



Brussels, 18.1.2018
COM(2018) 10 final

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

EU actions to improve environmental compliance and governance

{SWD(2018) 10 final}

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

EU actions to improve environmental compliance and governance

1. INTRODUCTION AND BACKGROUND

This Communication presents an Action Plan to increase compliance with EU environmental law and improve environmental governance. It involves the Commission working hand in hand with Member States and professionals such as inspectors, auditors, police officers and prosecutors in order to create a smart and collaborative culture of compliance with EU environmental rules on activities such as industrial production, waste disposal and agriculture.

The EU already has an extensive body of mature environmental legislation. However, there are major challenges to its implementation, as highlighted in the Commission's Environmental Implementation Review (EIR)¹. These are linked to persistent environmental problems such as diffuse water pollution, poor urban air quality, unsatisfactory waste treatment, and species and habitats in decline. There is also a serious incidence of environmental crime,² and a high number of environmental complaints to the Commission³ and petitions to the European Parliament. The costs of non-implementation are estimated at 50 EUR billion per year.⁴ Many benefits can be obtained through improved implementation without creating new legislation.

This requires, amongst other things, compliance with environmental rules on the ground, i.e. industry, utilities, landowners and other 'duty-holders'⁵ fulfilling environmental obligations concerning their activities. Obligations may be in the form of prohibitions, general binding rules, permits and other measures put in place to protect the environment, public health and society's long-term resource needs.

¹ http://ec.europa.eu/environment/eir/country-reports/index_en.htm.

² Combined estimates from the OECD, the UN Office on Drugs and Crime (UNODC), UNEP and INTERPOL on the monetary value of all environmental crime show that it is the 4th largest international crime.

³ Six hundred or so per annum.

⁴ http://ec.europa.eu/environment/enveco/economics_policy/pdf/report_sept2011.pdf. The cost elements include, amongst others, environmental and health costs, unrealized benefits in the green industries, market distortions and administrative costs for industry.

⁵ i.e. natural or legal persons, including public authorities, who must respect obligations derived from EU environment legislation when carrying out activities that involve emissions into or other physical impacts on the environment.

Weak mechanisms for securing compliance and effective governance at national, regional and local level are among the causes of implementation failure.⁶ They are also a factor in unfair competition⁷ and economic harm such as loss of tax revenue, and undermine public confidence in the effectiveness of EU laws.

This Communication aims to strengthen such mechanisms. It complements the Communication ‘EU law: Better results through better application’ in which the Commission set out how it will step up its efforts on the application, implementation and enforcement of EU law in general.⁸

2. THE NEED FOR ENVIRONMENTAL COMPLIANCE ASSURANCE

Member States are bound by a duty to co-operate in good faith on the achievement of EU objectives.⁹ The Court of Justice has derived from this a requirement on Member State authorities to redress the unlawful consequences of a breach of EU law¹⁰ and a requirement that enforcement be effective, proportionate and dissuasive¹¹. Member States must therefore have appropriate mechanisms in place to ensure compliance with EU-derived obligations.

Non-compliance may occur for different reasons, including confusion, poor understanding or lack of acceptance of rules, lack of investment, opportunism and criminality. Its impacts on the environment, human health and the economy will depend on the nature, scale and persistence of breaches.

In practice, mechanisms for securing compliance involve Member States using three broad classes of intervention (collectively referred to as ‘environmental compliance assurance’):

- *compliance promotion* helps duty-holders to comply through means such as guidance, ‘frequently asked questions’ and help-desks;
- *compliance monitoring* identifies and characterises duty-holder conduct and detects and assesses any non-compliance, using environmental inspections and other checks;
- *follow-up and enforcement* draw on administrative, criminal and civil law to stop, deter, sanction and obtain redress for non-compliant conduct and encourage compliance.

⁶ ‘The EU Environmental Implementation Review: Common challenges and how to combine efforts to deliver better results’ (COM(2017) 63).

⁷ The legitimate waste industry has already warned of this, as illegal waste operators can under-cut legitimate ones, e.g. by disposing of waste at illegal sites.

⁸ 2017/C 18/02.

⁹ See Article 4(3) of the Treaty on European Union.

¹⁰ See for example Case C-201/02 *Wells*, EU:2004:12, paragraphs 64-65.

¹¹ See for example Case 68/88 *Commission v Greece* [1989] ECR 2965, paragraphs 23 and 24.

These interventions are carried out by different kinds of Member State authorities. Bodies with inspection roles typically carry out routine or *ad hoc* checks and promote compliance. Police officers and prosecution services have important roles in investigating and prosecuting serious wrong-doing. Different bodies may be linked across an ‘environmental compliance assurance chain’, as where inspectors, customs and police officers and prosecutors co-operate in evidence-gathering and prosecution. Audit bodies can exercise a valuable function in looking at problems of generalised non-compliance or the performance of particular authorities.

Environmental compliance assurance mitigates the risk of some duty-holders not respecting their obligations and therefore negatively impacting the state of water, air, biodiversity, human health and the economy. It does so by assessing the causes and impacts of non-compliance and by using an adaptable combination of the three classes of intervention to influence duty-holder conduct. The concept¹² has developed over time in exchanges with experts, e.g. from Member States and practitioner networks.¹³

3. CHALLENGES

Member State authorities responsible for environmental compliance assurance face numerous challenges, in particular:

- the extent and diversity of EU environmental rules on activities with environmental impacts,
- the fact that they cover the whole territories of Member States, rural as well as urban areas,
- the existence of recognised problems with water and air pollution, waste disposal and nature in decline,
- the expectations of the public,
- the number and diversity of those who must comply with environmental rules,
- the many different kinds of compliance problems that can present themselves,
- the difficulties with detecting and addressing these, in particular environmental crimes.

Capacity can be added to this list as well, as responsibilities are often allocated to smaller bodies with limited financial resources, low staff numbers or a lack of specialist knowledge.¹⁴ In many Member States, the budgets of environmental inspectorates

¹² Further details are presented in the staff working document accompanying this Communication SWD(2018)10.

¹³ See for example ‘Make it Work’ guiding principles on environmental compliance assurance: <http://minisites.ieep.eu/work-areas/environmental-governance/better-regulation/make-it-work/subjects/2015/08/compliance-assurance>.

¹⁴ See for instance the implementation challenges report of the EU Network for Implementation and Enforcement of Environmental Law (IMPEL) at <https://www.impel.eu/impel-study-confirms-that-significant-challenges-remain-in-implementing-eu-environmental-law/>. An updated report confirms and amplifies the findings.

stagnated or decreased due to the financial crisis. In the face of these challenges, even large, well-resourced authorities can find it difficult to independently develop knowledge of the best ways to ensure compliance.

The challenges faced by these authorities have resulted in a demand for and the emergence of different forms of support at EU level. These types of support are summarised in Table 1 below, together with their specific benefits.

Table 1: Forms of support for ensuring environmental compliance and their benefits

Type of support	Benefits
EU networks for practitioners	Enable practitioners to exchange knowledge and experience and together develop some of the other forms of support included in this table
EU-level evaluation of Member State environmental compliance assurance systems	Enables comparison and identification of strengths and weaknesses
Generally accessible information portals on compliance assurance	Enable learning, sharing of good practices and easy comparison, and strengthen transparency and accountability
Mechanisms to facilitate cooperation, coordination, knowledge and experience-sharing and working together across the EU and input on compliance assurance from other Member States and authorities	Enable greater effectiveness by working together Enables learning from specialist knowledge that has been developed elsewhere
Cross-compliance under the Common Agricultural Policy (CAP)	Contributes to ensuring farmers' compliance with environmental obligations
Information and guidance on good practices	Enables learning from knowledge that has already been gained Reduces the need to develop good practices from scratch (efficiency gains)
Training programmes, training materials and guidance on skills	Enables skills to be developed and maintained
Accessibility of EU-generated data sources, such as satellite imagery	Extends possibilities for effective compliance assurance
EU financial support	Helps compliance assurance authorities to better deliver their objectives

Inspectors, police officers, customs officials, prosecutors, judges and auditors have already formed separate networks at European level to share and build knowledge on

compliance assurance.¹⁵ They and others offer positive examples of the different kinds of support summarised above. Allowing for their current limitations in coverage and scope, these examples point the way towards how, with the Commission's contribution, more can be done to strengthen environmental governance and increase compliance.¹⁶

4. RATIONALE FOR ACTIONS

The Commission has considered a number of options to improve environmental compliance assurance, including legislative ones, and in 2014 prepared a draft impact assessment report to inform its decision-making. It has concluded that an action plan with targeted support measures to address practical needs is the option most likely to deliver results across several priority areas already in the short term.

The preparatory phase, including consultation of Member States and practitioner networks¹⁷, confirmed the value of the forms of support summarised in Table 1 and identified ways of strengthening these and developing new tools. Practitioner networks stressed the value of sharing expertise and of having more coordinated efforts across Member States. They pointed to the importance of professional training and effective knowledge-sharing. Consultations also identified a number of sectors in which there is a significant demand for good practice reference material and new tools. Waste and wildlife crime were singled out as especially deserving of attention. The common agricultural policy (CAP) 2014-2020 prioritises the 'sustainable management of natural resources and climate action' through a variety of complementary policy instruments, including cross-compliance. The Commission's staff working document on 'Agriculture and sustainable water management in the EU'¹⁸ has already referred to the initiative being presented here as offering a means of improving national compliance assurance systems for water legislation in relation to farming activities. Similarly, the Commission's Action Plan for nature, people and the economy¹⁹ identifies the need to strengthen compliance²⁰. Other themes that have featured in the consultations are the contribution that technology can make to detecting non-compliance and the important role that citizens play in making complaints and submissions to national authorities. Some existing EU environmental legislation explicitly foresees the role of guidelines or

¹⁵ Inspectors are represented by the EU Network for Implementation and Enforcement of Environmental Law (IMPEL). Police officers are represented by EnviCrimeNet, prosecutors by the European Network of Prosecutors for the Environment (ENPE), judges by the EU Forum of Judges for the Environment (EUFJE), and environmental auditors by a specialised working group on environmental auditing within the European Organisation of Supreme Audit Institutions (EUROSAI).

¹⁶ See IMPEL's position paper on environmental compliance assurance <https://www.impel.eu/position-paper-on-environmental-compliance-assurance/>. ENPE also submitted a similar position paper.

¹⁷ See for example the summaries of a stakeholder conference of 31 January 2017 and a workshop of 20 March 2017 available at: <http://ec.europa.eu/environment/legal/law/inspections.htm>

¹⁸ SWD(2017)153, final, 28.4.2017.

¹⁹ COM(2017) 198 final and SWD(2017) 139 final.

²⁰ See in particular Priority B 'Building political ownership and strengthening compliance'.

guidance on inspections²¹ and it is opportune to make a start on delivering these. Work on the first EIR country-specific reports highlighted the scope for improving the Commission's feedback to Member States on compliance assurance and other aspects of public administration. Finally, consultations have identified a desire for high-level dialogue between environmental compliance assurance practitioners and senior managers within environmental administrations.

5. ACTIONS

The Action Plan consists of nine actions tailored to the above needs identified in the preparatory phase. They are summarised in Table 2²².

Table 2: Overview of actions

No	Action	Timing
1	Improve deployment of environmental compliance assurance expertise across the EU by means of peer reviews, joint enforcement actions, compliance assurance visits and use of the TAIEX-EIR Peer2Peer tool ²³	2019
2	Identify necessary professional skill-sets and training needs for environmental inspectors and improve cooperation with practitioner and other bodies promoting excellence and providing training for compliance assurance professionals at national and European level	2018
3	Facilitate the sharing of good practices , background and reference material, promote funding opportunities for environmental compliance assurance, and explore the setting up of a wider environmental implementation portal	2019
4	Prepare a good practice guidance document on strategies for combating environmental crimes and other related breaches , with a particular focus on waste and wildlife offences	2019
5	Prepare guidance document(s) on good practices in environmental compliance assurance in rural areas (in relation to land and water)	2019
6	Prepare technical guidelines for inspections of extractive waste facilities	2018
7	Prepare documentation on good practices in the handling of environmental complaints and citizen engagement at Member State level , including through citizen science and work with Member States to share good practices on effective national complaint-handling mechanisms concerning EU environmental law	2019
8	Build up the capacity and use of geospatial intelligence for compliance assurance and promote good practice projects (e.g. using Copernicus data)	2019

²¹ See Article 22(1) (d) of Directive 2006/21/EC on the management of waste from extractive industries and amending Directive 2004/35/EC, OJ L 102, 11.4.2006, p. 15 and Article 23(4) of Directive 2010/75/EU on industrial emissions, OJ L 334, 17.12.2010, p. 17.

²² Further details are given in the accompanying staff working document SWD(2018)10.

²³ http://ec.europa.eu/environment/eir/p2p/index_en.htm

No	Action	Timing
9	Assess national environmental compliance assurance systems as part of a wider governance assessment framework and regularly present feedback to Member States, also as part of the Environmental Implementation Review	2019

6. STRENGTHENING COOPERATION

On the one hand, as guardian of the Treaties, the Commission has a key role in ensuring the full and correct application of EU environmental law under the control of the European Court of Justice. On the other hand, Member States have the primary responsibility of correctly implementing EU law. The present Action Plan will contribute to addressing the challenges that the latter face which have been mentioned at the outset.

To ensure that this Action Plan has the desired results, Member States are invited to:

- facilitate participation of their authorities in network cooperation at EU level;
- ensure that identified good practices, in particular those related to the use of risk-based approaches and transparency, are taken up and that tools developed under the Action Plan are used;
- facilitate training and the development of professionals skills;
- ensure the right level of cooperation and coordination between authorities with compliance assurance functions;
- ensure an appropriate allocation of human and financial resources for compliance assurance across their territories.

The Commission is also setting up an expert group (‘the Environmental Compliance and Governance Forum’)²⁴ in order to provide steering for the Action Plan and allow an exchange of views with Member State senior managers on how to improve the compliance and governance aspects of implementation. This Forum will in particular be composed of representatives of Member States and EU-level practitioner networks, with representatives of the Council, Parliament, Committee of the Regions and European Economic and Social Committee invited to participate. The Commission will also seek to involve other interested stakeholders, including NGOs and business organisations, and will discuss the best ways of doing so at the first meeting of the Environmental Compliance and Governance Forum.

Delivery of the actions will be a collaborative process, involving not just the Environmental Compliance and Governance Forum but the practitioner networks. The networks will be offered assistance to facilitate their collaboration. The Commission will also continue to support them in their broader roles.

²⁴ C(2018)10.

Existing EU funding instruments, such as LIFE²⁵ and the Internal Security Fund (ISF)²⁶, can offer tangible ways of supporting different kinds of compliance assurance and governance activities. Member States, practitioner networks and other stakeholders are therefore encouraged to make full use of them.

In developing the Action Plan, the Commission will also take account of important external and global dimensions of EU environmental law, as reflected in EU participation in regional and global conventions. For example, global trade and global supply chains are relevant to waste management and protection of biodiversity. Indeed, environmental compliance assurance has broad global relevance, being necessary amongst other things for delivery of sustainable development goals. Strengthening it within Europe will help the Union to lead by example and be an effective partner at international level.

7. MONITORING AND FOLLOW-UP

This Action Plan will form the basis of a rolling work-programme for 2018-2019. The programme will be reviewed during 2019 and new actions will be added as appropriate, after consultation with the Environmental Compliance and Governance Forum.

The envisaged assessment framework (Action 9) will create a basis for examining how environmental compliance assurance and public administration is progressing within the Member States, allow follow-up through the EIR, and assess by the end of the first work programme whether other initiatives are necessary in this area.

8. CONCLUSIONS

This Action Plan responds to a demand for practical support to practitioners working across the EU to help improve compliance assurance and governance in the field of environment. Over and above the specific benefits already mentioned, the plan will help to collectively establish a more consistent EU approach to tackling environmental compliance and governance challenges. The results should enable practitioners to: better address breaches of environmental rules and unfair competition as well as the harm they cause; better assist duty holders to fulfil their obligations; better secure public confidence in compliance assurance, and, last but not least, better protect Europe's common heritage.

²⁵ Regulation (EU) No 1293/2013 of the European Parliament and of the Council of 11 December 2013 on the establishment of a Programme for the Environment and Climate Action (LIFE) and repealing Regulation (EC) No 614/2007, OJ L 347, 20.12.2013, p.185.

²⁶ Regulation (EU) No 513/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management and repealing Council Decision 2007/125/JHA, OJ L 150, 20.5.2014, p. 93.