



Brussels, July 2009

EEB Comments on

the Commission Communication on **implementing European Community Environmental Law** COM(2008) 773/4

Strong environmental EU legislation is only the first step. If not followed by good and timely transposition into national law and correct enforcement, legislation will fail its objective.

Therefore, EEB welcomed the publication of the long awaited Commission Communication on implementing EU Environmental Law¹ and its proposed improvements to the enforcement process, but takes issue with a series of points that are not addressed in a satisfactory way. EEB is also disappointed with the lack of interest from the side of the European Parliament and the Council of Environmental Ministers to respond to the Communication in launching a debate about how to systematically improve enforcement and the measures needed to achieve this.

Below we list EEB's main comments on the Communication:

- on transparency

EEB fully agrees with the Commission that better implementation can be achieved through enhanced transparency, communication and dialogue (chapter 1, Bullet point 5²). But it regrets that there is little explicit reference to better access to documents related to infringement procedures (see also chapter 3). EEB considers the lack of information on infringement procedures a critical hurdle to be overcome in order to mobilise civil society in seeking enforcement of EU environmental law.

Particularly important is better access to documents by the complainants, who are now solely thanked for their input, but are not made part of the follow-up process. The Commission's proposals for the revision of the Regulation on Access to Documents do not include any wording to resolve this particular lack of transparency.

If the European Commission set up a comprehensive register of the documents it produces or receives from Member States' authorities, eg when responding to reporting requirements on implementation of environmental law or in the context of complaints cases, it would not only help to avoid or speed up many infringement procedures, it would also increase transparency and improve its credibility with EU citizens.

In the Press Release of September 2007 which presented the Communication, "A Europe of Results — Applying EU Law," the Commission "...commits itself to ... increased transparency in the application and enforcement of the law." The press release also included a list of the main improvements the Commission proposed, some of which are mentioned in the Communication. Other important improvements that had been included in an earlier Communication³ are missing from this list, such as the "...Commission will continue to systematically include in proposals the obligation to present 'correlation tables' and seeks the commitment from Council and Member States to support the

¹ Communication on implementing European Community Environmental Law COM(2008) 773/4

² References refer to COM(2008) 773/4

³ Communication "A Europe of results – applying community law" COM(2007) 502 final

provision of these tables...” and that, “...summary information will be published on all stages of infringement proceedings.”

EEB questions why such points have not been included in the 2008 Communication. Where an evaluation is available with regard to the proposals the Commission made in 2007 this should be indicated with a reference where the information can be found.

- prioritisation and de-prioritisation

EEB welcomes the intent to move faster on the most important infringement cases (Chapter 1, Bullet point 3). This must, however, under no circumstances, lead to a de-prioritisation of other infringement cases and further delays of often already slow processes. EEB cannot agree that the three categories of infringements presented by the Commission (point 3.3.)⁴ are the most important infringements that would profit from immediate and more intensive treatment. In particular, the third one, which refers to breaches of EC law, is formulated in such a way that it would exclude any environmental complaint on practical application of EU environmental law from priority treatment. This approach is too limited and unacceptable considering that most of the complaints in the environmental area deal with exactly this category of breaches.

- access to justice

EEB fully supports the Commission's view that a Directive on access to justice would contribute to better and more consistent enforcement of environmental law. Therefore the Commission had produced a draft Directive in 2003, as part of the implementation of the Aarhus Convention (chapter 3.2.). The EP approved the Commission's proposal in April 2004 while insisting on some improvements, but the Council has so far refused to discuss it. The resistance of a number of Member States for reasons of subsidiarity is not justified, as the European Community (as well as all but one Member State individually) has ratified the Aarhus Convention, which requires legally binding arrangements to access to justice in environmental matters. Research done both on behalf of the Commission and by the EEB shows that a large majority of Member States are in breach of Aarhus Convention requirements (at least by 2006/2007, when the surveys were done). Effective access to justice at the national level gives environmental organisations in particular a tool to insist on proper implementation of environmental laws of EU (and national) origin, thereby reducing violations and also reducing the need to call upon the Commission to intervene.

- interim measures

Breaches of EU environmental law in connection with major projects involving EU funding, such as infrastructure, rural development or fisheries, can lead to irreversible ecological damage. EEB believes that in such cases it is appropriate to seek interim measures from the European Court of Justice. The use of interim measures should therefore not be limited to exceptional cases but rather should be considered the most appropriate measure to avoid irreversible damage. According to the Communication they are “likely to be sought only exceptionally” (chapter 3.3.3.d). To limit the use of this efficient tool in this way is not at all in line with the Commission's declarations on the importance of better enforcement.

- pilot mechanism

EEB welcomes the Commission establishing “a pilot problem-solving mechanism ... to test how it can respond better to citizens' inquiries concerning the application of EC law.” The Commission intends to transmit environmental cases promptly to Member States taking part in the pilot project, encouraging them to apply the best practice emerging from individual cases on a broader basis. A systematic reporting system on the cases addressed and an assessment of the achieved results could prove very

⁴ The first category includes *non-communication of implementing measures* for directives

The second category is *failure to comply with ECJ judgments*

The third category is *breaches of EC law, including non-conformity cases, raising issues of principle or having particularly far-reaching negative impact for citizens*

helpful. EEB believes that such a reporting system can only fully serve its purpose if it is made public in a way that allows for easy access. In addition, EEB would be interested in knowing the criteria for the Commission's evaluation of the success or failure of the pilot system and how this will be communicated to not only the concerned complainants in the first instance but also to the general public.

While EEB fully supports these initiatives to improve enforcement of environmental law, it believes that they are not sufficient to make the much needed progress. EEB was therefore pleased to see the European Parliament's resolution of November 2008 (P6_TA (2008) 0568) urging the European Commission to propose binding EU minimum standards for environmental inspections by the end of 2009. A binding directive and an EU environmental inspection force could complement enforcement efforts in an efficient way.

The EEB calls upon the Commission to act on this request.

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