

HARMONISATION IN EU ENVIRONMENTAL AND ENERGY LAW

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ENERGY LAW

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Harmonisation in EU Environmental and Energy Law

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FOREWORD

1. INTRODUCTION

After nearly fifty years of EU environmental law-making, the discussion on codification and harmonization is not only more relevant than ever, but it is also unavoidable for at least three reasons:

- 1) The increase of legislation across very different thematic areas/sectors – water, nature, air, waste and chemicals; often leading to a certain dispersion of legal instruments.
- 2) The volume of legislation (in the order of 50 main legal instruments) which needs to be effectively enforced.
- 3) The use of very different kinds of instruments and approaches over time (directives, regulations, decisions).

The Commission is working hard in ensuring the overall coherence when *developing* and *evaluating* legislation.

Let me address these matters further.

2. DEVELOPING LEGISLATION

- 1) In the field of environmental policy, it is important to note the key role of Environmental Action Plans (EAPs) since 1973 in outlining the priorities of the EU legislative agenda for five-year periods.

We are now on our 7th EAP and have tabled our proposal for an 8th EAP under Art. 192 (3) of the Treaty. Environmental Action Plans are adopted through the co-decision procedure by the Council and the European Parliament.

- 2) The Treaty, of course, plays a very significant role, in particular its Environment Chapter (Articles 191 and 192 TFEU) frames the level of ambition and steers EU action forward by means of certain basic principles.

The Chapter, introduced in 1987, was in part a Treaty codification of what was endorsed in earlier action plans. The first action plan in 1973 already announced the polluter pays principle. The action plans themselves are mentioned in Article 192(3).

- 3) Significant initiatives developing new “concepts” have contributed to greater EU harmonization in this area. The Circular Economy or the recent

European Green Deal, are very good examples in moving forward our environmental policy.

3. EVALUATING AND REVIEWING LEGISLATION

Codification has already taken place at the level of most EU environmental individual instruments. This means integrating amendments and streamlining legal texts.

From the 1990s on, serious consolidation has occurred within several thematic areas. Let me mention some very concrete cases:

- In 2001, The adoption of the Water Framework Directive allowed the repealing of several earlier directives;
- In 2008, the Air Quality Directive created a comprehensive legal framework for controlling individual air pollutants;
- In 2011, with the Industrial Emissions Directive it was possible to codify and replace several more specific directives.

Over the past 10 years, the introduction of systematic evaluations (better known as fitness checks) of existing legislation under the Better Regulation initiative is also a very significant development. These look at the efficiency, effectiveness, relevance, coherence and EU added value of our legislation.

Environment has been a front-runner in this area, with 13% of legislation already evaluated by the end of 2013. The figure currently stands at around 60%. This has included very high-profile evaluations like the Nature Fitness Check, where more than 550,000 citizens participated in the public consultation. Evaluations do not necessarily mean re-writing legislation, but they steer the Commission in new directions. For example: the fitness check of reporting across our legislation is stimulating a much greater emphasis on transparency at national level.

4. IMPLEMENTATION

Implementation has often tended to be the “Cinderella” of the policy cycle.¹ However, here too the Commission seeks greater coherence:

- 1) Through the Environmental Implementation Review, we now provide a regular EU-wide “big picture” of implementation across all environmental legal instruments in all Member States.

¹ “Cinderella” was the poor daughter of the family and was badly treated. Implementation should not be neglected.

- 2) In 2018, the Commission created a new Environmental Compliance and Governance Forum to bring together top national administrators as well as heads of networks of environmental agencies, inspectors, police, prosecutors and judges.

The initiative aims at achieving a more harmonized approach to tackling on the ground serious issues like environmental crime, enhancing coordination and developing effective responses.

Of course, this is without prejudice to the work of the Commission as a guardian of the Treaties. Environment is one of the areas with the highest number of complaints and cases brought forward by the Commission against the Member States for breach of EU law.

5. FUTURE PERSPECTIVES

On the basis of the above considerations, it can be concluded that a lot has been done in order to ensure that environmental legislation is not only fit for purpose, but also effectively enforced and implemented by Member States.

The question is: What more can be done?

In this context, it is important to have a global and not simply an EU perspective.

Environmental issues are global issues because the environment cannot be limited by administrative frontiers. Global warming will never be solved by Europe on its own, neither will the pollution problems of plastics in the oceans nor the collapse of nature. We therefore need to be outward-looking and outward-thinking. Europe has been leading multilateral negotiations in the field of climate biodiversity. The Treaty of Paris would not have been concluded without the active leadership of the EU.

Europe needs to support initiatives to create a more harmonized approach *globally*. This is also the philosophy behind the European Green Deal: the transformative agenda put forward by President von der Leyen to facilitate the ecological transition. The European Commission is currently also backing the idea of a *global pact* on the environment.² If adopted, this would codify the key principles of environmental law and put environmental protection on a better footing everywhere.

² See <https://globalpactenvironment.org/en/the-pact/>.

Environmental issues are increasingly of great concern for both citizens and Member States. The need to act more effectively will not diminish in the coming years. Europe has the responsibility and the means to lead this action by projecting its internal policies globally.

Daniel Calleja Crespo
Director General, European Commission
Brussels, June 2021

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