

The European Parliament and the implementation of EC environmental law

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Structure

1. Implementation of environmental legislation
 - (a) the legislation
 - (b) practice
2. The European Parliament and environmental law
 - (a) controlling Commission activities
 - (b) petitions and inquiries
3. Conclusions

Implementation – obligation of Member States

Article 10: Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's task.
They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty.

Article 175(4): Without prejudice to certain measures of a Community nature, the member States shall finance and implement the environment policy.

Implementation – obligation of the Commission

Article 211: the Commission shall ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied.

Thus, the Commission has an obligation of its own to ensure that the EC directives, regulations and other measures are not only transposed into national law, but actually applied.

- Mind:
1. The Commission cannot delegate this obligation to any other EC institution or body (Agency)
 2. The Commission cannot delegate this obligation to Member States

Implementation – the European Parliament

1. Control of the activities of the Commission, Article 201
2. Petition of citizens, Article 194
3. Ombudsman, to examine instances of maladministration, Article 195
4. Temporary Committee of Inquiry, to investigate maladministration in the implementation of Community law, Article 193

Implementation – Commission practice

Three steps of proceeding:

1. Is there communication of national implementation measures?
Commission sends out letters, asks for concordance tables.
Starts procedures under Article 226 more or less automatically, when measures are not communicated.
But does not consider an infringement the omission to send concordance tables!
2. Is transposition complete and correct?
 - Examination not systematic (languages, regional laws).
 - some outsourcing.
 - Problems in particular with regional and local legislation

Commission practice of monitoring application

3. Is the (transposed) EC environmental law correctly applied?
- Commission has no environmental inspectors, police, auditors or other body to examine practical application
 - Commission does not accept media and newspaper reports of bad application (this is different to f.i. competition law)
 - Commission hardly monitors the application of EC environmental regulations
 - Commission does not monitor the application of international environmental conventions which have been ratified by the EC and are thus part of EC law
 - the principal means of learning of bad application of EC environmental law is the complaint by citizens and NGOs

Commission practice in complaint handling

COM(2002)725: "All complaints received by the Commission are registered, without any selection".

DG Environment does not register all complaints. The responsible head of unit decides himself, whether to register or not. Not registered were up to 40 percent of all Spanish complaints. Cases sometimes concern huge projects (300 million €, 20% financing of EC funds).

This practice is unacceptable, unfair and arbitrary. It is a clear case of maladministration.

COM(2007)502: "As is the case now, enquiries and complaints sent to the Commission would continue to be registered and acknowledged"

How credible is this, in view of the current practice?

Commission complaint handling - priorities

COM(2007)502: "Priorities should be attached to those infringements which present the greatest risks, widespread impact for citizens and businesses and the most persistent infringements confirmed by the Court. These categories cover:

- Non-communication of national measures transposing directives or other notification obligations
- Breaches of Community law, including non-conformity cases, raising issues or principle or having particularly far-reaching impact for citizens, such as those concerning the application of Treaty principles and main elements of framework regulations and directives
- Respect for Court judgments declaring the existence of infringements (Article 228 EC Treaty)".

Comment: (1) and (3) have nothing to do with complaints. (2) has the effect that more than 95% of all environmental complaints would not be covered. Furthermore, huge discretion of Commission.

Preliminary conclusions

1. The Commission organises its internal structures and its priorities in a way that it can largely ignore any bad application of EC environmental law at local, regional, or national level.
2. This practice is, for the important sector of environmental protection, not compatible with article 211 EC Treaty, which obliges the Commission to ensure that all environmental law is applied.
3. This practice is not compatible with Article 9(3) of the Aarhus Convention - ratified by the EC - which provides that citizens must have a possibility to denounce breaches of environmental law and must receive a written (substantive) answer on their requests
4. This practice leads to placebo legislation at EC level: there are good words ("sustainable development", "good environmental quality", "best practice", "protection of biodiversity and habitats"), but the daily practice for citizens is quite different.

European Parliament- control of activities

Implementation reports

Most environmental directives require reports on the implementation.

1. The Commission does not regularly deliver. For example
 - no report on drinking water in the EC (27 years)
 - one report on environment impact assessment (22 years)
 - one report on the Habitats Directive (15 years), with omissions
2. The reports deal, at best, with measures taken, not with results.
3. The reports hardly deal with measures to repair the situation
4. Mrs. Jackson, MEP, tried during her time as a chairperson, to improve the situation. Since then, the effort has faded away.
5. Parliament is not informed about the efficiency of the legislation which it has co-decided. It accepts this non-transparent situation.

European Parliament – control of activities

Plans and programmes

Almost all directives provide for the elaboration of clean up or management plans (water, air, waste, noise). These plans must be sent to the Commission

1. The Commission hardly ever compares these plans or programmes, publishes comparative reports, publishes results after a number of years etc.
2. Practically no information is given to the Parliament on the management of these plans and programmes, the comparisons, strong and weak points etc. The Agency does not come in.
3. Parliament does not look into the effectiveness of its own legislation. It accepts this non-transparent situation.

European Parliament – control of activities

Loss of biodiversity

The European Council and the 6th Environmental Action Programme provide to stop the loss of biodiversity by 2010. In 2006, the Commission adopted an action plan

1. There are numerous measures in the action plan which are impossible to achieve in this time (designation of habitats, protection of other areas)
2. The Commission indicated that some 6 billion € per year would be needed to protect habitats. Yet, the Structural Funds delegate this question to Member States, and the Cohesion Fund (Reg.1084/2006) even openly contradicts Article 161(2) EC Treaty.
3. Parliament fought for LIFE, but not for the rest.

European Parliament – control of activities

Other possible means of controlling

1. Organise once per month an implementation discussion in the environmental committee, where also input of citizens and NGOs might be made.
2. Ask for access to letters of formal notice and to reasoned opinions under Regulation 1367/2006
3. Make sure that all studies which the Commission makes in the area of the environment, are made public (subject to commercial and political secrecy, as "public administrations hold information on the environment in the public interest" (Aarhus)

European Parliament - petitions

Diana Wallis, MEP (Wallis-report, PE 367.796v01-00 of 29.12.2005): "The vast majority of petitions relate to alleged infringements of EU legislation. The Committee on Petitions transmit these petitions on a systematic basis to the Commission, asking it to investigate the issues raised by the petitioners and report back".

1. With this practice, the European Parliament is presumably the only Parliament in the world which does not investigate itself the petition.
2. It could use the petitions to better control the activities of the Commission and ensure that the Commission complies with its legal obligation under Article 211 EC Treaty.
3. The Committee on Petitions has already started to do so, missions to Member States in order to establish the facts on the ground. This could be streamlined and made more systematic.

European Parliament - ombudsman

Article 195: The Ombudsman shall conduct inquiries on instances of maladministration in the activities of the Community institutions.

1. There are a number of complaints addressed to the Ombudsman regarding the present practice of complaint handling by the Commission. The problem is that the procedure with the Ombudsman takes a very long time and is, de facto, bypassed by events (COM(2007) 502).
2. Furthermore, where the attitude of a specific official is blamed, the practice by the institution is not necessarily changed.
3. An MEP of the Environmental Committee might consider to ask the Ombudsman, whether the present and future handling of monitoring the practical application of EC environmental law by the Commission is not a malpractice under article 211 – which it is in this author's opinion.

European Parliament - inquiries

25 years ago, in 1983, the European Parliament set up a Committee of Inquiry to investigate the case of bad application of EC environmental law and its monitoring by the Commission (Seveso barrels).

Parliament might wish to consider, whether the continuous, large-scale non-application of EC environmental law by the EC institutions themselves – examples: Articles 6 and 161(2) EC Treaty – and the omission to provide for the necessary structure in order to monitor the actual application – in particular the decisions of 2003 and 2007 to fix priorities – do not constitute, from the side of the Commission, a case of maladministration under Article 211 EC Treaty.

Conclusions

There is a consensus that large parts of the environment are in serious threat and that slow, but progressive deterioration continues. EC law more and more takes the character of framework legislation which is, in practice, largely ignored or set aside.

The European Parliament is the elected representative of the people of Europe. It has the task to adopt effective and efficient legislation and see that this legislation is actually applied.

If really EC environmental law becomes more and more placebo legislation and citizens have no way to influence its actual application by petitions, complaints and requests for effective intervention by public authorities

why then should an environmentally conscious citizen participate in European elections ?