings. Although the UK also deviates slightly from the pattern of large and small states, and The Netherlands has a pattern resembling that of the Nordic states, there seems to be a kind of a Nordic policy style. Such findings challenge the argument that it is not fruitful to talk about a 'North-South' division (Börzel 2001) and suggest that it could be fruitful to distinguish between Nordic and non-Nordic countries. However, one should be cautious about drawing too strong conclusions. There could perhaps be a 'newcomer' or a 'grace period' effect that is being played out in relation to the Nordic countries. However, in this analysis I have found no traces of such effects, and the pattern in Denmark, which is not a newcomer, is a pattern of implementation and conflict resolution that fits very well with the pattern in the other Nordic countries.

As shown, different theoretical models help to explain various aspects of implementation and conflict resolution. These findings indicate that we should *enrich* our theoretical repertoire when examining processes of Europeanization. It also shows that voting power is not a good indicator for measuring power in regard to implementation, and that there is a need for examining all European countries in order to see the broader picture regarding implementation. Another lesson to be learnt is that there is a need to improve our understanding of the administrative *interaction* between the European level and the domestic level, and the modes of conflict resolution

the various states apply. Such an effort would involve examining over time and space the tension and interplay between enforcement, power and the domestic institutional traditions and styles. Understanding the scope conditions for these mechanisms and the interplay between domestic and European-level institutions requires that we shift our focus away from static variation studies towards a better understanding of the processes of implementation. Finally, there is a need to improve our understanding of the dynamics of implementation for developing good *explanations* of why these patterns emerge; such factors could include administrative style and capacity, cooperative culture, legal culture and even religious tradition. When these three factors are taken seriously, it is likely that studies of implementation will contribute in important ways to our understanding of the dynamics of Europeanization.

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NOTES

1. In November 2002 there were 1,470 valid directives for the EU states and 1,392 directives for the EFTA states.
2. Differences in aspiration level between various states can account for variation, but this is not included in the analysis.
3. This perception of consensus should not be confused with the 'consensus model' of Lijphart (1999). His model rests upon factors such as executive power sharing in a broad coalition, the executive–legislative balance of power, the multiparty system, proportional representation, federal government and so on, whereas here the focus is upon policy styles rather than structures. However, since Lijphart argues that the EU is a consensus political system or configuration, it could well be that the consensus policy and administrative style that I am concerned with here are mutually enforcing and provide a good 'match' or 'fit'.
4. I am well aware that there is also a discussion in social policy and welfare state studies about a 'Nordic model' (Esping-Andersen 1985). This is not the kind of 'Nordic model' referred to in this article.
5. For instance, the data measure only transposition and not actual implementation. These data also treat directives as discrete units, ignoring that some directives are much more laborious and demanding to implement than others. When non-implementation is reported it is impossible to tell whether there is a small, insignificant fraction that is not transposed, or whether it is the whole or a significant part of the directive that is not transposed (Börzel 2001, 804). However, as data on conflict resolution the data are better.
6. EFTA Court Case E-9/97 *Erla María Sveinbjörnsdóttir and The Government of Iceland* paragraph 59.
7. Case C-387/97 *Commission vs. Greece* 2000 ECR p. I-5047.
8. See the White Paper on European governance: 'Late transposition, bad transposition and weak enforcement all contribute to the public impression of a Union which is not delivering' (European Commission 2001d).

9. For instance, of the 79 directives that were launched in 1995, 6.6 percent of them were still not transposed by all of the EU member states by the spring of 2000. More than 60 percent of the directives whose deadline for transposition expired in 1998 and more than 90 percent of the directives with a deadline in 1999 were not transposed by the spring of 2000 (European Commission 2000a). In 2001, the average delay in the transposition of a directive was 13 months (European Commission 2001c).
10. One should expect that the countries with the lowest transposition rates should receive the highest numbers of LFNs. Surprisingly, this is not the case. When running a test (Pearson), we found a correlation of 0.52 for the EU and only 0.12 for the EFTA. When lagged by one year the correlation drops to 0.35 for the EU and to -0.31 for the EFTA.

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