

## **Manual of European Environmental Policy**

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# Overview of EU Policy: Supporting Policy

There exist a number of measures currently in place that span all European Union (EU) environmental policy areas. This chapter provides a detailed analysis of those horizontal measures aimed at integrating into EU environmental legislation policy tools used in assessing the impact of particular projects and activities on the environment. It also reviews measures aimed at promoting environmental rights through involving the public and civil society organizations in formulating and implementing responses to the environmental challenges faced by the EU, facilitating access to information on the environment held by public authorities, and improving the accessibility and availability of those administrative and judicial procedures framing EU environmental legislation. Finally, the chapter also summarizes developments in legislation on the enforcement and sanctioning procedures linked to violation of Community legislation on the environment.

## Environmental assessment procedures

The 1985 Directive on environmental impact assessment (85/337/EEC) (see section on environmental impact assessment) lays down a procedure designed to ensure that an environmental assessment is undertaken before consent is granted to development projects – such as large-scale industrial or infrastructure projects – likely to have significant effects on the environment. To enable the assessment to be made the developer has to supply information and the public, and certain authorities, have to be consulted.

This procedure is complemented by an additional impact assessment procedure at the planning level. Directive 2001/42/EC (see section on strategic environmental assessment). requires authorities to undertake an environmental assessment of certain plans and programmes which are likely to give rise to significant effects on the environment. The process of assessing plans and programmes is generally referred to as ‘strategic environmental assessment’ (SEA). It sets out standard procedures for undertaking an environmental assessment, and complements Directive 85/337/EEC on the assessment of projects, by requiring an assessment, normally at an earlier stage than for projects, in the planning process.

## Environmental rights – implementation of the Århus Convention

The notion of environmental rights is closely linked to the provisions and obligations contained in the UNECE Convention on Access to Information, Public Participation in Decision making and Access to Justice in Environmental Matters (Århus Convention) adopted on 25th June 1998. The Convention adopts a rights-based approach. Article 1, setting out the objective of The Convention, requires Parties to guarantee rights of access to information, public participation in decision making and access to justice in environmental matters. It also refers to the goal of

protecting the right of every person of present and future generations to live in an environment adequate to health and well being. These rights underlie the various procedural requirements in The Convention. The obligations contained in The Convention are implemented at the EU level through a number of legislative texts.

There existed prior to The Convention Directive 90/313/EEC (see section on access to information) on the freedom of access to information on the environment which required Member States' public authorities holding information on the environment to make such information available, subject to certain exclusions. This Directive was instrumental in influencing the access to information section of The Convention. However, on some key points The Convention went beyond EU legislation and Directive 90/313/EEC was subsequently repealed by Directive 2003/4/EC (see section on access to information) strengthening access to environmental information provisions further by requiring 'the widest possible systematic availability and dissemination to the public' of such information and establishing the 'right' to access rather than the 'freedom' of access as well as emphasizing the role of information technology in improving access.

Directive 2004/35/EC (see section on public participation) is concerned with ensuring proper public participation in environmental decision making. To this end, it introduces a public participation procedure for certain plans and programmes, and improves the existing procedure contained in Directives 85/337/EEC and 96/61/EC (see section on integrated pollution prevention and control), now consolidated as Directive 2008/1/EC.

These two Directives, laying down rules for the application of the provisions of The Convention on, respectively, access to environmental information and public participation in decision making at the level of the Member States are, are complemented by Regulation (EC) No 1367/2006 on the application of the provisions of the Århus Convention to Community institutions and bodies.

## **Instruments aiming for effective enforcement of Community environmental law**

Directive 2008/99/EC (see section on environmental crime) on the protection of the environment through criminal law seeks to ensure that Member States treat a number of acts contravening Community environmental law as criminal offences under domestic law and provide for criminal penalties whenever these acts are committed by individuals. Non-compliance by corporations also has to be subject to penalties under the conditions laid down in the Directive, though Member States retain a choice to impose either criminal or administrative penalties on corporate offenders.

Directive 2004/35/EC (see section on environmental liability) is intended to establish a framework of environmental liability rules, based on the polluter pays principle, with the aim of preventing and remedying environmental damage. The Directive imposes a strict liability obligation on the operator of a list of activities regulated under existing Community environmental laws (given in Annex III), to remedy or prevent three types of damage to the environment: damage to protected species and natural habitats (sometimes referred to as

‘biodiversity damage’), water damage and land damage. It also imposes fault-based liability on all other occupational activities for damage to species and habitats. These liabilities are imposed by means of public, administrative law, rather than private, civil law, meaning that enforcement is confined to actions brought by public authorities, with private individuals and groups limited to requesting action from those authorities.

The non-binding Recommendation 2001/331/EC sets out criteria for adequate inspection, with a view to guide the Member States to improve the effectiveness of their enforcement of EU environmental law. In 2007 the Commission published a review of the implementation of Recommendation providing for minimum criteria for environmental inspections in the Member States ([COM\(2007\)707](#)) (see section on environmental inspections). In this review the Commission concluded ‘there are still large disparities in the way environmental inspections are being carried out within the Community’. As to future action, the Commission suggested the Recommendation should be amended ‘in order to improve its implementation and strengthen its effectiveness’. It also proposed to include specific legally binding requirements for the inspection of certain installations or activities in sectoral pieces of legislation. This has been taken forward, for instance, in the recast of the Integrated Pollution Prevention and Control Directive (2008/1/EC).