

Network of Heads of European Environment Protection Agencies

Improving the Effectiveness of EU Environmental Regulation – A Future Vision

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Flemish Environment Agency
Croatian Environment Agency
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Czech Environmental Information Agency
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National Directorate for Environment, Nature and Water, Hungary
Environment and Food Agency, Iceland
Environmental Protection Agency, Ireland
Italian Agency for Environmental Protection and Technical Services – APAT
Malta Environment and Planning Authority
Netherlands Environmental Assessment Agency
Norwegian Pollution Control Authority
Directorate for Nature Management, Norway
Chief Inspectorate for Environmental Protection, Poland
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National Environmental Protection Agency, Romania
Slovak Environmental Agency
Slovak Hydrometeorological Institute
Environmental Agency of the Republic of Slovenia
Swedish Environment Protection Agency
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Environment Agency for England and Wales
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European Environment Agency

The Network is an informal grouping bringing together the heads of environment protection agencies and similar bodies across Europe to exchange views and experiences on issues of common interest to organisations involved in the practical day-to-day implementation of environmental policy.

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Summary

Developing an agreed vision for environmental policy and regulation in Europe will be an essential building block in achieving an integrated, coordinated and consistent legal framework which will help to better deliver environmental outcomes.

We are asking DG Environment and the Commission to work with us and other interested parties to develop and adopt a long-term vision and strategy to improve the effectiveness of environmental regulation. This paper proposes some guiding principles for a strategy for regulation and identifies actions that would help achieve it.

We are calling for:

- An approach to regulation based on environmental outcomes
- A simple, transparent and consolidated legal framework, with a common approach to regulation
- Effective policy-making processes.

While this paper focuses on action required at an EU level we recognise that action is also required at a national level and we are working to remove obstacles and to promote good environmental regulation in practice locally.

The paper is intended as a contribution to the Commission to help develop their vision and strategy to improve the effectiveness of EU environmental regulation and we would welcome the opportunity to play our part in developing these further.

1
The Contribution of Good Environmental Regulation to Competitiveness: http://epanet.ew.eea.europa.eu/foI249409/our-publications/prague-statement-folder/PragueStatement_1.pdf

2
Barriers to Good Environmental Regulation: <http://epanet.ew.eea.europa.eu/foI249409/foI249409/foI249409/helsinki-statement>

Background

- 1¹ The Network of Heads of European Environment Protection Agencies believes that a clean and healthy environment supports a competitive economy and is key to sustainable development. We have published reports that show that good environmental regulation, management and performance contribute to overall competitiveness and we have shown that better regulation can maintain and improve the environment¹. We have examined how obstacles or barriers to good environmental regulation arise². We are working to remove obstacles and to promote good environmental regulation in practice.
- 1² EU environmental regulation has delivered many benefits to the environment, the internal market and society as a whole. However, the way in which EU legislation has evolved has resulted in a complex picture of partly overlapping and inconsistent requirements (Annex A).
- 1³ The EU Better Regulation Programme aims to simplify existing EU legislation, withdraw unnecessary legislation or re-draft inappropriate pending legislation and to ensure there are adequate impact assessments for new proposals that fulfil the environmental aims of the EU. Recent EU better regulation initiatives have been focussed on reducing administrative burdens or reviewing individual directives. However to improve the overall effectiveness of regulation, the Network of Heads of European Environment Protection Agencies believes that we need to move away from an agenda driven solely by administrative burden to one whose primary focus is improving the effectiveness of the delivery of environmental outcomes.
- 1⁴ Action is also required at a national level and there are already well-developed better regulation programmes in many of our member states. We want to draw on our own experience and to contribute to the development of DG Environment's policy and approaches on better regulation. This paper focuses on actions at an EU level.

Developing a vision and strategy for EU environmental regulation

- 2¹ Developing an agreed vision for environmental policy and regulation within Europe will be central to achieving a common framework of environmental legislation with a primary focus on environmental outcomes.
- 2² The Network of Heads of European Environment Protection Agencies has already developed a vision for environmental policy and regulation as a contribution for the Commission's consideration:
- “Environmental policy that supports a clean, competitive economy and a healthy environment in which to work and live. It is effective, efficient and easy to adopt and implement.”
- 2³ A modern strategy for regulation needs to be developed by the Commission at an EU level to support this vision. This strategy will be underpinned by supporting principles and actions to allow the vision to be achieved. Here we set out some guiding principles, under three main objectives, which the Commission might find a useful basis. Further detail is provided in Annex B.
- 2⁴ **An approach to regulation based on environmental outcomes.** The primary focus for environmental regulation will be to achieve environmental outcomes in the most effective way. To support this we should have a clear strategic picture of how policy fits together and how effective it is in achieving environmental outcomes. This will involve identifying links between directives, relevant Environment Action Programmes and other relevant EU frameworks and strategies and clearly defining their intended outcomes.

- 2⁵ A simple, transparent and consolidated legal framework, with a common approach to regulation. This will include integrating new environmental legislation into existing legislation and integrating existing directives in the short term. In the longer term, we envisage moving away from fragmented sector-based regulation towards a smaller number of integrated horizontal directives that are focussed on environmental outcomes. In many instances, Member States should be given the flexibility to tailor approaches to local circumstances to deliver agreed outcomes. This could be supported by developing standard (non-mandatory) delivery mechanisms. In circumstances where it is important to ensure a harmonised approach across Member States, delivery approaches and administrative arrangements could be clearly and consistently defined.
- 2⁶ Effective policy-making processes. This will require better consideration of implementation issues, involvement of regulators and use of appropriate innovative policy instruments and tools to enable practical, proportionate and potentially, where appropriate, risk-based solutions.
- 2⁷ A number of principles to support these overarching objectives are outlined in more detail in Annex B. More detailed work is needed to develop the principles and strategy for regulation, but Annex B may provide a starting point.

Benefits of this approach

- 3.¹ There are considerable benefits to an approach that focuses on delivering environmental outcomes through a simpler framework of regulation and improved policy-making processes.
- 3.² **Delivering environmental outcomes.** There are significant benefits from shifting the primary focus of the better regulation agenda to improving the effectiveness of the delivery of environmental outcomes. The aim would be to achieve better environmental outcomes while at the same time reducing cost to businesses.
- 3.³ **Greater consistency of approach and better integration of environmental policy.** There are significant advantages in developing a simpler, consolidated framework of legislation, with more streamlined and transparent processes. The current framework is too complex and results in a system that is not always proportionate, responsive or predictable. This fails to exploit synergies with existing regimes and approaches and has a significant impact on the administrative requirements that are placed on business and regulator alike. A simpler, more consistent framework will be easier for business and public administrations to understand. It will then be easier for them to prepare to implement new legislation. A clearer focus on achieving environmental outcomes in the most efficient way will enhance the reputation of environmental legislation and free up resources to better focus on new and big environmental challenges such as climate change.
- 3.⁴ **Reducing administrative burden for business and public administration.** Reduced administrative burdens on both business and public administration are best tackled within a simpler framework of legislation; a clear view of the strategic big picture and the outcomes to be delivered. This will allow a consistent view of how environmental policy and regulation should be developed and delivered. This will help to prevent further divergence of approach, lead to convergence of approaches over time and minimise administrative burdens.

Proposed actions to move towards the vision and strategy for regulation

- 4¹ Migrating towards a policy framework fit for the 21st Century requires a significant step change in practice and will take time. Here we set out some of the actions that could be taken in the medium-term at an EU level to move progressively towards the vision and strategy for regulation, and to support initiatives at a national level. These are based around the principles outlined in Section 2 and explained in more detail in Annex B.
- 4² **Towards an approach to regulation based on environmental outcomes.**
- Develop a single compendium of environmental standards so inspectors and operators can see what they are trying to achieve, rather than dispersing them throughout the existing body of legislation.
 - Consider reviewing directives to identify any opportunities to target effort on higher risk businesses or substances and adopt a more proportionate approach towards lower risk businesses or substances while still protecting environmental outcomes.
- 4³ **Towards a simple, transparent and consolidated legal framework, with a common approach to regulation.**
- Consider developing a single environmental permit or control process that implements multiple pieces of legislation, to increase effectiveness and reduce the administrative burden on business.
 - Review key terms to ensure common definitions across directives. Some examples of inconsistencies are given in Annex A.
 - Review registration requirements across all directives giving member states the discretion to decide whether an exemption should be registered.
 - Review EU monitoring and reporting requirements, moving towards a more risk-based, harmonised and flexible approach for member states. Revising monitoring and reporting guidelines where burdens can be reduced without affecting outcomes (e.g. EU Emissions Trading Directive, Standardised Reporting Directive, Water Framework Directive).
 - Review and harmonise the various waste directives where possible. For example, considering whether permitting and inspection requirements associated with the Waste Framework, IPPC and Landfill Directives could be integrated or better coordinated. Also, the opportunity to integrate various producer responsibility directives could be explored.

- Review and harmonise water policy where possible. Different standards and approaches used within the Water Framework Directive and other EU water directives increase the burden on public administration. The possibility of using information or data gathered for other purposes or for other regimes could be investigated.
- Review relationships between Framework Directives. This could include exploring and promoting the linkages between Framework Directives and underlying daughter Directives to exploit synergies and resolve any gaps or conflicts.
- 4⁴ **Towards effective policy-making processes.**
 - Incorporate and support implementation of the IMPEL³ and the Network of Heads of European Environment Protection Agencies'⁴ checklists into the Commission's Impact Assessment and policy-making procedures to improve the quality of new legislation.
 - Develop a consolidated database of existing legislation to ensure that new legislation is consistent with existing legislation.

3
Developing a checklist for assessing legislation on practicability and enforceability: http://ec.europa.eu/environment/impel/pdf/pe_checklist.pdf

4
Barriers to Good Environmental Regulation: <http://epanet.ew.eea.europa.eu/foI249409/foI249409/foI249409/helsinki-statement>

Summary of recommendations to the Commission

- 5¹ In summary, the Network of Heads of European Environment Protection Agencies is asking the Commission to:
- Develop a vision and strategy for regulation to complement and support the 6th Environment Action Programme and Better Regulation Action Plans working with Member States and regulators (for example through IMPEL and the Network of Heads of European Environment Protection Agencies).
 - In order to move progressively towards the vision of regulation, apply the principles outlined in this paper (Section 2 with more detail in Annex B) as new policy is developed or existing policy is reviewed and consider taking forward the actions proposed in Section 4.
 - Include regulators and implementing bodies when DG Environment develop their policy and approaches on better regulation, for example through a Commission-chaired Group of experts from all Member States (a similar approach to DG Agriculture on CAP simplification).

5

Drawn from a number of sources including IMPEL studies, previous work of the Network and suggestion from Member States.

Annex A

Examples of overlaps and inconsistencies in EU legislation⁵

Overlaps of EU Legislation

- Landfills are governed by a number of directives including EIA, IPPC, Waste Framework and the Landfill Directives and could benefit from better coordination.
- Poor coherence of reporting obligations of the Waste Statistics Regulation (Reg. 2150/2002/EC) and several other waste related pieces of legislation (Packaging, End-of-life vehicles, WEEE, etc.).

Varying definitions

- *Pollution* is defined differently in the IPPC and Water Framework Directives.
- *Volatile organic compounds* are defined differently in the Solvent Emissions and National Emissions Ceiling Directive.
- *Substantial change* is defined differently in the Solvent Emissions Directive to the IPPC and Waste Incineration Directives.
- *Biomass* is defined differently in the EU Emissions Trading Scheme and Waste Incineration Directives.
- *Installation, site* and *operator* are defined differently, for example in the IPPC directive to other directives.

Unclear definitions

- *If practicable* used in a number of pieces of legislation, including the Ozone Depleting Substances Regulation.
- *Major accident* in the Seveso II Directive.
- *Heavily modified water body* in the Water Framework Directive.
- *Risk* used in many directives (i.e. Water Framework Directive, Groundwater Directive, Soil Framework Directive Proposal).

Lack of consistency in permits and provisions

- Differing requirements for periodic reviews.

Disproportionate requirements

- Lack of threshold for some types of installations covered by the IPPC directive.
- Waste Framework Directive requires substances to be managed simply because they are waste rather than because they pose any risk to the environment.

⁶
Drawn from a number of sources including IMPEL studies, previous work of the Network and suggestion from Member States.

Annex B

Principles for a strategy for environmental regulation⁶

1 An approach to regulation based on environmental outcomes

The primary focus for environmental regulation will be to achieve environmental outcomes in the most effective way. To support this we should have a clear strategic picture of how policy fits together and how effective it is in achieving environmental outcomes. This will involve identifying links between directives, relevant Environment Action Programmes and other relevant EU frameworks and strategies and clearly defining their intended outcomes.

Things to consider in developing this principle further:

- The aims of any directives to clearly link back to the relevant Environment Action Programme or other relevant EU framework or strategy.
- Before drafting a new law, Commission to review all other related EU legislation, international Conventions and ECJ cases, including legislation from other policy fields, which may interact with environmental requirements. These findings should be included in the Commission's Explanatory Memorandum to a proposal.
- Intended outcomes must be clearly identified and communicated, including clear communication of anticipated benefits of proposed policy to business and wider society.

2 A simple, transparent and consolidated legal framework, with a common approach to regulation

This will include integrating new environmental legislation into existing legislation and integrating existing directives in the short term. In the longer term, we envisage moving away from fragmented sector-based regulation towards a smaller number of integrated horizontal directives that are focussed on environmental outcomes. In many instances, Member States should be given the flexibility to tailor approaches to local circumstances to deliver agreed outcomes. This could be supported by developing standard (non-mandatory) delivery mechanisms. In circumstances where it is important to ensure a harmonised approach across Member States, delivery approaches and administrative arrangements could be clearly and consistently defined.

Things to consider in developing this principle further:

- An overall, strategic approach to broad sectors of environmental policy, for example regulation of industry (as was achieved for water by the Water Framework Directive). Approach to achieve the right balance between flexibility and detailed prescription.
- Integration of new environmental legislation into existing legislation.

- Recitals in directives used to explain the rationale behind the legislative act and links between it and different acts. Recitals must also be consistent with the Articles of the directive to ensure that it is possible to reconcile them with any prescriptive standards set down.
- Adequate and consistent definition of terms. Definitions must be clear and unambiguous, especially in framework directives, and particularly when they determine some key aspect of the scope of a measure (for example definition of installations or activities), or define the requirements of the regulation. Definitions should be consistent across directives, with technical definitions (for example establishing emission limit values) being identical in terms of units and scientific meaning as far as possible. Where definitions vary between directives, an explanation should be offered as to why.
- Consider recasting. When amending directives, consider whether a full new text might be helpful – also consider interaction with other EU law to improve coherence.
- Consider codification, particularly where there have been lots of amendments e.g. nature protection, noise and waste.
- A common approach to definitions, permitting, consultation periods, and monitoring arrangements. Consider use of horizontal directives setting out outcomes and standards, supported by a horizontal directive or code detailing approaches and mechanisms where a harmonised approach across Member States is required.
- A harmonised reporting system for all environmental directives. This should include:
 - fewer reports, focusing on important environmental data
 - reporting to the Commission to focus on compliance data and information which will assess whether the legislation is effective
 - EEA being able to make use of, and add value to, the data
 - more commonality of reporting, for example from IPPC installations.
- Reporting requirements to be reviewed to:
 - determine the resource implications of reporting requirements
 - determine how the information should be transmitted in order to reduce time spent by regulators in putting data together
 - give an explanation on the use of the information by the Commission.
- Improving and streamlining the European system for collecting, analysing and reporting environmental information for example through the Commission's proposals for a Shared Environmental Information System (SEIS).

3 Effective policy-making processes

This will require better consideration of implementation issues, involvement of regulators and use of appropriate innovative policy instruments and tools to enable practical, proportionate and potentially, where appropriate, risk-based solutions.

Things to consider in developing this principle further:

- Good project management from start to finish.
- Sufficient engagement with regulators and other interested parties, and timeliness of decision-making to allow adequate time to implement.
- Impact assessment that considers the whole chain of regulation and the coherence of legislation. The Council and European Parliament should also assess the consequences of their amendments, by comparing them to the Commission's original proposal and impact assessment.
- The Commission's Impact Assessment Board (IAB) to engage with regulators (perhaps through existing networks) as external experts to help it in its work.
- Select the most appropriate type of instrument e.g. permitting, emission limit values, environmental quality standards, general binding rules, emissions trading etc. It should also be considered whether the use of many different legal instruments in one specific sector could result in an overly complex legal system that might be counterproductive to the environmental goals being pursued.
- Adopt/allow proportionate approaches. For example, there should be wider use of de-minimis thresholds to allow effort to be more proportionate for lower risk businesses or substances while still protecting environmental outcomes (for example low environmental impact installations in relation to the IPPC). This would allow effort to be focused on higher risk activities and reduce the burden on low risk activities.
- EU legislation to define outcomes and leave flexibility to tailor solutions at an operational level where appropriate.
- Provision for the use of a single permit or control process that implements multiple pieces of legislation, such as the IPPC permit, rather than a number of separate permits or processes.
- Technical experts to be engaged at various levels to advise on feasibility and enforceability.
- Technical annexes to be produced with as much care as the main text of a law, as their specifications can drive much of the practical consequences of implementation.

- Member States collectively, rather than the Commission alone, should produce guidance supporting EU environmental legislation, e.g. as in working groups of the Common Implementation Strategy of the Water Framework Directive.
- Timeframes for the implementation of legal requirements to be clear and developed with care to avoid difficulties in subsequent implementation and compliance. The timing requirements of different legal acts can clash if this point is not considered during the negotiation process, especially if a negotiation is protracted so that what was practicable at the beginning is not so at the end.
- Encourage provision of information to business to improve their understanding of regulation and its outcomes.
- A simple but effective process for the review and amendment of legislation, i.e. more than just a review clause in a directive and to include review of more technical aspects, often set out in annexes, by a Committee Procedure.
- The Commission to provide information to IMPEL and the Network of Heads of European Environment Protection Agencies on what legislation is forthcoming, so that they can identify those items where they might provide input.

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