

Scottish Environment Protection Agency (SEPA) response to the European Commission Stakeholder Consultation on the Final Assessment of the 6th Community Environment Action Programme

Introduction

This paper sets out the Scottish Environment Protection Agency (SEPA) response to the European Commission's consultation on the Final Assessment of the 6th Environment Action Programme (EAP).

SEPA considers this consultation extremely important and has contributed to a number of stakeholder debates on the subject in recent months; most recently Professor Campbell Gemmell, SEPA's Chief Executive, represented both SEPA and the European Network of heads of Environment Protection Agencies (EPA Network) at a stakeholder consultation meeting on 29 March in Brussels.

SEPA strongly supports the views expressed in the response submitted by the EPA Network and has contributed extensively to this. It also values the opportunity to contribute individually, as well as supporting the views of the UK Government.

As Scotland's environment protection agency, established under the Environment Act 1995, SEPA aims to protect the environment and human health by being an excellent environmental regulator and an effective and influential authority on the environment, limiting climate change and preparing Scotland for a sustainable future.

The state of our environment is important to everyone who works, lives or visits Scotland. Indeed, the environment is one of Scotland's greatest assets and environment policy is a success story that has been deeply influential in Scotland and the UK. We estimate that close to 90% of the environmental regulation we implement is European in origin and, consequently, Scotland has a significant role in securing effective implementation of the Commission's environmental principles and legal imperatives. The Scotland Act 1998 devolved environmental matters to the Scottish Parliament and SEPA is now accountable to the Scottish Parliament via Scottish Ministers.

Summary

This consultation gives us the opportunity to analyse the 6th EAP's achievements and failures, and to use the lessons learned to understand what more needs to be done to protect the environment and the best way to achieve this.

The 6th EAP has had a conjectural and a practical impact on improving the environment. Both these aspects have brought tangible benefits and improvements to the environment as the European Environment Agency's (EEA) SOER 2010 highlights. Indeed, we consider that the 6th EAP has undeniably provided a strong drive to improve the environment by setting out positive principles, establishing priorities, giving direction to policy and new legislation, thus contributing to solving environmental problems and to improving the quality of life for citizens in Europe.

We recognise that there is room for improvement with implementation of the 6th EAP as not all targets have been achieved, but, although some initiatives are now being undertaken by other work streams, SEPA believes that a **new EAP** is the best way forward to **maintain and progress the positive outcomes achieved so far**. This could present a programme that addresses the challenges we all face, as well as opportunities for regulation to find answers for issues such as climate change and achieving a low carbon economy.

General Questions

1. The four priority areas of the 6th Environment Action Programme (6th EAP) are climate change, environment and health, nature and biodiversity, natural resources and waste. What positive environmental impacts can be identified in each of these four priority areas over the last 9 years (2002-2010)?

As reported by the SOER 2010, there has been improvement in many areas, but some targets have not been achieved and many important challenges lay ahead.

On **Climate Change**, the EU has had a leading role globally considering the outcomes from Copenhagen and Cancun. There have been significant reductions of greenhouse gas (GHG) emissions across the EU that confirm that progress has been made, but not across all sectors which means that more needs to be done nationally and internationally. The Scottish Government recognises that climate change will have far reaching effects on Scotland's economy, its people and its environment and is determined to play its part in rising to this challenge. The Climate Change (Scotland) Act 2009 introduces ambitious, world-leading legislation to reduce emissions by at least 80% by 2050, with an interim target to reduce GHG emissions by 42% by 2020, compared to 1990 levels. We are aiming for this to drive new thinking, new solutions and new technologies putting Scotland at the forefront of building a sustainable low carbon economy and prepare for a changing climate; Scotland's first low carbon economic strategy was published in November 2010. SEPA has been working in partnership with the Government and other key public sector organisations such as the Enterprise Agencies on this strategy to encourage new and existing businesses and industries to develop and innovate for a low carbon future, realising benefits to Scotland's long term sustainable economic growth. Here, Environmental Regulation is not viewed as a barrier to achieving new low carbon and environmental opportunities and solutions, but as a framework that can:

- support the transition to a low carbon economy through the setting of standards, and emission limits;
- drive innovation/behaviour changes to encourage the uptake of new environmental and low carbon technology solutions and practices;
- help businesses manage risk through the avoidance of future costs relating to non-compliance or failure to achieve future environmental standards / emissions limits.

Progress has been made in areas linking **environment and health**. The quality of air and water has been improved by addressing the problems caused by certain chemicals and pesticides, but there are still health risks posed by ozone, particulates and pollution from diffuse sources that need to be dealt with along with new challenges presented by chemical mixtures and new technologies/non-traditional compounds e.g.: nanotechnology. Although REACH provides a high level of protection for human health, there are fears regarding health problems due to long term exposure.

On **Nature and Biodiversity** the target of halting **biodiversity** loss by 2010 has not been achieved at EU level or globally. This is now a major challenge that needs to be dealt with urgently. Decisions taken need to be implemented and biodiversity integrated in the development and implementation of all other policy areas, perhaps also with a greater emphasis on the marine (whole sea) environment; Scotland looks forward to hosting the World Conference on Marine Biodiversity in Aberdeen and St Andrews in September this year to address some of these issues.

On **natural resources and waste**, although the total volume of waste keeps increasing, the rate of increase has been reduced. The way waste is dealt with has seen a shift towards re-use and re-cycle, but the achievements vary enormously between countries.

2. In what ways has the 6th EAP contributed to the achievement of these positive environmental impacts? What in your view were the notable successes of the 6th EAP in that respect?

It is difficult to judge and quantify the progress made due to the 6th EAP in improving the environment. Some measures have just been implemented, and some actions have yet to be completed, therefore it is **too early to know what their impact is going to be on the environment**. It is unlikely that we will see environmental “outcomes” for a decade or more from the current EAP; this is a long term business.

Nevertheless, as previously mentioned in this response, there is no doubt that the 6th EAP has helped the Commission to accomplish many achievements by giving direction, setting out positive principles, providing a reminder and identifying priority areas that the Commission has been able to work on.

Few examples of these successes are the agreements on policies related to **REACH**, the revision of the **Waste Framework Directive**, that Scotland is taking forward through a zero waste plan, and the consideration of **coherence in policy making**.

3. In which areas have there been less progress than expected in the 6th EAP and what are the likely reasons for this lack of progress?

The **integration of environmental objectives in other policy areas** has not been achieved and represents a challenge still. This might be due to a lack of clarity on the relationship of the 6th EAP with other strategic documents. For example, the integration of **air quality** into other policy areas is a big concern; there is a mismatch between policies concerning energy, agriculture, and transport. Road traffic is the main source of air pollution in urban centres and, in Scotland, is also the second most significant source of GHG emissions. Where integrated thinking does not take place there may be unintended consequences. For example building a by-pass and diverting vehicles from a town centre might improve local air quality but the additional distance travelled will increase GHG emissions.

Also, more work is needed on **soil protection**, with greater integration with climate change issues. In the UK we already have robust domestic policies in place to protect soils, so we would be seeking a solution that respects the principles of subsidiarity and better regulation to avoid unnecessary additional administrative burdens and disproportionate costs. The Scottish Soil Framework is wide in scope and describes key pressures on soils, particularly climate change, relevant policies to combat those threats, and identifies the future focus for soil protection, key soil outcomes, and actions across a range of sectors.

Another priority that had been set in the 6th EAP is **good policy making** and this has not been fully applied yet. The way in which EU legislation has evolved has resulted in a sometimes complex picture of partly overlapping and inconsistent requirements too capable of different interpretations, therefore in danger of removing the level playing field of competition aspired to.

The reasons for these failures might lay in the timescale and ambition of the 6th EAP itself. Although there is merit in not going too fast and taking time to review and focus on what needs to be delivered, huge delays have been experienced in reaching agreements on thematic strategies, increasing the time from conception to change so much so that other political initiatives have undertaken some agreed actions.

4. In your view are there gaps in environment policy that are not addressed by the 6th EAP?

Gaps have been identified in the 6th EAP. Specifically the importance and difficulty of the **integration of Climate Change** mitigation and adaptation in other policy areas had been underestimated. Carbon management and carbon accounting needs to be more embedded into our decision making.

Although the priorities of the 6th EAP are still priorities today, a different and new way of approaching them is necessary. For example, benefits could be gained through a **smarter regulation** approach, the use of alternative to regulations and hindsight of climate change adaptation. A mixed approach is needed, but the starting point is the state of the environment; what is current and what is desired and how to get there.

As a regulator, SEPA would like to see its work aligned with and focused on the most important environmental problems that Scotland faces. This includes keeping iconic salmon fishing rivers like the Rivers Tay, Tweed and Spey clean, but also tackling environmental crime and issues that affect people's quality of life, for example fly-tipping, noise and odour. As an environmental regulator covering all sectors of society, we experience a spectrum of behaviours and degrees of engagement from those we regulate, all of which means that we have to be **flexible** in the way we work and deploy the most appropriate tools and approaches for each given situation.. Regulators need a sufficiently flexible toolbox to allow them to target dedicated effort to the risk/problem area, but to select different tools for the different groups. The tools we have are extremely varied and deployed in wildly different settings, sectors, regions and localities....from the Outer Hebrides to inner city Glasgow. This fits with the approach that SEPA is increasingly using, as originally set out in "*The Regulatory Craft*" but expanded upon in "*The Character of Harms*" by the Harvard Professor, Malcolm Sparrow.

We have aligned our approach to regulation with the principles from the Hampton Review¹ (2005) on the effectiveness of inspection and enforcement and the Macrory Review² (2006) on environmental penalties and sanctions. We have also piloted projects with Scotland's Regulatory Review Group³, an independent group made up of representatives from all of the main business organisations in Scotland. This Group reports annually, helping the Government in its work to improve the regulatory environment for business.

¹ www.bis.gov.uk/policies/better-regulation/improving-regulatory-delivery/assessing-our-regulatory-system

² www.bis.gov.uk/files/file44593.pdf

³ www.scotland.gov.uk/Topics/Business-Industry/support/better-regulation/regulatory-review-group

5. What lessons can be learned from the 6th EAP?

We would highlight the following:

- Thematic strategies are very useful but there is the need to set realistic and achievable targets in order for them to deliver.
- An outcome based approach would be beneficial for a next EAP, as is reference to treaties, e.g. use of precautionary principle. Above all, the outcome must be clear – what we want to be achieved must be clear.
- The lack of integration of climate change policy (mitigation and adaptation objectives) into ‘standard’ environmental policy needs to be acknowledged, as mentioned above.
- Integrating environment into other policy areas, including agriculture and fisheries. There is a need to mainstream environment into major sectoral policies. Given the current debate on water policy with a view to the 2012 blueprint to safeguard Europe’s water, this would be a good place to start this discussion.
- Including overseas territories within the scope should be considered.
- There is a need to engage people and communities. Alignment is also needed in the thinking of Government, NGOs and EPAs at all levels. Cultural issues need to be overcome.
- Need to clear definitions, for example, green growth means different things to different people and Green Economy needs to be better defined. Whilst not forgetting that environmental protection should be more deeply rooted in science than economy.
- That it is time to revisit tool kits – what worked, what did not, examining different types of regulatory regimes – outcome based and risk based approach to regulation is needed whilst recognising genuine regional differences and no one solution for all, to the point where we should ensure Member States are not compromised by dedicating resources to implementing frameworks for, in some cases, very little environmental improvement. For example Scotland, and the UK, already has a high environmental protection compared to some other MSs. Requirements may be too rigid and prescriptive – do all Member States need to be bound to the same standards irrespective of differing natural environmental circumstances?
- Need to set objective success criteria at the start of the process so it is easier to know what success looks like post evaluation.
- Need to ensure that framework remains flexible to address new priorities.

6. Taking into account the lessons learned from the 6th EAP what in your view are the emerging environmental policy challenges?

As indicated in the UK Government response:

- Facilitating the transition to a low carbon, resource efficient and climate resilient green economy in which natural resources are managed, used and protected in a sustainable way and the value of natural resources is properly reflected in decision-making.
- Integrating environmental objectives across all policy areas (as already mentioned).
- The effective implementation and enforcement of existing legislation, and the review of some of the older directives which are less targeted and proportionate, rather than on proposals for extensive new legislation.
- Ensuring that any new legislation is evidence- and science-based and subject to proper impact assessment at each stage of the legislative process, weighing the benefits against the regulatory and administrative burdens and compliance costs.
- Consistency between the EU’s various strategic documents (e.g. the EU Sustainable

Development Strategy, EU 2020, the roadmaps for a resource efficient Europe and a low carbon economy by 2050).

- Covering major areas and key themes including climate, the green economy, biodiversity and the value of natural resources.
- Taking a pragmatic approach, setting realistic ambitions and focusing on implementation and mainstreaming.
- There is also a need for better natural capital and ecosystem accounting. Ecosystem services should feature, with the cost of degradation and damage to be integrated into decision making.

Specific Questions

7. The 6th EAP had a number of characteristics on which it would be useful to have your views:

- i. Considering how the objectives and priority actions are formulated in the 6th EAP, do you consider them, including the 156 actions, to be too detailed or not detailed enough?**

Sometimes the lengthy discussions to achieve agreement on the proposals in the 6th EAP have delayed results and have been overtaken by other political initiatives. The reason for this could be that the objectives were too detailed and focused too much on the actions, without taking into account potential variables for change.

Environmental issues are very complex and interrelated and a framework of main principles guided by a shared long-term vision and strategy that allows for change and adaptation would be preferable.

- ii. Was the ten-year timeline of the 6th EAP appropriate? Was it the right balance between providing a degree of certainty for future policy development, the need to keep momentum in the programme and the time required for adoption of proposals, transposition into national legislation and implementation?**

Considering the need for businesses, civil society and Member States to plan accordingly, ten years seem like a sensible timeframe.

- iii. Was the approach of developing thematic strategies before proposing legislative initiatives helpful or not?**

As stated before, thematic strategies can be very helpful especially when supported by scientific information, impact assessment analysis and stakeholders input, but they should not be seen necessarily as the precursor of new legislation.

- iv. Are there any other characteristics of the 6th EAP which you regard as particularly helpful or unhelpful?**

No.

8. Did the 6th EAP contribute to improving implementation of EU environment legislation? Could that contribution have been made more effective? How (e.g. by the inclusion of additional implementation targets and indicators, etc)?

As previously stated, the 6th EAP has provided a strong drive to achieve some targets in specific priority areas; nevertheless more effort should be focused on improving the consistency between implementation and enforcement. Also the review of old directives is preferable to the proposal of new ones in order for the existing legislation to be more effective and efficient.

Setting realistic targets and monitoring and evaluating progress is very desirable, but it should always be considered that each Member State presents different circumstances and that targets and indicators might not deliver the desired outcomes.

9. Did the 6th EAP improve coherence within environmental policy and between environment policy and other policy areas? Was the 6th EAP able to boost integration of environmental concerns into other policy areas and, if so, how?

Although some improvement has been achieved, the integration between environmental policy and other policy areas remains a challenge. Areas where this concept could be improved and applied are: the sustainable use of resources, the CAP and CFP reforms, biodiversity into other sectors like natural resources, product, waste and chemicals policies.

10. How far has the 6th EAP advanced the EU's international environmental agenda? What do you consider to be the notable successes, disappointments and the reasons why?

SEPA has nothing to add to this, but supports the submission by the UK Government.

SEPA
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