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from: Secretary-General of the European Commission,
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Council, the European Economic and Social Committee and the Committee of
the Regions on implementing European Community Environmental Law

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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**

on implementing European Community Environmental Law

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on implementing European Community Environmental Law

1. INTRODUCTION

The aim of this Communication is to show how the new approaches set out in the Communication “A Europe of Results — Applying EU Law” will be applied in the area of environment.

It shows how EC environmental law can be implemented better by a combination of:

- legislative and post-legislative work aimed at the *prevention of breaches*,
- *responding* to the specific concerns of the *European public*,
- more immediate and more intensive treatment of *the most important infringements*,
- enhanced *dialogue with the European Parliament*,
- enhanced transparency, communication and *dialogue with the public* and interested parties.

This review is particularly timely in the light of EU enlargement in the period 2004-2007, the deepening of environmental concerns, a growing environmental *acquis*, important developments in the case-law of the European Court of Justice (ECJ) and the emergence of new compliance-promoting practices. The Communication reflects the increased priority attached to implementation, especially as expressed in the Sixth Environment Action Programme¹ and its mid-term review², and responds to a long-standing interest of the European Parliament.

The Communication first sets out the challenges in applying environmental law in the EU. The specific means of promoting and achieving compliance are then outlined, divided between: preventing breaches by improving the quality of new EC environmental legislation and ensuring good-quality national implementation; responding to the specific concerns of the European public, with an improved problem-solving mechanism and an enhanced Commission presence in the Member States; criteria for identifying breaches which call for an especially high level of attention; and proposals for enhanced dialogue with the European Parliament, the public and interested parties. The Communication is complemented by two separate Commission documents, one a description of sectoral challenges and an outline of preventive measures to promote compliance, and the other a summary of the impact assessment³.

¹ Decision No 1600/2002/EC.

² Commission Communication COM(2007) 225.

³ SEC(2008) 2851 and SEC(2008) 2852.

2. THE CHALLENGES OF IMPLEMENTING EC ENVIRONMENTAL LAW

2.1. General challenges

The environmental *acquis* is broad and ambitious, covering such issues as climate change, air quality, waste management, protection of water resources and biodiversity, controls on chemicals, and environmental impact assessment. It deploys a wide array of techniques, such as product standards, state-of-the-environment objectives, prohibitions and restrictions, economic instruments, sensitive area designations, plans and programmes, and public participation and information provisions. The *acquis* needs to be applied to a wide range of natural conditions, under very varied national and regional administrative arrangements, and in situations that often have a cross-border dimension. There is also a high level of public interest, reflected in the exercise of environmental rights, including complaints and petitions.

To these must be added the challenges presented by:

- *insufficient attention being paid to deadlines and completeness* during the adoption of national and regional legislation,
- *shortcomings in knowledge and awareness* in national and regional administrations,
- *shortcomings in administrative capacities*,
- *weak national and regional enforcement policies and practices*,
- *under-investment and delayed investment* in necessary pollution-abatement infrastructure.

The challenges presented by recent enlargement also deserve mention. Application of the *acquis* in the EU-12 requires significant efforts in terms of infrastructure improvements, administrative arrangements and the facilitation of citizen participation. Similar challenges arise in enlargement countries.

2.2. Specific Challenges

Non-communication of, and defects in, national and regional implementing legislation affect all parts of the environmental *acquis*. The following specific challenges apply:

- *Waste* – the need in certain Member States to end illegal landfilling, put in place adequate networks of regulated waste facilities, prevent illegal waste shipments and intensify public awareness of the goals of preventing, reusing and recycling waste. A combination of investment and well-structured national and regional enforcement and awareness-raising activities is necessary.
- *Water* – a need in certain Member States to invest more in collecting and treating urban waste water. This requires long-term planning and financial commitments.
- *Nature* – while now substantial in coverage, a key network of European nature sites still has gaps. More effort is also necessary to manage the sites in line with nature conservation objectives.
- *Industrial installations* – significant numbers of industrial installations still have EC permit and related requirements outstanding.
- *Environmental impact assessment* – the question of compliance with EC environmental impact assessment rules is frequently invoked in objections to major projects. The challenge is to have orderly development that takes account of legitimate environmental concerns.

- ***Air quality*** – lack of compliance with EC air quality standards in many European cities requires concerted action to lower concentrations of pollutants.
- ***Climate change*** - there is an ongoing need to ensure that all Member States provide the information needed to give proper follow-up to the Kyoto Protocol to the United Nations Framework Convention on Climate Change⁴.

An accompanying document sets out more details.

3. THE SOLUTIONS: TOWARDS IMPROVED IMPLEMENTATION OF EC ENVIRONMENTAL LAW

Better implementation of EC environmental law requires action of a preventive and corrective nature in key areas. There is also a strategic element.

The Environment Directorate-General has set up internal task forces for nature conservation, water, air, climate change, waste and impact assessment in the interests of coherence from conception to implementation of policies and of the co-ordinated use of the broad range of tools described below.

This has involved a strategic, sectoral approach, i.e. identifying and tackling problems that exist at a significant scale and across Member States. By way of example, this has allowed the Commission to tackle the lack of waste-water treatment facilities in a far higher number of cities, and the presence of illegal landfills in a far higher number of places than would have been possible if it had only focused on individual problems. In the context of nature legislation, it has helped secure the designation of thousands of sites across the EU: the approach is being extended to site management, for instance by promoting dialogue and best practice in specific economic sectors, such as ports and the non-energy extractive industry. A forthcoming Commission report on the first health check of habitats and species protected under EC nature legislation will indicate how effective current policy is.

3.1. Prevention of breaches

The extent and complexity of Community environmental legislation, combined with the high number of infringements, underline the importance of having a well-developed strategy for preventing breaches in the first place. Preventive measures, as described below, are in fact systematically used by the Commission. The accompanying document provides a more complete description.

Efforts to prevent breaches need to reflect a legislative life-cycle approach. They need to start with the design and drafting of legislation, to involve a range of actions and activities once legislation is adopted, and to take in legislative review and revision. Impact assessment, air quality and waste legislation provide examples of legislative updating that takes account of experience gained through implementation and enforcement work.

The use of such techniques and instruments as thematic strategies, consultation and impact assessment can help ensure that new legislation and policies — and the review and revision of existing legislation and policies — are coherent, efficient and effective.

Once legislation and policies are in place, a range of preventive tools exists to help ensure that tasks set by the legislation are successfully completed. These comprise:

- ***Effective information-gathering*** to check the extent to which legislation and policies are working. For example the Commission's annual bathing water reports

⁴ Decision 280/2004.

give a widely publicised picture of bathing water quality for the whole Community.

- **Performance scoreboards** enabling Member States and the public to compare the relative performances of Member States in achieving specific goals. One such scoreboard has been highlighting Member State progress in establishing a Community network of protected nature sites⁵.
- **Appropriate use of Community funds.** For example, agri-environment spending supports farming systems that maintain fragile semi-natural habitats. Community funds support major investments in waste-water collection and treatment. The Regional Development and Cohesion Funds make explicit reference to clean transport.
- **Pre-accession support in enlargement countries** to ensure that, as of the date of accession, new Member States are better able to comply with the *acquis*.
- Development of Commission **guidance documents** to help avoid interpretative disputes and misunderstandings. By way of example, the Commission has produced twenty-four guidance documents covering key aspects of framework water legislation. This reflects the wide implications of, and keen stakeholder interest in, the legislation concerned.
- Other forms of support, and **structured dialogue** with national authorities, including through the established networks of experts, IMPEL⁶ and GreenForce⁷, and other stakeholders. For example, the Commission is conducting dialogue on problems concerning illegal and mismanaged waste sites and illegal waste shipments.

The Commission also intends to help fund a programme of judicial training in environmental law and will exchange information and co-operate with networks of **judges** such as the European Forum of Judges for the Environment and the Association of European Administrative Judges. This is to reflect the key role that national courts play: they adjudicate on many individual cases and, in areas such as waste and nature conservation, the interpretative ECJ case-law resulting from Commission direct actions under Article 226 of the EC Treaty has been significantly supplemented by case-law resulting from the use by national judges of Article 234 of the Treaty.

The Commission will, following the adoption of major new environmental directives, establish permanent networks involving Commission officials and Member State contact points. These will aim to use exchanges of advice and experience to achieve full and timely implementation. By way of example, such networks already exist for EC nature legislation.

3.2. Problem-Solving — responding to specific concerns of the European public

To ensure uniform acceptance of EC environmental law, it is important for citizens to be able to get accurate information about it in all official languages, to be able to call on responsible bodies to fulfil its requirements and, in certain circumstances, to be able to refer to national

⁵ The scoreboard is known as the Natura 2000 barometer. For more information see http://ec.europa.eu/environment/nature/natura2000/barometer/index_en.htm.

⁶ European Union network for the implementation and enforcement of environmental law. This network of national inspectors was formed in 1992. For more information see <http://ec.europa.eu/environment/impel/index.htm>.

⁷ The European Union network of Member States' practitioners in both nature conservation and forestry. For more information see http://ec.europa.eu/environment/greenforce/index_en.htm.

dispute resolution mechanisms that are derived from EC law. There should also be a coherent and efficient relationship between the various responsible bodies to avoid, as far as possible, replication of effort.

Since implementation is primarily the responsibility of Member States, the main focus needs to be on effective response and accountability at national and regional level.

Effective response at the national and regional level, including mechanisms for administrative and judicial review

Citizens' requests to the responsible authorities to uphold EC-derived law in situations of concern

Citizens will often be the first to become aware of activities in breach of EC-derived environmental rules, such as illegal land filling or polluting discharges to water. One important indicator of meaningful implementation is the speed and effectiveness of official intervention once people alert the authorities. Member States can foster a good relationship by means such as confidential telephone lines, complaint-handling procedures, enforcement oversight bodies and ombudsmen.

Situations involving a dispute: dispute mechanisms at national and regional level derived from EC law, the role of the Aarhus Convention

There will be situations where citizens on the one hand and responsible authorities on the other disagree on whether there is compliance with EC environmental law.

The Aarhus Convention⁸, to which the Community is a party⁹, makes broad provision for access to justice. In 2003 the Commission adopted a proposal for an implementing directive on access to justice in environmental matters¹⁰ which is currently with the co-legislators. The Commission has also published a study of how Member States are giving effect to the Convention¹¹ and has organised a public debate in the light of the findings¹². The Commission remains of the view that Community environmental law would be better and more consistently enforced if the proposed directive were adopted. Making it easier to bring cases before a national judge should enable problems to be resolved closer to the citizen. It should also reduce the need for Commission intervention.

EC environmental law already provides for review mechanisms where disputes concern refusals to provide requested environmental information or public consultation in relation to environmental impact assessments and integrated pollution prevention and control permit decisions. By checking the quality of national legislation and practical implementation, the Commission will work to ensure that these review mechanisms are effective in all Member States. When reviewing existing or proposing new legislation, the Commission will consider proposing similar review mechanisms.

⁸ Convention on access to information, public participation in decision-making and access to justice in environmental matters.

⁹ See Council Decision 2005/370/EC (OJL 124, 17.5.2005).

¹⁰ COM(2003) 624.

¹¹ The study is entitled "Measures on access to justice in environmental matters (Article 9(3))". It is available at http://ec.europa.eu/environment/aarhus/study_access.htm.

¹² See previous footnote. The study broadly indicates that there is significant room for improvement on access to justice across the Community.

The Commission's role in dealing with information requests, complaints and petitions

While the first emphasis must be on ensuring that citizens and stakeholders get satisfactory responses at national and regional level, the Commission is also asked to investigate complaints and petitions and to provide information on the environment.

The Commission has established a pilot problem-solving mechanism with 15 Member States to test how it can respond better to citizens' inquiries concerning the application of EC law. Any environment cases will be promptly transmitted to Member States taking part in the pilot project. Member States will be encouraged to apply the best practice emerging from individual cases on a broader basis.

On a trial basis, the Commission is placing environment officials in its representation offices in four Member States¹³ to bring environmental law expertise closer to citizens and other stakeholders, providing legal and other information, raising awareness, identifying and assessing problems and solutions and liaising with national authorities and bodies with implementation-related functions. Their activities will be closely co-ordinated with other Commission implementation initiatives, including the enhanced problem-solving mechanism. Early indications are that the initiative is helping to identify problems and solutions at an earlier stage.

The range of ways of promoting and achieving compliance with all environmental legislation will be kept under review and assessed against the objectives of timely and complete implementation and responsiveness to public concerns.

3.3. More immediate and more intensive treatment of important infringements

Judgments of the ECJ have played an important role in improving the application of EC environment law. For example, cases concerning the failure to designate enough wetlands and other areas as special protection areas for wild birds in the Netherlands¹⁴ and to nominate enough habitats in Germany¹⁵ and France¹⁶ to a Europe-wide network of important nature sites have helped ensure that there are now extensive protected areas for Europe's endangered wildlife in these countries. Cases concerning the widespread flouting of Community waste rules in Ireland¹⁷ and the tolerance of a large number of illegal landfills in Greece¹⁸ have laid the basis for important waste management reforms in these Member States.

It is important that the infringement procedure be used effectively to tackle the most important problems. While all complaints and infringements will be dealt with, a "Europe of Results" refers to three categories of infringement that will be dealt with more immediately and more intensively.

1. The first category, which includes *non-communication of implementing measures* for directives, is of particular significance for the environment because directives dominate the environmental *acquis*.

2. The second category is *failure to comply with ECJ judgments* within a benchmark of an average of 12 to 24 months subject to specific circumstances of exceptional cases. A

¹³ Spain, Portugal, Italy and Poland.

¹⁴ C-3/96 *Commission v Netherlands* [1998] ECR I-3031

¹⁵ Case C-71/99 *Commission v Germany* [2001] ECR I-5811.

¹⁶ Case C-220/99 *Commission v France* [2001] ECR I-5831.

¹⁷ Case C-494/01 *Commission v Ireland* [2005] ECR I-3331.

¹⁸ Case C-502/03, *Commission v Greece*.

significant number of judgments on the environment concern results-based obligations, such as the achievement of an environmental quality standard or the provision of waste-water treatment. In applying the benchmark, the Commission will take account of relevant ECJ case-law¹⁹.

3. The third category is *breaches of EC law, including non-conformity cases, raising issues of principle or having particularly far-reaching negative impact for citizens*, such as those concerning the application of Treaty principles and main elements of framework regulations and directives. Criteria for such non-conformity cases need to be established sector by sector.

In terms of environment policy, infringements having a particularly far-reaching negative impact for citizens involve situations where, on a significant scale or repeatedly, people are exposed or may in the future become exposed to direct harm or serious detriment to their quality of life as a result of failure to comply with environmental quality standards or with requirements governing polluting activities. The irreversible character of the harm is a prioritisation factor.

Issues of principle may arise in a number of ways, for example a Member State may fundamentally undermine the overall effectiveness of EC environmental legislation by adopting transposition measures that are significantly in non-conformity with the directive concerned or by failing to take measures to contribute to an agreed specific Community-wide action such as the emissions trading scheme.

Against this background, the following criteria will be applied in the environment sector:

a) *Non-conformity of key legislation viewed as presenting a significant risk for correct implementation of environmental rules and hence their overall effectiveness*. This criterion is intended to be limited to those directives and directive provisions that set the main framework for environmental protection. It covers defective or incomplete national legislation that significantly limits the scope of application of a directive's requirements or otherwise significantly compromises the results to be achieved. For example, for nature conservation and impact assessment, conformity-related legal action is already being taken for the Birds Directive,²⁰ the Habitats Directive²¹, and the Impact Assessment Directive²². Similar action is progressively being taken for the major directives in the fields of waste management, water and air protection.

b) *Systemic breaches of environmental quality or other environmental protection requirements presenting serious adverse consequences or risks for human health and well-being or for aspects of nature that have high ecological value*. This criterion covers situations where there is contravention repeatedly or on a significant scale of, firstly, important state-of-the-environment obligations, such as those requiring maximum pollutant levels to be respected in air or water or deterioration of natural habitats to be avoided, or, secondly, key procedural or activity-related obligations such as those requiring landfills to operate under a waste permit, certain industries to operate under an IPPC permit²³ and urban waste water to be collected and treated. While the pursuit of individual cases may be effective, experience indicates that it is generally more efficient and equitable to try to resolve widespread

¹⁹ Case C-278/01 *Commission v Spain* [2003] ECR I-14141, paragraphs 26-30

²⁰ Directive 79/409/EEC on the conservation of wild birds (OJ L 103, 25.4.1979).

²¹ Directive 92/43/EEC on the conservation of natural habitats and of wild flora and fauna (OJ L 206, 22.7.1992).

²² Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ L 175, 5.7.1985).

²³ Integrated pollution prevention and control.

problems through a more systematic approach. Examples of systemic breaches that the Commission has addressed or is addressing include, for water, breaches of bathing water and drinking water standards and failure to collect and treat urban waste-water, for waste, tolerance of illegal waste activities and, for nature, failure to abide by hunting rules or derogation conditions. The Commission intends to build on these examples and, on the basis of available evidence, focus on systemic breaches of central provisions of environmental directives, such as the site protection requirements of the Habitats Directive.

c) *Breaches of core, strategic obligations on which fulfilment of other obligations depends.* This criterion covers failures to meet designation, plan and programme-making, reporting and similar obligations which go to the heart of particular environmental laws and which are intended to set a strategic framework for other obligations. Illustrations can be found in Commission legal actions to secure, in the sphere of nature legislation, designations or nominations of networks of important wildlife sites; in the sphere of water legislation, compliant action programmes to reduce water pollution from use of agricultural fertilizers; in the sphere of emissions trading, the adoption of national allocation plans; and in the sphere of waste legislation, waste management plans.

d) *Breaches concerning big infrastructure projects or interventions involving EU funding or significant adverse impacts.* In the light of the Aarhus Convention, the most appropriate level for addressing many such breaches may be that of the national courts. However, the Commission may also need to act, e.g. where Community co-financing is involved. The Commission will take into account such considerations as irreversible ecological damage, and, where appropriate, seek interim measures from the ECJ. While likely to be sought only exceptionally, interim measures represent a potentially important safeguard for ensuring that infringements do not present seriously damaging *faits accomplis*.

Further details of Commission infringements can be found in the complementary document. The Commission is ready to discuss the above criteria with the European Parliament and interested parties, including how to apply them to specific subject areas like nature conservation, water and waste, and is willing to adjust or review them by way of the annual reports on the application of EU law. The Commission will also reflect with interest on any views that the Council may wish to present.

In monitoring progress, particular attention will be paid to progress on the above cases. To ensure that the general and sectoral criteria are meaningful, other cases will be addressed at a pace and in a manner that does not compromise the efficient and effective handling of important ones. Maximum effort will be made to ensure that other dossiers are resolved through the means referred to in Sections 3.1 and 3.2.

3.4. Dialogue with the European Parliament

As co-legislator, the European Parliament has a clear interest in effective implementation. The environment accounts for about 10% of all parliamentary questions put to the Commission. The Environment Committee has periodic sessions on the implementation of EC environmental law, and the environment is currently the main subject in 35% of the petitions handled by the Petitions Committee.

The work of these Committees can facilitate dialogue on strategic aspects of implementation, such as those relating to the evaluations to be made in future Commission Annual Reports on the Application of EU law. For example, the Environment Committee's implementation sessions provide an occasion to discuss the situation in particular sectors, such as water, waste and nature conservation. The improved problem-solving mechanism should help the Petitions Committee to address citizens' grievances. It is to be expected that the Parliament will also

have inter-actions with national parliaments, not least because of the role these play in transposing directives for which the Parliament is co-legislator. The Commission is ready to assist in these interactions.

3.5. Transparency, communication and dialogue with the public and interested parties

Transparency and communication have special importance in a field where the desirability of an environmentally well-informed and active public is recognised in a significant number of legislative provisions. Information and key statistics, showing in particular how work on important cases is progressing, will be made available through Commission Annual Reports. Regularly updated scoreboards will be used for high-profile objectives such as nature conservation designations. There will also be awareness-raising activities, media events and publications aimed at general and specialised readerships. Communication strategies will be the subject of prior analysis and matched to operational requirements, using the internet where appropriate.

Environmental non-governmental organisations play a key role in promoting good implementation and public awareness. It is proposed to have regular dialogue with them, in Brussels and in national capitals through the representation offices. Through dialogue, the Commission will seek to obtain information on key implementation problems and concerns, encourage strategic analysis, and ensure that optimum use is made of the various means of problem-solving, including at national level.

Dialogue will be pursued with other interested parties to take into account as wide a range of views as possible when it formulates general positions on the implementation of the environmental *acquis*.

4. CONCLUSION

Effective implementation of EC environmental law will use a combination of means. Using the tools of impact assessment and consultation, preparation of legislation will focus on the most efficient ways of meeting environmental goals. Subsequent work will focus on preventing breaches by helping Member States to adopt national and regional legislation and other measures that are timely, complete and correct. In parallel, the Commission will seek to address the specific concerns of the European public by promoting responses at national and regional level, applying the improved problem-solving mechanism and itself making environmental law expertise available in Member States, initially on a pilot basis. A set of criteria will be used to identify any breaches that call for a particularly high level of attention, including where appropriate requests to the ECJ for interim measures. It is also intended to have enhanced dialogue with the European Parliament, the public and interested parties and, where appropriate, to refine the Commission's approach in the light of this.

This strategy should, through the mix of instruments, help the Commission to achieve greater efficiency and better targeting in its compliance promotion and enforcement work, respond better to citizens and interested parties and do more to meet the challenges in recently acceded Member States as well as in enlargement countries. The effectiveness of the strategy will be kept under review and, if necessary, the Commission will propose further measures to ensure better implementation of EC environmental law.

ABBREVIATIONS AND EXPLANATIONS

EC = European Community

ECJ = European Court of Justice

EU = European Union

EU12 = those Member States of the European Union which joined in the period 2004-2007

Acquis = the total body of applicable law