



European Economic and Social Committee

NAT/708

The EU Environmental Implementation Review

OPINION

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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 –

The EU Environmental Implementation Review:

Common challenges and how to combine efforts to deliver better results

[COM(2017) 63 final]

Rapporteur: **Mihai MANOLIU**

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1. Conclusions and recommendations

- 1.1 In the EESC's view, the EU Environmental Implementation Review (EIR) reveals that poor, fragmented and uneven implementation of the EU environmental legislation is a serious problem in many EU Member States. Behind the root causes of poor implementation identified in the EIR there would appear to be a lack of political will on the part of many Member-State governments to make substantial improvement a political priority and to provide sufficient resources. The EIR country reports demonstrate just how much the EU must do to achieve the objectives and milestones established in the 7th Environmental Action Programme (7th EAP):
- to protect, conserve and enhance the Union's natural capital;
 - to turn the Union into a resource-efficient, green and competitive low-carbon economy;
 - to safeguard the Union's citizens from environment-related pressures and risks to health and well-being.
- 1.2 The EESC underlines that proper implementation of the EU's environmental acquis is in the interest of European citizens and has real economic and social benefits. Citizens' health needs a healthy environment. Functioning ecosystems are a prerequisite for agricultural and many other economic activities. Even implementation of environmental standards across the Member States ensures a level playing field for businesses. Moving the economy towards environmentally responsible practices provides important potential for economic modernisation and innovation, business and employment opportunities and good employment conditions.
- 1.3 The Member States are chiefly responsible for implementation, while the Commission plays an important role in ensuring that implementation is carried out in an appropriate and even manner. Political will, integration of environmental and other policies, and active involvement of civil society in the decision-making and review processes are the key prerequisites for the successful implementation of environmental legislation at Member-State level.
- 1.4 European citizens value the EU for its high environmental standards. Poor implementation of these standards undermines the EU's credibility in terms of making sure that these standards are applied equally by all EU Member States.
- 1.5 The EESC welcomes the EIR as a new approach and an important step in an ongoing process which is intended to establish a joint commitment by the Commission and the Member States to improve the implementation of environmental policies and legislation. This process must be continued with due regard for synergies, a comprehensive approach, transparency and inclusiveness.
- 1.6 The EESC endorses the integrated policy approach of the EIR and points out that this must also apply to the integration of environmental and social policies. The implementation of environmental objectives can only be improved if social impacts – the consequences for the labour market and consumers, particularly vulnerable groups – are carefully addressed and taken into account in a proactive way. Market-based instruments, such as environmental tax reforms, are important tools to achieve the objectives laid down in environmental legislation. In

this context, the EESC points out that the commitments to phase out environmentally harmful subsidies must be put into effect.

- 1.7 The EIR should be further developed in the coming years by extending its scope to other environmentally relevant fields of legislation, such as climate and chemicals legislation.
- 1.8 Environmental implementation should be considered together with other policy areas in an integrated manner. In order to facilitate cross-cutting solutions, joint discussions by the Council of Environment Ministers and other Council configurations should be arranged. The relationship between the European Semester and the EIR should be further clarified so as to ensure that the potential of various instruments is harnessed in an optimal way.
- 1.9 The EESC welcomes the Commission's efforts to set up structured dialogues with Member-State governments based on the findings of the country reports. In order to be effective, these dialogues must be transparent and provide a clear outcome and follow-up. A set of prerequisites for effective dialogue processes should be considered and laid down for all parties involved.
- 1.10 The EESC points out that effective implementation of environmental protection measures hinges partly on civil society - employers, workers and other representatives of society - being granted an active role, by enabling the general public to monitor the proper implementation of environmental legislation through free access to environmental information, participation in the environmental policy-shaping process and access to justice. People must have access to accurate reports on the implementation of environmental legislation in the places where they live and work. All positive developments in the field of environmental protection have included significant involvement by civil society, the watchdog of democracy.
- 1.11 The EESC regrets that civil society's key role is not sufficiently reflected in the EIR. Stronger involvement of civil society would have the potential to strengthen the EIR project. Civil society organisations at national level 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. The EESC is ready to facilitate civil society dialogue at EU level.

2. Introduction

- 2.1 In May 2016, the Commission launched the Environmental Implementation Review (EIR)¹ in order to improve the implementation of EU environmental legislation in the EU Member States. The EIR is an information-based and cooperative policy instrument which does not introduce any legal requirements or reporting obligations. It is designed to be an ongoing process with biannual country reports by the Commission and dialogues with the Member States.
- 2.2 In February 2017, the Commission published the first set of 28 Member State country reports and a communication on the EIR with a summary of the findings and conclusions and the measures that the Commission will undertake.

¹ [COM\(2016\) 316 final](#)

3. General comments

- 3.1 The EU has a comprehensive acquis of environmental legislation. However, proper implementation is a serious problem. The EIR country reports demonstrate the fragmented and uneven implementation of environmental legislation in EU Member States. The EIR correctly describes the benefits of proper implementation for the quality of life of European citizens, a level playing field for businesses, and job creation². The costs of non-implementation are estimated at EUR 50 billion/year³.
- 3.2 The 7th Environment Action Programme (7th EAP) adopted by the European Parliament and the Council in 2013⁴ has made better legislative implementation one of its top priorities. The EESC appreciates the fact that the Commission is putting this into practice with the EIR.
- 3.3 The country reports summarise information which is not entirely new. However, their clear added value lies in the fact that, for the first time, implementation gaps are addressed in a comprehensive and crosscutting way, covering major fields of environmental legislation and all the Member States. This new level of assessment makes it possible to analyse common root causes and structural obstacles to ensure better implementation and develop remedies and enabling tools.
- 3.4 The approach taken by the EIR also makes it possible to move away from reacting to poor legislative implementation by means of infringement procedures to proactive measures by addressing the root causes of poor implementation. However, the EU Member States are chiefly responsible for the implementation of EU environmental legislation. It must be acknowledged that in many cases a lack of political will on the part of many Member-State governments to make substantial improvement a political priority and to provide sufficient resources for it appears to lie behind the root causes for poor implementation identified in the EIR⁵. Therefore, the EESC would appreciate it if the EIR could help to place the need for better implementation on the political agenda in EU Member States and Council meetings.
- 3.5 The Commission must tackle poor implementation of EU legislation by Member States through appropriate and stringent measures, including infringement procedures. The EESC is worried that so far, these measures have not been effective. European citizens value the EU partly for its high environmental standards. Therefore, poor implementation of these standards undermines the credibility of the EU in the eyes of its citizens.
- 3.6 The country reports are a good basis for a structured dialogue between the Commission and each Member State; they also allow Member States to learn from each other, identify common problems and learn from best practice, acting on the principle that sharing is power.

² [COM\(2017\) 63 final, p. 2](#)

³ European Parliament, At a glance, Environmental Implementation Review.

⁴ [OJ L 354, 28.12.2013, p. 189](#)

⁵ EESC opinion on the Proposal for a Decision of the European Parliament and of the Council on a General Union Environment Action Programme to 2020 "Living well, within the limits of our planet", [OJ C 161, 6.6.2013, p. 77](#), paragraph 1.2.

- 3.7 As citizens, local communities and companies are the real actors when it comes to carrying out environmental measures, civil society must play an active role in the EIR. Making civil society a partner in this endeavour is imperative.
- 3.8 The EESC appreciates the fact that the Commission considers civil society involvement to be an important asset for EIR follow-up. However, the EIR is still quite vague about how civil society should be involved. Civil society participation has to be ensured throughout the EIR, not only during follow-up. This aspect of the EIR should be developed.

4. Specific comments

4.1 Scope of the EIR

- 4.1.1 So far, the EIR covers the circular economy and waste management, nature and biodiversity, air quality and noise as well as water quality and management - a comprehensive field of environmental legislation. Other sectors closely related to these policy fields should be integrated into the next round. This applies in particular to climate mitigation and adaptation which are key for many environmental policies, such as the protection of nature and biodiversity and water management. The implementation of chemicals legislation is crucial for a healthy environment, well-being and a clean circular economy.

4.2 Country reports

- 4.2.1 The country reports provide a very good overview of the environmental challenges facing each Member State and its performance in the implementation of environmental legislation. The EESC also appreciates the fact that the country reports refer to the Sustainable Development Goals related to those challenges. This demonstrates that improving environmental performance is part of a bigger sustainable development approach, pursuing economic, social and environmental progress in an integrated, holistic and balanced way.
- 4.2.2 The country reports also provide added value for citizens and civil society organisations in the respective countries: not only do they provide non-governmental stakeholders with a good overview of the situation in their own country, they also enable them to compare performance with other Member States and identify shortcomings and untapped potential. The country reports must be regarded as a valuable tool for civil society in European Member States to hold their governments accountable for ensuring a healthy environment. They enable civil society to push for better implementation of environmental legislation.
- 4.2.3 However, this potential could be further strengthened by involving civil society still more in the preparation of the country reports, structural dialogues and follow-up, as well as in the review of the reports in the next biannual cycle. Civil society organisations have significant expertise that can feed into the identification of the major environmental challenges facing their country. They should therefore be consulted from the outset.

4.2.4 In order to establish the EIR as a continuous process, it will be important to track progress in the implementation of the recommendations of the previous rounds of country reports and summarise the results in the following EIR round.

4.3 **Root causes of poor implementation and enabling tools for improvements**

4.3.1 The EESC appreciates the fact that the Commission sees the EIR as an opportunity to analyse common root causes of poor implementation. The initial assessment in the communication should be continued with the Member States, factoring in the first-hand experience and knowledge of non-governmental stakeholders as well as research by academics, think tanks and the EU Network for the Implementation and enforcement of Environmental Law (IMPEL).

4.3.2 The Commission has already identified important common root causes: ineffective coordination between local, regional and national authorities, lack of administrative capacity and insufficient financing, lack of knowledge and data, insufficient compliance assurance mechanisms and the lack of integration and policy coherence.

4.3.3 The Commission mentions some examples of better policy coordination and integration, such as a coordinated approach to clean air policy and policies on mobility. The EESC endorses this integrated policy approach and points out that this must also apply to the integration of environmental and social policies. The implementation of environmental objectives can only be improved if social impacts – the consequences for the labour market and consumers, particularly vulnerable groups – are carefully addressed and taken into account in a proactive way.

4.3.4 Ultimately, the lack of political will is behind many of these problems⁶. It will therefore be important that the EIR succeeds in its objective of addressing the implementation of environmental legislation as a political issue and places it on the EU agenda.

4.3.5 The EESC also emphasises that the authorities' competences and knowledge are prerequisites for proper implementation. In addition, awareness raising and communication are vital for helping civil society take part in the EIR process.

4.3.6 The Commission mentions market-based instruments and investments as enabling tools for improving the objectives included in the environmental legal frameworks. The EESC has pointed out in a previous opinion the potential of environmental tax reforms shifting tax burdens from labour to resource use for achieving both job creation and economic innovation, as well as reducing adverse environmental impacts⁷.

4.3.7 In the same opinion, the EESC complained about ongoing environmentally harmful subsidies. Little progress has been made. Both tax reform and the phasing out of environmentally harmful

⁶ EESC opinion on the 'Proposal for a Decision of the European Parliament and of the Council on a General Union Environment Action Programme to 2020 "Living well, within the limits of our planet" NAT/592, 7th Environment Action Programme, [OJ C 161, 6.6.2013, p. 77](#)

⁷ EESC opinion on the Market-based instruments towards a resource efficient and low carbon economy in the EU (own-initiative opinion) [OJ C 226, 16.7.2014, p. 1](#)

subsidies are mentioned by the Commission in its communication as important enabling tools for better implementation. However, no approach is being presented to change this deadlock.

4.4 The way forward

4.4.1 As pointed out by the Commission, the responsibility for proper implementation of the EU environmental acquis lies primarily with the Member States. However, there are certainly also important issues at EU level that can hamper or support proper implementation. Smart integration of environmental objectives and other policy fields has to start at EU level with smart and consistent regulation and the earmarking of funds. The greening of the CAP is a good example of that and there are lessons to be learned. More policy coherence for sustainable development at EU level could also contribute to improving environmental performance in EU Member States. The EIR should also be used as a mechanism for obtaining feedback on whether the EU policies or legislation being implemented need to be corrected or updated.

4.4.2 Based on the findings of the first round of the EIR, the Commission offers to facilitate Member States' efforts by setting up a structured implementation dialogue with each Member State, providing tailored support to Member States' experts by their peers in other Member States and discussing common structural issues in the Council. The EESC welcomes these measures – although we have doubts as to whether they will be sufficient to improve the overall quality of Member States' environmental performance.

4.5 Structured dialogues

4.5.1 The introduction of structured dialogues similar to the approach in the European Semester process has already been envisaged in the 7th EAP⁸. The communication lacks information about the practical arrangements for these dialogues, which should not be left to the discretion of Member-State governments. A set of prerequisites for effective dialogue processes should be considered and laid down for all parties involved.

4.5.2 Balanced participation by a wide range of non-governmental stakeholders as well as regional and local authorities must be ensured. They must be invited well in advance and provided with appropriate information in order to be able to prepare their contributions.

4.5.3 In order to be effective, these dialogues must be organised in a result-oriented manner. The results and next steps, the commitments of the participants and timelines should be clearly established and monitored. The 7th EAP mentions "partnership implementation agreements" between the Commission and the Member States. This instrument should also be considered in the EIR. Commitments can also come from non-governmental stakeholders, such as industry, retail or agriculture.

⁸ 7th EAP, point 59.

4.6 Peer-to-peer support

4.6.1 The EESC welcomes the organisation of peer-to-peer support between Member States' experts. The rich and long-standing experience of the EU Network for the Implementation and enforcement of Environmental Law (IMPEL) should be taken into account.

4.6.2 The exchange of single experts should be complemented by broader programmes of mutual support between Member States, similar to the PHARE "Twinning" projects which successfully supported adaptation to the EU acquis during the 2004-2007 EU enlargement process. The introduction of peer-review programmes should also be considered – similar to the OECD programme of Environmental Performance Reviews⁹.

4.7 Discussion on common structural issues in the Council

4.7.1 The Commission intends to discuss common structural obstacles to proper implementation in the Council. This would place the issue of implementation on the political agenda. Information is lacking about how this will be arranged.

4.7.2 With the "greening" of the European Semester, attempts have been made in recent years to use this central governance coordination mechanism between the Commission and the Member States to improve environmental performance as well. This would bring problems in environmental performance directly to the attention of heads of government and would facilitate integrated solutions.

4.7.3 However, the greening of the European Semester has not been very successful so far. The Commission does not want to replace the greening of the Semester process with the EIR. However, in this case the relationship between the Semester and the EIR should be further clarified so as to ensure that the potential of each of these instruments is harnessed in an optimal way.

4.7.4 Discussions during meetings of the Council of Environment Ministers alone will probably not be sufficient. In order to facilitate integrated and cross-cutting solutions, joint discussions with other Council configurations should be pursued, such as joint discussions with the Ministers for Transport or Employment and Social Affairs.

4.8 Legal means of legislative enforcement

4.8.1 The Commission has clarified correctly that the EIR should not replace legal action to improve the implementation of environmental legislation; this does not fall within the scope of the EIR. However, the EIR's more cooperative approach will only be successful if the option of legal consequences and sanctions is applied credibly and effectively. This applies to infringement procedures by the Commission in the event of breaches of environmental legislation, as well as to the legal means by which citizens and civil society hold governments at Member-State and EU level accountable.

⁹ <https://www.oecd.org/site/peerreview/environmentalperformancereviews.htm>

4.8.2 The EESC would like to remind the Commission and the Member States that certain measures enhancing the enforcement of environmental legislation were included in the 7th EAP and have not been addressed so far:

- extending binding criteria for effective Member-State inspections and surveillance to the wider body of Union environmental legislation,
- ensuring consistent and effective mechanisms at national level for the handling of complaints about the implementation of Union environmental legislation.

4.8.3 The EESC will assess the forthcoming Commission communication on citizens' access to justice in environmental matters in a separate opinion.

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Georges DASSIS

The president of the European Economic and Social Committee
