

## Comments and Reactions

by

Justice & Environment (J&E)

**on the 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”***

### **Introduction**

Under article 17 of the TEU, the Commission (EC) has been given primary responsibility for monitoring the application of European law in Member States. Good and even enforcement of the EU environmental law is essential and anything less falls short of public expectations and undermines the reputation of the Community as an effective guardian of the environment.<sup>1</sup>

However, the process of implementation of EU environmental law into national laws shows many irregularities. Better enforcement and effective fight against the non-respect of the EU law should be one of the main priorities of the Commission, in order to prevent environmental damage and to ensure the efficiency of already developed instruments of European environmental law. As correctly noted by the EC, *“only by ensuring the correct implementation of the acquis will it be possible to realize environmental objectives.”*<sup>2</sup>

In its previous Communication on Implementing European Community Environmental Law<sup>3</sup> (the earlier Communication), the EC showed how European environmental law can be implemented better by a combination of *inter alia*:

- legislative and post-legislative work aimed at the prevention of breaches,
- responding to the specific concerns of the European public,
- enhanced transparency, communication and dialogue with the public and interested parties.

Knowing this, it is surprising that the current Communication on improving the delivery of benefits from EU environment measures: building confidence through better knowledge and responsiveness (the new Communication) still lists problems such as *“there is lack of data on the compliance and enforcement work being undertaken at national level”* (p. 6). And while it is to be greeted that the Commission intends to assess the feasibility of developing *“structured implementation and information frameworks (SIIFs) for all key EU environmental laws”* (p. 5), one has to ask why this did

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<sup>1</sup> From the EP’s resolution.

<sup>2</sup> Midterm report on the 6<sup>th</sup> EAP.

<sup>3</sup> COM(2008) 773 final.

not happen earlier, being aware of the many shortcomings of environmental law enforcements and the need for structured solutions.

J&E in its activities has been trying to direct the attention of the EU institutions on improvement of enforcement of environmental law and enhancing public access to decision-making and control of already set up rules in environmental field. Therefore, this letter fundamentally welcomes the Commission's efforts to address certain issues related to improving implementation and compliance with the EU environmental law and welcomes the new Communication, nevertheless will not hide areas where there is still room for improvement.

### **Inspections**

Environmental inspections are one of the most important tools to ensure that European environmental law is applied in a consistent way. Opposed to the European Parliament (EP), the EC does not consider appropriate to transform the criteria for environmental inspections into legally binding requirements.

However, a non-binding recommendation, as shown in the report<sup>4</sup> on the implementation of Recommendation 2001/331/EC (the RMCEI) is not a sufficient instrument to standardize rules of environmental inspections in Member States. The report shows that to achieve high level of implementation set in RMCEI (adopted over 10 years ago!) Member States *"still have some way to go"*.

J&E fully supports the view expressed by the EP in the Resolution on the Review of Recommendation 2001/331/EC providing for minimum criteria for environmental inspections in the Member States.<sup>5</sup> The EP urged the Commission to come forward with a proposal for a directive on environmental inspections, clarifying the definitions and criteria and extending the scope.<sup>6</sup> Taking into account proven, uneven and slow implementation of the RMCEI, J&E considers that, in order to improve compliance with EU law, the adoption of legally binding, framework directive on minimum criteria for environmental inspections is essential. We therefore suggest that the EC include this option among those listed in the new Communication (p. 8), under the sub-heading *"assessing options for complementing national inspections and surveillance in a targeted way at EU level"*.

In this regard, we recommend that the EC should include also networks of CSOs among those who are expected to be approached for a dialogue on compliance promotion, in addition to networks of inspectors, prosecutors and judges (p. 6). Also CSOs should be mentioned explicitly and play a role in what is called now in the new Communication *"arrangements for independent expert input on an ad hoc basis to address situations that present very particular implementation challenges"* (p. 8).

### **Access to Remedies**

Improvement of the implementation of EU law by last resort measures (putting Member States before the Court of Justice of the European Union) is not essential, nor the most effective way to solve current problems. The actual improvement requires the Commission to develop new methods of cooperation with Member States at all stages of implementation. Public as a watchdog – namely,

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<sup>4</sup> SEC(2007) 1493.

<sup>5</sup> L 118/41, 27.4.2001.

<sup>6</sup> EEB also had a position paper on inspections dated December 2009.

increased public involvement through improved access to information and access to justice are essential elements in the process of building greater compliance mechanisms.

Therefore J&E welcomes the efforts of the EC to provide more public access to relevant data, either by enhancing the effectiveness of the Access to Information Directive (p. 5) or by examining “*how the public could be provided with systematic and improved online information on implementation*” (p. 6).

When detailing initiatives designed to improve the handling by Member States of complaints, J&E suggests to have a set of minimum criteria or a benchmark for competent authority actions in the domain of complaint-handling in the new Communication in order to create a real level playing field within the Union (p. 8).

According to the EC, by “*responding to the specific concerns of the European public, enhanced transparency, communication and dialogue with the public and interested parties*”, the EU environmental law can be better implemented. Therefore, J&E is surprised and disappointed by the time lag in adoption of the EU Directive on Access to Justice but now sees a new hope rising that there will be significant progress made in 2012 towards the eventual adoption of the said directive. Draft of the Directive has been proposed by the Commission in 2003, and has been supported by many judges, experts and civil society organizations, including J&E. We believe that renewed effort should be made to introduce a directive on access to justice without any further delay.

For this reason, J&E believes that when talking about “*defining at EU level the conditions for efficient as well as effective access to national courts in respect of all areas of EU environmental law*” (p. 9), the new Communication de fact talks about an Access to Justice Directive.

In the adjacent capacity building activities, J&E misses the mention of networks of CSOs as those who can deliver valuable information about the implementation and enforcement of EU environmental law (p. 9). This should certainly be corrected since the reasoning to the Draft Access to Justice Directive dated 2003 relied heavily on civil society input and role as well as specific civil society knowledge. Such SCO involvement can produce high added value in issues such as “*general advice on the implementability and enforceability of EU environment proposals*” (p. 10).

### **The 7<sup>th</sup> EAP**

It is very important that the objective of the improvement of the implementation of existing environmental legislation finds its place as one of the main objectives of 7<sup>th</sup> Environment Action Programme (EAP). As stated in the 7<sup>th</sup> EAP Roadmap, published by the Commission in late 2011, uneven implementation record of environmental legislation has to be taken into account while creating the Programme. However, “*more effective implementation and enforcement*”, through inter alia improved standards of inspections, has been already one of the objectives of the 6<sup>th</sup> EAP. Although 6<sup>th</sup> EAP was an important strategic document, EEB finds its implementation “*un-ambitious and partly a failure*”. The EC itself, in the final assessment admits that “*inadequate implementation and enforcement of EU environmental legislation has been an important factor in preventing the achievement of several objectives.*”<sup>7</sup>

The EP<sup>8</sup> invited the Commission to base its future proposal for the 7<sup>th</sup> EAP on the following 3 ‘i’s as

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<sup>7</sup> COM(2011) 531 final.

<sup>8</sup> Priorities in the Draft Report on the review of the 6<sup>th</sup> Environment Action Programme and the setting of priorities

priorities: Implementation and strengthening, Integration, International dimension.

It is clear, that the new, 7<sup>th</sup> EAP should treat as a priority the enhanced implementation and enforcement together with improvement of environmental democracy (transparency, meaningful public participation and access to justice in environmental matters). It is also important, that the same mistakes and failures of the 6<sup>th</sup> EAP will not be repeated.

### **New Bodies, New Functions, New Instruments?**

We share the view that in addition to the Commission's role in monitoring compliance with EU law, it should not be ruled out for the future that the EU agency (e.g. EEA) should play an important part in this respect.

In addition to Member States' enhanced action on national level, and strengthened public involvement, appropriate bodies and structures at EU level are essential to improve transposition and application of EU environmental law.

Also in case the planned implementation agreements will become a practice, there is a clear need for setting the common standards and set of minimum criteria for them, in order not just to "*proactively direct EU Assistance towards improved implementation structures within Member States*" (p. 10) but also to ensure adequacy and transparency in implementation.

### **Conclusion**

Views presented in this paper only scratch the surface of the implementation and compliance problems. We share the view presented in the Communication, that efforts to prevent breaches need to reflect a legislative life-cycle approach:<sup>9</sup> starting with the considerate design and drafting of legislation, through involving a range of actions and activities once legislation is adopted, to instruments aimed at legislative review and revision.

The new Communication of the Commission is a detailed and elaborate set of guidelines on how to improve implementation and compliance, and we recommend that it be made fully available, visible and on the agenda of all stakeholders interested in the implementation of European environmental law.

European environmental law is indeed broad and ambitious. But if not fully implemented and enforced it won't be effective, thus meaningless. Given the above arguments, J&E believes that the new Communication that will respond to the recent concerns, and refer to arguments of the NGOs and the EP published by the Commission is a definite step further. J&E therefore welcomes the Commission having adopted the Communication and we urge the Commission to initiate public discussion in order to improve the implementation and application of European law by Member States.

**Thomas Alge, Chairman and The Executive Committee of Justice and Environment**

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for the 7<sup>th</sup> Environment Action Programme.  
<sup>9</sup> COM(2008) 773 final.