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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**

**Delivering the benefits of EU environmental policies through a regular
Environmental Implementation Review**

**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE
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**Delivering the benefits of EU environmental policies through a regular
Environmental Implementation Review**

1. IMPLEMENTATION GAPS AND THEIR IMPACT

The 2015 State of the Environment Report by the European Environment Agency states that "The foundation for short- and long-term improvements in Europe's environment, people's health and economic prosperity rests on full implementation of policies, and better integration of the environment into the sectoral policies that contribute most to environmental pressures and impacts¹." The Commission identified the challenges and solutions to deal with implementation gaps of environmental legislation in two Communications in 2008² and 2012,³ respectively.

The nature of the implementation gaps varies across different sectors and Member States. Gaps can occur because of the national environmental rules implementing EU legislation; in the achievement of agreed major objectives on air quality, water quality and biodiversity; in the completion of required waste and waste-water infrastructure; in the manner in which authorities interact with the public; in the fulfilment of safeguards such as timely completion of mandatory environmental plans, such as waste management plans; and in compliance with a broad set of rules applicable on the ground such as a prohibition on dumping waste.

As identified in the 2008 Communication on implementing EC Environmental law, the challenges that must be addressed are insufficient attention being paid to deadlines and completeness, shortcomings in knowledge and awareness⁴, shortcomings in administrative capacities, weak national and regional enforcement policies and practices and under-investment and delayed investment in necessary pollution-abatement infrastructure⁵.

The results of a 2015 survey of national environmental authorities indicate that there are common underlying factors causing poor progress with implementation⁶. The main underlying reason is insufficient capacity in administrative bodies responsible for enforcing the legislation, including insufficient capacity in the organisations responsible for environmental regulation and enforcement, followed by insufficient data, evidence and

¹ EEA, 2015. *The European Environment: State and Outlook 2015: Synthesis report*. European Environment Agency, Copenhagen, see <http://www.eea.europa.eu/soer>, p. 15

² COM (2008) 773 final http://ec.europa.eu/environment/legal/law/pdf/com_2008_773_en.pdf

³ COM (2012) 95 final <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52012DC0095>

⁴ In the COM (2012) 95 it was reiterated that knowledge about implementation remains problematical, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52012DC0095>, p.4.

⁵ COM (2008) 773 final http://ec.europa.eu/environment/legal/law/pdf/com_2008_773_en.pdf, p.3

⁶ IMPEL, 2015. *Challenges in the practical implementation of EU environmental law and how IMPEL could help overcome them*. European Union Network for the Implementation and Enforcement of Environmental Law, final report: 23 March 2015, <http://impel.eu/wp-content/uploads/2015/07/Implementation-Challenge-Report-23-March-2015.pdf>, p.6 and p.44 Figure 3.2

information, and a lack of skills at the local level. Not least, inappropriate sanctions and a level of fines for those that breach the law that does not constitute a deterrent were mentioned.

Other factors identified in the survey contributing to poor implementation of environmental law and policy include: absence of government level coordination to ensure consistency of priorities horizontally (at governmental level) and vertically (between levels of administration, i.e. local, regional, national), and insufficient integration of environmental concerns in various policies, programmes and projects.

The root causes of the implementation gaps need to be addressed in a comprehensive, systematic and collaborative way, for at least two reasons.

First, poor implementation gives rise to environmental, economic and social **costs**. For example, it has been estimated that the costs of damage to health and environment caused by air pollutants from European industrial facilities exceed EUR 100 billion annually⁷. The economic costs associated with failure to implement the environmental *acquis* were estimated at around EUR 50 billion a year in 2011, including costs related to legal procedures against Member States (infringement cases)⁸. This means that more than EUR 4 billion per month of unnecessary costs arise in the EU, whereas experience has shown that it is much cheaper to comply rather than to rectify afterwards the economic and environmental costs of inaction or late action⁹. There are social and economic costs incurred through not implementing existing environmental requirements. For example, full compliance with EU waste policy by 2020 could create an additional extra 400.000 jobs and an additional annual turnover in the waste management and recycling industries of EUR 42 billion¹⁰. Similarly, if existing EU water legislation were to be fully implemented, and all water bodies to achieve a 'good' status ranking, the combined annual benefits could be at least EUR 2.8 billion¹¹. The fact that large variations exist as regards the implementation record among Member States also creates barriers for the functioning of the internal market (an uneven level playing field for businesses).

Second, failure to meet EU environmental objectives affects the **credibility** of both national authorities and the EU in the eyes of citizens. The significant number of infringements, petitions and complaints in the field of environment¹² and the challenges in handling them,

⁷ EEA, 2015. *The European Environment: State and Outlook 2015: Synthesis report*. European Environment Agency, Copenhagen, see <http://www.eea.europa.eu/soer>, p.19-20

⁸ The costs of not implementing the environment *acquis* (COWI 2011) http://ec.europa.eu/environment/enveco/economics_policy/pdf/report_sept2011.pdf, p.9; COM (2012) 95 final <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012DC0095&from=EN>, p. 3

⁹ See e.g. the case studies on costs of late or non-action in the EEA report '*Late Lessons from Early Warnings: science, precaution, innovation*' (2013). <http://www.eea.europa.eu/publications/late-lessons-2>.

¹⁰ DG ENV, 2011. *Implementing EU legislation for Green Growth*. Study achieved by Bio Intelligence service, including the share per Member State of job and turnover creation, see <http://ec.europa.eu/environment/waste/studies/pdf/study%2012%20FINAL%20REPORT.pdf>

¹¹ European Parliamentary Research Service, 2015. *Water Legislation: Cost of Non-Europe Report*. See [http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_STU\(2015\)536369](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_STU(2015)536369)

¹² COM (2015) 329 final, Annual Report from the Commission: Monitoring the application of Union law 2014, http://ec.europa.eu/atwork/applying-eu-law/docs/annual_report_32/com_2015_329_en.pdf, p. 8: out of a total of 3715 new complaints registered in 2014, 508 concerned the environment; p. 13: out of a total of 893 new infringement cases launched in 2014, 174 cases were in the environmental field.

reflect the insufficient level of implementation of the environmental *acquis*. While it should be acknowledged that the national courts and the national environmental authorities, which are primarily responsible for the implementation of EU law, have made efforts to implement and enforce environmental rules, this has not been sufficient to close implementation gaps. It is also worth noting in this context that, although there are some Member States and regions with an excellent track record in implementing the environmental *acquis*, others are lagging behind, sometimes significantly.

2. THE NEED FOR A STRATEGIC AND COMPREHENSIVE APPROACH

While implementation is in the first place a task for the Member States themselves, the Commission, as Guardian of the Treaties has its own role as part of its responsibility to oversee the application of legislation adopted by the European Union. Infringement procedures remain ultimately a significant tool to ensure the proper implementation of legal provisions, and, for several years, targeted compliance-promotion actions addressed to the Member States, in particular in areas with the poorest record of implementation, have been initiated. This was done, among others, in the sectors of waste and water management. Such focused actions remain crucial and will be continued, but should be integrated into a systemic approach meant to tackle cross-sectoral aspects, offer a comprehensive view of achievements and challenges, and define the scale and range of priorities requiring not only technical but also political attention.

Such a strategic and comprehensive approach – which is currently missing – should allow the identification and tackling of the root causes of the implementation gaps at an earlier stage and in a partnership between Member States and the Commission. Based on this diagnosis, the Commission would be ready to accompany the Member States' own efforts with technical expertise and more targeted financial support using existing EU funds.

This is aligned with the 7th Environmental Action Programme, which prioritises better implementation as an enabler to deliver on its goals and also responds to the need to offer tailored-made analysis and support to Member States and improve the understanding and awareness of implementation gaps¹³.

3. PRINCIPLES AND OBJECTIVES OF THE ENVIRONMENTAL IMPLEMENTATION REVIEW (EIR)

The overarching objective of the EIR initiative is to support the delivery of the objectives of existing environmental policies and legislation, while scrupulously securing the **equal treatment** of the Member States. The objectives defined in existing agreed policies and rules constitute the set of **benchmarks** against which the implementation progress is monitored.

¹³ Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet.' (7th EAP) See <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013D1386&from=EN>

The EIR process should be **inclusive** and **participative**. Member States will be encouraged to involve relevant stakeholders such as the private sector and civil society organisations and governance levels to discuss the key implementation gaps and possible solutions.

The EIR process will be **flexible**, first by taking into account the specific national challenges in the assessment made by the Commission, and second by fully acknowledging that the Member States have the choice of the ways and means of implementation, provided that their action leads to the attainment of the common objectives pursued by the environmental *acquis* and policies.

This initiative will be **in synergy** with the existing work on environmental implementation. The deliverables will be based on information and data that is already collected by the Commission (including Eurostat, the Joint Research Centre), the European Environment Agency, the Organisation for Economic Cooperation and Development etc., and official national sources. Similarly, the findings of various Fitness Checks that are performed by the Commission on existing environmental legislation, including the one on environmental reporting, and the impact assessments for future legislative proposals will feed into the EIR.

The EIR will therefore be conducted by the Commission in order to:

- provide an informed and synthetic picture of where each Member State stands as regards the main environmental implementation gaps, based on a set of benchmarks which reflect the existing, agreed policy objectives and key obligations defined by the EU environmental legislation;
- create the opportunity for a structured dialogue with each Member State on the achievements and challenges in tackling the implementation gaps and about the actions needed;
- provide tailored support to Member States to improve implementation of the EU environmental *acquis* and policies;
- strengthen the EU's compliance culture in the area of environmental policies;
- provide an informed basis for political debates and deliberations between the EU institutions about the horizontal challenges, opportunities and possible solutions aimed at further narrowing the implementation gaps; identify and share best practices and common problems and make best use of the experience accumulated across the EU, as well as engaging with the whole range of stakeholders in actions to address the implementation gaps.

4. THE ENVIRONMENTAL IMPLEMENTATION REVIEW CYCLE

As a first step, **country-specific reports** will be drafted every two years focusing on essential topics in the area of environmental legislation and policy in each Member State. The first part addresses thematic areas such as circular economy, resource efficiency and waste management; biodiversity, marine protection, soil protection, green infrastructure and estimating natural capital; air quality, water quality and management, chemicals and sustainable cities. The second part covers the enabling framework and implementation tools

including the quality of administrative capacity, compliance assurance, effective access to justice and redress mechanisms, access to environmental information, and knowledge and evidence; environmental taxation, phasing out environmentally harmful subsidies, green public procurement and investments. In the future, climate change mitigation and adaptation will be addressed as cross-cutting issues in all thematic areas as relevant.

These reports will highlight the main challenges and successes of each Member State in the implementation of the EU environmental *acquis* and policies and suggest possible ways forward. The reports will be based on and further guide the existing thematic bilateral work on implementation and integration of environmental policy into other policy areas undertaken by the Commission with each Member State. They will set the framework for such bilateral **country dialogues** and sectoral compliance promotion actions between the Commission and the Member State concerned. The Commission will consult the Member States before finalising the reports in order to be sure of their accuracy. Once adopted by the Commission, the country reports will be rendered public.

The second step, which will be based on the above, is creating the framework for high level discussions on significant implementation gaps common to several Member States. The key findings of the 28 country-specific reports will be synthesised in an accompanying document that will be published together with the reports. Depending on the importance of the findings, specific **issue papers** would be prepared by the Commission to further explore with the Council certain topics that are relevant to several Member States and that merit particular attention and efforts. These issue papers would be submitted to the Council for exchanges of views about the approaches, experiences and best practices developed on such issues, in particular where they have cross-border impacts on environment and competitiveness.

The Commission will also inform the European Parliament about its key horizontal findings, taking duly into account its oversight role defined by the Treaties. It will also liaise with the Committee of the Regions in respect of the same key horizontal findings in order to engage with local and regional representatives in raising awareness about specific actions¹⁴. The outcomes of these dialogues will inform the Commission's follow up of each EIR cycle.

As from the second cycle onwards, the **Commission will report** on progress achieved in implementation, including as a follow up to the conclusions of the previous cycle.

5. EXPECTED BENEFITS

The EIR aims to improve effectiveness and efficiency in the delivery of environmental policy and legislation by complementing enforcement. A clear advantage of this approach is that it can bring up critical issues and possibly structural solutions in a **preventive** and **transparent** manner, in some cases even before the compliance deadlines expire and enforcement needs to come into action. Awareness of Member States' systemic action and effectiveness in tackling the root causes of implementation gaps plays a critical role in defining the Commission's

¹⁴ For example through the Technical Platform for Cooperation on the Environment set up by the Committee of the Regions and the Commission, referred to in the 7th EAP, p. 189, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013D1386&from=EN>

approach on enforcement. Better implementation enhances citizens' confidence in Union environment law, increases the mutual trust between Member States and creates a level playing field for economic actors operating in the internal market¹⁵. Moreover, better regulation is a matter of better implementation: the more the existing rules attain the objectives for which they were enacted, the less a new regulatory intervention is necessary to revise the existing rules or adopt additional ones.

The Member States will gain the opportunity to **exchange good practices** and receive knowledge and expertise from each other to tackle their individual environmental challenges. Common environmental issues will be clearly identified and can be addressed collectively where appropriate. In general, better understanding increases acceptance and support for the outcomes of the EIR. A comprehensive picture of the efforts made by each Member State may provide opportunities to learn from each other (peer to peer). This should also contribute towards a more targeted use of EU funds, stimulate higher absorption rates and highlight the real needs and priorities of smart investment policies. Furthermore, the achievements by Member States in tackling the challenges they are confronted with, as well as the costs or benefits of the necessary measures will be more visible to the public and to stakeholders.

The Commission will gain an opportunity to identify potential **systemic solutions** to environmental implementation problems, to raise awareness at an earlier stage and to strengthen the preventive dimension related to the application of Union law. This will allow Member States to anticipate better the issues that need corrective action, in line with the public policy principles enshrined in Article 191 of the Treaty on the Functioning of the EU¹⁶. The EIR exercise will also give a better insight into the challenges the national authorities are confronted with when applying the Union law, which is also useful when reviewing existing or proposing new environmental legislation. The initiative will improve the use of data already available to the Commission as the initiative necessitates compiling and assessing available information in a more targeted, country specific manner. In addition, the results of the regulatory monitoring initiative¹⁷ should result in the availability of better environmental data in the future. Finally it will provide a cross-cutting overview of the main implementation challenges.

6. RELATIONS WITH OTHER INITIATIVES

The EIR is intended to dovetail with a wider set of activities and initiatives on implementation. It covers a broad range of environmental topics, some of which generate country-specific knowledge that could be relevant for the **European Semester** process and will promote a more detailed dialogue and exchange of practices on specific environmental

¹⁵ For example, uneven playing field among companies that treat waste according to the legislation and those who illegally export waste. See: The costs of not implementing the environment acquis (COWI 2011) http://ec.europa.eu/environment/enveco/economics_policy/pdf/report_sept2011.pdf, p. 67

¹⁶ Article 191.2 TFEU: "Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay."

¹⁷ Monitoring and reporting of environment legislation - The Fitness Check on Monitoring and Reporting. See http://ec.europa.eu/environment/legal/reporting/fc_overview_en.htm

topics relevant for the **Growth and Jobs Agenda**. Moreover, the EIR will contribute to better knowledge on public administration quality as one of the causes of environmental implementation gaps, which is coherent with the broader analysis of administrative quality in the Semester.

In line with the **Better Regulation** agenda¹⁸, this initiative stresses the importance of implementing existing legal and policy commitments. The EU has a well-developed environmental policy framework comprising numerous directives and other soft policy targets and objectives, the implementation of which is followed generally on a sectoral basis. The EIR aims at looking into the key implementation issues in each Member State across the environmental sectors, in a systemic manner, thus fostering policy coherence. The EIR will also contribute to Better Regulation by providing evidence about how existing instruments work in practice in order to prepare any corrective action.

The EIR process is related to the ongoing Fitness Check of **environmental reporting** which aims at delivering a more coherent and coordinated approach to reporting information on implementation and compliance. This objective will be of great benefit for the EIR, providing relevant information on the level of implementation and the "distance to target" as a starting point for dialogue and action with the Member States. It should also support the proactive approach of the EIR by providing information indicating the risk of future non-compliance, therefore enabling the finding of timely solutions. Engagement of the public through access to environmental information, public participation and **access to justice** is essential to implementation. So too is **compliance assurance**, i.e. the combined actions of public authorities in preventing infringements through compliance promotion and working with business, detecting them through inspections and other forms of compliance monitoring and responding to them through enforcement. The EIR's scope will cover these topics, ensuring full coherence.

7. CONCLUSIONS AND OUTLOOK

This Communication sets out a process which demonstrates the Commission's renewed commitment to better implementation of environmental policy and legislation. The aim is to work more transparently and inclusively to ensure that existing environmental rules and policies deliver important societal goals more effectively and in close coordination with other relevant policy areas.

To achieve this, the Commission will publish country reports which will be progressively improved. However, the Commission cannot deliver on its own. This process requires a shared commitment by the relevant EU institutions, Member States and other actors. Preparing the biennial country-specific reports will not entail an additional burden for the Member States and there will be **no new reporting obligations**. The added value of this exercise and the measure of the expected benefits referred to above will ultimately depend on the follow up given by the national authorities. To facilitate such follow up, the Commission

¹⁸ Better Regulation Communication of 19 May 2015 (COM(2015)215) http://ec.europa.eu/smart-regulation/better_regulation/documents/com_2015_215_en.pdf

will continue its work at technical level in the various working groups covering sectorial issues relating to water, waste, nature, air or industrial emissions.