



European Economic and Social Committee

NAT/759

A more constructive role for civil society in implementing environmental law

OPINION

European Economic and Social Committee

A more constructive role for civil society in implementing environmental law

[Exploratory opinion]

Rapporteur: **Arnaud SCHWARTZ**

Co-rapporteur: **István KOMORÓCZKI**

Referral	European Commission, 18/12/2019
Legal basis	Article 304 of the Treaty on the Functioning of the European Union Exploratory opinion
Bureau decision	11/12/2018
Section responsible	Agriculture, Rural Development and the Environment
Adopted in section	01/10/2019
Adopted at plenary	30/10/2019
Plenary session No	547
Outcome of vote (for/against/abstentions)	152/3/1

1. Conclusions and recommendations

- 1.1 In requesting this opinion, the European Commission (EC) stated that in organised civil society – *"employers, workers and other representatives are central to implementation"*. The EESC agrees with this and, as it did in previous opinions^{1 2}, stresses the fact that environmental legislation is not properly implemented because of a lack of political will at all institutional levels. This has nothing to do with civil society not fulfilling its role sufficiently or constructively.
- 1.2 The EESC therefore calls on the EC to develop a better compliance framework at EU level. This should happen with more transparent and resolute handling of complaints and infringements, but also by adding greater human and financial resources (for instance under the Multiannual Financial Framework – MFF). The aim is to explain what EU environmental legislation is, check whether it is properly implemented, evaluate it and assist the courts to carry out their remit when necessary.
- 1.3 The EESC supports the Environmental Implementation Review (EIR) process, which is key to providing a wide range of environmental information on issues such as sustainability, climate change and quality of life in Europe. However, it is waiting for the EC and the Member States to fulfil their obligations by integrating the views of civil society organisations (CSOs) into the EIR and country reports.
- 1.4 The EESC also asks the EC to integrate CSOs more systematically into future EU environmental law fitness checks as well as into future EIR processes at both national and EU level. This integration should take place at a very early stage during the definition of the evaluation criteria, in cooperation with the EESC or equivalent committees depending on whether this happens at European, national or local level.
- 1.5 The EESC asks the EC to ensure that the Member States develop, introduce and operate harmonised, green and sustainable tax systems based on the "polluter pays" principle. This way, resources will be systematically redistributed towards those acting to prevent the pollution of soil, water and air. This principle should also apply to municipalities and other local or regional authorities.
- 1.6 Environmental CSOs and SMEs should be more involved in providing information to employees and shaping environmental education and training to ensure that the general public has a basic understanding of these issues. This cooperation should be supported and financed by Member States. Mandatory education on climate and environmental topics (ages 6-18) should be part of each country's national curriculum, and CSOs active in the area of the environment should be involved in theoretical or practical work on a compulsory basis from 2020 onwards.

¹ EESC opinion on *EU actions to improve environmental compliance and governance*, [OJ C 283, 10.8.2018, p. 83](#).

² EESC opinion on *Implementation of EU environmental legislation in the areas of air quality, water and waste*, [OJ C 110, 22.3.2019, p. 33](#).

- 1.7 On a political level, the EESC urges all Member States to establish at the very least a ministry for environmental protection, enabling a greater focus on and better coordination and enforcement of environmental law.
- 1.8 In order to reduce our ecological footprint and strengthen sustainable development, the EESC urges Member States to implement fully Green Public Procurement (GPP) strategies in a way that is regularly and directly supervised by the EC. The latter should go further in requiring CSOs to be consulted when preparing GPP and finalising incoming bids. The possibility of using EU funds in order to strengthen the positive impact of GPP should also be put forward by the EC.
- 1.9 The EU must help to develop local development models and promote widespread domestic protection of the environment. For these reasons, a more visible EU presence is needed locally in order to ensure that EU funds are well spent and relevant public and private stakeholders are involved in properly implementing environmental law and governance. This could also respond to the need to ensure that people and organisations living in outlying regions of the EU are supported and treated as a key part of the EU. The EC should also ensure that enough well trained personnel are employed of access to information and justice, and particularly in the field of inspection in order to monitor the proper implementation.
- 1.10 The EESC points out that the EC has to safeguard and strongly sustain our key environmental and social standards when promoting and protecting the EU economy during global trade negotiations. This is not only a way to enhance European competitiveness, improve Europe's image and give its population and territories a future, but also offers a chance to show other parts of the world a more democratic and sustainable method of governance based on stronger CSO involvement.
- 1.11 The EESC proposes setting up a tripartite body (EC, the Member States and CSOs) for dispute settlements and/or for debating problems raised by CSOs before any potential environmental harm takes place or any legal remedy is sought. In addition, an independent EU scientific advisory body should be able to make recommendations to the EC when a CSO reports a problem. The EC should also present reasoned decisions.
- 1.12 The Member States and the EC should extend more political, financial and professional support to SMEs and CSOs for focusing on protecting the environment after 2020.

2. **General comments**

2.1 **The role of civil society in the governance, implementation and evaluation of environmental law**

Context

- 2.1.1 Frans Timmermans, the first vice-president of the EC, wrote to the president of the EESC in December 2018 requesting this exploratory opinion, stating that "civil society – employers, workers and other representatives are central to implementation." The EESC, as the voice of

organised civil society, reflects the grass roots opinions of EU society in areas that fall within the themes mentioned in the above letter.

2.1.2 In the past few years, the EESC has adopted several opinions dealing with this topic, which the EC should take into account^{3 4}.

2.1.3 In the light of the global rise in concern about the environment among citizens⁵, the EESC would like to remind the EC that one of the biggest issues for better implementation of environmental law has been the lack of political will at local, national and EU level. This has also resulted in insufficient human and financial resources (for instance under the Multiannual Financial Framework), which are needed in order to explain the purpose of the environmental legislation, ensure that it is properly implemented, help the courts to carry out their remit when needed⁶ and evaluate it. In other words, the insufficient implementation of environmental legislation is not due to civil society's failure to fulfil its role sufficiently and constructively. The EESC is of the opinion that the fault lies chiefly with the legislative bodies, which simply did not care enough.

2.1.4 Last, but not least, the EESC would argue that a stronger role for organised civil society in the governance, implementation and evaluation of the EU environmental regulations is essential to achieving the UN Sustainable Development Goals (SDGs), beginning with SDG 1, and putting global climate agreements into practice. Consequently, the EESC draws the attention of the competent authorities to a number of general, sectoral and topical improvements listed in this opinion.

Access to information

2.1.5 The EESC strongly supports the Environmental Implementation Review process, which is key to providing a wide range of environmental information on issues such as sustainability, climate change and quality of life in Europe. It is waiting for the EC and the Member States to fulfil their obligations by integrating the views of CSOs into the EIR and country reports.

2.1.6 The EESC asks the EC to require the Member States to adopt a mechanism enabling access to environmental information within a one-month time limit (Aarhus Convention⁷). It is no longer acceptable for the public to be forced to wait – sometimes for more than a year – before being able to access this information.

³ EESC opinion on EU actions to improve environmental compliance and governance, [OJ C 283, 10.8.2018, p. 83](#).

⁴ EESC opinion on Implementation of EU environmental legislation in the areas of air quality, water and waste, [OJ C 110, 22.3.2019, p. 33](#).

⁵ <https://glocalities.com/latest/reports/environmental-concern>

⁶ EESC opinion on Implementation of EU environmental legislation in the areas of air quality, water and waste, [OJ C 110, 22.3.2019, p. 33](#) (conclusion number 1.5)

⁷ <https://ec.europa.eu/environment/aarhus/>

2.1.7 The EESC also asks the EC to better communicate and promote the vision of EU directives more regularly and efficiently by means of social media. This could be supported by CSOs. Ongoing training and education on environmental issues are key.

Participation

2.1.8 The EESC asks the EC to integrate CSOs more systematically into future fitness checks of the EU environmental regulations as well as into future EIR processes at both national and EU level. This integration should take place at a very early stage when the evaluation criteria are defined, in cooperation with the EESC and equivalent committees at national and local level.

2.1.9 As argued in the previous opinions^{8 9}, the EESC reiterates that effective implementation of environmental protection measures depends partly on providing civil society (employers, workers and other stakeholders) with a more active role. The EESC consequently repeats its call for the stronger and more structured involvement of CSOs, which would have the potential to strengthen EIRs. For example, CSOs concerned by environmental issues at national level and scientific communities must be given the opportunity to contribute their expertise and insight to the country reports, as well as to the structured country dialogues and the follow-up to them.

2.1.10 The same is true for EU trade negotiations: the EC has to safeguard and strongly sustain our key environmental and social standards when promoting and protecting the EU economy during global trade talks. This is not only a way to enhance European competitiveness, improve Europe's image and give its population and territories a future, but also offers a chance to show other parts of the world a more democratic and sustainable method of governance based on stronger CSO involvement.

2.1.11 CSOs are often called upon to represent and voice society's concerns on costs and inconveniences in implementation. Therefore, the EESC proposes that CSOs should play a role at an earlier stage in proceedings when asked to organise consultations and become relevant actors in dispute resolution. The EESC believes that dispute resolution should come in earlier in the process.

2.1.12 The EESC proposes setting up a tripartite body (EC, Member States and CSOs) for dispute settlements and/or for debating problems raised by CSOs before any potential environmental harm takes place or any legal remedy is sought. In addition, an independent EU scientific advisory body should be able to make recommendations to the EC when a CSO reports a problem. The EC should also present reasoned decisions.

⁸ EESC opinion on *Environmental Implementation Review* , [OJ C 345, 13.10.2017, p. 114.](#)

⁹ EESC opinion on Implementation of EU environmental legislation in the areas of air quality, water and waste, [OJ C 110, 22.3.2019, p. 33.](#)

Access to justice

- 2.1.13 Once again, referring to a previous opinion¹⁰, the EESC calls for the EC to work on improving access to justice for civil society (e.g. with the right for CSOs to stand before the European Court of Justice and having specialised judges and prosecutors at EU, national and local level).
- 2.1.14 To improve access to justice, the EESC also thinks that individuals should be able to approach the European Court of Justice directly, as in the case of the European Court of Human Rights (ECHR), when the transposition of EU law into national law is at stake and domestic remedies have been exhausted.
- 2.1.15 Given the often excessive judicial delays, the EESC calls on the EC to consider establishing an environmental injunction for issues other than emergencies, with which Member States must comply, whereby work is suspended pending a decision by the Court of First Instance in the event of there being any immediate harm to the environment.
- 2.1.16 The EESC also asks the EC to create an appropriate mechanism in order that fines paid for causing environmental damage are invested in actions aimed at supporting environmental protection.
- 2.2 Civil society's proposals regarding the role of SMEs, employers, trade unions and environmental organisations in implementing environmental law**

The role of SMEs in implementing environmental law

- 2.2.1 As pointed out in a previous opinion¹¹, the EESC, like the EC, is cautious in acknowledging that a lack of respect for the mechanisms that guarantee the implementation of environmental legislation and governance is a regrettable factor that contributes to unfair competition and causes economic harm.
- 2.2.2 SMEs and micro enterprises in particular represent 99.8% of firms in Europe: they are defined either by staff numbers or by turnover and balance sheet volume¹². SMEs' contribution to value creation and employment, as well as their environmental impact, is considerable. Though individually SMEs have generally limited human and financial resources, it is in everyone's interest to mobilise and encourage them to focus more on the rules of environmental protection. SMEs' abilities and involvement in innovation, renewal, job creation and maintaining social progress are very important for achieving the UN SDGs and meeting the Paris Agreement's global climate goals. There are a number of other important areas such as health, agriculture, manufacturing, tourism and hospitality, services and business in general where developing and harmonising environmental standards, safeguarding sustainable development and tackling

¹⁰ EESC opinion on EU actions to improve environmental compliance and governance, [OJ C 283, 10.8.2018, p. 83](#).

¹¹ EESC opinion on EU actions to improve environmental compliance and governance, [OJ C 283, 10.8.2018, p. 83](#).

¹² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003H0361>

climate change issues are key. In this regard, the EC, Member States and CSOs really need to work more closely with SMEs.

2.2.3 The EESC calls on the EC to ensure that the Member States develop, introduce and operate harmonised, green, sustainable and environmentally friendly tax systems based on the "polluter pays" principle. This way, resources will be systematically redistributed towards those fighting to prevent soil, water and air pollution. This principle should also apply to municipalities and other local or regional authorities.

The role of trade unions and employers in implementing environmental law

2.2.4 The EESC calls on the EC to subsidise some of the costs incurred in training employees to recognise and implement environmental regulations as part of courses organised by trade unions and/or employers.

2.2.5 CSOs concerned by environmental protection and SMEs should be more involved in providing information to employees and shaping environmental education and training to ensure that the general public has a basic understanding of these issues. This cooperation should be financed by Member States. Mandatory education on climate and environmental topics (ages 6-18) should be part of each country's national curriculum, and CSOs active in the area of the environment should be involved in theoretical or practical work on a compulsory basis from 2020 onwards.

The role of CSOs concerned by environmental issues in implementing environmental law

2.2.6 The EESC asks the EC to ensure that the EU budget covers the costs linked to the contributions by non-profit CSOs to the EU and national processes, as well as to the structure of governance, implementation and evaluation of environmental law.

2.2.7 Generally speaking, Member States and the EC should extend more political, financial and professional support to SMEs and CSOs for focusing on protecting the environment after 2020.

2.2.8 CSOs concerned by environmental issues should be able to participate in decision-making on the use of EU funds at regional level for projects that have an impact on the environment. In addition, CSOs should have easier access to these funds.

2.2.9 Moreover, environmental CSOs must have the ability to advise and participate in the drafting of annual Member State reports related to environmental directives (e.g. in relation to the Birds and Habitats Directives or the state of the environment of each country). The EC should also be more vigilant in ensuring that Member States issue these reports on time (because some are not submitted when they should be, as stipulated in Article 16 of the Habitats Directive or Article 9 of the Birds Directive).

2.3 Organised civil society's proposals regarding its role in implementing environmental law in the fields of waste, air and biodiversity

The role of civil society in implementing environmental regulations in the field of waste

- 2.3.1 The EESC is deeply concerned that, based on the EC's report, half of EU countries are running the risk of missing the municipal waste recycling target of 50% by 2020¹³.
- 2.3.2 The EESC urges the EC and the Member States to phase out the burning and burying of recyclable waste. It is high time that the EC and the Member States meet their commitments with regard to protection of the environment rather than accepting lobbies acting against an urgently needed sustainable, zero waste and circular economy.
- 2.3.3 In this respect, the EESC urges all Member States to play a significant role in focusing on and acting in the interest of protecting the environment. The EC should ask Member States to establish, as part of their governmental structure, a ministry with a portfolio of environmental protection and sustainable development enabling them to focus more on coordinating and enforcing the EU environmental regulations.
- 2.3.4 In order to facilitate the meeting of waste targets and support this process by means of better education and training, the EESC also urges the Member States to introduce clear education and information campaigns on waste prevention and management that targets the general public, including primary and secondary schools. In order to highlight better the overall social responsibility for protecting the environment, the targeted activities of SMEs and NGOs with regard to waste collection and management should regularly receive a much broader on-line coverage on the part of the EC and Member States. Following the example of the European Green Capitals competition (in 2019: Oslo¹⁴), the EESC proposes that, starting from 2020, the EC should give national environmental NGOs the necessary financial resources to annually award similar *green prizes* in the Member States to three rural settlements (cities or towns) based on their environmental performance. This prize, of course, will be more symbolic than substantial, while targeted local and national media interest will emphasise the importance of this issue.
- 2.3.5 Taxes, tax penalties, exemption from paying certain taxes and tax reliefs are important incentives for countries' economic management and growth when encouraging or discouraging stakeholders to reduce, dispose of, destroy and manage waste as a useful resource. With a view to involving SMEs in managing waste resources more efficiently and maintaining better air quality, the EESC suggests that Member States impose higher taxes for waste landfill, seriously reduce or even ban waste incineration and implement the "*pay as you throw*" principle across all Member States, as well as imposing penalties for contaminated recyclables. The introduction of green (or environmentally friendly) taxes or one-time tax relief for SMEs making key innovations in waste management and re-use would be very useful.

13 [COM\(2019\) 149 final](#)

14 http://ec.europa.eu/environment/europeangreencapital/index_en.htm

- 2.3.6 The EESC strongly supports the basic goals outlined in the Waste Framework Directive, which stipulates that waste should be managed without endangering human health and harming the environment, and in particular without risk to water, air, soil, plants or animals, without causing a nuisance through noise or odours, and without adversely affecting the countryside or places of special interest¹⁵. As a follow-up, the EC should complement EU waste legislation and policy by devising a mixture of selective waste collection methods (door-to-door, waste islands, tips, collective-societal actions in waste collection) and establishing a national network of tips. Mandatory introduction (and enforcement) of deposit return schemes for single-use containers (PET, aluminium, glass), intelligent use of bulky waste (reuse centres), extension of separately collected waste (textile, biodegradable, hazardous) and wider encouragement of home and community composting, together with financial and technical support for the use of compost, will reduce the waste disposal burden.
- 2.3.7 CSOs and relevant SMEs (mainly waste management companies) should be better involved in related environmental decision making and national implementation. The Member States should establish financial support schemes for SMEs playing an active role in waste collection, waste recycling, waste re-evaluation and the circular economy more generally.
- 2.3.8 In order to reduce our ecological footprint and strengthen sustainable development, the EESC urges Member States to implement fully Green Public Procurement (GPP) strategies in a way that is regularly and directly supervised by the EC. The latter should go further in requiring national environmental NGOs active in Member States to be involved when preparing GPP and finalising incoming bids. The possibility of using EU funds in order to strengthen the positive impact of GPP should also be put forward by the EC.
- 2.3.9 EIR¹⁶ should be published regularly, sharing relevant information on an ongoing basis. The EIR published on 4 April 2019 referred to a study which estimated that the total costs for society of current environmental implementation gaps are around EUR 55 billion annually¹⁷.
- 2.3.10 EU peer-to-peer expert exchanges between Member States' environmental agencies and municipalities have been functioning well for the last two years and have provided stakeholders with greater awareness. However, new ideas and best practices learned should receive much wider on-line coverage in the Member States by ensuring that the content and outcome of these peer-to-peer events are regularly published. Better involvement on the part of national CSOs and SMEs can result in closer technical or business cooperation and faster recognition of SME opportunities. The EESC urges the EC to publish global environmental dates¹⁸ each year, calling on and enabling local stakeholders in the Member States, when mobilising or financing stakeholders, businesses, CSOs and authorities to organise waste collection, clean-up or air quality improvement events.

15 <http://ec.europa.eu/environment/waste/framework/>

16 http://ec.europa.eu/environment/eir/pdf/eir_2019.pdf

17 http://ec.europa.eu/environment/eir/pdf/study_costs_not_implementing_env_law.pdf

18 https://en.wikipedia.org/wiki/List_of_environmental_dates

The role of civil society in implementing environmental law in the field of air

- 2.3.11 Due to mounting health and environmental problems, Member States should improve overall air quality and involve NGOs and businesses more actively in the pollution-prevention process. Heating in households using coal and wet wood, burning of commercial (e.g. plastic, textile), garden or other waste in the open air, old vehicles with engines that produce higher emission yields, civil and military aviation¹⁹, road transport, maritime transport, river and ocean cruise ships, as well as some industrial and agricultural practices, all cause considerable air pollution.
- 2.3.12 The EESC fully appreciates the Common Agricultural Policy (CAP), which introduced binding rules on environmental protection to promote sustainable development (Article 11, TFEU), on consumer protection (Article 12), on animal welfare requirements (Article 13), etc. The EESC encourages the EC to continue improving these fields and e.g. introduce new CAP measures linked to the improvement of air quality and reduction of emission levels. However, in order to alleviate problems relating to the cost borne by small business and farmers, the EU should also fully implement the decision to establish a proper alternative fuels infrastructure²⁰ as agreed under Directive 2014/94/EU on the deployment of alternative fuels infrastructure²¹.
- 2.3.13 In order to reduce air pollution from old vehicles, the EC should stop cross-border sales of second-hand cars that are more than five years old. Reducing road freight transport, improving conditions for rail, sea and river freight transport and implementing low emission zones in inhabited areas are key factors in reducing air pollution. With a view to avoiding air and noise pollution, there is a need for further efforts and the use of Member State funds to replace current outdated diesel car engines with e-cars or at least engines with lower emissions between 2022 and 2027.
- 2.3.14 In order to improve air quality, the EC should support the Member States in modernising rolling stock, eliminating speed restrictions on railway lines, extending electronic distance-based road tolls for trucks to all roads and introducing greater differentiation of the toll system based on emissions. The Member States – based on regular dialogue with NGOs and relevant SMEs – should establish urban road pricing in capital cities (including introduction of a congestion charge by 2025) and create more zones for pedestrians, bigger parks and other green areas in cities. NGOs and SMEs should be regularly involved and consulted online when planning and introducing these zones.
- 2.3.15 The EESC urges the EC to look into regulations on using more renewable energy, thus stepping up the share of renewables in the provision of electricity and heating. Both NGOs and SMEs should be visibly involved in devising new national energy plans resulting in decreased energy use, especially of fossil fuels. Member States should discuss tangible and feasible

¹⁹ EESC opinion on *Emissions trading scheme on aviation activities*, [OJ C 288, 31.8.2017, p. 75](#).

²⁰ EESC opinion on *Action Plan on Alternative Fuels Infrastructure*, [OJ C 262, 25.7.2018, p. 69](#).

²¹ <https://eur-lex.europa.eu/eli/dir/2014/94/oj>

proposals in this regard; best practices should also be recognised and given the necessary financial resources. Member States should regularly share their best environmental practices.

The role of civil society in implementing environmental law in the field of biodiversity

2.3.16 For the EESC, especially when it comes to the impact on biodiversity, it is essential that Member States carry out public consultations at an early stage, when all options are still open and there is room for a true analysis of alternatives. It is primarily up to the Member States and the competent authorities to ensure that developers take this requirement seriously and encourage early public consultations.

2.3.17 In order to enable CSOs to hold genuine discussions with the EC, the functioning of the EC (especially how decisions are made) and its expectations (the kind of information expected) should be clarified, for example in the event of failure to uphold environmental law or risk of damage to biodiversity.

2.4 Civil society's proposals regarding implementation of environmental law and the EC's role as guardian of the Treaties

2.4.1 The EESC calls on the EC to submit comments to national parliaments when a Member State legislates to transpose EU environmental law.

2.4.2 The EESC also wants the EC, at the request of third parties, to produce observations and communicate them to the parties concerned when a challenge to a national provision transposing EU environmental law is referred to a supreme court.

2.4.3 The EESC asks the EC to remind the Member States that the concept of over-transposition does not exist in EU legislation and that EU environmental law requires that measures be taken on an ongoing basis to improve the state of the environment. Therefore, EU legislation forbids any backsliding.

2.4.4 The EESC also calls on the EC to explain to Member States that EU environmental law, which authorises derogations from the rules of secondary legislation, requires that those derogations be strictly delimited by the states in order not to contravene the EU's objectives.

2.4.5 The EESC encourages the EC to continue drafting guidelines to facilitate the interpretation and application of secondary environmental law, particularly in two fields:

- a) taking into account health issues in environmental evaluations,
- b) defining wetlands by their multi-functional functionality.

2.4.6 The EU must help to develop and observe local development models and promote protection of the environment. Therefore, local EC checks on a more regular basis are needed in the Member States to ensure that EU funds are well spent and that all relevant public and private stakeholders are properly implementing environmental regulations and governance. This could also respond to the general requirement that people and organisations living in outlying regions

of the EU are supported and treated as a key part of the EU. The EC should also ensure that enough well trained personnel are employed in each Member State in the fields of access to information and justice, and even more in the field of inspection, in order to monitor the proper implementation of environmental regulations.

2.4.7 The EESC calls on the president of the EC to endow the Commissioner for Environmental Protection with greater authority, especially with regard to environmental and health-related issues. The commissioner should also focus on and become more involved in coordinating developments in rural areas, improving quality of life everywhere and ensuring that domestic businesses comply with agreed EU environmental requirements. The competitive economy of the future has to become the economy of beauty, covering all that is beautiful and good: cultural, artistic, environmental, locally based activities that improve quality of life. Growth of domestic happiness (GDH) i.e. overall well-being, – which is linked to a healthier economy and creates better and more sustainable economic, social and environmental values that can then be re-generated – should be one of our basic goals.

Brussels, 30 October 2019

Luca JAHIER

The president of the European Economic and Social Committee
