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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**Improving the delivery of benefits from EU environment measures: building confidence
through better knowledge and responsiveness**

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Introduction

The ideas set out in this Communication respond to the December 2010 Environment Council request that the Member States and Commission enhance and improve the implementation and enforcement of EU environment legislation in order to improve the state of the environment and ensure a level playing field.

The 2008 and 2011 Eurobarometer opinion poll on attitudes of European citizens towards the environment confirmed that for most citizens a healthy environment is as important to their quality of life as the state of the economy and social factors.

However, the 2010 European Environment State and Outlook of the European Environment Agency (EEA), confirms that "the EU appears to be locked in a number of status-quo and downward trends which are moving away from, rather than toward, sustainability".

How can we begin to reverse these trends? With the exception of soil, our environment is already the subject of extensive EU environment legislation, much of it long-established, so the main challenge is now one of effective implementation.

Two issues stand out: the extent of our knowledge about the state of the environment and how it is safeguarded; and effective ways of dealing with problems on the ground.

Knowledge is already extensive on matters such as urban air pollution levels and bathing water quality. In others, such as biodiversity and land-use, it is patchier. Moreover, the picture is difficult to fill in if we want to know precisely how implementation is undertaken in a region, city or village. While often helpful, complaints sent to the Commission and petitions submitted to the European Parliament are an incomplete source of information.

Analysis and consultation conducted in the framework of the preparations for a 7th Environmental Action Programme clearly show that enhancing and improving implementation can be considered a priority objective of European environment policy in itself. The ambition of this communication is to examine means of helping Member States achieve a fully systematic approach in knowledge collection and dissemination and greater responsiveness to problems on the ground. Effective access to justice is necessary but not sufficient, so it is proposed to also look at inspections and surveillance, complaint mechanisms and formalising partnerships to ensure implementation.

The ideas presented aim at complementing the content of a 2008 communication on the subject¹ and, while focused on the specificities of environment law as underlined by the

¹ COM(2008) 773 final

Aarhus Convention², draw inspiration from the 2007 Communication, "A Europe of Results"³, which stresses the importance of increased transparency at EU level and observes that *"complainants could in some cases enforce their rights directly at national level in a more efficient way."*⁴

The response to the present Communication will feed into the preparations for the 7th Environmental Action Programme. It may also lead to specific measures being proposed by the Commission underpinned by impact assessments where necessary. When legislation aims at other objectives in addition to the environmental ones (e.g. energy legislation), the proposals set out here might need to be supplemented by specific provisions, in particular on relations with certain stakeholders.

Why good implementation matters

Delayed or inadequate implementation has many negative consequences. It ultimately harms the environment and human health, generates regulatory uncertainty for industry and puts in question the level playing field of the Single Market. The long-term remediation costs – for example for clean-up of illegal waste sites and restoration of damaged habitats – can be much higher than the costs of prevention.

The costs of not implementing current legislation are broadly estimated at around €50 billion a year⁵. These relate not just to environmental but also to human health impacts. For example, 20 % - 50 % of the European population lives in areas where the air quality breaches European limit values and the estimated annual costs in terms of health expenditure or days of work lost run to billions of Euros.

In terms of benefits, the Europe 2020 strategy observes that new sources of growth depend critically on investing in knowledge and innovation. As the EU environment industry is estimated to have an annual turnover in excess of €300 billion, uncertainty about implementation possibilities, pathways and time-frames may carry significant costs in terms of missed opportunities⁶.

More specifically, full implementation of EU waste legislation is estimated to generate 400,000 jobs and have net costs that are €72 billion per year lower than under the alternative scenario of non-implementation⁷.

At the same time, innovative or improved implementation methods offer the prospect of reduced administrative burden and a more level playing field by making decision-making better informed as well as more rigorous, predictable and coherent.

Why the EU needs to improve knowledge on implementation

² Convention on access to information, public participation in decision-making and access to justice in environmental matters

³ COM(2007) 502, final

⁴ These ideas will be shared with the enlargement countries so that they can make use of them to plan for and improve implementation from the start of alignment with the environment acquis

⁵ "The costs of not implementing the environmental acquis", COWI, 2011.

⁶ Ibid.

⁷ "Implementing EU Waste Legislation for Green Growth", Bio Intelligence Service, 2011

Knowledge about implementation covers, on the one hand, the state of the environment and, on the other, all the required administrative and other measures intended to protect and improve it.

EU environment laws contain rules that generate information, for example air quality monitoring requirements, as well as rules that require information to be made available to the wider public.

During the past ten years the way in which knowledge is structured and used has been strengthened, thanks in part to a revision of the Access to Information Directive⁸, the adoption of the INSPIRE Directive⁹, work pursuant to the 2008 Commission Communication Towards a Shared Environmental Information System (SEIS)¹⁰ and increased use of information and communication technologies (ICT) at EU and national levels. However, knowledge about implementation remains problematical.

For example, it is not always simple to identify quickly the provisions of national law that correspond to a given provision of a directive. Monitoring efforts are uneven across Europe and the information generated is patchy and often out-of-date. Environmental information is available through individual requests rather than systematically published.

Better information at national, regional and local level would allow identification of the main problems and the most appropriate and efficient ways to address them. Greater application of the SEIS principle of "report once, use often" would help streamline information demands.

Improving knowledge on implementation

The chief responsibility for implementation lies within Member States and this is where the greatest environmental information needs and expectations of citizens, administrations and businesses arise. Meeting these requires information systems to be set up by Member States that generate, manage and communicate information that shows how EU laws are implemented and complied with in practice¹¹. The information concerned must cover the physical state of the environment as well as administrative measures, stable elements¹² as well as dynamic ones¹³. It needs to serve different end-users, helping competent authorities to manage their tasks, monitoring bodies to verify compliance and the public to understand how they and their environment are protected. This only works if there is close collaboration between environmental scientists, statisticians, ICT experts and administrators in order to deliver information that is, on the one hand, scientifically and legally robust and, on the other, meaningful to the general public, experts and policy-makers. Finally, the Aarhus Convention envisages progressive improvement in online environmental information.

⁸ Directive 2003/4/EC on public access to environmental information and repealing Council Directive 90/313/EEC, OJL 41, 14.2.2003

⁹ Directive 2007/2/EC establishing an Infrastructure for Spatial Information in the European Community (INSPIRE), OJL 108, 25.4.2007

¹⁰ COM(2008)46 final, 1.2.2008

¹¹ With regard to the transposition of directives into national law see Joint Political Declaration of 27 October 2011 of the European Parliament, the Council and the Commission on explanatory documents, OJC 369, 17.12.2011.

¹² Such as the location of designated areas.

¹³ Such as monitoring data.

The objectives described below aim at examining how to engage more actively with Member States so that they put in place effective information systems; providing better aggregated information at EU level; ensuring confidence in the information generated as a whole; and helping Member States to address data gaps and more effectively monitor land-cover changes.

Objective: Engaging with Member States to put in place more effective information systems on implementation

For all key EU obligations in the environmental field, an information system should be in place that would allow implementation to be tracked in the most efficient and timely way possible, in line with the Aarhus Convention.

By way of illustration, for the many thousands of industrial and other installations across Europe subject to specific controls, it would be appropriate to have information online relating to the key environmental provisions applicable. For example, this would allow all categories of user to check easily via an internet portal and an interactive map whether a specific facility has an authorisation and whether any problems identified by monitoring data or otherwise are being addressed.

The Access to Information Directive already contains minimum requirements on active and systematic dissemination of information as well as a general duty to ensure that information is up-to-date, accurate and comparable¹⁴. However, until now, these provisions have not been systematically linked to information on implementation of and compliance with individual EU environment laws.

The Commission will assess

- How the effectiveness of the Access to Information Directive could be enhanced. Options include development of best-practice guidance and/or proposed strengthening of the existing provisions.
- The feasibility for Member States, with support from the Commission, to develop structured implementation and information frameworks (SIIFs) for all key EU environment laws. These would be designed to clarify the main provisions of a directive as well as identify the types of information needed to demonstrate how EU law is being implemented on the ground. SIIFs would be aimed at existing legislation and, together with initiatives under SEIS, would guide the development by Member States of information systems that track implementation on the ground on a constant basis.
- How EU funding could be used for the development, upgrading and deployment within Member States of relevant interoperable information systems and related training.

Objective: Improve EU-level information

Improved information systems within Member States would need to be complemented by better EU-wide overviews to demonstrate a level playing field. The EEA has developed,

¹⁴ Articles 7 and 8

together with the statistical office of the European Union (Eurostat) and Joint Research Centre (JRC), an increasing role in processing monitoring and other data reported by Member States to the Commission. For example, the Commission's annual bathing water quality report, which is prepared with the support of the EEA, provides a comprehensive overview using geo-referenced data for more than 21,000 bathing waters across Europe. An internet site allows users to download data and check interactive maps, from the European level down to individual places. Pilot exercises involving the EEA are under development on air quality and waste to enhance overall implementation.

The Commission will examine

- How the public could be provided with systematic and improved online information on implementation, including through the use of transparent monitoring tools and benchmarks.
- How to continue the work with Member States to extend the approach used in the Bathing Water Directive across all relevant EU environment laws and in collaboration with the EEA where appropriate.

Objective: Help ensure confidence in the information generated at national, regional and local levels

Confidence in EU environment legislation depends on an equivalence of effort across Member States in the extent and reliability of state-of-the-environment monitoring and other exercises that generate information. Given its evolving role in environmental data processing and validation, the EEA is well placed to help.

The Commission plans to continue working with the EEA, in line with its statutory remit, so that the Agency can

- Assist the Commission in assuring the quality of state-of-the-environment monitoring arrangements at national level, examining monitoring systems to ensure that they are broadly comparable, fit-for-purpose and adequately focused on the greatest risks.
- Carry out other tasks related to providing information on implementation of EU environment measures.

Objective: Close important information gaps on compliance promotion and enforcement, and land-cover monitoring

There is a lack of data on the compliance and enforcement work being undertaken at national level by inspectors, prosecutors and courts. This means that choices between different approaches to compliance, including potentially promising complementary ones involving incentives, are not facilitated.

Monitoring and responding to land-cover changes is central to the success of much EU environment legislation such as the control of illegal waste operations and management of rare habitats. Technological advances, as in earth-observation techniques, provide opportunities, including o in terms of reduced monitoring costs that are not yet being systematically exploited.

The Commission considers that improvements could be achieved through:

- Working with Member States and opening a dialogue with key networks of inspectors, prosecutors and judges in order to identify the crucial categories of information and best means of collecting and collating data.
- An initiative on the use by Member States of earth observation techniques to extend the effectiveness of implementation monitoring on the ground.

Why the EU needs to improve responsiveness at national, regional and local levels

Improved knowledge will contribute to better delivery but it is not enough on its own. A key responsibility is implementation monitoring provided through bodies and persons who have duties and/or powers and rights to enquire into, oversee, verify, advise or ensure accountability in respect of compliance obligations. These include national inspectors, ombudsmen, prosecutors, courts, auditors and NGOs and citizens exercising participatory rights and submitting representations. At EU level, the Commission, Parliament, Court of Justice, European Ombudsman and EEA all exercise relevant roles.

As guardian of the Treaties, the Commission uses its enforcement powers to address an absence of required end-results. However, the high number of infringements, complaints and petitions related to EU environment legislation points to a need generally to reinforce implementation monitoring within Member States.

Improving responsiveness at national, regional and local levels

The Commission proposes to examine a suite of initiatives which could address this challenge. Although the initiatives can stand individually on their own merits, they are complementary and will be more effective in combination. For example, improved access to justice without improved complaint-handling may leave citizens frustrated in situations where they do not wish to go to court.

Objective: Improve the inspections and surveillance applying to EU legislation

Inspections and surveillance at national level are important in ensuring trust in the requirements of EU environment legislation. Inspections of industrial facilities already benefit from a framework that includes the minimum inspection criteria contained in Recommendation 2001/331/EC¹⁵ and binding sectoral provisions. However, beyond the domain of industrial facilities, the full range of activities having a potential significant adverse impact on the environment – from groundwater abstraction to trade in protected species – would benefit from additional provisions on inspections and surveillance, to make these more streamlined and risk-based, for instance. Given the cross-cutting nature of EU environment law – for example, as between water and nature legislation – such an approach should include full coherence and coordination amongst competent national authorities.

The context for addressing inspections and surveillance at national level also includes demands to secure a level playing field and the necessary degree of cooperation and

¹⁵ Recommendation 2001/331/EC providing for minimum criteria for environmental inspections in Member States, OJL 118, 27.4.2001

consistency on issues having a trans-frontier character with a view to improving mutual trust between Member States.

The Commission considers that improvements may be appropriate by

- Upgrading the existing framework for inspections and surveillance
- Assessing, for all new legislation, the value of including specific inspection and surveillance provisions, taking into account the experience with existing binding provisions;
- Assessing options for complementing national inspections and surveillance in a targeted way at EU level, including

- An EU-level inspection and surveillance capacity;
- Limited inspection role for the Commission that respect Member States' administrative autonomy, the Ozone Regulation¹⁶ offering a possible model, or powers to audit Member State inspections as provided for in the Animal Experiments Directive¹⁷;
- More systematic use of peer-review inspections, drawing on existing initiatives of IMPEL (the network of national inspectors);
- Arrangements for independent expert input on an *ad hoc* basis to address situations that present very particular implementation challenges.

Objective: Better complaint-handling and mediation at national level

There is currently no general framework on how competent authorities should respond to complaints at national level. A dual approach addressing direct and review-stage complaint-handling would make it more likely that concerns and grievances will be dealt with in a consistent way and sooner rather than later.

Complaint-handling systems can improve the inter-action between citizens and authorities but there may be situations in which mediation or other similar dispute resolution mechanisms will add a further useful dimension.

Improvements in complaint-handling at national level would in no way affect the right to complain to the Commission but should reduce the citizen frustration that can arise when EU institutions are asked to make up for a lack of national remedies. Such improvements would also be consistent with a recent trend in other EU policies, notably consumer legislation¹⁸, to make specific provision for grievance and dispute settlement at national level.

¹⁶ Regulation (EC) 1005/2009 on substances that deplete the ozone layer, OJL 286, 31.10.2009

¹⁷ Directive 2010/63/EU on the protection of animals used for experimental purposes, OJL 276, 20.10.2010

¹⁸ 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, OJL 211, 14.8.2009

The Commission considers it worthwhile to explore an initiative designed to improve the handling by Member States of complaints. This initiative might involve, for example, binding general criteria or non-binding general criteria complemented by sector-specific binding provisions and would cover:

Complaints focusing on the need for competent authority intervention. EU complaint-handling criteria would aim at a level playing field in terms of the responsiveness by competent authorities and provide general safeguards on matters such as confidentiality, record-keeping and timeliness.

Complaints focusing on claims of administrative inaction or inadequacy. EU complaint-handling criteria would aim to provide citizens with a means of bringing their dissatisfaction to the attention of an independent national administrative review body such as an ombudsman.

Complaints for which mediation or some other similar dispute resolution mechanism may be appropriate. EU criteria would make provision for such a mechanism to cover situations where the parties see mutual advantage in an amicable resolution.

Objective: Improve access to justice.

Specific provisions aimed at ensuring reasonable access to justice are currently restricted to a few areas of EU environment law. A 2003 Commission proposal¹⁹ aimed at facilitating wider access has not progressed but the wider context has changed, in particular the Court of Justice has confirmed recently that national courts must interpret access to justice rules in a way which is compliant with the Aarhus Convention²⁰. National courts and economic as well as environmental interests face uncertainty in addressing this challenge.

The Commission considers it appropriate to explore how greater certainty could be provided for national courts and economic and environmental interests. Possibilities include:

- Developing guidance to take account of a significant recent body of case-law in order to improve implementation of existing access to justice provisions²¹ as well as
- Defining at EU level the conditions for efficient as well as effective access to national courts in respect of all areas of EU environment law.

Objective: Deliver improvements in environmental outcomes through capacity-building and implementation agreements that engage Member States

At European level, networks have been created by ombudsmen, environment agencies, inspectors, lawyers working with governments, judges and prosecutors. However, despite a number of initiatives, the potential of cooperation has not been fully realised across all networks. Challenges include ensuring that networks have the necessary secretariat stability to function effectively over extended time-periods and identifying and undertaking projects and initiatives that help network members and facilitate implementation.

¹⁹ COM(2003)624 final

²⁰ Case C-240/09

²¹ Directive 2003/35/EC

Networks may be useful within Member States, too, for example to better involve regional and local government in implementation. Linking national inspectors or prosecutors can also make a significant contribution²².

Where problems emerge, there is a need for clear commitments from Member States to put in place measures, with benchmarks and timelines, to deliver the required results. These commitments need to be formalised and publicly available, so that Member States, the European Parliament, businesses and citizens can have confidence that their concerns are being addressed within a structured framework. This challenge could be addressed through partnership implementation agreements designed to help deliver improved environmental outcomes.

The Commission considers that improvements could be achieved through

- Active cooperation with EU networks, focusing on their distinct roles and strengths avoiding duplication and facilitating trans-network communication. The outputs of cooperation will respect the autonomous roles of both the Commission and the networks. They might cover support for training of prosecutors and investigators as well as judges. Possible new outputs of such networks include :

- information on successful complementary approaches to compliance and enforcement;
- advice or other forms of assistance to national ombudsmen on investigation of complaints related to EU environment law;
- suggested criteria for employing administrative and criminal sanctions in the case of prosecutors;
- advice on how to close data gaps on compliance promotion and enforcement work at national level;
- general advice on the implementability and enforceability of EU environment proposals.

- Co-organisation of events and conferences on implementation with the Committee of the Regions and creation of a technical platform for co-operation on the environment along the lines of the platform already established on health
- Implementation agreements that commit, without prejudice to the provisions of the Treaties and the Commission's role as guardian of the Treaties, Member States to actions having either the preventive aim of strengthening the capacity to deliver effective implementation or, where appropriate, the remedial aim of resolving specific problems through targeted action. Partnership implementation agreements could proactively direct EU assistance towards improved implementation structures within Member States and might be linked to other initiatives in this Communication, such as effective information systems, complaint-handling mechanisms and inspections. They could also, on a case by case basis, endorse Member State

²²

Examples from Ireland and the Flemish Region of Belgium may be cited.

remedial plans to resolve specific problems through targeted and adequately-resourced programmes of work featuring milestones, guarantees of transparency and other safeguards.

Conclusion

This communication supplements the previously mentioned 2007 and 2008 communications by developing ideas primarily aimed at providing Member States with better tools for improving implementation on the ground.

Knowledge and responsiveness are complementary facets of implementation. To give just one example, better knowledge can enable customs authorities to deploy better control strategies for illegal trade in waste and endangered species

Implementation has a cost. But the cost of non-implementation is very often much higher, and therefore taking the steps proposed in this communication represents a sound investment not only for the future but also for the present.

This Communication is addressed to the European Parliament, Member States, their citizens and all actors in the area of implementation and enforcement of environment law. The 7th Environmental Action Programme should ensure a proper follow up and specific measures will be subject to impact assessment.