



**REPORT ON THE CONSULTATION OF  
THE SUBSIDIARITY MONITORING NETWORK:**

**TOWARDS A 7TH ENVIRONMENT ACTION PROGRAMME (EAP) - BETTER  
IMPLEMENTATION OF EU ENVIRONMENT LAW**

Rapporteur: Ms Nilgun Canver (UK/PES)



<http://subsidiarity.cor.europa.eu>

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**Disclaimer:**

*This report does not seek to reproduce all the contributions to the consultation of the Subsidiarity Monitoring Network on the Communication Improving the delivery of benefits of EU environment measures: Building confidence through better knowledge and responsiveness (COM (2012) 95 final), but rather aims to synthesise the main points. The information it contains is purely for illustration purposes. The report is not binding on the CoR administration and does not prejudice the final content of the relevant CoR opinion.*

*The report was written by Ecologic Institute, Berlin, Germany. It does not represent the official views of the Committee of the Regions.*



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This document consists of 46 pages.

## 1. Introduction

Ms. Nilgun Canver (UK, PES, Committee of the Regions (CoR) rapporteur for the dossier *Towards a 7<sup>th</sup> Environment Action Programme (EAP) – better implementation of EU environment law*) asked for a targeted consultation of the Subsidiarity Monitoring Network (SMN). A questionnaire touching on subsidiarity-related issues<sup>1</sup> was therefore submitted to the SMN members. The consultation ran from 25 May to 6 July 2012.

The purpose of the consultation was to gather feedback on the European Commission's Communication of 7 March 2012 entitled *Improving the delivery of benefits of EU environment measures: Building confidence through better knowledge and responsiveness* (COM (2012) 95 final), in particular on the role of local and regional authorities in the implementation of EU environment law and how the respondents view selected options for strengthening the implementation of environment law, particularly regarding the principle of subsidiarity.

Furthermore, the consultation aims to provide input to the preparation of the CoR opinion, which will discuss the aforementioned European Commission's Communication and aims to feed into the work on the Commission's proposal for a 7<sup>th</sup> EAP.

The consultation resulted in eight replies from one local and seven regional stakeholders from five Member States (MS): one from Germany, one from Italy, one from Portugal, four from Spain, and one from the United Kingdom. In addition, the Association of Dutch Municipalities (VNG) issued an opinion as a contribution to the working document of the rapporteur on "The development of a 7<sup>th</sup> EAP to ensure better implementation of EU environmental legislation". Its applicable content was used in the preparation of this report.

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<sup>1</sup> See Appendix I.

Table 1 shows the list of respondents.

**Table 1: List of respondents to the consultation**

#	Country	Authority	Administrative level	Network
1	Germany	Bavarian State Government (Bayerisches Staatsministerium für Umwelt und Gesundheit, Referat Fachübergreifendes Recht)	R	SMN
2	Italy	Marche Regional Legislative Assembly	R	SMN
3	Portugal	Madeira Regional Government (Direção Regional dos Assuntos Europeus e da Cooperação Externa)	R	SMN
4	Spain	Catalan Regional Government (Secretaria de Medi Ambient i Sostenibilitat)	R	other stakeholder
5	Spain	Catalan Regional Parliament <sup>2</sup>	R	SMN
6	Spain	Extremadura Regional Parliament	R	SMN
7	Spain	Basque Government (Departamento de Medio Ambiente, Planificación Territorial y Agricultura y Pesca)	R	SMN
8	UK	Antrim Borough Council	L	other stakeholder
9	Netherlands	Association of Dutch Municipalities (Vereniging van Nederlandse Gemeenten)	L	SMN

Note: L=Local, R=Regional

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<sup>2</sup> The contributions from the Catalan Regional Parliament and the Government are identical.

## 2. Synthesis and Analysis of the Contributions

### 2.1 Implementation of EU environment law by local and regional authorities (Question 1)

#### A. Transposition of EU law into national law

*Seven of the nine contributions state that their authorities are involved in the transposition of EU environment law into national law in their Member State (Germany, Portugal, Spain, and the UK). One respondent says that this task belongs mainly to the central level of government. And the last one does not address this issue.*

The Basque Government, Spain, comments that the Autonomous Community of the Basque Country has the competence to develop and apply basic regulations in the field of environment and, in this context, approves regulatory provisions and participates in the drafting of national legislation that transposes EU law.

In Italy, local and/or regional authorities are not involved: The Marche Regional Legislative Assembly responds that, in Italian law, the role of transposing European legislation into national law belongs primarily to the central level of government. National legislation can also identify the general principles that must be observed by regions when implementing measures.

#### B. Application of—directly applicable and transposed—EU law (e.g., issuing permits)

*The eight respondents to the consultation indicate that their authority, i.e., seven regional and one local authority, is involved in the application and enforcement of EU environment law, including directly applicable EU legislation and EU law that has been transposed into national law. The opinion from the Association of Dutch Municipalities does not address this issue.*

The Antrim Borough Council, UK, specifies that it is involved when applicable. The Marche Regional Legislative Assembly, Italy, states that, according to the division of powers outlined by Italian state law, the regions and local authorities exercise administrative power concerning the issuance of environmental permits. The Basque Government, Spain, explains that it adopts measures for the implementation of EU environment law by issuing permits.

#### C. Enforcement

*The eight respondents to the consultation state that their regional or local authority is involved in the enforcement of EU environment law in their jurisdiction. The opinion from the Association of Dutch Municipalities does not address this issue.*

The Basque Government, Spain, comments that it is involved in the application of EU environment law by issuing permits (cf. item B. Application of EU law) and by carrying out the relevant enforcement work. The Marche Regional Legislative Assembly comments that in Italy enforcement activities are primarily entrusted to local authorities.

## **2.2 Subsidiarity: Improving knowledge on implementation — strengthening the provisions of the Access to Information Directive (Question 2)**

*Four respondents believe that the provisions of the Access to Information Directive<sup>3</sup> should be strengthened to improve knowledge about the implementation of EU environment law, two respondents consider that this is not necessary, and one does not explicitly answer the question but indicates through a detailed comment that the provisions of this Directive are essentially able to ensure access to proper environmental information. One respondent is hesitant regarding the creation of new EU-level information systems. One respondent does not answer the question.*

### *Strengthening of the Access to Information Directive*

Of those who believe that the provisions of the Directive should be strengthened, the Extremadura Regional Parliament, Spain, comments that the problem with the Access to Information Directive lies in the difficulty faced by citizens attempting to access and consult European law. Instead, it would be desirable to consider establishing a system that enables real-time access to existing environmental legislation.

While the Marche Regional Legislative Assembly, Italy, believes that the provisions of the Directive are essentially able to ensure access to proper environmental information, it also highlights rather technical issues that could be addressed in a possible revision of the Directive: In its view, it would be desirable to make environmental information accessible primarily through electronic information and communication technologies, which Article 7 of the Directive provides for only if available. It should also be envisaged to interconnect electronic databases containing environmental information and to consider binding rules for Member States that require the dissemination of information regarding the existence of these databases. In addition to these issues, the Marche Regional Legislative Assembly further states that the next Environment Action Programme as well as the next phase of EU cohesion funds for 2014-2020 should include specific measures to support not only environmental monitoring but also the implementation of systems that aim to disseminate environmental information.

### *No strengthening of the Access to Information Directive*

The Basque Government, Spain, and the Bavarian State Government, Germany, believe that it is not necessary to strengthen the provisions of the Access to Information Directive and that its current provisions and existing national law are already providing citizens with sufficient access to information. The German respondent also states that the unconditional access to information through conventional means as well as through electronic media is comprehensively regulated by binding provisions in Germany. The Association of Dutch Municipalities (VNG), while supporting the need for efficient and flexible information systems to improve knowledge on implementation of EU environment law, favors the use of existing infrastructure in and by individual Member States. The creation of European information systems should only be pursued if they contribute to reducing the administrative burden and are more cost effective than those in use by Member States. To test this requirement, the VNG requests an impact assessment by the European Commission. Prior to its

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<sup>3</sup> Directive 2003/4/EC on public access to environmental information and repealing Council Directive 90/313/EEC

completion the VNG regards it as premature to consider formulating guidelines for information sharing. Member States should also work on intensifying the exchange of experiences in this field.

The respondent from UK does not answer the question.

### **2.3 Subsidiarity: Inspections and surveillance in relation to the implementation of EU legislation at national level (Question 3)**

*Six respondents believe that the existing EU framework for inspections and surveillance at the national level,<sup>4</sup> which currently applies only to industrial facilities, should be upgraded.*

*Three respondents think that this should be done through recommendations, and two call for binding provisions. One respondent believes that recommendations and binding provisions are needed.*

*Three respondents consider no upgrade necessary.*

#### *Upgrading of existing EU framework for inspections and surveillance at the national level*

The three proponents of such an upgrade on the basis of recommendations are the Catalan Regional Parliament and Government, Spain, and the Antrim Borough Council, UK.

The Extremadura Regional Parliament, Spain, and the Marche Regional Legislative Assembly, Italy, call for binding provisions. The Extremadura Parliament believes that it is absolutely necessary to improve the system of inspections and surveillance by the EU through binding provisions that allow for the harmonisation of such matters, in contrast to recommendations, which may or may not be put into practice. The Marche Regional Legislative Assembly believes that binding legislation provides the guarantee that, in cases of inaction by the Member State regarding the transposition/implementation of EU legislation, the possibility of concrete forms of sanctions and deterrents exist.

The Madeira Regional Government, Portugal, calls for recommendations as well as binding provisions in this framework. It comments that, in regard to recommendations, methodologies and processes should be developed that ensure the standardisation of surveillance and inspection, while allowing for a better fit and flexibility in individual situations. With respect to mandatory provisions, it calls for the creation of conditions for simplifying and improving the efficiency of integration of different actors while avoiding overlaps and gaps.

#### *No upgrading*

The Basque Government, Spain, and the Bavarian State Government, Germany, argue that no upgrades of the framework for inspections and surveillance are necessary because the currently established system is sufficient. In the case of the Basque Government, the argument is that the current system of inspection and surveillance of industrial facilities is sufficient and appropriate. The Bavarian State Government explains that the law on environmental inspections in Germany has traditionally been characterized by a high degree of thoroughness. Constitutionally, the organizational structure of the surveillance and inspection administration is regulated in great detail at the regional

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<sup>4</sup> Recommendation 2001/331/EC providing for minimum criteria for environmental inspections in Member States and binding sectoral provisions.



level. In the interest of “better regulation,”<sup>5</sup> the Bavarian State Government argues, new bureaucratic regulations are to be avoided. The respondent highlights that in Germany EU recommendations are taken into account at least equally. Moreover, in times of lean public budgets due to the financial crisis, the focus should instead be put on using the available administrative resources more intelligently and consistently on the basis of applicable environment law. The Dutch Association of Municipalities believes that local and national authorities have the flexibility to conduct inspections and surveillance in the most effective way.

#### **2.4 Subsidiarity: Inspections and surveillance at EU level (Question 4)**

*Two respondents believe that the EU should create its own inspection and surveillance system to complement national mechanisms and measures in a targeted way, while one respondent provides a conditional agreement. The other six respondents consider this unnecessary.*

##### *Inspection and surveillance system at EU level*

The proponents of an EU-level inspection and surveillance system are the Madeira Regional Government, Portugal, and the Extremadura Regional Parliament, Spain. The latter comments that the environment is important enough to all EU citizens that giving the EU the powers to inspect and monitor facilities in all Member States in a uniform manner can be justified.

The Dutch Association of Municipalities agrees with the need to modernize the existing guidelines for inspections and monitoring of equipment and devices only if the new framework will be in the form of recommendations, follows a risk approach and can be customized to allow for other instruments aside from inspections to be used to ensure compliance. And finally, the new framework should represent the basis for such actions and avoid the need for special requirements in other, sectoral directives. Instead and if necessary, they should be adapted to the new framework. Uniform application of the inspection and surveillance framework would, furthermore, be facilitated through the continued improvement of the framework’s application and the use of complementary actions, including the exchange of information and experiences, joint implementation projects, skill and knowledge expansion of those working in this area, and the sharing of best practices, guidance, tools and common standards. A useful example to consider in this context is the IMPEL network.<sup>6</sup>

##### *No inspection and surveillance system at EU level*

The other six respondents reject such an EU system on the following grounds:

The Marche Regional Legislative Assembly, Italy, believes that, instead of creating a system of inspections and surveillance at European level, it would be preferable to hold the national authorities more responsible at the central, regional, and local levels. Inspections by the EU should still be the second level of control and done for a representative sample.

The Basque Government, Spain, argues that the transfer of inspections and surveillance to the EU level would complicate such actions since the proximity of local and regional authorities allows for a more flexible and, therefore, more effective response to any incidents or breaches of legislation.

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<sup>5</sup> According to the response from the Bavarian State Government, Germany, Question 3, p.6.  
<sup>6</sup> European Union Network for the Implementation and Enforcement of Environment law.

However, the Basque Government considers it desirable to establish common criteria for action by the EU, with the objective of standardising the treatment of installations across the EU and hence avoiding dissimilar inspections procedures in the Member States that would imply dissimilar costs for both the administration and the operator of the installation as well as possible effects on competition.

The Bavarian State Government is against the creation of an environmental inspection and surveillance system, including the corresponding administrative structures, at the EU level. It argues that such proposals by the EU Commission should respect the principles of subsidiarity and proportionality; in particular, enforcement tasks at the EU level would contradict these principles. Furthermore, the respondent believes that a centralised organisation of environmental inspections from Brussels or Copenhagen could not meet the demands of local enforcement of EU law in any way.

## **2.5 Subsidiarity: Handling complaints at national level (Question 5)**

*Recommendations for the handling of complaints by Member States are preferred by three respondents, binding provisions are preferred by three, and one respondent selects both options.*

*Two respondent believe that the EU should not set criteria for the handling of complaints by Member States.*

### *Criteria for the handling of complaints set at EU level*

All respondents, aside from the Bavarian State Government, Germany, consider some set of criteria for handling complaints by Member States desirable.

Recommendations are favored by the Catalan Regional Parliament and Government, Spain, and the Antrim Borough Council, UK.

The Marche Regional Legislative Assembly, Italy, the Basque Government, Spain, and the Extremadura Regional Parliament, Spain, prefer binding provisions.

The Marche Regional Legislative Assembly states that claims regarding the breach of EU law in the field of the environment are included in the broader context of complaints — complaints that a European citizen may address to the European institutions, by resorting to the Ombudsman or the European Commission, for verification that the conditions for opening an infringement procedure are met. Before determining whether the EU needs to establish an ad-hoc mechanism to lodge complaints, the outcome of the instances described above should be assessed. If the introduction of a separate method of appeal is considered, it would be preferable for it to happen through a legislative act rather than through non-binding acts. Furthermore, to ensure the uniform treatment of complaints, the Marche Regional Legislative Assembly would prefer the creation of a European authority dedicated to them or the expansion of the jurisdiction of the European Court of Justice.

The Basque Government believes that the handling of complaints by Member States should be as homogeneous as possible, offering citizens and operators of facilities all the necessary guarantees<sup>7</sup>, and thus be done through legally binding provisions, provided that the legislation of each Member State permits that such criteria are set at EU level, which is not certain, because it may involve sensitive matters such as criminal law.

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<sup>7</sup> The respondent from the Basque Government does not specify what guarantees would be necessary.

The Madeira Regional Government, Portugal, supports both recommendations and binding provisions.

*No criteria for the handling of complaints*

The Bavarian State Government does not see a need for the EU to set criteria for the handling of complaints by Member States on the basis of recommendations or binding provisions. The Association of Dutch Municipalities (VNG) acknowledges that the handling of complaints is an important issue. However, with respect to complaints by citizens and vis-à-vis improving access to justice and information on environmental issues, the VNG is concerned that new guidelines could become an independent source of *de-facto* law, especially in cases going beyond clear-cut legal rules. VNG highlights that complaints about the implementation of EU environment law in the Netherlands are scarce compared with other Member States, in part because the number of infringements is small.

## **2.6 Subsidiarity: Access to justice (Question 6)**

*Seven respondents believe that the EU should define the conditions for efficient and effective access to national courts with respect to all areas of EU environment law. The last one offers its qualified support for action by the EU on this issue.*

*One respondent rejects EU action in this field.*

*Definition of conditions for access to national courts by the EU*

Two of the seven respondents preferring EU action call for formulating the conditions as recommendations: the Antrim Borough Council, UK, and the Madeira Regional Government, Portugal.

The five respondents preferring binding provisions are the Marche Regional Legislative Assembly, Italy, the Catalan Regional Parliament and Government, Spain, the Basque Government, Spain, and the Extremadura Regional Parliament, Spain.

They detail their views as follows:

The Marche Regional Legislative Assembly believes that, if the monitoring of infringement proceedings in EU environment law should signal it appropriate to introduce new provisions concerning access to justice, universally binding rules should be used, i.e., in the form of a directive or regulation. The Basque Government reiterates its remark on the extent to which laws in the Member States would allow the EU to adopt legally binding legislation on judicial issues. Finally, the Extremadura Regional Parliament believes that the environment is an extremely important matter that would, at a minimum, require a series of agreements between Member States, which commit them to maintain uniform standards and compulsory commitment to access to justice in regard to the environment.

The Association of Dutch Municipalities is not opposed to EU-level actions as long as such actions do not reduce the levels of protection currently provided by the Aarhus Convention and also do not increase the administrative burden. The Association asks that the Committee of the Regions should, therefore, request a corresponding impact assessment.

*No definition of conditions for access to national courts by the EU*

The Bavarian State Government argues that the procedures for legal protection are already part of the key aspects of German constitutional and secondary law.<sup>8</sup>

According to the respondent, the German system of legal protection is regulated intensively both in terms of the administrative procedure and access to the courts and the applied legal tests are, moreover, characterised by an extraordinarily wide scope.

The respondent further highlights that access to the courts is currently re- and more broadly defined also for recognised associations, in accordance with the Aarhus Convention and the ruling of the European Court of Justice from 5 December 2011 (Trianel). Additional measures by the EU beyond the Directive 2003/35/EC on Public Participation and Access to Justice would, therefore, not be necessary and are rejected on the basis of lack of the necessary EU competencies.

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<sup>8</sup> Secondary law refers to legislation that is derived from primary law.

### 3. Conclusions

The small sample of contributions (four from Spain, one each from Germany, Italy, Portugal, and the UK) to the consultation “*Towards a 7th Environment Action Programme (EAP) - better implementation of EU environment law*” and the opinion submitted by the Association of Dutch Municipalities (VNG), that are summarised in this report, is not sufficient to provide a representative overview of the positions of the members of the SMN and other stakeholders regarding the issues raised by the six questions.

They nonetheless demonstrate that a variety of opinions exists among the respondents with respect to the issues covered by the consultation and their relation to the subsidiarity principle.<sup>9</sup>

First, the eight contributions to the consultation indicate that regional authorities are involved in the transposition, application, and enforcement of EU environment law in Germany, Portugal, and Spain, which highlights the relevance of the issues at stake at the regional level.

In Italy, however, EU environment law is transposed at the central level, while regional and local authorities participate in its application, and local authorities are primarily entrusted with its enforcement.<sup>10</sup>

The respondent representing a local authority in the UK indicates that local authorities are involved in the transposition of EU environment law and — when applicable — in its application and enforcement.<sup>11</sup>

The Association of Dutch Municipalities does not cover this aspect.

Questions 2, 3, 5, and 6 address the possibility for increased EU action in the implementation of EU environment law; in particular concerning access to environmental information, inspections and surveillance *at the national level*, the handling of complaints, and access to justice. The majority of respondents would not see any breach of the **subsidiarity principle** if the EU acted in these fields: With respect to **access to information** (question 2), four respondents see a need to strengthen the Access to Information Directive in order to make the relevant provisions more efficient. The general argument against such EU action, given by the other respondents, is that the provisions of the current Directive are sufficient to guarantee the rights of access to information of citizens. And the Association of Dutch Municipalities adds that existing information systems in Member States should be used instead and the exchange of experiences be promoted. The establishment of new European information systems should be considered only if they reduce the administrative burden and costs in Member States, which should be tested through an impact assessment by the EU Commission.

The majority (six out of nine submissions) is also in favor of upgrading the existing **EU framework for inspections and surveillance to be applied at national level** (question 3), but the Association of

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<sup>9</sup> According to the subsidiarity principle, in areas that do not fall within its exclusive competence the EU shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at the central level or the regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at the EU level. (Art. 5 (3) Treaty on European Union (TEU)).

<sup>10</sup> According to the Marche Legislative Assembly, Italy.

<sup>11</sup> According to Antrim Borough Council, UK.

Dutch Municipalities would agree to a modernization of existing guidelines only under certain conditions, including their non-binding character.

Seven out of nine submissions would welcome the **EU setting criteria for the handling of complaints by Member States** (question 5).

The definition of **conditions for efficient and effective access to national courts** with respect to all areas of EU environment law (question 6) is not opposed by eight of nine respondents. However, the Association of Dutch Municipalities requests that the impact assessment be conducted first regarding the impacts of such actions on the administrative burden and costs in Member States. According to the comments provided by the proponents of EU action in these areas, it can be concluded that such action would allow for greater effectiveness and standardisation (question 3), uniform treatment of complaints (question 5), and uniform standards for access to justice (question 6).

Furthermore, differences emerge concerning the issue of **proportionality**, when considering the form of such EU action, i.e., the use of recommendations or binding provisions. The majority of respondents (five versus two) prefer binding provisions over recommendations only on the issue of defining conditions for access to national courts. The distribution is even (four versus four) in the case of setting criteria for handling complaints and in favor of recommendations (five versus three) on strengthening the EU framework for inspections and surveillance to be applied at national level.

However, the picture changes for **subsidiarity** concerning the creation of an **inspection and surveillance system at EU level** (question 4): Only two respondents see the necessity for EU action in order to complement national mechanisms and measures in a targeted way. Three contributions highlight in this context that national authorities are better placed to implement EU environment law in an effective way.

Finally it has to be noted that the German respondent rejects EU action on all issues covered by the consultation, highlighting that national legislation already covers the relevant aspects. EU action is thus not necessary and consequently not in accordance with the subsidiarity principle.

#### 4. Appendix 1: Questionnaire

COMMITTEE OF THE REGIONS – DIRECTORATE E – Horizontal Policies and Networks



### Questionnaire

#### "TOWARDS A 7<sup>th</sup> ENVIRONMENT ACTION PROGRAMME (EAP) - BETTER IMPLEMENTATION OF EU ENVIRONMENT LAW".

Submitted by Ms Nilgun CANVER (UK/PES) for the purposes of consulting  
the Subsidiarity Monitoring Network (SMN).

Ms Canver is the rapporteur for the CoR opinion on *Towards a 7<sup>th</sup> Environment Action Programme (EAP) - better implementation of EU environment law*.

This opinion will discuss the European Commission's Communication of 7 March 2012 on *Improving the delivery of benefits from EU environment measures: building confidence through better knowledge and responsiveness*, COM (2012) 95 final, and aims to feed into the work on the Commission's proposal for a 7<sup>th</sup> Environment Action Programme (EAP), scheduled for the end of 2012.

Please complete and submit by **6 July 2012**. You can upload the completed questionnaire directly onto the Subsidiarity Monitoring Network website (<http://subsidiarity.cor.europa.eu> – remember to log in). Alternatively, you can send it by email to [subsidiarity@cor.europa.eu](mailto:subsidiarity@cor.europa.eu).

<b>Name of Authority:</b>	
<b>Contact person:</b>	
<b>Contact details (phone, email):</b>	
<b>Member of</b>	

Please answer the following questions:

**IMPLEMENTATION OF EU ENVIRONMENT LAW BY LOCAL AND REGIONAL AUTHORITIES**

1. How is the implementation of EU environment law organised in your Member State? Is your local/regional authority involved:

- a) in the transposition of EU law into national law?
- b) in the application of - directly applicable and transposed - EU law (e.g. issuing permits)?
- c) in its enforcement (e.g. surveillance, inspections)?

- a) Yes/No
- b) Yes/No
- c) Yes/No

The above-mentioned communication COM (2012) 95 considers enhancing and improving implementation as a priority objective of European environment policy. Accordingly, it examines "means of helping Member States achieve a fully systematic approach in knowledge collection and dissemination and greater responsiveness to problems on the ground" (introduction, p. 2).

**SUBSIDIARITY**

**Improving knowledge on implementation**

2. Should the provisions of the Access to Information Directive<sup>12</sup>, which contains minimum requirements on the dissemination and quality of information, be strengthened?

Yes/No

Comment (max. 300 words).

<sup>12</sup> Directive 2003/4/EC on public access to environmental information and repealing Council Directive 90/313/EEC.



**Improving responsiveness at central, regional and local level**

***Inspections and surveillance in relation to the implementation of EU legislation at national level***

3. *Should the existing EU framework for inspections and surveillance at national level<sup>13</sup>, which currently applies only to industrial facilities, be upgraded:*

- a) *through recommendations?*
- b) *through binding provisions?*

- a) *Yes/No*
- b) *Yes/No*

*Comment (max. 350 words).*

***Inspections and surveillance at EU level***

4. *Should the EU create its own inspection and surveillance system complementing national mechanisms and measures in a targeted way at EU level?*

*Yes/No*

*Comment (max. 300 words).*

***Handling complaints at national level***

5. *Should the EU set criteria for the handling of complaints by Member States (e.g. by providing general safeguards on confidentiality and timeliness; providing citizens with a means of bringing their grievances to the attention of an independent national administrative review body):*

- a) *through recommendations?*
- b) *through binding provisions?*

- a) *Yes/No*
- b) *Yes/No*

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<sup>13</sup> Recommendation 2001/331/EC providing for minimum criteria for environmental inspections in Member States and binding sectoral provisions.

**Access to justice**

6. Should the EU define the conditions for efficient and effective access to national courts in respect of all areas of EU environment law:

- a) through recommendations?
- b) through binding provisions?

a) Yes/No

b) Yes/No

Comment (max. 350 words).

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**Privacy Statement:** The follow-up to your contribution requires that your personal data (name, contact details, etc.) be processed in a file. All the answers to the questions are voluntary. Your replies will be kept for a period of 5 years after the reception of the questionnaire. Should you require further information or wish to exercise your rights under Regulation (EC) No. 45/2001 (e.g. to access, rectify, or delete your data), please contact the data controller (Head of Unit E2) at [subsidiarity@cor.europa.eu](mailto:subsidiarity@cor.europa.eu). If necessary, you may also contact the CoR Data Protection Officer ([data.protection@cor.europa.eu](mailto:data.protection@cor.europa.eu)). You have the right of recourse to the European Data Protection Supervisor at any time ([www.edps.europa.eu](http://www.edps.europa.eu)).

**Please note that the questionnaire with your contribution and your contact details will be published online. Your questionnaire may be transmitted to CoR rapporteurs and other EU institutions for information purposes. If you do not wish your questionnaire to be made available for this purpose, please notify us accordingly.**

## 5. Appendix 2: Contributions

### 5.1 Bavarian State Government

#### **UMSETZUNG DES UMWELTRECHTS DER EU DURCH LOKALE UND REGIONALE BEHÖRDEN**

1. *Wie ist die Umsetzung des EU-Umweltrechts in Ihrem Land organisiert? Ist Ihre lokale/regionale Gebietskörperschaft einbezogen*

- a) *in die Umsetzung von EU-Recht in nationales Recht?*
- b) *in die Anwendung von – direkt anwendbarem und bereits umgesetztem – EU-Recht (z.B. durch die Erteilung von Genehmigungen)?*
- c) *in die Durchsetzung von EU-Recht (z.B. Überwachung, Kontrollen)?*

- a) Ja
- b) Ja
- c) Ja

*In der oben genannten Mitteilung COM(2012) 95 wird eine verstärkte und verbesserte Anwendung der Vorschriften als ein eigenständiges prioritäres Ziel der europäischen Umweltpolitik angesehen. Dementsprechend wird untersucht, "wie den Mitgliedstaaten dabei geholfen werden kann, ein systematisches Konzept für die Sammlung und Verbreitung von Informationen zu erreichen und besser auf konkrete Probleme zu reagieren" (Einleitung, S. 2).*

#### **SUBSIDIARITÄT**

##### **Mehr Informationen über die Umsetzung**

2. *Sollten die Bestimmungen der Richtlinie über den Zugang zu Informationen<sup>14</sup>, die Mindestanforderungen für die Verbreitung und die Qualität von Informationen enthält, verstärkt werden?*

Nein

Die in Umsetzung der Aarhus-Konvention in Europa und auch in Deutschland normierten Informationszugangsrechte gewährleisten die freie Information von jedermann bereits in weitem Umfang. Sowohl auf konventionelle Weise wie auch in elektronischen Medien ist der

<sup>14</sup> Richtlinie 2003/4/EG über den Zugang der Öffentlichkeit zu Umweltinformationen und zur Aufhebung der Richtlinie 90/313/EWG des Rates.

voraussetzungslose Informationszugang umfassend verbindlich geregelt. Eine Verstärkung dieser Regelungen erscheint nicht erforderlich.

### **Größere Reaktionsbereitschaft auf nationaler, regionaler und lokaler Ebene**

#### ***Kontrollen und Überwachung der Umsetzung des EU-Rechts auf nationaler Ebene***

3. *Sollte der bestehende Rahmen für Kontrollen und die Überwachung auf nationaler Ebene<sup>15</sup>, der derzeit lediglich auf Industrieanlagen angewandt wird, ausgebaut werden*

- a) *durch Empfehlungen?*
- b) *durch verbindliche Vorschriften?*

a) *Nein*

b) *Nein*

In Deutschland ist das Umweltinspektionsrecht - nicht nur für Industrieanlagen - traditionell sehr intensiv ausgestaltet. Auch die Behördenorganisation für Kontrollen und Überwachung ist verfassungsgemäß auf regionaler Ebene detailliert geregelt. Im Sinne von „better regulation“ ist auf weitere bürokratieverstärkende Vorschriften zu verzichten. Die EU-Empfehlungen sind mindestens gleichwertig berücksichtigt. In Zeiten notleidender Budgets im Zusammenhang mit der Finanzkrise kommt es vordringlich darauf an, die Kräfte der Verwaltung auf den konsequenten und intelligenten Vollzug auf der Grundlage des geltenden Umweltrechts zu konzentrieren.

#### ***Kontrolle und Überwachung auf EU-Ebene***

4. *Sollte die EU als zielgerichtete Ergänzung zu den nationalen Mechanismen und Maßnahmen auf EU-Ebene ein eigenes Kontroll- und Überwachungssystem einrichten?*

Nein

Der Einrichtung von Umweltinspektionen (einschließlich Behördenstruktur) auf EU-Ebene kann - wie schon wiederholt ausgeführt - nicht zugestimmt werden. Maßnahmenvorschläge der Europäischen Kommission müssen die Grundsätze der Subsidiarität und Verhältnismäßigkeit beachten. Insbesondere Vollzugsaufgaben auf EU-Ebene widersprechen diesen Grundsätzen und sind nicht sachgerecht. Eine zentralisierte Organisation der Umweltinspektionen von Brüssel/Kopenhagen aus könnte den Anforderungen an den Vollzug vor Ort in keiner Weise genügen.

<sup>15</sup> Empfehlung 2001/331/EG zur Festlegung von Mindestkriterien für Umweltinspektionen in den Mitgliedstaaten sowie verbindlicher sektorspezifischer Bestimmungen.

### **Beschwerdeverfahren auf nationaler Ebene**

5. Sollte die EU Kriterien für die Bearbeitung von Beschwerden durch die Mitgliedstaaten festlegen (z.B. durch allgemeine Garantien in Bezug auf Vertraulichkeit und zügige Bearbeitung; durch die Möglichkeit, dass die Bürger ihre Beschwerden bei einem unabhängigen nationalen Aufsichtsorgan einreichen)

- a) durch Empfehlungen?
- b) durch verbindliche Vorschriften?

- a) Nein
- b) Nein

### **Zugang zu Rechtsmitteln**

6. Sollte die EU die Bedingungen für einen effizienten und wirksamen Zugang zu den nationalen Gerichten für alle Bereiche des Umweltrechts der EU festlegen

- a) durch Empfehlungen?
- b) durch verbindliche Vorschriften?

- a) Nein
- b) Nein

Rechtsschutzverfahren sind in Deutschland eines der wesentlichsten Anliegen im Verfassungs- und im Sekundärrecht. Das Rechtsschutzsystem ist entsprechend sowohl im Verwaltungsverfahren als auch hinsichtlich des Zugangs zu den Gerichten intensiv geregelt und vor allem durch außerordentlich weite Prüfungsmaßstäbe gekennzeichnet. Derzeit wird der Zugang zu den Gerichten auch für anerkannte Verbände gemäß den Vorgaben der Aarhus-Konvention und der EuGH-Rechtsprechung (Urteil vom 12.05.2011 - Trianel) neu und damit weiter gefasst. Zusätzliche Maßgaben der EU über die Partizipations-Richtlinie 2003/35/EG hinaus sind nicht erforderlich und kompetenzrechtlich abzulehnen.

## 5.2 Marche Regional Legislative Assembly

### **ATTUAZIONE DELLA LEGISLAZIONE DELL'UE SULL'AMBIENTE DA PARTE DEGLI ENTI LOCALI E REGIONALI**

*I. Quali sono le modalità di attuazione della legislazione dell'UE sull'ambiente nel Suo Stato membro? Il Suo ente locale/regionale ha un ruolo:*

- a) nel recepimento della legislazione dell'UE nell'ordinamento nazionale?*
- b) nell'attuazione della legislazione dell'UE, sia quella direttamente applicabile sia quella recepita (ad es. nel rilascio di autorizzazioni)?*
- c) nel garantirne l'osservanza (ad es. nelle attività di sorveglianza e di ispezione)?*

- a) Nell'ordinamento italiano il recepimento della legislazione europea in materia di ambiente spetta prioritariamente al governo centrale (allo Stato); il riparto di competenze derivante dalla Carta costituzionale è tale da considerare l'ambiente come "valore" che merita una tutela unitaria da parte della legislazione statale, la quale può individuare i principi generali che le Regioni devono osservare nell'adottare disposizioni di attuazione.*
- b) In base al riparto di competenze delineato dalla legislazione statale, le Regioni e gli enti locali esercitano una potestà normativa e, soprattutto, amministrativa, inerente il rilascio delle autorizzazioni ambientali.*
- c) L'attività di controllo è prioritariamente affidata agli enti locali.*

*Secondo la comunicazione COM(2012) 95, l'attuazione rafforzata e migliorata della legislazione dell'UE è da considerarsi un obiettivo prioritario della politica ambientale europea. Il documento della Commissione passa infatti in rassegna "i mezzi per aiutare gli Stati membri a seguire un approccio sistematico alla raccolta e alla diffusione delle conoscenze e a reagire meglio ai problemi riscontrati nella pratica" (Introduzione, pag. 2).*

## **SUSSIDIARIETÀ**

### **Migliorare le conoscenze sull'attuazione**

2. *Ritiene che le disposizioni della direttiva sull'accesso alle informazioni<sup>16</sup>, che prevede obblighi minimi in materia di divulgazione e qualità delle informazioni ambientali, debbano essere rafforzate?*

Osservazioni (massimo 300 parole): *Le disposizioni della direttiva del 2003 appaiono sostanzialmente in grado di assicurare l'accesso ad una corretta informazione ambientale da parte degli Stati membri. Nell'ottica di una possibile revisione dei contenuti di questa direttiva, sarebbe auspicabile prevedere che l'informazione ambientale sia prioritariamente fornita attraverso le tecnologie di comunicazione informatica e/o le tecnologie elettroniche che, nell'art. 7 della direttiva in commento, erano previste solo se disponibili. Sarebbe inoltre opportuno prevedere come strumento prioritario l'interconnessione delle banche dati elettroniche che contengono i dati dell'informazione ambientale. Altro aspetto sul quale potrebbe essere utile una revisione della direttiva del 2003 riguarda l'inserimento di norme vincolanti per gli Stati membri in tema di divulgazione dell'esistenza stessa di queste banche dati.*

*Oltre alla revisione della direttiva, sarebbe auspicabile che nel prossimo programma quadro per l'ambiente come pure nella prossima programmazione UE dei fondi per la coesione 2014 – 2020 siano inserite delle misure di sostegno non solo al monitoraggio ambientale ma anche per l'implementazione di sistemi finalizzati ad una migliore diffusione dell'informazione ambientale.*

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<sup>16</sup> Direttiva 2003/4/CE del Parlamento europeo e del Consiglio, del 28 gennaio 2003, sull'accesso del pubblico all'informazione ambientale e che abroga la direttiva 90/313/CEE del Consiglio.

**Migliorare la capacità di risposta a livello centrale, regionale e locale**

***Ispezione e sorveglianza relative all'attuazione della legislazione dell'UE a livello nazionale***

3. *Ritiene che il quadro europeo vigente in materia di ispezione e sorveglianza a livello nazionale<sup>17</sup>, attualmente applicabile ai soli impianti industriali, debba essere migliorato tramite l'adozione di*

- a) raccomandazioni, o di*
- b) norme vincolanti?*

- a) No*
- b) Sì*

Osservazioni (massimo 350 parole): *L'adozione di una disciplina vincolante, se da un lato pone un problema di verifica dello stato di recepimento / attuazione in concreto dei contenuti della disciplina stessa, d'altro costituisce la garanzia che, in caso di inerzia da parte dello Stato membro ci sia la possibilità di un intervento concreto sanzionatorio e dissuasivo. Pertanto, qualora la Commissione ritenesse di proporre l'ampliamento dell'ambito di applicazione della disciplina europea in materia di ispezione e sorveglianza, sarebbe auspicabile che questo avvenisse attraverso una normativa vincolante.*

***Ispezione e sorveglianza a livello dell'UE***

4. *Ritiene che l'Unione europea debba creare un proprio sistema di ispezione e sorveglianza, con attività mirate a livello dell'UE, per completare i meccanismi e le misure attuati a livello degli Stati membri?*

*No*

Osservazioni (massimo 300 parole): *più che creare un sistema di controlli e di ispezioni a livello europeo sarebbe preferibile responsabilizzare maggiormente le amministrazioni nazionali, sia a livello centrale che territoriale e locale; i controlli della Commissione europea dovrebbero comunque essere di secondo livello e dovrebbero essere effettuati a campione.*

***Trattamento delle denunce a livello nazionale***

5. *Ritiene che l'UE debba stabilire una serie di criteri per il trattamento delle denunce da parte degli Stati membri (ad es. con l'introduzione di garanzie generali sulla riservatezza e il rispetto dei termini, oppure offrendo ai cittadini il modo per sottoporre le loro rimostranze all'attenzione di un organo di ricorso amministrativo indipendente in ciascuno Stato*

<sup>17</sup> Raccomandazione 2001/331/CE del Parlamento europeo e del Consiglio, del 4 aprile 2001, che stabilisce i criteri minimi per le ispezioni ambientali negli Stati membri, e le pertinenti disposizioni settoriali vincolanti.



<p><i>membro) tramite l'adozione di</i></p> <p>a) <i>raccomandazioni, o di</i> b) <i>norme vincolanti?</i></p>
<p>a) <i>No</i> b) <i>Si</i></p>
<p>Osservazioni (massimo 350 parole): <i>le denunce per violazione della disciplina europea sulla tutela dell'ambiente sono inserire nel più ampio contesto delle denunce - reclami che un cittadino europeo può rivolgere alle istituzioni europee ricorrendo all'Ombudam oppure alla Commissione europea, affinché questa verifichi la sussistenza dei presupposti per l'apertura di un procedimento per infrazione. Prima di stabilire se l'UE debba introdurre un meccanismo ad hoc di denuncia occorrerebbe verificare l'esito delle istanze rivolge in base agli strumenti sopra richiamati. Qualora si ritenesse di introdurre un metodo di ricorso autonomo, sarebbe preferibile che questo avvenisse attraverso un atto normativo e non attraverso atti non vincolanti. Inoltre, per garantire l'uniformità di trattamento delle denunce, sarebbe preferibile introdurre un'autorità europea ad esse dedicata oppure ampliare le competenze del Tribunale di prima istanza.</i></p>

<p><b>Accesso alla giustizia</b></p> <p>6. <i>Ritiene che l'UE debba definire le condizioni per un accesso efficiente ed effettivo ai giudici nazionali in tutti i settori di applicazione della legislazione dell'UE sull'ambiente tramite</i></p> <p>a) <i>raccomandazioni, o</i> b) <i>norme vincolanti?</i></p>
<p>a) <i>No</i> b) <i>Si</i></p>
<p>Osservazioni (massimo 350 parole): <i>l'accesso alla giustizia va disciplinato attraverso norme vincolanti. Pertanto, qualora si rendesse opportuno introdurre nuove disposizioni in tema di accesso alla giustizia - ad esempio, a seguito di un monitoraggio delle procedure di infrazione promosse in questo settore, occorrerebbe utilizzare norme di carattere vincolante (una direttiva o un regolamento)</i></p>

### 5.3 Madeira Regional Government

#### **APLICAÇÃO DA LEGISLAÇÃO DA UE EM MATÉRIA DE AMBIENTE PELOS ÓRGÃOS DE PODER LOCAL E REGIONAL**

1. De que forma é organizada a aplicação da legislação da UE em matéria de ambiente no seu Estado-Membro? O órgão de poder local/regional que representa participa:

- a) na transposição da legislação da UE para a legislação nacional?
- b) na aplicação de legislação da UE diretamente aplicável e transposta (por exemplo, emissão de licenças)?
- c) no controlo da sua aplicação (por exemplo, monitorização e inspeções)?

- a) *Sim*
- b) *Sim*
- c) *Sim*

A referida Comunicação COM (2012) 95 considera o reforço e a melhoria da aplicação da legislação um objetivo prioritário da política europeia de ambiente. Examina, desta forma, «maneiras de ajudar os Estados-Membros na adoção de uma abordagem totalmente sistemática de recolha e divulgação de conhecimentos e de maior reatividade aos problemas no terreno» (Introdução, p. 2).

#### **SUBSIDIARIEDADE**

##### **Aprofundar o conhecimento sobre a aplicação**

2. Na sua opinião, dever-se-á reforçar as disposições da Diretiva Acesso às Informações<sup>18</sup>, que estipula requisitos mínimos de divulgação e de qualidade das informações?

*Sim*

*Observações (máx. 300 palavras).*

<sup>18</sup> Diretiva 2003/4/CE relativa ao acesso do público às informações sobre ambiente e que revoga a Diretiva 90/313/CEE.

**Melhorar a reatividade ao nível central, regional e local**

***Inspecções e monitorização da aplicação da legislação da UE a nível nacional***

3. Na sua opinião, o atual quadro regulatório da UE para as inspeções e monitorização a nível nacional<sup>19</sup>, que, presentemente, se aplica exclusivamente às instalações industriais, deve ser reforçado:

- a) com recomendações?
- b) com disposições vinculativas?

- a) Sim
- b) Sim

*Observações (máx. 350 palavras).*

*Ao nível das recomendações deveria propor metodologias e processos que permitissem assegurar uma normalização das ações de monitorização e inspeção mas, que, também permitissem uma melhor adequação e flexibilidade perante situações particulares (quer de contexto quer de instalações).*

*No domínio das disposições vinculativas, gerar condições de simplificação e de melhoria da eficiência da integração dos diferentes atores com competências inspetivas, evitando as sobreposições e vazios.*

***Inspecções e monitorização à escala da EU***

4. Julga que a UE deve criar um sistema de inspeção e de monitorização próprio, de cariz europeu, que complemente os mecanismos e as medidas nacionais?

Sim

*Observações (máx. 300 palavras).*

<sup>19</sup> Recomendação 2001/331/CE relativa aos critérios mínimos aplicáveis às inspeções ambientais nos Estados-Membros e disposições setoriais vinculativas.

***Tratamento de queixas a nível nacional***

5. Na sua opinião, a UE deve estipular critérios para o tratamento de queixas ao nível dos Estados-Membros (por exemplo, estabelecendo garantias gerais de confidencialidade e prazos de tratamento ou garantindo aos cidadãos meios de apresentar as suas queixas a uma instância de recurso administrativo nacional e independente):

- a) através de recomendações?
- b) através de disposições vinculativas?

- a) *Sim*
- b) *Sim*

***Acesso à justiça***

6. Na sua opinião, a UE deve estipular as condições para o acesso efetivo e eficiente aos tribunais nacionais em todos os domínios da legislação da UE em matéria ambiental:

- a) através de recomendações?
- b) através de disposições vinculativas?

- a) *Sim*
- b) *Não*

*Observações (máx. 350 palavras).*

## 5.4 Catalan Regional Government/ Catalan Regional Parliament

### **IMPLEMENTATION OF EU ENVIRONMENT LAW BY LOCAL AND REGIONAL AUTHORITIES**

1. How is the implementation of EU environment law organised in your Member State? Is your local/regional authority involved:

d) in the transposition of EU law into national law?

e) in the application of - directly applicable and transposed - EU law (e.g. issuing permits)?

f) in its enforcement (e.g. surveillance, inspections)?

a) Yes

b) Yes

c) Yes

The above-mentioned communication COM (2012) 95 considers enhancing and improving implementation as a priority objective of European environment policy. Accordingly, it examines "means of helping Member States achieve a fully systematic approach in knowledge collection and dissemination and greater responsiveness to problems on the ground" (introduction, p. 2).

### **SUBSIDIARITY**

#### **Improving knowledge on implementation**

2. Should the provisions of the Access to Information Directive<sup>20</sup>, which contains minimum requirements on the dissemination and quality of information, be strengthened?

Yes

Comment (max. 300 words).

<sup>20</sup> Directive 2003/34/EC on public access to environmental information and repealing Council Directive 90/313/EEC.

**Improving responsiveness at central, regional and local level**

***Inspections and surveillance in relation to the implementation of EU legislation at national level***

3. *Should the existing EU framework for inspections and surveillance at national level<sup>21</sup>, which currently applies only to industrial facilities, be upgraded:*

- a) *through recommendations?*
- b) *through binding provisions?*

- a) *Yes*
- b) *No*

*Comment (max. 350 words).*

***Inspections and surveillance at EU level***

4. *Should the EU create its own inspection and surveillance system complementing national mechanisms and measures in a targeted way at EU level?*

*No*

*Comment (max. 300 words).*

***Handling complaints at national level***

5. *Should the EU set criteria for the handling of complaints by Member States (e.g. by providing general safeguards on confidentiality and timeliness; providing citizens with a means of bringing their grievances to the attention of an independent national administrative review body):*

- a) *through recommendations?*
- b) *through binding provisions?*

- a) *Yes*
- b) *No*

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<sup>21</sup> Recommendation 2001/331/EC providing for minimum criteria for environmental inspections in Member States and binding sectoral provisions.

***Access to justice***

**6.** *Should the EU define the conditions for efficient and effective access to national courts in respect of all areas of EU environment law:*

- a) through recommendations?*
- b) through binding provisions?*

- a) No*
- b) Yes*

*Comment (max. 350 words).*

## 5.5 Extremadura Regional Parliament

### **LA APLICACIÓN DEL DERECHO DE LA UE EN MATERIA DE MEDIO AMBIENTE POR PARTE DE LOS ENTES LOCALES Y REGIONALES**

1. *¿Cómo está organizada la aplicación del Derecho ambiental de la UE en su Estado miembro?  
¿Participa su ente local o regional:*

- a) *en la transposición al ordenamiento interno del Derecho de la UE?*
- b) *en la aplicación del Derecho de la UE directamente aplicable o transpuesto (por ejemplo, expidiendo licencias)?*
- c) *en su ejecución (por ejemplo, mediante vigilancia, inspecciones)?*

a) Sí

b) Sí

c) Sí

*La Comunicación COM(2012) 95 antes citada considera que el perfeccionamiento y la mejora de la aplicación de la legislación son un objetivo prioritario de la política europea de medio ambiente. En consecuencia, examina las «formas de ayudar a los Estados miembros a aplicar un planteamiento totalmente sistemático a la obtención y difusión de información y tener una mayor capacidad de respuesta a los problemas sobre el terreno» (introducción, p. 2).*

### **SUBSIDIARIEDAD**

#### **Mejorar los conocimientos sobre la aplicación de la legislación**

2. *¿Deberían perfeccionarse las disposiciones de la Directiva sobre acceso a la información<sup>22</sup>, que establece una serie de requisitos mínimos sobre la difusión y la calidad de la información?*

Sí

*El problema con el que se encuentra el ciudadano muy a menudo es con la dificultad en el acceso y consulta a la legislación europea, por lo que, más que aconsejable, hay que considerar necesario el establecimiento de un sistema que permitiera conocer en tiempo real la legislación existente en medio*

<sup>22</sup> Directiva 2003/4/CE del Parlamento Europeo y del Consejo, de 28 de enero de 2003, relativa al acceso del público a la información medioambiental y por la que se deroga la Directiva 90/313/CEE del Consejo (DO L 41 de 14.2.2003, p. 26).



ambiente.

**Mejorar la capacidad de respuesta a nivel central, regional y local**

***Inspecciones y vigilancia en relación con la aplicación de la legislación de la UE a nivel nacional***

3. *¿Debería modernizarse el marco europeo existente de inspecciones y vigilancia a nivel nacional<sup>23</sup>, que en este momento se aplica únicamente a las instalaciones industriales:*

- a) *por medio de recomendaciones?*
- b) *mediante disposiciones jurídicamente vinculantes?*

a) *No*

b) *Sí*

*Creemos que es totalmente necesario mejorar los sistemas de inspecciones y vigilancia por parte de la UE, y no a través de recomendaciones, puesto que pueden ser llevadas a la práctica o no, si no de disposiciones jurídicamente vinculantes, que permitan una armonización de tal materia.*

***Inspección y vigilancia a nivel de la UE***

4. *¿Debería la UE crear su propio sistema de inspección y vigilancia, a nivel de la UE y como corresponda en cada caso, para completar los mecanismos y medidas nacionales?*

*Sí*

*A este respecto, el sentir general de los europeos es la importancia e incidencia que tiene el medio ambiente en la calidad de vida de cada uno de ellos, por lo que el objetivo sería incrementar el control dotando a la Comisión de facultades inspectoras y de vigilancia con el objeto de dar un cumplimiento uniforme por parte de todos los países miembros.*

<sup>23</sup> Recomendación del Parlamento Europeo y del Consejo, de 4 de abril de 2001, sobre criterios mínimos de las inspecciones medioambientales en los Estados miembros (2001/331/CE), [DO L 118 de 27.4.2001, p. 41.](#)

### ***Tramitación de denuncias a nivel nacional***

5. *¿Debería la UE fijar una serie de criterios para la tramitación de las denuncias por parte de los Estados miembros (por ejemplo, ofrecer unas garantías generales sobre aspectos tales como la confidencialidad y la diligencia; proporcionar a los ciudadanos medios para poner sus quejas en conocimiento de un organismo nacional independiente que actúe como instancia de recurso administrativo):*

- a) *por medio de recomendaciones?*
- b) *mediante disposiciones jurídicamente vinculantes?*

- a) *No*
- b) *Sí*

### ***Acceso a la justicia***

6. *¿Debería la UE determinar las condiciones que garanticen un acceso efectivo y eficaz a los tribunales nacionales en relación con todos los ámbitos del Derecho de la UE en materia de medio ambiente:*

- a) *por medio de recomendaciones?*
- b) *mediante disposiciones jurídicamente vinculantes?*

- a) *No*
- b) *Sí*

*Creemos que el medio ambiente es una materia sumamente importante, por lo que como mínimo sería necesario una serie de acuerdos entre los Estados miembros para comprometerse a mantener criterios uniformes y de firme compromiso de acceso a la justicia en relación con el medio ambiente.*

## 5.6 Basque Government

### **LA APLICACIÓN DEL DERECHO DE LA UE EN MATERIA DE MEDIO AMBIENTE POR PARTE DE LOS ENTES LOCALES Y REGIONALES**

I. *¿Cómo está organizada la aplicación del Derecho ambiental de la UE en su Estado miembro?  
¿Participa su ente local o regional:*

- a) *en la transposición al ordenamiento interno del Derecho de la UE?*
- b) *en la aplicación del Derecho de la UE directamente aplicable o transpuesto (por ejemplo, expidiendo licencias)?*
- c) *en su ejecución (por ejemplo, mediante vigilancia, inspecciones)?*

- a) **Sí**/No
- b) **Sí**/No
- c) **Sí**/No

***La Comunidad Autónoma del País Vasco tiene competencias para desarrollar y ejecutar la normativa básica del Estado en materia de medio ambiente. En este sentido, aprueba normas con contenido medioambiental, participa en la elaboración de la legislación del estado que traspone la normativa comunitaria y adopta las medidas encaminadas a su aplicación, bien mediante la concesión de autorizaciones, bien mediante las correspondientes labores de vigilancia.***

*La Comunicación COM(2012) 95 antes citada considera que el perfeccionamiento y la mejora de la aplicación de la legislación son un objetivo prioritario de la política europea de medio ambiente. En consecuencia, examina las «formas de ayudar a los Estados miembros a aplicar un planteamiento totalmente sistemático a la obtención y difusión de información y tener una mayor capacidad de respuesta a los problemas sobre el terreno» (introducción, p. 2).*

## **SUBSIDIARIEDAD**

### **Mejorar los conocimientos sobre la aplicación de la legislación**

2. *¿Deberían perfeccionarse las disposiciones de la Directiva sobre acceso a la información<sup>24</sup>, que establece una serie de requisitos mínimos sobre la difusión y la calidad de la información?*

Sí / **No**

*Comentario (máximo 300 palabras): No, porque las medidas que se recogen son suficientes para garantizar los derechos de acceso a la información de los ciudadanos.*

### **Mejorar la capacidad de respuesta a nivel central, regional y local**

#### ***Inspecciones y vigilancia en relación con la aplicación de la legislación de la UE a nivel nacional***

3. *¿Debería modernizarse el marco europeo existente de inspecciones y vigilancia a nivel nacional<sup>25</sup>, que en este momento se aplica únicamente a las instalaciones industriales:*

- a) por medio de recomendaciones?*
- b) mediante disposiciones jurídicamente vinculantes?*

a) Sí / **No**

b) Sí / **No**

***No, porque se considera que el sistema de inspección y vigilancia actual relativo a las instalaciones industriales es suficiente y adecuado.***

<sup>24</sup> Directiva 2003/4/CE del Parlamento Europeo y del Consejo, de 28 de enero de 2003, relativa al acceso del público a la información medioambiental y por la que se deroga la Directiva 90/313/CEE del Consejo (DO L 41 de 14.2.2003, p. 26).

<sup>25</sup> Recomendación del Parlamento Europeo y del Consejo, de 4 de abril de 2001, sobre criterios mínimos de las inspecciones medioambientales en los Estados miembros (2001/331/CE), DO L 118 de 27.4.2001, p. 41.

#### **Inspección y vigilancia a nivel de la UE**

4. ¿Debería la UE crear su propio sistema de inspección y vigilancia, a nivel de la UE y como corresponda en cada caso, para completar los mecanismos y medidas nacionales?

Sí / **No**

**Comentario (máximo 300 palabras): No, porque se considera que trasladar al nivel de la UE las labores de inspección y vigilancia complicaría el desarrollo de tales actuaciones, puesto que la cercanía de las autoridades locales permite una respuesta más ágil y, por tanto, más eficaz ante posibles incidentes o incumplimientos que pudieran producirse. Principio de subsidiariedad.**

**No obstante, se considera conveniente que se establezcan criterios comunes de actuación por parte de la UE con el objeto de que las instalaciones tengan el mismo tratamiento en todo el territorio y así evitar que determinadas instalaciones sean objeto de inspecciones en un territorio y no lo sean en otro territorio, con el coste que ello conlleva tanto para la propia Administración como para el titular de la instalación, pudiendo afectar, incluso a la competencia.**

#### **Tramitación de denuncias a nivel nacional**

5. ¿Debería la UE fijar una serie de criterios para la tramitación de las denuncias por parte de los Estados miembros (por ejemplo, ofrecer unas garantías generales sobre aspectos tales como la confidencialidad y la diligencia; proporcionar a los ciudadanos medios para poner sus quejas en conocimiento de un organismo nacional independiente que actúe como instancia de recurso administrativo):

- a) *por medio de recomendaciones?*
- b) *mediante disposiciones jurídicamente vinculantes?*

- a) Sí / **No**
- b) **Sí** / No

**La tramitación de las denuncias por parte de los estados miembros debería ser lo más homogénea posible, ofreciendo a los ciudadanos y a los titulares de las instalaciones todas las garantías necesarias, y en este sentido, debería realizarse a través de disposiciones jurídicamente vinculantes, siempre y cuando la legislación de cada estado miembro permita dicha atribución atendiendo a que se trata de una materias especialmente sensible como puede ser el ámbito jurisdiccional penal.**

**Acceso a la justicia**

6. *¿Debería la UE determinar las condiciones que garanticen un acceso efectivo y eficaz a los tribunales nacionales en relación con todos los ámbitos del Derecho de la UE en materia de medio ambiente:*

- a) *por medio de recomendaciones?*
- b) *mediante disposiciones jurídicamente vinculantes?*

a) **Sí/No**

b) **Sí/No**

***Únicamente cabe reiterar lo anteriormente señalado respecto a que las legislaciones de los estados miembros permitan a la UE adoptar disposiciones jurídicamente vinculantes en materia de legislación sobre aspectos judiciales.***

## 5.7 Antrim Borough Council

### **IMPLEMENTATION OF EU ENVIRONMENT LAW BY LOCAL AND REGIONAL AUTHORITIES**

*1. How is the implementation of EU environment law organised in your Member State? Is your local/regional authority involved:*

- a) in the transposition of EU law into national law?*
- b) in the application of - directly applicable and transposed - EU law (e.g. issuing permits)?*
- c) in its enforcement (e.g. surveillance, inspections)?*

- a) Yes*
- b) Yes – when applicable*
- c) Yes – when applicable*

*The above-mentioned communication COM (2012) 95 considers enhancing and improving implementation as a priority objective of European environment policy. Accordingly, it examines "means of helping Member States achieve a fully systematic approach in knowledge collection and dissemination and greater responsiveness to problems on the ground" (introduction, p. 2).*

### **SUBSIDIARITY**

#### **Improving knowledge on implementation**

*2. Should the provisions of the Access to Information Directive<sup>26</sup>, which contains minimum requirements on the dissemination and quality of information, be strengthened?*

*No Comment*

*Comment (max. 300 words).*

<sup>26</sup> Directive 2003/34EC on public access to environmental information and repealing Council Directive 90/313/EEC.

**Improving responsiveness at central, regional and local level**

***Inspections and surveillance in relation to the implementation of EU legislation at national level***

3. *Should the existing EU framework for inspections and surveillance at national level<sup>27</sup>, which currently applies only to industrial facilities, be upgraded:*

- a) *through recommendations?*
- b) *through binding provisions?*

- a) *Yes*
- b) *No*

*Comment (max. 350 words).*

***Inspections and surveillance at EU level***

4. *Should the EU create its own inspection and surveillance system complementing national mechanisms and measures in a targeted way at EU level?*

*No*

*Comment (max. 300 words).*

***Handling complaints at national level***

5. *Should the EU set criteria for the handling of complaints by Member States (e.g. by providing general safeguards on confidentiality and timeliness; providing citizens with a means of bringing their grievances to the attention of an independent national administrative review body):*

- a) *through recommendations?*
- b) *through binding provisions?*

- a) *Yes*
- b) *No*

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<sup>27</sup> Recommendation 2001/331/EC providing for minimum criteria for environmental inspections in Member States and binding sectoral provisions.



***Access to justice***

**6.** *Should the EU define the conditions for efficient and effective access to national courts in respect of all areas of EU environment law:*

- a) through recommendations?*
- b) through binding provisions?*

- a) Yes*
- b) No*

*Comment (max. 350 words).*

## 5.8 Association of Dutch Municipalities

### Points for discussion

- Thanks and compliments to the rapporteur
- It concerns an important issue.  
Strengthening and improving the implementation of EU environmental policy is important to improve the state of the environment. It is also an important objective in the preparations for the Seventh Environmental Action Programme.
- The issue of inspections is not easy.  
Multiple inspections will take place simultaneously (multiple levels of inspection (national and local) and inspections on the various directives in Europe) and this requires a great coordination between the various parties.

Example: in the port of Rotterdam, a port on the border of Europe and largest import and export harbor, this requires a huge coordination between various parties to properly monitor without excessive supervision burdens for companies.

The differences that occur in the interpretation of these guidelines make cooperation more difficult and increase the effort required of all parties involved.

The Committee should draw attention to differences in interpretation of guidelines and at this point indicate that better coordination between inspection authorities of Member States and EC should be improved.

- It concerns the inspection and supervision regarding the implementation of EU legislation at national level.  
Member States (national and local level), should be given the flexibility to monitor and carry out inspections in the most effective way.  
The tools deployed, coherence and consistency of the regulatory and administrative burdens should be taken into consideration.  
The Committee agrees with the modernization of the existing guidelines for inspections and monitoring of equipment and devices, provided that the framework will be no more than a recommendation;
- The renewed framework will also be based on a risk approach;
- Customization can take place: that, apart from inspections, different approaches to ensure compliance will be accepted;
- The framework forms the basis and special requirements in sectoral directives are being avoided as much as possible. Where this would be indispensable, they should be adapted to the framework.

- Concerning the improvement of knowledge on the implementation and the proposals on information systems.

We are in favor of efficient and flexible information systems, for which the systems of individual Member States could be utilized.

We are more hesitant when it comes the establishment of new European information systems, unless they contribute to reducing administrative burdens and are cost effective.

## **Background information**

### Commission proposal:

Strengthening and improving the implementation of EU environmental policy is an important objective in the preparations for the Seventh Environmental Action Programme. The purpose of the Commission proposal is to improve the state of the environment and to promote a level playing field. In this Communication the Commission indicates which tools Member States could use to systematically gather and disseminate knowledge on the actual implementation in order to better respond to concrete problems. The Communication does not announce concrete laws and regulations and is in outline. It will be further defined in the 7th Environmental Action Programme.

The subsidiarity of this communication can be positively evaluated. The EU level is the appropriate level for improving the implementation and enforcement of EU environmental policy. It is also paramount that the Member States have and should keep the power of enforcement (national and local level). Point of attention: Based on the present proposal it is not possible to estimate the financial impact.

### Focus inspection of materials and products

In the field of materials and products, in addition to other rules, there are many environmental regulations. Supervisors ("market surveillance authorities") of the Member States ensure that products comply to these rules and regulations, to make sure that the free marketing of such materials and products can take place.

Multiple inspections will take place simultaneously (multiple levels of inspection (national and local) and inspections on the various directives in Europe) and this requires a great coordination between the various parties.

Example: in the port of Rotterdam, a port on the border of Europe and largest import and export harbor, this requires a huge coordination between various parties to properly monitor without excessive supervision burdens for companies.

The differences that occur in the interpretation of these guidelines make cooperation more difficult and increase the effort required of all parties involved. This problem applies not only to product streams. Other environmental themes such as water scarcity, are faced with differences of interpretation. Better coordination between inspection services of Member States and the European Commission is essential to align the interpretation of directives, to improve the level playing field and to ensure the independence of supervision over (EU) legislation.

The Committee should draw attention to differences in interpretation of guidelines and at this point indicate that coordination between authorities of Member States and EC should be improved. For materials and products (in many cases exhaustively harmonized in regulations at European level) the so-called administrative cooperations (Adco's) provide a good foundation for a more binding cooperation between market surveillance Authorities. Moreover, the Adco's could be used to promote an independent check on the implementation and enforcement of European legislation from the perspective of the joint regulators from the Member States.

### **Questions from the working document of the rapporteur:**

#### **Improvement of knowledge on the implementation**

- *Should the requirements of the Directive concerning access to information, containing minimum requirements on the dissemination and quality of information, be tightened?*
- *How can information on the state of the environment and implementation be best improved at local and regional level?*

#### **Answer:**

The VNG is in favor of efficient and flexible information systems, for which the systems of individual Member States can be utilized.

VNG has, however, we are more hesitant when it comes to the establishment of new European information systems, unless they contribute to reducing administrative burdens and are more cost effective.

The Committee may request the European Commission for an impact assessment on this point.

VNG considers it very premature to formulate guidelines at EU level for information systems. Regardless of whether these guidelines are desirable or necessary, it seems that at this stage it makes more sense that Member States achieve a more intensive exchange of experience in this field.

#### **Inspections and supervision regarding the implementation of EU legislation at national level**

- *Should the existing EU framework for inspections and supervision at national level, which currently applies only to industrial plants, to be tightened by means of recommendations or mandatory provisions?*
- *Should the EU introduce its own inspection and monitoring system to complement national mechanisms and measures?*

#### **Answer:**

Member States (national and local level), should have the flexibility to monitor in the most effective way. VNG also believes that the tools deployed, coherence and consistency of the regulatory and administrative burdens must be taken into consideration.

VNG can agree to the modernization of the existing guidelines for inspections and monitoring equipment and devices, provided that:

The Committee agrees with the modernization of the existing guidelines for inspections and monitoring of equipment and devices, provided that:

- the framework will no more than a recommendation;
- the renewed framework will also be based on a risk approach;
- customization can take place: that, apart from inspections, different approaches to ensure compliance will be accepted;
- the framework should be the basis. Special requirements in sectoral directives should be avoided as much as possible. Where this would be indispensable, they should be adapted to the framework.

In order to facilitate uniform application complementary tools can be used, such as:

- further improvement of the application of the guidelines;
- exchange of information and experiences, implementation of joint projects;
- encouraging and facilitating the improvement of the knowledge and skills of those who work in this field and supervisors;
- sharing best practices and providing guidance, tools and common standards within the context of the recommendation. The IMPEL network (European Network for the Implementation and Enforcement of Environment law) has proved itself when it comes to organizing meetings of this kind.

### **Handling of complaints at national level**

*Should the EU set out the criteria for the handling of complaints by Member States (for example in the form of general guarantees in terms of confidentiality and timely treatment, or by offering citizens a tool so that they can have their complaints reviewed by an independent national professional body) by making recommendations or mandatory provisions?*

#### Answer:

VNG believes a good complaint handling is very important and supports this proposal of the Commission.

However, when it comes to complaints of citizens, improving access to justice for all environmental issues and information about law and jurisprudence, with respect to development of guidelines VNG does not want such guidelines to become an independent source of (semi) law. This can occur if it comes up with interpretations on issues that go beyond undisputed legal cases.

Background: In comparison with other Member States the number of complaints about the Dutch implementation of European law is limited. Complaints coming in through EU pilot are not public. There is however a relationship between numbers of complaints and number of infringements. NL has relatively few violations when it comes to Environmental policy.

## **Access to justice**

*Should the EU set conditions for an efficient and effective access to national courts for all areas of EU environmental legislation through recommendations or mandatory provisions?*

### Answer:

VNG is not a priori opposed to a new attempt to the Aarhus Convention to elaborate a European directive on access to justice. However it must be ensured that it does not affected the level of protection that is provided by the Aarhus Convention. The main precondition is that the administrative burdens will not increase.

It is important that the CoR opinion calls for an impact assessment on administrative burdens.