

Opinion of the Committee of the Regions on 'Towards a 7th Environment Action Programme: better implementation of EU environmental law'

(2013/C 17/07)

THE COMMITTEE OF THE REGIONS

- calls for the 7th Environment Action Programme (7EAP) to support local and regional authorities in their role in implementation, in particular by including elements such as: their greater participation throughout the process of formulating, transposing and evaluating EU legislation; effective source-based policies and expanding cost-recovery options for local and regional authorities; a focus on how to manage the urban environment sustainably; and to establish a reasonable timeframe between the adoption of laws and their subsequent revision;
- supports the improvement of the structuring, pro-active dissemination and accessibility of information, including the development of Structured Implementation and Information Frameworks (SIIFs); financial support for this should be made possible under the technical assistance provided for by the Structural Funds 2007-2014 as well as by the future LIFE programme;
- believes that the 7EAP should commit the EU and Member States to introduce new and enhanced instruments for improving responsiveness, such as a general EU framework on environmental inspections and surveillance; inspection powers for the European Commission; general criteria for national complaint-handling; and a Directive on Access to Justice;
- welcomes the proposed Partnership Implementation Agreements, however they should not only be agreed between the European Commission and a Member State, but also involve one or more local and regional authorities in order to adequately reflect multilevel governance;
- recommends to improve environmental outcomes through innovative methods of multilevel governance, including expanding the Covenant of Mayors to resource efficiency and further development of the European Green Capital Award;
- welcomes the support that the European Commission gives in its Communication to the CoR's proposal to co-organise a regular forum to address regional and local problems and solutions in the application of EU environmental law.

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	COM(2012) 95 final

I. POLICY RECOMMENDATIONS

THE COMMITTEE OF THE REGIONS

A. General remarks

1. Recalls that the purpose of this Opinion is threefold:

— to react to the European Commission Communication of 7 March 2012, which will help shape the future 7th Environment Action Programme (7EAP);

— to contribute to the debate on the future 7EAP, and its expected focus on better implementation;

— to expand on the past CoR Outlook Opinion on *The role of local and regional authorities in future environmental policy* (CdR 164/2010 fin) which highlighted opportunities to increase the effectiveness of environmental protection at all levels of governance and all stages of policy development;

2. acknowledges that whereas the 2008 Communication on implementing EU environment law ⁽¹⁾ focused on the European Commission's enforcement powers to tackle breaches of EU environment law, the current 2012 Communication is about how to improve implementation through good national, regional and local governance. This reflects previous criticism and recommendations of the CoR ⁽²⁾;

3. notes that the Communication is intended to intensify the dialogue with all stakeholders, including local and regional governments, on how they can work better together to enhance implementation of EU law through improving the collection and sharing of knowledge and by having greater ownership and responsiveness by all for effectively dealing with problems on the ground. The CoR endorses the view

that knowledge and responsiveness are complementary facets of implementation;

4. believes that local and regional authorities can potentially achieve greater coherence in implementation and enforcement by various means, in particular by setting up long-term environmental goals and strategies; through mobilisation of their citizens; by establishing well-functioning departments and services; by using EU funds for investing in environmental infrastructure and ecosystem services; by adaptation to climate change and disaster risk reduction; by applying the SEA and EIA Directives; and by promoting transparency and access to justice ⁽³⁾;

5. recognises however, that new tasks and regulations applied by the EU to local and regional government in this field can pose questions of cost and administrative burden. The CoR feels that new initiatives should be implemented in a way that does not increase the cost and administrative burden on local and regional government. The CoR would ask the European Commission to conduct impact assessments as well as studies on this matter. Recalling its well-established positions on administrative burdens and given the provisions of the Treaty ⁽⁴⁾, requests that the European Commission conducts a thorough impact assessment of the administrative and regulatory burden arising from any new EU initiatives consequent from this Communication;

B. Making implementation a priority of the 7EAP

6. reiterates its view that a 7th Environment Action Programme is needed, considering that the current EAP expired on 22 July 2012 and there is a need to ensure continuity. The 7EAP should ensure that the EU's environmental choices stay sufficiently clear and predictable for local and regional administrations ⁽⁵⁾;

⁽¹⁾ COM(2008) 773 final.

⁽²⁾ CdR 164/2010 fin.

⁽³⁾ CdR 164/2010 fin, CdR 38/2010 fin, CdR 199/2009 fin, CdR 89/2009 fin.

⁽⁴⁾ 'Draft legislative acts shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved.' [Treaty on the Functioning of the European Union, Protocol No 2, Article 5].

⁽⁵⁾ CdR 164/2010 fin, European Parliament resolution of 20 April 2012 (2011/2194(INI)).

7. recalls its earlier recommendations concerning the overall character and priorities of the 7EAP⁽⁶⁾, which stressed in particular the need for the 7EAP to contribute towards achieving a resource-efficient Europe within the framework of the Europe 2020 Strategy and a vision of where EU environmental policy should be directed for the longer term. It should also set clear targets, timetables and actions for 2020. There is a need to reflect the Rio+20 Declaration as adopted by the UNCSO on 22 June 2012 and its emphasis on an inclusive green economy and the post-2015 Sustainable Development Goals, as well as the CoR contribution to the Rio Summit⁽⁷⁾;

8. notes with concern that implementation of the EU environmental acquis is still insufficient and that full implementation and enforcement at all levels are crucial in order to improve the state of the environment and public health, to ensure a level playing field and create regulatory certainty for industry, and to avoid market distortions⁽⁸⁾. By the end of 2009, 18.8 % (544) of all infringement procedures against EU Member States of EU legislation were related to the environment, indicating continuing damage to the environment and distortion of competition⁽⁹⁾;

9. notes, for example, that the costs of not implementing current EU environmental legislation are broadly estimated at around EUR 50 billion a year in health costs and direct costs to the environment⁽¹⁰⁾. Further costs of non-implementation include missed opportunities for businesses, different compliance costs, distorting competition among EU industries, as well as increased costs related to infringement cases. It is estimated that full implementation of all waste legislation would lead to an additional waste (and recycling) industry turnover of EUR 42 billion and an additional job creation of about 400 000 jobs⁽¹¹⁾. The EU environment industry is estimated to have an annual turnover in excess of EUR 300 billion, so that uncertainty about implementation pathways and time-frames may carry significant costs in terms of missed opportunities⁽¹²⁾. If, due to an infringement case, investments have to be made over a very short time span they are likely to be more expensive than if the implementation had been better planned;

10. requests that good implementation should become a priority objective of the 7th EAP in order to secure

commitment to deliver better environmental outcomes, in particular those set out in the Resource Efficiency Roadmap, the Low-carbon Roadmap and the Biodiversity Strategy to 2020;

11. calls for the 7EAP to support local and regional authorities in their role in implementation, in particular by including elements such as:

- greater local and regional participation throughout the process of formulating, transposing and evaluating EU legislation, drawing on the experiences at local and regional level, so as to improve implementation of the legislation and facilitate greater ownership;
- mechanisms to engage and enable local and regional authorities to exchange best practices in policy implementation;
- effective source-based policies and expanding cost-recovery options for local and regional authorities;
- a focus on how to manage the urban environment sustainably, concentrating on integrated environmental planning, sustainable mobility, quality of life and public health;
- to establish a reasonable timeframe between the adoption of laws and their subsequent revision, in order to allow local and regional authorities the time to plan implementation and invest in adaptations within a stable legal environment, whilst retaining the flexibility for the EU to update laws to reflect technological change and changing needs or public expectations;

12. believes that the 7EAP should commit the EU and Member States to introduce new and enhanced instruments for implementation, building also on the initiatives set out in the Communication and detailed in sections C and D, such as⁽¹³⁾:

- improvement of the structuring, pro-active dissemination and accessibility of environment- and implementation-related information; including by national environmental protection agencies and the European Environment Agency;

⁽⁶⁾ CdR 164/2010 fin.

⁽⁷⁾ CdR 187/2011 fin.

⁽⁸⁾ See also European Parliament resolution of 20 April 2012 (2011/2194(INI), Council Conclusions on 'Improving Environmental Policy Instruments', 20 December 2010.

⁽⁹⁾ European Commission website 'Statistics on environmental infringements'.

⁽¹⁰⁾ Study 'The costs of not implementing the environmental acquis', COWI 2011, commissioned by the European Commission.

⁽¹¹⁾ Study 'Implementing EU Waste Legislation for Green Growth', Bio Intelligence Service 2011, commissioned by the European Commission.

⁽¹²⁾ Study 'The costs of not implementing the environmental acquis', COWI 2011.

⁽¹³⁾ CdR 164/2010 fin, CdR 140/2011 fin.

See also European Parliament resolution of 20 April 2012 (2011/2194(INI), Council Conclusions on 7th Environment Action Programme, 11 June 2012, Council Conclusions on 'Assessment of the Sixth Community Environment Action Programme and the Way Forward: Towards a 7th EU Environment Action Programme', 10 October 2011.

- an EU framework for environmental inspections at Member State level;
- criteria for national complaint-handling, including for dispute resolution such as mediation;
- revival of the stalled proposal for a Directive on Access to Justice;
- development of tripartite implementation agreements with Member States and regional or local authorities, as well as other multilevel governance instruments;
- effective monitoring of the EU Resource Efficiency Roadmap, including the insertion of resource efficiency targets and indicators into the Annual Growth Survey and the Member States National Reform Programmes;
- innovative concepts of financing and ways to encourage private investment in implementation, including the phasing out of environmentally harmful subsidies and the promotion of environment-friendly fiscal reforms that take more account of resource use;
- improve mainstreaming of environment and climate policy into other EU policies, with the aim to facilitate an integrated approach to implementation at the local level, and the inclusion of risk reduction considerations in environmental impact assessments;

C. *Improving knowledge on implementation*

13. shares the European Commission's concerns about the uneven monitoring efforts across Europe, with the information generated being often incomplete, incompatible or out-of-date. Not enough useful information is placed online, and it is often not published systematically. The CoR recognises that better and more accessible information at national, regional and local levels would allow major environmental problems to be identified earlier, thereby saving costs in the longer term;

14. highlights the pivotal role regional and local authorities have in collecting knowledge on implementation. The aim must be to ensure consistency and compatibility of the information also at national and EU level, and to make it effective and reliable;

15. believes that transparency plays an important role in stimulating better implementation and enforcement. There is a need to promote investments in online information systems that make information on the environment and on implementation available to the general public and to public institutions, with increased efforts at all governance levels to proactively disseminate and provide access to environmental information;

More effective information systems on implementation at national, regional and local level

16. insists that whilst strengthening the Access to Information Directive, as envisaged by the Communication, the European Commission should ensure that Member States and their local and regional authorities properly implement the existing minimum requirements of the Directive, in particular those on more pro-active, up-to-date and systematic dissemination of information to citizens, in line with the Aarhus Convention ⁽¹⁴⁾;

17. supports the development of Structured Implementation and Information Frameworks (SIIFs) for all key EU environment laws, as proposed by the European Commission. However, the development of such information systems needs to be effective and efficient, making better use of Member States' systems in a practical and flexible manner. It calls upon Member States to cooperate with the European Commission with the aim to put such SIIFs in place with the involvement of local and regional government. The CoR could believe that SIIFs, together with the range of SEIS initiatives, should lead to transparent information systems at national, regional and local level that make information accessible online and would allow implementation to be tracked in the most efficient and timely way possible, by local and regional authorities, citizens, experts and businesses ⁽¹⁵⁾;

18. sees scope for further coordination and streamlining of data demands to national, regional and local authorities in line with the principle 'produce once, use many times'. Data generated as part of reporting obligations under one piece of legislation is often relevant also to other pieces of legislation;

19. stresses however that there is a need to improve definitions in EU Directives to enable a level playing field in monitoring and reporting, public information and enforcement, e.g. concerning the different waste management options and waste flows under the Waste Framework Directive;

⁽¹⁴⁾ UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.

⁽¹⁵⁾ The European Commission gives as an example: For the national, regional and local implementation of EU drinking water rules, one would be able to identify on a map abstraction points, source protection zones, treatment plants and distribution networks and have links to related information such as leakage reduction programmes (European Commission MEMO/12/159).

20. attaches great importance to the commitment of the European Commission to explore how EU funding could be used for the development, upgrading and deployment within Member States, regions and municipalities of SIIFs and relevant interoperable information systems, related training and the increase of administrative capacity where needed. In particular, such support should be made possible under the technical assistance provided for by the Structural Funds 2007-2014 as well as by the future LIFE programme;

21. calls upon the EEA to explore within pilot projects how monitoring and reporting pressures on local and regional authorities can be reduced by ICT and e-government without affecting the impact of legislation;

22. supports initiatives by the European Commission and Member States to exploit the opportunities, including in terms of reduced monitoring costs, of earth-observation techniques, such as GMES, for improving the effectiveness of implementation monitoring on the ground⁽¹⁶⁾. This could include the promotion of pilot projects with local and regional authorities;

23. underlines the importance of the SEA and EIA Directives as instruments for local and regional public participation on environmental policy, and reiterates its call for the upcoming revision of the EIA to strengthen provisions that public consultation for EIAs should begin as early as possible, for instance at the preliminary scoping and screening stage in order to further expedite the implementation of the subsequent stages and the decision-making of the relevant authorities, and to include minimum requirements on how to make the EIA documentation available to the public concerned⁽¹⁷⁾;

Improving EU-level information

24. supports the need for better EU-wide, systematically and pro-actively disseminated, online geo-referenced data and maps on the environment in order to create a level playing field and to complement improved information systems within Member States, and regional and local authorities;

25. welcomes the intention of the European Commission to extend the approach used in the Bathing Water Directive across all relevant EU environment laws, building also upon pilot exercises under development by the EEA on air quality and waste;

26. recognises the role of the EEA in processing monitoring data reported by Member States to the Commission, as well as

supports its growing role in supporting the European Commission's analysis of Member State implementation reports, and calls for a greater coordination role of the EEA in ensuring consistency and compatibility in the collection and collation of these different data at EU level, as done under various tools, e.g. INSPIRE, SEIS, GMES, GEOSS, and EyeonEarth;

27. expects the European Commission to move forward with SEIS (Shared Environmental Information System) and present its SEIS Implementation Plan soon in 2012, explaining the state-of-play and setting out how improvements can be made;

28. calls for the European Commission to publish the conformity-checking studies that it regularly commissions on the implementation of EU environmental legislation by the 27 Member States, in order to allow full, democratic discussions on the state of environmental law;

D. Improving responsiveness

Improving inspections and surveillance

29. reiterates its call for the European Commission to come forward with a general EU framework on environmental inspections and surveillance⁽¹⁸⁾. Such a framework should allow Member States to apply guidelines in a flexible way whilst achieving a high level of consistency in application;

30. in the interests of better regulation, the European framework for inspections should become the core framework under EU environmental law. To the greatest extent possible, specific provisions in sectoral EU environmental directives should be avoided. If separate provisions in sectoral directives are essential, they must be in line with the framework;

31. believes that an EU-wide framework for national inspections can reduce unfair competition between EU regions and municipalities due to different or lacking inspection regimes, ensure a level playing field in legal action, and improve trans-frontier cooperation and consistency across the EU. The form and content of inspections should be regulated nationally and developed at local and regional level but on the basis of general principles set by the EU framework, including a streamlined and risk-based, approach⁽¹⁹⁾ and the European Environment Agency, in cooperation with national environmental protection agencies could play an important role in identifying and promoting them;

⁽¹⁶⁾ See also CdR 163/2011 fin.

⁽¹⁷⁾ CdR 38/2010 fin.

⁽¹⁸⁾ CdR 164/2010 fin.

⁽¹⁹⁾ CdR 164/2010 fin.

32. believes that the European Commission should have the possibility to investigate cases where there is a suspicion that EU environmental law has not been complied with. Such investigation possibilities exist at present in the areas of the customs union, agriculture, fisheries, regional policy, competition, veterinary and financial policy⁽²⁰⁾. Such inspection powers for the European Commission may conflict with relationships between the authorities within Member States. The investigations referred to above must therefore take into account the rules in force in the Member State concerned regarding oversight arrangements between different levels of government. So far as possible, European Commission investigations should also take place in accordance with the normal EU infringement procedure;

33. considers it essential, as a complementary action, that the European Commission reports on possible ways to strengthen the EU Network for the Implementation and Enforcement of Environmental Law (IMPEL), including in particular ensuring adequate long-term financial support for IMPEL, increasing IMPEL's systematic use for peer-review inspections, and its work on identifying and sharing good practice, as well as further extending it to the regional and local levels⁽²¹⁾;

Better complaint-handling and mediation at national level

34. expresses concern about the deficits and lack of remedies in many complaint-handling systems, which compels citizens to address to the European Commission, the European Parliament's Petitions Committee or EU Ombudsman, which are overloaded with complaints;

35. supports proposals for general criteria for national complaint-handling, including for dispute resolution such as mediation, based on recent specific provision for national grievance and dispute-settlement mechanisms in consumer legislation⁽²²⁾. The criteria could include for example general safeguards on confidentiality and timeliness, and on the need to provide information online for citizens on how a problem has been resolved, and to provide citizens and NGOs with independent local complaint institutions, whilst taking into account obligations on access to justice resulting from the Aarhus Convention, and whilst not affecting the general right to complain to the EU institutions;

Improve access to justice

36. notes that whereas the 2003 proposal for a Directive on Access to Justice on environmental matters has not yet been

⁽²⁰⁾ See also ClientEarth 2012: The 7th Environment Action Programme and Enforcement.

⁽²¹⁾ See also CdR 164/2010 fin, IMPEL 2012 Response to the 7EAP consultation, European Parliament resolution of 20 April 2012 (2011/2194(INI), Council Conclusions on 'Improving Environmental Policy Instruments', 20 December 2010.

⁽²²⁾ Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, OJ L 211, 14.8.2009.

adopted as a legal instrument, the European Court of Justice has confirmed that national courts must interpret access to justice rules in a way which is compliant with the Aarhus Convention⁽²³⁾. Due to case-law which foresees greater access to courts for citizens and NGOs, national courts, local and regional authorities and economic as well as environmental interests now face uncertainty in addressing this challenge;

37. reiterates therefore, that there is a need to revive the stalled Access to Justice Directive⁽²⁴⁾. This would close existing gaps in many Member States in complying with the requirements of Article 9(3) and (4) of the Aarhus Convention. It would also enhance the role of the public as a catalyst for better enforcement of environmental law at all levels. The current Communication is not explicit on how the European Commission intends to resolve this;

Improving environmental outcomes through capacity-building and implementation agreements that engage Member States

38. welcomes the support that the European Commission gives in its Communication to the CoR's proposal to co-organise a regular forum to address regional and local problems and solutions in the application of EU environmental law⁽²⁵⁾. Such a forum would allow for a continuous dialogue and the exchange of experience between environment practitioners from local and regional authorities and their associations, and from the CoR's consultative platforms and networks, together with the European Commission;

39. welcomes that the European Commission, by offering the new instrument of 'Partnership Implementation Agreements', reflects to a large extent a previous call of the CoR⁽²⁶⁾ on the EU to extend the pilot work carried out by the European Commission already in 2002 on tripartite agreements and contracts⁽²⁷⁾. The CoR calls upon the European Commission to provide more information and guidance on how it envisages designing and applying the instrument;

40. believes that Partnership Implementation Agreements should not only be agreed between the European Commission and a Member State, but also involve one or more local and regional authorities in order to adequately reflect multilevel governance, thereby becoming a Tripartite Implementation Agreement;

⁽²³⁾ Case C-240/09.

⁽²⁴⁾ CdR 164/2010 fin.

⁽²⁵⁾ COM(2012) 95 final, page 10. Letter of Commissioner Potocnik of 5 July 2012.

⁽²⁶⁾ CdR 164/2010 fin.

⁽²⁷⁾ CdR 89/2009 fin, COM(2002) 709 final.

41. believes that Tripartite Implementation Agreements could assist in achieving the implementation of certain EU environmental policies, when traditional instruments do not achieve the necessary commitment towards solving emerging or ongoing environmental and non-compliance problems. The agreements should result in clear commitments from Member States and local and regional authorities to put in place the necessary measures, as well as from the EU to provide support. These commitments need to be formalised with deliverable objectives and timelines, and publicly available so that they can be subject to scrutiny;

Improving environmental outcomes through innovative methods of multilevel governance

42. regrets that the Communication does not reflect the CoR proposal to jointly consider specific ways of extending the Covenant of Mayors to cover key areas of the Roadmap to a Resource-efficient Europe, such as biodiversity and land use, waste and water management or air pollution⁽²⁸⁾. The CoR believes that this would facilitate implementation of EU environmental policy by an innovative method of multilevel governance, which promotes the pro-active commitment of local and regional authorities in achieving implementation instead of relying on simple enforcement of EU law;

43. regrets that the Communication does not make reference to the European Commission's European Green Capital Award, which the CoR strongly supports as an important means of showcasing cities that are exemplars and innovators in implementation of EU environmental law, and for sharing their experiences with other cities. To this end, the CoR reiterates its recommendations of 2010 on the further development of the Award⁽²⁹⁾;

44. stresses that environmental problems and climate change cannot be resolved – or EU policy implemented – by any one level of government. A multilevel approach is required, in which each level of government (European, national, regional and local) must take responsibility and adopt the measures which

can and must be adopted by the relevant level. The CoR advocates the establishment of cross-government teams in the Member States in which experts from the various levels of government work together to draw up national implementation plans⁽³⁰⁾;

E. Subsidiarity, proportionality and better regulation

45. recalls that environmental policy is an area where competences are shared between the EU and the Member States, therefore the subsidiarity principle applies;

46. notes that the European Commission makes no assessment of the various options set out in the Communication terms of their compatibility with the principle of subsidiarity. Considers that the options presented in the Communication are for debate and reflection at this stage, and are therefore insufficiently well-developed for the CoR to form a definitive view, with much depending on whether (and how) the European Commission decides to take some of these forward;

47. with this reservation, notes the contributions from its Subsidiarity Monitoring Network (SMN), which generally indicate that the options in the Communication, when fully formulated, are unlikely to constitute a significant breach of subsidiarity⁽³¹⁾;

48. notes however, that whereas there is support for an upgrade of the existing framework for inspections, there may be some resistance in the SMN to this being made binding and to the creation of an EU inspection body. Similarly, whereas there is support for criteria for handling of complaints by Member States, some SMN members may prefer for these to be non-binding recommendations. There appears to be an acceptance that the EU should define the conditions for efficient and effective access to national courts on EU environmental law.

Brussels, 30 November 2012.

The President
of the Committee of the Regions
Ramón Luis VALCÁRCEL SISO

⁽²⁸⁾ CdR 140/2011 fin, CdR 164/2010 fin, COM(2011) 571 final.

⁽²⁹⁾ CdR 164/2010 fin.

⁽³⁰⁾ The Committee recommended establishing teams of this kind in CdR 164/2010 fin.

⁽³¹⁾ Results available on: <http://extranet.cor.europa.eu/subsidiarity/Pages/default.aspx>