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

Final report

European Commission – DG ENV
14 January 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

CLIENT
European Commission – DG ENV

REPORT TITLE
Final report

PROJECT NAME
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

PROJECT TEAM
BIO Intelligence Service (BIO), Ecologic Institute, Institute for European Environmental Policy (IEEP)

PROJECT OFFICER
Dr. Miroslav Angelov
Miroslav.ANGELOV@ec.europa.eu

DATE
14 January 2013

AUTHORS
Mr. Shailendra Mudgal, BIO Intelligence Service
Ms. Lise Van Long, BIO Intelligence Service
Ms. Mary Ann Kong, BIO Intelligence Service
Dr. Ingmar von Homeyer, Ecologic Institute
Dr. Stephan Sina, Ecologic Institute
Ms. Gesa Homann, Ecologic Institute
Mr. Lucas Porsch, Ecologic Institute
Dr. Andrew Farmer, IEEP

KEY CONTACTS
Shailendra Mudgal
sm@biois.com

Or

Mary Ann Kong
maryann.kong@biois.com

DISCLAIMER
The project team does not accept any liability for any direct or indirect damage resulting from the use of this report or its content. This report contains the results of research by the authors and is not to be perceived as the opinion of the European Commission.

Photo credit: cover @ Per Ola Wiberg
Table of Contents

DOCUMENT INFORMATION 2
TABLE OF CONTENTS 3
LIST OF TABLES 4
LIST OF FIGURES 5
LIST OF BOXES 5
ABBREVIATIONS 5
EXECUTIVE SUMMARY 7
CHAPTER 1:  INTRODUCTION 17
  1.1 Objectives, approach and context 17
CHAPTER 2:  OPTION 1 – ESTABLISHMENT OF A GENERAL MECHANISM TO REVIEW AND REPORT ON MS SURVEILLANCE/INSPECTION SYSTEM 27
  2.1 Analysis of the FVO model 28
  2.2 Application of the FVO model to DG ENV 47
  2.3 Summary table of option 1 analysis 60
CHAPTER 3:  OPTION 2 – AD HOC SURVEILLANCE-RELATED POWERS FOR THE EC IN SECTORAL ENVIRONMENT LEGISLATION 65
  3.1 Analysis of similar structures 65
  3.2 Application of ODS and LA models to waste shipment and nature protection legislation 79
  3.3 Summary table of option 2 analysis 104
CHAPTER 4:  OPTION 3 – ENHANCED USE OF PEER REVIEW APPROACH IN THE EXISTING IMPEL REVIEW INITIATIVE PROJECT 111
  4.1 Analysis of the IMPEL Review Initiative 111
  4.2 Other peer related initiatives 122
  4.3 Other policy developments on peer review 123
  4.4 Application of the IRI/peer review model to DG ENV role in investigations 124
  4.5 Summary table of option 3 analysis 134
CHAPTER 5:  OPTION 4 – USE OF AD HOC/FRAMEWORK CONTRACTS TO PROVIDE EXPERTISE 141
  5.1 Analysis of contractual procedures to carry out investigations 141
5.2 Analysis of practical experiences of using contractual terms for surveillance activities 145
5.3 Applicability within DG ENV of the use of contracts to request expertise for investigations 147
5.4 Summary table of option 4 analysis 151

CHAPTER 6: OPTION 5 – USE OF EXTERNAL EXPERTS TO PROVIDE ADVICE ON ALLEGED BREACHES OF EU ENVIRONMENT LAW 157
6.1 Analysis of similar models using external experts 157
6.2 Applicability within DG ENV of similar models of experts in investigations 177
6.3 Summary table of option 5 analysis 179

CHAPTER 7: COMBINATION OF POLICY OPTIONS 183
7.1 Selection of combinations of options for further analysis 183
7.2 Description of baseline scenario and combinations of options for analysis 184
7.3 Comparison and analysis of options 188
7.4 Summary table of option A and option B 192

CHAPTER 8: CONCLUSIONS 195

ANNEX 199

List of Tables

Table 1: List of experts contacted 18
Table 2: Sections of country profile reports 40
Table 3: Operating costs of the FVO 43
Table 4: Drivers of costs and impacts 52
Table 5: Summary table of option 1 analysis 60
Table 6: Typical division of costs 117
Table 7: Impacts of reviews carried out under IRI 119
Table 8: Summary table of strengths and weaknesses of IMEPL IRI scenarios 132
Table 9: Summary table of option 3 analysis 134
Table 10: Information on contracts made by DG ENV 146
Table 11: Summary table of option 4 analysis 151
Table 12: Expected budget and activities, 2012 164
Table 13: Summary table of option 5 analysis 179
List of Figures

Figure 1: Steps involved in an IRI project 115
Figure 2: Administrative and political levels involved in the Bern Convention’s case-file system 158
Figure 3: Compliance Committee Operation Procedures 172
Figure 4: Number of environmental infringements per year in the EU 186
Figure 5: Types of environmental infringements recorded in the EU in 2009 186

List of Boxes

Box 1: Excerpt of the Medina Ortega report: ................................................................. 29
Box 2: Specifications on inspections under Article 28 (ODS Regulation) ........................... 67
Box 3: Specifications on inspectors under Article 35 (Laboratory Animals Directive) ......... 74

Abbreviations

Commission’s Inspection General Services (IGS)
Council of Europe (COE)
Court of Justice of the European Union (CJEU)
Directorate-General for Agriculture and Rural Development (DG AGRI)
Directorate-General for Climate Action (DG CLIMA)
Directorate-General for the Environment (DG ENV)
Directorate-General for Health and Consumers (DG SANCO)
Directorate-General for Humanitarian Aid (DG ECHO)
Environmental Citizen’s Organisations (ECO)
European Commission (EC)
European Community Environment Action Programme (EAP)
European Food Safety Agency (EFSA)
European Parliament (EP)
European Union (EU)
European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL)
Food and Veterinary Office (FVO)
Framework contract (FWC)
IMPEL Review Initiative (IRI)
Official Controls Regulation (OFCR)
Office of Veterinary and Phytosanitary Inspection and Control (OVPIC)
Meeting of the Parties (MoP)
Member State (MS)
Multi-annual control plans (MANCPs)
Recommendation 2001/331/EC providing for minimum criteria for environmental inspections (RMCEI)
Regulation on Ozone Depleting Substances (ODS Regulation)
United Nations Environment Programme (UNEP)
Executive summary

This study has two distinct objectives: (1) to analyse options that would increase EU-level confidence and enhance the Commission’s role in environmental inspections and (2) to analyse the use of external expertise to enhance the Commission’s own investigations of alleged breaches of environmental legislation. Possible synergies were identified between the two objectives in terms of improving EU capacity on inspections, in particular related to minimising administrative burden and ensuring necessary technical expertise. This study aims to assist work related to the Seventh Environmental Action Programme (EAP), which sets out an environmental strategy guided by a long-term vision. It puts particular emphasis on better implementation of environmental legislation at all levels.

To carry out the two objectives of the study, five policy options and a possible combination of these options were analysed. The first three options (options 1, 2, and 3) relate to the first objective of the study and analyse the possibilities of EU role in inspection-related activities. The last two options (options 4 and 5) relate to the second objective of the study and explore the possibilities of using external expertise to assist the EC in investigation activities. The last task of the study analyses the possibilities of combining specific elements of the options. The options analysed include:

- Implementation of a general mechanism to review and report on MS surveillance/inspection systems based on a model similar to that of the FVO (Food and Veterinary Office) (option 1);
- Establishment of ad-hoc inspections-related powers for the Commission in sectoral environmental legislation (option 2);
- Enhancing the role of IMPEL (which is based on peer review of national inspection activities) (option 3);
- The use of specific contracts to provide expertise in specialist and demanding environmental policy areas (option 4); and
- The use of a pool of external experts to provide advice on an ad hoc basis to assist Commission investigations (option 5).

The study identifies key issues related to each of the options such as the feasibility of applying the options within DG ENV, the extent that the option is able to strengthen EU-level confidence in national environmental inspections, impacts on administrative burden and associated costs (to the extent that data was available), and aspects related to the economic, environmental, and social impacts of the different options/combinations of options. Findings of the study show that for the first objective of the study, a possible optimal solution would involve elements of options 2, 4 and 5.

In terms of the second objective, the study confirms the benefits of the use of external specialist expertise to assist the Commission in investigations of possible breaches of EU environmental law.

**Approach and methodology**

The approach applied to gather the necessary information to analyse each of the options included an in-depth literature review and expert interviews. Analyses were then carried out based on the data collected. Literature consulted included sources such as reports, studies launched by the Commission, legal documentation, articles, and press releases. Experts that were interviewed included Commission officers and authorities of relevant EU institutions and international conventions. A set of criteria was also developed to guide the analysis of the selected options, including the combinations of options. Criteria were established to ensure completeness in terms of fulfilling the objectives and in order to measure the feasibility of implementing the proposed options. They include:

- Potential for environmental improvements and benefits
- Completeness in terms of the extent the option addresses the problems of the environmental inspections and surveillance regime
- Cost effectiveness
- Technical constraints
- Administrative feasibility/readiness to implement
- Proportionality
- Political acceptance by MS, authorities and experts

**Analyses of options 1 to 5**

**Option 1:**

Option 1 explores the possibility of establishing a general-purpose audit type function for the Commission. DG ENV would be equipped with a general audit structure, allowing it to review the functionality of national control systems on a regular basis. This option is based on the Food and Veterinary Office (FVO) approach, which is part of DG SANCO (Directorate General for Health and Consumers). The main role of the FVO is to assess through official controls how Member States apply EU legislation in the field of food safety, animal health and welfare. Three different scenarios based on the FVO model were developed and analysed:

- **Scenario 1:** Intensified co-operation – DG ENV would not carry out controls, but would meet with Member State officials on a regular basis in order to discuss application issues. Compared to the current efforts of DG ENV in this regard known as “package meetings”, this scenario would focus on strengthening this instrument and to extend its scope to include the whole environmental acquis and to other horizontal aspects (such as co-operation issues between authorities in the respective Member State).

- **Scenario 2:** Specific controls – under the second scenario, a mechanism for specific audits would be established within DG ENV, however, would only
focus on the verification of national controls on sectoral issues. The difference with scenario 1 is that DG ENV would have the power to look into the effectiveness of a Member States’ inspection and surveillance arrangements and have the power to request Member States to conduct inspections or surveillance arrangements.

- **Scenario 3: General controls** – under the third scenario, a mechanism similar to scenario 2 would be set however with a focus on Member State control systems in general and the entire environmental acquis. An intensive audit type assessment would need to be carried out for all Member States at a sufficient frequency, including follow-ups. A significant advantage of an audit style function is the build up of professional capabilities within DG ENV that would allow for a real understanding of compliance challenges of the environmental acquis. All of the scenarios that were developed under option 1 have specific advantages and disadvantages. Scenario 1 has a clearly the biggest chance of political implementation as the smallest resource requirements are attached to it and less political resistance from Member States can be expected. Scenario 2 and scenario 3, which create an audit type function for the Commission, have the advantage of the higher likelihood of making a real difference to the inspection regimes in the member states and with that to compliance and environmental benefits. On the one hand scenario 2 enables DG ENV to cheery pick the sectors within its acquis, where costs of application are lowest and the effectiveness of audits are highest, but on the other hand applying the approach to only a section of the acquis will require some extra resources due to the cross cutting nature of environmental policy.

**Option 2:**

Option 2 addresses the possibility of establishing *ad hoc* inspection-related powers for the Commission in sectoral environment legislation. The Commission’s role would have a more specific and selective rather than a more general audit-type character (as is the case of option 1). Specific EU environmental legislation could be amended in different ways to achieve this aim: for example, monitoring requirements and some form of Commission oversight could be introduced; or the Commission could be given the right to participate in certain inspections. Analysis of option 2 is based on two existing examples of legislation where inspection-related powers are observed:

- **Ozone-depleting substances Regulation (ODS Regulation):** According to Article 28 of Regulation (EC) No 1005/2009 on ozone depleting substances, the Commission may, among other things, request competent Member State authorities to carry out investigations and assist them when conducting controls.

- **Laboratory Animals Directive:** Article 35 of Directive 2010/63/EU on the protection of laboratory animals requires the Commission to conduct, if there is due reason for concern, audits, i.e. to carry out controls of the infrastructure and operation of national inspections in Member States.
Waste shipments and nature protection were the two areas of sectoral environmental legislation chosen to carry out the analysis of the option’s applicability at EU level and to the wider environmental acquis. Therefore, option 2 analyses and compares applicability of the Ozone Depleting Substances model and the Laboratory Animals model to these two other environmental areas.

Some of the strengths and weaknesses of the application of an approach similar to the ODS Regulation include:

**Strengths:**
- Requests for inspection could compensate to some extent for the weak level of controls in some Member States
- The most sensible EU sites with the least effective controls could be targeted
- The running costs of the model will be low and no new capability has to be built up, as most of the costs would be in data assembly and reporting.
- Commission’s power to request inspections and to coordinate inspections in the Member States to some extent would have a strong deterrent effect
- Participation of Commission officials in inspections of establishments or undertakings may strengthen the position of local inspectors in some Member States
- The Commission may request information by Member States in a pro-active way
- Promoting information exchange and cooperation contributes to more level playing field

**Weaknesses:**
- The Commission may not get enough information to target possible cases for inspection.
- Some additional resources would be needed, including external expertise in collecting information.

Some of the strengths and weaknesses of the application of an approach similar to the Laboratory Animals Directive include:

**Strengths:**
- Assessments of the national inspection systems are suitable for assisting Member States in improving their inspection systems and thereby contributing to a more level playing field
- Conducting such assessments would provide the Commission with an information basis for the long term-improvements of the national inspection systems
- To conduct the assessments, the Commission may request information by Member States in a pro-active way
Contingent assessments would be more acceptable to Member States than regular assessments

**Weaknesses:**

- The Commission may not get enough information to conduct such assessments. The different inspection structures in each Member States render assessments difficult
- Additional resources would be needed, possibly including external expertise in auditing

**Option 3**

Option 3 examines the possibilities of enhancing the use of a peer review approach in the existing European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) Review Initiative project (IRI) to strengthen the EU’s role with regard to environmental inspection. This option is based on the model of the IRI. The IRI was set up under the auspice of IMPEL – an international non-profit association of the environmental authorities of the EU Member States (MS), acceding and candidate countries of the European Union and EEA countries. Since the IRI was established, approximately 22 (with 2 ongoing in 2012) IMPEL member countries have gone through an IRI review. The IRI is based on a peer review process, which is a process of self-regulation by a process of evaluation involving qualified individuals within the relevant field.

Three different scenarios of expanding the current state of the IRI at EU (DG ENV) level are analysed. The objective of each scenario is the same – to strengthen the EU’s role in inspection activities in the Member States. The three scenarios analysed include:

- **Scenario 1:** More frequent application of IRI by IMPEL (through more frequent peer reviews)
- **Scenario 2:** Expansion of IRI to other areas of environmental law (e.g. nature/water body sites, water pollution)
- **Scenario 3:** Introducing elements of peer review into law

Under scenario 1, increasing the number of IRI projects would build on a fully reviewed existing process, therefore would not entail any major restructuring of existing institutions. The peer reviews are based on a perceived need (request) from an IMPEL member and, therefore, the results are much more likely to be acted upon. This is because IMPEL members voluntarily request a review and are currently in no way obligated to undergo one. However, the constraints of the scenario 1 entail additional financing and would depend on the willingness (and resources) of additional authorities to ask to be subject to a peer review.

In order to realistically expand the practice of peer review to other areas of EU environmental law under scenario 2, new mechanisms for peer review would be needed and priority areas would also need to be identified. Scenario 2 could build on the existing IRI within IMPEL for certain new areas of law and could use the IRI as an example of best practice. The constraints of scenario 2 include the dispersed competences for some areas of environmental law across Member State authorities, which may inhibit the clear identification of ‘peers’ to be subject to review. Further,
new funding would be needed and new forms of peer review would require organisational support.

The establishment of peer review into law under Scenario 3 has the major advantage over the first two scenarios in that it would ensure that such reviews take place and that the Commission can ensure implementation occurs in cases of non-compliance. There are however a number of constraints implied by scenario 3: it would be difficult to find a legal basis to require Member States to peer review other Member States and Member States are likely to be particularly resistant to any obligation in law for peer review.

**Option 4**

Option 4 analyses the possibility of using ad-hoc or framework contracts to assist the Commission in performing investigations in specific areas following a breach of EU environmental law. When responding to alleged breaches of EU environmental law, certain forms of investigation may be required to clarify the situation on the ground. This may require expert knowledge of the subject area. Therefore, option 4 assesses the possibility of using contracts that would provide the Commission with flexible, specific and technical input from experts on precise questions.

The use of ad hoc or framework contracts for technical assistance services is already in use by DG Environment. In general, investigations carried out under contractual terms have generally been efficient and achieved their goal i.e. assisted the Commission in gathering enough evidence about an environmental breach in order to continue with the infringement procedure against a Member State. Extending the use of FWC or ad hoc contracts to use external expertise would contribute to more infractions being detected and more cases being proved by the EC before the CJEU. Lessons could be learned from the results of investigation activities that could be used to further improve implementation of EU environmental law and reduce the amount of infringements reports.

However, in terms of enhancing the potential of using external expertise to assist the EC in investigating alleged breaches of environmental law, some barriers and areas of improvement have been identified. These include for example the fact that under contractual terms, on-sites visits are rarely carried out, whereas in a (limited) number of cases they could help reinforce cases. Further, compared to in-house investigations, the conclusion of contracts entails additional costs. Finally, limited resources are available in DG ENV to review the outcome of tasks performed by external consultants.

**Option 5**

Option 5 examines the possibility of using a pool of external experts that would be called upon to assist the EC to investigate alleged breaches of EU environment law. This option would involve DG ENV selecting a pool or pools of experts that would be called upon/convoked to provide their expert opinion on specific cases. Although there is no current experience on this within DG ENV, the Council of Europe has used this approach under the Bern Convention (for addressing complaints on nature conservation).

Similar to option 4, option 5 addresses investigations, which are a more reactive response by the Commission, compared to system wide audits. However, the main difference between options 4
and 5 is that option 4 would select a chosen contractor to provide the expertise, whereas option 5 would put emphasis on the role of specific identified expert (within a pool of experts).

In order to apply option 5 within DG ENV, the Commission would need to be able to identify where external expertise is most needed. This can be done by undergoing an internal review to assess what expertise exists and available within the EC as well as reviewing the EU environmental infringement cases. Concerning the identification of experts, similar to the Bern Convention, the Commission could also potentially ask MS to recommend specific national experts for a particular environmental area. However, the possible challenge with this is to ensure that there is not a conflict of interest in using the national expert (i.e. using a national expert to carry out investigation activities in his/her MS of origin). Another challenge is to ensure that the expert is available for a sufficient amount of time. According to the EC’s rules for the use of external experts, option 5 is legally feasible to implement within DG ENV provided that the group of experts is established and operated according the rules set out in the “Rules for Commission Expert Groups”.

**Combination of options**

Several combinations of options were considered after a review of the analyses carried out for the individual options in the previous chapters. The main objective thereby was to identify possible combination of options whose implementation would help increase the effectiveness of national environmental inspections by use of a limited EU level capacity.

Based on the analyses carried out on the different options and the above points, two combinations have been selected for further analysis and comparison. The combinations of options are based on options 2, 4 and 5, and consists of explicitly granting the Commission a limited assessment function related to MS national environmental inspection systems when there is due reason for concern (following the model of the Laboratory Animals Directive), the possibility to request MS to carry out specific inspections (following the model of the ODS Regulation), and to engage external expertise in specific cases. The selection of the above mentioned elements for further analysis and comparison is based on the following considerations:

- Creating a general mechanism to review and report on MS inspections systems (option 1) would interfere too much into MS administrative autonomy. In terms of administrative burden, it would also require a significant amount of resources and administrative capacity at EU level to implement. Furthermore, it is not very likely that elements of this option would receive political acceptance from Member States.

- The IMPEL peer review model (option 3) is a good example of best practice in terms of improving national inspections in a transparent manner; however there are many legal and technical constraints that would prevent the expansions of this model in order to obtain a larger impact and political acceptance compared to the other options.

- Elements of Option 2 have the potential to fulfil several criteria that would meet the points listed above. Firstly, it would provide the Commission with an enhanced, but limited role in evaluating the functionality and
effectiveness of MS inspection systems, without interfering to a significant extent with MS administrative autonomy. Secondly, it would ensure that a level playing field is created in relation to environmental inspections at national level (through the principle of ‘due reason of concern’).

- Elements of option 4 and 5, which include use of external expertise, seem to have an added value, which justifies their consideration when analysing the usefulness of a combination of options.

Based on the analyses carried out on the different options, two combinations were selected for further analysis and comparison:

**Option A: Commission’s evaluation function and use of external expertise** - Option A would provide the Commission an assessment function related to MS national environmental inspection systems when there is due reason for concern. The criteria for ‘due reason for concern’ would follow the principles of risk management in terms of identifying elements that would indicate non-compliance of specific provisions under EU environmental legislation. The use of external expertise is also important under Combination A to assist in evaluations that may require very specific expertise. Under this option, the Commission would have a role in review and evaluation type activities only.

**Option B: Commission’s evaluation function, possibility to request MS to carry-out specific inspections and use of external expertise** - Under this option, the Commission would be granted both evaluation powers (described above under option A) as well as the possibility to request MS to carry out specific inspections (following the model of the ODS Regulation). This option is more exhaustive and ambitious in terms of the Commission’s role, as the Commission would be able to evaluate national inspection systems and steer specific inspection activities at national level. The Commission would only be able to request specific inspections in the case of due reason for concern. MS would need to report on the results of the concrete inspection activities. The use of ad hoc expertise and/or a pool of experts are also envisaged under this option combination. As option B would allow the Commission to request MS to carry out specific inspections, participation of external experts (rather than a Commission-appointed official) could help in some instances.

**Conclusions**

The options in this study have been analysed to help provide DG ENV with a basis for two distinct objectives. The first objective relates to enhancing the EU-level confidence in national environmental inspections. The second objective relates to enhancing the Commission’s own investigations into possible breaches of EU environmental law.

Options 4 and 5 (use of experts) were examined in the context of the second objective but were also found to have relevance to the first objective. For this reason, elements of Options 4 and 5 were taken up in the section of the study addressing combinations of options to enhance the EU role in national environmental inspections.

With regard to the first objective, the analysis of the baseline scenario and the possible impacts of options 1, 2 and 3 led to the conclusion that any efforts focused on extending or improving the EU capacity in relation to environmental inspections need to reflect the following:
National inspection systems should be as self-standing as possible in terms of their effectiveness and reliability;

Any EU role should be complementary in terms of providing assistance or in terms of addressing clearly identified shortcomings at the national level so as to ensure a level playing field.

The ways in which national inspection systems themselves can be improved is outside the scope of the present study but it may be noted that the Commission Communication COM (2012) 95 and the proposed 7th Environment Action Programme, COM (2012) 710 final:

Place improvements in national inspections within a wider context that identifies other possible means of improving overall implementation and the responsiveness of competent authorities to problems of non-compliance (such as improved information systems, national complaint-handling criteria, improved access to justice and network cooperation);

Indicate that any proposed measures related to an EU capacity concerning environmental inspections would be part of a wider initiative aimed at generally upgrading the current EU framework on environmental inspections. The current EU framework is principally devoted to the conduct of inspections by Member States and any upgrading is likely to also be principally devoted to the Member State level.

In a context in which the main emphasis is on enhancing EU role in national inspections, the analysis of Options 1, 2 and 3 brought the following results:

Option 1 would, if the DG SANCO experience is repeated, bring benefits in terms of the likely intensity of Commission review of Member States enforcement systems but would involve a significant commitment of staff and resources in order to create a general inspection capacity within DG Environment.

Option 2 would also bring benefits but would not entail the increase in staff and resources that option 1 would involve.

Option 3 would create the possibility of improvements in nation inspection systems via intensified peer review. Peer review holds great potential to improve implementation in several areas of environmental legislation. It is a voluntary initiative on the sharing of best practice and knowledge, based on transparency and mutual co-operation and could be extended to subjects such as CITES and approaches such as effective information campaigns and awareness raising, etc. However, the current IMPEL review mechanism appears unlikely to have the capacity to be scaled up to the appropriate

---


degree to secure an effective EU capacity since it depends on Member States voluntary inputs. There are also legal obstacles to any such intensification.

Based on the above, option 2 was therefore identified as the most realistic of the three options. Nevertheless, it was considered appropriate to extend the analysis to possible combinations involving options 4 and 5, in addition to option 2. This was to address some of the possible shortcomings of option 2, namely the risk that the Commission would be unable to allocate sufficient staff resources and ensure the necessary technical expertise. Thus, while options 4 and 5 were examined with a view to the second objective of the study, their usefulness for the first objective also became apparent.

Within the context of the first objective of this study, the areas of nature and waste shipments were examined in detail, inter alia with a view to the transferability of some existing inspection models (Ozone Depleting Substances and Animal Use) to other environmental sectors. The benefits of the transfer of these models to other environmental sectors were confirmed. It appears therefore to be appropriate to use these inspection models across the environment acquis.

With regard to the second objective, DG ENV sometimes has limited and unsystematic information on the enforcement status of EU environmental legislation. It is dependent on citizens’ complaints and on Member State reports as a source of information. Member State reports often lack information on essential details such as monitoring, frequency, intensity, gaps in the administrative structure and results achieved. As for citizens – though citizens are often the first to discover breaches of environmental law, they can only report on obvious failures but not on all shortcomings. Therefore, there are significant advantages of using external expertise in terms of gathering and understanding required data on non-compliance, which is not always effectively communicated through MS reports or citizen complaints.

Concerning the use of experts to assist in investigations (options 4 and 5), neither of these options are mutually exclusive, therefore it is recommended to use the approach for external expertise that is most appropriate for the case that needs to be investigated. The type of investigation in question also determines what approach using experts would be the most appropriate. It is recommended that an assessment of the current expertise that exists internally within the Commission, notably within DG ENV be carried out – including a time frame of how long this expertise may be available as a first step in terms of identifying what expertise is available. It should be noted that even if the expertise exists within the Commission, this does not always mean that the expert would be available to assist in investigations.

Whether we speak of the first or second objective of the study, the support and cooperation of MS is essential for any of the policy options to work effectively. This will ensure transparency and facilitate any enhanced role of the Commission in evaluation and assistance activities, whether this be an EU inspection capacity or linked to the Commission’s established investigative role. A stakeholder consultation/workshop with MS could be held to present and receive feedback on possible policy options.

---

5 Ballesteros, Marta (2009), EU Enforcement Policy of Community Environmental law as presented in the Commission Communication on implementing European Community law, in Environmental Law Network International ELNI Review, page 7.
Chapter 1: Introduction

This document is the final report for the study, “Possible options for strengthening the role of the European Union with regard to environmental surveillance activities and strengthening the Commission’s capacity to undertake effective investigations of alleged breaches of EU environment law”.

The report is divided into eight main chapters:

- Chapter 1: Introduction (provides the approach and objectives as well as provides the policy context of the study)
- Chapter 2: Option 1 – Analysis of the establishment of a general mechanism to review and report on MS inspection/surveillance systems
- Chapter 3: Option 2 – Analysis of ad hoc surveillance-related powers for the EC in sectoral environmental legislation
- Chapter 4: Option 3 – Analysis of enhanced use of peer review approach in the existing IMPEL review initiative
- Chapter 5: Option 4 – Analysis of the use of ad hoc/framework contracts to provide expertise in environment policy areas
- Chapter 6: Option 5 – Analysis of the use of external experts to provide advice on alleged breaches of EU environment law
- Chapter 7: Option 6 – Analysis of the combination of policy options
- Chapter 8: Conclusions

1.1 Objectives, approach and context

1.1.1 Objective of the study

This study has two main objectives (1) to analyse various policy options and the possible combination of these options to provide DG ENV with innovative solutions to enhance the EU level confidence in national environmental inspections and (2) to enhance the Commission’s investigations into possible breaches of EU environmental law through the use of external expertise.

1.1.2 Approach, scope, and outputs

The approach applied to gather the necessary information to analyse each of the options included an in-depth literature review and expert interviews by the project team. Analyses were then carried out based on the data collected. Summary tables were developed for each option indicating key impacts and information relevant to each option.
### Methodology used for data collection

The literature consulted included sources such as reports, studies launched by the Commission, legal documentation, articles, and press releases. Expert interviews took place through in-person meetings, phone interviews, and e-mail correspondence. Experts included Commission officers and authorities of relevant EU institutions and international conventions. Table 1 lists the experts consulted.

<table>
<thead>
<tr>
<th>Expert contacted</th>
<th>Organisation</th>
<th>Options</th>
</tr>
</thead>
<tbody>
<tr>
<td>Susanna Louhimies</td>
<td>DG ENV - Unit D3 (Directive 2010/63/EU)</td>
<td>Option 1</td>
</tr>
<tr>
<td>Frank Adriessen</td>
<td>DG SANCO – Food &amp; Veterinary Office</td>
<td></td>
</tr>
<tr>
<td>Liam Cashman</td>
<td>Deputy Head of Unit, DG ENV, A.2 (compliance promotion, governance &amp; legal issues)</td>
<td></td>
</tr>
<tr>
<td>Miroslav Angelov</td>
<td>DG ENV, A.1</td>
<td></td>
</tr>
<tr>
<td>Aléxandros Kiriazis</td>
<td>DG CLIMA - Unit C2 (Transport and Ozone)</td>
<td>Option 2</td>
</tr>
<tr>
<td>Anna Karamat</td>
<td>DG ENV, Unit A.2 (on waste shipments)</td>
<td></td>
</tr>
<tr>
<td>Yannis Counioutis</td>
<td>DG ENV, Unit A.2 (on nature protection)</td>
<td></td>
</tr>
<tr>
<td>Patricia Weenink-Driessen</td>
<td>IRI ambassador (IMPEL)</td>
<td>Option 3</td>
</tr>
<tr>
<td>Fotios Papoulias</td>
<td>DG ENV - Unit B3 (Nature)</td>
<td>Option 4</td>
</tr>
<tr>
<td>Aili Voit</td>
<td>DG ENV - Unit A2</td>
<td></td>
</tr>
<tr>
<td>Ivana Alessandro</td>
<td>Bern Convention/Council of Europe</td>
<td></td>
</tr>
<tr>
<td>Eladio Fernández Galiano</td>
<td>Bern Convention/Council of Europe</td>
<td>Option 5</td>
</tr>
<tr>
<td>Ella Behlyarova</td>
<td>Aarhus Convention</td>
<td></td>
</tr>
</tbody>
</table>

### Methodology used for analysis

The main purpose of this study is to identify key issues related to each of the options and to provide an analysis of these. It is meant to serve as a path-finding/feasibility study with impact assessment aspects, which mainly concerns the development of the various options and exploring their resource implications at EU-level.

The options analysed in this study were selected based on their potential to enhance EU-level role in the inspections undertaken at national level and to enhance EU investigations of alleged breaches of EU environment law. The analyses focus on actions that can be carried-out at the EU level, rather than focusing on a national dimension. The first three options analyse the possibilities of enhancing EU role in inspection-related activities:

- Implementation of a general mechanism to review and report on MS surveillance/inspection systems based on a model similar to that of the FVO (Food and Veterinary Office) (option 1);
Establishment of ad-hoc inspections and surveillance-related powers for the Commission in sectoral environmental legislation (option 2);

Enhancing the role of IMPEL (which is based on peer review of national inspection activities) (option 3).

Investigations are the focus of options 4 and 5, which address EU investigation powers of alleged breaches in EU environmental law:

- The use of specific contracts to provide expertise in specialist and demanding environmental policy areas (option 4);
- The use of a pool of external experts to provide advice on an ad hoc basis to assist Commission investigations (option 5).

The last task of the study analyses the possibilities of combining the above options.

The analyses carried out for each of the options provides:

- Information on the feasibility and design features of the options;
- The extent to which the option is able to enhance the Commission’s role in investigations of alleged breaches of EU environmental law and to strengthen EU confidence in national environmental inspections;
- Information on the administrative burden and associated costs (to the extent that data was available) with well-identified actions falling under the different policy options;
- In addition to the costs, the potential socio-economic and environmental benefits and improvements of the various options are provided based on data availability; and
- To the extent possible, aspects related to the economic, environmental, and social impacts of the different options/ combinations of options.

Criteria used for analysis of options

A set of criteria was developed to analyse the selected options, as well as the combination of options. The criteria were established to ensure completeness in terms of fulfilling the objectives and in order to measure feasibility of implementing the proposed options. The criteria are included in the summary tables at the end of each chapter that analyses the five main options, along with other essential information concerning the option. They include:

- **Potential for environmental improvement/benefit** – how will the option help in implementation of the environmental acquis and make progress towards reaching environmental objectives.
- **Completeness** – to what extent does the option address the problems of the environmental inspections and surveillance regime
- **Cost effectiveness** – what are the cost and human resource implications of implementing the option?
- **Technical constraints** – how technically feasible is it to implement the option?
Introduction

- **Administrative feasibility/readiness to implement** – does administrative structure capacity/structure exist to oversee the policy option? If not, how feasible would it be to implement?

- **Proportionality** – EU action should not go beyond what is necessary and should respect national agreements

- **Political acceptance by MS, authorities and experts** – to what extent do policy makers and other relevant national authorities support the option in question?

### 1.1.3 Terms and definitions

For clarity and consistency, the following definitions are provided for specific terms, which are frequently used throughout this report. It is important however to recognise that there may be different terms for the same activity and the same term may not encompass the same activity in a different context. If not otherwise specified, the context of the term is meant to be taken at the EU level. Therefore, the project team has aimed to be as explicit as possible when employing the terms in the analyses.

For the purposes of this study, the term ‘inspections’ is complemented by the term ‘surveillance’, which better describes some of the activities concerned under the proposed options. In some contexts, the term inspections conveys more specific inspection activities associated with very specific sites, such as abandoned or underused industrial and commercial facilities available for re-use. This land may be contaminated by low concentrations of hazardous waste or pollution, and has the potential to be reused once it is cleaned up, however requires that inspections are carried out prior to ensure that it is safe and sound to use. Surveillance refers to a more encompassing approach of monitoring that can be applied to a wider scope of environmental policy areas (e.g. biodiversity, chemicals, hydrology, wildlife crimes and protection of water bodies, etc.). To maintain certain aspects of EU environmental legislation, adequate controls are necessary to ensure that abuses do not arise. Controls typically require independent official oversight of the activities subject to these requirements. Oversight involves effective means to detect non-compliance as well as a capacity to remedy and deter unacceptable behaviour and harmful impacts. ‘Inspections’, ‘surveillance’ and ‘audits’ are all terms used in this context, sometimes loosely, and their precise meaning may vary depending on the legal framework.

- **Inspection** – An Inspection focuses on the assessment of activities on specific issues. Inspection usually refers to the close examination of any equipment, industrial facility or processes. In the context of this study, the analyses include the process of inspecting facilities such as research institutions performing animal experiments and producers of ODS.

Inspections can (but not solely) involve checks on the ground (such as site visits and checks on records, documentation, equipment and processes) to determine whether, first, specific facilities or operations are compliant with applicable requirements and, second, as to whether there are any significant activities of an illegal nature taking place across a particular territory. Inspections are also generally understood to be carried out on-the-spot, i.e. direct assessment of individual official services or facilities/installations. Both routine and non-routine
Inspections should be planned (with a plan and a check-list). Non-routine inspections can be planned only to some extent, e.g. procedures to be followed and approximate budget should be established in advance. The definition of ‘inspection’ has always proved difficult due to the different ways that it can be interpreted.

- **Investigation** – The Commission follows-up on the application of EU environment law in several ways. In addition to undertaking its own studies and assessments, the Commission also investigates complaints from EU citizens and organisations, petitions from the European Parliament, and questions from MEPS (Members of the European Parliament). To detect breaches of EU environment law, the Commission can use reports submitted by Member States, which are legal requirements under many environmental directives, or base on the information generated through its own investigations.\(^6\)

Investigations at EU level often involve gathering sufficient information to support arguments related to the infringement cases submitted to the Court of Justice of the European Union. On several occasions, the Court of Justice has told the Commission that it has not proven its case.\(^7\) Therefore, in the context of this study, an investigation refers to the activities employed by or in response to the Commission to determine whether a particular situation constitutes an infringement of EU environmental law. An investigation is quite targeted as it usually aims to investigate a particular issue on an ad hoc basis. An investigation is an exercise (usually undertaken in response to complaints or accidents) of examining a connected process or chain of activities in order to determine whether there is compliance and, if not, the nature and causes of the non-compliance as well as those responsible.

- **Surveillance** – Surveillance focuses on activities beyond controlled installations and may also include something comparable to ‘market surveillance’. In some sectors, there may be a high level of illegality and non-compliance. An example would be a high percentage of end-of-life vehicles that are unaccounted for. Surveillance would be designed to assess overall patterns of behaviour across an economic sector and the underlying factors that lead to non-compliance.

- **Audit** – An audit is the verification of a process, a system or a procedure. In the context of this study, an audit is thus understood to be a process of evaluation to measure whether the organisation’s arrangements (resources, procedures, practices, etc.) conforms to specific standards and/or guidelines. This could also mean checking whether the current system complies with the planned arrangements. Audits have the connotation of checks on the adequacy of control systems: they may apply at the level of individual industrial operations but also at the level of the system of official inspections itself.


\(^7\) EEB (2005), EU Environmental Policy Handbook: A Critical Analysis of EU Environmental Legislation Making it accessible to environmentalists and decision makers, [www.eeb.org/?LinkServID=3E3E42E-A8B4-A68D-231A634325A81B&showMeta=0](http://www.eeb.org/?LinkServID=3E3E42E-A8B4-A68D-231A634325A81B&showMeta=0)
In the context of audits, in addition to the standards, which organisations must comply to, there are also usually guidelines and rules explaining how an audit should be carried-out (e.g. the requirement that only authorities from a certain organisation can carry out the audit, rules governing the qualification and competences of auditors, etc.). An audit is usually carried-out by an independent body, with a clearly defined audit methodology.

At the EU level, audits are often carried-out with the intention to assess national systems. They are not conducted to identify individual cases of non-compliance. General follow-up audits are usually carried-out after the closure of a file in order to review the overall progress by national authorities in implementing recommendations. Compliance audit looks at the legality and regularity of expenditure/the implementation of legislation. It is carried-out ex post. EU law can, however, set-out requirements for detailed audits by Member States of their own authorities – this is most evident in the need for audits for financial control of the spending of EU funds.

The understanding of audits from the perspective of the Food and Veterinary Office of DG SANCO (analysed under option 1) is “an assessment of the performance of competent authorities and of the control systems they have put in place (including enforcement capability) aimed at ensuring compliance with EU law.” Thus, the FVO’s work can be described as a quality assessment of the Member States’ performance. A rather new category includes so called system audits, which will cover horizontal control issues, such as training, verification, audit, laboratory accreditation, etc. The purpose is to identify good and best practice examples for Member States. There will be pilot projects in the near future.

In the context of the Laboratory Animals Directive, (analysed under option 2), an “audit” refers to control activities involving an evaluation (of effectiveness) of national environmental inspection systems. Under the Laboratory Animals Directive, the Commission sees its audit type functions mainly in terms of a cooperative approach, helping Member States to improve their inspection system, rather than on alternative models with a stronger emphasis on on-the-spot inspections.

In general terms, an audit can be seen as a review/evaluation of a regulated entity’s administrative systems and physical operations in order to determine whether there is compliance with environmental requirements (possibly also financial and administrative requirements) and, if not, the nature and causes of the non-compliance.

**Monitoring** – This is a term that needs to be approached with care: sometimes it is used in a very generic way (such as in reference to "monitoring" the application of EU law) but it is also used in a more specific sense to mean state-of-the-environment monitoring or performance monitoring using very technical equipment, procedures, and methodologies.
1.1.4 EU Policy context

As stated in the mid-term review of the sixth EAP, whereas a common environment policy framework is now in place, ‘the high number of complaints and infringement procedures are a sign that the implementation of environmental legislation remains far from satisfactory’. The seventh EAP will set out an environmental strategy guided by a longer-term vision and be sufficiently adaptable and flexible to respond to the increasingly interlinked nature of environmental challenges. It should put particular emphasis on better implementation of environmental legislation at all levels.

Environmental inspections are an indispensable instrument for ensuring compliance with environment legislation. They enable state authorities to detect breaches and identify legislative imperfections, and to implement environment legislation more effectively, incl. through imposition of sanctions. Thus, environmental inspections are an important link in the regulatory chain and an efficient tool to contribute to a more consistent implementation and enforcement and to avoid distortions of competition.

The current EU legal framework on environmental inspections at national level consists of the horizontal Recommendation providing for minimum criteria for environmental inspections in Member States 2001/331/EC (RMCEI) and various binding inspection provisions in sectoral legislation. Although legally non-binding, RMCEI has been influential. Its principal focus is in the area of industrial inspections and it has helped to build confidence in EU initiatives in this area. Against this background, a number of binding inspection provisions have been adopted since 2001 based on RMCEI principles (for example the IED, the Seveso III Directive and the new WEEE Directive). However, information on RMCEI implementation reveals serious weaknesses related to its non-binding nature, limited scope, unclear definitions and insufficient level of detail of some of its main provisions, e.g. the ones related to inspection planning and public availability of outcomes of inspection activities.

The 2007 Communication of the European Commission on the review of the RMCEI and other available information about inspection practice on the ground shows that there are still large disparities between the inspection systems of the EU Member States. They relate not only to the way inspections are organised and carried out in the individual EU Member States but also to discrepancies as regards resources and professional qualification between Member States and between different administrative levels within individual Member States. Another shortcoming of the existing framework on environmental inspections is that the need for effective co-ordination between different national competent authorities within and between individual MS and the possible role of the Commission are not addressed properly.

Key aspects of the revision of the framework on environmental inspections should therefore be extending its scope to the wider environmental acquis, accounting not only for the classic cases

---

related to industrial pollution, but also to ‘Greenfield’ sites, which include for example the monitoring of Natura 2000 sites, protection of water bodies, etc., and defining an adequate role for the Commission.

On 7 March 2012, the Commission adopted a Communication on improving the delivery of benefits from EU environment measures: building confidence through better knowledge and responsiveness\(^{10}\). It complements the 2008 Commission Communication on implementing European Community Environmental Law,\(^ {11}\) which sets out the Commission's enforcement strategy to tackle breaches of the European Union's environmental protection laws. The Communication sets out ideas aimed at providing Member States with tools to improve implementation on the ground. Some of these recommendations include:

- Help ensure confidence in the information generated at national, regional and local levels
- Close important information gaps on compliance promotion and enforcement, and land-cover monitoring
- Improve the inspections and surveillance (at MS and EU level; the study focuses on the EU level dimension) applying to EU legislation
- Better complaint-handling and mediation at national level
- Improve access to justice
- Deliver improvements in environmental outcomes through capacity-building and implementation agreements that engage Member States\(^ {10}\)

Furthermore, the 2012 Commission Communication:

- Enlarges the concept of inspection to allow also for checks in areas beyond the classic one of industrial inspections
- Recognises the need for an EU dimension as regards inspection and surveillance and identifies possible policy options
- Places inspections in a wider context in which complementary mechanisms such as national complaint-handling criteria are also envisaged.

The recently presented proposal for the 7\(^{th}\) EAP confirms this approach and states that in the context of inspections it is necessary to extend the binding criteria for effective MS inspections to the wider environment acquis and to develop a complementary capacity at EU level to address situations where there is due reason for concern.\(^ {12}\)


In terms of the EU’s role in enforcing EU environmental laws, the Commission must play its role as Guardian of the Treaty (Article 211 of the TFEU). It must ensure that the provisions of the Treaty and EU legislation are respected by Member States. In order to do so, the Commission reviews the implementation by MS of EU legislation through maintaining close contact, correspondence and meetings with Member States. The Commission can also launch infringement proceedings, and bring the matter before the Court of Justice. Judges in the Member States also play a vital role in terms of enforcing EU legislation. The European Union Forum of Judges for the Environment contributes to promote the enforcement of national, European and international environmental law by contributing to a better knowledge by judges of environmental law.

The Commission registers a high number of complaints every year, alleging breaches of EU environment rules across the EU (between 500 and 700 a year). As there is no EU inspectorate for the environment to check what is happening in practice, the European Commission has only limited possibilities of ensuring proper enforcement. Nonetheless, organisations do exist such as the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL), which is a network of the environmental authorities of EU Member States. It provides a framework for policy makers, environmental inspectors and enforcement officers to exchange ideas, and encourages the development of enforcement structures and best practices.

The idea to equip the European Commission with inspection capacities is not new. It has been discussed for over two decades but so far has not progressed into concrete actions. Member States are responsible to implement and enforce EU legislation, including sufficient control of the application of this legislation. However, the situation today is not satisfying.

The overarching aim of this study is thus to explore and analyse the possible ways that the Commission’s role could be enhanced to improve implementation and enforcement of the EU environmental acquis. The general rationale of the policy options analysed in this study is to ensure more effective implementation and enforcement of EU environment legislation and a level playing field across the EU as well as to increase the EU confidence in actions related to environmental inspections activities by respecting MS administrative autonomy.

---


14 See for example Meßerschmidt, Klaus (2010), Europäisches Umweltrecht, page 206.
Introduction

This page is left intentionally blank.
Chapter 2: Option 1 – Establishment of a general mechanism to review and report on MS surveillance/inspection system

The first policy option focuses on the establishment of a general-purpose audit type function for the Commission in environmental matters in order to ensure a proper and harmonised application of the environmental acquis. In this capacity, DG ENV would be equipped with a general audit structure, in contrast to option 2, which relates to ad hoc inspection-related competencies (see chapter 3 for further elaboration on option 2). Further, it is important to stress that option 1 elaborates on a Commission power to review the functionality of national control systems and not Commission power to check the compliance with environmental rules in individual cases. Thus, this option addresses the establishment of a formal audit-type procedure to examine the national inspection systems of Member States on a regular basis.

There are some non-binding and binding requirements for environmental inspection at Member State level, which include the RMCEI and some pieces of EU environmental legislation.\(^5\) However, there are no EU environmental auditors/inspectors to verify that the environmental acquis is properly enforced in Member States, despite the fact that the Commission also has a certain responsibility to ensure application of EU law. The Commission already holds audit/inspection functions in a number of other policy fields such as competition, customs, fishery, and food safety. In the latter field, the Food and Veterinary Office (FVO), which forms part of DG SANCO (Health and Consumers), is in charge of regularly auditing national control systems.

Studies on environmental inspections have been already conducted, either with a focus on a Member State or EU level.\(^6\) The intention of the present assessment – i.e. option 1 - is to analyse the FVO experience and lessons learnt in detail and determine what is possible in the environmental sector.

The following chapter assesses a possible transfer of the FVO approach to DG ENV. FVO’s legal framework, institutional structures and activities are examined in detail. The results are used for an analysis on whether a similar framework could be established in the area of environmental law.

---


2.1 Analysis of the FVO model

2.1.1 FVO - Context and History

Generally, Member States and its competent authorities are in charge of implementing EU law (Arts 5 TEU and 192(2) TFEU). This includes its transposition, but also its application and enforcement. However, it is also part of the Commission's responsibility to ensure that EU law is properly applied (Art 17 TEU). It does this by providing guidance on its application to Member States through different means (e.g. issuing guidance documents, setting up meetings, launching related studies, etc.) or, as a last resort, by initiating infringement procedures. In a number of policy fields, though, the Commission takes a more active role in ensuring proper and even application. One of these policy areas is food safety law. The Commission set up the FVO as a separate inspection body within DG SANCO in order to ensure that EU legislation on food safety, animal health and welfare as well as plant health policies is fully and consistently enforced by Member States. It focuses on the audit of effective controls system and compliance standards at national level.

Major food crisis can have devastating economic effects, including in the agriculture and tourism sector. Thus, Member States have traditionally a great interest in the proper application of all rules aiming to prevent these crises. They established very early own inspection services, with a focus on countries importing to their markets, which were displaced by community inspections in the 1960s when harmonised rules were adopted. Inspections were carried out inter alia by the responsible bodies within DG AGRI since 1979. Back then, only operations in Third Countries were subject to inspections. Controls were extended to Member States in the early 1990’s. In general, inspections were carried out based on different mandates in several sectoral pieces of legislation.

The FVO in its current guise was established in 1997, mainly in response to the mad cow disease/BSE crisis in 1996. In the wake of the early BSE crisis in 1991, the Commission decided to improve inspections and established a separate unit, the Office of Veterinary and Phytosanitary Inspection and Control (OVPIC), still under the auspices of DG AGRI. It employed thirty inspectors to conduct on-the-spot inspections pertaining to food safety. However, there was very little funding devoted for these activities. In the aftermath of the BSE crises in 1996, the European Parliament carried out an inquiry on the handling of this crisis, including the veterinary inspections that were conducted in response. The inquiry concluded that the existing inspections services’ legal framework was too weak to be effective, including poor independence as well as insufficient financial strength.

---

Box 1: Excerpt of the Medina Ortega report\(^{20}\):

"... The Commission has failed to guarantee the proper functioning of veterinary controls within the internal market, thus breaching Directive 89/662, under which the Commission is empowered and obliged to carry out on-the-spot inspections to ensure the effectiveness of veterinary controls. ....

2. With regard to the procedures for monitoring the action to combat BSE and protect public health and animal health, the committee recommends:

2.1. The Community monitoring and inspection mechanisms should be strengthened, to ensure compliance with Community law and the protection of public and animal health in the internal market. This will require a firm political commitment leading to creation of suitable administrative structures at both Member State and Union level, backed up by the necessary human and material resources."

Hence, the Commission launched a major reform to address food health issues.\(^{21}\) The general objective was to rebuild and to improve consumer confidence in the safety of food after the BSE crisis by putting a stronger focus on safety considerations.\(^{22}\) It decided to move the inspection services away from the directorate responsible for agriculture policies to DG SANCO (former DGXXIV). This was intended to separate competencies for food production from those ensuring its application/inspections.\(^{22}\) Size and responsibility of the new FVO were upgraded as compared to its predecessors. The number of staff was extended to 74.

In contrast to the inspection activities carried out up until that time, the new services moved away from a system in which inspections were carried out to check compliance with EU law in the individual case to a system of formal audit procedures to assess the overall control systems of the Member States and its competent authorities. The new role of the FVO was to check the general performance of national authorities in terms of control and enforcement.

An initial idea to establish a separate agency\(^{23}\) for audits/inspections was abandoned\(^{24}\) as there were fears that Member States could exert too much influence via the agency’s management board and thus jeopardize its independence.\(^{25}\) Proponents of this idea argued that a strong inspection body could be guaranteed if a "clearly defined legal and official status for the control services, covering their missions, the functions and responsibilities of personnel, the procedures, the
Option 1 – Establishment of a general mechanism to review and report on MS surveillance/inspection system

working techniques, etc.” was established. Expected higher costs for establishing an agency were another important concern. Additionally, it was considered that coordination between FVO and the other DG SANCO services would be better, if they worked under the same administration and as close as possible. Given these arguments against establishing an independent agency, the FVO was kept under the authority of the Commission. The Commission’s Inspection General Services (IGS) assessed a possible design for the FVO. Their recommendations included necessary human resources, working procedures, audit and inspection procedures, internal controls and cooperation. In the end, it was decided that a high degree of transparency should be one of the main principles of the FVO’s work. Nonetheless, the term FVO was not made a separate entity, and “FVO” was retained as a name for the new Commission service (instead of only being named DG SANCO Directorate F). Therefore, the FVO is often perceived to be an independent agency rather than a Commission service. The decision to base the FVO in Ireland was a purely political one. It was decided to move it to Ireland as part of a larger agreement on the location of different EU bodies in different Member States.

Finally, following the BSE crises, it was decided that audits and inspections should be reinforced – not only institutionally, but also substantively. This led to the adoption of the White Paper on Food Safety in 2000. In its aftermath, a comprehensive legislative package was adopted (General Food Law, Hygiene Package). As to official controls, the majority of relevant mandates in different legal acts were integrated into a single act, i.e. Regulation (EC) No 882/2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (Official Controls Regulation /OFCR). The OFCR’s main objective is ensuring a harmonised approach with regard to official controls on compliance with food safety law with Member States.

2.1.2 Role of DG SANCO/FVO

2.1.2.1 DG SANCO

The Directorate-General for Health and Consumers DG SANCO is one of the 33 departments of the Commission, responsible for the administration of EU legislation on the safety of food, rights of consumers and public health. DG SANCO is responsible for a large variety of regulations and directives in these areas. It is associated with a number of subordinated agencies and three scientific committees. DG SANCO’s head office is located in Brussels and it employs

---

28 Decision of the Representatives of the Governments of the Member States on the location of the seats of certain bodies and departments (29 October 1993) (“The Office for Veterinary and Plant-Health Inspection and Control shall have its seat in a town in Ireland to be determined by the Irish Government”).
29 See White Paper on Food Safety, page 4: “It is proposed that, in cooperation with the Member States, a Community framework for the development and operation of national control systems will be developed”.
approximately 960 people (as of October 2012). Its responsibilities cover three different policy areas or “pillars”:

- Food safety, including rules on food hygiene, food additives, food enzymes, food labelling, animal health and welfare, import controls on live animals and food from animal origin;
- Consumer policy, including rules on consumer rights and product safety; and
- Public health, including, for example, rules on tobacco, pharmaceuticals and medical devices.

There is no need to operate these three policy areas under one administration, as their subject matters are partly overlapping but not entirely the same. They are based on three different legal bases with different decision-making processes and tools for action. In each policy area, specific strategies have been defined and adopted in recent years. Harmonised food safety law was established very early in the 1960s, though with a bigger focus on trade and market distortions than on health considerations. Rules on health prevention were adopted later, as well as legislation in the other two pillars, i.e. consumer policy and public health. Along its policy fields, DG SANCO is split into several directorates; i.e. General Affairs; Consumer Affairs; Public health; Health systems and products; safety of the food chain; Food and Veterinary Office; as well as Veterinary and international affairs. The directorates are split into two groups; both headed by a Deputy Director General. In the one group, there are consumer rights and public health (directorates A-D), in the other (directorates E-G), there is food safety. The following figure aims to illustrate the division of the policy fields in directorates.

---

2.1.2.2 **FVO**

The FVO is one of the seven directorates of DG SANCO, also named Directorate F. It is one of the three directorates of the foods safety section. The office is based in Grange, Co. Meath, Ireland, thus in a different location than the main administration body of DG SANCO in Brussels. As of May 2012, the number of FVOs personnel is 170.

The main role of the FVO is to assess how Member States – through official controls\(^{34}\) – ensure that the relevant addressees apply EU legislation in the field of food safety, animal health and welfare properly. According to the OFCR – which is the legal basis for the FVOs activity – the purpose is to “verify that, overall, official controls take place in Member States in accordance with the multi-annual national control plans referred to in Article 41 and in compliance with Community law” (see Article 45 (1) OFCR). Specifically, it also has to “verify the functioning and organisation of competent authorities”, “investigate important or recurring problems in Member States” and “investigate emergency situations, emerging problems or new developments in Member States” (Article 45(2) OFCR). The FVO has a number of other specific tasks based on other FVO’s sectoral legislation or policy initiatives.\(^{35}\) It also carries out controls in other countries than Member States.

\(^{33}\) Available at [http://ec.europa.eu/dgs/health_consumer/index_en.htm](http://ec.europa.eu/dgs/health_consumer/index_en.htm).

\(^{34}\) Official controls are defined in the Regulation as “any form of control that the competent authority or the Community performs for the verification of compliance with feed and food law, animal health and animal welfare rules (Article 2 (s))”.

\(^{35}\) Including the evaluation of Border Inspection Post plans; the operation of the Europhyt plant health interception notification system; the evaluation of residue control plans from Member States and Third Countries exporting food of...
States, i.e. in Candidate Countries, and in Third Countries exporting, or wishing to export, foodstuffs/feedstuffs/live animals, plants and plant products to the EU.\textsuperscript{36}

The FVO is not in charge of checking whether environmental rules are applied in the individual case, i.e. whether – for example - an individual operator complies with rules on animal by-products in order to prevent the diversion of organic fertilisers and soil improvers in the food chain. Neither is the FVO responsible for checking controls on the entire DG SANCO \textit{acquis} but covers only food safety, which involves more than 500 directives and regulations. This is facilitated by the fact that thematically, food safety law can be easily distinguished by the other two policy fields. Thus, audits of the FVO cover controls on the entire food chain, including farms, food-manufacturing businesses and other food business operators such as retailers and caterers.

The FVO does not have a stand-alone function but operates within a specific context of different responsibilities of operators, competent authorities, Member States and the Commission. Under the OFCR, the primary responsibility for ensuring that food is safe rests with the food business operators along the entire food chain, from primary production to the point of final sale to the consumer.\textsuperscript{37}

Member States are required to monitor and verify that operators meet their obligations under EU law (Article 3 OFCR). They are obliged to operate a system of controls for this purpose. In order to have a uniform approach throughout the EU, they must establish and implement so called multi-annual national control plans (MANCP) (Article 41 OFCR). These plans generally cover a three to five-year period, and are prepared along Commission guidelines regarding their content and structure.\textsuperscript{38} Member States are required to inform the Commission about the implementation of these plans via submission of annual reports (since 2007). The MANCPs are also “a solid basis for the Commission inspection services to carry out controls in the Member States. The control plans should enable the Commission inspection services to verify whether the official controls in the Member States are organised in accordance with the criteria laid down in this Regulation” (Recital 36 OFCR).

Specifics on the requirements for national control systems are set out in the OFCR (Article 4 ff. OFCR). This includes the following activities:

- Member States have to designate one or more competent authorities responsible for the purposes and official controls.
- They have to establish a sufficient number of suitably qualified and experienced staff and provide adequate facilities and equipment to carry out their duties properly.

\textsuperscript{36} However, the analysis in this chapter focuses on the controls done in Member States.

\textsuperscript{37} See Recital 4 OFCR: “Community feed and food law is based on the principle that feed and food business operators at all stages of production, processing and distribution within the businesses under their control are responsible for ensuring that feed and food satisfy the requirements of feed and food law which are relevant to their activities.

- Staff must use appropriate techniques to check compliance, including routine surveillance checks and more intensive controls such as inspections, verifications, audits, sampling and the testing of samples.

- Official controls have to take place regularly and on a risk basis. *Ad hoc* controls are also possible, such as in case of suspicion of non-compliance. Controls have to take place on the basis of documented procedures.

- In order to finance controls, Member State are allowed to levy fees or charges to cover the costs incurred through official controls.

- Member States have to establish a set of enforcement measures at the administrative level in order to quickly restore situations of non-compliance.

- Member States have to be available for administrative assistance, i.e. for the cooperation of competent authorities in and between the Member States. They have to designate one or more liaison bodies with the role of coordinating the transmission and reception of requests for assistance.

As explained, it is the Commission’s role to check whether Member States comply with these requirements (see Art. 45 OFCR in Title VI, Community Actions). If this is not the case, the Commission must take a number of safeguard measures (Art. 56 OFCR). The Commission can also offer training courses for the staff of the competent authorities in Member States responsible for official controls (Art. 51 OFCR). Moreover, the Commission has a certain coordination function between Member States, for instance in the case when a non-compliance affects several Member States and these Member States fail to agree on appropriate action to address non-compliance (Art. 40 OFCR). It is also in charge for the controls of imports into the EU (Art. 47). The diagram below illustrates this division of responsibilities between food business operators, Member States and the Commission:

- They are at all stages of production, processing and distribution within the businesses under their control responsible for ensuring that feed and food satisfy the requirements of EU feed and food law.

- They are obliged to enforce feed and food law, animal heath and animal welfare rules and monitor and verify that the relevant requirements are fulfilled by business. Official controls must be carried out for that purpose. Annual control plans have to be set up.

- The Commission carries out community controls in the Member States to verify whether food safety law is implemented in a uniform and correct way throughout the Community by controlling the national control system.

**Figure 2: Responsibility in food and feed law enforcement as laid down in OFCR**
2.1.3 FVO - Legal framework and set-up

The establishment of the FVO as an entity did not require a special legal basis as it is a Commission service within DG SANCO just as any other directorate. Hence, the title of the FVO is somewhat misleading as it might suggest an independent agency (see above). In contrary, the setting up of an independent agency (such as the European Food Safety Agency EFSA) would have required the adoption of a specific legal basis.

Controls fall within the wider guardianship role of the Commission to ensure that EU legislation is effectively applied and enforced within Member States.\(^{39}\) However, a functional legal mandate - on which the FVO delivers its work – is still required.\(^{40}\) This can be found in the OFCR. As described above, it aims to consolidate legal mandates on inspection in one legal basis. The intention was to establish a harmonised framework of general rules for the organisation of controls, with shared responsibilities of business, Member States and the Commission. The Commission argued in its proposal for the OFCR that:

“The creation of a single legal basis with the present proposal and the establishment of control plans will allow the Community control services to perform a general audit of the Member States’ control systems globally. These audits will be carried out globally in order to verify the continuous achievement of the required level of control by the competent services in the Member States. If needed, these can be supplemented by more specific audits and inspections for a particular sector or problem.”\(^{41}\)

It is worth noting in this context, that the OFCR does not prescribe the FVO to be in charge of community controls laid down in Title VI OFCR. In fact, the FVO is not mentioned in the OFCR at all, but only the “Commission”. Therefore, any other service of the Commission responsible for the relevant legislation could carry out community controls. However, in practice, this task has been delegated entirely to the FVO.

The OFCR is thus the legal basis for the organisation and operation of controls. It has a “horizontal” character, as it has to be applied in conjunction with the relevant substantive legal requirements of the food safety law.

The FVO itself consists of seven units, out of which five are inspection units (F2-F6: on mammals; birds and fish; plant health/processing and distribution; animal nutrition/import controls/residues; animal health and welfare). The personnel of the five inspection units carry out the inspections. Normally two auditors and additional national experts form a team but bigger audits can also require more auditors. In order to avoid duplicate expertise, units are organised

\(^{40}\) See Article 5 paragraph 5 TEU: “Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.”
thematically and not geographically/per Member States. This is also meant to ensure a consistent approach for audits throughout all Member States.\footnote{Interview, FVO, May 23 2012}

The other units, Unit F1 (country profiles, coordination and follow-up) is responsible for overall follow-up of audits. It receives those files from the other units that could not been closed. The F1 staff carries out follow-up audits on a country basis every second year. Unit F7 conducts operational tasks. It provides IT services, legal services, side-management, internal quality control (formal procedures to check quality of reports).

\section*{2.1.4 Activities}

\subsection*{2.1.4.1 Nature of audits}

FVO activities are largely described in Title VI of the OFCR on community activities. As described, the main function of the FVO is to carry out 'community controls', which are constructed around the concept of audits. The legal basis is set out in Article 45 of the OFCR.

It distinguishes between \textbf{general audits, specific audits and inspections}. In Article 2 OFCR, audits are defined as:

\begin{quote}
"systematic and independent examination to determine whether activities and related results comply with planned arrangements and whether these arrangements are implemented effectively and are suitable to achieve objectives."
\end{quote}

Inspections are defined as:

\begin{quote}
"the examination of any aspect of feed, food, animal health and animal welfare in order to verify that such aspect(s) comply with the legal requirements of feed and food law and animal health and animal welfare rules".
\end{quote}

The terms audits and inspections as used in the OFCR are generally in accordance with the definition defined in the terminology identified for this report (see section 1.1.2.2), with some slight differences:

- \textbf{Audits}: The differences between specific and general audits are not further specified in the OFCR. However, based on the wording in Art. 45 (1) OFCR, the purpose of the general audits is to verify that, overall, official controls take place in accordance with the requirements in the OFCR, and with what has been announced in the national control plans (MANCPs). They are meant to provide a general overview of the operations in Member States. Specific audits are sector-specific audits (Art. 45(2) OFCR) that look into sector specific issues.
In fact, the FVO carried out general audits focusing on the overall compliance in the past in different formats. However, the conduction of general audits was dropped due to their resource insensitivity. Verifying an overall compliance is much more difficult and much more problematic than ensuring that competent authorities are doing the job they are obliged to. The understanding of audits from the perspective of the FVO is rather “an assessment of the performance of competent authorities and of the control systems they have put in place (including enforcement capability) aimed at ensuring compliance with EU law.” Thus, the FVO’s work can be described as a quality assessment of the Member States’ performance. Therefore, differentiation between general and specific audits might be replaced in the near future, in the context of the next revision of the OFCR. The work done by the FVO will then only be labelled “audits”.

A rather new category includes so called system audits, which will cover horizontal control issues, such as training, verification, audit, laboratory accreditation etc. The purpose is to identify good and best practice examples for Member States. There will be pilot projects in the near future.

The FVO does generally not carry out unannounced audits. This is also not required by the legal mandate in the OFCR. However, in the context of planned audits, the FVO carries out on-the-spot inspections, which are announced on a rather short notice.

**Inspections:** The FVO understands inspection generally as on-the-spot checks, i.e. for example visits of business operator facilities to verify that official controls have taken place properly. Their aim is either to investigate specific problems in order to inform the Commission with a view to formulating policies aimed at resolving these problems, or because there is a specific legal requirement which requires such checks (e.g. in certain laboratories). However, stand-alone on-the-spot inspections occur but are particularly seldom. They are in most cases carried out in the context of general or specific audits. FVO inspections can be based either based Art. 45(2) OFCR (on its own initiative) or based on Art. 40 (3) OFCR (asked by Member States to intervene). Action based on the Art. 40 (3) OFCR has never been conducted as there has not been any request by Member States.

### 2.1.4.2 Planning/selection of FVO audits

In order to organise its community controls, the OFCR obliges the FVO to establish annual control programmes (see Article 45 (4) OFCR), so called “Programmes of Audits”.

---

43 Interview, FVO, October 16 2012.
44 Interview, FVO, October 16 2012.
45 Interview, FVO, May 23 2012
Programmes are published online. The OFCR states that audits have to take place regularly and proportionate to risk, but gives no further specific requirements on the planning process. ⁶⁷

Programmes of Audits are set up jointly by staff of the FVO and other DG SANCO directorates at unit-per-unit basis. Priority areas for specific audits and Member States for general audits are identified annually. Member States are consulted in the preparation process. Once published, the work programme is flexible and subject to modification during the year. There is one mid-term review of each programme. Smaller adjustments (of about 20 %) are generally made in response to emergencies like disease outbreaks in the course of each year.⁴⁸

Since there are more (400-500) audits proposed in this process than could be carried out with the available resources, audits must be prioritised and selected. The FVO states that this elaborations is done “under careful consideration of a number of factors like risk, legal requirements, trade and policy considerations, with risk being the main factor, and fully involving all relevant stakeholders in DG Health and Consumers, while the Member States are equally consulted.” Thus, a risk-based selection is the main selection criteria. The selection is generally guided by a Standard Operating Procedure, which lays down the main factors for the establishment of audit priorities as well as risk prioritisation criteria. Other tailor-made criteria have been developed by the different units per topic, in order to meet the specific characteristics of the different fields. The individual criteria and the selection process are not made public, as the selection as such is a complex procedure considering a variety of factors. The selection in an internal procedure is considered more efficient. Nevertheless, the FVO must be able to justify each selection sufficiently. Every few years, there are internal quality checks in order to review the selection process.

It is important to stress that audits focus on a systematic assessment of all control systems and are only seldom - initiated based on complaints or specific incidents. Firstly, this is in accordance with the intended role of the FVO to verify the overall control of national controls. Secondly, planning makes the work of the FVO more efficient, as resources can be allocated throughout the year.⁴⁹

The information that is used to select the MS to be evaluated through audits includes:

- SANCO files (FVO audit and inspection reports, country profiles, internal minutes)
- Information from competent authorities (e.g. action plans, multi-annual national control plans, audit reports and annual reports required under Article 44 of Regulation (EC) No 882/2004);
- Rapid Alert and other notification systems for feed and food, animal disease, plant health interceptions etc.;
- European Food Safety Authority (EFSA) assessments and reports;

---

⁶⁷ See for example OFFC Regulation, Article 3 paragraph 1: “Member States shall ensure that official controls are carried out regularly, on a risk basis and with appropriate frequency,...”; Commission, White Paper on Food Safety 2000, page 9: “Risk analysis must form the foundation on which food safety policy is based. The EU must base its food policy on the application of the three components of risk analysis: risk assessment (scientific advice and information analysis) risk management (regulation and control) and risk communication.”
⁴⁸ FVO, Programme of Audit 2012, p. 4
⁴⁹ Interview, FOV, May 23 2012
Other sources such as studies, statements by consumer and trade organisations, reports)

2.1.4.3 Implementation of audits

The FVO conducts around 250 audits a year, of which about 150 are conducted in EU Member States. The rest are carried out in Third or Candidate Countries. Each audit involves a minimum of two auditors. Audits teams are often comprised of national experts or an expert of another Member State as well as by a representative of the competent authority designated to be responsible for official controls (see Art. 4 OFCR). This is also similar to the peer review teams set up under IMPEL’s IRI initiative (see chapter 4 for further information on option 3).

Audits are determined by the list of requirements set out in the OFCR as transposed in the MANCPs. The audits are generally facilitated by the information presented in MANCPs and the publicly available country profiles (see below). The programme of each audit includes horizontal aspects such as:

- Organisation and implementation of official controls;
- Training of staff for official controls;
- Equipment of staff for official controls;
- Procedures for verification of effectiveness of official controls;
- System of enforcement measures in case of non-compliance; and
- Internal or external audits of official control systems.

Moreover, sector specific issues – depending on the subject matter of the audit – are assessed, i.e. specific requirements to be met from the food safety, animal health and welfare as well as plant health legislation.

The findings of each audit and inspection are set out in a report. If the audit identifies shortcomings, the FVO will give recommendations on how these can be tackled. The competent authorities in the Member States have an opportunity to comment on the report at the draft stage. Finally, the report is published online as a so called “inspection report”. Member States are then required to prepare measures to address these shortcomings and present them in an “action plan”.

The FVO – Unit 1 – assesses the actions plans and monitors the implementation by follow-up activities. These could either be general follow up audits, on-the-spot follow-up inspections or audits in the areas concerned; requests for written reports; and high-level bilateral meetings in the event of over-arching or persistent problems. In cases of emergency, the Commission can take safeguard measures (Art. 56 OFCR). These may include legal action to prevent trade in, or imports of, feed, food, animals, and plants or any of their products. As a last resort, legal action

50 FVO, Standard Operating Procedure.
51 All inspection reports are available at: http://ec.europa.eu/food/fvo/ir_search_en.cfm.
under EU law may be taken by the Commission to ensure that Member States meet their obligations under EU law.

All reports, including comments by Member States on these, are published on the FVO website, including Member State progress taken towards tackling shortcomings. Country profiles contain key information for each Member State and provide a horizontal, country based overview. They were created online in order to inform Member States and the public on the activities of the FVO as well as on the Member States’ compliance with EU food and feed law controls. Country profiles are also an important information source and facilitate the conduct of Commission controls. This source of information enables the Commission to respond quickly to emergencies such as disease outbreaks. They also allow a systematic follow up of the FVO recommendations by Member States.

Table 2 illustrates the different sections of each country profile reports:

<table>
<thead>
<tr>
<th>Section title</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Published FVO reports</td>
<td>Publication of the five most recently published FVO inspection and audit reports, ready for download</td>
</tr>
<tr>
<td>Follow up status</td>
<td>FVO’s assessment of the actions taken by the Member States in response to its audits/inspections (recommendations)</td>
</tr>
<tr>
<td>Control system</td>
<td>Overview of how control systems are organised in the Member State. Information are provided by Member States and put into a standardised format by the FVO</td>
</tr>
<tr>
<td>Basic statistics</td>
<td>The Member States' production, consumption and trade of food, animals and plants</td>
</tr>
<tr>
<td>Member State links</td>
<td>Links to Member States' websites</td>
</tr>
</tbody>
</table>

The FVO issues in total 50-60 recommendations each year. Member States implement these in most cases. There are always a few, but important, cases of non-compliance, though the reasons vary. These are more often cases where Member States are slow to respond or meet particular difficulties (such as necessary financial resources to implement measures), rather than their being generally unwilling to implement the recommendations.53

The FVO also publishes annual reports on its activities, which reviews the progress of its inspection programme and presents the global results. In 2010, after a few years of experience with implementation of the MANCPs, the FVO published a report on the overall operation of Member States controls in accordance with Article 44(4) OFCR (these reports are also known as Article 44-reports).54 Reports based on Article 44 OFCR must be submitted to the European Parliament and the Council. Special reports such as general overview reports describe specific themes of a series of audits/inspections and are thus of a sectoral nature.

---

53 Interview, FOV, May 23 2012


2.1.4.4 **Coordination with other DG SANCO directorates**

As the FVO works under the auspices of DG SANCO, it coordinates its work closely with the other six DG SANCO directorates. According to statements of the FVO, there are a number of coordination mechanisms:

- Annual Programmes of Audits are set up in cooperation with the other DG SANCO directorates on a unit-to-unit basis;
- Back-to-office notes (no official status) are prepared after each audit and provided to the relevant DG SANCO staff (includes a description of the audit, special issues, need for immediate actions etc.);
- *Ad hoc* discussions to discuss the need for safeguard measures;
- Regular follow up activities: this mostly entails discussions of issues on a routine basis, which take place both at unit level (*ad hoc*) and in other structures (such as the management committee on follow up). It consists of representatives from the FVO and other DG SANCO directorates and meets four to five times a year, especially to develop Member State strategies;
- Constant contact with DG SANCO staff responsible for the respective file; also close interaction with the dedicated enforcement unit and legal department (in A1), if legal actions (such as infringement procedures) become necessary.

Overall, the interaction is considered to work reasonably well. However, a particular challenge is the distance between the FVO, which is located in Grange, Ireland whereas the rest of DG SANCO staff is located Brussels. In particular, the direct exchange of information can be potentially difficult.\(^{55}\)

2.1.4.5 **Interaction with Member States**

Regarding community controls, both the FVO and Member States have specific obligations to co-ordinate activities between each other. This requires information exchange and interaction.

In general, a great deal of interaction/co-ordination with Member States is guaranteed by the FVO via preparation and publication of reports. As mentioned above, Member States are consulted in the process of setting up the annual Programmes of Audits. Representatives are invited to the FVO to discuss the priorities and ideas proposed by the FVO. Member States are asked to provide feedback orally or in writing within 10 days. According to its own statements, the FVO accommodates this feedback in the preparation process.\(^{56}\)

Member States are also involved in the auditing process by having the opportunity to comment on the FVO reports at the draft stage. If shortcomings are identified in the FVO report, the competent authority must prepare and present an action plan in order to illustrate how the deficits are intended to be tackled. The implementation of this plan is monitored by the FVO through general follow-up audits. If the action plan was not implemented, the FVO can take

---

\(^{55}\) Interview, FVO, May 23 2012

\(^{56}\) Interview, FVO, May 23 2012
other enforcement actions and, as last resort, initiate an infringement procedure. In the event that con-compliance results in an immediate health risk, the Commission can also take safeguard measures (see Art. 56 OFCR).

In 2006, the training programme “Better Training for Safer Food” was launched on EU food safety legislation. It is meant to support Member State’s competent authority's staff involved in official control activities. It aims to keep them up-to-date with the relevant acquis and to ensure more harmonised and efficient national controls.

More obligations for Member States are set out in Article 45(5) OFCR, which requires them to:

- “Take appropriate follow-up action in the light of the recommendations resulting from Community controls;
- Give all necessary assistance and provide all documentation and other technical support that Commission experts request to enable them to carry out controls efficiently and effectively;
- Ensure that Commission experts have access to all premises or parts of premises and to information, including computing systems, relevant to the execution of their duties.”

2.1.5 Costs

This section provides a short overview of the costs of the FVO. The information provided here serves as a preparatory step for the assessment of the potential costs of an audit type function at DG ENV. It describes the cost structure of the FVO, and in which way the cost structure might be applicable to an audit type function of DG ENV. It is worth noting that the information on the costs of the FVO is limited as the FVO is not an independent agency with separated accounts but a part of DG SANCO.

As mentioned above, the FVO conducts around 250 audits a year, of which about 150 are conducted in EU Member States. Each audit is carried out by a minimum of two auditors. Audit teams are often completed by national experts, whose travel expenses are also covered by the FVO. The size of the team depends on the scope of the audit (broad or narrow), the size of the country, either in terms of production (large/small numbers of producers), the geographic scope and/or constitutional organisation (e.g. federal structure in Germany, autonomous communities in Spain, etc.). In some cases, the team is split up in two teams in order to cover all issues. Depending on the topic, national experts are included (usually one), to add specific expertise. The length of the audit largely depends on the same factors - scope, country, and the size of the team. The average length of an audit is eight days.

The costs of the FVO to provide this service are summarised in Table 3. As average staff costs were not available and the building costs might not be transferable to DG ENV, figures from the DG ENV budget are used instead.

---

Table 3: Operating costs of the FVO

<table>
<thead>
<tr>
<th>Cost Title</th>
<th>Costs per year</th>
<th>Costs per Audit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Staff Costs (FVO)</td>
<td>Costs not available (170 staff)</td>
<td>The FVO employs 0.68 members per audit conducted.</td>
</tr>
<tr>
<td>2 Building Costs (FVO)</td>
<td>€4,000,000 to €5,000,000</td>
<td>~€16,000 to €20,000</td>
</tr>
<tr>
<td>3 Administrative costs (not from FVO - From DG ENV Budget)</td>
<td>~€22,000,000</td>
<td>~€88,000</td>
</tr>
<tr>
<td>4 Mission Budget</td>
<td>€2,200,000</td>
<td>~€9,000</td>
</tr>
<tr>
<td>5 National Experts Costs</td>
<td>€400,000</td>
<td>~€2,000</td>
</tr>
<tr>
<td>3-5 Total Costs</td>
<td>€26,600,000</td>
<td>~€99,000</td>
</tr>
</tbody>
</table>

The application of these numbers to a potential audit function at DG ENV requires careful consideration, as there may be considerable differences between the potential audit type function of DG ENV and the FVO. The number, the size, the length and the types of audits might differ and should be put into context.

- **Staff costs**: Average staff costs are difficult to establish from FVO figures. However, it is possible to alternatively use figures from the EU Commission draft budget. In 2011, DG ENV had overall administrative costs (staff costs plus building costs) of €93.9 million and 724 staff members. This would add up to an overall €130,000 staff member. The FVO employs 170 staff members and conducts 250 audits (0.68 members of staff per audit). Using this average, an overall €88,000 per audit is estimated. The FVO was asked about staff input of audits and on average it was estimated that audits require travel of on average 2.3 staff and include site visits for about 8 days.

- **Building costs**: In our interview, the general opinion prevailed that the accommodation costs in Grange at the FVO are relatively high, so it can be expected that those costs would be lower but it depends on the expected location of the proposed inspection unit. Using the DG ENV average figures (administrative costs) would make the use of these figures unnecessary.

- **Mission Budget**: If the new inspection facility is based in Brussels, this will reduce the necessary mission budget for flight costs and it will eliminate the need for regular flights to Brussels, which at the FVO takes up about half of the mission budget.

- **National Experts**: It needs to be discussed whether national experts are needed for potential audits of DG ENV.

---

58 Base year 2012.
59 Calculated as 170 staff (FVO) multiplied by €130,000 per year and member of staff (from DG ENV Budget).
2.1.6 Analysis of the FVO approach

2.1.6.1 Impacts and Strength

This section summarises the impacts and strengths associated with the FVO approach.

- Effectiveness/improved national controls

The enforcement of the food safety legislation has benefitted considerably through the work carried out by the FVO. This is guaranteed, firstly, through binding provisions for national controls with shared responsibilities, and secondly, through establishing a general audits structure within DG SANCO to verify whether these provisions are met. Finally, the FVO also ensures a high level of transparency.

The binding criteria on controls and consistent national control plans provide guidance to Member States and facilitate community controls. Each year, the FVO develops an audit programme identifying priority Member States and areas. General and specific audits as well as follow-up activities allow a systematic assessment of compliance with the control provisions. The large majority of weaknesses in control systems identified by the FVO are addressed through specific action plans drawn up by national authorities in response to its recommendations. In general, Member States abide by the FVO’s recommendations and implement measures to meet the identified shortcomings. Transparency through country profiles creates an important incentive to do so.

In its last annual report, the FVO provided information on the progress achieved. It emphasised the challenges that a number of Member States face in setting up and implementing MANCPs due to different agri-structures, administrative cultures and size. However, MS annual reports on the implementation of the plans indicate that considerable progress was made in setting up the structures and procedures to integrate the control plans of all the actors at national, regional and local level. It concluded that Member States generally ensure a good level of implementation of official controls and that "while there is scope for improvement, there has been progress in the efficient use of control instruments and resources, and in planning, implementation, and co-ordination of controls across all sectors".

Overall, the FVO receives very positive responses to its work. In the past, the European Parliament has pointed to the importance of the Office’s work as an independent overseer. Internationally, the FVO has also drawn attention and is perceived as good practice. For example, the United States General Accountability Office (GAO) examined the work of the FVO for lessons learned.

---

61 Interview, FVO, 2012, May 23.
63 Interview, FVO, 2012, May 23.
Better application of EU food safety law

The activities of the FVO have also led to better application of EU food safety law and thus to safer food. The precise impact of the FVO on safer food is difficult to measure. However, the BSE crises, which lead to the establishment of the FVO in its current guise, was generally handled well by the FVO, as there has been a sharp fall in the incidence of the disease.\(^{65}\) This is further supported by the fact that the UK was re-accepted as an export country for meat. According to the most recent Commission report on the application of EU law, the number of complaints and enquiries on EU health and consumer issues registered in 2010 were 137, representing 3.40% of all complaints received, and compared to 701 cases (17.37%) in the field of environment.\(^{66}\)

Better understanding of application of EU law

An important advantage of the FVO approach is the knowledge database it has created. By setting up country profiles and regular follow-ups, it has a good overview of the control systems in place and the competent authorities in charge. Moreover, it does a systematic assessment of shortcomings. It also has a good understanding of the actual quality of control systems, as the FVO services – through audits and inspections – see for themselves the realities of enforcement of the ground. This is important, as the FVO does not need to rely on implementation reports by Member States and citizen complaints in order to identify cases of improper transposition and application of EU law. It creates its own source of information. Due to the systematic assessment of shortcomings, the FVO can act quickly in emergency cases such as disease outbreaks and assure a high level for safe food.

The above-mentioned aspects make it possible for the FVO to deliver the framework of infringement proceedings to the European Court of Justice. One specific case was illustrated in the last Commission report on the application of EU law. The example is of Greece (Judgment of the Court of Justice of 23.4.2009 in case C-333/07)\(^{67}\):

"The FVO missions have highlighted since 1998 fundamental systemic shortcomings in the performance of the Greek authorities' official controls in the area of food safety, animal health and animal welfare. These shortcomings are mainly attributable to the shortage of human resources in the Greek veterinary services. Because of these shortages both in central administration as well as in the decentralised authorities, there was a failure to carry out the official controls in an effective and substantial way. The Court concluded that the results of the efforts made by the Greek authorities to solve these problems were unsatisfactory.


---


\(^{67}\) European Commission (2008), Situation in the different sectors, Accompanying document to the 26th Annual Report in Monitoring the Application of Community Law, page 374.
Option 1 – Establishment of a general mechanism to review and report on MS surveillance/inspection system

Also on the basis of evidence gathered during FVO inspections, the Court of Justice condemned Greece for failure to apply in a satisfactory way EU legislation relating to the protection of animals during transport and in slaughterhouses.”

- Transparency

Another strength of the FVO approach is the transparency it creates, especially due to its country profiles and follow-ups. This facilitates the conduct of audits and inspections, supports the systematic follow up of recommendations in FVO reports, helps to identify the main strengths and weaknesses of each national control system, assists the overall prioritisation of FVO audits, inspections and other monitoring activities and serves as a basic source of background information for stakeholders. This is essential as the participation of the public in EU policy matters depends on the provision of sufficient information. This has the potential to increase the confidence in EU institutions and its activities.

- Level playing field

Misapplication of legislation has the potential to cause harm to the EU economy and to undermine the confidence citizens and businesses have in the internal market and in the EU in general. The FVO approach is known to contribute to fairer competition and to strengthen the EU internal market, since uniform and efficient national controls as well as a better application of EU food safety legislation generally contribute to the level playing field. Trade can take place under conditions of consistent and high safety levels, which allow markets to focus on price, quality and consumer preferences.

- Efficiency of compliance checking

The usage of a systematic and risk based approach to select audits increases the efficiency of compliance checking. The FVO does not rely on complaints, and does not need to run “after bushfires”. Through its systematic assessment, it gains a good overview of shortcomings in Member States. There is no need to treat Member States differently. It also saves resources to plan audit activities. As a conclusion, the FVO approach seems efficient in verifying the proper implementation of national control systems.

- Further development of EU legislation

Through its work on the ground and cooperation with Member States, the FVO gets good insight on whether EU legislation actually works in practice. In direct exchange with staff of the competent authorities, it gains a good understanding of difficulties in the application of EU law, for example by unclear and ambiguous wordings in legal provisions. The FVO is in a position to communicate relevant problems back to policy makers. Thus, as an intermediary, the FVO generally contributes to the development of better and new EU legislation.

---

2.1.6.2 **Weaknesses and Challenges**

- **Location**

Despite the overall positive assessment of the FVO, there are certain barriers which have a negative impact on the effectiveness of the FVO and which can be attributed to particular characteristics of the FVO. Most importantly, the location in a different – and geographically peripheral - Member State from the rest of DG SANCO causes several difficulties. Travel to audits from this remote area needs time. Travel costs are relatively high. Communication with other DG SANCO staff is not as quick and fluent as it could be if FVO was also located in Brussels. The office is separated from the general EU services, which is another cost factor. For example, the facility management cannot be provided by the Office for Infrastructure and Logistics (OIB) of the European Commission in Brussels but must be carried out by additional staff hired by the FVO.

- **Costs**

Conducting national and community controls require considerable resources to set up and operate. To meet this challenge, the OFCR allows Member States to levy fees or charges to cover the costs incurred through official controls. However, though this saves public spending, it only shifts costs to the businesses concerned. Moreover, there are also considerable costs for community controls.

In the last annual report on the application of EU legislation, the FVO reported that the recent economic crisis had an impact on the availability of resources for official controls to verify compliance with the safety food legislations. Lack of financial resources is generally no justification for non-compliance with EU law. The Commission decided to respond to this development and has started a review process of the OFCR with a view of improving the financing of official controls.69

- **Political momentum**

The FVO in its current set-up was launched in response to the BSE crisis. This crisis revealed the weak participation of the Commission in checking compliance of EU food safety law. Hence, there was a strong political support to change this situation. This political acceptance, especially by Member States, was an important driver for the establishment of a general audit mechanism.

2.2 **Application of the FVO model to DG ENV**

One option would be to transfer the exact same approach of DG SANCO/FVO to DG ENV. This would entail the establishment of a general mechanism within DG ENV, similar to the FVO model that would review and report on the functioning of national inspection systems (option 1). In other words, an additional unit or agency would be established and dedicated to auditing national inspection and surveillance systems. Audits would most likely be carried out in a regular and systematic way similar to the FVO approach. The proponents of this option argue that DG

---

69 European Commission (2010), Commission staff working document, Situation on the different sectors, Accompanying document to the Report from the Commission, 26th annual report on monitoring the application of community law (2008), page 367
ENV could greatly improve its information gathering capability by having well-trained staff conduct environmental inspections in Member States. As a result, this would improve the proper and consistent application of EU environmental law.\textsuperscript{70}

### 2.2.1 Description of DG Environment

DG ENV is in charge of mainly all environmental matters of the EU. It devoted itself to “protection, preserving and improving the environment for present and future generations, and sustainable development”\textsuperscript{71}. As all Directorate-Generals, DG ENV tasks comprise administrative assignments, the preparation of new policy initiatives and the monitoring of the environmental acquis implementation.

After the establishment of a new Directorate-General for Climate Action in 2010, DG ENV is now comprised of about 400 officials, to which a number of persons on secondment and under contract (overall some 50) have to be added.\textsuperscript{72} It is located in Brussels.

Currently, it consists of six directorates, i.e. Legal Affairs & Cohesion; Nature, Biodiversity and Land Use; Sustainable Resources Management, Industry & Air; Water, Marine Environment & Chemicals; International affairs, LIFE & Eco-innovation as well as an directorate on Strategy. The following directorates illustrate the organisation of policy areas under the auspices of DG ENV:

The DG makes sure that Member States correctly apply the EU environmental law acquis, which currently includes about 200 pieces of legislation on air, chemicals, water, land use, marine and cost, soil, water, waste, nature and biodiversity.

One of the major tasks of the DG is to ensure that Member States correctly apply EU environmental law acquis, which currently includes about 200 pieces of legislation on air, chemicals, water, land use, marine and cost, soil, water, waste, nature and biodiversity.

Recent assessments of the application of EU environmental legislation have shown that there is room for improvement in this regard.\textsuperscript{73} The latest EU progress report showed that there are still considerable implementation deficits, including for example in the areas of nature conservation and waste. Moreover, the economic, social and cost benefits that could be achieved by a proper implementation were illustrated as well. The most recent Internal Market Scoreboard concluded that the vast majority of infringement proceedings (76 %) concern the incorrect application of EU legislation by Member States and almost half the total infringement proceedings are in the areas of taxation and environment.\textsuperscript{74}

---

\textsuperscript{70} Krämer, Ludwig (2011), EU Environmental Law, page 428; Ballesteros, Marta (2009), EU Enforcement Policy of Community Environmental law as presented in the Commission Communication on implementing European Community law, in Environmental Law Network International ELNI Review, page 2.


\textsuperscript{72} Krämer, Ludwig (2011), EU Environmental Law, page 32.

\textsuperscript{73} Such as European Commission (2008), A Europe of results – Applying Community Law.

\textsuperscript{74} Such as European Commission (2008), A Europe of results – Applying Community Law.
and waste.\textsuperscript{75} Moreover, the economic, social and cost benefits that could be achieved by a proper implementation were illustrated as well.\textsuperscript{76}

In order to tackle the trend of insufficient application, the Commission adopted the RMCEI providing for minimum criteria for national environmental inspections already a number of years ago. This recommendation contains non-binding criteria for the planning, carrying out, following up and reporting on environmental inspections. Its objective is to strengthen compliance with Community environmental law and to contribute to its more consistent implementation and enforcement in all Member States. An independent assessment has concluded that the success of the RMCEI can be seen in its (1) impetus given to knowledge exchange and sharing of best practices, mainly via the IMPEL network (2) its value as a tool for structuring and planning inspections, and (3) its non-binding character, which grant MS the flexibility to implement the legislations according to local context and external circumstances. \textsuperscript{77} Still, as stated above, a Commission review of the RMCEI in 2007 has concluded that there are considerable deficits in national control systems, for instance due to differing interpretations of the definitions and criteria as well as the reporting requirements. Moreover, there are still large differences in the political priority given to environmental inspections in Member States. Finally, the effectiveness of the RMCEI is limited by its scope: it covers industrial installations, companies and facilities that are subjected to authorisation, permit or licensing requirements under EU law (“controlled installations”). For industrial facilities, there are also a few minimum inspection criteria in other sectoral pieces of legislation. There is a full range of activities for which no guidance on exists but with considerable impact on the environment.

In addition to the RMCEI, DG ENV has developed other tools to get itself more involved in ensuring compliance with the EU environmental acquis. Besides setting up implementation plans (Transposition Implementation plans, TIPS) to support Member States in transposing EU directives, it meets regularly with Member States competent authorities to discuss and address sectoral implementation issues. These meetings are called “package meetings”, which usually take place in the organizes so called, informal “package meetings”. These meetings usually take place in the respective Member State for 3 days, and their main subjects are discussions on implementation problems and on-going infringement procedures.

\subsection*{2.2.2 Assessment of a possible transfer of the FVO model to DG ENV}

In order to assess the possible transfer of the FVO model to DG ENV, the differences of the acquis under the auspices of DG SANCO and DN ENV need to be considered.

The acquis of DG SANCO is characterised by the fact that the majority of rules relate to a certain activity, such as production, processing and distribution of food. It is very prescriptive in general. Environmental legislation often has a stronger focus on protection such as the protection of species or habitats. Sources of risks (such as pollution) are often diffuse and more difficult to

\begin{footnotesize}
\textsuperscript{75} Eu application report
\textsuperscript{76} Internal Market Scoreboard
\textsuperscript{77} Ecorys (2011), Impact assessment study into possible options for revising Recommendation 2001/331/EC providing for minimum criteria for environmental inspections (RMCEI), page 47
\end{footnotesize}
control. This makes the issue of compliance control much more challenging. Thus, though the 
acquis of food safety regulation is higher in numbers (500 pieces of legislation) than in the area of 
environment (about 200 pieces of legislation), the FVO focuses on a more limited number of 
specific subject areas.

It is also important to stress that for food and feed law, inspection services were in place very 
early, first in Member States only, than on Community level. Thus, a great part of structures was 
already in place before the OFCR was adopted. The relevance of an independent oversight was as 
such never questioned. This is generally different in the area of environment. Member States see 
a stronger Commission role as a much bigger interference in their competencies.

These differences in issues also imply a very different set of objectives from the objectives of DG 
SANCO. While the FVO audits have a very clear set of objectives, mostly focused on ensuring the 
health of European citizens, the objectives of the DG ENV acquis are much more diverse as 
different environmental objectives (human health, ecosystem health and many more) have to be 
balanced and understood. Any system of surveillance has to cope with this added complexity.

2.2.2.1 Costs administrative burden and impacts

The costs and the impacts of an FVO style system in DG Environment depend strongly on the 
exact setup of the implementation and the area of application. To some extent, it is possible to 
analyse how effective and costly a FVO style approach would be for the tasks set in DG 
Environment and which important lessons could be learned from this analysis. On the other 
hand, precise numbers for the costs and administrative burden can only be derived later in the 
process when the exact administrative details and the area of application are well defined.

Costs of a DG ENV function

DG SANCO (or the FVO) is spending about €100k per audit for their 250 audits per year, which 
includes not only the costs of an audit, but all background functions like planning, identification 
of audit targets, reporting and analysis. To assess how these resource requirements would apply 
for DG ENV the following cost drivers need to be understood:

- Remit of audits: The average cost of an audit depends strongly on the size of 
the regulatory system, which has to be evaluated. The more different 
regulatory authorities have to be audited and the higher the number of 
regulated organisations, the higher will be the staff effort for an audit. This is 
because some staff effort is needed to understand the regulatory and data 
systems of the regulator and some staff effort is proportional to the number 
of inspection reports, complaints or legal cases, to be reviewed. The auditing 
organisation has to analyse a robust sample of those cases in order to build 
up an understanding of the effectiveness of the system. The environmental 
acquis relates to many different regulatory authorities and many different 
regulated bodies in the member states, which means that the number of 
necessary audits for the whole of the acquis would be very high and the 
average costs of those audits would vary widely.

- Objectives of regulatory framework audited: Another important cost driver is 
the range of objectives that the audits have to test against. While the
Option 1 – Establishment of a general mechanism to review and report on MS surveillance/inspection system

Objectives of the audits conducted by the FVO are relatively one dimensional – all focused on human health – the objectives of most DG ENV regulation are multi-faceted. This has implications for the complexity of the regulatory system and with that for the complexity and average costs of audits. It can therefore be assumed that an FVO style function at DG ENV would have to cope with a higher complexity in respect to objectives and therefore higher costs per audit and potentially a higher number of audits have to be expected.

Data availability: The costs of audits also depend on the underlying data availability in the regulatory system. In some areas of the DG ENV acquis, data is chronically sparse and can only be collected with substantial resources (e.g. Ecosystem health). Any auditor in those fields of the environmental acquis would need substantial resources for its own data collection or would cause substantial costs on the side of the regulatory authority in the member states.

Consideration of the aspects listed above indicates that a separate audit function for the whole DG Environment acquis would very likely require substantially more than the 250 audits a year conducted by the FVO and the average costs of audit would vary widely.

Administrative Burden

The administrative burden of a new audit type function would fall mostly on regulatory authorities in the member states, as they normally have to provide the information for the audits. A minor part will fall on regulated bodies, if additional inspections will be instigated.

It is important to note that the administrative burden is defined only as those costs that have to be incurred additionally to the costs that would be needed anyway by a regulated authority to ensure compliance with the relevant regulations. In our case, this means that administrative burden would only be the reporting effort of the regulating authorities in the member states. If a regulatory authority has to increase the number of inspections due to the results of an audit, this would not counted as administrative burden, as this would be part of what the authority should have been doing anyway.

The FVO example has shown that an audit function leads to a greater standardisation of data collection regulatory practices in general. This would mean that any introduction has some substantial one off administrative burden in the first years as regulatory authorities change their practices to adhere to the demands of the audits. After this transition period, the administrative burden will probably be very small as the regulatory authorities collect the data needed for an audit. This assessment depends again on the area of the environmental acquis. If the data to be collected differs widely in the different member states, as specific problems differ, the standardisation will cause some lasting administrative burden.

Environmental Impacts of Audits

Any audit function aims at improving the regulatory practice of regulatory authorities in the member states in order to improve compliance behaviour of the regulated bodies. This approach will be most effective, if the lack of compliance in the member states is caused by inefficient regulatory practice. If other reasons are predominantly responsible for the lack of compliance
Option 1 – Establishment of a general mechanism to review and report on MS surveillance/inspection system

(e.g. no robust legal framework or data that is difficult or expensive to obtain) the audits will have less impact on compliance behaviour and with that less impact on the environment.

One indication for compliance challenges not related to the regulatory practice is the comparison of different countries. If the compliance problems are concentrated on a few countries and the best countries have a significant advantage, then it is more likely that the compliance problems are due to regulatory practice.

Additionally, audits will be more efficient if sufficient data allow a robust risk assessment to decide where audits need to be conducted.

From these assessments a set of criteria for cost effectiveness can be developed, which can be used to assess option 1 and option 2.

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Impacts on cost effectiveness</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of regulatory authorities</td>
<td>Costs and admin burden of audits increase with number</td>
</tr>
<tr>
<td>Number of regulated bodies</td>
<td>Costs and admin burden of audits increase with number</td>
</tr>
<tr>
<td>Variety of objectives of the regulation</td>
<td>Costs and admin burden of audits increase with variation</td>
</tr>
<tr>
<td>Data availability</td>
<td>Costs of audits decrease with higher data availability</td>
</tr>
<tr>
<td></td>
<td>Effectiveness of audits increase with higher data availability</td>
</tr>
<tr>
<td>Differences in regulatory practice and problems</td>
<td>Costs and admin burden of audits increase with greater variation</td>
</tr>
<tr>
<td>Variation in regulatory results</td>
<td>Effectiveness of audits increase with higher variation</td>
</tr>
</tbody>
</table>

**2.2.2.2 Possible Scenarios**

Three possible scenarios were developed to indicate possible impacts of enhanced involvement of the Commission in the assessment of the application of EU environment legislation. The three scenarios are further assessed here (without this list claiming to be exhaustive).

All of these scenarios focus on stronger involvement of DG ENV in monitoring the application of the EU environmental *acquis* and thus would need to be linked to increased efforts of Member States to ensure compliance. Resource constraints and subsidiarity considerations preclude that the Commission would be the only official environmental inspectorate at EU level. Thus, in accordance with the FVO model, all three scenarios require the adoption of a general binding instrument on national environmental controls, comparable to the OFCR. The three scenarios drafted for this report only distinguish between the degrees of involvement of the Commission. Therefore, similar to the OFCR, the Member States would be obliged to set up a system of national controls, including the identification and training of staff, the planning of inspection in plans, etc. These plans would need to be built on the basis of risks and periodic reports. This would oblige Member States with low inspection standards to establish and improve national and regional inspections regimes so as to match the standards of other Member States.
The three scenarios assessed include:

- **Scenario 1: Intensified co-operation**
  
  One of the mildest forms of a stronger role for DG ENV in environmental inspection would be a stronger co-operation between DG ENV and the Member States regarding inspection issues. DG ENV would not carry out Commission controls, but would meet with Member State officials on a general and regular basis in order to discuss application issues. Compared to the current efforts of DG ENV in this regard known as “package meetings”, this scenario would focus on strengthening this instrument and to extend its scope to include the whole environmental *acquis* and to other horizontal aspects (such as co-operation issues between authorities in the respective Member State).

- **Scenario 2: Specific controls**
  
  Under the second scenario, a mechanism for Commission audits would be established within DG ENV, however, would only focus on the verification of national controls on sectoral issues. The difference with scenario 1 is that DG ENV would have the power to look into the effectiveness of a Member States’ inspection and surveillance arrangements and have the power to request Member States to conduct inspections or surveillance arrangements.

- **Scenario 3: General controls**
  
  Under the third scenario, a mechanism similar to scenario 2 would be set however with a focus on Member State control systems in general and the entire environmental *acquis*. An intensive audit type assessment would need to be carried out for all Member States at a sufficient frequency, including follow-ups.

### 2.2.2.3 Scenario 1: Intensified co-operation

Scenario 1 would build on the existing structure within DG ENV. However, the “package meetings” would be used for a more in-depth discussion on the organisation and functioning of inspection systems, including efficiency considerations. Thus, scenario 1 can be considered an extended baseline scenario.

Compared to the current situation, the increased collaboration and exchange would gain from the fact that Member States would need to adapt their controls systems according to new binding requirements. This applies especially to the planning of controls; including the preparation of a national control plans would facilitate the work of DG ENV’s staff. An extension of the length of these meetings would be necessary, probably from three days up to one week. At least two officers (or external experts) would be necessary to fulfil this assignment. However, compared to scenario 2 and 3, they would not do work on the ground in Member States and would not gain the same level of understanding and overview of national controls. Moreover, as DG ENV would not have an audit but only an assisting function, it would not draft inspection reports on national controls to be published online. Handling of issues on compliance would still be dealt with between the administration of DG ENV and the relevant Member States, i.e. without involvement of other stakeholders. The public was only informed about shortcomings if a case was not sorted out and became subject to legal actions (infringement procedure).
Option 1 – Establishment of a general mechanism to review and report on MS surveillance/inspection system

Compared to the FVO approach, there would be generally no need to set up an internal unit or even directorate. The staff in the existing directorates/units could handle meetings. Technically, this option would be very easy to implement, because it could be built on existing structures. Accordingly, political acceptance for this scenario would probably much higher as compared to the other two scenarios. Considering that there is currently no particular incident/crisis in the area of environmental policy comparable to the BSE crisis that would justify the establishment of an EU environmental inspectorate, the implementation of scenario 1 seems much more feasible as the other two scenarios. Nevertheless, also scenario 1 would need more resources and more staff, both on national and community level.

As to the advantages, for a start, there would be those that result from the adoption of a binding instrument for national environmental inspections (similar to the OFCR). Generally, it is assumed that such a measure would increase the compliance with the EU environmental *acquis*. Harmonisation of national control systems through binding requirements will very likely mitigate the uneven and partial implementation, which has so far been observed under the RMCEI. Member States would have clear guidance on how to implement controls in all environmental fields. Planning of audits using a risk-based approach would also increase the efficiency of inspections. Moreover, harmonised application of the environmental acquis would contribute to a level playing field across the EU. Market distortion caused by different environmental standards could be reduced.

The advantage of the approach chosen in scenario 1 is that there could be a proportionate response where there are serious problems in implementing national controls, but with a minimum additional DG ENV capacity and with a minimum administrative burden. However, this measure would probably not as effective as those in scenarios 2 and 3, which include a much stronger incentive for Member States to operate functioning controls systems.

The drawback of this scenario is that DG ENV would not make use of a number of the main features that make the FVO a successful model. For example, this includes in particular the establishment of transparent country profiles and follow-up activities. This would result in, firstly, maintaining the exclusion of stakeholders (such as NGOs, the general public) from information on environmental compliance. Secondly, the Commission would pass up the opportunity to build a systematic assessment and database on the environmental acquis’ application in Member States. It would only have a general understanding of Member States efforts, without knowing details. This would also mean that member states with substandard inspection systems would not face a very strong pressure to improve.

The strengths, weaknesses, opportunities and threats for this scenario are

- **Strength**
  - Better insight of commission officials into member states inspection systems and results
  - Response to the need for a stronger Community role (harmonisation);
  - Builds on existing activities;

---

78 Ecorys (2011), Impact assessment study into possible options for revising Recommendation 2001/331/EC providing for minimum criteria for environmental inspections (RMCEI), page 58f.
Option 1 – Establishment of a general mechanism to review and report on MS surveillance/inspection system

Less interfering in Member States administrative structures (proportionality considerations) than other scenarios;

Additional costs and administrative burden compared to other scenarios are low;

No institutional set-up within DG ENV necessary.

Weaknesses

- Requires additional finance (as for all scenarios);
- No improvements as regard to transparency, little pressure to improve;
- DG ENV gains no general understanding of application in Member States;
- Would not meet the objective completely, other actions would be necessary.

Opportunities

- Compared to other two scenarios, political acceptance seems likely;
- DG ENV could relatively easily – compared to the other scenarios – make the necessary funding available through existing channels

2.2.2.4 Scenario 2: Specific controls

In this scenario, DG ENV would carry out specific audits in different sectors, such as for water, waste or nature. For this purpose, a structure within DG ENV would be set up to carry out these audit-type assessments. This could be either a separate directorate or a separate unit within the directorates (or a number of officials from different units) that are equipped with this evaluation function. The staff of this new body would do work on the ground within Member States. This would be a considerable change to the current situation. Moreover, this scenario would benefit from the obligatory national controls based on a new binding instrument (see scenario 1).

In this case, the sectors could be defined in terms of water, air, waste and nature primarily; while acknowledging the fact that there could be overlaps between the different sectors. This would generally resemble the so-called specific audits of DG SANCO.

Compared to scenario 1, DG ENV would make use of further elements of the FVO approach. It would build specialized expertise on national controls in the sectors concerned and would prepare inspection reports. These would be published online and ensure transparency. As specific audits would be carried out regularly and not only for individual pieces of legislation but for a specific area (as compared to option 2), the Commission would get a good understanding of the activities carried out in the relevant sectors.

Increased transparency would be an important improvement. If cases of non-compliance were made public, the practice of what is known “administrative secrecy” in handling these cases would be abolished.79 This would generally strengthen the confidence in the EU as an institution and a

Option 1 – Establishment of a general mechanism to review and report on MS surveillance/inspection system

credible environmental player. Environmental associations and other stakeholders could act on the shortcomings and, thus, strengthen the application of EU environmental law in general.

This scenario constitutes a stronger involvement of DG ENV in what is primarily a Member States’ assignment: the implementation of EU environmental law. This requires a sufficient justification with regard to proportionality considerations (Art. 5 TEU and Protocol No 2 on the Application of the principles of subsidiarity and proportionality). However, a stronger role of the Commission does not seem to go beyond what is necessary to achieve the objectives, i.e. an effective implementation of EU environmental legislation. Given that the existing efforts (e.g. RMCEI) did not lead to a considerable improvement, more actions on the EU level are needed to deal with the low compliance level in Member States. Moreover, the FVO experience shows that the approach discussed in scenario 2 is in accordance with general EU principles - especially considering the fact that the Commission must ensure the application of EU law (Art. 17 TEU).

The costs and the administrative burden of the scenario would be significant depending on the sector or sectors chosen for the application. The FVO is spending around €100k per audit and there is no reason that a similar function in DG Environment would require much less spending per audit although this and the number of necessary audits would depend strongly on the sector of application. Most of those costs would need extra funding although an audit type function would release some other DG ENV resources in respect to data collection and reporting.

The choice of the sector of application would also mean that DG ENV could control the costs to an extent. As the cost and the administrative burden differ substantially in the different sectors as data availability, regulatory praxis and regulatory results (compliance behaviour) do differ. DG ENV could focus on areas which promise to be less cost intensive (small number of regulating authorities, small number of regulated bodies, limited set of objectives, good data availability) and on sectors, which promise good effectiveness (limited set of objectives, good data availability).

Using such an approach could be also the first step into a general application of an FVO approach (Scenario 3). By learning with the “easier” cases DG ENV could build up sufficient capabilities in respect to audit type work to widen the remit stepwise to the more “difficult” sectors.

The build up of capability would be another important argument for an audit type function. The auditing of inspection system requires environmental knowledge but also more administrative abilities regarding audits and inspection regimes. An audit type function would build up this knowledge and capabilities over time and become more effective over time.

However, there are two crucial arguments against the feasibility of this scenario. First, there seems to be a lack of political momentum that would allow the proposal of this measure at this point in time. Compared to the situation with the FVO, the BSE crisis made the majority of stakeholders including the Council and Member States urge the Commission to take a stronger role in controls. There was a general agreement that harmonized and effective application would only be guaranteed by community controls. With regard to the area of environment, the situation is different. The level of compliance is low and although a stronger role of the Commission seems necessary in the view of a number of stakeholders, this would be regarded as a much too strong interference in national matters.

---

Secondly, the required resources for setting up an inspectorate within DG ENV seem to make this scenario less feasible. Depending on the choice of sector the required funds and administrative burden could well be unaffordable, especially considering the recent economic crisis.

The drawback as compared to scenario 3 is that DG ENV would not get a complete picture of the environmental *acquis' application in Member States. The level of inspections and compliance in all sectors is not equalised.

The strengths, weaknesses, opportunities and threats for this scenario include:

- **Strengths**
  - More effective national controls and application of EU environmental law;
  - Response to the need for a stronger Community role (harmonisation);
  - Enables the Commission to ensure application of EU law (Art. 17 TEU);
  - Creates good understanding on the application of parts of the environmental *acquis in Member States;
  - Contributes to transparency, facilitates the participation of the public;
  - Strengthens level playing field;
  - Enables concentration on the most effective sectors for application;
  - Builds up audit capabilities.

- **Weaknesses**
  - Requires creation of a new structure within DG ENV;
  - Does not cover the entire *acquis, neglects cross-cutting nature of environmental matters
  - Requires additional financing (as for all scenarios, and more compared to scenario 1);

- **Opportunities**
  - Lower costs than Scenario 3;

- **Threats**
  - Probably no political acceptance by Member States;
  - Necessary funding probably not available.

### 2.2.2.5 Scenario 3: General controls

Scenario 3 resembles scenario 2. All advantages and disadvantages associated with setting up an audit structure within DG ENV therefore also apply to scenario 3. The difference between these scenarios is that in scenario 3 DG ENV would verify the entire national control system (rather than for specific environmental sectors). There would be a regular assessment of Member States as compared to a regular assessment of specific sectors. The frequency of Member States assessments should not extend a period of five years, in order to increase the incentive to follow-up.
Option 1 – Establishment of a general mechanism to review and report on MS surveillance/inspection system

The inspection body within DG ENV would need more resources than in scenario 2, ensuring a permanent coverage of all Member States including linguistic and other expertise with regard to Member States. Country teams would be responsible for setting up and maintaining country profiles to be published online.

The costs and the admin burden of this proposal might well be proportionally higher than in Scenario 2 as DG ENV is not able to focus the effort on those sectors where the approach is most effective. On the other hand the effectiveness of the Scenario 3 in respect to improving compliance with the acquis might be low in some areas where lack of data make efficient auditing very expensive or ineffective.

As compared to scenario 2, this approach guarantees not only the most comprehensive surveillance of application of EU environmental legislation but not necessary the most efficient use of resources. On one hand, due to the cross-cutting nature of environmental issues, findings from community controls with relevance for more sectors will be presented in one general audit report. On the other hand, the data situation and other cost drivers are so widely different in the different sectors of the environmental acquis that any specialisation will provide huge gains in effectiveness and costs.

The strengths, weaknesses, opportunities and threats for this scenario include:

- **Strengths**
  - Enables the Commission to ensure application of EU law (Art. 17 TEU);
  - Creates good understanding on the application of the entire EU environmental acquis in Member States;
  - Contributes to transparency, facilitates the participation of the public;
  - Strengthens level playing field;
  - Takes into account the cross-cutting nature of environmental matters.
  - Builds up audit capabilities.

- **Weaknesses**
  - Requires creation of a new structure within DG ENV;
  - Requires additional finance (as for all scenarios, more than in scenario 1 and 2);

- **Threats**
  - Probably no political acceptance by Member States;
  - Necessary funding probably not available.

### 2.2.2.6 General conclusions on option 1

A significant advantage of an audit style function in general are the build-up of professional capabilities within DG ENV that allow a real understanding of compliance challenges of the environmental acquis. By launching a general audit body within DG SANCO, the Commission puts a clear emphasis on the importance of uniform and effective application of EU food safety law.
The features of the approach that was chosen – shared responsibilities between national and EU level controls, planning of controls on national and EU level, country profiles, follow-up activities – ensures uniform national controls as well as better application of EU food safety law. This is especially the case in terms of the transparency aspects, which guarantees that compliance cases are not sorted out “behind closed doors”, but allow all stakeholders to act and participate. This strengthens a generally trust and confidence by the public in the EU as an institution.

The establishment of the FVO was considerably accelerated due to political pressure for a stronger EU role in EU food safety law. In addition, food safety is a very sensitive issue that forces the Commission to be prepared for taking action at any time. To act on cases of emergencies on food as a superior authority is much more accepted in the area of food than in other policy areas. These are very important drivers for a stronger role of the Commission in the on proper enforcement of EU food safety law. Another important remark is that the FVO has not a stand-alone function, but that it is embedded in a framework of shared responsibilities and tasks. It is also crucial for the progress of the FVO that inspection services have been in place in Member States for a long time. There has been traditionally a strong focus on the proper application of food and feed law. If the FVO approach was to be transferred, these drivers and the necessary efforts have to be taken into account.

In terms of the scenarios that were developed under option 1, all have specific advantages and disadvantages. Scenario 1 has a clearly the biggest chance of political implementation as the smallest resource requirements are attached to it and less political resistance from member states can be expected.

Scenario 2 and scenario 3, which create an audit type function for the Commission, have the advantage of the higher likelihood of making a real difference to the inspection regimes in the member states and with that to compliance and environmental benefits.

On the one hand scenario 2 enables DG ENV to cheery pick the sectors within its acquis, where costs of application are lowest and the effectiveness of audits are highest, but on the other hand applying the approach to only a section of the acquis will require some extra resources due to the cross cutting nature of environmental policy.
### Summary table of option 1 analysis

**Table 5: Summary table of option 1 analysis**

<table>
<thead>
<tr>
<th>Category</th>
<th>Key features</th>
<th>Option 1</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Scenario 1: Intensified co-operation</td>
<td>Scenario 2: Specific audit type function</td>
</tr>
<tr>
<td>Purpose(s)</td>
<td>Strengthen consistent implementation and enforcement of EU environmental legislation</td>
<td></td>
</tr>
<tr>
<td>Problem structure to which measure responds</td>
<td>Limited EU capacity in monitoring the application of EU environmental law</td>
<td></td>
</tr>
<tr>
<td>(Expected) functioning/mechanisms (model)</td>
<td>Binding requirements for national controls + intensified “package meeting” between DG ENV and MS to discuss matters of compliance</td>
<td>Binding requirements for national controls + specific audit type function of DG ENV to assess the effectiveness of national environmental controls (as specific audits by FVO)</td>
</tr>
<tr>
<td>Scope (themes covered, MS covered, etc.)</td>
<td>No limitations as to thematically and geographical coverage</td>
<td>Covers only certain areas, such as nature, water or waste, depends on the focus selected</td>
</tr>
<tr>
<td>Funding</td>
<td>EU capacity is funded out of EU budget</td>
<td>EU capacity is funded out of EU budget</td>
</tr>
<tr>
<td>Legal framework</td>
<td>Builds on existing informal activities, no legal mandate required</td>
<td>Principle of conferral requires a clear legal mandate of the Commission for audit function</td>
</tr>
<tr>
<td>Category</td>
<td>Key features</td>
<td>Option 1</td>
</tr>
<tr>
<td>----------------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Management and organisational aspects</td>
<td>Builds on existing activities, no new organisational features necessary</td>
<td>New structure would form part of DG ENV as a new unit/directorate; would require a new set-up</td>
</tr>
<tr>
<td></td>
<td></td>
<td>New structure will form part of DG ENV as a new unit/directorate; would require a new set-up</td>
</tr>
<tr>
<td>Reporting mechanisms</td>
<td>MS would have to prepare control plans</td>
<td>MS would have to prepare control plans DG ENV would have to prepare annual control plans DG ENV would have to prepare audit and annual reports</td>
</tr>
<tr>
<td></td>
<td></td>
<td>MS would have to prepare control plans DG ENV would have to prepare annual control plans DG ENV would have to prepare audit and annual reports</td>
</tr>
<tr>
<td>Use of specific tools</td>
<td>Informal meeting with Member States</td>
<td>Control tools to work on the ground in Member States: audits and inspections</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Control tools to work on the ground in Member States: audits and inspections</td>
</tr>
<tr>
<td>Time requirements, planning</td>
<td>Little planning needed, requires one week meeting with Member States on an annual basis</td>
<td>Much planning needed and data collection necessary for audit identification</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Much planning needed and data collection necessary for audit identification</td>
</tr>
<tr>
<td>Human resources needed</td>
<td>Little cost for human resources</td>
<td>The FVO spends around €100,000 per audit including all work that is required for planning, identification, analysis and reporting</td>
</tr>
<tr>
<td></td>
<td></td>
<td>The FVO spends around €100,000 per audit including all work that is required for planning, identification, analysis and reporting</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Specific audit type function would not need to have the same strength as a general function and could concentrate on the issues with the least resource demands</td>
</tr>
<tr>
<td></td>
<td></td>
<td>General audit type function would require build-up of capacities for all areas – most likely even bigger than FVO</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Even more significant costs in the MS which need to produce data for audits</td>
</tr>
<tr>
<td>Material resources needed</td>
<td>Negligible as nearly all costs are human resource costs</td>
<td>Negligible as nearly all costs are human resource costs</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Negligible as nearly all costs are human resource costs</td>
</tr>
<tr>
<td>Category</td>
<td>Key features</td>
<td>Option 1</td>
</tr>
<tr>
<td>--------------------------------------</td>
<td>------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td><strong>Scenario 1: Intensified co-operation</strong></td>
<td><strong>Scenario 2: Specific audit type function</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Scenario 3: General audit type function</strong></td>
<td></td>
</tr>
<tr>
<td>Training requirements and other expertise required</td>
<td>Yes, but could build on existing expertise</td>
<td>Yes, audits in Member States require training</td>
</tr>
<tr>
<td>Overall administrative feasibility</td>
<td>High, as it builds on existing structure</td>
<td>Low, as new structure would possibly need to be set up</td>
</tr>
<tr>
<td>Completeness</td>
<td>Low, probably other measures needed to ensure a proper compliance</td>
<td>Middle, high degree of compliance expected in sectors covered</td>
</tr>
<tr>
<td></td>
<td></td>
<td>High level of completeness</td>
</tr>
<tr>
<td>Costs of implementation</td>
<td>Low costs</td>
<td>Medium to high costs</td>
</tr>
<tr>
<td>Cost effectiveness</td>
<td>Low</td>
<td>Medium</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Medium to high</td>
</tr>
<tr>
<td>Expected socio-economic impacts</td>
<td>Better exchange of information among MS and with the Commission</td>
<td>More effective national controls</td>
</tr>
<tr>
<td>Benefits of the option</td>
<td>Better understanding in the commission of application of the environmental acquis and compliance in the member states</td>
<td>Better understanding in the commission of application of the environmental acquis and compliance in the member states</td>
</tr>
<tr>
<td></td>
<td>Increased transparency</td>
<td>Increased transparency</td>
</tr>
<tr>
<td></td>
<td>Strengthening of level playing field</td>
<td>Strengthening of level playing field</td>
</tr>
<tr>
<td>Impacts on stakeholders</td>
<td>Increased participation of stakeholders</td>
<td>Some extra costs due to audits (but limited)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Some extra costs due to audits (but limited)</td>
</tr>
<tr>
<td>(Expected) results</td>
<td>Little or no impact on compliance or environmental benefits</td>
<td>Significant impacts on compliance and environmental benefits can be expected</td>
</tr>
<tr>
<td>Potential for environmental improvement/benefit</td>
<td></td>
<td>Significant impacts on compliance and environmental benefits can be expected, but not much more than in Scenario 2</td>
</tr>
</tbody>
</table>
### Option 1 – Establishment of a general mechanism to review and report on MS surveillance/inspection system

<table>
<thead>
<tr>
<th>Category</th>
<th>Key features</th>
<th>Option 1</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td><strong>Scenario 1: Intensified co-operation</strong></td>
</tr>
<tr>
<td><strong>Impact on quality of investigation activities</strong></td>
<td>Little impact on quality or quantity of inspections can be expected</td>
<td>As audits can be focused, the impact on the quality or quantity of inspections could be significant</td>
</tr>
<tr>
<td><strong>Other issues</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Potential impacts at international level</strong></td>
<td>Depends on issue of application</td>
<td></td>
</tr>
<tr>
<td><strong>Political Acceptance</strong></td>
<td>High</td>
<td>Low</td>
</tr>
<tr>
<td><strong>Proportionality</strong></td>
<td>In accordance with principle of proportionality</td>
<td>In accordance with principle of proportionality</td>
</tr>
<tr>
<td><strong>Main risks and obstacles/technical constraints</strong></td>
<td>Little progress in compliance</td>
<td>Political acceptance, costs</td>
</tr>
</tbody>
</table>
This page is left intentionally blank.
Chapter 3:  Option 2 – Ad hoc surveillance-related powers for the EC in sectoral environment legislation

The second option concerns the establishment of ad hoc inspection-related powers for the Commission in sectoral environment legislation.

Compared to the FVO model in Option 1, Option 2 focuses on specific EU environmental acts. Consequently, the Commission’s role would have a more specific and selective rather than a more general audit-character. Specific EU environmental legislation could be amended in different ways to achieve this aim: for example, monitoring requirements and some form of Commission oversight could be introduced; the Commission could be given the right to participate in certain inspections; co-operation obligations between national authorities and the Commission could be introduced.

Examples of such powers in EU environmental legislation are rare but exist: Article 35 of Directive 2010/63/EU on the protection of laboratory animals (in the following: Laboratory Animals Directive) requires the Commission to conduct, if there is due reason for concern, audits, i.e. to carry out controls of the infrastructure and operation of national inspections in Member States. According to Article 28 of Regulation (EC) No 1005/2009 on ozone depleting substances (in the following: ODS Regulation), the Commission may, among other things, instruct competent Member State authorities to carry out investigations and assist them when conducting controls.

3.1 Analysis of similar structures

To better understand how and whether a similar structure would work within DG ENV, this section provides an analysis of existing examples of legislation where ad hoc inspection-related powers are observed:

- Ozone-depleting substances Regulation
- Laboratory Animals Directive

3.1.1 Ozone-depleting substances (ODS) Regulation

Regulation (EC) No 1005/2009 on substances which deplete the ozone layer came into force on 1 January 2010 and replaced the previous Ozone Regulation EC 2037/2000, which has now been revoked. The adoption of the new Regulation served both to recast the previous Regulation, which had been substantially amended several times, and to ensure EU compliance with new requirements of the Montreal Protocol.

In Article 28 the ODS Regulation provides for a significant role of the European Commission with respect to inspections to ensure compliance with the Regulation. However, the respective
provisions are by no means new but were essentially already included in the Community’s first Regulation (EEC) 3322/88 of 1988 to implement the Montreal Protocol. It is not clear what the role of the Commission is with respect to inspections. Potential reasons why the Regulation contains these unusual and relatively far-reaching provisions may be related to the fact that the Commission occupies a very strong position with respect to implementing the Regulation because the EU has exclusive competence for the customs union and the Commission is the only actor which has an EU-wide overview of the production of ODS in the EU as well as EU imports and exports of ODS.\textsuperscript{81} ODS legislation is therefore very much a Common Market issue. Another reason might relate to the fact that the control of ODS is a narrow, clearly defined issue area which is traditionally characterised by a relatively strong political consensus. These factors may have contributed to rendering the introduction of an unusually strong role of the Commission with respect to inspections both particularly useful and politically acceptable to Member States.

### 3.1.1.1 Tasks/role

With respect to inspections, the Commission:

- May request competent authorities in the Member States to conduct investigations;
- Shall assist the officials of Member States’ competent authorities in their duties, provided a mutual agreement between the Commission and the respective Member State;
- May obtain all necessary information from competent authorities and undertakings;
- Shall promote cooperation and exchange of information with and between competent authorities.

As explained in more detail below, the Commission frequently asks Member States to conduct investigations. The Commission also provides assistance to national competent authorities. However, this assistance consists in the provision of information rather than more direct participation in investigations, such as participation in on-site visits, although this is not as such excluded. In addition, the Commission promotes cooperation and the exchange of information, albeit mostly in an informal way. Regarding an audit of national inspection systems, the reporting templates for Member State authorities according to Article 26 contain some relevant questions. However, given that the policy field is quite old and the relevant infrastructure well established, inspections in general work well, relevant information is seen as less and less important and the need for audits diminished over time.\textsuperscript{82}

---

\textsuperscript{81} It is typical that ODS enter the market at very few points (either production facilities or big ports) but eventually end up in many places in the Member States.

\textsuperscript{82} Interview DG CLIMA, Brussels, 8 May 2012.
3.1.1.2 **Legal framework**

Article 28 of the ODS Regulation provides the basis for the Commission's relatively strong role with respect to inspections:

- Article 28 (1) provides for the Commission's right to instruct Member States to conduct investigations;
- Article 28 (2) establishes that the Commission shall assist Member State officials in their duties;
- According to Article 28 (3) the Commission may obtain all necessary information from competent authorities and undertakings;
- Article 28 (4) obliges the Commission to promote cooperation and exchange of information with and between competent authorities;

Article 28 also defines the role of Member States with respect to inspections:

- Article 28 (1) obliges Member States to conduct inspections on the compliance of undertakings with the ODS Regulation and establishes certain modalities with which these inspections must comply, in particular a risk-based approach.

**Box 2: Specifications on inspections under Article 28 (ODS Regulation)**

**Inspection**

1. Member States shall conduct inspections on the compliance of undertakings with this Regulation, following a risk-based approach, including inspections on imports and exports of controlled substances as well as of products and equipment containing or relying on those substances. The competent authorities of the Member States shall carry out the investigations, which the Commission considers necessary under this Regulation.

2. Subject to the agreement of the Commission and of the competent authority of the Member State within the territory of which the investigations are to be made, the officials of the Commission shall assist the officials of that authority in the performance of their duties.

3. In carrying out the tasks assigned to it by this Regulation, the Commission may obtain all necessary information from the governments and competent authorities of the Member States and from undertakings. When requesting information from an undertaking the Commission shall at the same time forward a copy of the request to the competent authority of the Member State within the territory of which the undertaking’s seat is situated.

4. The Commission shall take appropriate action to promote an adequate exchange of information and cooperation between national authorities and between national authorities and the Commission. The Commission shall take appropriate steps to protect the confidentiality of information obtained under this Article.

5. At the request of another Member State, a Member State may conduct inspections of undertakings or investigations of undertakings suspected of being engaged in the illegal movement of controlled substances and which are operating on the territory of that Member State.
Articles 26 and 27 contain detailed reporting requirements for Member States and undertakings to the Commission. The resulting annual reports are an important source of information, which frequently forms the basis of, for example, Commission requests to Member States to conduct investigations.

### 3.1.1.3 Design and functioning

Four desk-officers at DG Climate Action (Unit C2) constitute the ODS team with one officer doing most of the work related to inspections/investigations. Additional staff is involved in this work only if cases escalate.

**Inspection related activities**

In practice, the Commission’s inspection related activities are not strictly based on Article 28 of the ODS Regulation which appears ‘not strictly necessary, at least nowadays’. This is because co-operation with Member State authorities is usually good and informal. Nevertheless, Article 28 is valuable because it functions as a “shadow of hierarchy” which provides Member States with an additional incentive to co-operate with the Commission and provides a basis for more direct involvement of the Commission in inspections should this be considered necessary in a particular case in the future.

The Commission’s inspection related activities are mostly based on Article 28:

- **Requests for Member State investigations (Article 28 (1))**: In terms of the Commission’s involvement in inspections, these requests may be the Commission’s most important activity under the ODS Regulation. Recently, the Commission has issued about 50-100 requests annually. These requests frequently result from the information contained in the annual reports which the Commission receives, in particular those from undertakings according to Article 27 of the ODS Regulation.

  If the Commission identifies a potential irregularity, it sends an informal email describing the case and requesting an investigation to the respective Member State authority. In the email, the Commission fixes a deadline by which it must have received the response, but does not mention Article 28 (1). The Commission does not specify how the investigation is to be conducted, although it might ask for specific measures - such as measuring emissions - at a later stage in the process, if previous Member State responses remain insufficient.

  While many cases can be clarified in this way, a significant number of cases remain unresolved at the stage of the initial email. Nevertheless, the Commission only pursues some of these unresolved cases further by sending a reminder. Due to resource constraints at the Commission, relatively minor cases therefore frequently remain unresolved – with the vast majority of unresolved cases falling into the category of minor cases.

---

83 Interview DG CLIMA, Brussels, 8 May 2012.
84 Interview DG ENV, Brussels, 8 May 2012
If the answer to a reminder is still not satisfactory or in the absence of a response, the Commission sends a formal letter to the respective Member State authorities, which then refers to Article 28 (1). However, this usually happens only once or twice a year. As a last resort if there is still no satisfactory result in response to the letter, the Commission may launch an infringement procedure.

**Commission assistance to national officials (Article 28 (2)):** The language of Article 28 (2), in particular the requirement of a prior agreement between the Commission and the respective Member State, suggests that the provision envisages a direct participation of Commission officials in inspections such as, for example, site visits in the Member States. However, at least in more recent years such direct involvement of the Commission in inspections has not happened. It is also considered unnecessary by the Commission because Member States have more personnel resources and knowledge of the local context. If the Commission were to engage in field inspections, this would require an increase of financial and human resources over what is presently available.

As mentioned above, the Commission nevertheless assists national officials in their duties, albeit in a less direct way by providing information. In fact, the requests for investigations can be seen as one example of such information. But the Commission also reacts to information requests from Member States, collects information from Member States and undertakings, transmits information from the international to the national level, and helps with interpreting relevant EU requirements.

**Obtain all necessary information (Article 28 (3)):** The Commission collects information mainly with the help of the annual reports, which Member States and undertakings have to submit. Requests for investigations provide additional information. However, where competences of the Commission are concerned (e.g. reporting, licensing) the Commission also engages directly with undertakings and requests information.

As mentioned above, the reporting templates designed by the Commission to implement the requirements of Article 26 contain, among many other things, some basic questions regarding national inspection systems. However, templates based on previous legislation required more information in this respect. This reflects two main factors: First, given that implementation of, and Member State compliance with, the current and previous ODS Regulations is generally good, there is no need for more information of this kind. Second, some of the modalities of inspections today apply not only across Member States but also across issue areas. They have been agreed by, for example, custom authorities. In terms of an audit of national inspection systems there is therefore no need for a strong Commission engagements. However, if necessary, the Commission could always use Article 28(1) to kick off discussions.

---

84 However, such a procedure would be based mainly on violations of other provisions of the ODS Regulation rather than a breach of Article 28.
- **Co-operation and exchange of information:** The Commission promotes exchange of information and good practice. This happens mostly informally, during the meeting of the committee established according to Article 25 of the ODS Regulation and during other meetings, such as international negotiations. For example, the Commission makes particularly instructive Member State reports available to the other Member States.86 Because cooperation with Member States is traditionally good in the issue area, additional measures to promote cooperation are not necessary. Good cooperation reflects, among other things, the lack of major conflicts among Member States and the long history of co-operation on ODS at EU level beginning in the early 1980s.

3.1.1.4 **Costs**

It is difficult to estimate the costs at EU level for the Commission’s inspection related activities under the ODS Regulation. Two factors appear to be mainly responsible for this:

- The fact that the Commission does not participate in on-the-spot inspections as was arguably originally envisaged in Article 28 (2), the costs of which would be relatively easy to estimate;
- The generally informal nature of the interactions between the Commission and Member States.

Arguably, the inspection-related practices in which the Commission does engage in respect to the ODS Regulation - requesting Member State investigations and providing information to Member States in support of investigations - could equally fall under the Commission’s general role with respect to supervising the implementation of EU legislation. If so, the respective costs could not easily be attributed to the inspection provisions of Article 28.

3.1.1.5 **Successes and failures**

The implementation and enforcement of EU legislation dealing with ODS was and is effective. Although the Commission usually does not use the provisions on inspections in Article 28, this does not mean that they have no effect. The fact that the Commission could invoke Article 28 if necessary seems likely to provide an incentive for Member States to comply with the ODS Regulation even in a situation in which, as argued above, a range of other circumstances, such as good informal contacts between the Commission and Member State officials, render compliance relatively unproblematic.87

In addition, Article 28 tends to reduce the administrative burden on Member States because it provides for alternative ways for the Commission to gather information in addition to the national reports according to Article 26. Consequently, the national reports need not be as

---

86 Interview DG CLIMA, Brussels, 8 May 2012.
87 Interview DG CLIMA, Brussels, 8 May 2012
comprehensive as would otherwise be the case. However, this appears to be attributable mostly to factors other than Article 28, which appears to have limited effects in practice.\textsuperscript{88} The fact that Article 28 survived several revisions of the ODS Regulation indicates that it is seen as useful by the Commission and Member States and that the latter are satisfied with the way the Commission uses its respective powers.

3.1.1.6 Drivers and barriers

The main reason why Article 28 is not used more widely in practice appears to be good informal cooperation between the Commission and Member States, which, among other things, renders more direct Commission involvement, such as in on-the-spot inspections, unnecessary.

3.1.1.7 Impacts

The inspection related activities of the Commission have a range of positive effects:

- As the only actor with a EU-wide overview, the Commission can provide useful information to the Member States which helps to reduce production and emissions of ODS.
- They also contribute to creating a level playing field. For example, the Commission recently helped to reduce uncertainty with respect to implementation of the ODS Regulation in relation to air transport. As a result, distortions of competition stemming from different interpretations of the ODS Regulation can be reduced.\textsuperscript{89}

Once again, for the reasons mentioned above, it remains questionable whether and to what extent these effects can be attributed to the provisions on inspections in Article 28.

3.1.2 Laboratory Animals Directive

Directive 2010/63/EU on the protection of animals used for scientific purposes (in the following: Laboratory Animals Directive) updates and replaces Directive 86/609/EEC on the protection of animals used for experimental and other scientific purposes of 1986. Several provisions in the original Directive were very vague and open to interpretation and the Directive established minimum standards, which were subsequently significantly exceeded by some Member States resulting in distortions of competition. Public concern regarding animal protection had also increased, a number of new EU and international legal provisions regarding animal welfare had been adopted, and new scientific knowledge had become available since the adoption of the original 1986 Directive.\textsuperscript{90}

\textsuperscript{88} Interview DG CLIMA, Brussels, 8 May 2012

\textsuperscript{89} Interview DG ENV, Brussels, 22 May 2012

Article 35 of the Laboratory Animals Directive obliges the Commission to assess national inspection systems if there is due reason for concern. The main reason why this new possibility of a Commission audit was introduced relates to the aim to increase public confidence in the system of inspections. Active NGOs campaigning to improve animal welfare and media coverage render the issue politically sensitive. This is also highlighted by the fact that the European Parliament (EP) prepared an own-initiative report calling for the revision of Directive 86/609/EEC in 2002 and a recent EP question91 - submitted more than a year before the Directive becomes applicable - asking the Commission to explain which practical arrangements will be made to enable Commission audits according to Article 35 of the Laboratory Animals Directive. In addition to Commission audits, the transparency requirements of the Directive also serve to increase public confidence in inspections.

Complaints regarding the implementation and enforcement of Directive 86/609/EEC might also have contributed to some extent to the introduction of Article 35 audits. However, in the past such complaints were not always justified given that the obligations under Directive 86/609/EEC are often only vaguely defined. In any case, the number of complaints decreased significantly as early as the mid-1990s after the Commission had carried out a horizontal check of national implementing legislation.92

Whereas the modalities for national inspections in Article 34 of the Laboratory Animals Directive were controversially discussed by Member States, this was not the case for the provisions in Article 35 on Commission audits, at least partly because these audits are not carried out on a regular basis.92 Member States already operating an advanced system of inspections, such as the UK93, welcomed the new requirements for national inspections in Article 34, whereas other Member States, which lacked such systems, were more sceptical given the resource requirements of setting up more effective national inspection systems.92

### 3.1.2.1 Tasks/role

According to Article 35 of the Laboratory Animals Directive, the Commission performs contingent audits of national inspection systems, i.e. if there is due reason for concern. The contingent nature of Commission controls corresponds to similar (though less explicit) arrangements for the ODS Regulation discussed above. However, while the wording of the respective Article 28 of the ODS Regulation - in particular the requirement of an agreement between the Member State concerned and the Commission seems to focus mainly on direct Commission involvement in on-the-spot inspections, the Laboratory Animals Directive foresees audit type functions.

One of the reasons for Laboratory Animal Directive’s focus on EU audit type functions rather than inspections appears to be the fact that it is a directive and not a regulation. Because a

---


92 Interview DG ENV, Brussels, 22 May 2012

93 On the transposition of Article 34, the UK responded to the Commission that they ‘will transpose Article 34 as it stands. We are committed to maintaining a strong and properly resourced inspectorate and a full, risk-based programme of inspections’ and that they expected this to be ‘cost neutral’.
Option 2 – Ad hoc surveillance-related powers for the EC in sectoral environment legislation

directive usually leaves more in leeway to Member States as to the exact way in which it is implemented than a regulation, a broader audit approach seems more appropriate than Commission involvement in specific, on-the-spot inspections.92

Another reason for choosing an audit rather than an on-the-spot-inspection-approach might relate to the main purpose of Commission controls under the Laboratory Animals Directive, i.e. ‘policing’ as opposed to ‘assisting’ Member States. More comprehensive system audit type functions generate information concerning national systems of inspections, rather than information relating to more or less idiosyncratic individual cases of implementation and/or enforcement failures. Therefore, audit type functions appear to be more suitable for assisting Member States in improving their inspection systems than on-the-spot inspections. In fact, in the case of the Laboratory Animals Directive, the Commission seems to understand its role with respect to audit type functions mainly in terms of such a cooperative approach, helping Member States to improve their inspection system.93 The history of Article 35 provides further support for this view: a ‘revised option’ presented in the Commission’s impact assessment for the revision of Directive 86/609/EEC heavily leans on the example of the audits produced by the FVO, which also focus on assisting Member States, rather than on alternative models with a stronger emphasis on on-the-spot inspections.95

Nonetheless, Article 35 also contains two important provisions, which are more in line with a ‘policing’ approach. While one of the main activities of the FVO consists in regular tri-annual audits of national inspection systems independently of particular implementation and/or enforcement failures, Article 35 audit type functions are triggered exclusively if there is due reason for concern, i.e. for policing. In addition, the only explicitly stated concrete criterion in Article 35 to be taken into account in determining a reason for concern is the proportion of unannounced inspections carried out by the respective national authorities. Unannounced visits are more closely associated with a ‘policing’ approach than with ‘assistance’, because one of their main purposes is to uncover intentional non-compliance rather than addressing a lack of information. It may at least partly be for this reason that the FVO in principle does not carry out unannounced audit.

However, once again in line with an approach emphasising ‘assistance’, the Commission’s interpretation of what - besides the proportion of unannounced inspections - constitutes reason for concern draws on the criteria for risk-analysis in Article 34 (2) of the Laboratory Animal Directive. Two (number and types of animals housed and of projects carried out) of the four criteria are more closely associated with ‘assistance’ than ‘policing’ because they are unrelated to indicators or assumptions about compliance.96

94 Interview, DG ENV, Brussels, 22 May 2012.
96 ‘Article 35 of Directive 2010/63/EU states that the Commission shall undertake controls ‘when there is due reason for concern, taking into account, inter alia, the proportion of inspections carried out without prior warning’. The criteria for a ‘due reason for concern’ should follow the principles of risk management as introduced by Article 34(2) thus taking into account elements such as the number and types of animals housed; the previous record of compliance with the directive; the number and types of projects carried out in the establishment as well as any other information that would indicate non-compliance.’, Parliamentary questions, 15 February 2012, E-012087/2011, Answer given by Mr
It seems likely that the use of unannounced audit type functions under the Laboratory Animal Directive was introduced as a means to improve national inspection systems and enhance public confidence in the national inspection systems – and is therefore also a main criterion for determining due reason for concern. However, it might also reflect cost and fairness concerns because regular audit type functions would be more expensive – at least for compliant operators. In fact, as mentioned above, one of the reasons why Article 35 was accepted by Member States without much controversy appears to have been that it prescribes contingent rather than regular audit type functions.

**3.1.2.2 Legal framework**

Article 35 of the Laboratory Animals Directive provides the basis for the Commission’s role with respect to audit type functions:

- **Article 35 (1)** obliges the Commission to ‘undertake controls of the infrastructure and operation of national inspections’ if there is ‘due reason for concern’;
- **Article 35 (2)** obliges the Commission to inform national competent authorities of ‘the results of the controls’.

Article 35 also defines the role of Member States with respect to Commission audit type functions:

- **Article 35 (2)** obliges Member States to ‘give all necessary assistance’ to the Commission officials carrying out the audit;
- **Article 35 (3)** obliges Member States to take measures to take account of the results of Commission audits.

**Box 3: Specifications on inspectors under Article 35 (Laboratory Animals Directive)**

**Controls of Member State inspections**

1. The Commission shall, when there is due reason for concern, taking into account, inter alia, the proportion of inspections carried out without prior warning, undertake controls of the infrastructure and operation of national inspections in Member States.
2. The Member State in the territory of which the control referred to in paragraph 1 is being carried out shall give all necessary assistance to the experts of the Commission in carrying out their duties. The Commission shall inform the competent authority of the Member State concerned of the results of the control.
3. The competent authority of the Member State concerned shall take measures to take into account the results of the control referred to in paragraph 1.

In addition, Article 34 obliges Member States to carry out regular inspections on the basis of a risk analysis to verify compliance. The Article also specifies certain criteria to be taken into account in the risk analysis and establishes minimum levels for the number of inspections of...
relevant undertakings. Article 54 establishes reporting requirements for Member States. In particular, they are obliged to submit implementation reports every 5 years, starting in November 2018. These reports are expected to become important sources of information on which the Commission can draw when determining whether there is due reason for concern and to carry out an audit.

### 3.1.2.3 Design and functioning

#### Organisation

According to Article 61 of the Laboratory Animals Directive, Member States shall apply the relevant national provisions starting 1 January 2013. However, Article 35 audit type functions will probably not be carried out until several years after this date because the first Member State reports on implementation - considered the main source of information for deciding on carrying out specific audit type functions - are not due before November 2018. However, in case other information sources indicate serious shortcomings in the functioning of the inspection system in an individual MS, the Commission could start implementing the provision of Art. 35 in practice also earlier.

Consequently, no Article 35 audit type functions have so far been carried out. The Commission is currently analysing possible options for the practical organisation of the audit type functions. One potential option could be to entrust the Food and Veterinary Office (FVO), which is part of the Commission’s DG SANCO (Health and Consumers), with carrying out future audit type functions. This option was already considered during the drafting of the Commission proposal for the Laboratory Animals Directive. However, in the absence of commitments to provide additional resources for the FVO, it was not possible to reach an agreement on this option within the Commission.97

Nevertheless, given that the availability of the necessary expertise will be critical for conducting effective Article 35 audit type functions, the FVO with its experience in both veterinary issues and auditing of Member States’ inspection systems would seem to be a particularly attractive candidate. The fact that the audit type functions will be irregular - depending on whether at a given point in time there is due reason for concern - might also speak in favour of drawing on a relatively large organisation, such as the FVO, specialising in relevant audit type functions, and which can make suitable experts available on an ad hoc basis, who normally do not work on Article 35 audit type functions. In addition, it might be argued that the FVO is not part of DG ENV and could therefore be perceived as more independent/credible than a DG ENV internal solution.

Another possible solution could consist in establishing a three-tier system consisting of

- About two DG ENV officials who know the relevant EU legislation, could screen Member State reports and other information to identify cases which would justify an audit; and manage contracts with auditors and experts. Presumably, these officials would also work on tasks not related to audit type functions;

---

97 Interview, DG ENV, Brussels, 22 May 2012
A framework contract with an organisation providing auditing expertise. Involvement of such an external organisation may not only be desirable in terms of expertise but also because it could increase the independence and credibility of audit type functions;

Involvement of ‘field experts’ who have the necessary veterinary and other expertise relating specifically to animal experiments (for system audit type functions only a relatively small amount of such highly specific expertise may be needed).

Working with IMPEL might also be an option.

Selection of audit type functions

The criteria for deciding on conducting a particular audit still need to be agreed. According to Article 35, the proportion of unannounced inspections is one of the criteria, which need to be taken into account. As mentioned above, the Commission also seems to consider the factors, which need to be taken into account for the risk analysis at national level according to Article 34 (2) of the Laboratory Animals Directive to be important criteria for determining audit type functions. These criteria are:

(a) the number and species of animals housed;
(b) the record of the breeder, supplier or user in complying with the requirements of this Directive;
(c) the number and types of projects carried out by the user in question; and
(d) any information that might indicate non-compliance.

Although the Commission expects that audit type functions will mainly be conducted on the basis of information derived from Member States’ implementation reports to the Commission which will not be available before November 2018, there may be a need for earlier audits ‘if deficiencies in the implementation of the national inspection systems are brought to the attention of the Commission prior to the November 2018 deadline’.

Cooperation with Member States

The Commission holds biannual meetings with the Member States, but inspection systems have not yet been discussed at these meetings. However, Member States appear to be happy to report to the Commission, including on which criteria they use for risk analysis. The Commission is planning to set up an expert working group to share best practice among inspectors once Directive 2010/63/EU takes full effect.

---


99 Interview DG ENV, Brussels, 22 May 2012
3.1.2.4 Costs
As no Article 35 inspections have so far been carried out and the organisational arrangements have not yet been agreed either, it is difficult to calculate costs. In a 2007 study commissioned by DG ENV in preparation of the impact assessment for the revision of Directive 86/609/EEC, the Prognos AG calculated costs for audit type functions modelled on the FVO audits on the following basis:

- 10 missions per year;
- Involvement of 2 EU inspectors, 2 EU translators, 2 national inspectors (4 days each, plus 12 hours travel time) per mission.

Based on these assumptions, Prognos calculated costs of about €250,000 annually.\(^{100}\) Costs arising at the EU level (i.e. not including the costs for national inspectors) would amount to about €210,000. These costs would obviously have to be adjusted to correspond to current price and wage levels. It is also very likely that the costs will vary substantially in different areas of application. However, the cost calculations were open for a public consultation and were supported by 80% of the respondents. Of those who argued either for lower or higher costs, none came forward with revised figures to correct the estimates in Prognos Study.\(^{99}\)

3.1.2.5 Successes and failures
Given that the Article 35 audit type functions have not yet been carried out and decisions on the respective organisational arrangements have so far not been made, it is too early to assess successes and failures.

3.1.2.6 Drivers and barriers
Although the Laboratory Animals Directive is not yet applicable in Member States, it is possible to identify a range of actual or potential drivers and barriers that could affect (a) the adoption of the provisions providing for contingent Commission audit type functions and (b) the implementation of these provisions at EU level.

Adoption

Factors contributing to the adoption of the Laboratory Animals Directive’s provisions on contingent Commission audit type functions include the following:

- There was significant political pressure: the protection of laboratory animals was discussed in the media; NGOs and the European Parliament called for stricter EU rules, including with respect to effective inspections;
- The field of laboratory animal protection is a relatively narrow area, which makes it less likely to constitute a precedent. This may have made it easier for Member States concerned about preserving the status quo with respect to the

---

distribution of inspection related competencies between the Commission and Member States to accept Commission audit type functions in this area;

- EU involvement in inspections and audit type functions had already been established in the related food and veterinary sector in the form of the relatively recent FVO, but also in preceding arrangements;

- Commission audit type functions are contingent on there being ‘due reason for concern’ rather than regular exercises. This lowers the costs of Commission audit type functions in terms of interruption of work and follow-up measures to ensure future compliance, in particular, but not only, for countries with effective inspection systems, which are unlikely to be audited.

It seems that the negotiations on the Laboratory Animals Directive’s provisions on the modalities of national inspections could have formed a significant barrier for the adoption of the provisions on Commission audit type functions. More specifically, if the compromise agreement, which Member States reached on the divisive issue of the modalities for national inspections had been more controversial, this could have jeopardized the uncontroversial adoption of the provisions on Commission inspections.

**Implementation**

Given that Article 35 on audit type functions have not yet been carried out and decisions on the respective organisational arrangements have so far not been made, the drivers and barriers regarding implementation remain hypothetical.

Political pressure by NGOs and the European Parliament - which, as pointed out above, already submitted a question to the Commission regarding implementation of the Commission audit type functions – are likely to act as a driver for effective implementation.

However, the implementation of the provisions on Commission audit type functions faces several significant barriers:

- Currently, DG ENV does not have the capacity to conduct the audit type functions and it is not yet clear how the necessary capacities can be created. Additional staff may be necessary to prepare, conduct and/or supervise the audit type functions. Perhaps more importantly, there is a need for expertise in both auditing and relevant veterinary aspects;

- Relevant expertise in both auditing and veterinary issues can be found in DG SANCO’s FVO. However, so far it has not been possible to draw on this expertise for the purposes of audit type functions under the Laboratory Animals Directive. The unresolved question of funding for such an arrangement appears to be a main reason for this.

- It seems particularly difficult to plan for implementation because it is not clear how many audit type functions will be carried out and when this will be done. This problem is linked to at least three issues:
• The fact that the Commission audit type functions are contingent on whether there is ‘due reason for concern’ makes it difficult to estimate their number and timing in advance;

• The need for audit type functions is particularly difficult to assess for the period until the first national reports on the implementation of the Laboratory Animals Directive become available in late 2018. Until the reports become available, the need for an audit cannot be excluded, but it is particularly difficult to predict because it’s identification would depend on more contingent sources of information;

• Even when the national reports become available, it will be difficult to assess the need for audit type functions in advance. This can partly be attributed to the 5 year reporting period: the situation with respect to national inspections - and hence the need for Commission audit type functions - in the first reporting period may be quite different from the situation in the second period 5 years later.

3.1.2.7 Impacts

Given that the Article 35 audit type functions have not yet been carried out and decisions on the respective organisational arrangements have so far not been made, it is too early to assess impacts.

3.2 Application of ODS and LA models to waste shipment and nature protection legislation

The scope of this study does not allow an extensive analysis of the application of arrangements similar to the ODS and Laboratory Animals models to the wider environment acquis. Two areas of sectoral environmental legislation were chosen for a further representative analysis: legislation related to waste shipments and legislation related to nature protection. Waste shipment is a high-profile issue concerning inspections, as shown by the recent public consultation on possible EU legislative criteria and requirements for waste shipment inspections.\(^{101}\) Furthermore, the transboundary impact of this field makes it particularly apt for an enhanced EU role in inspection overview.

Nature protection is also a high-profile issue, which generates frequent calls on the Commission to intervene with regard to specific circumstances, e.g. eminent threats to a protected nature site or widespread illegal hunting. A more pro-active role of the Commission in controls overview may thus be desirable.

Waste shipments are an example for sectoral environmental legislation with existing requirements for national inspections. In contrast, nature protection is an example for sectoral environmental legislation without such explicit requirements concerning inspections and controls.

### 3.2.1 Role of EU requirements for national inspections

It may be assumed that an enhanced Commission role in inspections through audit type functions of national inspection arrangements or participation in inspections might require the presence in the respective specific EU environmental legislation of relatively detailed inspection requirements for national inspections. However, the analysis of the ODS Regulation throws some doubt on this assumption because the Regulation only contains the most general requirements for national inspections, i.e. it obliges national competent authorities to carry out inspections and to use a risk-based approach in doing so (Article 28 (1)). It therefore seems possible to conclude that detailed prescriptions for national inspections may not be as important for an enhanced role for the Commission in inspections as was initially assumed.

At the same time the ODS Regulation contains many other detailed requirements which are directly binding on the Member States. A second hypothesis might be that relatively detailed prescriptions for national inspections may not be as important as initially assumed, provided that the respective piece of legislation contains other detailed requirements which leave relatively little room for different interpretations and ways of implementation at national level. If this is the case, the Commission’s enhanced role in inspections can draw on these other detailed requirements rather than mainly on those requirements, which relate directly to national inspections.

Perhaps more importantly, while the ODS Regulation itself only contains the most general requirements for national inspections, more detailed inspection requirements contained in customs laws also apply to ODS.

Besides EU environmental legislation, which contains relatively detailed provisions on national inspections, all things being equal, regulations, which generally leave less leeway at national level, may therefore be considered as more suitable for an enhanced Commission role in inspections than directives. However, the same might also apply to certain directives if they contain many provisions leaving little leeway at national level or relatively detailed provisions on inspections, such as the Laboratory Animals Directive.

In the case of both, regulations and directives, more detailed inspection requirements may also be contained in applicable additional legislation, such as customs law.

### 3.2.2 Role of issue area and political context

The analysis of the ODS Regulation and the Laboratory Animals Directive suggests that so far the Commission has only been granted an enhanced role in inspections in what could be called relatively narrowly confined ‘niche’ areas of EU environmental policy which, in addition, were
characterised by a favourable political context. The impact of this ‘niche’ characteristic may be particularly relevant in two respects:

- ‘Niche’ areas are seen less as a political precedent than larger issue areas and therefore may be seen by Member States as less of a threat to the status quo in terms of the division of inspection-related competences between Member States and the Commission;
- As suggested in particular by the example of the ODS Regulation, small issue areas involving only a limited number of relevant regulators and inspectors at EU and national level may allow for building informal, cooperative relationships which reduce the practical significance of the formal division of competences.

In the case of the ODS Regulation the favourable political context consisted in at least three factors:

- Both at international level and at EU level the management and phasing out of ODS are a relatively uncontroversial field of environmental policy-making;
- The economic significance of ODS is decreasing and substitutes are available;
- The Montreal Protocol regulates the management and phasing out of ODS internationally, with the Commission playing a central role in implementing the Protocol for the EU.

As to the Laboratory Animals Directive, the following main factors seem to have contributed to a favourable political context:

- There is considerable political pressure from the general public, NGOs and the European Parliament specifically to ensure effective inspections;
- Following the establishment of the FVO, but also previous EU arrangements, the EU already has a special role in inspections in another area dealing with veterinary issues and animal welfare.

It is difficult to assess how exceptional these particular issue area characteristics and the political context are. While the same or very similar combinations of characteristics may not be found in many other areas of EU environmental policy, different, but functionally equivalent combinations of factors might compensate for this in at least some issue areas.

### 3.2.3 Application of similar arrangements to waste shipments legislation

#### 3.2.3.1 Overview of waste shipment legislation

Regulation 1013/2006/EC on shipments of waste (Waste Shipments Regulation, WSR) seeks to prevent and control environmental and health hazards in relation to shipments of waste within the EU and between the EU and third countries, and to implement the Basel Convention on the control of trans-boundary movements of hazardous wastes and their disposal.
The WSR establishes procedures and control regimes for the shipment of waste, depending on the origin, destination and route of the shipment, the type of waste shipped and the type of treatment to be applied to the waste at its destination. Exports and imports are prohibited under certain conditions.

In particular, different regimes apply to shipments of wastes for disposal and for recovery, as well as to hazardous and “green-listed” non-hazardous wastes, and to some special categories in-between.\(^\text{102}\) It has to be noted that the distinction between hazardous and non-hazardous wastes does not follow the lines of the Waste Framework Directive, but a listing system established within the OECD, and is decided by the lists in the annexes to the WSR.\(^\text{103}\) The shipment of hazardous wastes and wastes destined for disposal is generally subject to notification procedures with the prior consent of all relevant authorities of dispatch, transit and destination, while green-listed wastes, as a rule, may be shipped for recovery within the OECD like normal commercial goods and only accompanied by certain information. The shipment of hazardous wastes to non-OECD countries is prohibited, while the shipment of non-hazardous wastes to these countries depends essentially on whether the importing country accepts them and which procedures it wants to apply.

In order to enforce the WSR, Art. 50 requires that MS provide for inspections of establishments and undertakings (in accordance with Art. 13/Art. 34 of the Framework Waste Directive 2006/12/EC / 2008/98/EC) and for spot checks on shipments of waste or on the related recovery or disposal. The checks on shipments shall include the inspection of documents, the confirmation of identity and, where appropriate, physical checking of the waste.

### 3.2.3.2 Enforcement status of the WSR

According to the Commission’s 28\(^\text{th}\) annual report on monitoring the application of EU law, significant deficits in the implementation and enforcement of EU waste legislation remain in large parts of the EU, particularly as regards inter alia illegal waste shipments.\(^\text{104}\) Inspections and controls appear to vary significantly between Member States. In some countries only very few and insufficient controls are carried out. Waste is suspected to be illegally exported via the EU seaports having the least effective controls.\(^\text{105}\)

The main problem consists in the huge trade with waste, which do not need prior notification, but only need to be accompanied by documentation showing that they are non-hazardous and intended for recovery (green list waste). Not all of these transports by road, train or ships can be controlled.\(^\text{106}\) Furthermore, lack of infrastructure for the completion of inspections as well as lack of a clearly defined partnership between the competent authorities and other organisations such as the customs offices, police forces etc. constitute a problem in many countries.\(^\text{107}\) Other factors

---

\(^\text{102}\) See ec.europa.eu/environment/waste/shipments/background.htm.
\(^\text{103}\) See Krämer, EU Environmental Law, 7\(^\text{th}\) ed. 2011, chapter 10-38.
\(^\text{106}\) Interview DG ENV, Unit A.2
contributing to the difficult enforcement situation include the extensive scope and the complexity of the WSR, the lack of clarity of some of its provisions and the rapid development of new waste streams or mechanisms of shipments, which may not readily fit the obligations of the WSR. \textsuperscript{108}

A specific section of IMPEL is dealing with issues of Trans-frontier Shipments of Waste, IMPEL-TFS. \textsuperscript{109} This network is very active in organising joint enforcement actions between Member States and providing guidance and documents to improve the enforcement and implementation of the WSR. However, it has no powers to make compulsory any guidance or participation in enforcement actions and the participation of Member States in the programmes organised by IMPEL-TFS is voluntary.\textsuperscript{110}

Between 25 January and 12 April 2011, the Commission carried out a public consultation on possible EU legislative criteria and requirements for waste shipment inspections. The gathered information could be used to prepare an impact assessment and a draft legislative proposal on this issue.\textsuperscript{111}

\subsection*{3.2.3.3 Application of an approach similar to the ODS Regulation}

An application of a model similar to the ODS Regulation to waste shipments would enable the Commission to request inspections by the Member States in order to control whether the rules of the WSR have been respected.

By selecting the requested inspections accordingly, such an approach could compensate to some extent for the weak level of controls in some Member States. In particular, EU seaports or other sites with the least effective controls, via which illegal waste is suspected to be exported in the first place, could be targeted. Providing the Commission power to request such targeted inspections and thereby to coordinate inspections in the Member States to some extent, e.g. by requesting simultaneous inspections in different Member States, could have a strong deterrent effect und would thus be very useful.\textsuperscript{112}

Concerning waste shipments, a participation of officials of the Commission in inspections could help in some instances, e.g. if questions of interpretation of the WSR occur, but would be of minor importance, as Member States usually take the necessary measures once illegal shipments are spotted. As to inspections of establishments or undertakings, however, participation of Commission officials would be useful in cases where local inspectors do not have a position strong enough to react on detected non-compliance in an adequate way.\textsuperscript{113} In some cases, spot checks directly performed by Commission officials may be useful\textsuperscript{114}, which would however go far beyond the ODS model.

\textsuperscript{109} EC website: ec.europa.eu/environment/impel/impel tfs.htm.
\textsuperscript{110} BIO Intelligence Service (2010), Environmental, social and economic impact assessment of possible requirements and criteria for waste shipment inspections, controls and on-the-spot-checks, June 2010, p. 9.
\textsuperscript{111} EC website: ec.europa.eu/environment/waste/shipments/news.htm.
\textsuperscript{112} Cf. Interview DG ENV, 19 September 2012
\textsuperscript{113} Cf. Interview DG ENV, 19 September 2012
\textsuperscript{114} Cf. Interview DG ENV, 19 September 2012
This approach would only be technical feasible if the Commission received enough information to be able to target possible cases for inspection. Requests under the ODS Regulation frequently result from the annual reports to be delivered under this Regulation. According to Art. 51 WSR, Member States shall forward to the Commission before the end of each year a copy of its report for the previous year according to the Basel Convention, and a report for the previous year based on the additional reporting questionnaire in Annex IX WSR. However, the Commission would need much more information than is presently available to it, from these reports or otherwise. Information would be necessary on what waste is produced, where it goes for treatment and where leaks occur. To get all this information is very complicated in the EU due to the plethora of different actors involved – producers, collectors, brokers, pre-treatment, exporters etc. Information on inspections and their results would also be important. To obtain the necessary information in a pro-active way, the Commission may address corresponding requests to Member States. In applying the ODS model, such requests for information would be possible, although the limits appear to be unclear. Also, in promoting information exchange and cooperation between national authorities and between national authorities and the Commission as foreseen by the ODS Regulation, the Commission may obtain additional, in particular comparable information. Taking account of these additional tools for information gathering, the information basis for the Commission may still need to be improved to enable inspection requests, as the Commission would need some kind of information system to cover the whole waste treatment chain. Such a system may be possible on a sector basis, e.g. for electronic waste. For this kind of waste, which has become the most frequent type of waste involved in violations, the WEEE Directive organises the treatment chain and provides for information on each step in the treatment chain.

Even with an adequate information basis, the selection of inspection requests would still be difficult due to the complexity of the WSR.

An empowerment of the Commission to promote information exchange and cooperation between national authorities and between national authorities and the Commission as foreseen by the ODS Regulation would also contribute to a level playing field by reducing the difference of the enforcement performance between the Member States. Such a binding mechanism would be an improvement to the current networking activities done by IMPEL-TFS on a voluntary basis, although cooperation is always dependent on the good will of the parties involved. Even more important, it would involve all Member States, which is not the case with the voluntary IMPEL-TFS network.

These measures may be completed by the prescription of minimum requirements for waste shipment inspections by the EU, as proposed as favoured option in a study for the Commission.

---

115 Cf. Interview DG ENV, 19 September 2012
116 Cf. Interview DG ENV, 19 September 2012
118 Cf. Interview DG ENV, 19 September 2012
119 Cf. Interview DG ENV, 19 September 2012.
120 BIO Intelligence Service, Environmental, social and economic impact assessment of possible requirements and criteria for waste shipment inspections, controls and on-the-spot-checks, June 2010.
Provided that the additional information collection needed for inspection requests can be found, an inspection system could be very effective as the regular inspection of important bottle necks (e.g. harbours) and suspected transport companies will increase the pressure on illegal shipping on waste and probably improve compliance. Waste shipment is a complex market with a substantial number of interdependencies which means that every success in enforcement provide a lot of information on other potential compliance failures. Provided that information is forthcoming the inspection system would be relatively cheap to run as the number of inspection requests does not need to be very high. The dominant costs of an ODS model for the Commission would be in improving the information base to target the inspection requests. Depending on the efforts that are needed for setting up and maintain such an information basis, additional staff might be required.

Concerning administrative feasibility, an approach similar to the ODS model would require additional resources for the Commission.121 However, taking into account activities of the Commission in infringement cases, the additional administrative burden of such a pro-active approach, intended to limit complaints and infringement cases, appear to be relatively low. For the collection of the additional information needed for inspection requests, external support may be needed122 (see option 5).

Concerning political acceptance of such an approach to waste shipments, Member States generally regard themselves as exclusively competent for enforcement of EU law. They may, however, accept binding EU minimum criteria and a coordinating role of the Commission. In the public consultation carried out by the Commission on ways to strengthen the inspections and enforcement of the WSR, a vast majority of stakeholders favoured new legislation strengthening inspection requirements.123 Such new legislation could be used as an opportunity to include elements of the ODS Regulation concerning a stronger involvement of the Commission in enforcement issues. Several aspects in waste shipments strongly speak in favour of such an enhanced role of the Commission: there is a single market for wastes (considered as goods if intended for recovery), it is a trans-boundary activity of potential adverse concern across Member States, and there is a sensitive public. For these reasons, which make it difficult for them to argue with the principle of subsidiarity, Member States, while still being cautious, appear more open to a stronger involvement of the Commission than usual.124 Moreover, a growing concern for resources within the EU may act as a driver for stricter enforcement measures in order to prevent illegal shipments of valuable wastes such as electronic waste, especially out of the EU.

The strengths, weaknesses, opportunities and threats of the application of an approach similar to the ODS Regulation to waste shipments, therefore, are:

**Strengths:**

---

121 Interview, DG ENV, 21 September 2012 on nature protection.
122 Cf. Interview, DG ENV, 19 September 2012.
124 Cf. Interview, DG ENV, 19 September 2012.
Option 2 – Ad hoc surveillance-related powers for the EC in sectoral environment legislation

- Requests for inspection could compensate to some extent for the weak level of controls in some Member States
- The most sensible EU sites with the least effective controls could be targeted
- The running costs of the model will be low and no new capability has to be built up, as most of the costs would be in data assembly and reporting.
- Commission’s power to request inspections and to coordinate inspections in the Member States to some extent would have a strong deterrent effect
- Participation of Commission officials in inspections of establishments or undertakings may strengthen the position of local inspectors in some Member States
- The Commission may request information by Member States in a pro-active way
- Promoting information exchange and cooperation contributes to more level playing field

**Weaknesses:**

- The Commission may not get enough information to target possible cases for inspection. An information system to cover the whole waste treatment chain is difficult to establish (maybe possible for certain waste types like electronic waste)
- Some additional resources would be needed, including external expertise in collecting information.

**Opportunities:**

- Several aspects in waste shipments (single market for wastes, trans-boundary, sensitive public opinion) strongly speak in favour of more involvement of the Commission in enforcement issues
- New legislation strengthening inspection requirements could be used as an opportunity to include elements of the ODS Regulation concerning a stronger involvement of the Commission in enforcement issues
- The market structure in shipping and to an extent in road freight allows an efficient targeting of inspection provided good information is available.

**Threats:**

- Member States would presumably be opposed to inspection requests. They may rather accept a coordinating role of the Commission.
- The complexity of waste shipments may endanger the effectiveness of an enhanced role of the Commission.
3.2.3.4 Application of an approach similar to the Laboratory Animals Directive

An application of the model of the Laboratory Animals Directive to waste shipments would enable the Commission to assess the national inspection systems concerning enforcement of the WSR rules, if there is due reason for concern.

Compared to the ODS model, this is a much more general approach to tackle the enforcement deficiencies in the Member States. As such, it is more suitable for assisting Member States in improving their inspection systems and thereby contributing to a more level playing field than requests for on-the-spot inspections. Indeed, for the Commission, it would be more important to assess the national inspections systems to ensure that they are effective and that cooperation between the different Member States is possible than to assist Member States in specific inspection issues, e.g. by conducting direct inspections or participate in Member States’ inspections. Also, conducting such assessments would imply the gain of an information basis which may be used for long term improvements of the Member States systems through further measures, e.g. through recommendations, or for ad-hoc inspection requests according to the ODS model.

The criteria for due concern would need to be agreed upon. Most of the criteria considered for the Laboratory Animals Directive are not applicable and would thus need to be adapted to the area of waste shipments.

As with the ODS model, and even more so, this approach would only be technically feasible if the Commission was able to collect enough information to conduct such assessments. First, it would need sufficient information to raise the issue of due concern as a prerequisite for assessments of the Member States’ systems. Second, it would need the necessary information on the Member States enforcement system. As mentioned above relating to the application of the ODS model, the WSR obliges Member States to forward to the Commission each year two complementary reports for the previous year. However, as described in detail above concerning the application of the ODS model, the Commission would need much more information than is presently available to it, from these reports or otherwise. An assessment of national inspection systems is only useful if the Commission would get detailed information, e.g. on the quantity of inspections carried out, the numbers of officials involved, their qualification etc. However, Member States are sometimes reluctant to give this kind of information to the Commission. To some extent, the Commission may request Member States to provide specific information as part of their duty under the Laboratory Animals model to give all necessary assistance to the experts of the Commission in carrying out their duties. Taking into account these additional tools for information gathering, the information basis for the Commission may still need to be improved to enable assessments of national inspection systems, as the Commission would need some kind of due reason for concern.

---

125 See above at 3.1.2.1.
126 Cf. Interview with DG ENV, 19 September 2012.
127 See above at 3.1.2.3.
128 Cf. Interview DG ENV, 19 September 2012.
129 Cf. Interview DG ENV, 19 September 2012.
of information system to cover the whole waste treatment chain. As already mentioned above in the ODS context, such a system may be possible on a sector basis, e.g. for electronic waste according to the WEEE Directive. In addition, the information basis for the Commission may need to be improved by requiring more detailed information on inspections and their results in the periodical reports.

Even with an adequate information basis, the assessment of the national inspection systems would still be difficult due to the complexity of the WSR.

Concerning costs it is quite important to note that the structure of costs falling on DG ENV would be quite different from the costs in an ODS model. In the ODS model the Commission would need a very robust information base to decide where to target the inspections. In a Laboratory Animals model less information would be needed to decide on the right place for the audit. To decide where an audit needs to take place the Commission does only need information on where something is wrong. To target inspections the Commission need additional information on what the problem is.

On the other hand audit type functions need far more resources than inspection requests which means that the in a Laboratory Animals model DG ENV would need to build up a capability for audit type functions while less capability for data collection would be needed.

Concerning administrative feasibility, an approach similar to the Laboratory Animals model would require additional resources for the Commission. However, taking into account activities of the Commission in infringement cases, the additional administrative burden of such a proactive approach, intended to limit complaints and infringement cases, appear to be relatively low. Nevertheless, assessing national inspection systems in waste shipments is particularly difficult due to the fact that the inspection structure is different in each Member State, with some States having many different authorities involved (e.g. waste, transport, police and customs authorities, local and regional levels etc.). A precise assessment of administrative feasibility is also difficult because, as of yet, no practical experience exists with audit type functions according to the Laboratory Animals Directive. One of the solutions proposed in that context that could also be applied to the area of waste shipments is a system consisting of some DG ENV officials and a framework contract with an organisation providing assessment expertise. For the evaluation of information that implies special technical expertise, external experts may also need to be involved (see option 5).

The effectiveness of such a model could be equally high as the ODS model. Over the years DG ENV would build up significant knowledge on the compliance problems and would gain a better understanding of how to tackle them. The knowledge built up by inspections would be more patchy and not as useful for long term improvement plans.

Concerning political acceptance of an approach similar to the Laboratory Animals model applied to waste shipments, the same considerations hold true than for an application of an approach similar to the ODS model. Member States may be more reluctant to accept assessments of their inspection systems by the Commission than inspection requests, since some of them fear

---

130 Cf. Interview DG ENV, 19 September 2012.
131 See more details above at 3.1.2.3.
comparison with Member States that have well-functioning systems. However, the aspects described above in favour of a stronger role of the Commission in enforcing the WSR apply equally for assessments of national inspection systems. Moreover, the Laboratory Animals model does not include assessments on a regular basis, but only in cases of due concern.

The strengths, weaknesses, opportunities and threats of the application of an approach similar to the Laboratory Animals Directive to waste shipments, therefore, are:

▶ **Strengths:**
- Assessments of the national inspection systems are more suitable for assisting Member States in improving their inspection systems and thereby contributing to a more level playing field than requests for on-the-spot inspections.
- Conducting such assessments would provide the Commission with an information basis for the long term-improvements of the national inspection systems.
- To conduct the assessments, the Commission may request information by Member States in a pro-active way.
- Contingent assessments would be more acceptable to Member States than regular assessments.

▶ **Weaknesses:**
- The Commission may not get enough information to conduct such assessments. An information system to cover the whole waste treatment chain is difficult to establish (maybe possible for certain waste types like electronic waste).
- The different inspection structures in each Member States render assessments difficult.
- Additional resources would be needed, possibly including external expertise in auditing.

▶ **Opportunities:**
- Several aspects in waste shipments (single market for wastes, transboundary, sensitive public opinion) strongly speak in favour of more involvement of the Commission in enforcement issues.
- New legislation strengthening inspection requirements could be used as an opportunity to include elements of the Laboratory Animals Directive concerning a stronger involvement of the Commission in enforcement issues.

▶ **Threats:**
- Some Member States would fear to be compared with well-functioning inspection systems in other Member States and thus oppose any kind of assessments (even more than inspection requests).
The complexity of waste shipments may endanger the effectiveness of an enhanced role of the Commission.

3.2.4 Application of similar arrangements to nature protection legislation

3.2.4.1 Overview on nature protection legislation

Nature protection is mainly regulated by Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (Habitats Directive, HD) and Directive 2009/147/EC on the conservation of wild birds (Birds Directive, BD). Both directives establish a nature protection system based on two pillars: The Natura 2000 network of protected sites (Sites of Community Importance – “SCIs” – or Special Areas of Conservation – “SACs” – under the HD and Special Protection Areas – “SPAs” under the BD) on the one hand, and a strict system of species protection on the other hand.

In contrast to the Waste Shipment Regulations, the Habitats and Birds Directives do not entail explicit provisions on inspections. Art. 11 of the Habitats Directive requires Member States to undertake surveillance of the conservation status of natural habitats and species of Community interest. In addition to this general control obligation, both directives contain two types of provisions, which are relevant for specific control obligations derived from Art. 11 HD for that Directive or from Art. 10 TFEU for the BD:

- Situations where there is some kind of authorisation in place: Derogations from protective measures (Art. 12 HD, Art. 9 BD), impact assessments to determine the compatibility of plans or projects with the conservation status of protected sites (Art. 6 (3) HD) or decisions on compensatory measures (Art. 6 (4) HD). Such derogations or decisions are subject to strict conditions. The link to controls is evidenced by Art. 9 (2) lit. e) of the Birds Directive requiring that the controls which will be carried out in cases of derogations from the provisions of Art. 5-8 must be specified, and by Art. 16 (3) lit. e) HD requesting the specifications of supervisory measures in the reports on derogations to be forwarded to the Commission.

- Situations where general rules apply: Both the HD and the BD contain prohibitions which must be respected on the ground, e.g. prohibitions on killing or capturing birds (Art. 5 BD) or protected species listed in Annex IV HD (Art. 12 HD). Further examples are as restrictions on landowners in order to safeguard habitats inside Natura 2000 sites, e.g. natural stone formations, protected woodland.

- Nature protection legislation also includes legislation on wildlife trade (Regulation (EC) No. 338/97). In the Commission’s communication “improving...
the delivery of benefits from EU environment measures”, trade in protected species is mentioned as an example for activities which would benefit from additional provisions on inspections and surveillance, for instance to make them more streamlined and risk-based. However, this legislation is similar in structure (transboundary aspects, inspection relatively detailed inspection requirements) to legislation on waste shipments, which is not the case for the HD and the BD.

### Enforcement status of the HD and BD

According to the Commission’s 28th annual report on monitoring the application of EU law, nature conservation legislation accounts for between a fifth and a quarter of environmental infringements. The nature sector accounts for the highest number of open environmental cases. Although the demand from citizens, NGOs and the European Parliament is high, the complaint and legal enforcement mechanisms for nature conservation in the Member States are often weak and inappropriate. The level of enforcement varies from one Member States to another. For lack of scientific knowledge and/or financial resources, some Member States do not carry out regular and efficient controls. According to GreenEnforce, a voluntary informal EU network of practitioners focused on the implementation of EU provisions in the field of nature and forestry, the most common enforcement problems consist in insufficient human and financial resources, followed by inadequate communication with other involved authorities and weak trans-boundary cooperation. Overall, inspection activities have not been harmonized sufficiently in comparison with other fields of environmental inspections. In particular, Recommendation 2001/331/EC providing for minimum criteria for environmental inspections in the Member States does not comprise criteria for the inspection of Natura 2000 sites. In 2008, GreenEnforce held a meeting to find a basis for developing voluntary guidelines on Green Enforcement focusing on Natura 2000. As of yet, however, such guidelines have not been issued.

Concerning the HD, activities by the Commission focused to a large extent on the transposition of this Directive, in particular the establishment of the Natura 2000 network. At present, the EU is very close to the completion of this network, so priorities in the future will shift to its

---

133 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Improving the delivery of benefits from EU environment measures: building confidence through better knowledge and responsiveness, 7.3.2012, COM(2012) 95 final.
136 Interview with DG ENV, 21 September 2012.
137 Interview with DG ENV, 21 September 2012.
effective management.\textsuperscript{\texttt{143}} The Commission already receives numerous complaints about threats to Natura 2000 sites.\textsuperscript{\texttt{144}}

The Commission is regularly called upon to investigate situations where it is alleged that Member States have failed to ensure compliance with both types of situations described above:

\begin{itemize}
  \item Situations where there is some kind of authorisation in place: examples include failure to ensure respect for the conditions of hunting derogations\textsuperscript{\texttt{145}}, often on a wide scale, and failure to ensure effective delivery of compensatory measures
  \item Situations where general rules apply: examples of non-compliance appear to be more numerous and have often, as a reaction to complaints from individuals, lead to Commission litigation against Member States: failure to control activities next to beaches used by the Mediterranean sea turtle\textsuperscript{\texttt{146}} illegal trapping of wild birds\textsuperscript{\texttt{147}} and snakes\textsuperscript{\texttt{148}} illegal construction, quarrying and other forms of extraction in Natura 2000 sites.
\end{itemize}

\textbf{3.2.4.3 Scenario 1: Application of similar approaches to situations where there is some kind of authorisation in place}

As mentioned above, the HD and the BD contain two types of provisions, which are relevant for specific control obligations: situations where there is some kind of authorisation in place and situations where general rules apply. Therefore an application of approaches similar to the ODS Regulation and the LA Directive is analysed for both scenarios.

Scenario 1 comprises derogations from protective measures (Art. 12 HD, Art. 9 BD), impact assessments (Art. 6 (3) HD) and decisions on compensatory measures (Art. 6 (4) HD). The latter is also relevant to SPAs under the BD (Art. 7 HD). The main difference of these authorisations or decisions compared to the general rules (scenario 2) is that they imply evaluations of specific situations by the national authorities, and that derogations from the general rules, compensatory measures as well as decisions on the compatibility of plans or projects with the integrity of protected sites are subject to strict conditions. Furthermore, derogations are subject to specific controls (Art. 9 (2) lit. e) BD and Art. 16 (3) lit. e) HD).

\textbf{Application of the ODS model}

An application of the model of the ODS Regulation to this scenario would enable the Commission to request inspections by the Member States to determine whether the conditions/limits of the derogations, compensatory measures, or the duty to carry out impact assessments (decisions on


\textsuperscript{\texttt{145}} See e.g. Court of Justice, Commission v. Malta, C-76/08, Commission v. Finland, C-342/05.

\textsuperscript{\texttt{146}} Court of Justice, Commission v. Greece, C-103/06.

\textsuperscript{\texttt{147}} Court of Justice, Commission v. Spain, C-135/04.

\textsuperscript{\texttt{148}} Court of Justice, Commission v. Greece, C-518/04.
the non-compatibility of plans or projects with the integrity of protected sites) have been respected.

By selecting the requested inspections accordingly, such an approach could, in particular, compensate to some extent for the weak level of controls in some Member States. It may generally contribute to conducting inspections in a more targeted way, focusing for example on large projects, and have some deterrent effect. In practice, in the framework of the briefing procedure opening infringement proceedings, the Commission already asks Member States to carry out field studies if it is not convinced that a particular project will not affect a Natura 2000 site. However, this is a reacting approach, while the approach of the ODS model is a pro-active one. In addition, the experience with the ODS Regulation demonstrates that the possibility to ask for inspections in a binding way is valuable even if co-operation with Member States on an informal basis is good. Scenario 1 concerns situations that, as far as derogations are concerned, already require specific controls by the Member States. However, the enforcement situation shows that Member States do not always apply these controls in an effective way. Arguably, enforcement of these specific controls is even more important than enforcement of the general rules, due to the strict conditions that have to be respected by Member States by granting derogations etc., but also due to the fact that failure to conduct these specific controls cannot be "justified" by lack of resources to the same extent as with the general surveillance obligation in Art. 11 HD. Furthermore, inspection requests in a relatively sophisticated national control system where specific controls and corresponding information obligation (see above) exists appears more effective than in a less sophisticated national control system where they do not exist (scenario 2).

This approach would only be technical feasible if the Commission would receive enough information to be able to target possible cases for inspection. Requests under the ODS Regulation frequently result from the annual reports to be delivered under this Regulation. According to Art. 16 (2) HD, Member States shall forward to the Commission every two years a report on the applied derogations, including the supervisory measures and the results obtained, while Art. 9 (3) BD requires annual reports on the derogations including specifications of the controls to be carried out. Thus, for derogations, the information to be provided to the Commission is short-termed and arguably specific enough to be able to serve as basis for inspection requests. However, no such report obligation exists related to impact assessments for plans and projects. Art. 6 (4) only demands an opinion of the Commission, thus implying the necessary information, when the site concerned hosts a priority natural habit and/or a priority species and the Member State wants to raise considerations relating to other imperative reasons of overriding public interest than those explicitly mentioned in that article. To obtain the necessary information in a pro-active way, rather than receiving them in a passive way as with individual complaints, the Commission would need to address corresponding requests to Member States. In applying the ODS model, such requests for information would be possible. Also, in promoting information exchange and cooperation between national authorities and

---

149 Interview with DG ENV, 21 September 2012.
150 See above under 3.1.1.3.
151 See above at 3.2.4.2.
between national authorities and the Commission as foreseen by the ODS Regulation, the Commission may obtain additional information. In the end, however, the information basis for the Commission concerning impact assessments may need to be improved to enable inspection requests.

An empowerment of the Commission to promote information exchange and cooperation between national authorities and between national authorities and the Commission as foreseen by the ODS Regulation would also contribute to reduce the lack of knowledge or experience in some Member States, and by disseminating best practices, contribute to a level playing field. Such a binding mechanism would be an improvement to the current networking activities done by GreenEnforce on a voluntary basis, although cooperation is always dependent on the good will of the parties involved. An initiative similar to GreenEnforce could be installed, with the Commission as coordinator, where Member States meet on a more regular basis to exchange information and practices. Having an overview over more enforcement systems, the Commission could give recommendations how to improve the system, in particular concerning the planning of inspections.

Concerning administrative feasibility, an approach similar to the ODS model would require additional resources for the Commission. However, as the Commission already requests Member States to carry out concrete measures on a case-by-case basis in relation to ongoing infringement cases, the additional administrative burden of a pro-active approach, intended to limit complaints and infringement cases, appear to be relatively low. For the evaluation of information, that implies ecological expertise, e.g. related to compensatory measures according to Art. 6 (4) HD, external experts may need to be involved (see option 5).

Concerning costs, the solid existing information base means that DG ENV does not need to collect much more information to decide on the targeting of inspection requests. On the other hand it is very likely that more inspection requests would be needed than in the case of the waste shipment Regulation, as the nature protection is a very local phenomenon which means that gathering the data for a robust risk assessment model is far more difficult as local differences have to be taken into account. The same argument runs true for the effectiveness of the inspection requests. In interconnected market places like waste shipments, conducted inspections give important information for the targeting of the next inspection requests, but this positive feedback loop will be less efficient in nature protection.

Concerning political acceptance of such an approach to nature protection, Member States generally regard themselves as exclusively competent for enforcement of EU law. Thus, they may be opposed to any guidance by the Commission on inspections going beyond a smaller or rather general degree of orientation. In particular, the economic importance of plans and projects may lead to especially strong resistance. However, a higher level of disparities in the enforcement of the HD and the BD may justify some kind of harmonisation of the control systems of Member States, including a stronger rule for the Commission. Thereby, the specific report obligations of the Member States towards the Commission according to the HD and the

\[152\] Interview, DG ENV, 21 September 2012.
Option 2 – Ad hoc surveillance-related powers for the EC in sectoral environment legislation

BD in scenario 1 situations already indicate a stronger Commission oversight over inspections activities of the Member States.

The strengths, weaknesses, opportunities and threats of the application of an approach similar to the ODS Regulation to this scenario, therefore, are:

**Strengths:**
- Requests for inspection could compensate to some extent for the weak level of controls in some Member States
- Requests for inspection could contribute to conducting inspections in the Member States in a more targeted way, especially concerning compliance with specific national decisions which may be even more important than compliance with general rules
- Inspection requests in a context with specific controls and corresponding reporting obligations would be more effective than within a less sophisticated national control system (scenario 2)
- Commission’s power to request inspections and to coordinate inspections in the Member States to some extent may have a deterrent effect and strengthen the cooperation of Member States
- The Commission may request information by Member States in a pro-active way
- Promoting information exchange and cooperation would contribute to more level playing field between all Member States

**Weaknesses:**
- The Commission may not get enough information to target possible cases for inspection, especially concerning control of issues related to impact assessments, which are not covered by specific reporting obligations. The information basis for the Commission would thus need to be improved.
- Additional resources, including ecological external expertise would be needed.
- The number of inspections needed for active deterrent might be quite substantial due to localised situation in nature protection

**Opportunities:**
- The specific reporting obligations in the HD and BD on controls already indicate a stronger Commission oversight, so inspection requests may be more acceptable for Member States than in scenario 2 or other sectors.

**Threats:**
- Member States would presumably be opposed to any substantial guidance by the Commission on inspections
- The economic importance of plans and projects for Member States may lead to especially strong resistance
**Application of the Laboratory Animals model**

An application of the model of the Laboratory Animals Directive to this scenario would enable the Commission to assess the national inspection systems concerning enforcement of derogations, compensatory measures, or the duty to carry out an impact assessments, if there is due reason for concern.

Compared to the ODS model, this is a much more general approach to tackle the enforcement deficiencies in the Member States. As such, it is more suitable for assisting Member States in improving their inspection systems and thereby contributing to a more level playing field than requests for on-the-spot inspections. Also, conducting such assessments would imply the gain of an information basis which may be used for long term-improvements of the Member States systems through further measures, e. g. through recommendations, or for ad-hoc inspection requests according to the ODS model.

The criteria for due concern would need to be agreed upon. Most of the criteria considered for the Laboratory Animals Directive are not applicable and would thus need to be adapted to the area of nature protection in general and to scenario 1 in particular. One general criteria which could be applied is information that might indicate non-compliance according to Article 34 (2) lit d) of the Laboratory Animals Directive.

As with the ODS model, and even more so, this approach would only be technical feasible if the Commission was able to collect enough information to conduct such assessments. First, it would need sufficient information to raise the issue of due concern as a prerequisite for assessments of the Member States’ systems. Second, it would need the necessary information on Member States’ enforcement system. As mentioned above relating to the application of the ODS model, the HD and BD oblige Member States to provide the Commission with specific information concerning derogations including controls in short-term periods of one (BD) and two (HD) years. In addition, under the Laboratory Animals Directive, the relevant Member States shall give all necessary assistance to the experts of the Commission in carrying out their duties. This includes the necessary information to conduct the assessments of the national control systems. Such information requests would be especially relevant for the assessment of national control systems related to impact assessments for plans and projects, where no specific reporting obligation exists. As for the application of the ODS model, the information basis for the Commission concerning impact assessments may need to be improved to enable assessments of national inspection systems.

Concerning administrative feasibility, an approach similar to the Laboratory Animals model would require additional resources for the Commission. There is some synergy effect with infringement procedures where the Commission is already obliged to evaluate Member States’ compliance with the HD and BD. However, this varies across different environmental legislation, especially concerning the HD, which is a much more recent legal instrument than the BD. A precise assessment of administrative feasibility is difficult due to the fact that, as of yet, not practical experience exists with audit type functions according to the Laboratory Animals

---

153 See above at 3.1.2.1.
154 See above at 3.1.2.3.
Directive. One of the solutions proposed in that context may also be applied to the area of nature protection, consisting of a system with some DG ENV officials and a framework contract with an organisation providing assessment expertise.\textsuperscript{155} For the evaluation of information that implies ecological expertise, e.g. related to compensatory measures according to Art. 6 (4) HD, external experts may also need to be involved (see option 5).

Concerning costs of such an approach in nature protection, the running of an Laboratory Animals model would be more expensive than an ODS model as audit type functions in general require more manpower than inspection requests, both at DG ENV and in Member States. As most of the information needed to decide on targeting of audit type functions seems to be available, no substantial extra costs arise here.

The effectiveness of an Laboratory Animals approach might be higher than that of an ODS approach as nature protection is a very localised issue and structured audit type functions are better able to provide the important learning points than are focused inspections. The knowledge of DG ENV on compliance problems will also grow quicker with the audit type functions than with inspection requests.

Concerning political acceptance of such an approach to nature protection, Member States generally regard themselves as exclusively competent for enforcement of EU law. Thus, they may be opposed to any guidance by the Commission on inspections going beyond a smaller or rather general degree of orientation.\textsuperscript{156} In particular, the economic importance of plans and projects may lead to especially strong resistance. However, a higher level of disparities in the enforcement of the HD and the BD may justify some kind of harmonisation of the control systems of Member States, including a stronger role for the Commission. Thereby, the specific report obligations of the Member States towards the Commission according to the HD and the BD in scenario 1 situations already indicate a stronger Commission oversight over inspections activities of the Member States.

The strengths, weaknesses, opportunities and threats of the application of an approach similar to the Laboratory Animals Directive to this scenario, therefore, are:

\begin{itemize}
  \item **Strengths:**
  \begin{itemize}
    \item Assessments of the national inspection systems are more suitable for assisting Member States in improving their inspection systems and thereby contributing to a more level playing field than requests for on-the-spot inspections
    \item Conducting such assessments would provide the Commission with an information basis for the long term-improvements of the national inspection systems
    \item To conduct the assessments, the Commission may request information by Member States in a pro-active way
    \item Most of the information for targeting the assessments is already available meaning little extra costs
  \end{itemize}
\end{itemize}

\textsuperscript{155} See in more details above at 3.1.2.3.

\textsuperscript{156} Interview, DG ENV, 21 September 2012.
Contingent assessments would be more acceptable to Member States than regular assessments

**Weaknesses:**

- The Commission may not get enough information to conduct such assessments, especially concerning control of issues related to impact assessments which are not covered by specific reporting obligations. The information basis for the Commission would thus need to be improved.
- Additional resources would be needed, including external ecological expertise and assessment knowledge

**Opportunities:**

- The specific reporting obligations in the HD and BD on controls already indicate a stronger Commission oversight, thus assessments may be more acceptable for Member States than in scenario 2 or other sectors.
- The underlying logic of localised behaviour in nature protection could be easier uncovered with structured assessments than with inspection requests

**Threats:**

- Member States would presumably be opposed to any substantial guidance by the Commission on inspections
- The economic importance of plans and projects for Member States may lead to especially strong resistance

### 3.2.4.4 Scenario 2: Application of similar approaches to situations where general rules apply

Scenario 2 comprises situations where general rules apply: Both the HD and the BD contain specifications, which must be respected on the ground.

**Application of the ODS model**

An application of the model of the ODS Regulation to this scenario would enable the Commission to request inspections by the Member States in order to control whether the general rules have been respected.

In contrast to scenario 1, scenario 2 concerns situations for which both the HD and the BD do not explicitly foresee specific controls by the Member States, but only the general surveillance obligation in Art. 11 HD, which can be based on Art. 10 TFEU for the BD.

Requiring specific inspections may thus compensate to some extent for the weak level of controls in some Member States. It may generally contribute to conducting inspections in a more targeted way, for example related to hunting activities in certain areas or to certain activities in Natura 2000 sites. Furthermore, Commission power to request inspections and coordinate inspections in Member States to some extent may have a deterrent effect and strengthen the cooperation of Member States. However, inspection requests in a field where no specific controls...
and corresponding information obligation exists (scenario 2), do appear less effective than in a situation where they do exist (scenario 1). This is because the potential contribution of single targeted inspections is arguably proportional to the level of sophistication of the national control system.

This approach would only be technical feasible if the Commission received enough information to be able to target possible cases for inspection. However, while requests under the ODS Regulation frequently result from the annual reports to be delivered under this Regulation, reports under the HD and the BD have to be delivered respectively only every six (Art. 17 (1) HD) three (Art. 12 (1) BD) years, if no derogations or other kind of authorisations require additional specific reports as in scenario 1. These relatively long reporting periods are due to the fact that some developments in nature conservation, e.g. development of species within protected sites, require surveillance over a longer period of time. Still, data gathered by Member States have become outdated in some cases, and updating this data as well as reporting on the status of site and species conservation in a sufficient amount of time is a top priority for the Commission.\textsuperscript{157}

Therefore, reaction to such information may, at least to some extent, be too late to be able to verify specific areas of concern. In addition, such information has to be specific enough to enable the Commission to take up the matter. To obtain the additional and specific information in a proactive way, the Commission could address corresponding requests to Member States. In applying the ODS model, such requests for information would be possible. Also, in promoting information exchange and cooperation between national authorities and between national authorities and the Commission as foreseen by the ODS Regulation, the Commission may obtain additional information. In the end, however, the information basis for the Commission concerning the application of general rules may need to be improved to enable inspection requests.

The ability of the Commission to promote information exchange and cooperation between national authorities and between national authorities and the Commission as foreseen by the ODS Regulation would also contribute to reducing the lack of knowledge or experience in some Member States, and by disseminating best practices, which contribute to a more level playing field. An initiative similar to GreenEnforce could be installed, with the Commission as coordinator, where Member States meet on a more regular basis to exchange information and practices.\textsuperscript{158} Having an overview over more enforcement systems, the Commission could give recommendations how to improve the system, in particular concerning the planning of inspections.\textsuperscript{159}

Concerning administrative feasibility, an approach similar to the ODS model would require additional resources for the Commission.\textsuperscript{160} However, taking into account activities of the Commission in infringement cases, the additional administrative burden of such a pro-active approach, intended to limit complaints and infringement cases, appear to be relatively low. For the evaluation of information that implies ecological expertise, external experts may need to be involved (see option 5).

\textsuperscript{157} Interview, DG ENV, 21 September 2012.
\textsuperscript{158} Interview, DG ENV, 21 September 2012.
\textsuperscript{159} Interview, DG ENV, 21 September 2012.
\textsuperscript{160} Interview, DG ENV, 21 September 2012.
Concerning costs, the critical point is the lack of dependable data to identify the most efficient inspection sites. DG ENV would need to build up an information system that allows for such targeting. This would require additional man-power in the Commission and would have some cost implications on the Member States. Additionally the localised situation in nature protection requires a significant number of inspection requests to act as robust deterrent.

Concerning effectiveness, the lack of sufficient data would be an obstacle for the build-up of an effective inspection system.

Concerning political acceptance of such an approach to nature protection, Member States generally regard themselves as exclusively competent for enforcement of EU law. Thus, they may be opposed to any guidance by the Commission on inspections going beyond a smaller or rather general degree of orientation. However, a higher level of disparities in the enforcement of the HD and the BD may justify some kind of harmonisation of the control systems of Member States, including a stronger rule for the Commission.

The strengths, weaknesses, opportunities and threats of the application of an approach similar to the ODS Regulation to this scenario, therefore, are:

**Strengths:**
- Requests for inspection could compensate to some extent for the weak level of controls in some Member States
- Requests for inspection could contribute to conducting inspections in the Member States in a more targeted way, e.g. concerning sensible issues
- Commission power to request inspections and to coordinate inspections in the Member States to some extent may have a deterrent effect and strengthen the cooperation of Member States
- The Commission may request information by Member States in a pro-active way
- Promoting information exchange and cooperation would contribute to more level playing field between all Member States

**Weaknesses:**
- Inspection requests in a context without specific controls and corresponding reporting obligations would be less effective than within a more sophisticated national control system (scenario 1)
- The Commission may not get enough information to target possible cases for inspection. The information basis for the Commission would thus need to be improved.
- Both the cost of the build-up of the information system and the costs of inspection requests will be high.
- Additional resources, including ecological external expertise, would be needed.

---

16 Interview, DG ENV, 21 September 2012.
Option 2 – Ad hoc surveillance-related powers for the EC in sectoral environment legislation

Threats:

- Member States would presumably be opposed to any substantial guidance by the Commission on inspections

Application of the Laboratory Animals model

An application of the model of the Laboratory Animals Directive to this scenario would enable the Commission to assess the national inspection systems concerning general rules, if there is due reason for concern.

Compared to the ODS model, this is a much more general approach to tackle the enforcement deficiencies in the Member States. As such, it is more suitable for assisting Member States in improving their inspection systems and thereby contributing to a more level playing field than requests for on-the-spot inspections.\textsuperscript{162} Also, conducting such assessments would imply the gain of an information basis, which may be used for long term-improvements of the Member States’ systems through further measures, e. g. through recommendations, or for ad-hoc inspection requests according to the ODS model. As a matter of principle, an assessment of the national inspection systems concerning general rules (scenario 1) would be as useful as an assessment of the national inspection systems concerning authorisations and decisions (scenario 1).

The criteria for due concern would need to be agreed upon. Most of the criteria considered for the Laboratory Animals Directive\textsuperscript{163} are not applicable and would thus need to be adapted to the area of nature protection in general and to scenario 1 in particular. One general criteria which could be applied is information that might indicate non-compliance according to Article 34 (2) lit d) of the Laboratory Animals Directive.

As with the ODS model, and even more so, this approach would only be technical feasible if the Commission would be able to collect enough information to conduct such assessments. First, it would need sufficient information to raise the issue of due concern as a prerequisite for assessments of the Member States’ systems. Second, it would need the necessary information on the Member States enforcement system. The reports under the HD and the BD, which have to be delivered respectively every six (Art. 17 (1) HD) and three (Art. 12 (1) BD) years, may form the information basis for both, if they are specific enough. However, Member State reports generally do not contain information on inspections and results achieved.\textsuperscript{164} To some extent, the Commission may request Member States to provide specific information as part of their duty under the Laboratory Animals model to give all necessary assistance to the experts of the Commission in carrying out their duties. As this may not prove sufficient for an assessment of the whole control system of a Member State, the information basis for the Commission would need to be improved, e. g. by explicitly requiring information on inspections or other controls in the periodical reports.

Concerning administrative feasibility, an approach similar to the Laboratory Animals model would require additional resources for the Commission. There is some synergy effect with infringement procedures where the Commission is already obliged to evaluate Member States

\textsuperscript{162} See above at 3.1.2.1.
\textsuperscript{163} See above at 3.1.2.3.
compliance with the HD and BD. However, this is not the case for all environmental legislations, especially concerning the HD, which is a much younger legal instrument than the BD. Here, the Commission is focussing more on transposition issues than on implementation issues. A precise assessment of administrative feasibility is difficult due to the fact that, as of yet, no practical experience exists with audit type functions according to the Laboratory Animals Directive. One of the solutions proposed in that context may also be applied to the area of nature protection, which is a system consisting of some DG ENV officials and a framework contract with an organisation providing assessment expertise. For the evaluation of information that implies ecological expertise, external experts may also need to be involved (see option 5).

Concerning costs, similar to an ODS approach, information collection would be the key costs of the approach. Some information, which is currently not available, would be needed to decide on the right targets for assessments while even more information would be needed in the audit type functions. Both the costs for the commission and the costs and administrative burden for the member states would be very high. Concerning effectiveness, the approach would be more effective than an ODS approach as structured assessment will be more efficient in detecting localised problems.

Concerning political acceptance of such an approach to nature protection, Member States generally regard themselves as exclusively competent for enforcement of EU law. Thus, they may be opposed to any guidance by the Commission on inspections going beyond a smaller or rather general degree of orientation. However, a higher level of disparities in the enforcement of the HD and the BD may justify some kind of harmonisation of the control systems of Member States, including a stronger rule for the Commission.

The strengths, weaknesses, opportunities and threats of the application of an approach similar to the Laboratory Animals Directive to this scenario, therefore, are:

- **Strengths:**
  - Assessments of the national inspection systems are more suitable for assisting Member States in improving their inspection systems and thereby contributing to a more level playing field than requests for on-the-spot inspections.
  - Conducting such assessments would provide the Commission with an information basis for the long term improvements of the national inspection systems.
  - To conduct the assessments, the Commission may request information by Member States in a pro-active way.
  - Contingent assessments would be more acceptable to Member States than regular assessments.

---

165 See more details above in 3.1.2.3.
166 Interview, DG ENV, 21 September 2012.
Option 2 – Ad hoc surveillance-related powers for the EC in sectoral environment legislation

- Weaknesses:
  - The Commission may not get enough information to conduct such assessments. The information basis for the Commission would thus need to be improved.
  - Additional resources would be needed, including external ecological expertise

- Threats:
  - Member States would presumably be opposed to any substantial guidance by the Commission on inspections
### 3.3 Summary table of option 2 analysis

#### Table 5: Analysis grid for option 2

<table>
<thead>
<tr>
<th>Category</th>
<th>Key features</th>
<th>Areas and scenarios under option 2: Ad hoc surveillance-related powers for the EC in sectoral environmental legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Waste shipments</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ODS model</td>
</tr>
<tr>
<td>Purpose</td>
<td>Strengthen consistent implementation and enforcement of EU environmental legislation</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Improve inspection procedures and surveillance activities</td>
<td></td>
</tr>
<tr>
<td>(Expected) functioning/mechanisms</td>
<td>Commission could request inspections</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Commission could assess national inspection systems</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Commission could request inspections</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Commission could assess national inspection systems</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Commission could request inspections</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Commission could assess national inspection systems</td>
<td></td>
</tr>
<tr>
<td>Scope</td>
<td>Would apply to Commission and all MS</td>
<td></td>
</tr>
<tr>
<td>Functioning details</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Funding</td>
<td>EU budget</td>
<td></td>
</tr>
<tr>
<td></td>
<td>MS budget for inspections</td>
<td></td>
</tr>
<tr>
<td></td>
<td>EU budget</td>
<td></td>
</tr>
<tr>
<td></td>
<td>MS budget for inspections</td>
<td></td>
</tr>
<tr>
<td></td>
<td>EU budget</td>
<td></td>
</tr>
<tr>
<td></td>
<td>MS budget for inspections</td>
<td></td>
</tr>
<tr>
<td></td>
<td>EU budget</td>
<td></td>
</tr>
<tr>
<td></td>
<td>MS budget for inspections</td>
<td></td>
</tr>
<tr>
<td></td>
<td>EU budget</td>
<td></td>
</tr>
<tr>
<td></td>
<td>MS budget for inspections</td>
<td></td>
</tr>
<tr>
<td>Legal framework and feasibility</td>
<td>Would need amendments in sectoral legislation (or a horizontal binding instrument)</td>
<td></td>
</tr>
<tr>
<td>Management and organisational aspects</td>
<td>Implications of increased resources at DG ENV</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Coordination of external expertise (option 4 &amp; 5)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Implications of increased resources and possibly new structure at DG ENV</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Coordination of external expertise (option 4 &amp; 5)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Implications of increased resources and possibly new structure at DG ENV</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Coordination of external expertise (option 4 &amp; 5)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Implications of increased resources at DG ENV</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Coordination of external expertise (option 4 &amp; 5)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Implications of increased resources at DG ENV</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Coordination of external expertise (option 4 &amp; 5)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Implications of increased resources and possibly new structure at DG ENV</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Coordination of external expertise (option 4 &amp; 5)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Implications of increased resources and possibly new structure at DG ENV</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Coordination of external expertise (option 4 &amp; 5)</td>
<td></td>
</tr>
</tbody>
</table>
### Areas and scenarios under option 2: Ad hoc surveillance-related powers for the EC in sectoral environmental legislation

<table>
<thead>
<tr>
<th>Category</th>
<th>Key features</th>
<th>Waste shipments</th>
<th>Nature protection: Scenario 1</th>
<th>Nature protection: Scenario 2</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>ODS model</td>
<td>LA model</td>
<td>ODS model</td>
</tr>
<tr>
<td>Reporting mechanisms</td>
<td></td>
<td>Commission would inform competent authorities of MS concerned of assessment results</td>
<td>-</td>
<td>Commission would inform competent authorities of MS concerned of assessment results</td>
</tr>
<tr>
<td>Use of specific tools</td>
<td>Inspection requests Assistance in inspections Information requests Promotion of cooperation</td>
<td>Inspection requests Assistance in inspections Information requests Promotion of cooperation</td>
<td>Inspection requests Assistance in inspections Information requests Promotion of cooperation</td>
<td>Inspection requests Assistance in inspections Information requests Promotion of cooperation</td>
</tr>
<tr>
<td>Time requirements, planning</td>
<td>Some planning and data collection necessary for identification of inspection requests</td>
<td>More planning needed but less data for identification needed of audit type functions (as in ODS model)</td>
<td>Some planning and data collection necessary for identification of inspection requests</td>
<td>More planning needed but less data for identification needed of audit type functions (as in ODS model)</td>
</tr>
</tbody>
</table>
### Area and Scenarios under Option 2: Ad hoc Surveillance-related Powers for the EC in Sectoral Environmental Legislation

<table>
<thead>
<tr>
<th>Category</th>
<th>Key Features</th>
<th>Waste Shipments</th>
<th>Nature Protection: Scenario 1</th>
<th>Nature Protection: Scenario 2</th>
</tr>
</thead>
</table>
| **Human Resources Needed**    | Costs for the Commission depend on the specific inspection requests  
Costs for Commission are mainly for planning and identification and for the follow up of the inspection  
Targeting of inspections might be possible due to known (or suspected) hot spots of illegal trafficking - Data availability is good but not sufficient yet | Estimate of Prognos per audit around €20,000 but more human resources needed for identification of audit, planning, reporting and analysis  
FVO spends for the whole process 100,000 per audit.  
Costs per audit might be smaller than for the FVO as system is smaller  
Data availability is good but not sufficient yet | Costs depend on the specific inspection requests  
Costs are mainly for planning and identification and for the follow up of the inspection  
Targeting of inspections difficult due to lack of data - Data availability is good but not sufficient yet | Costs depend on the specific inspection requests  
Costs are mainly for planning and identification and for the follow up of the inspection  
Targeting of inspections difficult due to lack of data - Data availability is good but not sufficient yet  
Lack of data will require more human resources (member states or EU)  
Estimate of Prognos per audit around €20,000 but more human resources needed for identification of audit, planning, reporting and analysis  
FVO spends for the whole process 100,000 per audit.  
Data availability is good but not sufficient yet, but will improve over time. | Lack of data will require more human resources (member states or EU)  
Estimate of Prognos per audit around €20,000 but more human resources needed for identification of audit, planning, reporting and analysis  
FVO spends for the whole process 100,000 per audit.  
Data availability is good but not sufficient yet, but will improve over time. |
| **Material Resources Needed** | Negligible as nearly all costs for the Commission are human resource costs | Negligible as nearly all costs are human resource costs | Negligible as nearly all costs are human resource costs | Negligible as nearly all costs are human resource costs | Negligible as nearly all costs are human resource costs |
| **Training Requirements and Other Expertise Required** | Expertise on: MS inspection systems Wastes | Expertise on: Assessments MS inspection systems Wastes | Expertise on: Assessments MS inspection systems Ecological issues | Expertise on: Assessments MS inspection systems Ecological issues | Expertise on: Assessments MS inspection systems Ecological issues | Expertise on: Assessments MS inspection systems Ecological issues |
## Option 2 – Ad hoc surveillance-related powers for the EC in sectoral environment legislation

### 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

<table>
<thead>
<tr>
<th>Category</th>
<th>Key features</th>
<th>Areas and scenarios under option 2: Ad hoc surveillance-related powers for the EC in sectoral environmental legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Overall administrative feasibility</strong></td>
<td><strong>Waste shipments</strong></td>
<td><strong>Nature protection: Scenario 1</strong></td>
</tr>
<tr>
<td></td>
<td>Increased resources at DG ENV needed</td>
<td>Increased resources at DG ENV needed</td>
</tr>
<tr>
<td></td>
<td>Coordination of external expertise (option 4 &amp; 5)</td>
<td>Coordination of external expertise (option 4 &amp; 5)</td>
</tr>
<tr>
<td><strong>Completeness</strong></td>
<td>Additional improvements needed on: Information system for EC National inspections, e.g. binding criteria</td>
<td>Additional improvements needed on: Information basis for EC National inspections, e.g. guidelines or criteria</td>
</tr>
<tr>
<td><strong>Expected socio-economic impacts</strong></td>
<td><strong>Costs of implementation</strong></td>
<td><strong>Cost effectiveness</strong></td>
</tr>
<tr>
<td>Increased resources at DG ENV needed</td>
<td>Low to medium costs</td>
<td>Medium costs</td>
</tr>
<tr>
<td>Coordination of external expertise (option 4 &amp; 5)</td>
<td>Medium costs</td>
<td>Medium costs</td>
</tr>
</tbody>
</table>
### Option 2 – Ad hoc surveillance-related powers for the EC in sectoral environment legislation

#### Areas and scenarios under option 2: Ad hoc surveillance-related powers for the EC in sectoral environmental legislation

<table>
<thead>
<tr>
<th>Category</th>
<th>Key features</th>
<th>Waste shipments</th>
<th>Nature protection: Scenario 1</th>
<th>Nature protection: Scenario 2</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Benefits of the option</strong></td>
<td></td>
<td>ODS model</td>
<td>LA model</td>
<td>ODS model</td>
</tr>
<tr>
<td></td>
<td>Partial compensation for weak control level in some MS</td>
<td>Assessments more suitable for assisting MS in improving their inspection systems than inspection requests</td>
<td>Assessments more suitable for assisting MS in improving their inspection systems than inspection requests</td>
<td>Assessments more suitable for assisting MS in improving their inspection systems than inspection requests</td>
</tr>
<tr>
<td></td>
<td>Targeting of most sensible sites possible (with least effective controls)</td>
<td>Some deterrent effect</td>
<td>Some deterrent effect</td>
<td>Some deterrent effect</td>
</tr>
<tr>
<td></td>
<td>Deterrent effect</td>
<td>Deterrent effect</td>
<td>Deterrent effect</td>
<td>Deterrent effect</td>
</tr>
<tr>
<td></td>
<td>Pro-active information requests possible</td>
<td>Pro-active information requests possible</td>
<td>More effective than scenario 2 (more sophisticated control system)</td>
<td>Pro-active information requests possible</td>
</tr>
<tr>
<td></td>
<td>More level playing field by promoting information exchange and cooperation</td>
<td>More level playing field by promoting information exchange and cooperation</td>
<td>More effective than scenario 2 (more sophisticated control system)</td>
<td>More level playing field by promoting information exchange and cooperation</td>
</tr>
</tbody>
</table>

#### Impacts on stakeholders

<table>
<thead>
<tr>
<th>Category</th>
<th>Key features</th>
<th>Waste shipments</th>
<th>Nature protection: Scenario 1</th>
<th>Nature protection: Scenario 2</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Benefits of the option</strong></td>
<td></td>
<td>Could create a more level playing field through additional and more effective inspections and exchange of information and</td>
<td>Could create a more level playing field through improvements of assessed national systems</td>
<td>Could create a more level playing field through improvements of assessed national systems</td>
</tr>
<tr>
<td></td>
<td>Could create a more level playing field through improvements of assessed national systems</td>
<td>Could create a more level playing field through additional inspections and exchange of information and</td>
<td>Could create a more level playing field through additional inspections and exchange of information and cooperation</td>
<td>Could create a more level playing field through improvements of assessed national systems</td>
</tr>
</tbody>
</table>

---

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
### Option 2 – Ad hoc surveillance-related powers for the EC in sectoral environment legislation

#### Areas and scenarios under option 2: Ad hoc surveillance-related powers for the EC in sectoral environmental legislation

<table>
<thead>
<tr>
<th>Category</th>
<th>Key features</th>
<th>Waste shipments</th>
<th>Nature protection: Scenario 1</th>
<th>Nature protection: Scenario 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Expected) results</td>
<td></td>
<td>ODS model</td>
<td>LA model</td>
<td>ODS model</td>
</tr>
<tr>
<td></td>
<td>cooperation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Potential for environmental improvement/benefit</td>
<td>Partial compensation for weak control level in some MS</td>
<td>Assessments more suitable for assisting MS in improving their inspection systems than inspection requests</td>
<td>Assessments more suitable for assisting MS in improving their inspection systems than inspection requests</td>
<td>Lack of sufficient data could be an obstacle for targeting of inspections</td>
</tr>
<tr>
<td></td>
<td>Targeting of most sensible places possible (with least effective controls)</td>
<td>Some deterrent effect</td>
<td>Some deterrent effect</td>
<td>Little effect on the quality or quantity of inspections</td>
</tr>
<tr>
<td></td>
<td>Some deterrent effect</td>
<td>Gathering of information basis for long-term improvements</td>
<td>Gathering of information basis for long-term improvements</td>
<td>Some deterrent effect</td>
</tr>
<tr>
<td></td>
<td>Some effect on the quality of inspections if targets can be well identified</td>
<td>Improvement of regulatory system</td>
<td>Improvement of regulatory system</td>
<td>Some deterrent effect</td>
</tr>
<tr>
<td></td>
<td>Increase in number of national inspections</td>
<td>Increase in number of inspections in identified countries</td>
<td>Increase in number of inspections in identified MS</td>
<td>Improvement of regulatory system</td>
</tr>
<tr>
<td></td>
<td>Increase in compliance level and some environmental benefits</td>
<td>Increase in compliance levels and some environmental benefits if enough inspection requests are issued due to localised problems</td>
<td>Increase in compliance levels and environmental benefits if enough inspection requests are issued due to localised problems</td>
<td>Smaller improvements of regulatory system</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Increase in number of inspections in identified countries</td>
<td>Increase in number of inspections in identified MS</td>
<td>Smaller increase in number of inspections in identified countries</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Increase in compliance levels and some environmental benefits</td>
<td>Increase in compliance levels and environmental benefits if enough inspection requests are issued due to localised problems</td>
<td>Smaller increase in compliance levels and some environmental benefits</td>
</tr>
</tbody>
</table>
## Option 2 – Ad hoc surveillance-related powers for the EC in sectoral environment legislation

### Areas and scenarios under option 2: Ad hoc surveillance-related powers for the EC in sectoral environmental legislation

<table>
<thead>
<tr>
<th>Category</th>
<th>Key features</th>
<th>Waste shipments</th>
<th>Nature protection: Scenario 1</th>
<th>Nature protection: Scenario 2</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>ODS model</td>
<td>LA model</td>
<td>ODS model</td>
</tr>
<tr>
<td>Potential impacts at international level</td>
<td>Changes to existing Directives would need to conform to existing international agreements e.g. Basel Convention</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Political acceptance</td>
<td>MS would oppose inspection requests, rather accept coordination role of Commission</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>MS would fear comparison and thus oppose assessment of national inspection systems</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>MS may oppose any substantial Commission role, especially concerning plans and projects</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>MS would oppose any substantial Commission role, especially concerning plans and projects</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>MS may oppose any substantial Commission role</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Proportionality</td>
<td>Necessity of the inspection requests</td>
<td>Only contingent assessments (due concern needed)</td>
<td></td>
<td>Only contingent assessments (due concern needed)</td>
</tr>
<tr>
<td></td>
<td>Only contingent assessments (due concern needed)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Necessity of the inspection requests</td>
<td>Only contingent assessments (due concern needed)</td>
<td></td>
<td>Only contingent assessments (due concern needed)</td>
</tr>
<tr>
<td></td>
<td>Only contingent assessments (due concern needed)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Potential) Risks and obstacles, technical constraints</td>
<td>Lack of sufficient information to target inspections for requests</td>
<td>Lack of sufficient information for establishment of due concern and assessment of national inspection systems</td>
<td>Lack of sufficient information to target inspections for requests</td>
<td>Lack of sufficient information for establishment of due concern and assessment of national control systems</td>
</tr>
</tbody>
</table>
Chapter 4: Option 3 – Enhanced use of peer review approach in the existing IMPEL Review Initiative Project

This option looks at the possibilities of enhancing the use of a peer review approach in the existing European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) Review Initiative project (IRI) to strengthen the EU’s role with regard to environmental inspection. Several different sources of information were used in the analysis including expert interviews and IMPEL IRI reports.

This option is based on the model of the IRI. It implies extending the work of IMPEL, which is a voluntary and independent association. Three different scenarios of expanding the current state of the IRI are analysed. The objective of each scenario is the same – to strengthen the EU’s role in surveillance activities in the Member States. The three scenarios analysed include:

- **Scenario 1**: More frequent application of IRI by IMPEL (through more frequent peer reviews)
- **Scenario 2**: Expansion of IRI to other areas of environmental law (other than review of inspectorates and inspection procedures related to control of industrial emissions)
- **Scenario 3**: Introducing requirements of IRI into law

### 4.1 Analysis of the IMPEL Review Initiative

The IRI was set up under the auspice of IMPEL – an international non-profit association of the environmental authorities of the EU Member States (MS), acceding and candidate countries of the European Union and EEA countries. The association is registered in Belgium and its legal seat is in Brussels, Belgium. IMPEL was set up in 1992 as an informal Network of European regulators and authorities concerned with the implementation and enforcement of environmental law. IMPEL became an independent association with legal status in 2008. In 2009, a Memorandum of Understanding on cooperation between IMPEL and the European Commission was signed.

The Network’s objective is to create the necessary impetus in the EU to make progress on ensuring a more effective application of environmental legislation. The core of IMPEL activities concerns awareness raising, capacity building and exchange of information and experiences on implementation, enforcement and international enforcement collaboration as well as promoting and supporting the practicability and enforceability of European environmental legislation.

IMPEL contributes to supporting MS in the implementation and the enforcement of environmental legislation. The Recommendation on Minimum Criteria for Environmental Inspections (RMCEI) invited IMPEL “…to consider the establishment of a review scheme, under
Option 3 – Enhanced use of peer review approach in the existing IMPEL Review Initiative Project

which Member States report and offer advice on inspectorates and inspection procedures. As a result of this, a series of projects known as the IMPEL Review Initiative was established as a voluntary scheme to report on and offer advice on inspectorates and inspection procedures, as well as provide for informal reviews of environmental authorities in IMPEL Member countries. Findings of each IRI project are aimed at highlighting examples of good practice for other Member State Inspecting Authorities, and the opportunities for development by the host Inspecting Authority. The specific objectives of the IRI are:

- Providing advice to environmental authorities seeking an external review of their structure, operation or performance by experts from other IMPEL Member Countries for the purpose of benchmarking and continuous improvement of their organisation
- Encouraging capacity building in environmental authorities in IMPEL Member Countries
- Encouraging the exchange of experience and collaboration between these authorities on common issues and problems
- Spreading good practice leading to improved quality of the work of environmental authorities and contributing to continuous improvement of quality and consistency of application of environmental law across the EU (“the level playing-field”)
- Contributing to consistent implementation and enforcement of environmental law in the European Union

Since the IRI was established, 22 (with 2 additional on-going in 2012) IMPEL member countries have gone through an IRI review. The IRI scheme was evaluated in 2003 and in 2010 to determine areas of improvement and identify the success factors.

4.1.1 Main activities of IRI

The IRI is based on a peer review process. Peer review is a process of self-regulation by a process of evaluation involving qualified individuals within the relevant field. Peer review methods are often used to maintain standards, improve performance and provide credibility. In the case of the IRI, the peer review process is carried out by qualified environmental inspectors and staff of MS environmental agencies.

The IRI programme sends a team of senior inspectors from different countries to explore the regulatory system of the candidate inspectorate by comparing practice in the candidate inspectorate with the arrangements in the inspectorates of the review team members. Currently,

---


the IRI carries out two audit type inspection reviews a year. Findings of the review are recorded in a final report at the end of the project and published on the IMPEL website.

### 4.1.2 Organisational aspects

As the IRI is a voluntary scheme, candidate inspectorates for review are selected on a voluntary basis. The inspectorates and timeline for review are identified and agreed upon at the bi-annual IMPEL general assembly (GA). A terms of reference (ToR) outlining the scope of the project is submitted and presented to the IMPEL GA and the IMPEL Cluster 1 group: Improving permitting, inspection and enforcement. The team for the review process is then selected, which is agreed upon with the inspectorate under review. There are several different actors that are involved in an IRI project, which include\textsuperscript{169}:

- **IRI ambassadors** – a small team that helps to promote the IRI wherever possible and available to answer any questions about the IRI scheme that potential hosts may have. The IRI ambassador is the first point of contact for the host. They can advise on writing the Terms of Reference and help provide information on how to select a review team and estimate the costs of the review.

- **Review team leader** – the IMPEL Plenary establishes a pool of 3-4 Team leaders with experience of the IRI process, each for a two year commitment and are selected for individual reviews by agreement with the candidate inspectorate. Qualifications for a team leader include ability to be a good chairman, encouragement of all review team members to participate, and experience with IRI.

- **Review team experts/participants** – experts from different Member States, normally from inspectorates. During the IRI trial phase (from 2001-2003, 6 trial reviews took place), members of the review teams were selected by the Team leader from a pool of volunteers from Member State inspectorates. The review team should have a maximum of eight members and this should include a member of a previous review, a member from the host authority and if possible a future review host country.

- **Rapporteur(s)** – responsible for helping to write down notes during pre-review meetings, during the review process, and drafting up final report. Ideally, two rapporteurs should be assigned for each IRI. One of them should have participated in a previous IRI and both should be working in an environmental authority or have a good knowledge of the subject.

For each IRI project, approximately 5 (minimum) to 8 individuals are part of the review team (1 team leader, 1 to 2 rapporteurs and several experts from different MS). In the IRI evaluation reports, it is strongly emphasized that experienced senior people are included in the review team.

\textsuperscript{169}IMPEL (2010), Support for the new IRI scheme, \url{http://impel.eu/wp-content/uploads/2012/02/Support-for-the-new-IRI-scheme-Draft-Final-report.pdf}
as they bring practical understanding of the subject matter and a good basis for provision of advice\textsuperscript{170}. The team should also be composed of individuals with experience in policy, technical, and organisational issues. Further, there should be at least one member from a previous candidate inspectorate and one from an inspectorate scheduled for future review. Other important actors that assist the review team include the:

- **Host** – the host is usually the environmental authority under review. The host is responsible for the different meetings held during the review process (pre-review meeting and post-review meeting), as well as sending out information to the review team.

- **National coordinator** – a national coordinator is designated in each IMPEL member country and provides nominations for the review team positions and other participants. This could be previous participants as well as people new to the IRI process. It would not be a commitment to participate in future reviews but just an expression of interest. This would enable a pool of participants to be drawn up which will help when identifying participants for future reviews.

- **IMPEL secretary** – responsible for managing budget and other financial and administrative matters.

The IRI peer review process is composed of several steps.

Figure 1 charts out the different tasks and actors involved in each step.

### 4.1.3 IRI’s peer review process

The main tools of the IRI scheme is the questionnaire, which is used to carry out the inspection review process. It sets out the topics for the review team to consider under sections such as legal basis of the inspectorate, workload, training and procedures. The questionnaire was shortened and simplified after the evaluation of the scheme in 2003, which considered the earlier questionnaire to be too complicated and using language that was difficult to understand. After the review of the IRI scheme, the questionnaire is now tailor made for each review based on the work and wishes of the host (environmental inspectorate to be reviewed)\textsuperscript{171}. When drafting the Terms of Reference for its IRI, the environmental authority (under review) decides on the precise scope of the review in accordance with its specific needs. This enables the reviews to be tailor made.

\textsuperscript{170} Interview with IMPEL IRI representative, 24 May 2012

\textsuperscript{171} IMPEL (2010), Support for the new IRI scheme, \url{http://impel.eu/wp-content/uploads/2012/02/Support-for-the-new-IRI-scheme-Draft-Final-report.pdf}
The revised IRI scheme is applicable to authorities involved in permitting and inspection. The questionnaire consists of 4 main parts:

- **Part A**: covers the institutional and legal setting as well as the organisation and management of the environmental authority. This section is usually completed by the authority before the start of the review (to cut down the review time as well as ensuring participants get up to speed quickly).

- **Part B**: covers permitting activity, with 4 questions exploring the relationship between the permitting and inspection authorities.

- **Part C**: focuses on how the authority carries out its inspection tasks based on the environmental inspection cycle (provided by RMCEI guidelines): planning of inspections, execution framework, execution and reporting, and performance monitoring.

- **Part D**: covers a site visit if chosen by the host authority, which is a useful way to confirm the review team's understanding of the regulatory system and the work.
of the environmental authority as well as the relationship of the environmental authority with industry.

Since the review of the IRI scheme, the peer review process has been shortened to 3-4 days (as opposed to 5 days originally) and a part of the review is prepared in advance.\(^{172}\)

### 4.1.4 Funding mechanisms and budget of IMPEL IRI

Since the formation of IMPEL as an independent legal entity, core funding for IMPEL has taken the form of LIFE+ funding and partly through its Members. LIFE is the EU’s financial instrument supporting environmental and nature conservation projects throughout the EU, as well as in some candidate, acceding and neighbouring countries. Since 1992, LIFE has co-financed some 3506 projects, contributing approximately €2.5 billion to the protection of the environment.\(^{173}\)

The applicable budgetary rules for this kind of Commission’s financing differ to some extent from the budgetary rules applicable for LIFE+ project funding in the EU Member States. For example, Member State’s human resources put into a project cannot be accounted for in monetary terms.

IMPEL Members have to pay at least 30% of the overall IMPEL-budget (minimum), the Commission (though the LIFE+ fund) may then pay 70% of this overall budget (maximum). In other words for every 3 Euros a Member pays into the IMPEL budget, the Commission may pay 7 Euros to IMPEL.\(^{174}\) Therefore, the size of the Commission’s payment is limited through the size of the IMPEL Member’s payment. As a rule, if Members pay more into the IMPEL budget, the Commission will pay more to IMPEL as well. Only direct payments of IMPEL Members into the IMPEL-budget are recognised by the Commission’s financial rules as “payment of a Member towards IMPEL”. Contributions such as rooms, meals, human resources and payments of a Member which are paid directly into a project are not counted as part of the IMPEL Member’s share of 30%. Therefore, it is important to note that in addition to financial contributions, Members also contribute time and expertise as well as other contributions like meeting venues. This contribution has not been monetised; however, IMPEL representatives state that this contribution is significant compared to the purely financial contributions received from member countries and LIFE+.

The two (since spring 2012) IMPEL clusters meet to identify the priorities for spending. Cluster 1 includes decisions on the IRI alongside other projects with core inspection focused activity (other than on waste shipment which is assessed by the TFS cluster). The views of all clusters are brought to the General Assembly, which makes the final decision on which activities are to be funded. The decision making of the General Assembly is based on the priorities of the IMPEL members.

Cost is a concern that is consistently mentioned when countries consider having an IRI. After a review of some past IRIs, it was noted that on average, a normal IRI where just dinners and

---

\(^{172}\) Interview with IMPEL IRI representative, 24 May 2012


transport are covered by the host will cost between €3 000 - €5 000. The time spent by the project team to carry out the reviews and attend meetings is not usually charged as it is done on a voluntary basis. Additional services such as translation, use of external consultants and training will increase these costs. Table 6 illustrates the proposed division of costs between IMPEL and the host.

Table 6: Typical division of costs

<table>
<thead>
<tr>
<th>IMPEL</th>
<th>Host</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preparatory meeting:</td>
<td>Preparatory meeting:</td>
</tr>
<tr>
<td>Travel for team leader and rapporteurs</td>
<td>Dinner (1 or 2 evenings)</td>
</tr>
<tr>
<td>Hotel for team leader and rapporteurs</td>
<td></td>
</tr>
<tr>
<td>Project:</td>
<td>Project:</td>
</tr>
<tr>
<td>Travel for 8 participants</td>
<td>Dinner, 3-4 evenings</td>
</tr>
<tr>
<td>Hotel for 8 participants</td>
<td>Daily transport from hotel to meeting</td>
</tr>
<tr>
<td>Meeting facilities for the project</td>
<td></td>
</tr>
<tr>
<td>Lunch for the participants</td>
<td></td>
</tr>
<tr>
<td>Optional:</td>
<td>Interpreters during the project</td>
</tr>
<tr>
<td></td>
<td>English course for colleagues</td>
</tr>
<tr>
<td></td>
<td>Consultant</td>
</tr>
<tr>
<td></td>
<td>Translation of the report in own language</td>
</tr>
</tbody>
</table>

By examining details of the IMPEL project budgets for four peer review projects agreed over the last two years a good indication of the current administrative costs of peer review. These specified costs only cover travel, accommodation, meeting venue, etc. The total average cost for a review under the IRI is around €11,000. Table 16 in the Annex presents a breakdown of the estimated costs of the IRI projects that have been implemented to date.

4.1.5 Dissemination of findings

The final report of the review is the principal deliverable of each IRI project. The report usually contains a review background, a list of the participants, information on expenditure, and recommendations on its dissemination. Training and Educational material on lessons learnt and on examples of good practice for incorporation into training schemes of Member State inspectorates Relevant extracts from the review report are also used for dissemination to other IMPEL members and the EC. Publication of IRI Review reports on the IMPEL website is an important part of the dissemination process. Furthermore, presentation of the review findings and best practices are provided to the IMPEL general assembly and Cluster 1.


For dissemination of IRI findings, IMPELS’s communication strategy is also used. The communication strategy includes activities such as:

- Collection of best practices of communication by Member States
- Analysis of collected information and recommendations for Member States
- Provide input for the IMPEL newsletter
- Active communication to the press of the IMPEL TFS (transboundary shipment of waste) project results/activities
- Active communication of project and other results to key partners, especially to the political decision makers such as the European Parliament
- Participation in international forums

### 4.1.6 Strengths and areas of improvement of the IRI

Since its establishment in 2002, the IRI has reviewed or is in the process of reviewing approximately 24 environmental authorities. Following are some of the main successes and areas of improvement of the current IRI scheme.

#### Strengths

- The pre-review meeting is invaluable as it allows the project team to go through the basic information about institutional and legal matters well in advance of the review. This helps in preparing the team for the actual review.
- The recently developed, IRI questionnaire was significantly improved by rendering it shorter and easier to understand. The incorporation of the Environmental Inspection Cycle from the “Doing the right things” Guidance Book also helps to structure discussions.
- Active participation of all the review team members has greatly contributed to getting a full, balanced picture of the review.
- The review team leader leads the discussions and frequently summarises the areas of good practice and opportunities for development. Team leaders are encouraged to motivate and stimulate all other review team members to actively take part in the discussions.
- It is strongly encouraged that the next Member State to receive an IRI is involved. This enables the review group to openly discuss ways to improve the IRI process and provides the opportunity for the Member State in question to raise issues and understand what would be required during its IRI.

---

The review process helps to develop “capacity building” for both the Review Team members and the Candidate Inspectorate – both parties leave the meetings with shared experiences and knowledge of best practices and how to further improve not only inspection activities but also on the review process itself.

The IRI process is unique in that it is not an audit in the traditional sense of the word but a good balance between examining details and establishing the overall regulatory philosophy. The process is based on mutual benefits and peer review, which eases knowledge exchange and promotes transparency.

The IRI process is equally successful in large and small inspectorates and across all variations of cultural, constitutional and legal backgrounds.

The high level of communication and exchange of good practices.

The majority of feedback received on the IRI reviews is positive. Some examples of how the review process was able to influence changes to organisational and operational systems and arrangements are provided in Table 7. These examples are taken from the final reports of the reviews that took place during the IRI trial phase (2001-2003).

### Table 7: Impacts of reviews carried out under IRI

<table>
<thead>
<tr>
<th>Member country</th>
<th>Impacts/lessons learned</th>
</tr>
</thead>
</table>
| Spain          | After the review, 2 courses were held for the Galician inspectors during which inspectors from other countries gave some of the lectures.  
The IRI Review report on the Galician Environmental Inspection Service was translated into Spanish and Galician and sent to all the Autonomous Communities and local authorities and to other bodies in Galicia. |
| Netherlands    | The final IRI from the inspectorate in the Netherlands provided useful input and recommendations to be carried out by the Province of Overijssel. Generally, it can be concluded that the review gave a very positive boost both to the staff involved and to the quality of work done by the whole organisation. |

---

**Information for each country taken from the following sources:**

**Terms of References for IRI projects on-going reviews:**
- Italy - [ToR-IRI-Lombardy.doc](http://impel.eu/wp-content/uploads/2012/02/Terms-of-Reference-ToR-IRI-Lombardy.doc)
- Iceland - [ToR_IRI-iceland_20111206.doc](http://impel.eu/wp-content/uploads/2012/01/ToR_IRI-iceland_20111206.doc)

**Final reports of IRI projects:**
- Ireland - [IRI_report.pdf](http://www.edis.sk/ekes/irireport.pdf)
<table>
<thead>
<tr>
<th>Member country</th>
<th>Impacts/lessons learned</th>
</tr>
</thead>
</table>
| Belgium       | - Examples of good practice and advice where discussed in several regional and national meetings with policy-makers and experts. Politicians responsible for this part of public work were involved in one way or another with the process.  
- The report was disseminated to regional, national and international (IMPEL) levels.  
- Following the completion of the review, the BIME has developed Memoranda of Understanding with six local authorities and one Administration.  
- The Brussels IRI report was published as part of the BIME Annual Report. |
| Croatia       | - More thorough analysis of the results produced from announced and unannounced inspections may prove beneficial to understanding the different outcomes of the respective approaches  
- The use of further prioritisation criteria for inspections will enable more effective use of resources.  
- Consider using a guideline document to assist inspectors in deciding how to prioritise the importance of complaints  
- Demographic challenge – a significant proportion of staff are in the 40-50 age range. Therefore important to take steps to address this and ensure there is no significant loss of experience and expertise when that group retires or leaves the Inspectorate  
- Look into possibilities for systematic mapping of the competence levels of staff, and consider a gap analysis of current and future competency needs within the inspectorate  
- Consider developing an internal procedure to keep and maintain data for a long enough period to ensure availability of data for future needs, e.g. concerning clean up and soil remediation on discontinued industrial sites |
| Germany       | - The contents of the IRI Report were not widely disseminated because of the absence of a German translation. Therefore, in this case, translation would have greatly helped dissemination of the report.  
- Those who were involved in drafting the report and those who read the report were able to have a more global insight as to how specific directives are being handled in other European countries. This was new knowledge and was judged to be valuable.  
- The findings of this project allow a more precise and detailed planning of the individual inspector’s workload. This may result in more comprehensive and/or more frequent inspections of specific IPPC installations in the future. |
| France        | - Following the IMPEL review a new efficiency programme was drafted by the Ministry and representatives from the DRIREs. This programme includes many ideas discussed during the review, including the following:  
- Definition of a target time limit for the complete process of permitting.  
- Introduction of a formal system for rotating inspectors between sites after 6 years.  
- Experiments in separating inspection and permitting functions.  
- Improvement of response to the public. |
<table>
<thead>
<tr>
<th>Member country</th>
<th>Impacts/lessons learned</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- Formal recognition of the status of “confirmed inspectors”.</td>
</tr>
<tr>
<td></td>
<td>- Greater use of the Intranet as a dynamic system for exchange of expertise and guidance between inspectors and to publish minutes of meetings of groups of experts.</td>
</tr>
<tr>
<td></td>
<td>- Development of the national model permit for classified installations subject to authorisation.</td>
</tr>
<tr>
<td></td>
<td>- Creation of specialist teams for environmental and health risk assessment.</td>
</tr>
<tr>
<td>Ireland</td>
<td>- The IRI project was able to encourage ideas for capacity building, discussion on common issues/problems and the development and dissemination of good practice were achieved. The external review was seen as a constructive exercise and particularly useful as a benchmarking tool and for generating ideas for continual improvement.</td>
</tr>
<tr>
<td></td>
<td>- The recommendations in the review have fed into the EPA Strategic Framework 2003 – 2006. To date the majority of the ‘Opportunities for Development’ have been addressed.</td>
</tr>
<tr>
<td></td>
<td>- The role of the Agency was reviewed and a high level document outlining the Agency’s Strategic Framework 2003 – 2006 was published.</td>
</tr>
<tr>
<td></td>
<td>- The establishment of the Office of Environmental Enforcement within the EPA has achieved further integration of enforcement activities. This office is dedicated to the implementation and enforcement of environmental legislation in Ireland. Its establishment gives an extra focus on enforcement by bringing together all the major enforcement activities of the EPA into one Office. It gives greater attention and priority to supervising the environmental performance of local authorities.</td>
</tr>
<tr>
<td>Denmark</td>
<td>- After the review a workshop concerning responsibilities under the Seveso II Directive was held, and the Fire Inspectorate, the Labour Inspecting Authority and the local municipalities participated.</td>
</tr>
</tbody>
</table>

**Areas for improvements:**

Communication and dissemination of findings of an IRI review is one of the principal areas for improvements highlighted by both experts and in the project reports. It was pointed out that the dissemination process does not allow for ‘central’ conclusions and the usability of outputs might be limited.

During the revision of the new IRI scheme, recommendations were discussed to improve communication of results. These include holding additional meetings with staff to discuss the findings subsequent to the final presentation at the end of the review. Further, annual meetings could be held with those involved in the IRI, including hosts, review team, ambassadors etc. to discuss how the recommendations have been implemented in each country and what has

---

Option 3 – Enhanced use of peer review approach in the existing IMPEL Review Initiative Project

changed as a result of the review. Additional articles on the IRI could be included on the IMPEL website and newsletter.

Further efforts could be made towards raising awareness of the scheme outside of IMPEL – such as to the European Commission and the European Parliament. The IRI could also be promoted along with the RMCEI as it is seen as a way to informally review compliance with the legislation. Other possible links and promotion include the Doing the right things project.181

The IRI is one way of informally reviewing compliance with the RMCEI and could be promoted through this angle. This could pique the interest of relevant experts and Member countries to participate in an IRI review.

Finally, it should be noted that the IRI is a voluntary initiative based on the exchange of good practices and peer review. Inspectorates are not obliged to implement recommendations; therefore a concern lies in ensuring that recommendations included in the final reports of reviews are actually acted upon. It has been suggested to hold additional meetings, such as an annual meeting of those involved in the IRI (e.g. hosts, review team, ambassadors etc.) where the IRI process could be discussed with staff to discuss the findings and how the recommendations have been implemented in each country and what has changed as a result of the review.

4.2 Other peer related initiatives

Although Option 3 focuses on the IRI and peer review more generally, it is important to note that enforcement of EU law can be supported by other peer related activities. Most notable in this regard is for authorities in more than one Member State to come together to undertake implementation and enforcement activities. This enables a learning experience and sharing of views on the performance of how Member States perform. The most notable example of this also comes from IMPEL in the form of joint inspections under Waste Shipment Regulation, which has been viewed in a positive light by the Commission. Concern over trans-boundary impacts of waste shipments have acted as a stimulus to these activities and individual inspectors in some Member States where there is very low capacity for WSR implementation strongly welcome these actions as it provides an opportunity to discuss concerns with colleagues in other Member States whereas there may be little opportunity to discuss their problems domestically. Joint inspections can raise some issues that would occur in peer review as participants share their practices and experience of inspection, reaching conclusions on practical steps to enhance inspection efficiency and, potentially, enhance capacity more widely. Under IMPEL joint inspections are generally hosted by a member with significant experience, with inspectors from other members joining to take part in practical inspection activity and discussions. However, a joint inspection does not review the entire enforcement activity of one inspectorate in the same way that a peer review process does.

There are other examples of joint inspection, such as by authorities responsible for implementing EU GMO legislation, as well as in fisheries enforcement. With regard to GMOs, joint inspections are organised through the European Enforcement Project (EEP), which is a European-wide network for inspectors and inspectorates of the EU Member States and non-EU countries to exchange experiences and establish methodologies for the harmonisation of approaches to inspection and enforcement of work with GMOs. It organises ‘Joint Inspection Visits’, but does not undertake peer review\textsuperscript{182}.

With regard to fisheries, the Community Fisheries Control Agency organises the joint deployment of the national means of control and inspection\textsuperscript{183}. Joint deployment plans are agreed by the Agency and the Member States concerned on the basis of identified criteria, benchmarks, priorities and common inspection procedures. Multinational teams are set up for inspection at sea and onshore in identified areas and on identified fisheries and fleets at given times. The Member States concerned adopt the necessary measures to undertake the joint control and inspection activities. The Agency also undertakes inspection training. To achieve greater cooperation between the inspection services of the Community the Member States have nominated national inspectors and national inspection means to be deployed during joint inspection operations. National inspectors fulfilling specific criteria as specified in Regulation (EC) No 1042/2006 may be appointed as Community Inspectors and are able to carry out inspections of fishing vessels in Community waters under the jurisdiction of another Member State and in international waters. These Community inspectors may be assigned for specific control and inspection programmes, international control and inspection programmes or inspection programmes developed by Member States.

In taking forward peer-related enforcement activities, therefore, the Commission may wish to consider additional activities to support the core focus on peer review.

4.3 Other policy developments on peer review

Within the Impact Assessment of the policy options to accompany the Blueprint to Safeguard Europe’s Water Resources, the issue of inadequate governance of water is one of the issues being addressed.\textsuperscript{184} The consultation document states that implementation failure can undermine the effectiveness of EU water policy. Concerns on governance include “concerns of fragmented institutional structures, poor intra and inter-institutional relationships and capacity (personnel, technical capacity, training, etc.) which undermine the ability of authorities to perform the detailed analyses necessary to implement the [Water Framework Directive], perform the necessary monitoring, develop and implement River Basin Management Plans (RBMPs) and develop amended plans in an effective adaptive management framework”. One option that is being considered within the Blueprint policy options is:

\textsuperscript{182} The EEP does not have a public website, but a secure website for members: \url{http://www.eep-network.org/}

\textsuperscript{183} \url{http://cfca.europa.eu/}

\textsuperscript{184} Blueprint Consultation Document. \url{http://ec.europa.eu/environment/consultations/pdf/blueprint.pdf}
“To develop a peer review process for river basin district authorities within the context of the WFD Common Implementation Strategy with a view to help them identifying ways of improving their coordinating role”.

This option is not yet further elaborated and the option does not propose a specific peer review approach, but rather that one be developed after the publication of the Blueprint. There would therefore be potential for taking forward wider initiatives on peer review by DG ENV by integrating the wider approach with that for water.

4.4 Application of the IRI/peer review model to DG ENV role in investigations

This section discusses three scenarios relating to option 3 and the possibilities of extending the IRI and the use of peer review of authorities in the Member States responsible for supervision activities. It explores what is meant by each option, exploring different aspects and alternatives within these and sets out the strengths, weaknesses, opportunities and threats of each.

4.4.1 Scenario 1: More frequent application of IRI by IMPEL

Currently, the IRI carries out approximately 2 to 3 peer reviews a year in Member States. In this scenario, it is envisaged that more peer reviews would be carried out – for example up to five a year. This option simply seeks to extend the frequency of peer reviews undertaken by IMPEL. The limitations of undertaking these peer reviews consist of four elements:

- The availability of core IMPEL finance to perform the peer reviews.
- The willingness of individual IMPEL members to be subject to peer review.
- The willingness of other IMPEL members to be part of the peer review team.
- Resource constraints within IMPEL members to provide the peer review (such as staff time).

The reasons there are not currently more reviews are due to resource constraints as well as willingness of Member countries to participate. During the original design of the trial scheme, the time of potential Review Team members and the resources of candidate inspectorates were examined. Their findings indicated that a review frequency of less than one in five years per Member State (based on 15 MS) could leave uncertainties about the current situation in a Member State, whilst a higher frequency might be judged to be too much of a drain on already

---

*85 Interview with IMPEL IRI representative, 24 May 2012*
scarce inspectorate resources. In the context of 27 Member States, continuation at the same average review frequency and demand for team members translates into five reviews per year with teams of approximately five people. The review team felt that an increased review frequency or increased team size could jeopardize the benefits of having smaller teams and experienced team members who would be available to participate. Therefore, in light of all these considerations it was proposed that any future scheme should allow for a maximum of 3 to 5 reviews per year.

As the decision making of the General Assembly is based on the priorities of the IMPEL members, it would not be possible to ‘require’ additional IRI projects within the current model. In earlier years there has been some friction between the Commission and IMPEL on the content of the work programme (which the current model has eliminated).

The only practical option to direct resources towards undertaking additional peer review is for the Commission to make additional finance available to IMPEL, for example for three additional peer reviews. If the finance is for additional peer review, it would be necessary to ensure that the current average of two to three peer reviews per year are not reduced in their priorities within the work programme as the Commission would fund activities in any case.

According to the IRI expert interviewed for this study, IRI projects are a major priority in IMPEL’s annual work programme and are strongly encouraged. Currently, all ToRs for IRI projects that have been presented to the IMPEL general assembly have been accepted. Furthermore, the budget of a typical IRI review represents a very small amount compared to the budgets of other types of projects. There are several reasons for this. Firstly, the team members are usually very experienced professionals; therefore they are extremely knowledgeable about the subject area, rendering the review efficient and useful, without requiring external expertise. The review team volunteers their time and expertise, meaning they are not paid. The principal cost of an IRI is mainly transportation of the team members to the meetings, hotel and food. Therefore, IRI projects are ideal, not only because they bring significant benefits to Member countries, but also due to their low budget costs. As mentioned earlier, the main reasons there are not more IRI reviews every year is not necessarily a question of financial resources, but more about Member countries’ willingness to participate in a review and availability of senior experts to be part of the review team.

Simply making funding available will not necessarily deliver the required result. The project would need to examine whether there are peer review proposals that are not taken up due to lack of resources – i.e. is there an appetite for additional peer reviews. Clearly, if there were such a desire, additional funding would have positive results. If there is not, additional funds might not be taken up.

If additional funds are made available by the Commission, it is important to recognise the sensitivities of IMPEL members. The funding should be seen as simply enabling IMPEL to

---

perform more activities that it wants to do – not trying to push IMPEL members to undertake activities that it does not see as necessary. In the latter case, such an initiative would fail.

This leads to the constraints of the willingness of the peer-reviewed authority to take part and others to be part of the peer review team. The former is the key constraint. The project should identify how many IMPEL members express an interest in peer review. On the latter, it is not clear how many individuals take part in peer review teams and what pool of individuals is available. This needs to be explored and whether there is a constraint in this regard. Clearly, in looking at IRIs that have been performed, some individuals appear repeatedly in peer review teams. Whether this is because they have extensive valuable experience, or whether no one else is available, needs to be determined.

The availability of staff for the peer reviews is a constraint. Unfortunately, in the current economic crisis and constraints on public expenditure, it is likely that freeing up staff time for an IRI project (which is not a core function of a public body) will be more difficult in many cases than previously. The project should explore if this is a constraint and whether this varies between Member States.

Finally, it is important to note that IRI projects are focused on IMPEL members, not necessarily whole Member States. If they did cover whole Member States, then, at the rate of five per year, they would repeat Member States after only five years and this would be unlikely to meet with a positive reception. However, many IMPEL members are regional authorities which are appropriate for peer review, so that even at the rate of five per year it would take some years before all IMPEL members would theoretically be covered.

The strengths, weaknesses, opportunities and threats of this scenario, therefore, are:

**Strengths:**
- Expanding the number of IRI projects builds on a fully reviewed existing process.
- The peer reviews are based on a perceived need (request) from an IMPEL member and, therefore, the results are much more likely to be acted upon. This is because IMPEL members voluntarily request a review and are currently in no way obligated to undergo one.
- Peer review is an exploration of issues by colleagues, so that the reviewed authority is likely to be less defensive than it might be with a review by the Commission, for example.

**Weaknesses:**
- The option would require additional finance.
- The option depends on the willingness (and resources) of additional authorities to ask to be subject to a peer review.
- Additional peer reviews might be constrained by the availability of staff to form the peer review team.
Option 3 – Enhanced use of peer review approach in the existing IMPEL Review Initiative Project

- The recommendations from peer review cannot be guaranteed to be acted upon by the reviewed authority.

  **Opportunities:**
  - The decision making for peer review within IMPEL is already in place, so that the option could move forward quickly.
  - The Commission could relatively easily make the additional necessary finance available to IMPEL through existing channels.

  **Threats:**
  - IMPEL might view the provision of additional finance to perform a particular activity desired by the Commission as 'interference'.
  - There might not be the demand from enough IMPEL members to be subject to a peer review.
  - There may be insufficient staff available for the peer review teams.

4.4.2 Scenario 2: Expansion of IRI/peer review to other areas of environmental law

Scenario 2 examines the possibilities of extending the scope/content of the IRI. This would imply that the IRI cover other environmental inspection/surveillance activities (e.g. nature/water body sites, water pollution) other than auditing the classic Member State inspectorates and inspection procedures currently addressed by IMPEL (such as those which are responsible for industrial pollution control). This would occur either by expanding the IRI, *sensu strictu*, or through the adoption of a peer review process similar to the IRI for other areas of EU environmental law.

The co-operation of IMPEL would be required to expand the IRI. To achieve this, it would need to expand the scope into areas of EU environmental law of concern to IMPEL members. This is not straightforward. IMPEL has traditionally focused on a limited (but important) body of EU environmental law, including core industrial pollution control (IPPC/IED and Seveso) and issues relating to waste shipment (including WEEE, etc.). This has required consideration of some aspects of waste management and there has more recently been an interest in interactions with other policy areas such as water.

Furthermore, IMPEL members have competence for different issues. For example, IMPEL members from the UK have competence for water management, whereas those from the Netherlands do not necessarily have the same level of competence in this area. Waste management is also uneven in its competence, with much undertaken by local administrations. Few IMPEL members (if any) are the main body with competence for nature protection. Therefore, simply expanding the scope of what is covered by a peer review of an IMPEL member could have significant limitations (noting that this might also apply to the peer review team).
However, there are potentially issues covered by IMPEL that are not routinely included within the IRI. This is most obviously seen with waste shipment. Formal IRIIs do not focus on this issue. Rather (see section below) peer related activity is focused on joint inspections, etc. The project could explore the scope for peer review in this instance (some of which is already addressed in the joint inspections). There may also be the potential for a wider IRI focus on waste management. However, the exact potential scope of this within IMPEL members would need to be determined.

In order to realistically expand the practice of peer review to other areas of EU environmental law, new mechanisms for peer review would be needed. Priority areas would also need to be identified. Priorities ought to reflect where the need is greatest, rather than where supervision obligations are clearest (i.e. those set out in sectoral environmental legislation).

Establishing new peer review mechanisms is likely to be very difficult. To do this requires:

- Clarity on the scope of competent authorities – are the responsibilities for implementing the EU law sufficiently focused in a limited number of authorities, which could be usefully subject to peer review?
- Is there any willingness on the part of the authorities to be subject to peer review and to contribute to peer review teams? Without this, a peer review process would be impossible to establish.
- Who will organise the peer reviews? Who receives requests, organises teams, prioritises between Member States, etc.? The IRI has a secretariat and decision making body behind the scheme, whereas this may be lacking in other policy areas. It would be necessary to determine whether such a support and decision making structure could exist in other policy areas (see section below on other initiatives on supervision and the comment on water policy).
- Does the necessary core finance exist? Presumably, the Commission would need to provide finance. However, if the establishment of peer review tapped into a strong perceived need, the initial finance might only need to pump prime the process (this is not likely and is less likely in the current financial climate). Furthermore, the question of who/what body would be responsible for organising the finance mechanisms would also need to be addressed.

It is important to note that peer review can be broad or narrow in its scope of EU environmental law. Peer reviews of the broad issues of water management, for example, would be ambitious in scope (yet be able to address critical issues of integrated decision-making). Conversely, it is perfectly possible, theoretically, to have a peer review focused on a specific issue or law, such as environmental crime, port reception of waste, etc. The choice would depend on the nature of the competent authorities and of the perceived needs of those authorities.

The strengths, weaknesses, opportunities and threats of this scenario, therefore, are:

- **Strengths:**
  - The option can build on the existing IRI within IMPEL for certain new areas of law.
For other areas of environmental law, the option can use the IRI as an example of best practice.

The option is potentially flexible in scope so that it can meet Member States and, therefore, be more likely to be taken up.

Weaknesses:

- The dispersed competences for some areas of environmental law across Member State authorities may inhibit the clear identification of ‘peers’ to be subject to review.
- IMPEL’s scope is limited and, therefore, this will set a boundary on how broad the IRI itself may be.
- New funding would be needed.
- New forms of peer review would require organisational support.

Opportunities:

- Expansion of the scope within IMPEL to any gaps in the current coverage of law addressed by IMPEL should be possible.

Threats:

- An expansion of peer review within IMPEL would require the support of Members. This may not be forthcoming.
- Establishing new peer review mechanisms might be resisted by some Member States or some authorities or be opposed in some areas of environmental law.
- For the Commission to establish new peer review processes could seem initially (even if it is not) as interference in the administrative arrangements of the Member States. Time and establishment of trust would be needed to overcome this.

4.4.3 Scenario 3: Introducing requirements of IRI/peer review into law

Scenario 3 examines the use of IRI as a model to be enshrined in binding form in legislation: this would imply that the model would no longer be an IMPEL centred model and instead draw on the IMPEL methodology.

The establishment of peer review into law has the major advantage over the first two scenarios in that it would ensure that such reviews take place and that the Commission can ensure implementation occurs in cases of non-compliance.

There are constraints however on introducing requirements for peer review into law. A legal obligation for a peer review would presumably have to apply to the Member State receiving the peer review (it would be difficult to find a legal basis to require Member States to peer review
other Member States). However, while it is technically possible to oblige a Member State to organise a peer review, because such an activity would require co-operation from other Member States, failure to organise a peer review might not be the fault of the recipient Member State. Therefore, it may be less appropriate to prescribe peer review itself in EU law.

It is also important to note that Member States are likely to be particularly resistant to any obligation in law for peer review\(^{187}\). Indeed, it has proved difficult to oblige co-operation between Member States even where there is a strong trans-boundary interest (as seen, for example, during adoption of the Marine Strategy Framework Directive, where Council resisted any obligation in the Directive to require the production of single Marine Strategies for marine waters shared by more than one Member State). This was not an objection to co-operation in principle, but an objection to requiring such joint action in EU law. If this were to reflect the general view of environment Ministers, it is unlikely that an obligation on peer review would be well received.

However, rather than prescribe peer review in law, a Directive could require that Member States require that institutional arrangements (covering various aspects of implementation and enforcement) be subject to independent review. If this were required, a Directive (probably in an Annex) would need to set out what would constitute an independent review and what the review would need to include.

An independent review would include peer review by authorities of other Member States, as well as reviews by other organisations (within that Member State). Requiring a review in this way might be more acceptable to Member States. In all cases, the Directive would need to require that the results are published, public and reported to the Commission.

An Annex would need to identify what would need to be included in a review. Elements from the IRI could form the basis for this and, if the obligation is prescribed in a Directive specific for a specific area of environmental law, the obligations would need to be tailored to that law (e.g. for an industrial activity, nature protection area, etc.). The elements of a review could also be divided into compulsory elements which must be included and non-compulsory (supplementary) elements which could be included if these are considered as helpful by the Member State.

Such a provision would also need to identify when such a review would be appropriate. Timing would need to depend upon the nature of the law being implemented and the timing of that implementation. Review immediately after identification of a competent authority would be too early, as the competent authority would have had little time to explore its responsibilities.

However, experience has shown that Directives implemented over time result in competent authorities focusing on issues step by step. For example, in implementing IPPC, competent authorities initially spent much time understanding permitting requirements and issuing permits. Only later was more consideration given to enforcement activity such as inspection. Similarly, in implementing the Water Framework Directive, competent authorities have spent many years understanding the state of, and pressures on, water bodies and developing River Basin Management Plans and Programmes of Measures within them. Now there is consideration being given to how to ensure effective enforcement of those measures. Of course, it is theoretically

\(^{187}\) Interview with IMPEL IRI representative, 24 May 2012
possible to require (review at different stages of implementation (e.g. initial assessment, plan formulation, implementing measures, etc). However, too frequent reviews would be liable to be viewed as an unnecessary burden by some Member States.

In establishing obligations for an independent/peer review in EU environmental legislation, consideration also needs to be given to whether such an obligation be set out in an overarching Directive on implementation and enforcement which is applicable to all EU environmental law (or an explicit sub-set of that law) or whether the requirements for review are included in new or revised sections of EU environmental law (e.g. Habitats Directive, Waste Framework Directive, etc.).

The advantage of an overarching law containing a review obligation is that it would require adoption once and would not require a wait until different Directives are subject to review and the opportunities for amendment arise. However, such an overarching obligation would need to be carefully formulated in order for it to be fully appropriate for all of the legislation to which it applies. Of course, such a binding instrument could set out specific review issues for individual areas of environmental management. Parallels for such an approach can be seen with the Environmental Liability Directive and Environmental Crime Directive, which adopt obligations applying to several environmental Directives, or indeed, the much older Standardised Reporting Directive which added reporting obligations to a wide range of separate environmental Directives.

Whether the obligations are established in a single law or across a number of Directives would require careful analysis and this would mirror the analysis that was undertaken in the review of the Recommendation on Minimum Criteria for Environmental Inspections that included the action to enhance inspection obligations in selected individual items of EU environmental law.

The strengths, weaknesses, opportunities and threats of this scenario, therefore, are:

**Strengths:**
- Prescription for review within EU law should ensure that reviews are undertaken.
- There would be transparency on what is expected in a review by stakeholders.
- Requirements for reporting on reviews would provide the Commission with concrete information on governance issues, implementation and enforcement problems, etc., as well as best practice examples to share with other Member States.
- An overarching Directive setting out such an obligation could address many areas of law simultaneously.
- Establishing obligations piece by piece in individual areas of environmental law could tailor the obligation more easily to the specific issues facing those areas of environmental management.

**Weaknesses:**
- Prescribing reviews in EU law would probably not be able to detail all of the elements and nuances of peer review as undertaken by the IRI.
The more flexible the obligation is in law, the more likely it is that practical implementation of reviews would not fully address the issues of concern to the Commission.

**Opportunities:**
- An overarching Directive containing a general obligation covering all or many areas of environmental law could be proposed as soon as it have been developed.
- If the obligations for review were to be introduced into a range of different environmental Directives, this would require the opportunity for review of those Directives and, therefore, could take a number of years.

**Threats:**
- Member States would be very unlikely to agree to a requirement for peer review in EU law.
- Member States might resist a requirement for independent review. Some might consider the requirement unnecessary and others might which to avoid the spotlight on them (although some might welcome an emphasis on improved enforcement in other Member States).

Table 8: Summary table of strengths and weaknesses of IMEPL IRI scenarios

<table>
<thead>
<tr>
<th>Scenarios</th>
<th>Strengths</th>
<th>Weaknesses</th>
</tr>
</thead>
</table>
| Scenario 1: More frequent application of IRIs | - Expanding the number of IRI projects builds on a fully reviewed existing process.  
- The peer reviews are based on a perceived need (request) from an IMPEL member and, therefore, the results are much more likely to be acted upon.  
- Peer review is an exploration of issues by colleagues, so that the reviewed authority is likely to be less defensive than it might be with a review by the Commission, for example. | - The option would require additional finance.  
- The option depends on the willingness (and resources) of additional authorities to ask to be subject to a peer review.  
- Additional peer reviews might be constrained by the availability of staff to form the peer review team.  
- The recommendations from peer review cannot be guaranteed to be acted upon by the reviewed authority. |
| Scenario 2: Extension of IRI to other areas of EU environmental law | - The option can build on the existing IRI within IMPEL for certain new areas of law.  
- For other areas of environmental law, the option can use the IRI as an example of best practice.  
- The option is potentially flexible in scope so that it can meet Member States and, therefore, be more likely | - The dispersed competences for some areas of environmental law across Member State authorities may inhibit the clear identification of ‘peers’ to be subject to review.  
- IMPEL’s scope is limited and, therefore, this will set a boundary on how broad the IRI itself may be. |
### Scenarios

<table>
<thead>
<tr>
<th>Strengths</th>
<th>Weaknesses</th>
</tr>
</thead>
</table>
| to be taken up. | • New funding would be needed.  
| | • New forms of peer review would require organisational support. |

#### Scenario 3: Introducing requirements into EU law

- Prescription for review within EU law should ensure that reviews are undertaken.
- There would be transparency on what is expected in a review by stakeholders.
- Requirements for reporting on reviews would provide the Commission with concrete information on governance issues, implementation and enforcement problems, etc., as well as best practice examples to share with other Member States.
- An overarching Directive setting out such an obligation could address many areas of law simultaneously.
- Establishing obligations piece by piece in individual areas of environmental law could tailor the obligation more easily to the specific issues facing those areas of environmental management.

- Prescribing reviews in EU law would probably not be able to detail all of the elements and nuances of peer review as undertaken by the IRI.
- The more flexible the obligation is in law, the more likely it is that practical implementation of reviews would not fully address the issues of concern to the Commission.
- Members States may be even more reluctant than they already to participate in the scheme, should it be legally binding.
Option 3 – Enhanced use of peer review approach in the existing IMPEL Review Initiative Project

4.5 Summary table of option 3 analysis

Table 9: Summary table of option 3 analysis

<table>
<thead>
<tr>
<th>Category</th>
<th>Key features</th>
<th>Scenarios under option 3: Expansion of the IRI initiative</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Scenario 1</td>
</tr>
<tr>
<td>Functioning details</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Purpose</td>
<td>Strengthen consistent implementation and enforcement of EU environmental legislation. Improve inspection procedures and surveillance activities.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Expected) functioning/mechanisms</td>
<td>Increase the number of reviews under the current IRI scheme</td>
<td></td>
</tr>
<tr>
<td>Scope</td>
<td>Applies to national inspectorates and inspection procedures of IMPEL Member countries.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Would apply to IMPEL Member countries but go beyond current scope to encompass review of surveillance activities of areas of environmental sectors (see above cell)</td>
<td></td>
</tr>
<tr>
<td>Funding</td>
<td>LIFE +, IMPEL Member countries (Additional funding from above sources would be necessary for more frequent reviews)</td>
<td></td>
</tr>
<tr>
<td>Category</td>
<td>Key features</td>
<td>Scenarios under option 3: Expansion of the IRI initiative</td>
</tr>
<tr>
<td>----------------------------------------------</td>
<td>-------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Scenario 1</td>
</tr>
<tr>
<td>Legal framework and feasibility</td>
<td>Would involve no further legal implications</td>
<td>Would involve no further legal implications as IMPEL is an independent association</td>
</tr>
<tr>
<td>Management and organisational aspects</td>
<td>Implication of increased resources needed to manage more frequent reviews</td>
<td>Interaction and cooperation with the bodies responsible for the relevant environmental legislations Necessary to create management/operational capacity within IMPEL secretariat able to organise and assist with reviews</td>
</tr>
<tr>
<td>Reporting mechanisms</td>
<td>Publication and presentation of final report and findings</td>
<td>Publication and presentation of final report and findings. Diffusion of findings on IMPEL website Dissemination of deliverables to other national authorities</td>
</tr>
<tr>
<td>Use of specific tools</td>
<td>Peer review IRI work package RMCEI guidelines</td>
<td>Peer review IRI work package RMCEI guidelines</td>
</tr>
<tr>
<td>Time requirements, planning</td>
<td>For a review, 4 days (5 if a site visit is planned) is required. Additional days also necessary to take into account time to write the ToR, present to GA, and any other pre-planning meetings.</td>
<td>Depending on the site of the review, time requirements could be similar to current scope of IRI. More significant time requirements may be necessary for very large or complex sites or activities</td>
</tr>
</tbody>
</table>
### Scenario under option 3: Expansion of the IRI initiative

<table>
<thead>
<tr>
<th>Category</th>
<th>Key features</th>
<th>Scenario 1</th>
<th>Scenario 2</th>
<th>Scenario 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Human resources needed</td>
<td>4-5 days for each review, including 1 day for pre-planning meeting and approximately 10 days for final report</td>
<td>Will depend on type and number of sites under review (more complex sites may require more time to review and very specific expertise).</td>
<td>Human resources mainly at Commission level, but also taking Member State level resources necessary to ensure local and operational activities</td>
<td></td>
</tr>
<tr>
<td>Material resources needed</td>
<td>Hotel lodging for participants, transportation and food.</td>
<td>Hotel lodging for participants, transportation and food.</td>
<td>Hotel lodging for participants, transportation and food.</td>
<td></td>
</tr>
<tr>
<td>Training requirements and other expertise required</td>
<td>Very specific and in-depth expertise and experience required from the review team on inspection</td>
<td>A wide range of expertise would be needed to address the different surveillance activities of various environmental legislations (i.e. water/hydrology experts, waste experts, etc.)</td>
<td>Similar to the training and expertise requirements of the current IRI scheme</td>
<td></td>
</tr>
<tr>
<td>Overall administrative feasibility</td>
<td>An increase in the number of peer reviews would require additional national experts and inspections than is presently the case.</td>
<td>New forms of peer review (specific to the different environmental sectors) would require organisational support.</td>
<td>Would entail increased administrative burden compared to the other scenarios under option 3, to ensure proper monitoring and enforcement.</td>
<td></td>
</tr>
<tr>
<td>Completeness</td>
<td>Low to medium: increasing number of reviews could improve overall inspection procedures and surveillance activities, however would be limited to national inspectorates.</td>
<td>Medium: IRI is perceived as a best practice therefore expanding peer review to cover other environmental inspection/surveillance activities would strengthen consistent implementation of EU environmental legislation and improve inspection procedures and surveillance activities</td>
<td>High: the establishment of peer review into law would ensure that such reviews take place and that the Commission can ensure implementation occurs in cases of non-compliance.</td>
<td></td>
</tr>
</tbody>
</table>
### Option 3 – Enhanced use of peer review approach in the existing IMPEL Review Initiative Project

#### Scenarios under option 3: Expansion of the IRI initiative

<table>
<thead>
<tr>
<th>Category</th>
<th>Key features</th>
<th>Scenario 1</th>
<th>Scenario 2</th>
<th>Scenario 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Costs of implementation</td>
<td>Low</td>
<td>IRI peer reviews (approximately 11 000 to 13 000€ per review) are in general less costly than traditional audits (estimated at approximately 88 000 € per audit – see section 2.1.5)</td>
<td>Compared to current cost of peer review under IRI, costs could vary greatly depending on what environmental sector/activity is being inspected (i.e. peer review of a national inspectorate may not entail the same costs as verification of waste shipment procedures – duration of the peer review may not be the same, differences in the type of expertise needed, etc.)</td>
<td>Would depend greatly on what requirements are decided upon would entail costs for Member States to transpose into national laws and practices.</td>
</tr>
<tr>
<td>Expected socio-economic impacts</td>
<td></td>
<td></td>
<td>Medium to high</td>
<td></td>
</tr>
<tr>
<td>Cost effectiveness</td>
<td>Medium to high</td>
<td>Low to medium</td>
<td>Low to medium</td>
<td></td>
</tr>
<tr>
<td>Benefits of the option</td>
<td>Expanding the number of IRI projects builds on a fully reviewed existing process. The peer reviews are based on a perceived need (request) from an IMPEL member and, therefore, the results are much more likely to be acted upon. Peer review is an exploration of issues by colleagues, so that the reviewed authority is likely to be less defensive than it might be with a review by the Commission, for example.</td>
<td>The option can build on the existing IRI within IMPEL for certain new areas of law. For other areas of environmental law, the option can use the IRI as an example of best practice. The option is potentially flexible in scope so that it can meet Member States needs and, therefore, be more likely to be accepted.</td>
<td>Requirements for reporting on reviews would provide the EC with concrete information on governance issues, implementation and enforcement problems, etc., as well as best practice examples to share with other Member States. There would be transparency on what is expected in a review by stakeholders. An overarching Directive setting out such an obligation could address many areas of law simultaneously. There would be transparency on what is expected in a review by stakeholders.</td>
<td></td>
</tr>
</tbody>
</table>
### Option 3 – Enhanced use of peer review approach in the existing IMPEL Review Initiative Project

<table>
<thead>
<tr>
<th>Category</th>
<th>Key features</th>
<th>Scenarios under option 3: Expansion of the IRI initiative</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Scenario 1</td>
</tr>
<tr>
<td>Impacts on stakeholders</td>
<td>Increased awareness raising</td>
<td>Increased awareness raising</td>
</tr>
<tr>
<td></td>
<td>Mutual benefits for all through the sharing of best practices</td>
<td>Mutual benefits for all through the sharing of best practices</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Expected) results</td>
<td>Increased number of reviews and sharing of best practices and recommendations could greatly improve the quality of inspections and compliance.</td>
<td>Ability to address surveillance activities under other areas of environmental law</td>
</tr>
<tr>
<td>Potential for environmental improvement/benefit</td>
<td>Could serve as best practice for third countries</td>
<td>Could serve as best practice for third countries</td>
</tr>
<tr>
<td>Other impacts</td>
<td>Political acceptance</td>
<td>Some opposition may be expected based on willingness of MS to undergo a peer review</td>
</tr>
<tr>
<td></td>
<td>Would need the co-operation of IMPEL</td>
<td>Would need the co-operation of IMPEL</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Option 3 – Enhanced use of peer review approach in the existing IMPEL Review Initiative Project

#### 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

<table>
<thead>
<tr>
<th>Category</th>
<th>Key features</th>
<th>Scenarios under option 3: Expansion of the IRI initiative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proportionality</td>
<td>members</td>
<td>Scenario 1: Establishing new peer review processes could be perceived initially (even if not the case) as interference in the administrative arrangements of the Member States. Time and establishment of trust would be needed to overcome this. Scenario 2: Similar to scenario 2, prescribing peer/independent review into the EU environmental acquis could be seen as an infringement on national MS authority.</td>
</tr>
<tr>
<td>(Potential) Risks and obstacles, technical constraints</td>
<td>Lack of sufficient resources to support and monitor more frequent reviews Lack of sufficient willingness from Member States to undergo a review Important not to carry out too many reviews, as too frequent reviews could be liable to be viewed as an unnecessary burden by some Member States</td>
<td>Scenario 3: Resistance from Member States who prefer the voluntary nature of peer review Need for the setting up sufficient follow up and monitoring mechanisms A binding instrument would need to set out what would constitute an independent review and what the review would need to include.</td>
</tr>
</tbody>
</table>

Lack of sufficient resources to support and monitor more frequent reviews
Lack of sufficient willingness from Member States to undergo a review Important not to carry out too many reviews, as too frequent reviews could be liable to be viewed as an unnecessary burden by some Member States

Similar to scenario 2, prescribing peer/independent review into the EU environmental acquis could be seen as an infringement on national MS authority.

Resistance from Member States who prefer the voluntary nature of peer review Need for the setting up sufficient follow up and monitoring mechanisms A binding instrument would need to set out what would constitute an independent review and what the review would need to include.
Option 3 – Enhanced use of peer review approach in the existing IMPEL Review Initiative Project

This page is left intentionally blank.
Chapter 5: Option 4 – Use of ad hoc/framework contracts to provide expertise

This option looks at the possibility of using ad-hoc or framework contracts to assist the Commission in performing investigations in specific areas following a breach of EU environmental law.

When responding to alleged breaches of EU environmental law, certain forms of investigation may be required to clarify the situation on the ground. This may require expert knowledge of the subject area. This task thus assesses the possibility of using contracts that would provide the Commission with flexible, specific and technical input from experts on precise questions.

5.1 Analysis of contractual procedures to carry out investigations

5.1.1 Context

At the end of 2009, DG ENV had 451 open infringement files under investigation. An infringement is recorded once a formal letter of notice is issued to the MS in question. On average, the Environment Directorate General handles 20% of Commission infringement actions. Infringement cases range from illegal damage to protected nature sites and lack of effective control on wildlife crimes to non-compliance of individual industrial facilities with permit requirements and failure to protect water bodies from pollution or other forms of interference.

The Commission holds a Guardian role and must ensure that EU law is respected (Art 17 of the Treaty on European Union). However, the Commission has no explicit inspection powers and can therefore only rely on Member States to cooperate. Should an investigation point to a breach, the Commission must be able to discharge the burden of proof. To do so, it must therefore gather information to support its arguments related to the infringement cases submitted to the European Court of Justice. In some cases, the Court of Justice has told the Commission that its cases were not sufficiently proved.

However, the Commission does not always have the specialist input required to gather the necessary evidence to treat many of the alleged breaches reported. In order to implement an effective enforcement programme, the Commission needs a strong and reactive team of experts able to investigate complex situations in order to point out breaches of law and switch the burden of proof on the defendant, should this be the case.

---

5.1.2 Types of investigations at stake

Investigations carried out by the European Commission in case of alleged breaches of EU environmental law cover various types of tasks. Experts can be required to carry out investigations focusing on:

- Review of impact assessments
- The assessment of documents
- Assessments of permits
- Assessments of waste management plans
- Etc.

And/or they can be commissioned to carry out on-site investigations such as:

- On site visits involving taking pictures, perform visual verifications etc.
- Fact finding-type visits with legal expert of the European Commission meeting the national authorities.

5.1.3 Procedures to request external services

In general, contracts allow the Commission to seek specific technical advice on a predetermined area, with a precise question to address.

▶ Ad hoc contracts

Contracts can be concluded ‘ad hoc’, after an infringement of EU environmental law is brought to the Commission’s attention, in response to a specific need from the Commission to conduct on-site verifications or to gather information and evidences. Ad hoc contracts hence provide a “one shot” answer by a project team on a specific question.

The general rules on awarding public works contracts, public supply contracts and public service contracts are defined in Directive 2004/18/EC of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. The directive sets up basic rules regarding publicity, time limits, criteria for exclusion and selection and awards, with differences depending on the procedure chosen.

▶ Framework contracts

Framework contracts provide the EC a flexible framework to obtain technical assistance (TA) services, by a company or group of companies, to provide services in defined fields. It is an accelerated means to receive propositions, with projects beginning sooner, but for projects limited in terms of duration and budget. Its purpose is two-fold:

(i) A fast-track procurement procedure for recruitment of short term TA services, thus avoiding lengthy procedures applicable in other procurement methods, but which entails a budget limitation (normally up to 200 000 Euros); and
(ii) Provision of an immediate response to emergencies, thus rapid mobilisation of expertise (typically within 2 weeks from signature of a contract for delivery of specific services)\(^{190}\).

The rules framing the functioning of framework contracts are defined in Directive 2004/18/EC of 31 March 2004 mentioned above and rules relating to framework contracts are further explained in a note from DG Market entitled 'Explanatory note – framework agreements – classic directive'.\(^{191}\)

Framework contracts are carried out according to the normal procedure i.e. the open or restricted procedures (or under some conditions- negotiated procedures). Therefore, the ‘normal’ conditions relating to the conclusion of public service contracts apply. As soon as a need is identified, the EC project officers formulate the Terms of Reference (ToR) where the assignment’s objectives, tasks and deliverables are outlined together with a tentative implementation schedule. The ToR together with a Request for Services (RfS) form are then sent to the preselected Consortia to submit an offer (which includes CVs + Statements, financial offer and sometimes a methodology). Each of these Consortia usually offers a qualified team to the EC from their own staff, by using their network of partner organisations or by approaching freelance consultants.

The time between the RfS related to a specific contract within the respective framework contract and the deadline to submit an offer is usually very short and often not longer than two weeks or 14 calendar days. Based upon an evaluation of the offers submitted by the different consortia, the EC decides which offer will be selected. Selection criteria usually involve the best value for money offer based on the technical quality and financial offer. A Specific Contract is concluded on the basis of the standard format and the successful Framework Contractor is expected to mobilize the experts in country within 10 days from receipt of the Specific Contract.

The scope of services requested under the projects relate to the full project cycle: identification, feasibility, operational and technical follow-up assignments, financial and/or contractual monitoring, project evaluation, technical, financial or contractual audit of the project, technical advice and support, information and communication, or closure of a project.

Framework contracts are mostly multi-year contracts and the duration of framework agreements usually cannot exceed 4 years (except in ‘exceptional cases, duly justified’ relating for instance to competition aspects), which is also the case of contracts awarded under these agreements. However, it is possible to launch a contract just before the deadline of the framework agreement. Framework contracts can also be concluded when the terms are not all defined from the beginning and where certain aspects can be left aside in order to be established later upon reopening of competition (multiple framework contracts) or in subsequent consultation with the sole economic operator (individual framework contracts). However, as the specifications and terms of the framework agreement cannot be substantially amended once the agreement is signed, particular care is necessary in drawing them up.

\(^{190}\) EU websites on contracts: \(\text{https://www.frameworkcontracts.eu/framework\_contracts.php}\) and \(\text{http://www.saco2011.eu/framework.htm}\)

Framework contracts are awarded according to the following rules:

- Multiple framework agreements (Multiple framework contracts)

Multiple framework contracts are contracts that involve several economic operators. They can only be concluded between the contracting authorities (in this case the EC) and the economic operators originally party to the framework agreement.

In the case of multiple framework contracts establishing all the terms, the Directive does not explicitly regulate the choice between the specific operators to carry out a contract. It can be done according to the normal procedure or by means of a “cascade” process i.e. contacting the economic operator who was considered the best and turning to the second one where the first one is not capable of or interested in providing the service.

When the framework agreements do not establish all the terms, individual contracts based on a framework agreement are awarded following the reopening of competition i.e. as all the terms are not set up in advance, the offers submitted by competitors following the reopening of competition will vary on some aspects. Then the EC will award the contract to the competitor offering the most relevant offer, based on a set of criteria.

Normally, all the economic operators party to the agreement must be consulted in writing. In this written consultation, the contracting authorities indicate the object of the specific contract for which tenders are requested and the time limit for their submission. The time limit must be sufficient to allow tenders to be submitted, taking into account inter alia the complexity of the subject.

When awarding the contracts under a framework agreement, the award criteria do not have to be same as those used for the conclusion of the framework agreement itself. Service contracts could hence be awarded based on qualitative criteria such as the contractor’s experience.

- Individual framework contracts

Individual framework contracts are concluded based on framework agreements concluded with a single economic operator.

For contracts to be awarded under a framework agreement that establishes all the terms, there is no scope for supplementing the initial offer. Requests are therefore placed exclusively under the terms established in the framework agreement and within the limits (in particular concerning the range of services covered etc.) set in this agreement.

When all the terms are not initially established in the framework agreement, the contracts further concluded combine the terms initially set up with the terms offered by the contractor to complete the framework agreement.

### 5.1.4 Procedure to request services within the Commission

It could be envisioned to request services of experts within the European Commission (DG ENV or other DGs) to carry out specific investigations of alleged breaches of EU environmental law has occurred. However, the Commission has limited human resources and EC staff members have...
very specific job descriptions. Therefore it is not clear how feasible it would be to request services from experts within the EC to carry out specific investigations.

5.2 Analysis of practical experiences of using contractual terms for surveillance activities

- **Eurostat Project**

BIO is currently conducting a project for Eurostat on the 'implementation of an Information hub in the context of the Environmental Data Centre on Natural Resources'. Studying closely the terms of this contract provides a practical insight of the benefits and drawbacks related to the functioning framework contracts.

This framework agreement between BIO and Eurostat is set for a total duration of 16 months. During this lapse of time, Eurostat can publish call for tenders and require the contractor (BIO) to provide a proposal within 10 working days. Such a short lapse of time is possible since Eurostat is contacting the contractor by e-mail and accepts responses electronically. This example shows that framework contracts can be developed based on situations where reactivity is required. Another advantage is to have a maximum budget set up contractually in advance.

- **Life +**

Another example is the project LIFE +, under which ad hoc contracts are concluded to evaluate LIFE + proposals. The Commission uses the technical expertise of external experts to ensure that the projects financed are of good quality and will deliver effective results. This system allows the Commission to require relevant experts from a panel to analyse the proposals most relevant to their area of expertise.

The contract terms describe:

- The number of experts per group and their CVs. The terms are quite specific about the professional backgrounds of the experts to be included.
- The tasks to be performed
- An average workload
- Evaluation criteria

Additionally, the Commission can, if duly justified, ask for the replacement of any one expert (for example if his/her professional competence is not satisfactory, conflict of interest, etc.). The new expert will then be taken from a reserve list established in the contract.

- **Investigation contracts concluded by DG ENV**

Information on contracts made by DG ENV in order to carry out investigations is gathered in the table below:

---

192 LIFE+ is the European financial instrument for the environment, for the period from 1 January 2007 until 31 December 2013. Co-funding may be applied for action grants, covering three strands (Nature and Biodiversity, Environmental Policy and Governance, Information and Communication), or NGO operating grants.
DG ENV concluded a 4-year framework contract with three companies (Arcadis, Oranjewoud and LDK) in order to carry out investigations of alleged breaches of environmental law. Within this agreement, contractors were selected according to a procedure ‘en cascade’ i.e. when the first contractor of the list is not able to provide relevant experts for a specific contract, the Commission turns towards the second contractor; and subsequently towards the third one, if necessary. Contractors selected have an extensive expert network allowing them to quickly find relevant expertise to carry out the required investigation work.

The Nature Unit of DG ENV concluded an ad-hoc contract with a consortium that included several companies. This contract has a duration of 1 year and can be renewed. To launch a new task within the contract, the EC drafts a task sheet defining the nature of the work required, setting time limits etc. The contractor is then selected based on a mutual agreement among the consortium and between the consortium and the Commission. A variety of experts are needed, depending on the task i.e. ecological experts, experts on plants, habitats types, marine environment etc.

In both situations (FWC and ad hoc contracts), the contractors – when they make an offer – must propose relevant experts and make sure that no criteria for exclusion are met i.e. they must make sure for instance that there are no conflict of interests between the proposed expert and the authorities from the country where investigations are carried out. The selection of expert is based on several criteria such as:

- **Strict experience and expertise requirements:** Senior staff must have 10 years of professional experience including 7 years on the field while junior staff must justify of 3 years of experience including at least 2 years in the field
- **Language requirements:** as specific texts will often have to be closely assessed, experts must speak perfectly the national language of the country where investigations are performed
- **Understanding of EU legislation**

As shown in Table 10 investigations aiming at collecting evidences to support cases before the European Court require a short duration, from 5 weeks to few months. This is explained by the

---

93 Interview DG ENV - Unit B3 : 13 June 2012 and DG ENV - Unit A, 1 June 2012
nature of tasks performed e.g. assessing waste management plans, verifying IA assessing the impacts on the environment of a construction in a protected area etc. In general, investigations allocated to experts by contracts only require the examination of documents. Less frequently, experts can be commissioned to carry out on-site visits and perform visual controls or take pictures. However, on-site visits are the exception, mainly because they require significant human and financial resources.

5.3 Applicability within DG ENV of the use of contracts to request expertise for investigations

As the examples above indicate, the use of ad hoc or framework contracts for technical assistance services is already in use by DG Environment. In general, investigations carried out under contractual terms have generally been efficient and achieved their goal i.e. assisted the Commission in gathering enough evidence about an environmental breach in order to continue with the infringement procedure against a Member State. However, in terms of enhancing the potential of using external expertise to assist the EC in investigating alleged breaches of environmental law, some barriers and areas of improvement have been identified.

Firstly, there are times when the Commission knows the most relevant expert for the investigation of a specific area but cannot directly contract with this person because of the existence of the FWC. Under the FWC, contractors are responsible for contacting the relevant experts. In this case, using the model of a pool of experts (which is option 5 and discussed in the next chapter) would be more appropriate. Nonetheless, in the case when the Commission is aware of a relevant expert, the contact information can still be transmitted to the contractor.

During the information gathering process, contractors can also face reluctance to cooperate from national authorities and experts, even if a letter of recommendation signed by the EC is sent along with the information request. Occasionally, experts may ask for financial compensation for their assistance. However, because of the set budgets of FWCs, contractors would either need to take into account the budget for experts during the tendering process (thereby fully anticipating the use and cost of experts before the start of the project). Otherwise, in the case of an unforeseen need to contact an expert, contractors could face difficulty receiving additional funding from the EC.

In some cases, more human resources are required within DG ENV to get the most out of the contract. For instance, in the case of a FWC, on average, two full working days of a policy officer are needed to verify information submitted by the contractor. These resources are not always available and can potentially delay project deliverables and timely information needed for investigations.

Experts with technical and legal knowledge in a particular field do not always exist. In some instances, the Commission did not request studies because they knew in advance that there were no relevant experts available. It can sometimes be difficult to find experts who correspond to all the criteria (expertise, language, availability, technical knowledge and knowledge of EU law). In these cases, investigations are usually carried out in-house, which brings us back to the issue of
whether the specific expertise exists within the Commission and whether the particular expert is available to assist.

Several aspects can be considered to enhance the current contractual arrangements, with a view to improve the capacity and functioning of the investigative work of DG Environment. Firstly, it seems important to identify the key areas of environmental law in which external expertise is most needed. This implies that an assessment of what internal expertise already exists within the EC is necessary. It is also essential to determine the mandate of these experts in terms of how long their expertise may be available. In this way, areas of external expertise where it is most needed is identified for which contracts can then be set up.

In addition to the above contractual models for external expertise in investigating alleged breaches in environmental law, there is also the possibility of using other contractual models such as a general framework contract allowing for satellite clusters of experts covering different EU environment policy areas. This is similar to the model that the EACI uses for its evaluation work (see example under option 5, in chapter 6). In order to apply this model within DG ENV in the context of assisting in investigations, it would be necessary to identify which areas relevant clusters of expertise would be needed.

Areas in which external expertise may be necessary can be identified by analysing the trends on environmental infringements in the EU, which is well documented by the EC. Based on the information gathered from the EC’s websites, many of the infringement cases involved matters related to nature conservation, waste and water legislation, which accounts for 59% of the infringement case load for the environment sector, with the sectors of impact assessment and air contributing the bulk of the remainder (27%)\(^\text{994}\). The last few years have also seen a marked increase in cases in the air sector concerning the failure to ensure that PM\(_{10}\) (particulate matter) limit values set of the Air Quality Directive.

To render the use of contractual expertise effective, it is important that the policy officer or team of policy officers are able to clearly identify the question that needs to be addressed and have some indication of the resources necessary to target the most efficient use of contractual agreement/expertise. The definition of contractual terms must be based on a sound explanation of the tasks and areas of expertise potentially required. Experts hired through contracts are mainly required to conduct examination of documents, and are less frequently asked to carry out on-site investigations. Investigations are subject to the availability and willingness of relevant experts combining all the criteria listed by the EC, which would need to be taken into account in terms of budget availability. Further, investigations are subject to successful cooperation with MS authorities. Finally, it is essential that findings from the investigation activities are reported and transparent. This will help to raise confidence and credibility in the EU’s ability to carry out investigations of alleged breaches in EU environmental law. Such reports would also provide the opportunity for Member States to receive recommendations and guidance on how to better implement EU environmental legislation.

In terms of when to use one contract or the other, framework contracts may be more appropriate for cases/issues that need a longer time to address (e.g. more than one year). This would also ensure that expertise is available within the timeframe set by the FWC (which are usually around 4 years). Ad-hoc contracts would be more appropriate for investigations that require very specific expertise and which could be completed within a year. In both cases, it is important that provisions for on-site investigations and cooperation with Member States are taken into account. This can be ensured for example by communicating with and informing Member States of a possible service request before its launch. This would allow for transparency in EU actions and permit EU officials to determine whether an on-site visit would be possible with the authority in question. It would be essential to explain to Member States the importance of on-site visits (if this is indeed the case) on order to gather the required data to carry out the investigation.

Concerning the administrative burden of using such contracts for assistance in investigations, they have the potential to alleviate some administrative burden from the Commission, as it would be the contractor’s responsibility to identify or contact the relevant expert to carry out the specific investigation tasks. Nonetheless, in terms of costs, compared to in-house use of expertise within the Commission, the use of external expertise would require additional finances. Contract budgets would need to consider the cost of using a contractor and experts to carry out certain investigation tasks, especially in the case of on-site investigations, which would require some travel, lodging, and food expenses.

The main strengths and weaknesses regarding the contracts concluded by DG ENV are listed below.

### Strengths
- The contracts can be flexible enough to allow the contractor to find relevant expertise on a various range of technical subjects
- Expertise can be sought on a various range of subjects
- Expertise can be sought on very technical subjects
- Ad hoc contracts allow the EC to change contractors depending on the subjects that need further investigation
- Framework contracts allow the possible development of a team of experts with expertise in different aspects of a similar subject
- Requirements on time limits allow the Commission to launch investigations quickly

### Weaknesses
- Under contractual terms, on-sites visits are rarely carried out, whereas in a (limited) number of cases they could help reinforce cases
- Compared to in-house investigations, the conclusion of contracts entails costs (budget)
- Limited resources are available in DG ENV to review the outcome of tasks performed by external consultants
Option 4 – Use of ad hoc/framework contracts to provide expertise

- Follow-up contracts and tasks require significant human resources

**Opportunities**

- Extending the use of FWC or ad hoc contracts to use external expertise would contribute to more infractions being detected and more cases being proved by the EC before the ECJ. Therefore it would help enforce EU environmental law.

- Lessons could be learned from the results of investigation activities that could be used to further improve implementation of EU environmental law and reduce the amount of infringements reports.

- The conclusion of more contracts will result in the majority of relevant experts in the EU being included in contracts and available upon request from the EC.

**Threats**

- A growth of the number of contracts concluded might entail significant costs and administration burden to maintain.

- DG ENV might not have sufficient human resources to monitor and follow up efficiently a high number of such contracts.

- These contracts generally aim at carrying rather document-based verifications and investigations. Increasing their number will not be beneficial in situations where on-site investigations are needed.
## 5.4 Summary table of option 4 analysis

### Table 11: Summary table of option 4 analysis

<table>
<thead>
<tr>
<th>Category</th>
<th>Key features</th>
<th>Scenarios under option 4: Use of external experts through specific contracts</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Scenario 1: Ad hoc contracts</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Strengthen implementation of effective enforcement of EU environmental legislation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Improve investigation procedures</td>
</tr>
<tr>
<td>Purpose</td>
<td></td>
<td>Provide targeted external expert input on specific areas of EU environmental policies</td>
</tr>
<tr>
<td>(Expected) functioning/mechanisms</td>
<td></td>
<td>Investigations carried out by the Commission after a breach of EU environmental law</td>
</tr>
<tr>
<td>Scope</td>
<td></td>
<td>EU budget (including some funding from LIFE + programme)</td>
</tr>
<tr>
<td>Functioning details</td>
<td></td>
<td>Would involve no further legal implications as general rules for ad hoc contracts already defined under Directive 2004/18/EC</td>
</tr>
<tr>
<td>Management/organisational aspects</td>
<td></td>
<td>Implication of increased resources needed to manage more investigations.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Reluctance to cooperate from national authorities</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Unavailability of relevant experts</td>
</tr>
</tbody>
</table>

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.
### Scenarios under option 4: Use of external experts through specific contracts

<table>
<thead>
<tr>
<th>Category</th>
<th>Key features</th>
<th>Scenario 1: Ad hoc contracts</th>
<th>Scenario 2: Framework contracts</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Reporting mechanisms</strong></td>
<td>Present information related to the infringement cases to the European Court of Justice</td>
<td>Present information related to the infringement cases to the European Court of Justice</td>
<td></td>
</tr>
<tr>
<td><strong>Use of specific tools</strong></td>
<td>Investigation by external experts</td>
<td>Investigation by external experts</td>
<td></td>
</tr>
<tr>
<td><strong>Time requirements, planning</strong></td>
<td>Varies depending on the mission and contract</td>
<td>10 days to submit offers</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Contracts usually run for one year and are renewable</td>
<td>FWC contracts run for approximately four years</td>
<td></td>
</tr>
<tr>
<td><strong>Human resources needed</strong></td>
<td>Very variable 10 -20 days/year to manage the overall contract and from 2 days to a high number of days to carry out tasks</td>
<td>2 days per contract</td>
<td></td>
</tr>
<tr>
<td><strong>Material resources needed</strong></td>
<td>Only in case of on-site investigations: hotel lodging, transportation and food for the experts.</td>
<td>Only in case of on-site investigations: hotel lodging, transportation and food for the experts.</td>
<td></td>
</tr>
<tr>
<td><strong>Training requirements and other expertise required</strong></td>
<td>Very specific and in-depth expertise and experience required from the external expert on investigation</td>
<td>Very specific and in-depth expertise and experience required from the external expert on investigation</td>
<td></td>
</tr>
<tr>
<td><strong>Overall administrative feasibility</strong></td>
<td>Medium to high – already being implemented within DG ENV.</td>
<td>Medium to high –already being implemented within DG DNV.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Could shift some administrative burden off the Commission by delegating contact id expert to contractors.</td>
<td>Could shift some administrative burden off the Commission by delegating contact id expert to contractors.</td>
<td></td>
</tr>
</tbody>
</table>
### Option 4 – Use of ad hoc/framework contracts to provide expertise

<table>
<thead>
<tr>
<th>Category</th>
<th>Key features</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Expected socio-economic impacts</strong></td>
<td></td>
</tr>
<tr>
<td>Completeness</td>
<td>This option would contribute to carrying out investigations of environmental infringements and open up the possibility of presenting more cases being proved by the EC before the ECJ. Therefore, it would help to enforce EU environmental law.</td>
</tr>
<tr>
<td>Costs of implementation/cost effectiveness</td>
<td>Around €500,000 for multiple ad hoc contracts. Compared to in-house use of expertise within the Commission, use of outside expertise would require additional finances. Budgets would need to consider the cost of using a contractor and experts to carry out certain investigation tasks.</td>
</tr>
<tr>
<td>Benefits of the option</td>
<td>Allows for expert input/scientific justification</td>
</tr>
<tr>
<td></td>
<td>Allows for objectivity by experts outside of the Commission</td>
</tr>
<tr>
<td></td>
<td>To a certain extent, helps to raise awareness of the environmental issue at stake by involving external experts</td>
</tr>
<tr>
<td>Impacts on stakeholders</td>
<td>Provides business opportunities</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Scenarios under option 4: Use of external experts through specific contracts</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Scenario 1: Ad hoc contracts</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Scenario 2: Framework contracts</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Costs of implementation/cost effectiveness**

- **Scenario 1: Ad hoc contracts**
  - Around €500,000 for multiple ad hoc contracts.
  - Compared to in-house use of expertise within the Commission, use of outside expertise would require additional finances. Budgets would need to consider the cost of using a contractor and experts to carry out certain investigation tasks.

- **Scenario 2: Framework contracts**
  - Around €30,000 to €35,000 per task.
  - Compared to in-house use of expertise within the Commission, use of outside expertise would require additional finances. Budgets would need to consider the cost of using a contractor and experts to carry out certain investigation tasks.

**Benefits of the option**

- Allows for expert input/scientific justification
- Allows for objectivity by experts outside of the Commission
- To a certain extent, helps to raise awareness of the environmental issue at stake by involving external experts

**Impacts on stakeholders**

- Provides business opportunities
### Option 4 – Use of ad hoc/framework contracts to provide expertise

<table>
<thead>
<tr>
<th>Category</th>
<th>Key features</th>
<th>Scenarios under option 4: Use of external experts through specific contracts</th>
</tr>
</thead>
</table>
| (Potential) Risks and obstacles, technical constraints | Lack of sufficient resources to support frequent investigations as it entails costs  
Lack of sufficient cooperation from Member States  
Lack of on-sites visits, whereas in a (limited) number of cases they could help reinforce cases  
Possibility that the specific expertise desired does not exist  
Would need the cooperation of Member States | Scenario 1: Ad hoc contracts  
Lack of options to allocate the investigation to the most relevant expert  
Lack of sufficient resources to support frequent investigations as it entails costs  
Lack of sufficient cooperation from Member States  
Lack of on-sites visits, whereas in a (limited) number of cases they could help reinforce cases  
Possibility that the specific expertise desired does not exist  
Would need the cooperation of Member States  
Scenario 2: Framework contracts  |
| Impact on quality of investigation activities | Commission to have enough evidence about environmental breach in order to continue with the infringement procedure against a Member State  
Allows Commission to launch investigations quickly  
Would ensure a high-level of quality due to the use of experts, transparency, and scientific/technical objectiveness involved | Commission to have enough evidence about environmental breach in order to continue with the infringement procedure against a Member State  
Allows Commission to launch investigations quickly  
Would ensure a high-level of quality due to the use of experts, transparency, and scientific/technical objectiveness involved |
| (Expected) results | Using expertise to help carryout investigations would provide lessons learned that could be used to further improve implementation of EU environmental law and reduce the amount of infringements reports.  
Could also help to decrease the amount of infringements that occur by sending out a message to MS that the EC is capable of carry out efficient investigations. | Lessons could be learned from the results of investigation activities that could be used to further improve implementation of EU environmental law and reduce the amount of infringements reports.  
Could also help to decrease the amount of infringements that occur by sending out a message to MS that the EC is capable of carry out efficient investigations. |
| Potential for environmental improvement/benefit |                                                                                 |                                                                             |
### Scenarios under option 4: Use of external experts through specific contracts

<table>
<thead>
<tr>
<th>Category</th>
<th>Key features</th>
<th>Scenario 1: Ad hoc contracts</th>
<th>Scenario 2: Framework contracts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Political acceptance</td>
<td>Essential that experts are highly qualified, ‘neutral’ and not considered a conflict of interests. Important that there is participation of the MS under investigation to ensure investigation activities carried out run smoothly and efficiently.</td>
<td>Essential that experts are highly qualified, ‘neutral’ and not considered a conflict of interests. Important that there is participation of the MS under investigation to ensure investigation activities carried out run smoothly and efficiently.</td>
<td></td>
</tr>
<tr>
<td>Proportionality</td>
<td>Important that experts respect national administrative autonomy and that there is support of the MS under investigation.</td>
<td>Important that experts respect national administrative autonomy and that there is support of the MS under investigation.</td>
<td></td>
</tr>
<tr>
<td>Potential international impacts</td>
<td>None</td>
<td>None</td>
<td></td>
</tr>
</tbody>
</table>
Chapter 6: Option 5 – Use of external experts to provide advice on alleged breaches of EU environment law

This chapter analyses Option 5, which examines the possibility of using a pool of external experts that would be called upon to assist the EC to investigate alleged breaches of EU environment law. This option would involve DG ENV selecting a pool or pools of experts that would be called upon/convoked to provide their expert opinion on specific cases. Although there is no current experience on this within DG ENV, the Council of Europe has used this approach under the Bern Convention (for addressing complaints on nature conservation). The model of the Bern Convention is explored in the detail in following section. It is assumed that this option would have financial implications. There may also be relevant experience elsewhere in the Commission.

Similar to option 4, option 5 addresses investigations, which are a more reactive response by the Commission, compared to system wide audits. However, the main difference between options 4 and 5 is that option 4 would select a chosen contractor to provide the expertise, whereas option 5 would put emphasis on the role of specific identified expert (within a pool of experts).

6.1 Analysis of similar models using external experts

In order to better understand how and whether a similar structure would work within DG ENV, this section provides an analysis of existing structures where external experts are used for specific expertise. The cases discussed below include:

- The Bern Convention
- The Aarhus Convention
- EU’s system of external expertise
- EACI’s list of external experts for evaluation activities
- EU’s Civil Protection Mechanism

6.1.1 The Bern Convention

The Bern Convention (official known as The Convention on the Conservation of European Wildlife and Natural Habitats) is a binding international legal instrument in the field of nature conservation, which covers most of the natural heritage of the European continent and extends to some States of Africa. The Bern Convention was adopted in September 1979 in Bern (Switzerland) and entered into force on 1 June 1982. The Council of Europe (COE) manages it. Fifty Contracting Parties, including Member States of the Council of Europe, four African States, and the European Union have signed the Convention. NGOs cannot be Contracting Parties, however can be granted official observer status.
The Convention aims are to conserve wild flora and fauna and their natural habitats and to promote European co-operation in that field. The Convention places a particular importance on the need to protect endangered natural habitats and endangered vulnerable species, including migratory species. All countries that have signed the Bern Convention must take action to:

- Promote national policies for the conservation of wild flora and fauna, and their natural habitats;
- Have regard to the conservation of wild flora and fauna in their planning and development policies, and in their measures against pollution;
- Promote education and disseminate general information on the need to conserve species of wild flora and fauna and their habitats;
- Encourage and co-ordinate research related to the purposes of this Convention.
- And also co-operate to enhance the effectiveness of these measures through:
  - Co-ordination of efforts to protect migratory species; and
  - The exchange of information and the sharing of experience and expertise.\(^{95}\)

The Bern Convention has set–up an efficient system of monitoring and recommendations, known as the case-files system to ensure that Contracting parties follow up on their commitments under the Convention. Figure 2 below illustrates the different administrative bodies and political systems involved in the case-file system.

The Bern Convention’s case-files system is a monitoring mechanism set up by the Standing Committee to monitor the failure to honour the undertakings entered into by Contracting Parties\(^{96}\). The case-files system makes it possible to verify application of the convention’s

---

\(^{95}\)Council of Europe website, [http://www.coe.int/t/dg4/cultureheritage/nature/bern/default_en.asp](http://www.coe.int/t/dg4/cultureheritage/nature/bern/default_en.asp)

\(^{96}\)The case-files system was not officially included in the Convention. It was set-up independently by the Standing Committee.
provisions as defined at international level (Council of Europe) in the local context of habitats and endangered species in a given geographical area.

The following actors are involved in a case-file system:

- **Secretariat**: Once a complaint is received, it goes through a first screening by the Secretariat. The Secretariat decides whether to take the complaint forward to the Standing Committee. There are no written criteria on how to determine whether a complaint should continue its route to the Standing Committee, however there are number of points that are taken into consideration such as whether the focus of the complaint is covered by the Bern Convention. Further, the complaint must not be anonymous and be sufficiently serious to warrant examination at international level, bearing in mind the European importance of the habitat, species or population concerned.

- **Standing Committee**: the Standing Committee of the Bern Convention is the governing body of the Bern Convention. It includes all Contracting Parties as well as observer states and organisations, both governmental and non-governmental, at the national and international level. It meets annually at the Council of Europe premises in Strasbourg. The Standing Committee has general responsibility for overall monitoring of the convention by approving recommendations, declarations, decisions, and providing guidelines for compliance. They are also responsible for selection of the groups of experts. In terms of their role in the case-file system, the Standing Committee assesses them and decides on the status of the file, as well as the measures/recommendations to be adopted. The Standing Committee may request further information and reports to be presented; whether an on-the-spot appraisal is needed; or adopts a specific Recommendation on the matter, whose implementation will be followed-up afterwards.

- **Groups of experts**: they are appointed by the Standing Committee to offer expertise on particular topics. They also help to prepare specific draft recommendations, which are provided to the Standing Committee.

- **Contracting Parties**: Contracting parties are usually the ones being investigating for the possible infringement of the Convention – in which case, a case-file is opened. States accused of infringements are subject to international judgement of their management of sites or species.

- **Complainants**: complainants are usually NGOs, individuals or groups of individuals. They have observers’ rights in many of the meetings held under the Convention. The role of NGOs in the case-files system is often decisive. Oftentimes, it is through NGOs that make it possible to determine how provisions of the convention are being applied in specific cases. The majority of cases which have led to the opening of files have been notified by national or international NGOs.
Since its foundation, the Convention Secretariat has received 127 complaints of infringements of the Convention by Contracting Parties. 32 of these complaints have resulted in the opening of case-files. See Table 17 in the Annex for a complete list of case files and complaints that have been registered to-date.

The majority of complaints received by the Secretariat are based on specific plans or projects that affect a natural protected area and which may be negative to the habitats of species protected by the Convention. These projects are usually related to economic development (e.g. road constructions or projects to build dams or wind farms), which makes it a subject of great importance for the concerned country. Tourism development has also been a serious concern, especially for the conservation of marine turtles in the Mediterranean Sea. 197

### 6.1.1.2 Groups of Experts

The Bern Convention has implemented nine different Groups of Experts to monitor the implementation of Standing Committee recommendations concerning the species or habitats they cover (e.g. Amphibian and reptiles, plants, birds, etc.).

The delegates of the Standing Committee (who are representatives of the Contracting party) select the experts that make up the nine different Groups of Experts. One expert is assigned per country. There are approximately 20 experts assigned to each group198.

They address particular cases by preparing “specific” draft recommendations, particularly with regard to measures to protect certain species, which has proven to be a valuable contribution. 199

The Groups of Experts work on very specific technical and scientific issues related to the Convention and are not involved in the decision making process, which is the role of the Standing Committee.

The Groups of Experts can meet on a regular or ad hoc basis, depending on requirements. Meetings are usually held every two or three years, where they address specific conservation problems and propose recommendations to the Standing Committee. As it is up to the Contracting Party to select the expert, oftentimes the team of experts differ from year to year.

### 6.1.1.3 Follow-up activities

The following monitoring and reporting actions have been set-up to ensure compliance to requirements under the Convention and implementation of recommendations:

---


198 Interview with Bern Convention Secretariat, 11 June 2012

Recommendations

Following the review of case-files and based on expertise received from the Groups of Experts, the Standing Committee can adopt two types of recommendations, as well as guidelines to address the complaint in question:

- General recommendations: adopted by the Standing Committee (usually after consultation with groups of experts, the work of consultants or seminars);
- Specific recommendations: specifically addressed to one or more Contracting Parties, and concern situations in which the implementation of the Convention raises such as problems over the conservation of flora, fauna, or a natural habitat (for example, unsatisfactory protection of a species of fauna in a specified location). Specific recommendations serve as the official statement of the Standing Committee’s decisions on a particular case-file. These recommendations offer guidance to the party or parties concerned on the measures to be taken in order to comply with the provisions of the convention. The Groups of Experts are often quite valuable in helping to draft the specific recommendations.

- Guidelines: Guidelines are more detailed than the general recommendations, and have comparable standing. They offer guidance to the Contracting Parties on the action to be taken.

The recommendations are an essential means to support the provisions of the Convention therefore the monitoring of their follow-up is therefore fundamental. The follow-up to general recommendations or guidelines takes place mainly through general four-yearly reports in which the Contracting Parties concerned describe the legal and/or other measures taken to comply with the policies they propose.

Of the 76 case-files opened, 22 have resulted in a recommendation, representing 27.8% of all recommendations adopted by the Committee. Following adoption of a recommendation, the party or parties concerned are required to present a report on developments in the situation and the measures taken to apply the terms of the recommendation in question.

On-the-spot visits

In the event of difficulty or doubt as to the measures to be taken in a particular case and if further information is required, the Committee may ask an expert designated by the Secretariat to carry out an on-the-spot appraisal. So far, 23 on-the-spot visits have been made. Two types of appraisals are carried out by the COE:

Option 5 – Use of external experts to provide advice on alleged breaches of EU environment law

- Appraisals to determine whether the Environmental Diploma (an award given out by the COE for exceptional conversation activities) can be awarded, renewed, or withdraw.
- Appraisals related to case-files to either verify information or ensure that the recommended measures are being properly implemented.

On-the-spot appraisals are carried out with the agreement of the Party concerned. They are usually requested when information on the case is either lacking or unclear. They are of extreme importance, and therefore the report of the independent expert resulting from the visit is analysed by the Standing Committee with the utmost attention. These visits are crucial for the Standing Committee to decide on further steps on the case. The measures or draft recommendations proposed by the expert are discussed by the Standing Committee, providing the basis for Standing Committee Recommendations. The following rules were developed for on-the-spot appraisals:

- In urgent cases, the Chair may authorise the Secretariat to consult the Standing Committee by post in order that a decision may be reached in accordance with the foregoing paragraph.

- The expert selected to carry out the visit of inspection shall be appointed by the Secretary General of the Council of Europe. The expert cannot be a person who represents or has represented a State on the Standing Committee, or a national of the Party in whose territory the natural habitat to be visited is situated. The appointment of the expert must be agreed by the Party concerned. If possible, the expert selected must speak the language of the country where the appraisal is taking place.

- At the request of the Standing Committee or its Chair, the expert shall be accompanied during the visit by a member of the Secretariat and by a representative of the Party concerned.

- The Standing Committee shall draw up precise terms of reference to be conveyed to the expert.

- After completing the visit of inspection, the expert shall submit a written report to the Standing Committee in one of the official languages of the Council of Europe. The expert may be called upon to present the report in person to the Standing Committee at one of its meetings.

- In order to ensure that the said expert may carry out the assignment in full independence, the travel and subsistence expenses pertaining to the visit and

---

203 Interview with Bern Convention Secretariat, 11 June 2012
204 Bern Convention Standing Committee document (2008), Application of the Convention: Summary of Case files and complaints Reminder on the processing of complaints and new on-line form,
those arising out of the presentation of the report to the Standing Committee shall be borne by the Council of Europe.\textsuperscript{205}

\textbf{Reporting system}

The following types of reports under the Bern Convention contribute to monitor the implementation of the Convention and assess its effectiveness:

- Compulsory biannual reports submitted by Parties on the use of the exceptions that are allowed under Article 9 of the Convention;
- Voluntary general reports submitted by Parties on the national implementation of the Convention (every four years);
- Legal reports analysing the implementation of the Convention in one country (one country per year), commissioned by the Secretariat;
- National reports submitted to and discussed by the Groups of Experts regarding their target species or habitats;
- Reports submitted by Parties and observers on the follow-up of Recommendations (a selection of recommendations is monitored each year by the Standing Committee)\textsuperscript{206}.

\textbf{Budget and funding mechanisms}

The Bern Convention is funded by the COE and voluntary contributions (from Contracting Parties). The Committee of Ministers sets the budget provided to the Council of Europe, which is the COE’s decision-making body. It comprises the Foreign Affairs Ministers of all the member states, or their permanent diplomatic representatives. The budget attributed to the Bern Convention has seen yearly reductions.\textsuperscript{207} The reason for this is that the environment and nature conversation is not a top priority for many of the foreign affair ministries.\textsuperscript{207} To some extent, the current economic crisis also explains the decreasing yearly budget.

The COE is expected to provide around € 427,300 in 2012 (€ 201,900 for financing the programme of activities including overheads, and €225,400 for staff and high level management costs). Voluntary contributions in 2012 from Parties are expected to be around € 359,000. See Table 12 for breakdown of these costs.

For 2013, the Council of Europe is expected to provide around € 401,400 in 2013 (€ 202,000 for financing the programme of activities including overheads, and € 199,400 for staff and high level management costs).

\textsuperscript{206} Council of Europe website: http://www.coe.int/t/dg4/cultureheritage/nature/bern/default_en.asp
\textsuperscript{207} Interview with Bern Convention Secretariat, 11 June 2012
management costs). Parties are expected to provide approximately € 397,000 in new voluntary contributions.\(^{208}\)

In terms of the funding of experts, the Secretariat estimated that experts are paid approximately 175 Euros a day (based on rates for Strasbourg), in addition to the reimbursement of their travel, food, and lodging costs.

Table 12: Expected budget and activities, 2012\(^{208}\)

<table>
<thead>
<tr>
<th>Activities</th>
<th>Funding (Euros)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>OB(^{209})</strong></td>
<td><strong>VC(^{210})</strong></td>
</tr>
<tr>
<td>Monitoring of the legal application of the Convention</td>
<td></td>
</tr>
<tr>
<td>Reports of the implementation of the Convention</td>
<td>4,000</td>
</tr>
<tr>
<td>Conservation of natural habitats</td>
<td></td>
</tr>
<tr>
<td>Group of experts on protected areas and ecological networks</td>
<td>9,300</td>
</tr>
<tr>
<td>2 technical seminars for the setting-up of the Emerald Network</td>
<td>--</td>
</tr>
<tr>
<td>Pilot projects for the setting-up of the Emerald Network</td>
<td>--</td>
</tr>
<tr>
<td>Group of Specialists on the European Diploma of Protected Areas</td>
<td>7,200</td>
</tr>
<tr>
<td>Consultants</td>
<td>--</td>
</tr>
<tr>
<td>Monitoring of species and encouraging conservation action</td>
<td></td>
</tr>
<tr>
<td>Biodiversity and Climate Change</td>
<td>9,300</td>
</tr>
<tr>
<td>Select experts Group on Invasive Alien Species</td>
<td>3,400</td>
</tr>
<tr>
<td>Large Carnivores</td>
<td>9,100</td>
</tr>
<tr>
<td>Conservation of Birds</td>
<td>13,100</td>
</tr>
<tr>
<td>Sectoral policies and biodiversity conservation</td>
<td></td>
</tr>
<tr>
<td>Charter on gathering of mushrooms and other wild biodiversity</td>
<td>--</td>
</tr>
<tr>
<td>Monitoring of sites and populations at risk and emergencies</td>
<td></td>
</tr>
<tr>
<td>On-the-spot visits, including European Diploma appraisals(^{211})</td>
<td>14,000</td>
</tr>
<tr>
<td>Sites at risk as a result of an emergency</td>
<td>--</td>
</tr>
</tbody>
</table>


\(^{209}\) Refers to the ordinary budget which is financed by the Council of Europe

\(^{210}\) Refers to the voluntary contributions provided by Contracting Parties

\(^{211}\) The European Diploma of Protected Areas is a prestigious international award granted since 1965 by the Council of Europe.
Option 5 – Use of external experts to provide advice on alleged breaches of EU environment law

### Activities and Funding (Euros)

<table>
<thead>
<tr>
<th>Activities</th>
<th>Funding (Euros)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>OB 209</td>
</tr>
<tr>
<td>Training, awareness, and visibility</td>
<td>12 000</td>
</tr>
<tr>
<td>Strategic development of the Convention after CBD/COP 10 for the European targets for 2020</td>
<td>--</td>
</tr>
<tr>
<td>Chair’s expenses</td>
<td>3 000</td>
</tr>
<tr>
<td>Delegates of African states and of some delegates of Central and Eastern Europe</td>
<td>12 200</td>
</tr>
<tr>
<td>Travel of experts and Secretariat</td>
<td>16 100</td>
</tr>
<tr>
<td>Meetings of the Bureau</td>
<td>6 800</td>
</tr>
<tr>
<td>Permanent staff (provided by the COE)</td>
<td>225 400</td>
</tr>
<tr>
<td>Temporary staff</td>
<td>--</td>
</tr>
<tr>
<td>Office costs for temporary staff</td>
<td>--</td>
</tr>
<tr>
<td>Overheads (interpretation, translation and printing of documents)</td>
<td>81 200</td>
</tr>
<tr>
<td>Total</td>
<td>427 300</td>
</tr>
<tr>
<td>Overall Total</td>
<td>786 300</td>
</tr>
</tbody>
</table>

---

### 6.1.1.5 Strengths and weaknesses

There are several strengths and weaknesses of the Bern Convention’s model to be considered in order to analyse the feasibility of implementing a similar model within DG ENV:

**Strengths**

- A strong point that both the expert interviewed and literature review point out is the flexibility of the procedural steps involved. The Standing Committee remains free to decide the solution in each case, without being constrained by strict obligations that may be a burden for the smooth co-operation among Contracting Parties. This concept is even written in the Convention under Article 18(1): “The Standing Committee shall use its best endeavours to facilitate a friendly settlement of any difficulty to which the execution of this Convention may give rise”. Therefore, the institution sees itself as a forum to express opinions and to propose solutions rather than one with very strict rules, which could compromise such freedom. These principles of cooperation, transparency, flexibility, and knowledge exchange are also seen in the IMPEL IRI for which it...

---

also bases its success. The Bern Convention is not meant to play the role of watchdog but serves an instrument of co-operation among equal Parties, and a forum to discuss and help resolve problems.

- Closely connected to the point above, another strength of the Bern Convention model lies in the willingness of the Parties to co-operate. Practice has shown that the success or the failure of a case-file procedure does not depend on the procedural rules themselves, but on the will of the Parties to co-operate.

- The experts that comprise the different Groups of Experts are chosen because of their very specific technical and scientific skills related to the relevant Group they are a part of. This high level of expertise ensures that the Standing Committee is provided with objective and informative data permitting them to develop general and specific recommendations to address difficulties in implementation or non-compliance of the Convention.

**Weaknesses**

- Communication between the different actors involved can be further improved. For example, to convoke experts to a meeting of the Group of Experts or for other specific informational needs, rather than directly to the expert himself, the Secretariat must first send a letter to the delegate of the Contracting Party, who may then contact the expert. Nonetheless informal contact is often made between the Secretariat and experts.

- Certain monitoring activities of the Convention can also be further improved. For example, currently, only 3 staff members make up the Convention’s Secretariat, which is not sufficient to deal with the required administrative work for the 50 Parties of the Convention. The limited amount of human resources within the Secretariat also does not allow for the review of all cases, and instead resources are focused just on the most urgent cases. Further, there is currently no “registration system” to number the old files and the new incoming ones, which would provide quicker access to the information related to them.

Nonetheless, some improvements have been made recently to facilitate the work of the Secretariat. This includes for example, the development on an on-line complaint form (before complainants could only send complaints through registered post). Moreover, the on-line form has also been developed to fill in information gaps by improving the quantity and quality of the information provided by complainants. Finally, there has been a proposal for a numeration system to register and organise all case-files and complaints.

- Experts of the Groups of Experts are chosen by the delegates of the Standing Committee (and not by the Convention Secretariat, who is responsible for selecting experts to carry out the on-the-spot appraisals). Oftentimes experts who are appointed to a Group change yearly. This means that the team of experts for each group is not always consistently stable from year to year, which

---

213 Interview with Bern Convention Secretariat, 11 June 2012
could create some difficulty in terms of treating certain case-files for which certain experts may have had a longer experience in compared to a newly arrived expert.

- Another challenge that has been voiced includes the priorities and objectives of the Ministries of Foreign Affairs of the different Contracting parties. As was mentioned earlier, the annual budget for the Convention has decreased from year to year. The reason for this is underlined by the current economic crisis and priorities of the Ministries of Foreign Affairs, which are not always focused on nature conservation.

### 6.1.2 The Aarhus Convention

The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention) was adopted on 25 June 1998 in the Danish city of Aarhus at the Fourth Ministerial Conference in the 'Environment for Europe' process. As of July 2009, it had been signed by 40 (primarily European and Central Asian) countries and the European Union and ratified by 41 countries. Within the European Union, Aarhus-type principles are starting to be integrated in legislation, notably the Water Framework Directive (Directive 2000/60/EC).

The Aarhus Convention grants the public rights and imposes on Parties and public authorities’ obligations regarding access to information and public participation and access to justice. It is considered a milestone in environmental democracy because it grants procedural rights to individuals with respect to access to environmental information held by public authorities and public participation in decision-making. This transparency and participation is, according to the objective of the Convention, “to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being…”

It is an international instrument that makes a clear link between environmental protection, health, human rights and democracy. The Convention also provides for increased access to justice in a number of circumstances, such as wrongful decisions under the terms of the Convention or even to challenge more general contraventions of environmental laws.

The Convention:

- Links environmental rights and human rights
- Acknowledges that we owe an obligation to future generations
- Establishes that sustainable development can be achieved only through the involvement of all stakeholders
- Links government accountability and environmental protection
- Focuses on interactions between the public and public authorities in a democratic context

---

214 EEB (2005), EU Environmental Policy Handbook: A Critical Analysis of EU Environmental Legislation Making it accessible to environmentalists and decision makers, [www.eeb.org/?LinkServID=3E5422E-AAB4-A68D-211A634325A89B8&showMeta=0](http://www.eeb.org/?LinkServID=3E5422E-AAB4-A68D-211A634325A89B8&showMeta=0)
The Aarhus Convention (UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters)\textsuperscript{215}, implemented an Ad Hoc Expert Group on Public Participation. This expert group was given a mandate to coordinate information sharing on public participation in decision-making, including through the collection of good practice examples, and to advise the Working Group of the Parties on the terms of reference for a task force on public participation\textsuperscript{216}.

Finally, the Aarhus Convention Compliance Committee was established to fulfil the requirement of Article 15 of the Aarhus Convention on review of compliance to establish arrangements for reviewing compliance with the Convention.

These two structures established under the Aarhus Convention are analysed in further detail in the following sections to determine whether lessons can be taken towards improving implementation of EU environmental legislation and investigation efforts within an EU level context.

\textbf{6.1.2.1 Ad Hoc Expert Group on Public Participation}

The Meeting of the Parties decided at its third session (Riga, 11–13 June 2008) to address implementation of the Convention’s provisions on public participation by establishing an Ad Hoc Expert Group on Public Participation. The Ad Hoc Expert Group was given a mandate of two years (2009-2011) to prepare revisions on the draft terms of reference for a Task Force on Public Participation.

The first meeting of the Expert Group on Public Participation took place from 7 to 8 July 2009 in Geneva. The Expert Group focused on the draft terms of reference for a future task force on public participation in decision-making on environmental matters.

The Expert Group decided on the following important tasks that the Task force has been assigned to focus on in terms of sharing of best practices:

- Document and share expertise, experience and good practices and comparative analyses concerning public participation in environmental decision-making and the impact of other sets of instruments of participatory democracy related to sustainable development, through:
  - The organization of workshops;
  - The use of the clearing-house mechanisms and other types of electronic exchange of information;
  - Commissioning and publication of research work and expert studies; and
  - A database of experts and resources and an inventory of public participation procedures, both compulsory and voluntary.

\textsuperscript{215} UNECE, Aarhus Convention website: http://www.unece.org/env/pp/introduction.html
Exchange information on innovative forms and tools of public participation beyond traditional consultation procedures, including through the exchange of best practices on modes of participation and on their evaluation, in order to enhance the effectiveness of public participation.\(^227\)

The Ad Hoc Expert Group on Public Participation had its first meeting on 7-8 July 2009. Most experts who participated had legal and/or environmental law expertise and came from a wide variety of organisations:

- Government bodies (30 experts) – Ministries of Environment, Ministry of Trade and Economic Affairs, and the European Commission (DG ENV)
- NGOs (24 experts) – including Bureau of Environmental Investigations (Ukraine), European ECO Forum (Ireland), EarthJustice (Switzerland), Environment-People-Law (Ukraine), Ural Ecological Union (Russia), etc.
- Academia (2 experts) – from the International Environmental Law Centre of the University of Limoges (FR)
- UNECE Secretariat (6 experts) – Environment, Housing, and Land Management Division
- Regional Environmental Centres (2 experts) – Regional Environmental Centre for Central and Eastern Europe and Regional Environmental Centre for Moldova
- Private Sector (5 experts) – CropLife International, EuropaBio, Monsanto International\(^{218}\)

### 6.1.2.2 Aarhus Compliance Committee

The Convention has a unique Compliance Review Mechanism, which can be triggered in four ways:

- A Party makes a submission concerning its own compliance,
- A Party makes a submission concerning another Party's compliance,
- The Convention Secretariat makes a referral to the Committee, or
- A member of the public makes a communication concerning the compliance of a party.\(^{219}\)

The Compliance mechanism of the Aarhus Convention is unique in that it allows members of the public to communicate concerns about a Party's compliance directly to a committee of

---


\(^{219}\) UNECE, Aarhus Convention website: http://www.unece.org/env/pp/ccbackground.html
international legal experts empowered to examine the merits of the case. The Committee can receive complaints directly (through the Aarhus Convention secretariat) from members of the public. The procedure is designed to promote compliance with the Convention, rather than provide redress for infringement of an individual’s rights.

Similar to the Group of Experts under the Bern Convention, the Aarhus Compliance Committee cannot issue binding decisions. Instead, the Compliance Committee makes recommendations to the full Meeting of the Parties (MoP). However, in reality, recommendations of the Compliance Committee are very important as MoPs occur infrequently. As of August 2009, 41 communications from the public - many originating with non-governmental organizations - and 1 submission from Party had been submitted to the Convention’s Compliance Committee. Complaints that received so far range from issues related rights of legal standing for ECOs, to failure of national laws to respect the Convention and failure of public participation procedures.

**On-the-spot appraisal**

The Compliance Committee may “undertake, with the consent of any Party concerned, information gathering in the territory of that Party” to assist in the performance of its functions. On-the-spot appraisal is used to collect information that requires experts’ travel to the territory of a State to establish facts and assess the situation of alleged non-compliance.

A member of the Compliance Committee or the Secretariat is usually the one to carry out on-the-spot appraisals. They can also be assisted by international/sub-regional organizations (such as OSCE and UNDP), especially if they are present in the territory of the Party concerned and familiar with the Convention.

On-the-spot appraisals cannot be carried out spontaneously or without prior consent of the Party concerned. The following reasons justify the request for an on-the-spot appraisal:

- The Committee has enough information already to open a file and the situation of alleged non-compliance is and continues to be serious;
- The Committee lacks essential information or the case presents serious uncertainties or difficulties as to the appropriate measures that should be recommended; and
- It is not possible to obtain the missing elements by other less costly means.

For each information-gathering mission, the Committee prepares terms of references, which may contain a description of the case under consideration. To prepare these terms of reference, the Committee considers the following:

- The objective and expected outcome of the mission.
- The timing of the mission, i.e. what is the most suitable timing for the Party concerned or of relevant entities in the Party concerned.

---


Option 5 – Use of external experts to provide advice on alleged breaches of EU environment law

- The duration of the mission.
- The appropriate representation by the Committee and/or by the secretariat. Other individuals, such as experts or representatives of international organizations with field presence in the Party concerned, may be mandated to gather the information. Availability and language skills will be considered when selecting the appropriate persons to undertake the mission.
- The budget for the mission. In principle, the costs of an information-gathering mission are covered by the Convention’s trust fund and/or a contribution from the Party concerned.

Figure 3 presents the operation procedures of the Compliance Committee.

6.1.2.3 **Budget and funding mechanisms**

The majority of the funding for the implementation of the Aarhus Convention is provided through the budgets of public authorities of each Contracting Party. Currently, data is not available to assess the volume of those resources.

Financial arrangements to fund the activities of the Convention were set up in Decision I/13 at the first MOP. It is based on a voluntary scheme of contributions by Parties and Signatories; using a system of equal shares. Any remaining budget of the work programme for 2003-2005 not covered by the United Nations regular budget should be covered by voluntary contributions. This corresponded to 59 shares of US$ 20,000 per year, of which 43 shares would cover core requirements and 16 shares would cover the remaining requirements. A special Task Force was also established to determine the feasibility of introducing a system of financial arrangements ‘based on the UN scale of assessments or other appropriate scales’. Since the original system of financial arrangements, a differentiated system of shares has been decided: Type A of US$ 20,000; and Type B of US$ 500.

Between 2003-2007, the countries that contributed the largest amount of funding to the Convention include Norway, Denmark, Estonia and Sweden, followed (at a significant distance) by Belgium, Finland and Italy. The European Union, as a contracting Party also made a very significant contribution from the EU budget of over US$ 126,000 per year throughout the five-year period.

---

Figure 3: Compliance Committee Operation Procedures

Option 5 – Use of external experts to provide advice on alleged breaches of EU environment law


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
6.1.2.4 **Strengths and weaknesses**

There are several strengths and weaknesses of the Aarhus Convention’s model that should be considered in order to analyse the feasibility of implementing a similar model within DG ENV:

- **Strengths**

  The Ad Hoc Expert Group on Public Participation was given a very targeted and specific task – that of revising and refining the terms of reference for the Task Force on Public Participation. The objectives of the meetings were closely followed to ensure that the main task of the group would be carried out.

  The Expert Group was composed of a diverse mix of stakeholders allowing for exchange of information from a wide variety of different viewpoints.

- **Weaknesses**

  Recommendations provided by the Aarhus Convention’s Compliance Committee are often quite pertinent, however they are not binding. Therefore, it is never a guarantee that Parties will adopt the recommendations.

  One of the principal weaknesses of the Aarhus Convention relates to progress in implementation. Clear and consistent frameworks for the implementation of the Convention by defining the legislation, including the mechanisms and procedures to make sure that regulations are applied in practice have not been carried out by all Signatories.²²⁵

6.1.3 **Examples of Commission use of external experts**

This section describes the Commission’s system of external experts as well as two examples of how the system of external experts is implemented in two specific contexts.

6.1.3.1 **European Commission’s system of external experts**

Within the European Commission, a system of external experts is in place and provides general guidelines that must be followed when using external experts. The provisions of using external expertise are set in the Commission document “Rules for Commission Expert Groups”²²⁶ and “Guidelines on the collection and use of expertise by the Commission”.²²⁷ The different types contracts that governs the Commission’s system of experts is detailed in Chapter 5.

A Commission expert group is defined as a “body set up by the Commission or its departments to provide it with advice and expertise, comprising at least 6 public and/or private sector members and meeting more than once”.

²²⁵Istra, Zelzna, (2011), Enforcement of the Aarhus Convention in the Adriatic Region Countries, [http://aarhus.zelenaistra.hr/sites/aarhus.zelena-istra.hr/files/Aarhus_seminar_proceedings.pdf](http://aarhus.zelenaistra.hr/sites/aarhus.zelena-istra.hr/files/Aarhus_seminar_proceedings.pdf)


There are 2 types of expert groups:

- Formal expert group set up by a Commission decision
- Informal expert group set up by an individual Commission department

The latter is the most relevant expert group under Option 5 as it would involve setting up a pool of external experts within DG ENV.

Expert groups used by the EC serve as a forum for discussions, providing high-level input from a wide range of sources and stakeholders in the form of opinions, recommendations and reports. However, expert input or recommendations is not binding on the, which remain fully independent regarding the way they take into account the expertise and views gathered.

Experts with specific knowledge in a subject can take part in the work of the group on an ad hoc basis.

Expert groups can have the following types of members:

- Individuals appointed in a personal capacity, acting independently and expressing their own personal views
- Individuals appointed to represent a common interest shared by stakeholders in a particular policy area; they do not represent an individual stakeholder
- Organisations in the broad sense of the word including companies, associations, NGOs, trade unions, universities, research institutes, EU bodies and international organisations
- National authorities of the Member States (at regional and local levels)

Several factors are taken into account to select the members of a Commission expert group. For example, for individuals, they are chosen according to a selection process that guarantees a high level of expertise, avoid conflicts of interests, as well as to ensure geographical and gender balance, when possible. The Commission and its departments can also issue public calls for applications. Members can be appointed for either a fixed (possibly renewable) or unlimited period.

External experts are usually not paid for their work; however the Commission reimburses travel and subsistence expenses. Only in duly justified cases are experts provided a special additional allowance.

6.1.3.2 EACI – List of external experts for evaluation activities

The EACI (The Executive Agency for Competition and Innovation) recently launched a call for experts. Selected experts will assist in evaluation activities relating to the implementation of the Competitiveness and Innovation Programme (CIP) adopted by decision of the European Parliament and the Council. This concerns the following programmes: Intelligent Energy-Europe, Eco-Innovation and the Marco Polo programme.

---

228 EC website: ec.europa.eu/transparency/regexpert/faq.cfm?aide=2
229 EACI, Call for expression of interest for the setting up of a list of external experts for evaluation activities. Reference: EACI/2008/002, http://ec.europa.eu/eaci/call_en.htm
Experts are selected based on certain criteria to ensure aspects such as:

- Ensuring a balance of experts and an appropriate rotation of experts
- The applicant’s geographical origin
- Professional experience: university degree, at least five years of professional experience, including at least three years acquired in a specific area of expertise, and appropriate working knowledge of English.
- Balanced participation of men and women

When an evaluation mission needs to be carried out, the awarding authorities of the EACI either invites all candidates on the list or just a selected number based on objective and non-discriminatory selection criteria specific to the evaluation work.

Experts that are included on the list are not obligated to accept the mission. Similarly, inclusion on the lists entails no obligation on the part of the awarding authority concerning the award of a contract.

In terms of financing, contracts signed under this call for applications will be standard task contracts concluded with a daily rate of 450 € (four hundred and fifty euro). Travel, subsistence and other costs will be reimbursed according to standard Commission rules. Contracts will, as a general rule, not cumulatively exceed 30 days per year. The daily rate of 450 € may be subject to annual or biannual revision.

Remuneration comes in the form of a payment per day worked, plus travel and subsistence expenses. A daily payment of € 450 may be claimed, (if required). If selected to serve as an expert, the person will be sent an appointment letter with all the terms and conditions (including a declaration on confidentiality and conflicts of interest) before he/she is allowed to start work. The expert is informed that the appointment letter is neither a public procurement nor a service contract. It is not a payment for the supply of services to the EACI. Therefore, it is not subject to VAT and the EACI does not provide the expert with a VAT exemption on supplies of goods and services or the consignments of goods to eligible institutions/individuals referred to in Article 15(10) of Directive 77/388/EEC and Article 23(1) of Directive 92/12/EEC (1510 form). Important: The contract is between the expert and the EACI, who does not intervene in any agreement between the employer and the expert.

Evaluations usually take place in the context of short sessions lasting a maximum of around 10 days a year. These may be in Brussels or carried out remotely (i.e. at the evaluator's home or place of work). The number of proposals that an expert deals with depends very much on each area. This may involve travel 2 or 3 times to Brussels.

6.1.3.3 **EU’s Civil Protection Mechanism**

The key features of the arrangements for civil protection under the responsibility of DG ECHO will also be reviewed. Under the EU’s Civil Protection Mechanism (operated through DG ECHO), the Monitoring and Information Centre (MIC) is the central hub of the EU Civil Protection Mechanism, which aims to facilitate strengthened cooperation between the EU and the Member
States in civil protection assistance intervention in the event of major emergencies. The MIC is widely recognised as providing useful services by advising on the needs on the ground, by facilitating closer cooperation among Participating States and by pooling resources. The MIC operates through a "one-stop shop" manner, which saved significant time for States who need to request international assistance, and also for the Participating States providing it. The MIC also coordinates with other international relief emergency responders, in particular UN agencies, external humanitarian NGO community and military actors (such as NATO).

Under the EU's Civil Protection Mechanism, there is an exchange system for civil protection experts. The system allows national civil protection experts to work in administrations of other participating states on all aspects of emergency intervention. It allows experts to gain experience and direct knowledge about similar responsibilities under different national systems; to familiarise themselves with various techniques used; to study the approaches taken by other emergency services; and, if necessary, to attend or give courses requiring specific expert knowledge not available in their home or host country respectively.

The EU exchange of experts is open to all civil protection institutions and organisations that are based in the EU MS, Croatia, and EEA countries. Experts are chosen based on the following criteria:

- Work at administrative, operative or scientific level
- Active in areas like coordination and incident management, technical expertise and response to disaster, contingency and emergency planning, emergency calls management, response on shore to marine pollution and coordination of training including through virtual academies for civil protection.
- The EU Exchange of Experts is particularly aimed at: intervention team leaders, liaison officers, technical experts, assessment experts, members of coordinating teams, people in charge of coordination and key national contact point staff as well as staff responsible for receiving and handling emergency calls and their trainers.

A training programme is provided to experts in order to prepare them for international civil protection assistance interventions inside as well as outside Europe. It also serves as a very useful platform for experience sharing and networking between national experts from participating countries.

The European Commission funds the EU Exchange of Experts Programme.

---

231 EC website on exchange of experts programme: [www.exchangeofexperts.eu](http://www.exchangeofexperts.eu)
6.2 Applicability within DG ENV of similar models of experts in investigations

Based on the analysis of similar models mentioned above, this section examines the feasibility of implementing a structure with a pool of experts within DG ENV to assist in carrying out investigations of alleged breaches in EU environmental law. Compared to option 4, option 5 would focus emphasis on the role of specific identified experts who would have a recognised standing and expertise in their fields (rather than on a contractor who would then be responsible for finding the expertise necessary).

The use of option 5 is not mutually exclusive with option 4. Both options on the use of external experts could potentially be used together in a complementary way. For example, the Commission could establish several stand-alone pools of experts with specific expertise (option 5) to which the Commission could refer in the context of a framework/ad-hoc contract (option 4). They could strongly encourage contractors to contact these experts during investigations. This is similar to the model that the EACI uses for its evaluation work as well as how the Bern Convention establishes its nine different Groups of Experts to monitor the species and habitats covered by the Convention. In order to apply this model within DG ENV, the Commission would need to be able to identify where external expertise is most needed. This can be done by undergoing an internal review to assess what expertise exists and available within the EC as well as reviewing the EU environmental infringement cases. Interviewing policy officers who work closely with MS on environmental infringements and implementation of EU environmental law is also a good way to identify the needs in expertise.

In terms of the reliability of expertise, the experts that comprise the different Groups of Experts under the Bern Convention are chosen due to their very specific technical and scientific skills related to the relevant Group they are a part of. This high level of expertise ensures that the information is objective and useful in addressing the problem at hand. The Commission has set up similar criteria in terms of identifying qualified experts (see example of the EACI and section 5.2).

There are several databases with the EC of external experts including for example the database of experts used by the current Scientific Risk Assessment Advisory Structure of the EC\(^{233}\). Following an open call for expression of interest, experts are selected as either members of the Scientific Committees or members of the Pool of Scientific Advisors. The Database of Experts is permanently open for subscription to scientists wishing to contribute to the work of the Scientific Committees. As is seen within the current Secretariat of the Bern Convention suffers from a lack of sufficient human resources, therefore, it would be necessary to ensure that within DG ENV, there is a sufficient administrative support (i.e. in the form of a secretariat) for effective monitoring and follow-up. For DG ENV to undertake similar actions, it would take some amount of administrative work within DG ENV to identify these needs, however in the long term would greatly facilitate the identification of relevant and available experts when an investigation case comes up.

Concerning the identification of experts, similar to the Bern Convention, the Commission could also potentially ask MS to recommend specific national experts for a particular environmental area. However, the possible challenge with this is to ensure that there is not a conflict of interest in using the national expert (i.e. using a national expert to carry out investigation activities in his/her MS of origin). Another challenge is to ensure that the expert is available for a sufficient amount of time. As seen with the Bern Convention, experts who are appointed to a Group change yearly. This means that the team of experts for each group is not always consistently stable from year to year, which could create some difficulty in terms of treating certain case-files.

Other challenges relate to obtaining not only the acceptance to participate from experts, but also ensuring experts are available in terms of having the time to assist in investigations. According to the EC’s guidelines on using external experts, only travel and subsistence costs expenses are provided, therefore it would be necessary to identify relevant experts who are willing to participate without a fee or for lower than their usual fees. This could be a significant barrier to using high-level experts who may require high fees. On the other hand, in the past it has been observed that such experts are often willing to work for the Commission, despite low compensation due to the high-level recognition they receive by working for the Commission. This would also provide mutual benefits for both the expert in question and the Commission (by receiving the needed expertise to carry out investigations).

The example of the use of experts under the Bern Convention emphasise how important it is to provide for the possibility of carrying out on-site investigations. Closely connected to the previous point, another strength of the Bern Convention model lies in the willingness of the Parties to co-operate. Practice has shown that the success or the failure of a case-file procedure does not depend on the procedural rules themselves, but on the will of the Parties to co-operate.

According to the EC’s rules for the use of external experts, option 5 is legally feasible to implement within DG ENV provided that the group of experts is established and operated according the rules set out in the “Rules for Commission Expert Groups”.

Regarding political acceptance and feasibility, it is essential that experts are highly qualified, ‘neutral’ and not considered a conflict of interests. It is possible that an independent expert would be more accepted by MS than if a Commission official came to carry out an onsite investigation. The expert would need to be familiar with the MS national laws, as well as implementation of EUU environmental acquis and if possible speak the native language of the MS under investigation to facilitate efficient and smooth communication. As is discussed under option 4, findings of experts during investigation proceedings should be well documented and made available to the MS in question.
### 6.3 Summary table of option 5 analysis

**Table 13: Summary table of option 5 analysis**

<table>
<thead>
<tr>
<th>Category</th>
<th>Key features</th>
<th>Option 5: Model using external pool of experts</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Purpose</strong></td>
<td>Use of a pool of external experts to enhance confidence in EU role of investigating alleged breaches of environmental law</td>
<td>DG ENV selecting a pool or pools of experts that would be called upon/convoked to provide their expert opinion on specific cases in alleged breaches of EU environment law</td>
</tr>
<tr>
<td>(Expected) functioning/mechanisms</td>
<td></td>
<td>External experts with in-depth and specific legal, technical, and policy knowledge in various fields of environmental sectors (e.g. waste, nature protection, water, etc.)</td>
</tr>
<tr>
<td><strong>Scope</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Funding</strong></td>
<td>EU budget</td>
<td></td>
</tr>
<tr>
<td>Legal feasibility</td>
<td>Legally feasible to implement within DG ENV provided that the group of experts is established and operated according the rules set out in the &quot;Rules for Commission Expert Groups&quot;. Need to ensure that the use of external expert does not infringe upon any possible conflict of interest</td>
<td></td>
</tr>
<tr>
<td>Management and organisational aspects</td>
<td>Would require a mechanism in order to regularly update and monitor the database of experts</td>
<td></td>
</tr>
<tr>
<td>Reporting mechanisms</td>
<td>Findings of experts during investigation proceedings should be well documented and made available to the MS in question. To ensure information is transparent and knowledge is shared.</td>
<td></td>
</tr>
<tr>
<td>Use of specific tools</td>
<td>Development of a database would be necessary in order to keep track of experts</td>
<td></td>
</tr>
<tr>
<td>Time requirements, planning</td>
<td>Low to medium time requirements. Implies the launch of a call for tender to request specific expertise Possibility to also request from MS to recommend specific experts</td>
<td></td>
</tr>
<tr>
<td>Human resources needed</td>
<td>Would require additional amount of human resources to be able to organise (through a public call for applications) and oversee the selection process and use of experts (to set up the contracts with the individual expert for example).</td>
<td></td>
</tr>
<tr>
<td>Material resources needed</td>
<td>Database to collect and organise experts</td>
<td></td>
</tr>
</tbody>
</table>
### Option 5 – Use of external experts to provide advice on alleged breaches of EU environment law

<table>
<thead>
<tr>
<th>Category</th>
<th>Key features</th>
</tr>
</thead>
</table>
| **Training requirements and other expertise required** | Necessary to be able to identify what areas of expertise is needed within DG ENV in relation to alleged breaches of environmental law/environmental infringements  
Selected experts would need to be familiar with the MS national laws, as well as implementation of EUU environmental acquis and if possible speak the native language of the MS under investigation to facilitate efficient and smooth communication. |
| **Overall administrative feasibility** | Would be necessary to ensure that within DG ENV, there is a sufficient administrative support (i.e. in the form of a secretariat) for effective monitoring and follow-up.  
It would take some amount of administrative work within DG ENV to identify these needs, however in the long term would greatly facilitate the identification of relevant and available experts when an investigation case comes up. |
| **Completeness** | Would contribute to EU investigations being more transparent by using independent experts.  
Use of experts provides the EU the potential to gather the necessary information to be able to discharge the burden of proof of the alleged breaches reported.  
This option would contribute to carrying out investigations of environmental infringements and open up the possibility of presenting more cases being proved by the EC before the ECJ. Therefore, it would help to enforce EU environmental law. |
| **Costs of implementation** | Cost of implementation to set up a database is low. However, there are possible implications of financial resources needed to pay experts. In duly justified cases, experts are provided a special additional allowance. |
| **Expected socio-economic impacts** | Potential to increase public and MS confidence in EU capacity to investigate  
Successful investigations of environmental breaches could in the long term reduce number of reported infringements by improving compliance levels  
Highly skilled experts are often willing to work for the Commission, despite low compensation due to the high-level recognition they receive by working for the Commission. This would also provide mutual benefits for both the expert in question and the Commission (by receiving the needed expertise to carry out investigations) |
## Option 5 – Use of external experts to provide advice on alleged breaches of EU environment law

<table>
<thead>
<tr>
<th>Category</th>
<th>Key features</th>
<th>Option 5: Model using external pool of experts</th>
</tr>
</thead>
<tbody>
<tr>
<td>Impacts on stakeholders</td>
<td>Experts could provide MS with recommendations and advice on how to improve inspection systems or advice on how to correctly comply to requirements under EU environmental legislation.</td>
<td></td>
</tr>
<tr>
<td>(Potential) Risks and obstacles, technical constraints</td>
<td>Ability to identify relevant and reliable expertise (on an ad-hoc basis and in some cases in terms of duration)</td>
<td>Potential to increase the quality of inspection activities</td>
</tr>
<tr>
<td></td>
<td>Participation of high-level experts willing to provide input for fees based on Commission guidelines</td>
<td>Commission to have enough evidence about environmental breach in order to continue with the infringement procedure against a Member State</td>
</tr>
<tr>
<td></td>
<td>Essential that participation of the MS in question is ensured</td>
<td>Allows Commission to launch investigations quickly</td>
</tr>
<tr>
<td>(Expected) results</td>
<td>Impact on quality of investigation activities</td>
<td>Would ensure a high-level of quality due to the use of experts, transparency, and scientific/technical objectiveness involved</td>
</tr>
<tr>
<td></td>
<td>Potential for environmental improvement/benefit</td>
<td>Lessons could be learned from the results of investigation activities that could be used to further improve implementation of EU environmental law and reduce the amount of infringements reports.</td>
</tr>
<tr>
<td></td>
<td>Other impacts</td>
<td>Could also help to decrease the amount of infringements that occur by sending out a message to MS that the EC is capable of carry out efficient investigations.</td>
</tr>
<tr>
<td>Other impacts</td>
<td>Political acceptance</td>
<td>Essential that experts are highly qualified, ‘neutral’ and not considered a conflict of interests.</td>
</tr>
<tr>
<td></td>
<td>An independent expert would most likely be more accepted by MS than if a Commission-appointed official were to carry out an onsite investigation.</td>
<td>An independent expert would most likely be more accepted by MS than if a Commission-appointed official were to carry out an onsite investigation.</td>
</tr>
<tr>
<td></td>
<td>Important that there is participation of the MS under investigation to ensure investigation activities carried out run smoothly and efficiently.</td>
<td>Important that there is participation of the MS under investigation to ensure investigation activities carried out run smoothly and efficiently.</td>
</tr>
<tr>
<td></td>
<td>Proportionality</td>
<td>Important that experts respect national administrative autonomy and that there is support of the MS under investigation.</td>
</tr>
<tr>
<td></td>
<td>Potential impacts at international level</td>
<td>Use of international experts possible depending on the area of expertise needed.</td>
</tr>
</tbody>
</table>
Option 5 – Use of external experts to provide advice on alleged breaches of EU environment law

This page is left intentionally blank.
Chapter 7: Combination of policy options

7.1 Selection of combinations of options for further analysis

Several combinations of options were considered after a review of the analyses carried out for the individual options in the previous chapters. The main objective thereby was to identify possible combination of options whose implementation would help increase the effectiveness of national environmental inspections by use of a limited EU level capacity. Based on the analysis of the previous options it is assumed, that a combination of some of their elements could be an appropriate solution and that such combinations should be able to address the following:

- Assist the Commission in gathering relevant and sufficient information to understand and analyse underlying problems related to implementation of EU environmental legislation;
- Ensure a limited but effective evaluation and assisting role for the Commission regarding the functionality of national inspection systems that respect Member States’ administrative autonomy,
- Ensure that the Commission can play a more active role in situations where reliable information indicates serious systemic shortcomings in organisation and functioning of national inspection systems
- Arrangements for independent expert input on an ad hoc basis to address situations that present very particular implementation challenges.

Based on the analyses carried out on the different options and the above points, two combinations have been selected for further analysis and comparison. The combinations of options are based on options 2, 4 and 5, and consists of explicitly granting the Commission a limited assessment function related to MS national environmental inspection systems when there is due reason for concern (following the model of the Laboratory Animals Directive) the possibility to request MS to carry out specific inspections (following the model of the ODS Regulation), and to engage external expertise in specific cases.

The selection of the above mentioned elements for further analysis and comparison is based on the following considerations:

- Creating a general mechanism to review and report on MS inspections systems (option 1) would interfere too much into MS administrative autonomy. In terms of administrative burden, it would also require a significant amount of resources and administrative capacity at EU level to implement. Furthermore, it is not very likely that elements of this option would receive political acceptance from Member States.
The IMPEL peer review model (option 3) is a good example of best practice in terms of improving national inspections in a transparent manner; however there are many legal and technical constraints that would prevent the expansions of this model in order to obtain a larger impact and political acceptance compared to the other options.

Elements of Option 2 have the potential to fulfil several criteria that would meet the points listed above. Firstly, it would provide the Commission with an enhanced, but limited role in evaluating the functionality and effectiveness of MS inspection systems, without interfering to a significant extent with MS administrative autonomy. Secondly, it would ensure that a level playing field is created in relation to environmental inspections at national level (through the principle of ‘due reason of concern’). It would allow the Commission to efficiently target problem areas related to implementation of EU environmental legislation, whilst also allowing it to gather relevant and sufficient information to understand and analyse underlying problems related to implementation of EU environmental legislation. Finally, the selected elements of option 2 would also serve as an important channel through which the Commission could develop a valuable knowledge base on MS inspection activities.

Elements of option 4 and 5, which include use of external expertise, seem to have an added value, which justifies their consideration when analysing the usefulness of a combination of options. There are many advantages of using external experts, namely for their added value in bringing in specific expertise, ability to fill in knowledge/skill gaps that may be lacking or not available within the Commission as well as to relieve some administration burden of the Commission.

7.2 Description of baseline scenario and combinations of options for analysis

The selected combinations of options, in addition to the baseline scenario are described in the following section. For simplicity purposes, the two selected options are labelled as option A and option B.

Baseline scenario

The baseline scenario describes the evolution of the current situation should no further action be taken. It is also referred to as “business as usual”. The baseline scenario in the context of this study would imply relying on the existing framework (i.e. RMCEI and existing binding sectoral provisions) without introducing any proposals for improving RMCEI, not proposing any further sectoral provisions other than those found in already envisaged sectoral proposals and not proposing a more active role of the Commission relating to environmental inspections at national level.
Within the business as usual scenario, it is assumed that supporting actions to implement sectoral legislation and RMCEI will continue, with information dissemination, support of RMCEI within the context of IMPEL work etc. Also experts may be called on an ad-hoc basis to help the Commission in difficult legal cases that may involve inspections. In terms of monitoring, the EU has just issued a Communication "Improving the delivery of benefits from EU environment measures: building confidence through better knowledge and responsiveness". Monitoring efforts are uneven across Europe and the information generated is patchy and often out-of-date. Through the measures included in the Communication (i.e. greater application of the Shared Environmental Information System (SEIS) principle of "report once, use often", possibilities of enhancing the Access to Information Directive, working with Member States to open a dialogue with key networks of inspectors, prosecutors and judges to identify the crucial categories of information and best means of collecting and collating data, etc.), the Commission aims to improve information at national, regional and local level, which would allow identification of the main problems and the most appropriate and efficient ways to address them.

These measures aim at improving information sharing and responsiveness to breaches in environmental policies to help solve current implementation problems. However, further action seems to be necessary in relation to environmental inspections to address current implementation and enforcement problems. For example, the number of complaints, cases of poor inspection practices and infringement procedures will most likely continue to increase reflecting the disparities in the level of implementation of environmental legislation in MS. Based on the evolution of infringement cases over the years (see Figure 4). It can be observed that the number of complaints recorded over the past 5 years have remained fairly constant. However, with the enlargement of the EU, the number of infringement cases will most likely increase in coming years.

In terms of the areas in which environmental infringements in the EU are registered, the data indicates that nature conservation, waste and water legislation accounts for 59% of the infringement caseload for the environment sector, with the sectors of impact assessment and air contributing the bulk of the remainder (27%). See Figure 5.

---


235 The overall aim of the SEIS is to maintain and improve the quality and availability of information required for environmental policy, in line with better regulation, while keeping the associated administrative burdens to a minimum. The EC published a Communication that sets out an approach to modernise and simplify the collection, exchange and use of the data and information required for the design and implementation of environmental policy. The main challenge of the SEIS is to align the many relevant activities already ongoing.

Furthermore, of the three types of infringements possible (e.g. non-communication infringements, non-conformity cases, and bad-application cases), DG ENV handles a higher percentage of both non-conformity and bad application cases compared to the rest of the Commission. Non-conformity cases are opened if shortcomings are identified in the transposition of a given directive in a Member State. Bad application cases address shortcomings in the application of the transposed provisions of a directive by a Member State. The significant bad application cases reinforce the observation that MS are experiencing difficulty in applying
environmental legislation in practice. This will most likely continue to be the case if no additional measures are taken.

Despite the positive effects of adoption the Recommendation 2001/331/EC and some binding sectoral inspection related provisions, there are still large differences in the way environmental inspections are organised and function across the EU. This implies the need to secure a level playing field in regards to inspections at national level. In this respect, ensuring a more active assisting and co-ordinating role for the Commission appears to an appropriate response to the current shortcomings in implementation and enforcement of environment legislation.

- **Option A: Commission’s evaluation function and use of external expertise**

Option A would provide the Commission an assessment function related to MS national environmental inspection systems when there is due reason for serious concern. As discussed in Chapter 3, under Article 35 of the Laboratory Animals Directive, “due reason for concern” relates mainly to the proportion of unannounced inspections carried out by the respective national authorities, the number and types of animals housed by the respective operator and its previous compliance record. However, the "due reason for concern" concept does not need to be tight to one particular type of obligation or to one specific element of the inspection cycle. In other contexts the concept may have a different focus. Examples of other specific criteria that can be used to identify due reason for concern are provided for the environmental sectors of waste shipments and nature protection legislations (see section 3.2).

The use of external specialist expertise as analysed under options 4 and 5 appears to be an important supporting element under Combination A. The involvement of outside expertise could increase the independence and credibility of COM evaluation activities. As is discussed in chapters 5 and 6 on the use of external expertise, depending on the type of expertise needed, two principle options are available: the use of contractual procedures (FWC or ad-hoc contracts) or the use of a pool of experts. As this option is a more general approach to tackle enforcement deficiencies in the Member States, it may be more appropriate to use the approach described under option 4 by using contractual agreements for expertise compared to a pool of experts, which would be more useful under option B - where more the on-spot and specific expertise may be needed.

Under this option, the Commission would have a role in review and evaluation type activities only.

- **Option B: Commission's evaluation function, possibility to request MS to carry-out specific inspections and use of external expertise**

Under this option, the Commission would be granted both evaluation powers (described above under option A) as well as the possibility to request MS to carry out specific inspections (following the model of the ODS Regulation). This option is more exhaustive and ambitious in terms of the Commission’s role, as the Commission would be able to evaluate national inspection systems and steer specific inspection activities at national level.

---

The Commission would be able to request specific inspections in the case of due reason for concern and to play assisting role in cases with trans-boundary impacts. MS would need to report on the results of the concrete inspection activities. Analysis was carried out for the sectors of waste shipment and nature protection in which some possible criteria for identification of need in terms of specific inspection actions.

Further, the use of ad hoc expertise and/or a pool of experts are also envisaged under this option combination. As option B would allow the Commission to request MS to carry out specific inspections, participation of external experts could help in some instances. In this case, the use of a pool of external experts (option 5) would probably be most appropriate due to the nature of expertise that would most likely be needed. The reasons for this is time – especially in urgent cases when the Commission needs to be able to contact experts quickly – rather than go through a procedure (even if not necessarily long in duration) to identify a contractor – who would then be in charge of contacting the relevant expert. Experts could assist in situations where specific technical knowledge is needed. Questions that would require very specific expertise could be, for example, related to a particular stream of hazardous waste.

The principal difference between the two options is that option A implies a more “policing approach”, meaning that the Commission would act under a similar scenario as seen under the Animal Use Directive and, thus, would be quite reactive. Option B includes in addition elements of the Ozone Depleting Substances Regulation model allowing the Commission to request MS to carry out specific inspections. The second combination allows a more pro-active approach because it would imply a role in directing specific national inspections and so would not necessarily be triggered only by situations where the MS evidently failed to establish effective inspection systems. Option B thus takes both a “policing” and assistance approach. Under both options, provisions for external expertise are included in order to assist the Commission in carrying out specific evaluation functions or in the case where very specific expertise is needed.

### 7.3 Comparison and analysis of options

Similar criteria used to analyse the individual options are also used to evaluate and compare the combination of options. The criteria include:

- Potential for environmental improvement/benefit
- Completeness
- Cost effectiveness
- Technical constraints
- Administrative feasibility/readiness to implement
- Political acceptance by MS, authorities and experts
7.3.1 Potential for environmental improvement/benefit

This section compares the options in terms of their potential to assist MS in implementing the environmental acquis and make progress with reaching environmental objectives.

Under Option A, the evaluation function of the EC to review the national inspection systems of MS in the case of due concern, would most likely increase the quality of inspections. The Commission would be able to carry out targeted reviews of national inspection systems with the aim of providing guidance and recommendations for MS to improve their inspection systems. This in turn would increase compliance levels and result in environmental benefits. The potential environmental benefits specific to waste shipments and nature protection legislation are detailed in section 3.2.

Option B would result in increased environmental benefits compared to Option A. Option B would take option A farther by ensuring the possibility for the Commission to request MS to carry out specific inspections. For example, the Commission could ask Member States to target high priority sites where enforcement is weak or where weak control systems are in place (i.e. seaport controls in the case of waste shipments). If specific requests for MS to carry out inspections are well defined, this may also increase the quality of inspections, as well as increase the overall compliance level of MS.

Both options would most likely result in the yearly decrease in reported environmental infringements by being able to target priority national inspection systems and providing guidance and assistance on how to improve national inspection systems.

Finally, both options would also contribute to providing the Commission with an information base of the function of national inspection systems that could be used later as best practice.

7.3.2 Completeness

Option A uses a much more general approach to tackle the enforcement deficiencies in the Member States. As such, it is more suitable for assisting Member States in improving their inspection systems and thereby contributing to a more level playing field than specific requests for on-the-spot inspections. Also, conducting such assessments would provide the Commission with an important information basis, which may be used for long term improvements of the Member States systems through further measures, e.g. through recommendations, or for ad-hoc inspection requests according to the ODS model. This would also help the Commission get an overall picture of how national inspection systems are operating on the ground, enabling the possibility to share best practices and harmonise/render more coherent the inspection activities across MS.

In terms of completeness, Option B would be more far-reaching than Option A. This is because Option B includes, in addition to the possibility to review national inspection systems in the case of due reason for concern, elements that would allow focusing on specific cases where individual control actions could help ensure proper enforcement.
7.3.3 Cost of implementation/cost effectiveness

It was difficult to obtain detailed information on the costs of the different elements addressed by Option A and Option B, however some observations can be made on costs based on similar models and the interviews that were carried out with relevant experts. Firstly, the cost advantage of contingent reviews is that they are less expensive and cost effective than carrying out regular audits. By targeting national inspection systems that present higher priority, reviews would be fairer because compliant national systems would be spared an unnecessary audit-type activity (thereby saving costs). This is the case for both options A and B as they are both based on contingency (or due reason for concern).

The costs of implementing option A would be less than for option B. Under option A, less information would be needed to decide on the right place for the review. On the other hand audit-type evaluations need far more resources than inspection requests, which means that the Commission would need to build up a capability for audits while less capability for data collection would be needed. Audits in general require more manpower than inspection requests, both at DG ENV and in the member states. This would of course vary depending on the environmental sector in question. For example, compared to nature protection data, data on waste shipments is more available. This is because nature protection is a very local phenomenon and developments in other places do not give the regulator as much information on developments in other places than in the case of waste shipment. In case of nature protection legislation, more resources would need to be invested to obtain the necessary data to target priority areas.

Under Option B, in order to identity situations where there is a need to request MS to take concrete inspection action, the Commission would need a very robust information base to decide where to target the inspections. This would imply a certain amount of costs to request and collect the data in an efficient manner.

7.3.4 Technical constraints

The most challenging technical constraints that apply to both models are the capacity of collecting sufficient and reliable information for the Commission to conduct assessments and to request MS to carry on ad-hoc inspections. Under Option A, the Commission would need sufficient information to raise the issue of due concern as a prerequisite for assessments of the Member States’ systems. Information on the Member States enforcement system would also be necessary. Under the WSR, the analysis indicates that although the WSR obliges Member States to forward to the Commission each year two complementary reports for the previous year, the Commission would need much more information than is presently available to it, from these reports or otherwise to be able to identify priority inspection systems for review. Member States are often reluctant to give this kind of information to the Commission. This is also the case for Option B, which would only be technically feasible if the Commission received enough information to be able to target possible cases for inspection. Further, the type and amount of information varies widely depending on the environmental sector in question. For example in the case of the WSR, in order to target ad-hoc inspections, information would be necessary on what waste is produced, where it goes for treatment and where leaks occur. The information basis for
the Commission may still need to be improved to enable inspection requests, as the Commission would need some kind of information system to cover the whole waste treatment chain. Such a system may be possible on a sector basis, e.g. for electronic waste under the WEEE Directive, which requires the reporting of information on each step in the treatment chain.

7.3.5 Administrative feasibility/readiness to implement

Concerning administrative feasibility, the evaluation function of the EC to review MS national inspection systems under both options A and B would require certain amount of additional resources for the Commission and possibly a limited restructuring of DG ENV. The Commission is already obliged to evaluate Member States’ compliance under certain environmental laws, therefore potential of synergies exists. Therefore, in terms of readiness to implement options A or B, some areas of environmental sectors may be less ready than others. Assessing national inspection systems in waste shipments is also particularly difficult due to the fact that the inspection structure is different in each Member State, with some States having many different authorities involved (e.g. waste, transport, police and customs authorities, local and regional levels etc.).

Under option B, concerning the request for specific inspections, additional resources would be required from the Commission. However, as the Commission already requests Member States to implement concrete measures on a case-by-case basis in relation to on-going infringement cases, the additional administrative burden of such a pro-active approach, intended to limit complaints and infringement cases, appear to be relatively low compared to the evaluation function under option A.

The use of external experts under both options could also relieve administrative burden from the Commission in terms of evaluating information that needs specific expertise, e.g. related to compensatory measures according to Art. 6 (4) of the Habitats Directive where external experts may also need to be involved.

7.3.6 Political acceptance by MS, authorities and experts

Concerning political acceptance of option A and option B, there may be some opposition to any guidance by the Commission on inspections going beyond a smaller or rather general degree of orientation. Nonetheless, the growing number of environmental infringement cases as well as a higher level of disparities in the enforcement of environmental legislation may justify some kind of harmonisation of the control systems of Member States, including a stronger role for the Commission.

The levels of acceptance of options A and B would be similar because both options include elements of the Laboratory Animals Directive and Member States may be more reluctant to accept assessments of their inspection systems by the Commission compared to individual inspection requests.
Finally, both options includes assessments of national systems or ad-hoc inspections only in cases of due concern, therefore tends to reduce the costs of EU involvement in inspections and renders such EU involvement more acceptable to Member States.

7.4 Summary table of option A and option B

Table 14: Comparison on options A and B compared to the baseline scenario

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Option A (Evaluation function and use of external expertise)</th>
<th>Option B (Evaluation function, power to request MS to carry-out specific inspections and use of external expertise)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Potential for environmental improvement</td>
<td>Would increase the quality of inspections in identified Member States. Would increase compliance levels and result in environmental benefits. Would help to decrease environmental infringements by improving priority national inspection systems Would provide the Commission with an information base of the function of national inspection systems that could be used later as best practice</td>
<td>Lessons could be learned from the results of investigation activities that could be used to further improve implementation of EU environmental law and reduce the amount of infringements reports. Would help to decrease environmental infringements by improving priority national inspection systems Possibility to target root causes of weak national inspection systems by carrying out specific inspections. Would increase the quality of inspections, as well as increase the overall compliance level of MS.</td>
</tr>
<tr>
<td>Completeness</td>
<td>Contributes to a more level playing field by targeting inspection systems in case of due reason for concern Would provide the Commission with an information base of the function of national inspection systems that could be used later as best practice</td>
<td>Contributes to a more level playing field Would provide the Commission with an information base of the function of national inspection systems that could be used later as best practice Option B would be more far-reaching than Option A: in additional to reviewing targeted national inspection systems, specific situations could also be targeted through inspection requests</td>
</tr>
<tr>
<td>Cost of implementation</td>
<td>Financial resources necessary to gather data needed to identify priority national inspection systems Financial resources may be necessary to compensate use of high-level external experts Implies additional human resources</td>
<td>Financial resources necessary to gather data needed to identify priority national inspection systems for evaluation as well as to identification cases where requests for MS to carry out ad-hoc inspections Financial resources may be necessary to compensate use of high-level external experts Implies additional human resources (more compared to the baseline scenario and option A).</td>
</tr>
</tbody>
</table>
### Combination of policy options

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Option A (Evaluation function and use of external expertise)</th>
<th>Option B (Evaluation function, power to request MS to carry-out specific inspections and use of external expertise)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Technical constraints</strong></td>
<td>Necessary to develop database and monitoring mechanisms to identify and follow-up on priority national inspection systems for evaluation</td>
<td>Necessary to develop database and monitoring mechanisms to identify and follow-up on priority national inspection systems for evaluation and special requests for MS to carry out specific inspections</td>
</tr>
<tr>
<td><strong>Administrative feasibility/readiness to implement</strong></td>
<td>Would require a significant amount of additional resources for the Commission and possibly a restructuring of DG ENV. Use of external experts could relieve some administrative burden from the Commission in terms of gathering necessary evidence, however would need mechanism to identify and follow-up with experts. Readiness to implement will depend on the environmental legislation in question.</td>
<td>Would require a significant amount of additional resources for the Commission and possibly a restructuring of DG ENV. Use of external experts could relieve some administrative burden from the Commission in terms of gathering necessary evidence, however would need mechanism to identify and follow-up with experts. Readiness to implement will depend on the environmental legislation in question.</td>
</tr>
<tr>
<td><strong>Political acceptance</strong></td>
<td>There may be some opposition to any guidance by the Commission on inspections, however the growing number of environmental infringement cases as well as a higher level of disparities in the enforcement of environmental legislation may justify some kind of harmonisation of the control systems of Member States, including a limited audit-type role for the Commission. Assessments of national systems are carried out only in cases of due concern</td>
<td>Member States may be more accepting of inspection requests compared to assessments of their inspection systems Assessments of national systems or ad-hoc inspections are carried out only in cases of due concern</td>
</tr>
<tr>
<td><strong>Use of external expertise</strong></td>
<td>As this option is a more general approach to tackling enforcement deficiencies in the Member States, it may be more appropriate to use contractual agreements for expertise compared to a pool of experts.</td>
<td>As this option would allow the Commission to request MS to carry out specific inspections, the use of a pool of external experts would probably be most appropriate due to the nature of expertise that would most likely be needed.</td>
</tr>
</tbody>
</table>
This page is left intentionally blank.
Chapter 8: Conclusions

The options in this study have been analysed to help provide DG ENV with a basis for two distinct objectives. The first objective relates to enhancing the EU-level confidence in national environmental inspections. The second objective relates to enhancing the Commission’s own investigations into possible breaches of EU environmental law.

Options 4 and 5 (use of experts) were examined in the context of the second objective but were also found to have relevance to the first objective. For this reason, elements of Options 4 and 5 were taken up in the section of the study addressing combinations of options to enhance the EU role in national environmental inspections.

With regard to the first objective, the analysis of the baseline scenario and the possible impacts of options 1, 2 and 3 led to the conclusion that any efforts focused on extending or improving the EU capacity in relation to environmental inspections need to reflect the following:

- National inspection systems should be as self-standing as possible in terms of their effectiveness and reliability;
- Any EU role should be complementary in terms of providing assistance or in terms of addressing clearly identified shortcomings at the national level so as to ensure a level playing field.

The ways in which national inspection systems themselves can be improved is outside the scope of the present study but it may be noted that in Commission Communication COM (2012) 95 and the proposed 7th Environment Action Programme, COM (2012) 710 final, the following:

- Place improvements in national inspections within a wider context that identifies other possible means of improving overall implementation and the responsiveness of competent authorities to problems of non-compliance (such as improved information systems, national complaint-handling criteria, improved access to justice and network cooperation);
- Indicate that any proposed measures related to an EU capacity concerning environmental inspections would be part of a wider initiative aimed at generally upgrading the current EU framework on environmental inspections. The current EU framework is principally devoted to the conduct of inspections by Member States and any upgrading is likely to also be principally devoted to the Member State level.

In a context in which the main emphasis is on enhancing EU role in national inspections, the analysis of Options 1, 2 and 3 brought the following results:

- Option 1 would, if the DG SANCO experience is repeated, bring benefits in terms of the likely intensity of Commission review of Member States

---

enforcement systems but would involve a significant commitment of staff and resources in order to create a general inspection capacity within DG Environment.

- Option 2 would also bring benefits but would not entail the increase in staff and resources that option 1 would involve.

- Option 3 would create the possibility of improvements in nation inspection systems via intensified peer review. Peer review holds great potential to improve implementation in several areas of environmental legislation. It is a voluntary initiative on the sharing of best practice and knowledge, based on transparency and mutual cooperation and could be extended to subjects such as CITES and approaches such as effective information campaigns and awareness raising, etc. However, the current IMPEL review mechanism appears unlikely to have the capacity to be scaled up to the appropriate degree to secure an effective EU capacity since it depends on Member States voluntary inputs. There are also legal obstacles to any such intensification.

Based on the above, option 2 was therefore identified as the most realistic of the three options. Nevertheless, it was considered appropriate to extend the analysis to possible combinations involving options 4 and 5, in addition to option 2. This was to address some of the possible shortcomings of option 2, namely the risk that the Commission would be unable to allocate sufficient staff resources and ensure the necessary technical expertise. Thus, while options 4 and 5 were examined with a view to the second objective of the study, their usefulness for the first objective also became apparent.

Within the context of the first objective of this study, the areas of nature and waste shipments were examined in detail, inter alia with a view to the transferability of some existing inspection models (Ozone Depleting Substances and Animal Use) to other environmental sectors. The benefits of the transfer of these models to other environmental sectors were confirmed. It appears therefore to be appropriate to use these inspection models across the environment acquis.

With regard to the second objective, DG ENV sometimes has limited and unsystematic information on the enforcement status of EU environmental legislation. It is dependent on citizens’ complaints and on Member State reports as a source of information. Member State reports often lack information on essential details such as monitoring, frequency, intensity, gaps in the administrative structure and results achieved. As for citizens – though citizens are often the first to discover breaches of environmental law, they can only report on obvious failures but not on all shortcomings. Therefore, there are significant advantages of using external expertise in terms of gathering and understanding required data on non-compliance, which is not always effectively communicated through MS reports or citizen complaints.

---

240 Ballesteros, Marta (2009), EU Enforcement Policy of Community Environmental law as presented in the Commission Communication on implementing European Community law, in Environmental Law Network International ELNI Review, page 7.
Concerning the use of experts to assist in investigations (options 4 and 5), neither of these options are mutually exclusive, therefore it is recommended to use the approach for external expertise that is most appropriate for the case that needs to be investigated. The type of investigation in question also determines what approach using experts would be the most appropriate. It is recommended that an assessment of the current expertise that exists internally within the Commission, notably within DG ENV be carried out – including a time frame of how long this expertise may be available as a first step in terms of identifying what expertise is available. It should be noted that even if the expertise exists within the Commission, this does not always mean that the expert would be available to assist in investigations.

Whether we speak of the first or second objective of the study, the support and cooperation of MS is essential for any of the policy options to work effectively. This will ensure transparency and facilitate any enhanced role of the Commission in evaluation and assistance activities, whether this be an EU inspection capacity or linked to the Commission's established investigative role. A stakeholder consultation/workshop with MS could be held to present and receive feedback on possible policy options.
Conclusions

This page is left intentionally blank.
The following table provides a brief overview of the different inspection related requirements for EU Member States that govern a range of different policy areas other than that on the environment.

Table 15: Examples of requirements set out for EU Member States to undertake a range of different inspection, control, auditing and supervision requirements other than for EU law on the environment

<table>
<thead>
<tr>
<th>Policy field</th>
<th>Directive/Regulation</th>
<th>Nature of the control requirement set out in the EU law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture</td>
<td>Regulation (EC) No 1122/2009 on cross-compliance</td>
<td>Detailed binding rules including random and targeted spot checks</td>
</tr>
<tr>
<td></td>
<td>Regulation (EC) No 1290/2005 (rural development)</td>
<td>Detailed binding rules including random and targeted spot checks</td>
</tr>
<tr>
<td>Air transport</td>
<td>Directive 2004/36/EC on the safety of third-country aircraft</td>
<td>Detailed requirements on ramp inspections</td>
</tr>
<tr>
<td></td>
<td>Regulation (EC) No 736/2006 on the European Aviation Safety Agency</td>
<td>Detailed obligations on EASA to inspect Member State authorities and train staff</td>
</tr>
<tr>
<td>Customs</td>
<td>Regulation (EEC) No 2913/92 establishing the Community Customs Code and amendments</td>
<td>Sets out detailed obligations to conduct spot checks, including a requirement to use a risk-based approach based on explicit criteria</td>
</tr>
<tr>
<td>Fisheries</td>
<td>Regulation (EC) 1224/2009 on CFP</td>
<td>Detailed requirements on inspection – what to check, duties of operator, reporting. Also EU inspectors and conduct of joint inspections, audits, etc.</td>
</tr>
<tr>
<td>Food and veterinary</td>
<td>Regulation (EC) No 882/2004 on official controls for food law, animal health, etc.</td>
<td>Detailed requirements for multi-annual national control plans – planning, process and resource requirements. Also includes provisions for Commission's controls and audits.</td>
</tr>
<tr>
<td>Policy field</td>
<td>Directive/Regulation</td>
<td>Nature of the control requirement set out in the EU law</td>
</tr>
<tr>
<td>--------------</td>
<td>----------------------</td>
<td>-----------------------------------------------------</td>
</tr>
<tr>
<td>Health and Safety at work</td>
<td>Directive 89/393/EC - OSH “Framework Directive”</td>
<td>Simple statement for Member States to ensure adequate controls and supervision – no further detail</td>
</tr>
<tr>
<td></td>
<td>Directive 96/29/Euratom – worker protection from ionising radiation</td>
<td>Requirement to conduction inspections and exchange experience – no further detail</td>
</tr>
<tr>
<td></td>
<td>Directive 93/103/EC - work on board fishing vessels</td>
<td>Requirement to conduct checks – no further detail</td>
</tr>
<tr>
<td></td>
<td>Directive 2007/47/EC on medical devices</td>
<td>Requirement to oversee process, investigate incidents, etc.</td>
</tr>
<tr>
<td>Medicines</td>
<td>Directive 2001/20/EC on practice of clinical trials</td>
<td>Requirement to conduct inspections, reporting, etc. – but no further detail</td>
</tr>
<tr>
<td></td>
<td>Directive 2001/83/EC on the Community code relating to medicinal products for human use</td>
<td>Requirement to conduct and report on inspections; Detail provisions on powers of inspectors</td>
</tr>
<tr>
<td></td>
<td>Directive 2003/94/EC on manufacturing practice for medicines</td>
<td>Requirement to conduct inspections, reporting, etc. – but no further detail</td>
</tr>
<tr>
<td>Products</td>
<td>Directive 2001/95/EC on general product safety</td>
<td>Requirement to develop sectoral surveillance programmes, including use of risk-based approaches</td>
</tr>
<tr>
<td></td>
<td>Regulation (EC) No 765/2008 - requirements for accreditation and market surveillance relating to the marketing of products</td>
<td>Requirement to undertake checks on products based on risk assessment, complaints and other information</td>
</tr>
<tr>
<td>Regional Funds</td>
<td>Regulation (EC) No 1083/2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund concerning certain provisions</td>
<td>MS to undertake evaluations/audits to examine the evolution of a programmes in relation to Community and national priorities, before, during and after the programming period’ – extensive auditing. (art 46-48)</td>
</tr>
</tbody>
</table>
### Policy field

<table>
<thead>
<tr>
<th>Directive/Regulation</th>
<th>Nature of the control requirement set out in the EU law</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Relating to financial management and repealing Regulation (EC) 1260/1999</strong></td>
<td>Member States should adopt adequate measures to guarantee the proper functioning of their management and control systems. MS to set up managing authority, certifying authority, audit authority and monitoring committee (art 59). Also Commission can carry out strategic evaluations at its initiative and in partnership with MS, especially if MS evaluations identify a 'significant departure from the goals initially set'. (art 49)</td>
</tr>
<tr>
<td>Regulation (EC) No 881/2004 establishing the European Railways Agency</td>
<td>Sets duties on ERA to undertake visits to inspect Member State activity</td>
</tr>
<tr>
<td>Directive 2004/49/EC on railway safety</td>
<td>Sets detailed requirements for the investigation of railway incidents – powers, processes, actions and reporting</td>
</tr>
<tr>
<td>Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport</td>
<td>Refers to inspecting offer to assess compliance with legislation – but no further supervision detail</td>
</tr>
<tr>
<td>Directive 2006/22/EC on minimum conditions for implementing road transport regulations</td>
<td>Requires Member State to undertake spot checks; Sets minimum inspection frequency, issues to be inspected, processes of concerted checks</td>
</tr>
<tr>
<td>Recommendation 2004/345/EC on enforcement in the field of road safety</td>
<td>Non-binding recommendation, focusing on supervision of key road safety issues</td>
</tr>
<tr>
<td>Directive 2009/16/EC on Port State Control</td>
<td>Sets out details of inspection requirements, powers of inspecting authorities, annual inspection commitment, frequency of inspections, detailed and non-detailed inspections, etc.</td>
</tr>
<tr>
<td>Directive 2002/59/EC establishing</td>
<td>Sets out requirement to conduct</td>
</tr>
<tr>
<td>Policy field</td>
<td>Directive/Regulation</td>
</tr>
<tr>
<td>--------------</td>
<td>----------------------</td>
</tr>
<tr>
<td></td>
<td>a Community vessel traffic monitoring and information system</td>
</tr>
<tr>
<td></td>
<td>Directive 1999/95/EC concerning the enforcement of provisions in respect of seafarers' hours of work on board ships</td>
</tr>
</tbody>
</table>
### Table 16: Summary of IRI projects

<table>
<thead>
<tr>
<th>IMPEL Member</th>
<th>Year</th>
<th>Facility reviewed</th>
<th>Time resource</th>
<th>Breakdown of time resource</th>
<th>Budget breakdown (€)</th>
<th>Financing (€)</th>
<th>Total budget (€)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Iceland*</td>
<td>2012</td>
<td>Environment Agency of Iceland</td>
<td>39</td>
<td>8 members for 3.5 days. 1 day pre-meeting and 10 days for host preparation and report writing.</td>
<td>11,710</td>
<td>IMPEL</td>
<td>13,710</td>
</tr>
<tr>
<td></td>
<td>(ongoing)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2,000</td>
<td></td>
</tr>
<tr>
<td>Italy*</td>
<td>2012</td>
<td>Environmental Protection Agency in Lombardy, Italy</td>
<td>35.5</td>
<td>7 members for 3.5 days plus 1 day pre-meeting and 10 days host preparation and report writing.</td>
<td>6,360</td>
<td>IMPEL</td>
<td>10,150</td>
</tr>
<tr>
<td></td>
<td>(ongoing)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3,790</td>
<td></td>
</tr>
<tr>
<td>Latvia</td>
<td>2011</td>
<td>State Environmental Service of Latvia</td>
<td>47</td>
<td>10 members for 3.5 days (Tuesday to Friday lunchtime), plus 1 day pre-meeting. 10 days for host preparation and report writing.</td>
<td>11,400</td>
<td>IMPEL</td>
<td>13,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1,600</td>
<td></td>
</tr>
<tr>
<td>Croatia</td>
<td>2011</td>
<td>Croatian Environmental Protection Inspectorate of the Ministry of Environment</td>
<td>28.5</td>
<td>7 members for 2.5 days plus 1 day pre-meeting. 10 days for host preparation and report writing.</td>
<td>9,325</td>
<td>IMPEL</td>
<td>11,325</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2,000</td>
<td></td>
</tr>
</tbody>
</table>

241 Days contributed by IMPEL member country
<table>
<thead>
<tr>
<th>IMPEL Member</th>
<th>Year</th>
<th>Facility reviewed</th>
<th>Time resource</th>
<th>Breakdown of time resource</th>
<th>Budget breakdown (€)</th>
<th>Financing (€)</th>
<th>Total budget (€)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Romania</td>
<td>2010</td>
<td>Romanian National Environmental Guard</td>
<td>48</td>
<td>9 members including hosts. 4 days in duration. Plus 2 days for pre-meeting. 10 days for host preparation and report writing.</td>
<td>10,100</td>
<td>IMPEL</td>
<td>10,100</td>
</tr>
<tr>
<td>Slovenia</td>
<td>2010</td>
<td>Inspectorate of the Republic of Slovenia for the Environment and Spatial planning (IRSEP)</td>
<td>47</td>
<td>9 members including hosts. 4 days in duration. Plus 1 day for pre-meeting. 10 days for host preparation and report writing.</td>
<td>11,400</td>
<td>IMPEL</td>
<td>13,000</td>
</tr>
<tr>
<td>Portugal</td>
<td>2009</td>
<td>Portuguese Environmental and Spatial Planning General Inspectorate</td>
<td>47</td>
<td>37 days. 10 members in the team for 3.5 days (Tuesday to Friday lunchtime). 2 days pre-meeting. 10 days for host preparation and report writing.</td>
<td>6,500</td>
<td>IMPEL</td>
<td>6,500</td>
</tr>
<tr>
<td>Norway</td>
<td>2007</td>
<td>Norwegian Pollution Control Authority</td>
<td>60.5</td>
<td>11 members for 4.5 days. 1 day pre-meeting. 10 days for host preparation and report writing.</td>
<td>-</td>
<td>All project costs covered by MS</td>
<td>-</td>
</tr>
<tr>
<td>UK/Scotland</td>
<td>2006</td>
<td>Scottish Environmental Protection Agency</td>
<td>47</td>
<td>8 members 4.5 days plus 1 day pre-meeting. 10 days for host preparation and report writing.</td>
<td>7,650</td>
<td>IMPEL</td>
<td>7,650</td>
</tr>
<tr>
<td>IMPEL Member</td>
<td>Year</td>
<td>Facility reviewed</td>
<td>Time resource (h)</td>
<td>Breakdown of time resource</td>
<td>Budget breakdown (€)</td>
<td>Financing (€)</td>
<td>Total budget (€)</td>
</tr>
<tr>
<td>--------------</td>
<td>------</td>
<td>-------------------</td>
<td>------------------</td>
<td>-----------------------------</td>
<td>----------------------</td>
<td>--------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>Sweden</td>
<td>2005</td>
<td>County Administrative Board of Stockholm and the Environment and Public Health Committee of the municipal Södertälje</td>
<td>61</td>
<td>10 team members for 5 days plus 1 day pre-meeting. 10 days for host preparation and report writing.</td>
<td>Insufficient data</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spain</td>
<td>2003</td>
<td>Inspection Service of the Ministry of Environment in the Autonomous Community of Galicia</td>
<td>52</td>
<td>8 members for 5 days plus 2 pre-meeting days. 10 days for host preparation and report writing.</td>
<td>12,720</td>
<td>EC</td>
<td>15,900</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>3,180</td>
<td>IMPEL</td>
<td></td>
</tr>
<tr>
<td>Netherlands</td>
<td>2002</td>
<td>Enforcement Division in the Department of Environmental Affairs of the Province of Overijssel</td>
<td>51</td>
<td>8 members for 5 days plus 1 day pre-meeting. 10 days for host preparation and report writing.</td>
<td>11,200</td>
<td>EC</td>
<td>14,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2,800</td>
<td>IMPEL</td>
<td></td>
</tr>
<tr>
<td>Belgium</td>
<td>2002</td>
<td>Brussels Institute for Management of the Environment</td>
<td>-</td>
<td></td>
<td>Insufficient data</td>
<td></td>
<td></td>
</tr>
<tr>
<td>France</td>
<td>2002</td>
<td>Direction Régionale de l'Industrie, de la Recherche et de l'Environnement (DRIRE) Nord Pas-de-Calais</td>
<td>52</td>
<td>8 members for 5 days plus 2 days pre-meeting. 10 days for host preparation and report writing.</td>
<td>10,800</td>
<td>EC</td>
<td>13,500</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>2,700</td>
<td>IMPEL</td>
<td></td>
</tr>
<tr>
<td>Ireland</td>
<td>2002</td>
<td>Irish Environmental Protection Agency</td>
<td>-</td>
<td></td>
<td>Insufficient data</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### 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

<table>
<thead>
<tr>
<th>IMPEL Member</th>
<th>Year</th>
<th>Facility reviewed</th>
<th>Time resource</th>
<th>Breakdown of time resource</th>
<th>Budget breakdown (€)</th>
<th>Financing (€)</th>
<th>Total budget (€)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Germany</td>
<td>2001 **</td>
<td>The Staatliches Gewerbeaufsichtsamt (GAA) (Trade and Factory Supervisory Office)</td>
<td>-</td>
<td>-</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Denmark</td>
<td>2001 **</td>
<td>Storstroem County Inspecting Authority</td>
<td>-</td>
<td>-</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*For Iceland and Italy, these are ongoing and the figures stated here are estimated time resource and budgets for these reviews. **Denotes reviews that took place during the initial trial phase of the IRI. In terms of financing, these projects were financed by the European Commission (EC). IMPEL only received funding from LIFE+ when it became an independent entity from 2008.*
### Table 17: Register of Bern Convention case files\(^{242}\)

<table>
<thead>
<tr>
<th>Name of case</th>
<th>No.</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gran Sasso, Italy</td>
<td>1982/1</td>
<td>Closed</td>
</tr>
<tr>
<td>Hunting in Valle Furlana, Italy</td>
<td>1982/2</td>
<td>Closed</td>
</tr>
<tr>
<td>Wadensea, The Netherlands</td>
<td>1983/1</td>
<td>Closed</td>
</tr>
<tr>
<td><strong>Hainburg Alluvial Forest, Austria</strong></td>
<td>1983/2</td>
<td>Closed</td>
</tr>
<tr>
<td>Management of wetlands in Ravenna, Italy</td>
<td>1984/1</td>
<td>Closed</td>
</tr>
<tr>
<td>Inch Level Wetland Area, Ireland</td>
<td>1984/2</td>
<td>Closed</td>
</tr>
<tr>
<td>Halvergate Marshes And Benone Region, Northern Ireland</td>
<td>1984/3</td>
<td>Closed</td>
</tr>
<tr>
<td>Spring shooting, Greece</td>
<td>1984/4</td>
<td>Closed</td>
</tr>
<tr>
<td><strong>Markemeer, The Netherlands</strong></td>
<td>1984/5</td>
<td>Closed</td>
</tr>
<tr>
<td>Hunting migratory Birds, Cyprus</td>
<td>1984/6</td>
<td>Closed</td>
</tr>
<tr>
<td>St Petersberg Limestone Galleries The Netherlands</td>
<td>1984/7</td>
<td>Closed</td>
</tr>
<tr>
<td>Duich Peat Mos, UK</td>
<td>1985/1</td>
<td>Closed</td>
</tr>
<tr>
<td><strong>Sorgenti del Fiume Pescara, Italy</strong></td>
<td>1986/1</td>
<td>Closed</td>
</tr>
<tr>
<td>Lake Akrotiri, Cyprus</td>
<td>1986/2</td>
<td>Closed</td>
</tr>
<tr>
<td>Hares Doen and Knowst on Moores, UK</td>
<td>1986/3</td>
<td>Closed</td>
</tr>
<tr>
<td><strong>Alluvial Forest of Rastatt, Germany</strong></td>
<td>1986/4</td>
<td>Closed</td>
</tr>
<tr>
<td><strong>Grencher Witi, Switzerland</strong></td>
<td>1986/5</td>
<td>Closed</td>
</tr>
<tr>
<td>Vikos-Aaos Natural Park, Greece</td>
<td>1986/6</td>
<td>Closed</td>
</tr>
<tr>
<td><strong>Caretta Caretta in Dalyan Beach, Turkey</strong></td>
<td>1986/7</td>
<td>Closed</td>
</tr>
</tbody>
</table>

\(^{242}\) Bern Convention (2012), Standing Committee 32nd meeting, Strasbourg, 27-30 November 2012: Register of Bern Convention Case-Files
<table>
<thead>
<tr>
<th>Name of case</th>
<th>No.</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>20</strong> Caretta Caretta in Laganas Bay, Greece</td>
<td>1986/8</td>
<td>Closed</td>
</tr>
<tr>
<td><strong>21</strong> Jersey and Channel Islands, UK</td>
<td>1987/1</td>
<td>Closed</td>
</tr>
<tr>
<td><strong>22</strong> Chafarinas Islands, Spain</td>
<td>1987/2</td>
<td>Closed</td>
</tr>
<tr>
<td><strong>23</strong> Santoña Marshes, Spain</td>
<td>1987/3</td>
<td>Closed</td>
</tr>
<tr>
<td><strong>24</strong> Cabrespine Cave, France</td>
<td>1987/4</td>
<td>Closed</td>
</tr>
<tr>
<td><strong>25</strong> Vipera Kaznakovi in Hopa, Turkey</td>
<td>1988/1</td>
<td>Closed</td>
</tr>
<tr>
<td><strong>26</strong> Gulf of Orosei, Italy</td>
<td>1989/1</td>
<td>Closed</td>
</tr>
<tr>
<td><strong>27</strong> Dorset Heathlands, UK</td>
<td>1989/2</td>
<td>Closed</td>
</tr>
<tr>
<td><strong>28</strong> Podarcis Muralis, The Netherlands</td>
<td>1989/3</td>
<td>Closed</td>
</tr>
<tr>
<td><strong>29</strong> <em>Bufo calamita</em> in Castlegregory, Ireland</td>
<td>1989/4</td>
<td>Closed</td>
</tr>
<tr>
<td><strong>30</strong> Vipera Lebetina schweizerei in Milos, Greece</td>
<td>1989/5</td>
<td>Closed</td>
</tr>
<tr>
<td><strong>31</strong> Bottlenosed dolphins in Moray Firth, UK</td>
<td>1989/6</td>
<td>Closed</td>
</tr>
<tr>
<td><strong>32</strong> Poisoned Baits, Greece</td>
<td>1989/7</td>
<td>Closed</td>
</tr>
<tr>
<td><strong>33</strong> Dam of Vidrieros/ Ursus arctos in Cantabria, Spain</td>
<td>1989/8</td>
<td>Closed</td>
</tr>
<tr>
<td><strong>34</strong> Vipera Ursini Rakasiensis, Hungary</td>
<td>1990/1</td>
<td>Closed</td>
</tr>
<tr>
<td><strong>35</strong> <em>Hyla Arborea</em>, Sweden</td>
<td>1990/2</td>
<td>Closed</td>
</tr>
<tr>
<td><strong>36</strong> <em>Bufo Calamita</em>, Austria</td>
<td>1990/3</td>
<td>Closed</td>
</tr>
<tr>
<td><strong>37</strong> <em>Bufo Viridis</em> and Eptesicus Serotinus in Leimen, Germany</td>
<td>1990/4</td>
<td>Closed</td>
</tr>
<tr>
<td><strong>38</strong> Vipera Wagner I., Switzerland, Germany, Netherlands, Sweden</td>
<td>1990/5</td>
<td>Closed</td>
</tr>
<tr>
<td><strong>39</strong> La Loire, France</td>
<td>1991/1</td>
<td>Closed</td>
</tr>
<tr>
<td><strong>40</strong> Testude Hermanni in Maures, France</td>
<td>1992/1</td>
<td>Closed</td>
</tr>
<tr>
<td>Name of case</td>
<td>No.</td>
<td>Status</td>
</tr>
<tr>
<td>--------------------------------------------------</td>
<td>-------</td>
<td>----------</td>
</tr>
<tr>
<td><em>Ursus Arctos</em> in the Pyrenees, France</td>
<td>1992/2</td>
<td>Closed</td>
</tr>
<tr>
<td><em>Totes Moores</em>, Germany</td>
<td>1992/3</td>
<td>Closed</td>
</tr>
<tr>
<td>Missolonghi Wetlands, Greece</td>
<td>1992/4</td>
<td>Closed</td>
</tr>
<tr>
<td>Dam Project in Salamanca, Spain</td>
<td>1992/5</td>
<td>Closed</td>
</tr>
<tr>
<td><em>Caretta Caretta</em> in Patara, Turkey</td>
<td>1993/1</td>
<td>Closed</td>
</tr>
<tr>
<td><em>Phoca Vitulina</em> in the Bay of Somme, France</td>
<td>1993/2</td>
<td>Closed</td>
</tr>
<tr>
<td>Wind Farm in Tarifa, Spain</td>
<td>1993/3</td>
<td>Closed</td>
</tr>
<tr>
<td>Trade of <em>Caretta Caretta</em>, Senegal</td>
<td>1993/4</td>
<td>Closed</td>
</tr>
<tr>
<td>Itoiz Dam Project, Spain</td>
<td>1993/5</td>
<td>Closed</td>
</tr>
<tr>
<td><em>Testudo Marginata</em>, Greece</td>
<td>1994/1</td>
<td>Closed</td>
</tr>
<tr>
<td><em>Tryonix Triunguis</em>, Turkey</td>
<td>1994/2</td>
<td>Closed</td>
</tr>
<tr>
<td><em>Rana Holzi</em>, Turkey</td>
<td>1994/3</td>
<td>Closed</td>
</tr>
<tr>
<td>Gallocanta Marshes, Spain</td>
<td>1994/4</td>
<td>Closed</td>
</tr>
<tr>
<td><em>Grünewald Forest</em>, Luxembourg</td>
<td>1995/1</td>
<td>Closed</td>
</tr>
<tr>
<td>Porto (Island Of Tinos), Greece</td>
<td>1995/2</td>
<td>Closed</td>
</tr>
<tr>
<td>Burdur Lake, Turkey</td>
<td>1995/3</td>
<td>Closed</td>
</tr>
<tr>
<td>Biltzheim Forest, France</td>
<td>1995/4</td>
<td>Closed</td>
</tr>
<tr>
<td>Introduction of exotic bees, Portugal</td>
<td>1995/5</td>
<td>Closed</td>
</tr>
<tr>
<td><em>Akamas Peninsula</em>, Cyprus</td>
<td>1995/6</td>
<td>Open</td>
</tr>
<tr>
<td><em>Caretta Caretta</em> In Kaminia, Greece</td>
<td>1995/7</td>
<td>Closed</td>
</tr>
<tr>
<td><em>Lacerta Agilis</em>, The Netherlands</td>
<td>1996/1</td>
<td>Closed</td>
</tr>
<tr>
<td>Name of case</td>
<td>No.</td>
<td>Status</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------------</td>
<td>--------</td>
<td>--------</td>
</tr>
<tr>
<td>62 Triturus Cristatus Orton Brick Pits, UK</td>
<td>1996/2</td>
<td>Closed</td>
</tr>
<tr>
<td>63 Oxyura Leucocephala (White Headed duck), UK &amp; others</td>
<td>1997/1</td>
<td>Closed</td>
</tr>
<tr>
<td>64 Rhine-Rhone Grand Canal Project, France</td>
<td>1997/2</td>
<td>Closed</td>
</tr>
<tr>
<td>65 Lake Vistonis and Lafralafrouda Lagoon, Greece</td>
<td>1997/3</td>
<td>Closed</td>
</tr>
<tr>
<td>66 Bialowiesa Project, Poland</td>
<td>1998/1</td>
<td>Closed</td>
</tr>
<tr>
<td>67 Caretta Caretta in Belek, Turkey</td>
<td>1998/2</td>
<td>Closed</td>
</tr>
<tr>
<td>68 Habitats for the survival of the common hamster (Cricetus Cricetus) in</td>
<td>1998/3</td>
<td>Open</td>
</tr>
<tr>
<td>Alsace, France</td>
<td></td>
<td></td>
</tr>
<tr>
<td>69 Meles Meles, UK</td>
<td>1998/4</td>
<td>Closed</td>
</tr>
<tr>
<td>70 Doñana National Park, Spain</td>
<td>1998/5</td>
<td>Closed</td>
</tr>
<tr>
<td>71 Sciurus Vulgaris, Italy</td>
<td>1998/6</td>
<td>Closed</td>
</tr>
<tr>
<td>72 El Regajal Nature Reserve, Spain</td>
<td>1999/1</td>
<td>Closed</td>
</tr>
<tr>
<td>73 Ursus Arctos, Greece</td>
<td>1999/2</td>
<td>Closed</td>
</tr>
<tr>
<td>74 Canis Lupus, Norway</td>
<td>1999/3</td>
<td>Closed</td>
</tr>
<tr>
<td>75 Meles Meles, Ireland</td>
<td>1999/4</td>
<td>Closed</td>
</tr>
<tr>
<td>76 Cricetus Cricetus, The Netherlands</td>
<td>1999/5</td>
<td>Closed</td>
</tr>
<tr>
<td>77 Exploitation and trade of Lithophaga lithophaga, Spain</td>
<td>1999/6</td>
<td>Closed</td>
</tr>
<tr>
<td>78 Green turtle in Kazanli, Turkey</td>
<td>2000/1</td>
<td>Closed</td>
</tr>
<tr>
<td>79 Olympic Rowing Centre In Marathon, Greece</td>
<td>2001/1</td>
<td>Closed</td>
</tr>
<tr>
<td>80 Wind farms in Smola Archipelago, Norway</td>
<td>2001/2</td>
<td>Closed</td>
</tr>
<tr>
<td>81 Dam construction in Vistula River, Poland</td>
<td>2001/3</td>
<td>Closed</td>
</tr>
<tr>
<td>82 Motorway construction Kresna Gorge, Bulgaria</td>
<td>2001/4</td>
<td>Closed</td>
</tr>
<tr>
<td>Name of case</td>
<td>No.</td>
<td>Status</td>
</tr>
<tr>
<td>------------------------------------------------------------------------------</td>
<td>-----------</td>
<td>------------</td>
</tr>
<tr>
<td>Exotic Forest plantations, Iceland</td>
<td>2001/5</td>
<td>Closed</td>
</tr>
<tr>
<td>Military antenna in the Sovereign Base Area of Cyprus</td>
<td>2001/6</td>
<td>Closed</td>
</tr>
<tr>
<td>Tourist Development in Souss Massa Nat. Park, Morocco</td>
<td>2001/7</td>
<td>Closed</td>
</tr>
<tr>
<td>Odelouca Dam, Portugal</td>
<td>2002/1</td>
<td>Closed</td>
</tr>
<tr>
<td>Caves in the Thrace Region, Turkey</td>
<td>2002/2</td>
<td>Closed</td>
</tr>
<tr>
<td>Wolf control, Switzerland</td>
<td>2002/3</td>
<td>Closed</td>
</tr>
<tr>
<td>Motorway project Via Baltica, Poland</td>
<td>2002/4</td>
<td>Closed</td>
</tr>
<tr>
<td>Hydroelectric Damsat Kárahnjúkar And Nordlingaaldal, Iceland</td>
<td>2003/1</td>
<td>Closed</td>
</tr>
<tr>
<td><strong>Bystroe Estuary Canal, Ukraine</strong></td>
<td><strong>2004/1</strong></td>
<td><strong>Open</strong></td>
</tr>
<tr>
<td>Wind Farms in Balchik and Kaliakra, Bulgaria</td>
<td><strong>2004/2</strong></td>
<td><strong>Open</strong></td>
</tr>
<tr>
<td>Lesser White fronted goose, Sweden</td>
<td>2005/1</td>
<td>Closed</td>
</tr>
<tr>
<td>Protection of the Green toad (<em>Bufo Viridis</em>) in Alsace, France</td>
<td>2006/1</td>
<td>Possible</td>
</tr>
<tr>
<td>Wind Farm Project, Slovenia</td>
<td>2006/2</td>
<td>Closed</td>
</tr>
<tr>
<td>Motorway across Drava Marshlands/hydropower river Dobra, Croatia</td>
<td>2006/3</td>
<td>Closed</td>
</tr>
<tr>
<td>Planned capture of bottlenose dolphins, Turkey</td>
<td>2006/4</td>
<td>Closed</td>
</tr>
<tr>
<td><strong>Eradication and trade of the American Grey squirrel (<em>Sciurus carolinensis</em>), Italy</strong></td>
<td><strong>2007/2</strong></td>
<td><strong>Open</strong></td>
</tr>
<tr>
<td>Natterjack (<em>Bufo calamita</em>) population on the coastal island of Smögen, Sweden</td>
<td>2007/2</td>
<td>Closed</td>
</tr>
<tr>
<td>Aberdeen Western Peripheral Route, UK</td>
<td>2008/1</td>
<td>Closed</td>
</tr>
<tr>
<td>Tourism project in El Bosc de la Rabassa, Andorra</td>
<td>2008/2</td>
<td>Closed</td>
</tr>
<tr>
<td>Impacts on the Hermann tortoise (<em>Testudo hermanni</em>), France</td>
<td>2008/3</td>
<td>Closed</td>
</tr>
<tr>
<td>Name of case</td>
<td>No.</td>
<td>Status</td>
</tr>
<tr>
<td>------------------------------------------------------------------------------</td>
<td>-------</td>
<td>--------</td>
</tr>
<tr>
<td>Lošinj Dolphin Reserve (Tursiops truncatus), Croatia</td>
<td>2008/4</td>
<td>Closed</td>
</tr>
<tr>
<td>Emerald Network, Switzerland</td>
<td>2008/5</td>
<td>Closed</td>
</tr>
<tr>
<td>Wind turbines in Alta Maremma (Italy)</td>
<td>2008/6</td>
<td>Closed</td>
</tr>
<tr>
<td>Black Grouse (Tetrao tetrix) in Drôme and Isère, France</td>
<td>2009/1</td>
<td>Closed</td>
</tr>
<tr>
<td>Ecological impacts of a tourism centre in Saidia, Morocco</td>
<td>2009/2</td>
<td>S-B</td>
</tr>
<tr>
<td>Planned culling of badges (Meles meles) in Wales, UK</td>
<td>2009/3</td>
<td>Closed</td>
</tr>
<tr>
<td>Conservation of wolves, brown bears, wolverines and lynxes, Norway</td>
<td>2009/4</td>
<td>Closed</td>
</tr>
<tr>
<td>Threats to Vjetrenica cave, Bosnia and Herzegovina</td>
<td>2010/1</td>
<td>Closed</td>
</tr>
<tr>
<td>Afforestation of steppic habitats, Ukraine</td>
<td>2010/2</td>
<td>Closed</td>
</tr>
<tr>
<td>Threat to natural habitats and species in Dniester River Delta, Ukraine</td>
<td>2010/3</td>
<td>S-B</td>
</tr>
<tr>
<td>Increase in turtle mortality in Episkopi and Akrotiri areas, United Kingdom</td>
<td>2010/4</td>
<td>Closed</td>
</tr>
<tr>
<td>Threats to marine turtles in Thines Kiparissias, Greece</td>
<td>2010/5</td>
<td>Possible</td>
</tr>
<tr>
<td>Culling of badgers in Côte d’Or, France</td>
<td>2010/6</td>
<td>Closed</td>
</tr>
<tr>
<td>Culling of Badgers, United Kingdom</td>
<td>2010/7</td>
<td>N-F</td>
</tr>
<tr>
<td>Sediments immersion in the sea in the harbour of Lorient, France</td>
<td>2011/1</td>
<td>N-F</td>
</tr>
<tr>
<td>Management of carnivores, Norway</td>
<td>2011/2</td>
<td>Closed</td>
</tr>
<tr>
<td>Threat to Rieilla helicophylla in the Department of the Bouches-du-Rhône, France</td>
<td>2011/3</td>
<td>Closed</td>
</tr>
<tr>
<td>Threats to the Mediterranean monk seal (Monachus monachus), Turkey</td>
<td>2011/4</td>
<td>Possible</td>
</tr>
<tr>
<td>Apron du Rhône (Zingel asper) menacé dans les départements du Doubs (France) et les cantons du Jura et de Neuchâtel (Suisse)</td>
<td>2011/5</td>
<td>Possible</td>
</tr>
<tr>
<td>Threat to the Brown Bear in Croatia</td>
<td>2011/6</td>
<td>S-B</td>
</tr>
</tbody>
</table>
## Annex

**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**

### Table of Cases

<table>
<thead>
<tr>
<th>Name of case</th>
<th>No.</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Management of the wolf (<em>Canis lupus</em>) in Ukraine</td>
<td>2011/7</td>
<td>Closed</td>
</tr>
<tr>
<td>Threat to the Bottlenose Dolphin (<em>Tursiops truncatus</em>) in Ukraine</td>
<td>2011/8</td>
<td>S-B</td>
</tr>
<tr>
<td>Wide scale culling of badgers to control bovine tuberculosis in cattle (UK)</td>
<td>2012/2</td>
<td>S-B</td>
</tr>
<tr>
<td>Brown bears’ welfare (<em>Ursus arctos</em>) in France</td>
<td>2012/2</td>
<td>N-F</td>
</tr>
<tr>
<td>Possible spread of the American mink (<em>Neovison vison</em>) in Poland</td>
<td>2012/3</td>
<td>Other</td>
</tr>
<tr>
<td>Steady decline of the national badger (<em>Meles meles</em>) population in Ireland</td>
<td>2012/4</td>
<td>Other</td>
</tr>
</tbody>
</table>

### LEGEND

**Open:** Open file  
**Possible:** Possible file  
**S-B:** Complaint in Stand-by  
**N-F:** Screened by the Secretariat and Not Forwarded to the Bureau  
**Other:** Other complaints  
**Bold:** Case-files which have been formally opened by the Standing Committee
14 January 2013

20-22 Villa Deshayes
75014 Paris
+ 33 (0) 1 53 90 11 80
biois.com