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Environmental Compliance Assurance — scope, concept and need for EU actions

Accompanying the document

EU actions to improve environmental compliance and governance

{COM(2018) 10 final}

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1 Introduction

Given the significant gap in implementing EU environment legislation, it is high time to better address compliance with rules on activities that have an environmental impact. This needs to be done in order to assist Member State authorities in the daily challenges they face when overseeing compliance. The Environment Implementation Review (EIR)[1] has identified poor compliance as one of the cross-cutting root causes for lack of implementation. As a result, the Commission's communication *EU actions to improve environmental compliance and governance*[2] sets out a number of concrete actions at EU level to create synergies and foster a collaborative way of working and promoting good practices. Further details are provided in Annex 1 to the present document.

The document complements the communication and explains:

- the broader policy context;
- why compliance with environmental rules is important;
- how environmental rules work;
- the roles of the Commission and Member States in securing compliance;
- the environmental compliance assurance concept;
- the current legal framework;
- the role of practitioner bodies;
- the types of support that are currently available to Member State authorities and their limitations;
- Commission consultations.

Finally, the document describes the rationale for the set of actions as well as a number of accompanying arrangements to help implement them.

2 Context

The Commission initiative on compliance assurance and governance forms part of a wider effort to improve implementation of EU law in general and EU environmental law specifically:

- The Commission's communication *Better regulation for better results — An EU agenda*[3] highlights the various ways in which implementation can be improved, e.g. by cooperating with *'Member States in examining the best ways to ensure compliance with EU law at national level, including those that have initiated a review of how well EU and Member State regulation combines to help protect the environment […]. The objective is to identify solutions to enhance the efficient application of EU law at national and local level by reducing its complexity while maintaining its level of protection.'*
- The Commission's communication *EU law: better results through better application* stresses the importance of working with Member States on enforcement and of citizens benefitting from EU law[4]. It refers to this initiative.

[1] COM(2017) 63.
[2] COM(2018)10.
[3] COM(2015) 215.
[4] 2017/C 18/02.

- The Commission's communication *The European Agenda on Security*[5], amongst other things, prioritises the fight against organised environmental crime. The present initiative will contribute to this agenda, in particular through an action focusing on good practice in combating environmental crimes and other related breaches.
- The *Environmental Implementation Review (EIR)*, a new Commission tool launched in 2016, aims to address the causes of gaps in environmental implementation[6]. The present initiative complements the EIR by aiming to improve knowledge of a particular aspect of implementation, namely environmental compliance assurance, and by aiming to strengthen compliance mechanisms.
- The Commission *Notice on access to justice in environmental matters*[7] focuses on the role of citizens and environmental associations in using national courts to secure compliance, i.e. 'private enforcement'. The present initiative complements that by focusing on 'public enforcement', i.e. the role of authorities in securing compliance.
- The Commission's *Action Plan for nature, people and the economy*[8] stresses the importance of improving implementation of EU nature legislation. The present initiative will help, especially Priority B '*Building political ownership and strengthening compliance*', through new guidance on good practices in ensuring compliance in rural areas and in tackling environmental crimes and offences.
- The Commission's staff working document *Agriculture and sustainable water management in the EU*[9] refers to problems such as nutrient enrichment and over-abstraction of water. The present initiative will help to address these problems through an action aimed at improving compliance with activity-related environmental rules concerning rural areas.
- The Commission report *Actions to Streamline Environmental Reporting*[10] includes actions to promote active dissemination of environmental information at EU and national levels, and to explore the potential of other data sources such as citizen science and the Copernicus programme to complement data from reporting. The present initiative aims to carry out similar actions in the field of compliance assurance.

Environmental compliance assurance is an integral part of the governance framework underpinning EU environmental law. It plays a key role in operational terms at the level of authorities and duty-holders on the ground. Within this wider environmental governance framework are mechanisms, rules and practices to implement, apply and enforce EU environmental laws and policies[11]. The framework constitutes the way in which EU environmental laws work in practice and deliver concrete results.

[5] COM(2015) 185 final.
[6] http://ec.europa.eu/environment/eir/index_en.htm.
[7] Commission Notice on Access to Justice on Environmental Matters, C (2017) 2616 final.
[8] COM(2017) 198 final and SWD(2017) 139 final.
[9] SWD(2017)153, final, 28.4.2017.
[10] COM(2017) 312 final.
[11] Based on 'governance' definition in the Single Market Scoreboard.

3 Importance of EU environmental rules on activities

EU rules in the environment field can be broadly divided in two categories:

- those concerning activities and ambient conditions;
- those concerning products (i.e. product standards).

This document focuses on activities. Environmental product standards are dealt with elsewhere under *market surveillance*[12] as part of the work to strengthen the Single Market for goods and services. As with market surveillance, the Commission will work closely with Member States and stakeholders under this initiative to create a smart and collaborative culture of compliance.

Environmental rules on activities are important because they help ensure public health and a good environment. Eurobarometer surveys show that this is a top concern for the EU public. Almost all Europeans say that environmental protection is important to them personally, and over half say it is very important. Half or more say that they are worried about air pollution and water pollution, while over four in ten are worried about the impact on health from chemicals in everyday products and the growing amount of waste[13].

In this context, 'activities' means economic and other activities that directly affect the environment through air emissions, water discharges, waste disposal, or other land-, water- and species-related interventions.

EU environmental rules seek to identify, prevent or limit the harmful effects of such emissions, discharges, disposal or interventions. They cover, amongst other things:

- industrial processes (including chemical manufacture);
- extractive industries;
- waste management;
- the water industry[14];
- construction projects;
- land management (including interventions in protected nature sites) and fertiliser use in nutrient-sensitive zones.

They derive from around 40 principal EU instruments enacted since the 1970s, most of which are directives. These instruments are listed in Annex 2.

Along with respect for environmental product standards, fulfilling activity-related rules helps EU governments to secure, for the benefit of their own and other EU citizens, vital public goods that underpin human health and the capacity for sustainable development and that are subject to rights and obligations under EU law that national courts can be called upon to uphold[15].

EU activity-related rules are closely related to EU environmental rules on ambient conditions. These include requirements to adhere to limits on air pollution, pursue the good ecological

[12] http://ec.europa.eu/growth/single-market/goods/building-blocks/market-surveillance/organisation_en.
[13] http://ec.europa.eu/commfrontoffice/publicopinion/archives/ebs/ebs_416_en.pdf.
[14] i.e. collection and treatment of urban waste-water and provision of drinking water.
[15] Commission Notice on access to justice in environmental matters, C(2017)2616, 28.4.2017, Section C.1.

status of water bodies, and ensure the favourable conservation status of protected habitats and animal and plant species.

State-of-the-environment monitoring shows that the ambient conditions these rules envisage are not being fully realised in Europe:

- People in many European cities are exposed to unsafe levels of particulate matter (PM) and nitrogen dioxide (NO2), to name just two air pollutants[16].
- Many water bodies suffer from excessive levels of nutrients and pesticides, as a result of run-off from the land or untreated waste-water[17].
- Over 80 % of protected habitat types (i.e. Europe's most fragile natural areas such as sand-dune systems, peat bogs and biodiverse woodlands) have an unfavourable conservation status, while the situation with protected species is not much better[18].

Shortcomings in implementation come with financial costs. A 2011 Commission study estimated the costs of implementation gaps at around EUR 50 billion per year[19].

Compliance with activity-related rules is important for closing implementation gaps with regard to ambient conditions. It is also important for:

- *avoiding transboundary spill-over effects.* Shared seas, rivers, ecosystems, and weather systems mean that the effects of non-compliance will often be felt in Member States other than those where it occurs. Therefore, ensuring compliance is a matter of good neighbourliness between Member States.
- *avoiding detriment to other EU policies.* An example is waste contaminating food production. Another is over-abstraction of water causing long-term impairment of the ability to sustain agriculture in dry regions.
- *ensuring a level playing field.* Businesses are entitled to know that their competitors observe the applicable rules and do not under-cut them through non-compliance. A waste collector who fly-tips the waste he collects will avoid the gate fees that a legitimate waste operator has to pay.
- *supporting the circular economy, resource efficiency and green innovation.* A common thread running through EU environmental rules on activities is their focus on reducing environmental externalities, i.e. the transfer of costs of production to the environment and society at large in the form of pollution and waste. A culture of compliance will recognise the good sense of innovative and cost-effective solutions that avoid these externalities.

[16] Concentrations of PM exceed the EU limit and target values in large parts of Europe, with a total of 6 % of the EU-28 urban population exposed to PM10 levels above the daily limit value. Of the EU-28 urban population, 7 % lives in areas in which the annual EU limit value for NO2 was exceeded in 2014. See https://www.eea.europa.eu/publications/air-quality-in-europe-2016.

[17] For example, 22 % of river and 37 % of lake monitoring stations under the Water Framework Directive, 2000/60/EC, show eutrophication (i.e. nutrient enrichment). See Commission's staff working document 'Agriculture and sustainable water management in the EU', SWD(2017)153, final.

[18] Across the EU-27 (i.e. Member States other than Croatia), only 16 % of the habitats protected under the Habitats Directive, 92/43/EEC, have a favourable conservation status, and 60 % of the species protected by the same Directive have an unfavourable conservation status. 17 % of European bird species are threatened and a further 15 % are near threatened, declining or depleted. See http://ec.europa.eu/environment/nature/pdf/state_of_nature_en.pdf.

[19] http://ec.europa.eu/environment/enveco/economics_policy/pdf/report_sept2011.pdf.

4 How EU environmental rules on activities work

Directives adopted by the EU co-legislators oblige Member States to adopt national legislation to give effect to the legal objectives and requirements that they contain. This will typically involve Member State governments:

- imposing obligations on economic operators and others ('duty-holders', sometimes referred to as 'regulatees' or 'the regulated community');
- giving competent authorities the responsibility to check compliance;
- establishing procedures for dealing with instances of non-compliance.

To understand in detail the content of EU environmental rules on activities, the diversity of national laws need to be taken into account.

In broad terms, EU environmental rules on activities fall into a number of sub-categories:

- prohibitions;
- procedural requirements;
- permits, development consents, authorisations and derogations;
- general binding requirements;
- conditions under binding contracts or other agreements;
- requirements stemming from *ad hoc* court decisions or other enforcement actions.

This typology is explained in more detail in Annex 3.

The duty-holders concerned by these rules are diverse. Ordinary citizens must, amongst other things, observe rules on waste. Local authorities and utility companies must supply safe drinking water, collect and appropriately treat urban waste-water, and operate waste facilities without causing a nuisance. Industrial operators must control all forms of pollution. Farmers must observe fertiliser rules and hunters must respect hunting restrictions.

Examples of non-compliance with the different types of rules are given in Table 1.

Table 1: Examples of non-compliance with EU environmental rules on activities

Prohibitions	• dumping waste in rural areas • spreading manure on land in a nitrate vulnerable zone in December • hunting of wild birds in springtime • importing from non-EU countries animals and plants that are subject to a trade ban

Procedural requirements	• carrying out construction works or other physical interventions without regard for impact assessment as in:
	  ○ illegal quarrying
	  ○ destruction without approval of archaeological sites or other culturally important monuments[20]
	• destroying or degrading protected habitats within Natura 2000 without prior assessment and consent
	• shipping waste across borders without documentation or with false documentation

Permit, development consent, authorisation and derogation requirements	• emitting a greater amount of air pollutants from a factory than its permit allows • accepting hazardous waste at a landfill only permitted to accept domestic waste
General binding requirements	• discharging untreated urban waste-water into a river, lake or the sea • operating a farm without the required storage capacity for livestock manures
Conditions under contracts or other agreements	• disregarding prescriptions for protecting wildlife under an agreement despite receiving payments for complying with them
Requirements stemming from *ad hoc* court decisions or other enforcement actions	• disregarding a court order to cease operating an illegal waste facility

5 Roles of the Commission and national authorities

Prohibitions, procedural requirements, permit conditions, general binding requirements and contractual conditions are all intended to be enforceable in principle and enforced in practice. This requires having information on compliance levels and intervening effectively to bring about compliance where it is not being achieved. Otherwise the rules will, at best, amount to good advice.

Poor or absent mechanisms to ensure compliance will make non-compliance with activity-related rules more likely (as deterrence is reduced) and will thereby contribute to other implementation failures, for example, non-achievement of requirements concerning ambient conditions.

On the one hand, as guardian of the Treaty, the Commission ensures that EU environmental instruments are respected. To this end, the Commission can and does use its own exclusive enforcement powers under the Treaties to address non-compliance issues in the general

[20] See the Environmental Impact Assessment Directive, 2011/92/EU.

interest of the Union.[21] It also supports Member States – as it is seeking to do through this initiative.

On the other hand, Member States have the primary responsibility for fully and correctly implementing EU rules. In this context, Member States have devolved oversight responsibilities and adjudication powers to a very wide set of public authorities ('environmental compliance assurance authorities'), including:

- local authorities;
- regional authorities;
- environmental agencies with a broad mandate;
- agencies with specialist functions, such as checking the quality of drinking water;
- general law enforcement bodies, such as the police, customs and prosecution services;
- other bodies with specialist but non-environmental functions, such as fire authorities;
- specialist law enforcement bodies, such as special environmental prosecutors;
- ombudsman and public advocates;
- supreme audit bodies;
- judges responsible for adjudicating administrative-law, criminal-law and civil-law cases.

To this list can be added, amongst others, technical and scientific support services (e.g. hydrologists and biologists who can assess particular kinds of environmental harm) and forensic laboratories which may be in-house or external. Therefore, the diversity of Europe's public sector is reflected in the arrangements Member States have put in place. Oversight and enforcement can also involve private-sector service-providers (who may even fulfil certain inspection-type functions) and civil society (which may provide authorities with important information about breaches). The work of academics in various fields, such as criminology and behavioural science, also has an important role.

Environmental compliance assurance authorities differ not only in size and role but in the extent of their powers and specialist skills. Some enjoy a high degree of independence and autonomy. Others need to closely coordinate their work with others (for example, police and prosecutors). Some have a dual role. For example, a local authority may exercise oversight on permits governing private businesses while at the same time be subject to oversight itself on how it collects and treats urban waste-water.

Finally, the international dimension is important for at least two reasons. First, activities subject to EU rules sometimes have strong links to non-EU countries (e.g. waste shipments), requiring cooperation with those countries' authorities[22]. International conventions on wildlife, waste and other subject-matter can also come into play. Second, there is global recognition of how important both environmental rules and the mechanisms for securing compliance are. This is *inter alia* reflected in the UN's Sustainable Development Goal 16: '*Peace, Justice and Strong Institutions — Promote peaceful and inclusive societies for*

[21] Communication from the Commission, *EU law: Better results through better application*, C/2016/8600, in OJ 2017 C 18, p. 10, section 3, at first paragraph.

[22] See for instance the Strategic Framework for Customs Cooperation 2018-2020 between the EU and China, signed on 2 June 2017; supporting the fight against fraud with an emphasis on protecting the environment.

sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels'.

6 The environmental compliance assurance concept

The Communication introduces the challenges faced by compliance assurance authorities. This section presents the concept of environmental compliance assurance in more detail. This concept serves as the theoretical frame of reference for identifying how to support Member States in addressing these challenges.

6.1 Terms and definitions

Environmental compliance assurance is an umbrella term to cover the range of interventions used by public authorities to ensure compliance by duty-holders with environmental rules on activities. It is not legally defined and what follows in this section is a synthesis based on the work of practitioners, especially those mentioned in the next section.

The term is found in OECD and IMPEL references[23] and was also used by the Make it Work group of Member States[24]. In essence, it covers all the aspects of public enforcement. However, it is a better umbrella term because 'enforcement' does not well describe all the types of intervention concerned. If 'enforcement' is used indiscriminately then the description of different classes of intervention can become muddled.

The three broad classes of compliance assurance intervention are illustrated in Figure 1.

They comprise:

- *Compliance promotion*, which helps duty-holders to comply through means such as guidance, 'frequently asked questions' and help-desks. This represents the 'preventive' part of compliance assurance.
- *Compliance monitoring*, which identifies and characterises duty-holder conduct and detects and assesses any non-compliance, using environmental inspections and other means. This represents the 'diagnostic' part.
- *Follow-up and enforcement*, which draw on administrative, criminal and civil law to stop, deter, sanction and obtain redress for non-compliant conduct and encourage compliance. These represent the 'corrective' part.

[23] See for instance OECD 2009, 'Ensuring Environmental Compliance: Trends and Good Practices'; Mazur, E. (2010), 'Outcome Performance Measures of Environmental Compliance Assurance: Current Practices, Constrains and Ways Forward', OECD Environment Working Papers, No 18, OECD Publishing; IMPEL (2012), 'Exploring the Use and Effectiveness of Complementary Approaches to Inspection for Ensuring Compliance'; IMPEL (2012), 'Compliance Assurance through Compliance Management Systems'.

[24] http://minisites.ieep.eu/work-areas/environmental-governance/better-regulation/make-it-work/subjects/2015/08/compliance-assurance.

Figure 1: The three classes of environmental compliance assurance intervention

A more detailed description of each intervention class is set out in Annex 4.

The concept aims at being:

- comprehensive, i.e. embracing the full range of interventions used to positively influence conduct;
- integrative, i.e. recognising the connections and synergies between different classes and types of intervention.

The Commission's own initiatives and interventions reflect the concept. The EU is a union of law and Member States constitute a regulated community. Compliance monitoring is carried out through action such as (i) Commission examination of Member States' implementation reports and complaints, (ii) promotion through means such as EIR bilateral exchanges and publication of guidance documents and (iii) enforcement through use of infringement procedures.

6.2 Types of conduct and interventions

Compliance promotion, monitoring, follow-up action and enforcement are all relevant to securing compliance and are inter-related and inter-dependent. The reasons for this are related to the explanations given for non-compliant conduct and the realities of pursuing each class of intervention.

The conduct spectrum

There is no single explanation for why breaches of activity-related rules occur. Instead, the conduct of duty-holders corresponds to a conduct spectrum, illustrated in Figure 2. Most duty-holders (it is hoped) will comply of their own volition and some may even be motivated

to go beyond fulfilling legal requirements ('champions'). For the rest, non-compliant conduct may have a range of explanations, including confusion or poor understanding of the applicable rules, absence of investment, lack of acceptance of rules, opportunism and criminality.

By the same token, no one type of response is ideally suited to deal with all types of non-compliant conduct. Enforcement and monitoring are clearly important but so too are awareness-raising, positive engagement with duty-holders and practical support measures. Compliance assurance is adaptable allowing for a mix of compliance promotion, monitoring and enforcement measures, depending on the nature of the non-compliance.

Figure 2: Types of conduct which can result in different levels of compliance and responses to these

The functional relationship between different classes of intervention

There are strong functional relationships within and across different classes of intervention which make compartmentalisation both unrealistic and unhelpful. Follow-up action and enforcement measures depend on the evidence that compliance monitoring provides. Different types of enforcement will demand different evidence (e.g. authorities must satisfy a higher burden of proof when they rely on criminal enforcement). At the same time, evidence-gathering by inspectors, police and others serves little purpose if those with enforcement powers or adjudication roles have no interest in follow-up action or enforcement. This is recognised in what is termed the 'enforcement chain' or the 'compliance assurance chain'. This refers to the links that connect the roles of inspector, police officer, prosecutor and judge. Each role is distinct and the judge's role is independent of the others. However, there

is need for a common understanding of activity-related rules and what is at stake when they are broken.

As for compliance promotion, compliance monitoring may identify this as an appropriate means of preventing or reducing future breaches. By lowering the general level of non-compliant conduct, it lessens the burden on scarce inspection resources.

6.3 Risk assessment, organisation and governance

Breaches vary in scale, frequency, persistence, geographical extent and the harm they cause. Risk assessment is a recognised tool for focusing limited compliance assurance resources on the most serious breaches[25]. At the strategic level, it can identify priorities and help authorities to prepare strategies and choose the best mix of compliance assurance interventions. At the operational level, it can help to target specific interventions. It is presented in more detail in Annex 4.

Environmental compliance assurance not only involves conducting particular activities. There are organisational and governance considerations as well. They are also presented in more detail in Annex 4.

6.4 Relationship to implementation

Environmental compliance assurance of activity-based rules represents a significant part but not the entirety of implementation of the EU environmental legislation in Annex 2. This legislation typically combines activity-related rules with rules setting out administrative tasks that public authorities must carry out. Furthermore, the fact that the bulk of the legislation consists of directives means that national legislation must be adopted or adapted. Implementation covers all of this and so has additional dimensions such as the role of public authorities in putting national legislation into place and carrying out administrative tasks such as preparing environmental management plans and monitoring ambient environmental conditions (i.e. state-of-the environment monitoring). These are illustrated in Figure 3 below. As can be seen, environmental compliance assurance as addressed in this initiative largely concerns level 3[26]. However, all aspects of implementation are closely inter-related. Thus, poor state-of-the-environment monitoring results can be an important indicator of the possible existence or impact of non-compliance with activity-related rules. Contrariwise, good results may point to good outcomes in terms of compliance. Furthermore, compliance assurance can provide valuable evidence for framing rules in ways that make compliance easier to secure[27].

[25] For instance, it features in the inspection provisions of the Industrial Emissions Directive, 2010/75/EU.
[26] While largely focused on level 3, the present initiative has relevance for levels 1 and 2 as well. For example, the proposed action on handling complaints will not only address level 3 compliance but also how well authorities fulfil level 2 tasks. This is because redress mechanisms typically embrace both.
[27] An example is the introduction of more stringent financial security requirements on operators of waste and other high-risk facilities in some Member States following unsuccessful enforcement interventions against companies that caused unlawful environmental damage but who turned out to be insolvent.

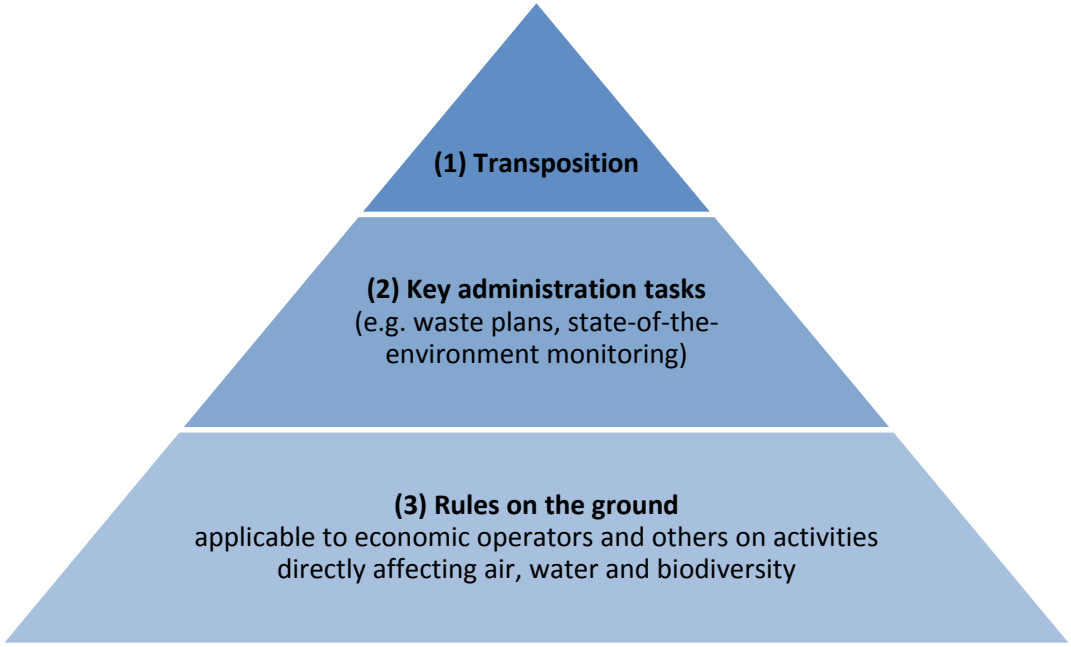

Figure 3 Three levels of implementation

7 Current situation at EU level

Moving beyond the conceptual framework, this section discusses the EU's current situation in terms of (i) the legislation currently in place on environmental compliance assurance, (ii) the role of networks of practitioners and others, (iii) the existing forms of support together with their limitations and (iv) the assessment of compliance assurance efforts.

7.1 Existing EU instruments relevant to environmental compliance assurance

There is no single over-arching EU instrument that governs the environmental compliance assurance of activities.

Compliance monitoring

Limited legislative provisions exist on compliance monitoring. These mainly consist of a set of non-binding general criteria on inspections set out in Recommendation 2001/331/EC providing for minimum criteria for environmental inspections in the Member States ('RMCEI') and some sectoral binding inspection provisions. The latter are principally found in the Industrial Emissions Directive 2010/75/EU[28], the Seveso III Directive 2012/18/EU[29] and the Waste Shipment Regulation, 1013/2006[30].

These instruments follow a similar blue-print, providing for a mix of routine (i.e. planned) and non-routine inspections. They recognise the role of the public, making reference to

[28] Article 23.
[29] Article 20.
[30] Article 50.

complaints. In addition, the Industrial Emissions Directive and the Seveso III Directive provide for minimum inspection frequencies to be determined using risk assessment.

Other parts of the environmental *acquis* (e.g. waste legislation) contain less detailed references to inspections and a lot of environmental legislation (e.g. water and nature legislation) is devoid of them.

Follow-up action and enforcement
Interpreting the general EU treaty provision to cooperate in good faith[31], the Court of Justice of the European Union has held that Member States are obliged, in respect of breaches of European law, to provide for sanctions in their legal systems that are effective, proportionate and dissuasive. Recent environmental directives contain standard penalty clauses based on these strictures.

The Environmental Crime Directive, 2008/99/EC[32], goes further, requiring Member States to have on their statute book criminal penalties for the most serious environmental offences under much of the legislation featuring in Annex 2.

More generally, the Court has held that Member States are obliged to nullify the unlawful consequences of a breach of EU law[33].

Reflecting the polluter pays principle, the Environmental Liability Directive, 2004/35/EC, requires Member States to operate a system of liability for environmental damage.

Application of criminal penalties or environmental liability requirements is dependent on evidence of criminal or environmental liability being found.

Funding
Financial support for environmental compliance assurance in Member States is possible under several EU instruments. Of particular note are the LIFE Regulation[34], which provides grants and project funding, and the Commission implementing decision[35] on the 2017 Annual Work Programme for Union actions under the Internal Security Fund — Police Instrument[36], which includes a budget line for the fight against organised environmental crime.

[31] Article 4(3) of the Treaty on the European Union or TEU.
[32] Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law, OJ L 328, 06/12/2008, p. 28.
[33] See for instance case C-201/02, *Wells*.
[34] Regulation (EU)No 1293/2013 of the European Parliament and of the Council on the establishment of a Programme for the Environment and Climate Action (LIFE) and repealing Regulation (EC) No 614/2007, OJL 347, 20.12.2013, p. 185.
[35] C(2017) 6343.
[36] Regulation (EU) No 513/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management and repealing Council Decision 2007/125/JHA, OJ L 150, 20.5.2014, p. 93.

7.2 Role of European practitioner networks and other bodies

Alongside the above-mentioned legislative patchwork, voluntary networks of environmental compliance assurance practitioners have been established since the 1990s. These have worked both individually and, more recently jointly, to support environmental compliance assurance.

An OECD study[37] highlights important functions of voluntary networks, including:

- promoting the exchange of information and experiences;
- raising professional standards;
- facilitating training;
- channelling participation by national agencies.

Separate networks exist for inspectors, police, prosecutors, judges, auditors and environmental agencies[38]. These are presented in Table 3 below.

Table 3: Main European networks of environmental compliance assurance practitioners

Network	**Description**
The European Union Network for Implementation and Enforcement of Environmental Law (**IMPEL)**	Established in 1992, this is the oldest and most developed network. Its membership is drawn from all Member States and is made up of environmental authorities and environmental inspectorates at central or regional level. It also embraces candidate and potential candidate countries as well as EFTA members.
EnviCrimeNet[39]	Established in 2011, this network mainly consists of national police officers specialised in combating environmental crime.
The European Network of Prosecutors for the Environment **(ENPE)**[40]	Founded in 2012, this brings together bodies responsible for criminal prosecutions (and, to some extent, applying administrative sanctions).
The EU Forum of Judges for the Environment **(EUFJE)**[41]	Founded in 2004, this brings together judges from across the EU, including those adjudicating in criminal as well as administrative and civil cases.
The European Organisation of Supreme Audit Institutions, specialised working group on environmental auditing **(EUROSAI**)[42]	The working group functions within the broader EUROSAI setting.
The European Network of the Heads of Environment Protection Agencies **(NEPA)**[43], in particular its Better Regulation Interest Group (BRIG)	BRIG maintains a close interest in environmental compliance, in particular with regard to its strategic importance within many environment protection agencies.

[37] Mazur, E (2011), 'Environmental Enforcement in Decentralised Governance Systems: Toward a Nationwide Level Playing Field', OECD Environment Working Papers, No 34, OECD Publishing, p. 32. The study also stresses that networks can serve for benchmarking among different authorities, which in turn is seen as a 'tool that might allow national authorities, the regulated community and the public to know whether there is equality in regulatory and compliance assurance activity', p. 37.

[38] An informal network of environmental law academics, the Avosetta Group, also exists http://avosetta.jura.uni-bremen.de/.

[39] http://envicrimenet.com/

[40] http://www.basel.int/Default.aspx?tabid=2940

[41] http://www.eufje.org/

[42] http://www.eurosaiwgea.org/

[43] http://epanet.pbe.eea.europa.eu/.

Also worth mentioning is 'Make it Work', an initiative launched by several Member States that aims to deliver environmental outcomes more efficiently and effectively, without lowering existing protection standards. Amongst other things, it has prepared drafting principles on environmental compliance assurance[44].

The work of the specialist environmental networks mentioned above is supported by Europol (which, amongst other things, provides secretariat support to EnviCrimeNet) and Eurojust (which has close links to ENPE).

At the international level, the Interpol Environmental Crime Programme has been active in highlighting and helping with the fight against environmental crime, in particular concerning waste and wildlife trafficking. It has recommended that member countries establish National Environmental Security Task Forces (NESTs) formed from police, customs, environmental agencies, other specialised agencies, prosecutors, non-governmental organisations and intergovernmental partners. Such task forces can help ensure:

- a multi-disciplinary approach is taken to enable cooperation and coordination between relevant authorities;
- an intelligence-led approach is used to collect information to effectively tackle transnational environmental crime[45].

A precursor to the Habitats Directive, the Convention on the Conservation of European Wildlife and Natura Habitats ('the Bern Convention') has contributed to environmental compliance assurance in at least two respects. First, it operates a case-file system[46] as a compliance monitoring mechanism. Second, it has developed a detailed series of recommendations on combating the illegal killing, trapping and trade of wild birds[47].

Some environmental NGOs contribute useful work to environmental compliance assurance, e.g. through investigative work that supplements the compliance monitoring of public authorities and through compliance promotion efforts.

7.3 Available forms of support and their limitations

Thanks in large part to the work of the networks and other bodies mentioned above, several forms of specific support to Member State compliance assurance authorities have emerged. These are summarised below. EU financial assistance, in particular under the LIFE Regulation, has helped to make much of this support possible. Also on a positive note several practitioner networks have recently moved to combine their efforts[48].

[44] http://minisites.ieep.eu/work-areas/environmental-governance/better-regulation/make-it-work/subjects/2015/08/compliance-assurance.

[45] A recommended model of NEST formation and structure has been outlined in a National Environmental Security Task Force Manual. See for more details: http://www.interpol.int/Crime-areas/Environmental-crime/Task-forces.

[46] https://www.coe.int/en/web/bern-convention/monitoring

[47] See https://www.coe.int/en/web/bern-convention/recommendations-on-illegal-killing-of-birds

[48] IMPEL, ENPE, EnviCrimeNet and EUJFE have started to organise joint conferences and IMPEL, ENPE and EnviCrimeNet are cooperating with each other in the fight against environmental crime. On 20 September 2017, the latter three networks signed a Memorandum of Understanding in the presence of representatives of the Commission and EUFJE.

On the other hand, there are limitations both in terms of the specific forms of support and the general role of the networks. For example, several Member States do not participate at all or only rarely in IMPEL projects and, being voluntary, IMPEL and the other networks are patchy in their coverage of both practitioners and subject-matter.

Peer reviews
These allow environmental compliance assurance authorities in one Member State to benefit from a review of their structures and practices by compliance assurance practitioners from other Member States. The host Member State receives a visit (typically lasting up to a week) after which a report is prepared by the visiting practitioners.

The most established reviews are those conducted under the IMPEL Review Initiative (IRI) which focuses on reviewing and evaluating national environmental inspection systems[49]. The IRI peer reviews provide a useful form of external evaluation but are limited in both the extent of what is reviewed and the number of reviews undertaken. Not all Member States have yet been subject to an IRI review. To date reviews have largely focused on industrial inspections rather than other types of compliance assurance activities (although latterly the IRI has begun undertaking reviews focused on nature legislation). Being conducted by IMPEL alone, they have not covered — or not to any large extent — the environmental compliance assurance chain that brings in the roles of police, prosecutors and courts.

Mention may also be made of another peer review mechanism. Over 2017-2019, the compliance assurance chain is to be covered in a one-off peer review ('mutual evaluations') conducted by Member States themselves in accordance with Joint Action 97/827/JHA. This review, which was announced under the Maltese Presidency in the first half of 2017, shows how important environmental crime has become and will focus on Member States efforts to combat waste crime in particular. For each country visit, the evaluation team consists of two national experts and two members of the staff of the Council General-Secretariat. One Commission representative and representatives of Eurojust and Europol can participate as observers.

Joint enforcement
One form of joint enforcement currently exists. This has been developed by the waste expert team of IMPEL and consists of annually organised joint inspections of waste shipments in all Member States[50].

Peer2Peer tool
IMPEL has facilitated exchange programmes for inspectors but there has been no comprehensive tool covering the main implementation challenges identified in the EIR country reports. Therefore, on 7 September 2017 DG Environment launched a new tool for peer-to-peer exchanges among national, regional and local authorities in Member States, the

[49] See for details: Bio Intelligence Service/Ecologic/IEEP (2013), 'Study on possible options for strengthening the EU level role in environmental inspections and strengthening the Commission's capacity to undertake effective investigations of alleged breaches in EU environment law', p. 111f. Further detailed information on individual reviews under the IMPEL Review Initiative is available at: http://impel.eu/categories/43/search_type/and/order/default/
[50] More detailed information is available at: http://impel.eu/cluster-2/

TAIEX[51]-EIR Peer2Peer[52]. This is aimed at helping Member States improve in implementing EU-based environmental policy and law, including tackling (administrative) root causes, inspired by the implementation challenges indicated in the EIR.

On-the-spot visits
The Bern Convention's case-file system is used to look into serious complaints about compliance and draws on a group of appointed experts to conduct independent on-the-spot appraisals to verify information or check whether recommendations are being satisfactorily implemented. However, these expert visits are limited to nature dossiers and do not cover the numerous other areas of the EU environmental *acquis.*

Training
In 2008, the Commission launched a 'Programme for Cooperation with National Judges and Prosecutors in the Field of EU Environment Law'. It aimed to:

- develop various training modules;
- organise workshops to raise awareness of EU environment law and policy;
- assist national judges in applying laws in practice;
- provide a forum for exchange of knowledge and experience, in particular on environment case law[53].

EUFJE and ENPE representatives have actively contributed. While focused on environmental law in general and not on compliance assurance specifically, the Programme has included the development of a training module on protecting the environment through criminal law[54].

As for inspectors, IMPEL too has developed training materials and organises regular workshops. EUROSAI WGEA has developed a MOOC (mass online open course) to provide a university qualification in environmental auditing.

Despite these positive steps, the picture remains incomplete as to the necessary skills required for effective compliance assurance and the associated training needs.

Guidance documents and strategies
Guidance documents exist on several aspects of environmental compliance assurance but only to a limited extent. Over the years, IMPEL has developed methodologies and issued guidance on inspections. Their principal focus has been on industrial and waste-shipment inspections. It began developing exchanges of good practices on issues such as diffuse water pollution and illegal wildlife activities but guidance on these is still incomplete. The Bern Convention developed a strategy and guidance on combating the illegal killing of wild birds, and the Commission has adopted an Action Plan against wildlife trafficking[55], which the Council endorsed. However, these cover only limited parts of the *acquis* set out in Annex 2.

[51] Technical assistance and information exchange.
[52] .http://ec.europa.eu/environment/eir/p2p/index_en.htm
[53] http://ec.europa.eu/environment/legal/law/judges.htm
[54] http://ec.europa.eu/environment/legal/law/criminal_law.htm
[55] COM(2016) 087 final.

Data and information portals
The practitioner networks maintain a web presence and are a useful source of information on compliance assurance. However, there is no overall central source of information and the Commission's web presence on this is currently weak.

ENPE facilitates the collecting of data on environmental crime and the enforcement action taken on this across the EU. It also maintains a database of European waste crime cases which it intends to expand into other areas[56]. However, there is a general lack of transparency and data as regards what compliance assurance authorities actually do and what they achieve. Academic literature and other sources refer to the lack of systematic data collection on inspections and related compliance assurance[57]. This contributes to the lack of systematic evidence-based evaluation of the performance of compliance assurance systems and of individual authorities with a view to streamlining and strengthening their effectiveness.

Geospatial intelligence
Geospatial intelligence (GEOINT) is intelligence about human activity on Earth derived from the exploitation and analysis of imagery and geospatial information that describes, assesses, and visually depicts physical features and geographically referenced activities on Earth. It can serve as a valuable tool for compliance monitoring — for instance, helping to detect and document illegal land-use. The Copernicus Programme aims to develop European information services based on satellite earth observation and in situ (non-space) data, implemented in partnership with the European Space Agency (ESA) and others[58]. IMPEL and others have shown interest in developing the potential of geospatial intelligence to help in environmental compliance assurance. However, examples of its use to date are limited.

Funding
IMPEL, the network of inspectorates receives an annual grant under LIFE, and ENPE, the prosecutors' network has received project funding. LIFE has also funded a number of projects with an interest for environmental compliance assurance, e.g. on a compliance assurance approach to combat the illegal poisoning of birds of prey in Spain[59] and on improving social acceptance of wolves and other large carnivores. However, take-up by individual compliance assurance authorities of LIFE project-funding has so far been low.

7.4. Assessing compliance assurance efforts

The EIR presents an overview of implementation of EU environmental legislation. Chapter 5 of each country-specific report addresses environmental compliance assurance. However, the information the Commission had on this when compiling the reports was much less complete than it was for other aspects of implementation. While the Commission benefits from periodic Member State reports based on state-of-the-environment monitoring (reflecting detailed requirements on matters such as the establishment and collection of data from air

[56] https://www.environmentalprosecutors.eu/waste-crime
[57] Faure, M. and Svatikova, K., 'Criminal or Administrative Law to Protect the Environment? Evidence from Western Europe', Journal of Environmental Law, May 2012, p. 16 and 22. OECD research also stressed the inadequacy of available enforcement data in many countries to allow assessment of efficiency and effectiveness of enforcement actions, see OECD 2009, 'Ensuring Environmental Compliance. Trends and Good Practices', p. 42-43.
[58] http://www.copernicus.eu/main/overview.
[59] http://ec.europa.eu/environment/life/project/Projects/index.cfm?fuseaction=search.dspPage&n_proj_id=3573

pollution monitoring stations), it must rely on various sources to build a picture of how environmental compliance assurance works in practice[60].

Assessing the performance of Member State authorities in overseeing compliance with environmental legislation is not easy. As indicated above, there has been an initial attempt to boost progress on this in the first round of the EIR. Learning from this experience, the Commission decided that more work is needed to develop a better understanding of what works well. It launched a scoping study[61] to present some initial ideas for a comprehensive assessment framework. In developing such an assessment framework, it may be useful to refer to three dimensions of environmental compliance assurance systems:

- organisation (allocating and dividing responsibilities);
- activities (types of interventions to ensure compliance);
- governance (administrative coordination and public participation).

Figure 4 illustrates the principal building blocks of each dimension. The building blocks represent individual elements or activities that must be carried out or initiated to deliver a compliance assurance assessment system.

Figure 4: Dimensions of environmental compliance assurance[62]

[60] These have included the work of IMPEL and a number of *ad hoc* studies.
[61] Study 'Further development of an assessment framework for environmental compliance assurance'.
[62] 'CoI' in Figure 4 stands for 'conflict of interest'

The scoping study has been able to present some ideas on how these aspects can be presented in a country fiche template, a related scoreboard and a traffic light assessment system. The assessment framework was tested in two countries and recommendations have been made on how such a compliance assurance assessment framework can be developed further. The outcome of this scoping study will be discussed and developed further when the Action Plan is implemented (in particular Action 9). A follow-up project will help realise this assessment framework with the aim of providing input and better evidence on compliance assurance in the second and any further EIR.

8 Consultation process

From February to May 2013, the Commission carried out an online stakeholder consultation with a view to a possible initiative on environmental compliance assurance. The results showed broad support for the concept.

Over 2014 and 2015, the Commission worked closely with the Make it Work group of Member States who wanted to prepare recommendations on the drafting of environmental compliance assurance provisions. Make it Work adopted its conclusions in 2015[63].

Following the announcement of this initiative in the Commission's 2017 Work Programme[64], the Commission convened a stakeholder conference with Member States and experts on 31 January 2017[65] and a workshop on environmental crime held on 20 March 2017[66]. Position papers followed from IMPEL and ENPE in May and June 2017 in which both stressed their enthusiasm to collaborate with the Commission on strengthening environmental compliance assurance[67].

9 How to improve support on compliance assurance?

In 2013, a draft impact assessment report was prepared. This examined several options for improving environmental compliance assurance, including legislative ones. However, a strategic set of concrete actions that focused on supporting Member States was subsequently considered to be the best way forward. Stakeholders showed strong support for this approach at the conference held in January 2017.

In the light of consultations and analysis, nine actions were chosen.

The nature, scope and ambition of the proposed actions broadly reflect the outcome of the stakeholder conference and the subsequent workshop on environmental crime. An overview is provided in Table 3 below and further details are set out in Annex 1. The actions were

[63] http://minisites.ieep.eu/work-areas/environmental-governance/better-regulation/make-it-work/subjects/2015/08/compliance-assurance
[64] http://ec.europa.eu/atwork/pdf/cwp_2017_en.pdf
[65] The summary of this conference is available at: http://ec.europa.eu/environment/legal/law/pdf/summary_conference_compliance_assurance.pdf
[66] The summary and other material of this workshop are available at: http://ec.europa.eu/environment/legal/law/inspections.htm
[67] The IMPEL Position Paper is available at: https://www.impel.eu/wp-content/uploads/2017/06/EnvCompliance-Assurance-Position-Paper-IMPEL.pdf

chosen for their expected high added value in addressing particular shortcomings over a relatively short period of time. They represent a balanced mix of the different kinds of support described in Section 7. The Commission aims to ensure there is overall coherence and synergy between the actions. For example, Action 3 will, amongst other things, aim at disseminating deliverables under other actions.

Table 3: List of proposed actions and timing

No	Action	Timing
1	**Improve deployment of environmental compliance assurance expertise** across the EU by means of peer reviews, joint enforcement actions, compliance assurance visits and use of the TAIEX-EIR Peer2Peer tool68	2019
2	Identify necessary **professional skill-sets and training needs** for environmental inspectors and improve **cooperation with practitioner- and other bodies promoting excellence and providing training for compliance assurance professionals** at national and European level	2018
3	**Facilitate the sharing** of good practices, background and reference material, promote funding opportunities for environmental compliance assurance, and explore the setting up of a wider **environmental implementation portal**	2019
4	Prepare a **good practice guidance document on strategies for combating environmental crimes and other related breaches**, with a particular focus on waste and wildlife	2019
5	Prepare **guidance document(s) on good practices in environmental compliance assurance in rural areas** (in relation to land and water)	2019
6	Prepare **technical guidelines for inspections of extractive waste facilities**	2018
7	Prepare **documentation on good practices in the handling of environmental complaints and citizen engagement at Member State level**, including through citizen science and work with Member States to share good practices on effective national complaint-handling mechanisms concerning EU environmental law	2019
8	Build up the **capacity and use of geospatial intelligence** for compliance assurance and promote good practice projects (e.g. using Copernicus data)	2019
9	Assess national environmental compliance assurance systems as part of a wider governance **assessment framework** and regularly present feedback to Member States, also as part of the Environmental Implementation Review	2019

Action 1, improve deployment of environmental compliance assurance expertise

The following specific considerations underlie Action 1:

- There continue to be wide disparities in environmental compliance assurance across the EU, with good practices not always known or followed.

[68] http://ec.europa.eu/environment/eir/p2p/index_en.htm

- The take-up of IMPEL's review initiative and its joint enforcement show that there is amongst Member States a broad interest in collaboration with compliance assurance experts from other Member States and authorities, with IMPEL's position paper stressing the value of this.
- There is clearly room to develop further the deployment of compliance assurance experts.

Action 2, identify necessary professional skill-sets and training needs

At the stakeholder conference, the importance of training and development of specialised skills was very strongly emphasised by all networks[69]. They are also strongly emphasised in the position papers of IMPEL and ENPE.

Action 3, facilitate the sharing of good practices

The stakeholder conference confirmed the importance of collecting and disseminating information properly and of developing tools to facilitate this.

Action 4, prepare a good practice guidance document on strategies for combating environmental crimes

The following specific considerations underlie Action 4:

- environmental crimes are amongst the most serious forms of non-compliance[70];
- the December 2016 Council Conclusions stressed the importance of action to combat environmental crime and called on the Commission to do more[71]; this was particularly acknowledged in the recently published Commission's 'Comprehensive Assessment of EU Security Policy'[72];
- organised crime already features in the Security Agenda and is a particular problem in the areas of waste and wildlife;
- IMPEL, EnviCrimeNet, ENPE and EUFJE concur on the importance of working together to combat environmental crime, and on prioritising the areas of waste[73] and wildlife[74];

[69] See the conference summary at: http://ec.europa.eu/environment/legal/law/pdf/summary_conference_compliance_assurance.pdf

[70] Combined estimates from the OECD, the UN Office on Drugs and Crime (UNODC), UNEP and INTERPOL on the monetary value of all environmental crime show that it is the fourth largest international crime. According to Europol, waste related environmental crime is driven by an exceptional low-risk, high profit margin and is organised by sophisticated networks of criminals with a clear division of roles (e.g. collection and transportation). Europol also stresses that organised criminal groups play an increasing role in wildlife trafficking within the EU.

[71] http://data.consilium.europa.eu/doc/document/ST-15412-2016-INIT/en/pdf

[72] Commission staff working document 'Comprehensive Assessment of EU Security Policy', SWD(2017) 278 final, p. 58-61.

[73] Waste crime and offending is a problem that concerns both fixed waste sites and waste movements within and outside the EU. Based on 2009 data, an estimated 15 % of waste within the EU is placed on sites that do not meet EU standards. See Ecologic 2009 — A Report on the Implementation of Directive 1999/31/EC on the landfill of waste. Some estimate suggest it might be 400 times cheaper to simply dump hazardous waste than dispose of it legally in the EU (See 'From toxic waste to toxic assets, the same people always get dumped on', *The Guardian*, 21 September 2009; available online at http://www.guardian.co.uk/commentisfree/cif-green/2009/sep/21/global-fly-tipping-toxic-waste).

- combating environmental crime and related offences presents particular challenges in terms of cooperation and coordination between authorities, e.g. between inspectors, police and prosecutors across the environmental compliance assurance chain, and in terms of the relationship between criminal, administrative and civil law.

Action 4 takes up an idea advanced by EnviCrimeNet at the March 2017 workshop on environmental crime[75], namely the value of having a strategic approach to environmental crime and offending such as that developed in the Netherlands. It is also timely in light of the review of the Environmental Crime Directive, 2008/99/EC, and will help to effectively implement that instrument as well as the related efforts to combat organised environmental crime.

Action 5, prepare guidance document(s) on good practices in environmental compliance assurance in rural areas

The following specific considerations underlie Action 5:

- The EIR highlights serious concerns about diffuse water pollution and over-abstraction, and the poor condition of many habitats and species. These are also highlighted in the Commission's staff working document *Agriculture and sustainable water management in the EU* and the Commission's Action Plan for nature, people and the economy.
- EU water and nature legislation do not have provisions on environmental inspections such as those found in the Industrial Emissions Directive, 2010/75/EU.
- Methodological guidance on how to carry out environmental compliance assurance in rural areas could be strengthened. IMPEL now has expert teams on water and nature but these were established relatively recently. While these are of growing value, they have had less time to match the work done on industrial inspections.
- A combined approach to rules affecting rural areas will enable greater coherence and streamlining of compliance assurance efforts there.

Action 6, prepare technical guidelines for inspections of extractive waste facilities

The Mining Waste Directive, 2006/21/EC and the Industrial Emissions Directive, 2010/75/EU both make explicit provision for adopting Commission guidelines on environmental inspections. As part of the present Action Plan, the Commission will adopt the guidelines envisaged in the Mining Waste Directive.

Action 7, prepare documentation on good practices in the handling of environmental complaints and citizen engagement at Member State level

A number of specific considerations underlie Action 7:

[74] Wildlife crime has both an international aspect and an internal EU aspect. The international aspect relates to wildlife trafficking. A Commission communication on the subject in 2014 notes that 2 500 seizures of wildlife products are made every year in the EU. See COM(2014) 64 final, p. 4.
[75] http://ec.europa.eu/environment/legal/law/pdf/Summary_20_03.pdf

- the Commission's communication *EU law: better results through better application* stresses the role national authorities play in securing the rights of individuals and the importance of supporting national redress mechanisms[76];
- while complaint mechanisms form part of the concept of environmental compliance and while they figure in a number of environmental instruments[77], there is currently neither a general mechanism for, nor guidance on, handling environmental complaints at national level;
- the high number of environmental complaints[78] and petitions received by the European institutions show that there is scope for improving environmental complaint-handling within Member States;
- citizen science offers a constructive model for how citizens can make environmental submissions to the competent authorities, something already acknowledged by the Commission in its report *Actions to Streamline Environmental Reporting*[79].

Action 8, build up the capacity and use of geospatial intelligence

The workshop on environmental crime held on 20 March 2017 included a contribution from the European Space Agency that confirmed the potential value of geospatial intelligence for environmental compliance assurance[80].

Action 9, assess national environmental compliance assurance systems

The stakeholder conference included a presentation of the EIR and highlighted that there was broad agreement on the need and usefulness of evaluation mechanisms at both national and EU level. The following points also emerged[81]:

- Evaluation systems should have a dynamic character and be closely integrated with support measures that aim to help evaluated bodies to improve their performance.
- Evaluation criteria should be developed in a dynamic way in close collaboration with evaluated bodies and be designed to show trends and state when progress is made.
- Evaluation systems are not only valuable to the bodies evaluated but can also help to demonstrate the credibility of both the assessing and evaluated bodies to the public. It was considered valuable to have evaluation criteria on complaint-handling and public engagement in order to show that public concerns are taken on board and to ensure public confidence.

[76] 2017/C 18/2.
[77] See for example RMCEI and the Industrial Emissions Directive, 2010/75/EC.
[78] Approximately 600 per annum.
[79] COM(2017) 312 final.
[80] The matter was explored in more detail in a workshop on the use of satellites to combat waste crime organised by DG ENV and an ESA-funded consultancy in October 2017.
[81] An evaluation system developed and presented by Ireland's Environmental Protection Agency (EPA) was instructive, see Irish EPA presentation at the stakeholder conference on 31 January 2017: http://ec.europa.eu/environment/legal/law/inspections.htm

10 Creation of an expert group

At the stakeholder conference, participants stressed the importance of multi-level governance and of having a strategic approach to environmental compliance assurance. They observed that, to be effective, compliance assurance needs to involve all government levels and that a shared understanding of objectives and approaches across different authorities is desired. They also stressed senior management need to be engaged to ensure prioritisation, proper strategic planning, suitable resource allocation and efficiency.

In view of this, an expert group is being established to engage Member States at senior level on issues of environmental compliance assurance and environmental governance generally. This will provide steering for the Action Plan and serve as a forum to exchange views with senior managers from Member States on how to improve these aspects of implementation. There is currently no such cross-cutting expert group at EU level. The expert group offers a means for the chairs and leaders of the practitioner networks to join in the exchanges.

ANNEX 1

Details of actions

ACTION 1:

Improve deployment of environmental compliance assurance expertise across the EU by means of peer reviews, joint enforcement actions, compliance assurance visits and the use of the TAIEX-EIR Peer2Peer tool.

OBJECTIVE:

Enable Member States to benefit from the application of compliance assurance expertise from elsewhere in the EU.

BACKGROUND, RATIONALE AND DESCRIPTION:

The action will build on a number of existing mechanisms that strengthen compliance assurance in one or more Member States through deploying compliance assurance experts from other Member States or bodies:

- IMPEL (EU Network for the Implementation and Enforcement of Environmental Law) carries out **peer reviews** (IMPEL Review Initiative or IRI for short[82]) in which a host authority in one country receives IMPEL experts from other countries who draw up a report on their visit;
- IMPEL has an established **joint enforcement action** on trans-frontier waste shipments under which inspectors from all Member States carry out joint checks and collect data once a year[83];
- The Berne Convention on the Conservation of European Wildlife and Natural Habitats ('the Berne Convention'), to which both the EU and Member States are parties, has a case-file system which provides for **on-the-spot visits by independent experts** to report on compliance issues;
- The TAIEX-EIR **Peer2Peer tool** forms part of the Environmental Implementation Review[84] (EIR) and will fund short-term visits of officials from one Member State to another.

These mechanisms have in common the involvement of experts from outside an individual Member State in compliance assurance within that Member State. They facilitate transfer of knowledge, good practices and insights, and foster a more cohesive and consistent approach to compliance assurance across the EU.

The action will aim to increase such benefits by:

- strengthening IMPEL peer reviews through one or more of the following:
    - expanded geographical coverage[85];
    - expanded subject-areas[86];

[82] https://www.impel.eu/tools/impel-review-initiative-tool/

[83] https://www.impel.eu/projects/enforcement-actions/

[84] http://ec.europa.eu/environment/eir/p2p/index_en.htm

[85] While most Member States have already hosted at least one IMPEL peer review, some have not yet hosted any.

    - more extensive coverage of the compliance assurance chain (for instance, through involvement of police officers and prosecutors)[87];
- strengthening IMPEL joint enforcement action by initiating it in one or more new areas;
- strengthening the Commission's capacity to carry out compliance assurance visits in one or more Member States (such visits could look at specific compliance issues — or systemic ones where they might cause an environmental implementation gap; they would be carried out in close coordination with Member State administrations);
- encouraging authorities to use the TAIEX-EIR Peer2Peer tool for cross-border visits by compliance assurance practitioners.

DELIVERABLES, RESPONSIBILITIES AND TIMELINES:

What?

- agreement with IMPEL on strengthening peer reviews and joint enforcement actions;
- development of Commission model and capacity to undertake compliance assurance visits;
- promotion of the TAIEX-EIR Peer2Peer tool for compliance assurance.

Who?

The relevant Commission services will lead the work. They will collaborate closely with IMPEL and consult with EnviCrimeNet (Environmental Crime Network) and ENPE (European Network of Prosecutors for the Environment).

When?

Discussions on improving available tools (with IMPEL or TAIEX-EIR Peer2Peer) during 2018 with the view to promoting them for compliance assurance. The model and the proposed capacity to carry out compliance assurance visits will be developed during 2018. A presentation will be given to the Environmental Compliance and Governance Forum in Quarter 4, 2018 on the progress made.

[86] IMPEL peer reviews have to date largely focused on industrial inspections, with a few recent ones focusing on compliance with EU nature and water legislation. Improved coverage of EU nature and water legislation would be beneficial.

[87] IMPEL peer reviews have largely focused on the role of inspectorates. However, there is scope to involve other categories of practitioners such as prosecutors with a view to improving feedback to host authorities and Member States on how to manage work-flows that include several authorities.

ACTION 2:

Identify necessary **professional skill-sets and training needs** for environmental inspectors and enhance cooperation with practitioner and other bodies promoting excellence and providing training for compliance assurance professionals at national and European level.

OBJECTIVES:

- provide Member State competent authorities with reference material on skill-sets and training needs related to the compliance assurance chain[88];

- achieve a broad expert consensus on the best options for preparing training materials, rolling-out training and ensuring coordination of training efforts in the compliance assurance field.

BACKGROUND, RATIONALE AND DESCRIPTION:

At the Stakeholder Conference of 31 January 2017, the EU-level pan-European networks, IMPEL[89], ENPE[90], EUFJE, EnviCrimeNet and the working group on environmental auditing within EUROSAI[91], together with Europol and Eurojust, pointed to the importance of professionalism and a high demand for specialist training. The topic features prominently in IMPEL's subsequent position paper. The lack of specialised knowledge and the need to strengthen training activities across the environmental compliance chain have already been recognised in several Council Conclusions[92] and Commission documents as well as in scientific research[93].

Professionalism and training needs relate to:

- the different professions that undertake environmental compliance assurance, in particular those of inspector, police officer, customs official, prosecutor and judge;
- the technical and forensic support required by these professions;
- entry-level recruitment requirements;
- core qualifications, core competences and criteria for measuring expertise;
- in-service training and the links to career development and continuous assessment;
- assessment of training effectiveness.

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88 The chain that links the roles of inspectors, police, prosecutors and judges.

89 In June 2017, IMPEL published a position paper on the present Commission initiative, see https://www.impel.eu/wp-content/uploads/2017/06/EnvCompliance-Assurance-Position-Paper-IMPEL.pdf.

90 ENPE also provided a position paper on the initiative.

91 The European organisation of supreme audit institutions.

92 See for instance Council Conclusions on countering environmental crime from 8 December 2016: http://data.consilium.europa.eu/doc/document/ST-15412-2016-INIT/en/pdf; Council Conclusions on the EU Action Plan against wildlife trafficking: http://data.consilium.europa.eu/doc/document/ST-10512-2016-INIT/en/pdf; Council Conclusions on the continuation of the EU Policy Cycle for organised and serious international crime for the period 2018-2021: http://data.consilium.europa.eu/doc/document/ST-7704-2017-INIT/en/pdf.

93 See for instance the outcomes of the EU-funded study on European action to fight environmental crime (EFFACE): http://efface.eu/.

The rationale of **Action 2** is, *firstly*, to take an initial step towards addressing the demand for specialist training by identifying the professional skill-sets necessary to carry out environmental inspections and their associated training needs, with IMPEL invited to take the lead; *secondly*, to build on this and further support training needs through cooperation between the Commission and the compliance assurance networks and other bodies.

IMPEL already provides some training to its members with Commission support. The Commission also runs an existing 'Programme for cooperation with national judges and prosecutors in the field of environmental law'[94]. Action 2 will aim to ensure a particular focus on compliance assurance when developing new training materials or updating existing ones

DELIVERABLES, RESPONSIBILITIES AND TIMELINES:

What?

First: Discussion with IMPEL on delivering an inventory of professional skill-sets and training needs for environmental inspectors. This is to be followed by a reference document containing an inventory of skills, competencies and training needs, and broad recommendations for how to deliver qualifications and training.

Second: Refinement of existing training support in light of exchanges with the compliance assurance networks and other bodies.

Who?

The relevant Commission services will coordinate the work. This will involve close collaboration, in particular with IMPEL but ENPE, EnviCrimeNet, EUFJE and EUROSAI will also be consulted.

When?

Action 2 will be implemented in a two-step approach. Firstly, it will involve discussion with IMPEL in Quarter 1, 2018 to engage in a collaboration which would result in IMPEL presenting its inventory at the Environmental Compliance and Governance Forum in Quarter 4, 2018. Secondly, it will involve engaging with all the pan-European networks on their training activities and presenting the Environmental Compliance and Governance Forum with an overview in Quarter 2, 2019 as well as the proposals of each network for improving training.

[94] http://ec.europa.eu/environment/legal/law/judges.htm

ACTION 3:

Facilitate the sharing of good practices, background and reference material and promote funding opportunities for environmental compliance assurance and explore the setting up of a wider environmental implementation portal.

OBJECTIVES:

Help Member States' experts, practitioners and the public to better understand environmental compliance assurance find relevant examples and good practices and ensure effective dissemination of deliverables under this Action Plan.

BACKGROUND, RATIONALE AND DESCRIPTION:

In combination with search engines, internet information portals allow both the public and specialists to find useful information and knowledge more easily. In the field of the environment, the importance of disseminating environmental information is recognised in the Access to Environmental Information Directive, 2003/4/EC[95], the INSPIRE Directive, 2007/2/EC[96] and a Commission review of EU environmental reporting requirements[97]. Positive examples of active dissemination of environmental information by EU institutions and bodies include WISE[98], BISE[99], IPCHem[100], and online information related to the Urban Waste Water Treatment Directive[101]. However, actively-disseminated information about environmental compliance assurance at EU level is currently patchy, hampering understanding of the concept, the sharing of good practices and the take-up of funding opportunities.

This action aims to improve the situation by establishing a more complete, coherent and useful Commission web presence on environmental compliance assurance, linking it to other information sources, e.g. those developed in certain sectors (e.g. industrial emissions) or certain organisations (e.g. IMPEL). Apart from being key potential end-users, several of the networks of environmental compliance assurance practitioners mentioned below themselves maintain a web presence whereby they share valuable compliance assurance information. It will draw on positive models where they already exist, and, in terms of content, seek to provide visitors with a coherent body of information covering good practices, references and

95 Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC , OJL 41, 14.2.2003, p.26.

96 Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE), OJ L 108, 25.4.2007, p. 1.

97 http://ec.europa.eu/environment/legal/reporting/fc_overview_en.htm

98 The Water Information System for Europe, see: http://water.europa.eu/.

99 Biodiversity Information System for Europe, see: http://biodiversity.europa.eu/.

100 The Information Platform for Chemical Monitoring, see: https://ipchem.jrc.ec.europa.eu/.

101 Urban Waste-water Treatment Directive Structured Implementation and Information Framework (SIIF), see: http://www.eea.europa.eu/themes/water/water-pollution/uwwtd/interactive-maps/urban-waste-water-treatment-maps-1.

sources of funding (for example under the LIFE Regulation[102]). It will, amongst other things, serve to actively disseminate deliverables under other actions of the Action Plan.

As the Environmental Implementation Review (EIR) demonstrates, information about environmental compliance assurance fits into a broader context. To categorise the content of environmental information, the European Environment Agency (EEA) uses a 'DPSIR' (drivers, pressure, state, impact and response)[103] model. Environmental compliance assurance forms part of the response category, but a broad understanding of compliance challenges needs to draw on other DPSIR categories. Therefore, this action also explores the possibility and feasibility of setting up a wider environment implementation portal, building on the experiences gained through sharing information on compliance assurance which would, amongst other benefits, support the EIR.

DELIVERABLES, RESPONSIBILITIES AND TIMELINES:

What?

The action will first and foremost focus on ensuring that the Commission provides user-friendly information on environmental compliance assurance through the Europa pages, in particular to actively disseminate deliverables under the Action Plan. As a second step it will explore the possibility of expanding the information to encompass broader content by using an environment implementation portal.

Who?

The relevant Commission services will lead the work. They will seek feedback from relevant pan-European practitioners networks in the field of the environment such as IMPEL (EU Network for the Implementation and Enforcement of Environmental Law, EnviCrimeNet (Environmental Crime Network), ENPE (European Network of Prosecutors for the Environment) and EUFJE (EU Forum of Judges for the Environment). Moreover, input from sectoral information or relevant information available at national level will be considered.

When?

The results of the action will be presented to the Environmental Compliance and Governance Forum in Quarter 2, 2019.

[102] Regulation (EU) No 1293/2013 of the European Parliament and of the Council of 11 December 2013 on the establishment of a Programme for the Environment and Climate Action (LIFE) and repealing Regulation (EC) No 614/2007, OJ L 347, 20.12.2013, p. 185.

[103] For more information on the DPSIR framework, see the EEA's page at http://ia2dec.pbe.eea.europa.eu/knowledge_base/Frameworks/doc101182

ACTION 4:

Prepare a **good practice guidance document on strategies for combating environmental crimes and other related breaches**, with a particular focus on waste and wildlife.

OBJECTIVES:

Ensure a minimum level of coherence across the EU Member States on how to tackle environmental crimes and other related breaches. The action will help the relevant Member State authorities to develop strategic approaches at national level, by providing guidance that they can adapt and refine.

BACKGROUND, RATIONALE AND DESCRIPTION:

Member States[104], practitioners[105] and international bodies[106] have recognised environmental crime as a serious issue, in particular in the areas of waste and wildlife. Challenges include:

- the need for strategic assessment of risk and strategic coordination within and across Member States between administrative authorities and law enforcement bodies (including the police, customs and prosecutors), as well as the sharing of intelligence;

- the need to take account of non-EU countries, and ensure good links with international law enforcement, e.g. through Interpol;

- the need to take account of non-environmental crimes and offences, such as corruption, fraud, money laundering and tax evasion;

- the need to take account of organised crime, which features prominently in relation to both waste and wildlife, although it does not characterise all forms of waste and wildlife offending;

- the need to sometimes address issues of social acceptance of unlawful conduct in the case of wildlife breaches (e.g. some forms of illegal hunting);

- difficulties in detecting illegal activities that are highly mobile and clandestine, and may require special investigative techniques, know-how and powers;

[104] See for instance Council Conclusions on countering environmental crime from 8 December 2016: http://data.consilium.europa.eu/doc/document/ST-15412-2016-INIT/en/pdf. Also, the Council mechanism on the mutual evaluations round (see Joint Action 97/827/JHA) has environmental crime as a topic for evaluation, starting in 2017. This involves evaluating the application and implementation at national level of measures and activities in the fight against organised environmental crime, with the main focus being on waste crime and dangerous materials across the EU-28.

[105] Workshop on tackling waste and wildlife crime held in March 2017; stakeholder conference on environmental compliance assurance held in January 2017; workshop on review of existing policy and legislation on organised environmental crime (waste and wildlife crime) held in October 2016; and EFFACE final conference on 'Combating Environmental Crime: Priorities and Opportunities for further EU Action' held in February 2016.

[106] https://www.interpol.int/News-and-media/News/2016/N2016-073

- the need for responses to include not only application of criminal law, but also administrative law and rules on remediation;

- the need to address the concerns of the public and civil society;

- the need to respond to media interest.

Currently, with some positive exceptions[107], there is an absence of guidance at EU level on how to address these challenges and — again with some positive exceptions[108] — an absence of strategies at national level. Drawing on advice from practitioners, this action will address the gap by producing:

i. An easy-to-understand overview and summary of:

   - the relevant EU environmental obligations in the areas of waste and wildlife;

   - the types of offending that occur in practice;

   - the principles that should govern compliance assurance (for example, the principle of effectiveness, including with regard to sanctions; the polluter pays principle; and the principle of prevention);

   - the role of the Charter of Fundamental Rights.

ii. An overview of the role of the following in giving effect to these principles:

   - criminal law, in particular the Environmental Crime Directive[109], in ensuring the most serious offences are effectively sanctioned;

   - administrative law in providing a set of responses (such as warnings and administrative fines) for circumstances that are not well addressed by penal codes (e.g. lack of penal sanctions for legal persons);

   - assessing environmental harm as part of the assessment of gravity of environmental crimes and breaches and the role of liability regimes, in particular the Environmental Liability Directive[110], in addressing damage resulting from environmental crime and offending;

   - financial security as both a preventive and response tool for certain types of offending;

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[107] Detailed EU Guidelines for customs controls on transboundary shipments of waste do exist, and are aimed at supporting a harmonised and coherent approach by customs authorities in the control of shipments of waste into, through and out of the territory of the European Union, reference OJC 157, 12.5.2015, p. 1-14.

[108] For example, in the Netherlands and in the United Kingdom.

[109] Directive 2008/99/EC of the European Parliament and the Council of 19 November 2008 on the protection of the environment through criminal law, OJL 328, 6.12.2008, p28.

[110] Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, OJ L 143, 30/04/2004, p. 56.

- awareness-raising.

iii. An overview of arrangements and good practices at national, pan-European and international[111] level for ensuring close coordination and cooperation, including information and data-sharing, between similar authorities and authorities with different roles, e.g. inspectors responsible for routine fixed installation inspections (which may be the first to identify offences) and police, customs and prosecutors, who will have the detailed investigative powers and the right to prosecute;

iv. An overview of relevant compliance monitoring tools and how they relate to enforcement tools;

v. Recommended content for strategies to combat environmental crimes and offences, taking account of links to other kinds of crime and offence.

DELIVERABLES, RESPONSIBILITIES AND TIMELINES:

What?

Guidance document and other relevant information to be presented to the Environmental Compliance and Governance Forum.

Who?

The relevant Commission services will lead the work. The action will be implemented in close discussion and consultation with the Environmental Compliance and Governance Forum. In the preparatory phase, the Commission services will seek close collaboration with relevant pan-European groups, bodies or networks, in particular IMPEL (EU Network for the Implementation and Enforcement of Environmental Law), EnviCrimeNet, ENPE (European Network of Prosecutors for the Environment) and EUFJE (EU Forum of Judges for the Environment), Europol and Eurojust. Preparing the guidance will involve a phase of research on existing Member State models, where they exist (e.g. The Netherlands), and an iterative approach to drafting, involving expert workshops and expert consultations.

When?

The guidance document will be presented to the Environmental Compliance and Governance Forum in Q2/2019.

[111] For instance, see the Strategic Framework for Customs Cooperation 2018-2020 between the European Union and the Government of the People's Republic of China, signed June 2nd 2017, supporting the fight against fraud with an emphasis on protecting the environment.

ACTION 5:

Prepare **guidance document(s) on good practices in environmental compliance assurance in rural areas** (in relation to land and water).

OBJECTIVES:

Improve environmental compliance assurance as regards rural areas[112] by assisting national authorities to monitor, promote and enforce compliance with EU water,[113] nature[114] and related legislation[115]. The action will strengthen compliance with EU nature legislation, creating a synergy with the Commission's Action Plan for nature, people and the economy[116] and help improve national compliance assurance systems for water legislation as envisaged in the Commission staff working document *Agriculture and Sustainable Water Management in the EU*[117]. The guidance will contribute to the Common Agricultural Policy (CAP) by underpinning legislation covered by cross-compliance.

BACKGROUND, RATIONALE AND DESCRIPTION:

EU environmental legislation lays down obligations related to activities in rural areas that affect land and water. Much EU environmental legislation that gives rise to environmental requirements for rural areas does not contain detailed provisions on inspections and other forms of compliance monitoring. There is an absence of guidance to help Member States ensure that these requirements are effective on the ground. However, some of these requirements are subject to cross-compliance – which comes with inspection and audit provisions under the CAP.

The action will facilitate better implementation of environmental legislation by producing:

i. An easy-to-understand overview and summary of the relevant EU environmental obligations that govern or influence these environmental requirements, a summary of

[112] The intended focus is on areas outside of urban areas and urban settlements such as those within the scope of Directive 91/271/EEC on urban waste water treatment, OJ L 135, 30.5.1991, p. 40 (**Urban Waste Water Treatment Directive**).

[113] In particular, Directive 2000/60/EC establishing a framework for Community action in the field of water policy, OJ L 327, 22.12.2000, p.1 (**Water Framework Directive**); Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources, OJ L 375, 31.12.1991, p.1 (**Nitrates Directive**); Directive 2007/60/EC on the assessment and management of flood risks, OJ L 288, 6.11.2007, p. 27 (**Floods Directive**); Council Directive 98/83/EC on the quality of water intended for human consumption, OJ L 330, 5.12.1998, p. 32 (**Drinking Water Directive**).

[114] In particular, Directive 2009/147/EC on the conservation of wild birds OJ L 20, 26.1.2010, p. 7 (**Birds Directive**); and Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, OJ L 206, 22.7.1992, p. 7 (**Habitats Directive**).

[115] In particular, Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, OJ L 26, 28.1.2012, p. 1. (**Impact Assessment or EIA Directive**); Directive 2008/98/EC on waste and repealing certain Directives, OJ L 312, 22.11.2008, p. 3 (**Waste Framework Directive**), Directive 2008/50/EC on ambient air quality and cleaner air for Europe (**Air Quality Directive**) and Directive 2016/2284/EU on the reduction of national emissions of certain atmospheric pollutants (**NEC Directive)**.

[116] COM(2017) 198, final, see in particular Priority B: Building political ownership and strengthening compliance.

[117] SWD(2017)153 final, 28.4.2017, Section 2.1.

the principles and strategies that should govern compliance assurance in respect of them, and links to funding instruments.

ii. A tool for developing strategies, in particular for assessing the risks of non-compliance with these requirements, including systemic risks, to help Member State prioritise and target their compliance assurance.

iii. Guidance on good practices in inspections and other forms of compliance monitoring, as well as follow-up, covering in particular (1) site-based inspections[118]; (2) monitoring at the level of river catchments or protected sites; (3) earth observation and related means of monitoring land-use changes; (4) environmental audits; (5) role of citizen science; (6) compliance monitoring that covers different requirements and takes account of cross-compliance; (7) data collection and data-sharing and other forms of cooperation between authorities and (8) relationship of compliance monitoring to state-of-the-environment and pressure monitoring. To maximise synergy with the CAP, particular attention will be paid to requirements that are also subject to cross-compliance or are otherwise the subject of CAP payments, with a view to avoiding unnecessary administrative burden for farmers and Member States.

iv. Guidance on good practices to help duty-holders comply and raise general public awareness, covering in particular (1) advice and awareness-raising on the importance of compliance and the consequences of non-compliance; (2) practical advice on how to fulfil requirements; (3) practical advice on where to get financial support; and (4) co-design with duty-holders of detailed requirements and prescriptions, in particular those that have a voluntary character, to optimise results

These outputs will to an appropriate and useful extent take account of requirements concerning:

- storage of manures and other polluting substances and organic and chemical fertiliser application[119];
- pesticide use[120];
- abstraction of surface and ground water[121] and protection of groundwater;
- protection of habitats and species[122].

Account will also be taken of related environmental requirements that concern:

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118 Including under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control), OJ L 334, 17.12.2010, p. 17. (**Industrial Emissions Directive**).

119 Nitrates Directive and Article 11 of the Water Framework Directive

120 Water Framework Directive and Directive 2009/128/EC establishing a framework for Community action to achieve the sustainable use of pesticides, OJL 309, 24.11.2009 (**Sustainable Use Directive**).

121 Article 11 of the Water Framework Directive.

122 Articles 3 and 4 of the Birds Directive, Articles 6, 12 and 13 of the Habitats Directive and Article 4 of the Water Framework Directive.

- waste-water discharges in rural areas (i.e. outside urban areas and urbanised settlements)[123];

- protection of drinking water sources[124], protection of other environmentally sensitive areas[125] and protection of groundwater[126];

- erosion of soil[127] and flood management[128];

- assessment of impacts on and/or protection of valuable features such as wetlands and cultural heritage[129];

- emissions of air pollutants from agricultural sources[130].

To facilitate authorities and duty-holders, also with view to simplification, the action will aim at identifying the inter-linkages between different requirements and responses.

DELIVERABLES, RESPONSIBILITIES AND TIMELINES:

What?

Guidance document(s) and other relevant information will be presented to the Environmental Compliance and Governance Forum. Deliverables will take account of relevant water research and innovation initiatives, and other innovative solutions such as those facilitated by the European Innovation Partnership (EIP) on Water[131] and the EIP on Agriculture[132]and the importance of the links between science and policy.

Who?

The relevant Commission services will lead the work. In the preparatory phase, the Commission will seek close collaboration with experts in the various environmental sectors as well as relevant pan-European groups, bodies or networks, in particular (1) IMPEL (EU Network for the Implementation and Enforcement of Environmental Law), (2) the specialised working group on environmental auditing within the European Organisation of Supreme Audit Institutions (EUROSAI,) and (3) other experts in the field. Relevant high-level sector-specific groups, notably the EU Water Directors and the EU Nature Directors, will be kept informed of progress, given that the action supports the Common Implementation Strategy of the Water Framework Directive and the Action Plan for Nature respectively.

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123 Waste Framework Directive/Water Framework Directive.

124 Article 7 of the Water Framework Directive.

125 See Water Framework Directive.

126 See Directive 2006/118/EC of the European Parliament and of the Council on the protection of groundwater against pollution and deterioration, OJ L 372, 27.12.2006, p. 19 (**Groundwater Directive**).

127 Article 11 of the Water Framework Directive, Articles 3 and 4 of the Birds Directive and Article 6 of the Habitats Directive.

128 Floods Directive.

129 Waste Framework Directive and EIA Directive.

130 Air Quality Directive and NEC Directive.

131 http://www.eip-water.eu/about

132 https://ec.europa.eu/eip/agriculture/en

When?

The first guidance document(s) will be presented to the Environmental Compliance and Governance Forum in Q2/2019.

ACTION 6:

Prepare **technical guidelines for inspections of extractive waste facilities.**

OBJECTIVES:

Provide Member States with technical guidelines on inspections in line with Article 22 of Directive 2006/21/EC on the management of waste from extractive industries.

BACKGROUND, RATIONALE AND DESCRIPTION:

Directive 2006/21/EC[133] sets out requirements which Member States must fulfil when managing waste from mines and other extractive industries.

Article 17 requires Member States to inspect extractive waste facilities to ensure that they comply with relevant permit conditions and Article 22 provides that the Commission shall adopt technical guidelines for inspections in accordance with Article 17.

This action involves the Commission adopting the expected technical guidelines for inspections.

DELIVERABLES, RESPONSIBILITIES AND TIMELINES:

What?

The technical guidelines are expected to address aspects such as the competence of inspectors, inspection plans, the scope of inspections and the role of competent authorities.

Who?

The relevant Commission services will lead the work and the adoption process will involve use of a committee procedure set out in Directive 2006/21/EC. In line with Better Regulation commitments, the Commission plans to publish the draft act for public feedback. This would then be adopted as an implementing act, using the examination procedure, which involves Member States experts.

When?

Formal adoption is expected in 2018. The technical guidelines will be presented to the Environmental Compliance and Governance Forum in Quarter 2, 2019.

[133] OJ L 102, 11.4.2006, p. 15.

ACTION 7:

Prepare **documentation on good practices in the handling of environmental complaints and citizen engagement at Member State level**, including through citizen science and work with Member States to share good practices on effective national complaint-handling mechanisms concerning EU environmental law.

OBJECTIVES:

The action will help Member States authorities to apply good practices for handling environmental complaints and organising citizen science submissions from the public by developing a reference document on these.

BACKGROUND, RATIONALE AND DESCRIPTION:

As guardian of the Treaties, the Commission receives and examines 600 or so environmental complaints from EU citizens each year. At the same time, it recognises the importance of supporting effective redress mechanisms at national level[134]. There is currently an absence of reference documents to help Member States address complaints concerning the environmental *acquis* at national level. There is also patchy knowledge of the opportunities created by citizen science to facilitate submissions from citizens to public authorities on implementing this *acquis.*

The action will address this gap by producing documentation that presents good practices on:

i. handling complaints submitted to environmental authorities at national level about non-compliance, which will cover complaints about nuisances and environmental crimes and offences;

ii. the role of national ombudsmen and similar bodies that receive complaints about how national administrations have fulfilled obligations related to the EU environmental *acquis;*

iii. the role of citizen science in facilitating the transmission of useful information from citizens to public authorities on implementing the EU environmental *acquis.*

DELIVERABLES, RESPONSIBILITIES AND TIMELINES:

What?

Documentation will be prepared for presentation to the Environmental Compliance and Governance Forum.

Who?

The relevant Commission services will lead the work. The Commission will seek close collaboration with relevant pan-European groups, bodies or networks, in particular IMPEL.

[134] COM(2017) 198 final.

When?

Presentation of documentation to the Environmental Compliance and Governance Forum in Quarter 4, 2018.

ACTION 8:

Build up the **capacity and use of geospatial intelligence** for compliance assurance and promote good practice projects (e.g. using Copernicus data).

OBJECTIVES:

Enable Member States and the Commission to benefit from the potential of geospatial intelligence (GEOINT) to support risk-based compliance assurance.

BACKGROUND, RATIONALE AND DESCRIPTION:

GEOINT is intelligence about human activity on Earth derived from the exploitation and analysis of imagery and geospatial information that describes, assesses, and visually depicts physical features and geographically referenced activities on Earth. GEOINT consists of imagery and imagery intelligence[135] (IMINT) combined with other geospatial[136] information. It uses different sources of information about specific locations (e.g. imagery from satellites and other means of earth observation such as drones) as either itself a form of compliance monitoring or as a tool for directing other forms of compliance monitoring (such as site-based inspections). Other geospatial information is essentially all the spatial data covered by the INSPIRE Directive, 2007/2/EC[137], to which also specific information on compliance can be linked as attributes (for example a landfill is a waste processing facility at a given location to which information on permits etc. can be linked). The recent results of the environmental reporting fitness check[138] have shown that there is greater scope for using such geospatial technologies to make monitoring and reporting on compliance more effective and efficient.

GEOINT can be useful in detecting and documenting unlawful land-use changes (e.g. damage to protected nature sites and operation of illegal landfills) or in tracking sensitive movements (e.g. waste or wild birds). It has the potential to provide automated early warnings (e.g. by picking up the signatures of unusual or irregular land-use changes and notifying these to end-users); *ad hoc* evidence of change (e.g. before and after images of particular locations affected by unlawful changes); and tracking data that can deter illegal movements, such as those of waste.

Amongst others, the following organisations have shown an interest in GEOINT: the Commission's Joint Research Centre (JRC), IMPEL (EU Network for the Implementation and Enforcement of Environmental Law), the European Space Agency (ESA) and a number of Member States. Furthermore, the EU Copernicus Programme can support GEOINT through implementing the 2016 Space Strategy.

[135] Imagery intelligence (IMINT) is an intelligence-gathering discipline which collects information via imaging sensors on satellite and/or airborne platforms (planes, drones).

[136] Geospatial information is defined in the ISO/TC 211 series of standards as data and information having an implicit or explicit association with a location relative to the Earth.

[137] Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE), OJ L 108, 25.4.2007, p. 1.

[138] COM(2017)312 and SWD(2017)230.

The action will help Member States and bodies who wish to use GEOINT by bringing together expertise (including expertise resulting from a number of *ad hoc* applications) and sharing insights with the Environmental Compliance and Governance Forum.

DELIVERABLES, RESPONSIBILITIES AND TIMELINES:

What?

The Commission services will seek to develop *ad hoc* applications of GEOINT and to cooperate with others, notably the EEA, IMPEL and the ESA, who are also applying this technique.

The action will dovetail with the implementation of the INSPIRE Directive (also taking into account the results of the reporting fitness check) and Commission objectives for supporting the uptake of Copernicus and space applications[139], in particular through:

- the development of an information session on using GEOINT for environmental compliance assurance as part of Copernicus training and information sessions for use across the EU[140];
- evidence-gathering that quantifies benefits of improved environmental compliance assurance achieved through using integrated geospatial technologies & data as part of the Copernicus market report[141];
- thematic workshop(s) for environmental compliance assurance as part of Copernicus[142];
- development of applications or broker services for GEOINT support to Commission work on environmental compliance assurance[143];
- encouraging the potential of framework partnership agreements to boost the uptake of Copernicus and space applications in the field of environmental compliance assurance, e.g. to support the production and procurement of useful space applications by public authorities.

Who?

The relevant Commission services (ENV, JRC and GROW in close collaboration) will lead the work. It will involve close collaboration with EEA, ESA and IMPEL, with EnviCrimeNet (Environmental Crime Network) and ENPE (European Network of Prosecutors for the Environment) also invited to participate.

When?

139 https://euagenda.eu/publications/fostering-the-uptake-of-copernicus-and-space-applications
140 Ibid p. 24.
141 Ibid p. 26.
142 Ibid p. 29.
143 Ibid pp. 31-33.

The initial showcasing is expected to take place at a thematic workshop planned for the INSPIRE Conference in Antwerp in September 2018. A presentation is planned to be given at the Environmental Compliance and Governance Forum for Quarter 2, 2019 concerning the progress made.

ACTION 9:

Assess national environmental compliance assurance systems as part of a wider governance **assessment framework** and present feedback regularly to Member States, also as part of the Environmental Implementation Review (EIR).

OBJECTIVES:

Improve the understanding of — and ability to present information on — each Member State's system of environmental compliance assurance as a means to measure progress and identify good practices.

BACKGROUND, RATIONALE AND DESCRIPTION:

Identifying strengths and weaknesses in national approaches to environmental compliance assurance requires information and criteria to assess what works well and what does not.

In the field of the environment, the Commission's general priority on implementation now involves providing Member States with a regular EIR in which the perceived strengths and weaknesses of each Member State's implementation efforts are presented through concise country reports.

Section 5 of the first round of EIR country reports (published in February 2017)[144] covers, amongst other governance topics, environmental compliance assurance. The reports' preparation showed that the methodological approaches for assessing Member States' compliance assurance systems are not mature, with assessment criteria incomplete and relevant data and information to underpin the assessment often not readily available.

Therefore, the rationale of this action is to improve the feedback to Member States by developing and applying an assessment framework that can better analyse national environmental compliance assurance systems as well as other components of environmental governance (such as access to information and access to justice). It will contribute to the preparation of future EIR country reports and complement other work the Commission is undertaking on the quality of public administration in the context of the EU Semester[145].

DELIVERABLES, RESPONSIBILITIES AND TIMELINES:

What?

This action will involve:

- reviewing existing methodologies and approaches for assessment frameworks;

144 http://ec.europa.eu/environment/eir/index_en.htm

145 https://ec.europa.eu/info/sites/info/files/european-semester_thematic-factsheet_quality-public-administration_en.pdf

- defining appropriate qualitative criteria and/or quantitative indicators (building on the Commission's Better Regulation Guidelines[146]);

- testing, applying and presenting the proposed assessment approach and refining it in light of the testing;

- producing specific country reports for all EU Member States based on the proposed governance assessment framework.

It will also collect the necessary, publically available data and information, and contribute to preparing country reports under future EIRs.

Who?

The relevant Commission services will lead the work, with a support project initiated in 2017. The project will be carried out involving close consultation and interaction with Member State experts and relevant pan-European compliance assurance networks such as IMPEL (EU Network for the Implementation and Enforcement of Environmental Law) as well as the European Environment Agency.

When?

A project has been launched in 2017 and it aims to have material to contribute to the second round of EIR country reports (due to be published in Quarter 1, 2019) but the assessment framework will be fully developed and applied thereafter. A presentation of the final project and proposals for further work will be made to the Environmental Compliance and Governance Forum in Quarter 2, 2019.

[146] SWD(2015) 111 (http://ec.europa.eu/smart-regulation/guidelines/toc_guide_en.htm)

ANNEX 2

Legislation relevant to EU environmental rules on activities

LEGISLATION PRINCIPALLY LINKED TO ENVIRONMENTAL MEDIA (AIR, LAND, WATER)

1. Air

(a) European Parliament and Council Directive 94/63/EC of 20 December 1994 on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations[147];

(b) Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC[148];

(c) Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise[149];

(d) Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air[150];

(e) Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe[151];

(f) Directive 2009/126/EC of the European Parliament and of the Council of 21 October 2009 on stage II petrol vapour recovery during refuelling of motor vehicles at service stations[152];

(g) Directive 2016/2284/EU of 14 December 2016 on the reduction of national emissions of certain atmospheric pollutants[153];

2. Nature and biodiversity

(a) Council Directive 83/129/EEC of 28 March 1983 concerning the importation into Member States of skins of certain seal pups and products derived therefrom[154];

[147] OJ L 365, 31.12.1994, p. 24.
[148] OJ L 121, 11.5.1999, p 13.
[149] OJ L 189, 18.7.2002, p. 12.
[150] OJ L 23, 26.1.2005, p. 3.
[151] OJ L 152, 11.6.2008, p. 1.
[152] OJ L 285, 31.10.2009, p. 36.
[153] OJ L 344, 17.12.2016, p. 1-31.

(b) Council Regulation (EEC) No 3254/91 of 4 November 1991 prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards[155];

(c) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora[156];

(d) Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein[157];

(e) Council Directive 1999/22/EC of 29 March 1999 relating to the keeping of wild animals in zoos[158];

(f) Council Regulation (EC) No 2173/2005 of 20 December 2005 on the establishment of a FLEGT licencing scheme for imports of timber into the European Community;

(g) Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products[159];

(h) Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds[160];

(i) Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market[161];

(j) Regulation (EU) No 511/2014 of the European Parliament and of the Council on compliance measures for users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation in the Union[162];

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[154] OJ L 91, 9.4.1983, p. 30.
[155] OJ L 308, 9.11.1991, p. 1.
[156] OJ L 206, 22.7.1992, p. 7.
[157] OJ L 61, 3.3.1997, p. 1.
[158] OJ L 94, 9.4.1999, p. 24.
[159] OJ L 286, 31.10.2009, p. 36.
[160] OJ L 20, 26.1.2010, p. 7.
[161] OJ L 295, 12.11.2010, p. 23.
[162] OJ L 150, 20.5.2014, p.59

(k) Regulation (EU) No 1143/2014 on the prevention and management of the introduction and spread of invasive alien species[163].

3. Water and marine

(a) Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water[164];

(b) Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources[165];

(c) Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption[166];

(d) Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy[167];

(e) Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality and repealing Directive 76/160/EEC[168];

(f) Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration[169];

(g) Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks[170];

(h) Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive)[171].

[163] OJ L 317, 4.11.2014, s. 35.
[164] OJ L 135, 30.5.1991, p. 40.
[165] OJ L 375, 31.12.1991, p.1.
[166] OJ L 330, 5.12.1998, p. 32.
[167] OJ L 327, 22.12.2000, p. 1.
[168] OJ L 64, 4.3.2006, p. 37.
[169] OJ L 372, 27.12.2006, p. 19.
[170] OJ L 288, 6.11.2007, p. 27.
[171] OJ L 164, 25.6.2008, p. 19.

4. Chemicals

(a) Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC[172];

(b) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC[173];

(c) Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006[174];

(d) Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products[175];

(e) Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals[176];

(f) Directive 2009/128/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for Community action to achieve the sustainable use of pesticides[177].

5. Industrial emissions and major accident hazards

(a) Council Directive 87/217/EEC of 19 March 1987 on the prevention and reduction of environmental pollution by asbestos[178];

[172] OJ L 158, 30.4.2004, p. 7.
[173] OJ L 396, 30.12.2006, p. 1.
[174] OJ L 353, 31.12.2008, p. 1.
[175] OJ L 167, 27.6.2012, p. 1.
[176] OJ L 201, 27.7.2012, p. 60.
[177] OJ L 309, 24.11.2009, p. 71-86.
[178] OJ L 85, 28.3.1987, p. 40.

(b) Regulation (EC) No 1102/2008 of the European Parliament and of the Council of 22 October 2008 on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury[179];

(c) Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control)[180];

(d) Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC[181];

(e) Directive 2015/2193/EU of the European Parliament and the Council of 25 November 2015 on the limitation of emissions of certain pollutants into the air from medium combustion plants[182].

6. Waste

(a) Council Directive 86/278/EEC of 12 June 1986 on the protection of the environment, and in particular of the soil, when sewage sludge is used in agriculture[183];

(b) European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste[184];

(c) Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT)[185];

(d) Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste[186];

(e) Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of-life vehicles[187];

[179] OJL 304, 14.11.2008.
[180] OJ L 334, 17.12.2010, p. 17.
[181] OJ L 197, 24.7.2012, p. 1.
[182] OJ L 313, 28.11.2015, p. 1.
[183] OJ L 181, 4.7.1986, p. 6.
[184] OJ L 365, 31.12.1994, p. 10.
[185] OJ L 243, 24.9.1996, p. 31.
[186] OJ L 182, 16.7.1999, p. 1.
[187] OJ L 26, 21.10.2000, p. 34.

(f) Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC[188];

(g) Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste[189];

(h) Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC[190];

(i) Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives[191];

(j) Directive 2012/19/EU of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment (WEEE)[192];

(k) Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC[193].

HORIZONTAL INSTRUMENTS

(a) Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage[194];

(b) Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE)[195];

(c) Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment[196].

[188] OJ L 102, 11.4.2006, p. 15.
[189] OJ L 190, 12.7.2006, p. 1.
[190] OJ L 266, 26.9.2006, p. 1.
[191] OJ L 312, 22.11.2008, p. 3.
[192] OJ L 197, 24.7.2012, p.38.
[193] OJ L 330, 10.12.2013, p. 1.
[194] OJ L 143, 30/04/2004, p. 56.
[195] OJ L 108, 25.4.2007, p. 1.
[196] OJ L 26, 28.1.2012, p. 1.

ANNEX 3

Typology of environmental rules on activities derived from EU law

Prohibitions render certain types of activity unlawful[197]. The rationale for having this type of rule is that the activities targeted are inherently damaging to the environment and must be prevented.

Procedural requirements stipulate that certain activities can only be approved and should only be carried out once their environmental impacts have been examined — and/or environmental authorities and the public have been given an opportunity to have their say. Here the rationale is that the requirements enable potential environmental problems to be identified, public goods safeguarded and civil society engaged in advance of decision-taking.

Permits, development consents, authorisations and derogations[198] govern how certain activities are carried out. For example:

- a permit may regulate a factory's operating conditions;
- a development consent may require fulfilment of certain environmental conditions;
- a derogation may set out limits and restrictions on how an activity is carried out.

What they have in common is that they are framed with specific activities in mind. They are often time-limited and need to be reviewed. The rationale is that protecting the environment sometimes requires not only prior approval but also safeguards to be applied on an ongoing basis.

General binding requirements provide that certain activities must be carried out in compliance with specific conditions fixed in generally binding rules rather than in individual permits[199]. The rationale for this type of rule is that protecting the environment requires that safeguards be applied to these activities on an ongoing basis. They are administratively simpler than permits, since they do not require individual decisions.

Conditions under binding contracts or other agreements bind the parties concerned. Under some EU environmental legislation, it is possible for Member States to use contracts or other agreements with duty-holders to achieve environmental objectives. The rationale is that some environmental outcomes are best accomplished through agreements voluntarily entered into. However, once entered into, some agreements are binding on the parties and their non-fulfilment can be subject to enforcement.

[197] Examples include different bans: on use of specific hazardous chemicals, on uncontrolled dumping of waste, on land-spreading of fertilisers over the winter and hunting of wild birds during periods of migration or in the breeding season.

[198] Permits to operate waste facilities are an example. Development consents requiring compensation for habitat damage are another.

[199] One example is a requirement that farmers have minimum storage capacity for livestock manure in nitrate vulnerable zones. Another consists of requirements to collect and treat urban-waste water according to EU standards set in national implementing legislation (these may also be set in authorisations).

Requirements stemming from ad hoc *court decisions or other enforcement actions* are auxiliary rules intended to ensure that the other rules are respected. The rationale is that enforcement action will often require duty-holders to conduct themselves in particular ways, e.g. complying with a court order to do something positive or refrain from doing something negative.

ANNEX 4

Description of different aspects of environmental compliance assurance

I. Compliance promotion

The principal goals of compliance promotion are to:

- communicate to the general public, media and duty-holders the importance of compliance, in particular for protecting the environment and human health;
- provide advice and guidance to duty-holders on how to comply with relevant obligations;
- help duty-holders to achieve and maintain compliance as efficiently as possible, thereby reducing costs;
- recognise and reward excellence in achieving compliance;
- facilitate and encourage self-monitoring, self-certification, self-reporting of compliance and non-compliance, and voluntary environmental auditing by duty-holders.

Some instruments listed in Annex 2 such as the Timber Regulation (EU) No 995/2010 are trade-related. Compliance promotion can therefore include making information available to suppliers in non-EU countries who supply EU duty-holders.

Promotion can include having structured partnerships with the regulated community and other stakeholders, including duty-holder representative bodies, with a view to improving levels of compliance.

Compliance promotion can be especially important in situations where:

- non-compliance is caused by a lack of awareness, knowledge, understanding or capacity on the part of duty-holders, something likely to occur when duty-holders consist of micro, small and medium-sized enterprises that lack the detailed in-house knowledge of compliance requirements often possessed by larger enterprises;
- it is difficult to ensure compliance among a large number of duty-holders through compliance monitoring and enforcement activities alone;
- new and complex obligations are introduced.

II. Compliance monitoring

The principal goals of compliance monitoring are to

- verify compliance;
- identify, detect and characterise the nature and extent of non-compliance, identify those responsible and establish a causal link to the non-compliance detected;
- analyse the causes of non-compliant conduct;
- contribute to compliance enforcement and promotion, and rule-setting.

Compliance monitoring can cover individual breaches as well as generalised non-compliance. In an individual case, effective follow-up action and enforcement may depend on establishing a convincing causal link between the breach and those identified as responsible. Monitoring

can also extend to analysing the best means to ensure voluntary compliance and encouraging duty-holders to report any instances of non-compliance to the authorities responsible.

The different kinds of compliance monitoring include but are not limited to:

- *periodic, planned site-inspections* — these are associated with fixed installations such as industrial plants operating under permit and they may take account of self-monitoring by the operators;
- *ad hoc inspections* — these are carried out in response to complaints or in case of incidents or accidents;
- *surveillance and spot-checks* — these may be appropriate for mobile activities such as transferring waste or recreational hunting, or activities like forestry that occur over wide geographical areas;
- *environmental audits* — these may be valuable in identifying system bottlenecks, for example, in relation to weak investment in urban waste-water treatment facilities;
- *intelligence-gathering and forensic investigations* — these may be needed to uncover clandestine organised crime such as waste and wildlife trafficking.

With different kinds of monitoring come different techniques and technologies. Examples include the use of earth observation[200] to detect unlawful land-use change, data analytics (sometimes referred to as 'data science' or 'big data') to uncover irregular patterns in documentation and whistleblower provisions that encourage insiders to disclose unlawful conduct.

Compliance monitoring may be proactive or it may be reactive, triggered by complaints from the public or incidents and occurrences such as fires and accidents.

Duty-holders can contribute to compliance monitoring through self-monitoring as well as through means such as due diligence in overseeing their supply chains.

Environmental NGOs can contribute through their evidence-gathering that is shared with authorities.

III. Follow-up action and enforcement

Follow-up action and enforcement come into play when non-compliance is detected.

The principal goals of follow-up action and enforcement are to:

- bring non-compliance to an end as soon as possible;
- prevent, limit and remedy or offset the harm caused to the environment or human health;
- apply the polluter pays principle and ensure that non-compliance does not bring economic advantage to the culprits;
- deter and prevent future non-compliance.

[200] Imagery from satellites and aircraft.

Depending on the circumstances, proportionate and appropriate follow-up action and enforcement may involve one or more of the following:

- *tightening of permit conditions;*
- *issuing of audit recommendations;*
- *written or recorded verbal warnings*;
- *cease-and-desist orders;*
- *enforceable undertakings* whereby an economic operator agrees in a binding manner to do something or refrain from doing something;
- *communications, notices or orders* requiring corrective action by the duty-holder responsible, possibly including capital investment and remediation or offsetting of environmental damage;
- *imposing administrative fines or launching criminal proceedings*;
- *publishing detected non*-compliance cases naming the offender;
- *seizing, destroying, disabling or confiscating goods or prohibiting specific activities*;
- *civil proceedings* claiming damages or an injunction.

Thus, administrative, criminal and civil law can all come into play.

Follow-up action and enforcement may take into account the extent of a duty-holder's cooperation in relation to detecting and reporting non-compliance for which the duty-holder is responsible in whole or in part. They may take into account also the respective duty-holder's compliance record.

A key aspect of environmental compliance assurance concerns how best to select and integrate the different possible types of follow-up action and enforcement in order to secure the goals of intervention[201].

IV. Risk assessment

Risk assessment has two aspects: 'likelihood' and 'effects'. The first relates to the likely occurrence of breaches and involves looking at the class or classes of duty-holders concerned and past evidence of non-compliance. The second involves looking at immediate and long-term effects on the environment and human health as well as other factors such as unfair competition. Effects will relate to the nature, scale and persistence of breaches. The greater the likelihood and the greater the effects, the more reason there is to worry — and intervene.

To further understand how risk assessment works, it is useful to refer to the DPSIR — 'driver', 'pressure', 'state', 'impact', 'response' — model of how human beings influence the environment. This is shown in Figure 5. In this model, both activity-related rules and compliance assurance represent a response. However, they are closely related to the other DPSIR dimensions.

[201] Valuable insights into the rationale for choosing different kinds of sanction in environmental cases can be found in 'Regulatory Justice: Making Sanctions Effective, Final Report', November 2006, Professor Richard Macrory, available at http://webarchive.nationalarchives.gov.uk/20121205164501/http://www.bis.gov.uk/files/file44593.pdf

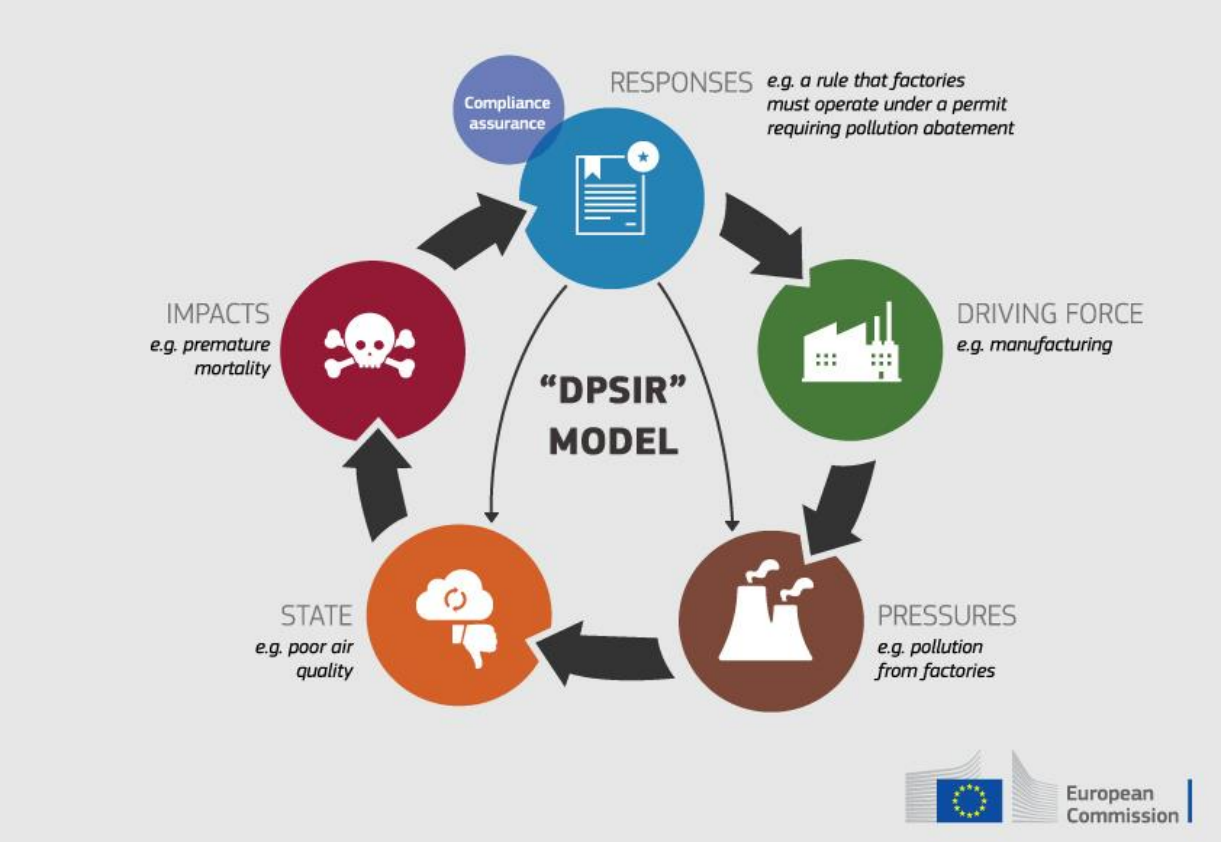

Figure 5: DPSIR model of human influences on the environment

The likelihood of non-compliance is especially (though not exclusively) linked to drivers and pressures, while the effects of non-compliance is linked to state and impacts. It is easier to focus on the most important types of non-compliance when the effects of non-compliance are understood, If the pressures and drivers are understood, it is easier to choose the right compliance assurance interventions. For example, if it is known that breaches of waste rules are driven by criminal waste enterprises looking to make illicit profits, the right compliance assurance mix is likely to include compliance monitoring and criminal enforcement.

The type of monitoring and those carrying it out will be influenced by the nature of the driver and the pressure, e.g. checks such as surveillance and criminal investigations led by the police and scientific examination of illegal landfill sites. So too will the type of enforcement, e.g. criminal enforcement aimed at sanctioning and deterring the search for illicit profits. At the same time, the state of the environment may require additional interventions, such as action against the perpetrators to require them to clean up contaminated sites.

The assessment of risks of non-compliance can take place on both operational (e.g. for targeting specific inspections) and strategic level (e.g. for prioritising compliance monitoring work).

V. Organisation and governance

Organisational and governance considerations cover amongst other matters:

- statutory powers given to authorities to carry out different compliance assurance tasks;
- safeguards to ensure that compliance assurance activities are carried out in a consistent and impartial manner;
- safeguards to ensure that the staff responsible for monitoring and enforcement are free of any conflict of interest, have the necessary qualifications, and periodically receive training;
- arrangements for ensuring that different compliance assurance authorities cooperate and coordinate with each other, including through data-sharing;
- keeping accurate records;
- protection of personal data, non-disclosure of information covered by professional secrecy and respect for fundamental rights;
- active dissemination of certain compliance assurance information (e.g. through publication of annual activity reports or individual inspection reports);
- preparation of periodic evaluations, activity reports, research and awareness-raising;
- registration and handling of complaints and other submissions from the public.