

ROADMAP			
TITLE OF THE INITIATIVE	Communication on a regular Environmental Implementation Review. Delivering the benefits of existing Environmental Policies and Rules.		
LEAD DG – RESPONSIBLE UNIT – AP NUMBER	ENV (D2)	DATE OF ROADMAP	14 March 2016
LIKELY TYPE OF INITIATIVE	Communication		
INDICATIVE PLANNING	<i>Deliverables of the first cycle will be ready for adoption by the end of 2016</i>		
ADDITIONAL INFORMATION	<i>Website is in preparation and will be launched the day the Roadmap is published</i>		
<p>This indicative roadmap is provided for information purposes only and can be subject to change. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.</p>			

A. Context, Subsidiarity Check and Objectives
<p>Context</p> <p>In the past 30 years, the EU has adopted a substantial and diverse range of environmental measures aimed at improving the quality of the environment for European citizens. The European Commission has a key role in this regard given its right to initiate new legislation and its responsibility to oversee the application of Union law, as "guardian of the Treaties" according to Article 17 TEU. The Commission services use a wide range of tools to gather information about implementation and work together with the Member States to implement the environmental requirements, ranging from advising on transposing EU legislation to expert groups on specific implementation issues as well as enforcement action.</p> <p>Nevertheless, there remain significant differences in implementation between and within Member States. Whereas various initiatives deal with these at a sectoral level, the Commission must tap into its position to draw cross-sectoral conclusions and bring the key problems and successful solutions to the attention of decision makers at national and EU level.</p> <p>In this context, the Environmental Implementation Review (EIR) aims to help fill implementation gaps and to maximise the benefits of Union environment legislation by offering tailored-made support to Member States. As highlighted in the Better Regulation Package, the Commission, when monitoring the application of EU law should be able to identify clearly how Member State legislation and measures implement EU legislation. The EIR contributes to this objective by improving the knowledge and evidence base for Union environment policy and contributing to better country-specific knowledge. Therefore, it also supports the implementation of the 7th Environmental Action Programme. Positive results of Member States will be more visible to the public and to stakeholders and a comprehensive picture of the efforts made by each Member State may provide opportunities to learn from each other.</p> <p>The Fitness Check on environmental reporting (see separate roadmap) can provide important information for the EIR, as reporting, among other things, should provide relevant information on the level of implementation and the "distance to target" to ascertain in each case if there is a need for dialogue and action with the Member States.</p> <p>The EIR will make use of Member States' specific data that are collected annually as input for the European Semester Country Reports.</p> <p>The EIR approach is not a novelty at EU level, as similar tools have been used by the Commission in other domains such as internal market¹, digital single market² and SMEs³. These reference documents</p>

¹ http://ec.europa.eu/internal_market/score/index_en.htm

² <http://ec.europa.eu/digital-agenda/en/my-country>

³ http://ec.europa.eu/growth/smes/business-friendly-environment/performance-review/index_en.htm

assess the performance of all Member States and are seen as useful by Member States and stakeholders⁴. They enable all relevant stakeholders to get an informed overview of the state of play of each Member State, take corrective or follow-up measures, and allow the spreading out of best practices.

Experience accumulated notably following the adoption of the 2008 Commission communication on implementation of EC environmental law⁵, the knowledge generated by enforcement actions, complaints and reporting have shown that the implementation of the EU environmental acquis and agreed policies is lagging behind in many Member States, which results in environmental, economic and social costs. The costs of not implementing current legislation are broadly estimated at around EUR 50 billion a year⁶. Enforcement actions taken by the Commission (i.a. through formal infringement procedures) are not sufficient in all cases to address structural implementation gaps and in particular to address the root-causes of these gaps. Enforcement action is reactive by its nature, being used to address an infringement which has already taken place. As explained below, the EIR aims to be part of a coherent dialogue with Member States, potentially preventing problems to occur or persist.

The EIR aims at looking into the key implementation issues in each Member State across environmental sectors and thus fostering policy coherence and better implementation of existing commitments, in line with the Better Regulation agenda. It does not overlap with prior legislative initiatives.

Issue

Significant deficits in the implementation and enforcement of EU environmental legislation and policy remain in some Member States, particularly as regards waste management, waste water treatment and air quality. The nature of the implementation gaps varies across different sectors and Member States. Gaps can occur in the achievement of agreed objectives on air quality, water quality and biodiversity; in the completion of required waste and waste-water infrastructure; in the manner in which authorities interact with the public; in the fulfilment of safeguards such as completion of environmental plans; and in respect to rules applicable on the ground such as illegal waste dumping.

In addition to the regular early compliance work with Member States, the Commission was managing 286 infringement cases in the area of the environment at the end of 2015. 25% of the cases concerned water protection and management, followed by waste management (21%), nature protection (17%), and air quality (13%)⁷.

Infringement procedures are launched when bilateral dialogues and sectorial compliance promotion do not lead to compliance with EU law. Efficient complementary **upstream solutions** can be found outside legal requirements. Such common upstream solutions may include improving the administrative capacity or knowledge of implementing authorities, which could fix or even avoid downstream difficulties in several sectors at the same time, such as the assessment of environmental impacts.

Because of the significant differences in implementation of the environmental *acquis* between and within Member States, the level playing field for economic actors operating in the internal market is threatened. This hampers the development of innovation and the promotion of first-mover advantages for European companies in many sectors.

The EIR aims to address these underlying issues in order to implement more effectively and efficiently EU environmental law and policy. A comprehensive, strategic overview of Member States' performance would allow the Commission, other stakeholders and the national authorities to engage in an informed dialogue and find efficient solutions, if possible **before a breach of EU law occurs**.

The EIR aims also to **facilitate cooperation between Member States when implementing environmental laws and policies**, by fostering exchange of best practices and peer to peer support.

Work at technical level, though essential, is not sufficient. It must be matched by strong political focus.

⁴ Single Market Scoreboard- monitoring tool that has contributed to better implementation and reduced markedly the [transposition deficit](#); seen as very helpful by users. Small Business Act -seen as very useful by SMEs as shown in public [consultation report in 2014](#) where many stakeholders commented. Digital Agenda Scoreboard - the Digital Agenda Scoreboard used by the Member States in the Structural Fund Operational Programmes 2014-2020

⁵ <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1456226175362&uri=CELEX:52008DC0773>

⁶ "The costs of not implementing the environmental acquis", COWI, 2011. ADD HYPERLINK

⁷ <http://ec.europa.eu/environment/legal/law/statistics.htm>

Implementing environmental requirements is often costly and requires political choices. Lack of political ownership or lack of coordination between the relevant authorities is a major cause of insufficient implementation. In this respect, as discussed in the Environment Council of October 2015, outstanding implementation issues could feature on the Council's agenda more regularly. The EIR would provide the input to those debates. The EIR's public reports will bring these issues into the limelight earlier and will facilitate debates and consensus by including possible solutions and best practice.

As mentioned previously, the costs associated with failure to implement the environmental acquis are high, broadly estimated at around EUR 50 billion a year, including costs related to infringement cases. The high number of infringement cases illustrates this implementation gap. Furthermore, the Commission receives hundreds of complaints each year indicating specific and sometimes systemic issues of improper application of EU law at grassroots levels.

The 2008 Communication on implementing European Community Environmental Law mentions five main causes of implementation gaps as regards legislative requirements. They concern:

- insufficient attention being paid to deadlines and completeness during the adoption of national and regional legislation,
- shortcomings in knowledge and awareness in national and regional administrations,
- shortcomings in administrative capacities,
- weak national and regional enforcement policies and practices,
- under-investment and delayed investment in necessary pollution-abatement infrastructure.

These causes may also apply to implementation gaps on agreed policies. In addition, causes may be found with regard to:

- consistency: the existence of government coordination mechanisms to ensure consistency of priorities horizontally (within a government level) and vertically (between levels of administration), as well as over time (not changing priorities every year),
- coherence: unsustainable policies (e.g. agriculture, transport) in one or more policy sectors may undermine environmental implementation,
- adaptability/flexibility: implementation arrangements (including programmes, projects, and incentives) are not always designed in a way that new circumstances/facts can be incorporated
- availability of environmental information at the level where responsibility for implementation lies.

Although those issues will not necessarily be addressed directly by the initiative, the EIR will provide a platform for a better understanding of their causes and for the exchange of best practices on their resolution.

Without introducing new legal obligations for them, the EIR is likely to impact positively and involve a broad range of stakeholders:

- *National authorities*, as they will gain a comprehensive perspective on the state of implementation of the EU environmental *acquis* and policies and where they stand compared to other Member States. On the basis of this overview across the EU, it will be easier to know what other Member State faced a similar challenge and how that was addressed and thus to ask and receive advice to cope with the implementation challenges via peer to peer support between Member States.
- *Economic operators* and *civil society organisations* will have better information on the state of environmental implementation, improving transparency and empowering them to follow up, to comply and to participate to the relevant public debates concerning the implementation of environmental obligations. Furthermore, better implementation results in more level playing field, which is of direct interest to the private sector, in particular in sectors such as industrial emissions, air quality, pollution by nitrates, waste management etc.
- *Individuals* will benefit first from getting a meaningful overview of the key environmental issues in their own Member State and border areas, increasing also the transparency and democratic accountability of the EU project.

As stated above, the significant number of infringements and complaints in the field of environment (20% of the overall number received by the Commission) calls for **new approaches to complement**

enforcement actions. In case no policy action is taken, the business-as-usual scenario will continue requiring targeted ex-post reactions by the Commission, through infringement procedures. This does not strengthen the credibility of the EU environmental policy. In addition, the fact that large variations as regards implementation exist among Member States creates barriers for the functioning of the internal market (lack of level playing field for businesses).

Subsidiarity check

It is the Commission's task to oversee the correct implementation of EU policy and legislation. **Without prejudice to the enforcement powers conferred by the Treaties to the Commission**, this initiative is intended to step up problem solving with the Member States and support their efforts to improve the implementation of agreed policy objectives and targets. The Commission brings oversight, allowing for cross-comparisons, highlighting good practices in Member States, and involving stakeholders (including business).

The EIR complies with the subsidiarity principle, as it does not impose any obligation on Member States and therefore it fully respects national competences in the choice of the ways and means or in the allocation of powers and responsibilities among different levels of governance. It is for the Member States alone to decide what the most appropriate solutions are and how to implement them. The success of this initiative depends on the open cooperation by the national authorities.

Main policy objectives

There is room for improvement by setting up a new system dealing with environmental implementation more coherently and effectively across the Union. This initiative aims to improve the coherence and the effectiveness of implementation efforts.

The overarching objective of the initiative is to better deliver the objectives of environmental policy and legislation and reduce the implementation gap affecting EU environmental laws. The main sub-objectives are to:

- provide an informed and synthetic picture of where each Member State is as regards the main environmental implementation gaps ('distance to targets' provided by the EU environmental legislation and, where appropriate, enshrined in relevant policy objectives not covered by the binding EU *acquis*, in particular if these have measurable objectives and have an impact on the implementation of the *acquis*);
- on that basis, deliver tailored-made support to Member States in a more coherent and targeted manner (building on the Better Regulation priority on implementation and using its Toolbox⁸), to help Member States implement EU environmental *acquis* and policies;
- create the opportunity for a structured dialogue with the Member States and the other EU institutions, including at political level and where appropriate with stakeholders, on environmental issues, aimed at further narrowing the implementation gap;

The main deliverables will be:

- a Commission Communication that will frame this process, and explain this initiative to the Member States, the European Parliament and the key stakeholders;
- 28 country-specific reports as Commission Staff Working Documents (to be made public periodically - every two years). The reports will reflect knowledge of the environmental situation in Member State and the challenges to address the core implementation gaps, and prepare the ground for high-level bilateral country dialogues between the Commission and the Member States concerned;
- horizontal policy implementation papers that will be tabled periodically by the Commission mainly to the Environment Council. These will review key implementation challenges common to a number of Member States. Political debates in the Environment Council, and with the Parliament in its oversight role, would take place on such horizontal issues (e.g. persistent problems in a range of

⁸ http://ec.europa.eu/smart-regulation/guidelines/toc_tool_en.htm

Member States) resulting in political guidance by the two institutions.

The intention is that the EIR will improve the implementation of EU environmental law by mapping the root-causes and proposing durable solutions in close cooperation with and among the Member States. This will include looking at other policies and initiatives that impact on the successful achievement of environmental obligations and objectives and identifying the potential for mainstreaming.

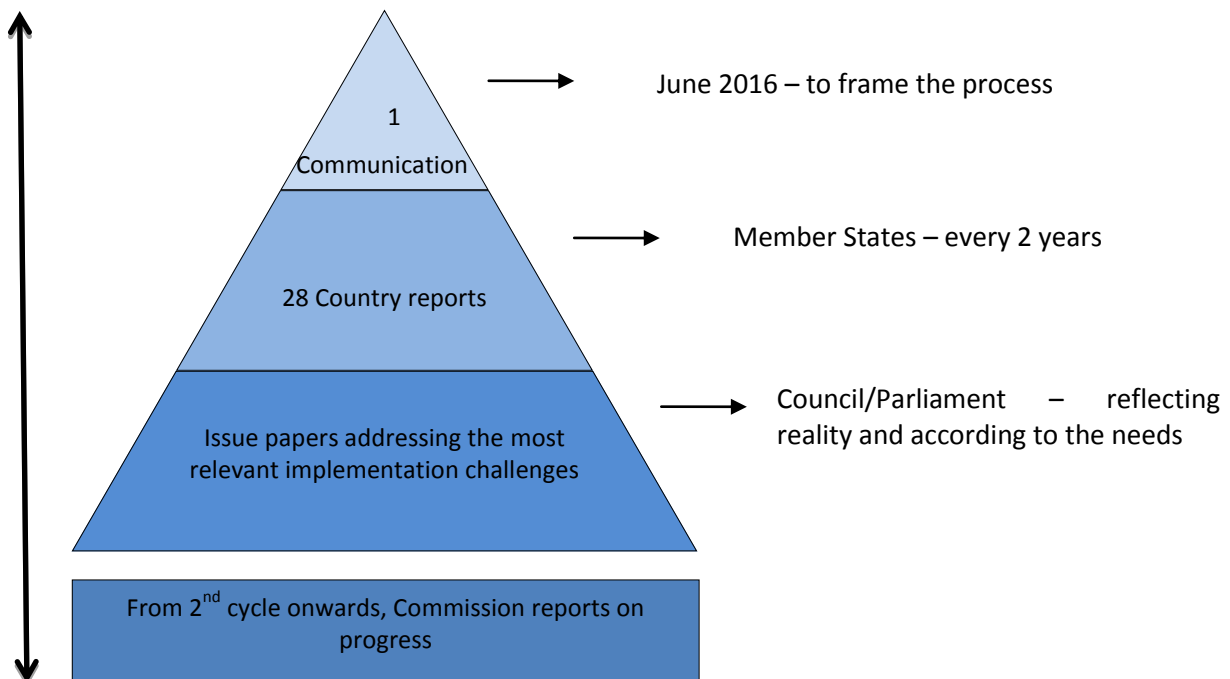
B. Option Mapping

The proposed initiative is a soft policy instrument and its ultimate goal is to support Member States in implementing EU environmental law and policies (alongside e.g. enforcement and EU funding).

The first step is to draw up country-specific reports on essential topics in the area of environmental legislation and policy in each Member State every two years. The reports will highlight the main challenges and successes of each Member State as regards the implementation of the EU environmental acquis and propose actions to improve implementation, based on best practices. The reports will guide bilateral work on implementation, enforcement, environmental integration in cohesion policy etc. with Member States.

The second step is creating the framework for high level discussions on significant implementation gaps common to several Member States and on the way to address them in the form of issue papers prepared periodically by the Commission on the basis of the country reports. The horizontal policy implementation papers would be submitted to the Council to enable ministers to take stock of the gaps, discuss solutions, and follow these up in their Member States. As from the second cycle onwards, the Commission should report on progress achieved in implementation, including as a follow up to the conclusions of the previous cycle.

The policy cycle introduced by this initiative could be described as follows:



Preserving the *status quo* in terms of implementation is unsatisfactory. However, a legislative option with similar objectives cannot be imagined, as the purpose of the initiative is to improve the implementation of the existing environmental acquis and policy through means complementary to enforcement.

The EIR would improve the effectiveness and efficiency in the delivery of environmental policy and regulatory objectives by providing a complementary tool to enforcement. A clear advantage of this

approach is that it can bring up critical issues and possible solutions preventively, even before compliance deadlines expire.

There are also various compliance promotion actions at sectoral level through which the Commission is working with national authorities to improve implementation. The EIR will be complementing these in ensuring that:

- the specific situation in each Member State is known systematically for all sectors covered by the initiative;
- the key implementation challenges and potential solutions are brought to the attention of the decision-makers, drawing on the exchanges at technical level,
- provide more transparency by ensuring that key environmental issues and progress achieved are made known to the public. Informing the public, which is a key feature of environmental legislation, enables more effective public debates and better implementation.

The Commission will identify potential solutions to environmental implementation problems and their prioritisation. The initiative will improve the use of data already available to the Commission (also as a result of the Fitness Check of environmental monitoring and reporting, which will feed into the EIR) and provide a cross-cutting overview of the main implementation challenges.

The Commission is currently examining⁹ the benefits of its enforcement action. Such benefits could be accrued without delay with the help of advance warning and putting in place bespoke sets of solutions via the EIR. A study by the European Parliament on the benefits of implementing the EU water legislation estimates that if existing EU water legislation were to be fully implemented, and all water bodies to achieve a 'good' status ranking, the combined annual benefits could be at least EUR 2.8 billion. This is only one of the environmental sectors covered by this initiative, but it is clear that putting in place a mapping and dialogue process such as EIR imposes small costs and efforts compared to the expected benefits.

Proportionality check

The proposed policy option respects the proportionality principle as its content and form do not exceed what is necessary to achieve the objectives of the Treaties. By focussing on stimulating the political dialogue between the Commission and the Member States, and involving the Parliament, and by seeking to improve the implementation of existing legislation and policy targets, in a complementary way to enforcement, the initiative will benefit compliance promotion.

C. Data collection and Better Regulation instruments

Data collection

Results of ongoing reporting requirements and studies will be used. It is not foreseen to collect new data from the Member States.

The deliverables will be based on information and data which is already collected by the Commission or by the European Environment Agency. The findings of various environmental Fitness Checks, including the one on environmental reporting, and Impact Assessments, such as on the review of the Environmental Impact Assessment directive, will be used in the EIR.

The value added of the initiative is to distil and put together the most relevant information, mapping the key implementation gaps, possible common causes across sectors and to suggest appropriate solutions.

Consultation approach

Pursuing this initiative has been discussed with the representatives of Member States. Further

⁹ Study to assess the benefits delivered through the enforcement of EU Environmental Legislation ENV.D.2/ETU/2015/0006.

substantial consultations will be organised once the key documents, such as the country reports, will be drafted. The consultation strategy for the EIR contains the following elements:

1. The consultation objectives: the objectives are:
 - a. to validate existing information or analysis and receive feedback, as a form of external quality control,
 - b. to collect views and opinions on implementation challenges and their root-causes in the Member States,
 - c. to gather evidence on efficient solutions to implementation challenges, and
 - d. to raise awareness and increase political ownership.
2. The stakeholder mapping: relevant stakeholders include national authorities (environmental and other relevant ones, depending on the theme), the private sector, civil society organisations, and citizens.
3. The consultation tools: the first consultation process is envisaged before the publication of the country reports, when the Commission will consult the relevant national authorities to check in particular the factual elements included to avoid manifest errors. Once the reports will be published, and depending on the needs and the requests from various Member States, it is envisaged to organise debates at national level on selected main issues, in which context organising stakeholder seminars will be an option.

The Member States' environmental experts who meet in Brussels twice a year in the framework of the Expert Group on Greening the European Semester¹⁰, including observers from civil society and business organisations, will be regularly informed and consulted on the progress of the exercise.

4) The consultation page: this will be provided the day the Roadmap is published.

Will an Implementation plan be established?

No

The EIR is a soft law initiative, thus not involving new transposition/implementation obligations.

Will an impact assessment be carried out for this initiative and/or possible follow-up initiatives?

The EIR initiative does not require an Impact Assessment, as it assists the implementation of existing EU environmental obligations, with no new requirements, including no new data/reporting requirements from Member States and other stakeholders.

¹⁰ http://ec.europa.eu/environment/integration/green_semester/index_en.htm