

TAIEX-EIR Multi-country Flagship Workshop on Environmental Compliance & Governance

Session III – Roundtable: Enforcing Zero Pollution together – compliance assurance aspects of the Zero Pollution Action Plan

Discussion document (Version: 03/11/2022)

Policy background and purpose of the discussion paper

This document aims at facilitating the discussions during the session on the Zero Pollution Action Plan (ZPAP) at the TAIEX-EIR Multi-country Flagship Workshop on Environmental Compliance & Governance on 14 November 2022. It explains the policy background of the ZPAP, in particular its Flagship 5, and invites for a reflection on the possible ways to ensure closer cooperation and exchange of good practices between environmental authorities with control and enforcement functions and other authorities with similar functions in relevant areas.

The Zero Pollution Action Plan¹ aims at securing clean air, water and soil, healthy ecosystems and a healthy living environment for Europeans as part of the green & digital transition. Pollution control and reduction has been at the heart of EU environmental policy. Several EU legal instruments have existed for more than 40 years (e.g. directives on bathing water, drinking water) and others (e.g. directives on air quality, industrial emissions) have been added since. Yet, we still experience significant pollution impacts on health or the environment, e.g. excessive nutrient levels in waters from agriculture, high air emissions from transport or energy production or toxic chemicals from production and products. To a large extent, these persistent pollution problems could already be solved if existing laws were better implemented and enforced.

A 2019 survey² amongst practitioners in the Member States identified the reasons that make it difficult to effectively implement and enforce environmental law in the EU at national, regional or local level (see figure in the annex). This is supported by the regular reports of IMPEL on implementation challenges³. It was striking to see that the conflict between environmental law and other interests, the lack of well-trained human resources as well as the insufficient cooperation between all the relevant administrations have been identified as the main obstacles. More recently, a number of cross-border cases of pollution (e.g. Oder river, Turów mine, British Channel) have pointed to weaknesses in enforcement cooperation not only within but also between MS. This is particularly worrying since pollution often is transboundary in nature and thus a common challenge.

The Action Plan has addressed these issues through a flagship initiative entitled: “Enforcing zero pollution together”. The Commission committed, inter alia, to “bring together environmental and other enforcement authorities (e.g. those in charge of EU transport, energy, agriculture or consumer protection legislation) to kick off the exchange of best practices and encourage Member States to devise cross-sectorial compliance actions towards zero tolerance for pollution at national and transboundary level.”

¹ (COM(2021)400) - https://environment.ec.europa.eu/strategy/zero-pollution-action-plan_en

² “Implementation and compliance with EU environmental laws in the Member States - survey 2019”

³ [Implementation challenge 2021 | Impel](#)

Questions for discussion

The background presented in the Annex is an initial overview prepared by DG ENV which needs to be deepened and enriched by experiences from national enforcement practitioners. The discussion at the workshop allows for a first exchange of views in the context of Flagship 5 of the ZPAP as a starting point for possible follow up activities in 2023. The overall objective is to foster strengthening implementation and enforcement of the relevant EU pollution-related legislation at different levels and also in the cross-border context. Synergies between the work of authorities with implementation and enforcement functions in different but connected policy areas are to be explored.

To frame and facilitate the debate at the workshop, the following topics and questions are proposed for discussion:

1. ***Which are the key sectors where collaboration between environmental and other enforcement authorities should be strengthened to improve pollution prevention?***

Implementing environmental laws and solving environmental pollution requires collaboration between the environmental and other enforcement authorities, e.g. on agriculture, transport, health protection, etc. There are many different practices and experiences in the Member States which could be shared. Moreover, it may be useful to support national efforts also with a EU level initiative to bring different authorities together to discuss common implementation and enforcement challenges and solutions. The aim of the discussion is to identify priority sectors where the Commission services should bring environmental and other enforcement authorities together, notably in 2023 and 2024, as part of the implementation of flagship 5.

2. ***What are the main solutions to address the identified issues – do you have some ‘good’ or ‘less good’ experiences?***

Training is key to ensure that the enforcers have the necessary specialised knowledge. There are already many specialised programmes on the environment and opportunities to share best practices (i.e. TAIXE-EIR-peer-to-peer tool). Technical assistance also helps reinforcing the administrative capacity (e.g. through the Technical Support Instrument). The aim of the discussion is to identify positive examples, but also areas where further improvements can be initiated at EU level to help Member State authorities in their efforts.

3. ***How can EU level cooperation help resolve the identified obstacles?***

In addition to training, there are a number of other support actions that can help close the implementation gap with the help of the enforcement networks. Based on the outcome of the discussion, the Commission services would consider proposing a number of specific activities in 2023 in collaboration with other relevant bodies and organisations. In addition, IMPEL and possibly other European networks of environmental enforcement practitioners could be invited to consider their closer involvement in the implementation of the ZPAP, in particular its Flagship 5, for example by carrying out relevant projects to support the pollution-prevention and control work on the ground.

Annex

The Commission launched in 2020 formal **exchanges with all Member States** (so called “EU pilot letters” to ascertain compliance with the EU acquis, which may precede the launch of infringement proceedings) to explore, amongst others, how national systems of water pollution prevention and control work in practice. Based on the replies received by the Member States, the analysis shows that:

- 1) When it comes to preventing pollution *from point sources*, most Member States use prior authorizations (permits), typically subject to regular reviews. However, the mechanisms and frequencies for these reviews differ significantly across the Member States, ranging from 1 to 15 years. In most cases, the permits are linked to discharges stemming from large installations covered under the Industrial Emissions Directive 2010/75/EU, and thus the permits are reviewed within that legal context although not always with the degree of ambition needed to meet the objectives set by Article 4 of the Water Framework Directive (WFD).
- 2) When it comes to preventing pollution *from diffuse sources* (notably by agriculture – use of fertilisers and pesticides), most Member States have some legislative and/or non-legislative measures in place, which seem however to significantly differ in nature and strength. They need to be reviewed mostly in their specific context (Nitrates or Pesticides legislation), rather than having regard to the need to achieve good status by 2027 at the latest across all freshwater bodies, as required by the WFD.

Enforcement and sanctioning tools used by Member States to prevent pollution from both point and diffuse sources include warning notices, legal injunctions, withdrawal of authorisations, administrative fines, criminal penalties. However, there seem to be significant differences between the Member States in the use of these tools, in particular as regards sanctions.

On 8 September 2022, the Commission adopted the 2022 **Environmental Implementation Review**⁴ (EIR), now at its third edition after the 2017 and 2019 reviews. It is a useful tool which shows the Member States’ performance in implementing EU environmental law and identifies priorities for improvement.

According to the 2022 EIR, air pollution continues to harm the health of Europeans, as limit values for dangerous substances (particulate matters and nitrogen dioxide) are still exceeded. As a result, 18 Member States are subject to infringement proceedings. Furthermore, as regards ammonia from agriculture, 19 Member States are at high risk of non-compliance with their 2020-2029 and 2030 onwards emission reduction commitments. The 2022 EIR also shows that progress towards achieving good status for water bodies is generally slow, and implementing rules for drinking water is still a cause for concern in a few countries. As a consequence, 19 Member States are subject to infringement proceedings. Targeted priority actions have been delivered to the great majority of Member States to counterweigh the situation. These priority actions (or recommendations) range from taking into account the context of the National Air Pollution Control Programme (NAPCP), actions towards reducing emissions sources, to completing the implementation of the Urban Waste Water Treatment Directive for all agglomerations, by building up the necessary infrastructure (the full list of priority actions is available in the Annex to the EIR Communication⁵). The lack of a sustained political will and the suboptimal amount of human and financial capacities put to the task can be cited as the main causes for an unsatisfactory legal implementation. Finally, some Member States or regions of Member States have achieved compliance progress in certain sectors. This proves that where there is a will, there is a green way forward.

⁴ [Environmental Implementation Review 2022](#)

⁵ [Annex of Environmental Implementation Review 2022](#)

The recent [Communication](#) on “Enforcing EU law for a Europe that delivers”⁶ recalls that implementing and applying EU law is “a combined effort” involving several actors (European Commission, Member States, judges, professionals, NGOs): *“The Commission oversees the respect of EU law by Member States and it makes use of a variety of tools to promote and enforce its correct application, including infringement proceedings. However, effective application and enforcement on the ground require several other actors to play their part as well. Enforcement is about cooperating and working hand in hand with Member States in the first instance, as well as with specialised authorities like consumer or data protection authorities, competition and regulatory authorities, NGOs, businesses and the public. For the system to function effectively, it relies both on the full commitment of national authorities responsible for the proper application and enforcement of the law, and the involvement of the public, civil society, business and others to identify potential breaches.”*

The Commission uses a wide array of tools to support compliance. Such tools aim to:

- **Prevent breaches** (e.g. guidance on EU law, dialogue/meetings with Member States or expert groups, use of EU co-financing to solve environmental problems or ensure that EU money will not harm the environment);
- **Detect breaches early enough and solve them** (e.g. scoreboards to measure performance, the EIR, the new interactive infringement map, use of EU Pilot letters);
- **Enforce EU law** through the effective and strategic use of infringements by the European Commission;
- **Support compliance assurance activities at national level** (e.g. cooperation with European networks of environmental enforcement practitioners and preparation of guidance documents, such as the Vademecum on compliance assurance in rural areas prepared in implementation of the Action Plan on environmental compliance and governance).

Example 1

Addressing many individual misapplications in one infringement procedure

In the environmental field, the Commission used to open individual cases for a single non-compliant landfill, or one agglomeration that was non-compliant with urban waste water legislation. It now focuses on systemic cases, tackling sometimes hundreds of agglomerations in one urban waste water treatment case or dozens of landfills in waste cases. This revamped approach proves to be much more efficient.

Example 2

Effective infringement action

EU law on air pollution is an area in which ensuring compliance may have a high economic cost, but where failure to comply with EU law costs lives, grave illness and thus entails even higher, though partly hidden, economic costs too. By July 2022, the Commission had initiated 28 infringement cases concerning failure by 18 Member States to apply the Ambient Air Quality Directive. 15 cases have been referred to the Court of Justice, 10 of which have resulted in a ruling supporting the European Commission’s findings. One of these cases constitutes a second referral to the Court, so it may lead to fines. These enforcement efforts have been instrumental in driving down the number of air quality zones exceeding the legal limits for particulate matters from 91 in 2019 to 55 in 2021, and the number of zones with excess nitrogen dioxide from 68 to 23 in 2021. This means that people in several cities across Europe can now enjoy cleaner air. Applying EU air quality law has helped to drive a drop in premature deaths linked to air pollution by one third since 2005.

⁶ [COM\(2022\) 518](#)

Areas with possible need for enhanced cooperation

In order to feed the discussion and based on implementation experiences so far, the Commission services suggest the following cross-cutting areas as possible candidates for enhancing synergies across the different enforcement authorities in charge:

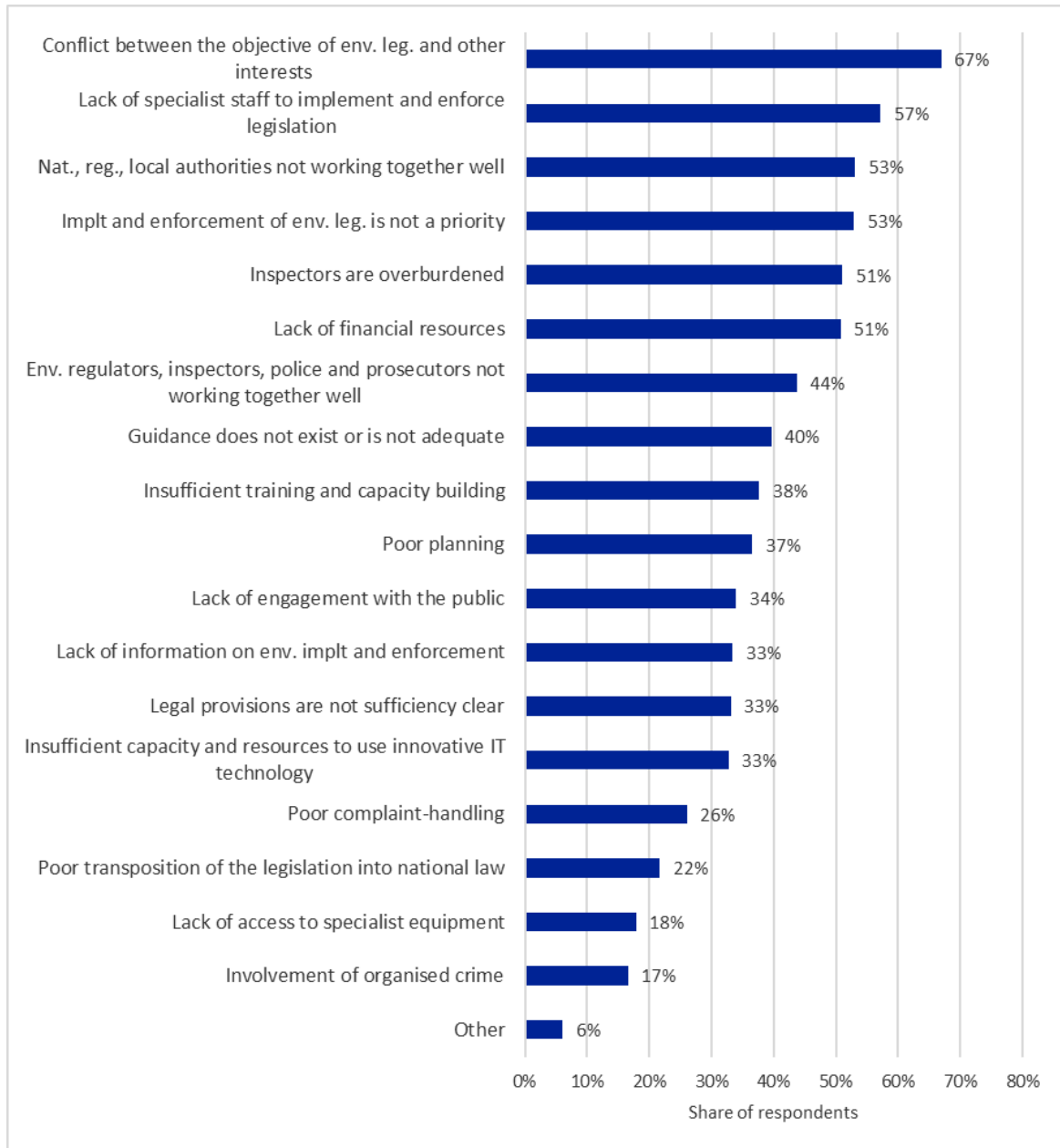
- **Pollution from agricultural practices** (*i.e. interplay between the EU environmental and agriculture acquis*): a diverse number of environmental authorities are responsible to implement air, water, marine and industrial emissions legislation affecting agriculture. This requires coordination amongst the various environmental authorities as well as with agriculture authorities controlling, inter alia, the implementation of the Nitrates Directive, the implementation of the CAP, from payments and farm advisory to auditing ([Chapter II \(Art 8\) new CAP Regulation \(EU\)2021/2116](#)). Also the implementation of the current and future [Sustainable use of Pesticides Regulation](#) requires MS to designate competent authorities to implement ‘training and certification schemes’ in view of training pesticide users. The Commission has been providing support to Member States in relation to addressing the environmental impact of agriculture activities, including through the preparation of the [Vademecum on compliance assurance in rural areas](#).
- **Pollution from energy production** (*i.e. interplay between the EU energy and –in particular- air quality acquis*): bringing together environmental (e.g. industrial emissions / air quality) authorities with authorities in charge of enforcing EU rules on energy production ([National Regulatory Authorities in Energy Europe](#)) is important to foster pollution reduction and decarbonisation synergies in the transformation of the EU energy production infrastructure.
- **Pollution linked to consumer products** (*interplay between the EU pollution prevention, consumer protection and internal market acquis*): when it comes to **consumer products with toxic substances**, the overall enforcement is closely linked to **chemicals** legislation. The Chemicals Roundtable has recently adopted a [report on enforcement and compliance](#) which highlights the importance of cooperation between the chemicals and customs authorities. Of increasing importance in this context are also **pharmaceuticals**. In addition, there are a number of other pollution challenges linked to consumer products not complying with standards of relevance for air pollution, such as emission limits for **road vehicles, heaters** etc. This calls for enhanced co-operation between the air quality authorities and those in charge of controlling the level of **compliance of heating systems in buildings** or **motor vehicle type approval** and periodic technical inspection (PTI) authorities (e.g. in view of detecting any tampering that may affect vehicle emissions) – more details in the [EREG report](#).
- **Pollution from shipping** (*i.e. interplay marine pollution prevention, waste shipment and port reception facilities acquis*): shipping affects air and water/marine pollution, with a number of different authorities with relevant functions such as authorities in charge of [port state control](#) operations check air, waste and wastewater rules for ships and authorities in charge of enforcing EU rules on waste shipments (Article 56 of the [Waste Shipments Regulation](#), the list can be found [here](#)). With the [EMTER report 2021](#), a very good analytical basis exist. Possible enforcement activities in this area would benefit from involving the European Maritime Safety Agency.

Another dimension is cross-sectorial compliance in the cross-border and transboundary context. EU law makes it clear that, between EU Member States, obligations exist (e.g. Article 3.5 of Directive 2000/60/EU). Moreover there are many international agreements (e.g. international river basin commissions or regional sea conventions) with early warning mechanisms in place. Yet, we often experience that these mechanisms do not work properly. Yet, delayed or no action often has serious consequences. Therefore, the Commission has recently made proposals to strengthen the transboundary cooperation in the field of air quality⁷ and water pollution⁸.

⁷ See Article 21 in [COM\(2022\) 542](#)

⁸ Article 12 in [COM\(2022\) 540](#) and Article 12 of [COM\(2022\) 541](#)

Figure: What makes it difficult to effectively implement and enforce environmental law in your Member State / region / municipality? Multiple choice question, shares of total number of respondents, responses ordered from most selected to least selected. (n=465)⁹



⁹ Report: [“Implementation and compliance with EU environmental laws in the Member States - survey 2019”](#)