Study on environmental complaint-handling and mediation mechanisms at national level

Final report

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Chapter 1: Introduction

Citizens play a vital role in the effective application and enforcement of EU environmental law at the national level. On the one hand as complainants in detecting infringements of the Community law and on the other hand as propagators of the respective laws and provisions – especially in the case that she or he is in favour of its contents and trusts in its consistent application all over the EU. In case of non-compliance or alleged illegality, it is therefore necessary to provide for well-designed, clear, fair, transparent, effective and easily accessible remedies that enjoy public confidence. These remedies must be provided at the EU level[1] but also at the national level[2], as the relevant national authorities are more directly involved with these cases and it can be expected that they handle the complaint in a timely manner closer to the citizen.

Especially in the area of EU environment law, a delay or an error in the application of the respective laws and provisions weakens the system itself, its acceptance and credibility; and reduces the possibilities for its objectives to be achieved. A different standard of protection of environmental goods in the EU Member States due to a diverging effectiveness of complaint-handling in relation to a missing or incomplete implementation or to non-compliance of the respective rules could also lead to diverging conditions of competition and consequently to losses in public acceptance of Community law, especially in the countries that strive for an effective compliance of the rules.

Environmental law is characterised in many cases by its lack of directly and individually affected private persons[3] as well as its complexity. Especially less visible infringements, such as discharges into water bodies above permit limits, excess emissions of invisible gas or a failure to install best available pollution control techniques are difficult to detect by citizens as they generally lack resources such as analytical laboratories and access to facility premises.

Therefore, this field of law needs specific complaint procedures as well as innovative approaches, such as mediation procedures and the intervention of ombudsmen or petitions

[1] The Commission, as the so-called Guardian of the Treaty, is to ensure that the provisions of the Treaty and the measures taken by the institutions pursuant thereto are applied.

[2] Member States have the primary responsibility for the correct and timely application of EU Treaties and legislation. They are responsible for the direct application of Community law, for the application of their laws implementing Community law and for the many administrative decisions taken under those laws.

[3] The so-called *Schutznorm* doctrine in the peculiarity of restrictive standing rules for example in Germany limit public interest organizations in using judicial remedies to enforce compliance of (Community) environmental law.

committees. In EU Member States there exists a variety of different complaint mechanisms with specific pre-conditions depending on the country's legal tradition and administrative structures. Besides this, some EU Member States already made experiences with different innovative proceedings and approaches that could serve as best practices on dealing with environmental complaints. However, there is currently no general framework on how the relevant national authorities should respond to concerns and complaints about EU environmental law at national level.

This report – after describing the key steps, principles and practices for allowing for effective complaint-handling and mediation mechanisms in chapter 2 and 3 – gives an overview on the characteristics of complaint-handling and mediation mechanisms in the environmental sector in ten selected EU Member States (Chapter 4).

On the basis of the case-studies good practice features as well as bottlenecks and barriers of environmental complaint-handling mechanisms are identified and analysed in Chapter 5.

Same is done for the mediation mechanisms in Chapter 6, also including good practice examples from existing mediation mechanisms in other sectors than environmental protection (such as civil law and consumer protection) and in other countries than the ten EU Member States selected for the case-studies.

Finally proposals are made on how the complaint-handling and mediation mechanisms might be improved focusing on several options the EU could theoretically recommend to Member States with a view to promoting compliance with EU environmental law and a level playing field (Chapter 7).

Chapter 2: Key steps, principles and administrative practices of complaint-handling

This chapter provides an overview assessment of key steps, principles and administrative practices of complaint-handling. Key good governance principles are delineated as a basis for effective complaint-handling processes, based on an evaluation of literature available.

1. Key steps of an environmental complaint-handling process

This section describes the key steps of a standard complaint-handling process. While Member State practice varies in terms of procedures and institutional practices some general steps can be delineated that are basically implicit to every complaint-handling procedure. Figure 1 displays these steps and links them to actions of good practice[4].

[4] Adapted by the study team.

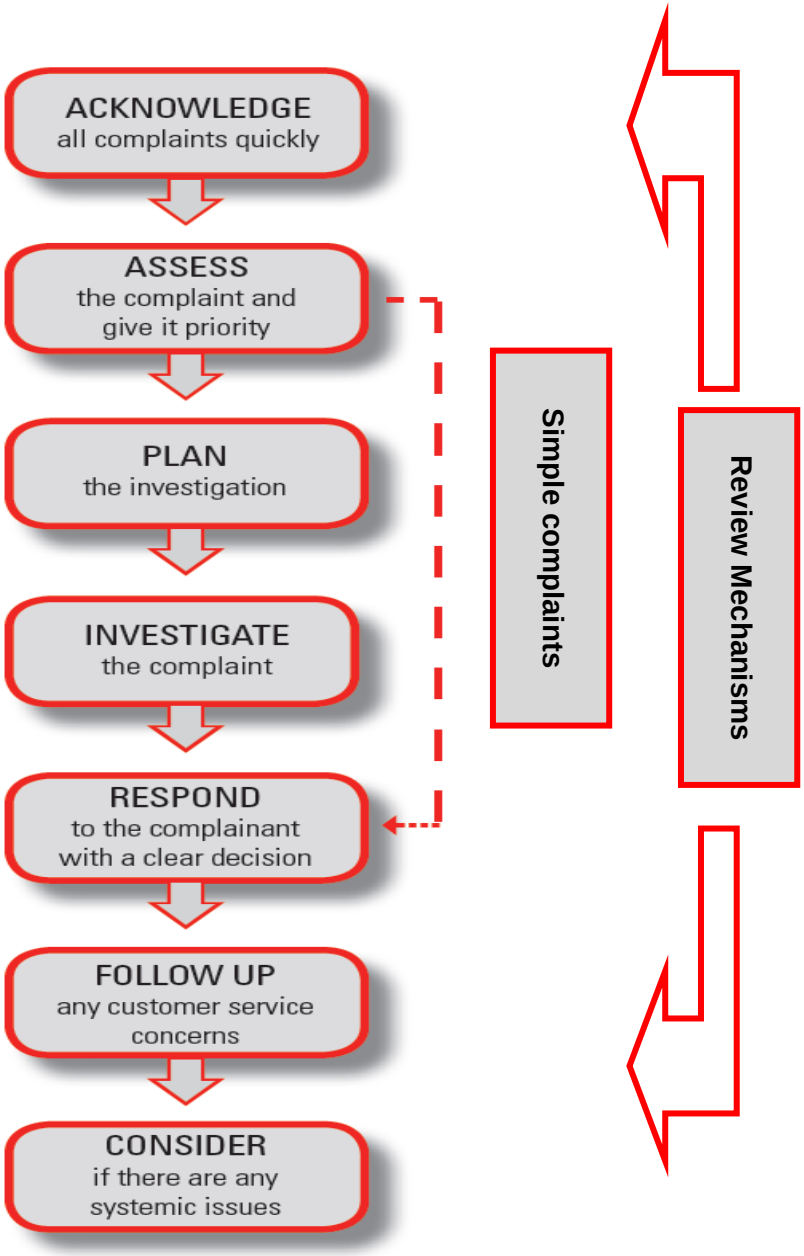

Figure 1. Stages of a typical complaint-handling process

1.1 Acknowledge the receipt of complaints

Acknowledgement of the receipt of the complaint is the first step in any complaint handling process. It should normally go along with informing the complainant about the overall steps of the process. This acknowledgement is an important tool in managing the complainant's expectations and generates trust into the system: acknowledging the receipt quickly demonstrates administrative responsiveness. The acknowledgement should also note how long it is likely to take to resolve the complaint and when the complainant will next be contacted.

1.2 Assess the Complaint and assign responsibilities

The nature of complaints differs widely. The specific action required for certain type of complaints should be carefully assessed by the the competent authority in charge. Depending on the complexity of the complaint issue at hand it might be necessary to involve other parties into the assessment of the complaint to ensure that those assessing the complaints are able to quickly recognise what is the most appropriate action for the complaint category in question. For example a complaint about the potentially wrongly assessed environmental impacts of a major new power plant that affects very different business and individuals differs in its complexity than if the same plant would only be affecting one business or few individuals, particularly when it comes to the remedies for action. . Ideally the assessment should be carried out by a person or team that specialises in this task. A well working co-operation between the authorities helps to ensure that the complaint is swiftly sent to and addressed by the appropriate authority.

1.3 Plan the Investigation

After the complaint has been acknowledged and after the responsible authority has been assigned the investigation of the complaint needs ot be planned carefully. This normally follows a sequence of basic steps

- define what is to be investigated;
- list the steps involved in investigating the complaint and state whether further information is required, either from the complainant or from another person or organisation;
- provide an estimate of the time it will take to resolve the complaint;
- identify the remedy the complainant is seeking, whether the complainant's expectations are realistic or need to be managed, and other possible remedies; and
- note any special considerations that apply to the complaint

1.4 Investigation

The investigation should be carried out with clear rules of responsibility and a clear overall time line. In order for the review in a fair and independent way it has to fulfil the principles of good governance in relation to confidentiality, independence and accountability. A good balance of independence and accountability ensures that public authorities' complaint-handling activities are not driven by bias and ulterior motives while ensuring at the same time

that a system of checks is in place to guarantee the efficiency of enforcement activities or the fairness of their procedures.

1.5 Response

When the complaint has been completed it is important to inform the complainant in clear language on the decision reached and the actions to be taken, if any. A key reason behind the lack of trust of citizens on the efficiency of complaint-handling authorities and their willingness and capacity to enforce environmental law is the long lapse of time between the day a complaint is filed and the day effective enforcement action is taken to stop the breach of environmental law.

1.6 Follow up and Review

The existence of mechanisms to review the general performance of complaint-handling systems is a key requirement for ensuring the constant improvement of the effectiveness and cost-effectiveness of complaint-handling procedures and administrative practices.

2. Key good governance principles for ensuring citizen's trust and an effective complaint-handling system

A complaint-handling system can be efficient only if citizens actively contribute to it by reporting breaches in environmental law. Citizens' confidence in the system can be established and maintained through the application of key governance principles i.e. transparency, accessibility and simplicity, confidentiality, independence and accountability.

The transparency of environmental complaint-handling systems is a key element for ensuring citizen confidence in the complaint-handling system itself and in the application of environmental law. Accessibility and simplicity of complaint-handling procedures are also essential for ensuring citizens' trust in the application of environmental law and to ensure that complaints on breaches of environmental law are actually reported to local or national authorities.

Personal information related to the identity of complainants should be kept confidential and not disclosed, particularly information related to the regulatory addressees against whom the complaint has been lodged. This confidentiality enables complainants to come forward to complaint-handling and enforcement authorities without fearing threats and other forms of retaliation.

Finally, two interrelated elements which are fundamental for ensuring citizens' trust in the system include the independence of competent authorities from political influence and private interests as well as the existence of mechanisms to hold enforcement authorities accountable to citizens.

2.1 Transparency

A transparent complaint-handling system presupposes the existence of clear rules governing its functioning. This regulatory framework shall be clear, accessible and the public should be informed about it.

Transparency also implies that procedures, decisions and their enforcement are carried out in a manner that follows these rules and regulations. It provides for the possibility of efficient communication between complainants and competent authorities via simple and accessible means.

In a transparent environmental complaint-handling mechanism, complainants should be able, at all times, to access sufficient information on the steps that are being taken in relation to the relevant complaint. Ideally authorities shall inform complainants of the on-going actions related to the complaint within predefined timeframes. If slow or no action is taken in reaction to a complaint, the authority should clearly explain the reasons. In addition, transparency implies that information is communicated to people affected by the authorities' decisions pursuant to a complaint.[5]

Systematic registration of complaints ensures traceability and allows for continuous long-term monitoring. Registration of complaints in a dedicated tool and accessibility of related information is an essential token of transparency.

Activity reports and audits carried out by independent bodies guarantee a high level of transparency by ensuring that the complaint-handling system is periodically reviewed. This also allows for identifying areas of improvement. Public bodies should therefore have systems to record, analyse and report on the lessons learned from handling complaints.[6]

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[5] UNSECAP (2011) *What is Good Governance?* Available at: http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp

[6] Ombudsman website, UK, "Seeking continuous improvement" http://www.ombudsman.org.uk/improving-public-service/ombudsmansprinciples/principles-of-good-complaint-handling-full/9

2.2 Accessibility and simplicity

To be efficient, an environmental complaint-handling system shall be accessible to all complainants, regardless of circumstances. Accessibility involves public awareness of the system's existence and functioning as well as options for simple access.

Public awareness of the system means that citizens should be aware of the possibility to alert the authorities about facts likely to cause environmental damages, or which seems incompliant with environmental law provisions. Accessibility also means that citizens should have a clear understanding of administrative authorities' competences, in accordance with the type of environmental case at stake. Information about the existence of the complaint-handling mechanism can be communicated via various means e.g. awareness rising campaigns, annual reporting, explanatory documents available on websites, etc.

In order to ensure that the system is accessible, available options to lodge a complaint shall be clearly explained to citizens and the explanations should be easily accessible in a simple and clear language (e.g. published on a website). In addition, ensuring that various methods to lodge a complaint are available to complainants (e.g. letter, e-mail, direct complaints at the office of the competent authority, standardized form etc.) guarantees a more efficient system.

Beyond principles that render the system accessible and simple to use, barriers deterring complainants from complaining and provisions having an effect equivalent to barriers (i.e. deterring costs, heavy procedural requirements etc.) should be avoided.

2.3 Confidentiality

In the context of complaint-handling, confidentiality refers to the extent the mechanism ensures that information about the identity of the complainant is protected. Details concerning the identity of the complainant should not be disclosed during the investigations aiming at verifying the complaint, and personal information should not be used during subsequent judicial proceedings.

Confidentiality can be ensured at different levels and in different types of situations. It ranges from accepting anonymous complaints, ensuring that the identity of the complainant is kept secret upon its request, to more far reaching legal protection of whistleblowers.

2.4 Independence and accountability

The independence of enforcement authorities from political bias or private interests is a key to ensure public trust in the application of EU environmental law.

Accountability to the public is a key aspect of good governance. In the case of complaint-handling mechanisms, this may be achieved through the presence of an independent

supervisory body (e.g. Ombudsman, independent auditor), high transparency requirements or the possibility to challenge decisions/failure to act in court.

The publication of periodic transparent activity reporting containing measureable information (e.g. percentage of complaints treated within a given timeframe, statistics on the outcome of complaints etc.) also constitutes a pledge of independence and accountability, and provides information on the effectiveness of the complaint-handling process. Additionally, audits carried out by independent bodies are also a valuable option to take independence one step further.

A good balance of independence and accountability ensures that public authorities' complaint-handling activities are not driven by bias and ulterior motives and ensures at the same time that a system of checks and balances is in place to guarantee the efficiency of enforcement activities or the fairness of their procedures.

Each of these good governance principles over which the country studies will be later assessed shall be appropriately defined and their relevance to environmental complaint-handling explained.

3. Key administrative practices for complaint-handling

Those include:

3.1 Availability of scientific, legal and other technical expertise

Skilled staff is essential for effective complaint-handling. As the field of EU environmental law is in general quite complex, there should at least exist a possibility to contact an interdisciplinary team build of lawyers, scientists and technicians.

The availability of sufficient legal, scientific and other technical expertise in bodies handling complaints on environmental matters is a fundamental criterion for ensuring the effectiveness of the complaint-handling system. Legal and scientific expertise is essential for both understanding the relevance of a complaint and devising the most appropriate enforcement action. Given the multidimensional nature of many environmental complaints, a good knowledge of the responsibilities of other enforcement or complaint-handling authorities and the existence of systems facilitating cooperation, communication and coordination with other enforcement authorities in case of complaints cutting across different areas of expertise and responsibility is also central for ensuring that responses to environmental complaints are efficiently addressed.

Authorities can receive a high number of complaints. Appropriate training in "customer service" skills (e.g. appropriate oral and written communication manners) may also be important for ensuring a positive relation between the complaint-handling authority and the public, whereas lack of sufficient expertise of staff can severely hamper both effectiveness and legitimacy of the process.

3.2 Mechanisms/Benchmarks for ensuring timely response to complaints

The establishment of clear benchmarks and sound administrative practices for ensuring an efficient management of complaints may however have an effect on the timeliness of responses or at least on the public trust on the willingness of authorities to enforce environmental law. The prioritisation of certain complaints on the basis of clear and transparent criteria (such as the seriousness and scale of the environmental damage reported, the urgency of the environmental problem, the expected timeframe for enforcing the relevant legislation), for example, may enable a more efficient handling of complaints while ensuring a better trust of citizens on the operation of the enforcement authority through the creation of clear and realistic expectations. An efficient prioritisation of complaints may also indirectly have positive effects on the environment in terms of avoided environmental harm or timely restoration of environmental damage.

Realistic timelines and benchmarks can be set by developing quality indicators designed to monitor response times to complaints in different areas. Such indicators would need to be balanced against quality aspects since complainants may often place more significance to the comprehensiveness of the responses. According to the nature, complexity and size of the filed complaints, different targets may be set.

3.3 Mechanisms to review the general performance and effectiveness of complaint-handling systems (e.g. reporting, independent evaluation)

The existence of mechanisms to review the general performance of complaint-handling systems is a key requirement for ensuring the constant improvement of the effectiveness and cost-effectiveness of complaint-handling procedures and administrative practices. Both quantitative measurement (e.g. the number of complaints resolved in a certain time period) and qualitative measurement (e.g. the degree of the complainants' satisfaction with the process) should be undertaken. The authorities should publicly report on their performance against those standards.

This process clearly rests on two fundamental practices:

- The first is the regular production of information on the complaint-handling activities by the relevant authority. Information could potentially include, inter alia, the number of complaints received, the type of complaints received including insights on the distribution of complaints in terms of environmental media, geographical area or specific industrial installations as well as information related to the performance of the complaint-handling authority, such as the average time spent for each complaint (in terms of acknowledgment of receipt and resolution of complaints), specific administrative problems encountered or information collected from customer surveys.

The second key practice consists on the analysis of this data. This could be done through external auditing, internal review processes and ideally through information exchanges with other complaint-handling bodies or enforcement authorities relevant to the implementation of environmental legislation. As citizen's complaints are in fact also a key source of information for regulatory authorities on the state of the environment, the level of implementation of specific environmental legislation and the key areas of improvement. The regular production and analysis of this information is therefore also a key practice for identifying problems and solutions in terms of implementation of environmental legislation.Part of a successful approach to review and improve on the effectiveness of the complaint handling system at hand is the capacity of competent authorities to monitor and internally evaluate practice and implement relevant changes based on previous experiences. The availability of skilled staff is a fundamental element to allow the identification and application of improvement measures within a complaint-handling body. This form of internal learning and evaluation is a key prerequisite for effective periodic reporting of good practices and lessons learned This practice would also allow the identification and introduction of improvements in the environmental legislation.

3.4 Electronic record-keeping mechanisms

An electronic system for entering, tracking and monitoring complaints and for analysing complaint data is essential in for easy and efficient handling of the complaints. Such a system allows for an easy feedback for the complainants at any time, an overview on the already completed steps as well as the next steps in the processing and a cooperation between different persons/institutions that are involved. Electronic records also facilitate the

rapid transmission of documents and thus allow a quicker processing of complaints. Some of the key elements of a successful electronic record-keeping mechanism include:[7]

- Simple data entry;
- Ability to search across fields, such as
    - the complainant's name – to track the progress of an individual complaint;
    - the staff member's name – to conduct quality assurance reviews;
    - the type of problem – to identify emerging trends and ensure consistency in how the authority replies to complaints;
    - the location of the problem – to highlight regional or institutional trends in complaints and how they are handled;
    - the time taken to resolve the complaint – to monitor timeliness and efficiency;
- Regular reporting, to prompt the authority to monitor trends and quickly identify and respond to new challenges and
- Simple access by all staff members involved.

Moreover, it can also include:

- Compliance with the authority's recordkeeping practices;
- Compliance with any legislation that regulates how the authority is to make, record and notify decisions or resolve complaints, as well as information privacy and data protection principles.

Such system should allow the amendment and update of information during the complaint-handling process. Security measures should also be implemented to secure the record-keeping systems against unauthorised access and accidental or deliberate loss of data. It might be often the case that complaints are submitted on paper format especially from citizens that do not have access to a computer. This issue of system compatibility should be resolved by for example scanning all incoming documents into the system.

3.5 Mechanisms to address multiple/campaigning complaints

Providing specific mechanisms for multiple or campaigning complaints allows for an efficient complaint-handling procedure as the authorities will not be blocked by the simple number of

[7] See Commonwealth Ombudsman, Better practice guide to complaint-handling, April 2009, available under: http://www.ombudsman.gov.au/docs/better-practice-guides/onlineBetterPracticeGuide.pdf

complaints that are handed in. To avoid the creation of such administrative bottlenecks, the competent authorities should develop internal record keeping systems to facilitate the identification of the subject matter of each complaint and allow the grouping of these complaints according to the requirements. Such complaints could be treated as a single case with several complainants to increase the efficiency of the whole system.

3.6 Mechanisms shifting the burden of handling complaints on polluter

In certain areas of the environmental legislation (e.g. in IPPC) the polluters are known to the authorities and their practices are managed through licensing system. In such areas the administrative burden of complaint-handling can be shifted at least partially to the respective operators of the polluting facilities. The complaint-handling mechanism should encourage complainants directly to the regulated operators. This presupposes that such installations are required to provide public access to their environmental records including information on environmental emissions and other sampling and monitoring results. For this reason the operators should establish the necessary communication channels with the public by publishing the names and contact details of the responsible person. For each complaint which is not resolved directly by the operator, the complainants should be allowed to address their cases to the competent authorities.

Chapter 3: Environmental mediation

In this chapter first the concept and the peculiarities of environmental mediation will be presented. This will be followed by a description of the key principles and steps of (environmental) mediation procedures.

1. Definition and concept of environmental mediation

According to the Directive 2008/52/EC "mediation" means a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator. This process may be initiated by the parties or suggested or ordered by a court or prescribed by the law of a Member State. It includes mediation conducted by a judge who is not responsible for any judicial proceedings concerning the dispute in question. It excludes attempts made by the court or the judge seised to settle a dispute in the course of judicial proceedings concerning the dispute in question.[8]

For the purpose of this study, mediation is defined as non-judicial or pre-judicial (notwithstanding the possibility of opting for a mediator during the judicial phase) instrument for dispute resolution between two or more parties with concrete effects that can be classified between complaint-handling and access to justice. This mechanism is much less rule-bound than complaint-handling mechanisms. Typically, a third party, the mediator, assists the parties in negotiating a settlement.

Compared to arbitration or alternative dispute resolution (ADR) mediation is a non-binding process where a neutral third-party (the mediator) works with the parties to reach a mutually agreeable settlement. If a settlement is not reached, the mediator has no authority to impose one. In arbitration, the arbitrator hears evidence and receives testimony, much like a judge and makes a decision that is binding on the parties.

The particularities of environmental mediation are:

- usually more than two parties involved in the conflict;
- complex conflict themes (natural sciences, technology, and aspects of regional and/or national economy);

[8] Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, Article 3.

- incertitude over the qualitative and/or quantitative consequences of a certain projects at its effects;
- unequal distribution of power (possibilities for influence) and resources (expert knowledge, time, financial resources) among the participants;
- coming together of individual interests and public interests;
- high public and media participation;
- often with extensive political dimensions (local community, regional and national policy levels);
- complex points of difference at the factual and values levels;
- conflicts over legal opinion.

Generally the results of the environmental mediation processes are a preparation for political and administrative decisions. Environmental mediation as such does not replace political or administrative decisions.

2. Key principles and steps for ensuring effective environmental mediation

2.1 Key principles

The following key principles have proven to be essential for effective mediation procedures[9]:

2.1.1 Voluntariness

Parties in conflict are free to enter into the mediation process. The side consequence of it is that they are also free to end the process at any time. The same is valid for the mediator herself/himself.

It guarantees that the parties will not lose their possibility to go to court as a result of the time spent in mediation: the time limits for bringing an action before the court are suspended during mediation.

[9] See for example European Commission Recommendation 2001/310/EC of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes and European Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes and the European Code of Conduct for Mediators, that has been developed by a group of stakeholders with the assistance of the Commission and that was launched at a conference in Brussels on 2 July 2004, available under: http://ec.europa.eu/civiljustice/adr/adr_ec_code_conduct_en.pdf

2.1.2 Confidentiality

Parties and the mediator commit to keep all verbal and written communication taking place during the mediation strictly confidential during the mediation and after it ends, including the fact that the mediation is to take place or has taken place.

Any information disclosed in confidence to mediators by one of the parties must not be disclosed to the other parties without permission, unless compelled by law.

It generally provides that the mediator cannot be obliged to give evidence in court about what took place during mediation in a future dispute between the parties to that mediation, unless compelled by law or grounds of public policy to disclose it.

2.1.3 Neutrality and Impartiality of the mediator

The mediator is a neutral, impartial and independent third party, he/she is leading the process and making sure that the specific rules (especially confidentiality and communication rules[10]) are followed.

If there are any circumstances that may, or may be seen to, affect a mediator's independence or give rise to a conflict of interests, the mediator must disclose those circumstances to the parties before acting or continuing to act.

Such circumstances include:

- any personal or business relationship with one or more of the parties;
- any financial or other interest, direct or indirect, in the outcome of the mediation;
- the mediator, or a member of his firm, having acted in any capacity other than mediator for one or more of the parties.

In such cases the mediator may only agree to act or continue to act if she/he is certain of being able to carry out the mediation in full independence in order to ensure complete impartiality and the parties explicitly consent.

The duty to disclose is a continuing obligation throughout the process of mediation.

Impartiality is generally ensured by specific rules regarding the mediators:

- they are appointed for a fixed term and shall not be liable to be relieved from their duties without just cause;
- they have no perceived or actual conflict of interest with either party;

[10] For example balanced speaking time, each party speaks for him/her self ("I"-rule), not interrupt when the other party is speaking, use of a correct and polite language.

- they provide information about their impartiality and competence to both parties prior to the commencement of the mediation procedure.

2.1.4 Fairness

The mediator must ensure that all parties have adequate opportunities to be involved in the process. She/he should be aware of possible diverging powers, funds etc. of the involved parties (especially when it comes to a mediation between a multination company and a private person or a NGO but also as regards a mediation between an administrative authority and a private person or a environmental NGO).

She/he must inform the parties, and may terminate the mediation, if:

- a settlement is being reached that for the mediator appears unenforceable or illegal, having regard to the circumstances of the case and the competence of the mediator for making such an assessment, or
- the mediator considers that continuing the mediation is unlikely to result in a settlement.

2.1.5 Ownership

The parties are responsible of the outcome; they are best placed to know what their interests and needs are. The mediator is responsible for the process but not for the outcome of the mediation. This is also the essential difference to other dispute resolution mechanisms as for example arbitration.

2.1.6 Expert knowledge

The mediator must be aware in each mediation process he/she is leading about the general rights and the duties of the involved parties according to the applicable laws. If he/she is not sure if the planned settlement is in line with the current laws he/she should interrupt the mediation and suggest to the parties to seek legal assistance. Thus, a legal background of the mediator is utile but not necessary. If it turns out during the process that specific technical or scientific expertise is needed, the mediator might always – by mutual agreement of the involved parties - enlist an expert or to contract an expert opinion.

The mediator - upon request of the parties - shall disclose her/his professional background and skill enhancement as well as the training in mediation.

Some of the principles as laid down for the complaint-handling mechanisms also apply for the mediation mechanisms, such as:

2.1.7 Transparency

A transparent mediation procedure presupposes that the involved parties understand the characteristics of the mediation and the role of the mediator and the parties in it. The mediator must in particular ensure that prior to commencement of the mediation the parties have understood and expressly agreed the terms and conditions of the mediation agreement including any applicable provisions relating to obligations of confidentiality on the mediator and on the parties.

2.1.8 Accessibility and simplicity

To be efficient, a mediation process shall be accessible to everybody, regardless of circumstances. Accessibility involves public awareness of the existence of the mediation, its functioning as well as options for simple access.

Beyond principles that render the system accessible and simple to use, barriers deterring persons/authorities from participating and provisions having an effect equivalent to barriers (i.e. deterring costs, heavy procedural requirements etc.) should be avoided.

2.2 Key steps of a mediation procedure

The key steps of a mediation procedure are the following:

2.2.1 Preparation and constitution

The first phase of preparation and constitution can be divided into the following features:

- Constitution of participants;
- Appointing of mediators;
- Description of the characteristics of the mediation;
- Agreement on business and communication rules;
- Clarification of the distribution of costs;
- Signature of the mediation agreement.

The mediator must ensure that the parties to the mediation understand the characteristics of the mediation process and the role of the mediator and the parties in it.

The mediator must in particular ensure that prior to commencement of the mediation the parties have understood and expressly agreed the terms and conditions of the mediation agreement including any applicable provisions relating to obligations of confidentiality on the mediator and on the parties.

2.2.2 Negotiation phase

The second phase consists of the following steps:

- Description and analysis of the conflict by both parties;
- Drafting of interests and goals of both parties;
- Compilation and negotiation of possible solutions.

2.2.3 Closing, realisation and monitoring

The third phase in general has three sub-topics:

- Decision of the solution
- Mediation contract on the result
- Regulation of implementation, liabilities and future conflicts, monitoring

In this phase the mediator must take all appropriate measures to ensure that any agreement is reached by all parties through knowing and informed consent, and that all parties understand the terms of the agreement.

The mediator must, upon request of the parties and within the limits of her/his competence, inform the parties as to how they may formalise the agreement and the possibilities for making the agreement enforceable.

Chapter 4: Description of characteristics of complaint-handling and mediation mechanisms in ten EU Member States (case-studies)

I. AUSTRIA

1 Institutional, administrative and legal context

Austria is a federal state with nine federal states (*Bundesstaaten*), in detail Burgenland, Carinthia, Lower Austria, Upper Austria, Salzburg, Styria, Tyrol, Vorarlberg and Vienna. Each Austrian state has an elected legislature, the *Landtag*, a state government, the *Landesregierung*, and a governor, the *Landeshauptmann*. On the level of the federal states Austria is divided into 84 political districts (*politische Bezirke*), and 15 independent cities (*Statutarstädte*) which form their own districts. The administrative office of a district, the district commission (*Bezirkshauptmannschaft*) is headed by the district commissioner (*Bezirkshauptmann*). The districts are in charge of the administration of all matters of federal and state administrative law and subject to orders from the higher instances, usually the governor (*Landeshauptmann*) in matters of federal law and the state government (*Landesregierung*) in state law. At local level there exists a self-administration by the municipal administrations of 2,358 Austrian municipalities.

The 99 administrative districts are not independent territorial authorities but rather organizationally integrated in the federal state administration or within the greater city. As such, Austria can be said to have a four-tiered administrative structure throughout: Federal Government – Federal States – Districts – Municipalities.

The federation, the *Bundesstaaten* and the districts all have legislative and enforcement competencies. The allocation of legislative and enforcement competencies is set out in the Austrian Constitution (*Bundesverfassungsgesetz*, Art 10 – 15 B-VG). For the environmental sector the allocation of competencies is as follows:

According to Art 15 para. 1 B-VG the legislative **and** the enforcement competence for the environmental sector, in detail nature protection, land planning, building law, air pollution

control regarding heating installation and waste management regarding non-hazardous waste, lies within the federal states, with the following exceptions:

- For EIAs regarding federal highways and high power railway lines with expected significant impacts on the environment (Art 10 clause 9 B-VG), for water (Art 10 clause 10), for hazard prevention due to exceedance of air immission limits and for air pollution control in general (Art 10 clause 12), for waste management regarding hazardous waste, for the non-hazardous waste in case of the need for uniform regulations (Art 10 clause 12) the legislative **and** the enforcement competence lies within the federation (*Bund*),
- For EIAs in general the legislative competence lies within the federation (*Bund*) and the enforcement competence within the federal states (Art 11 B-VG),
- For the local issues in the fields of building inspection, space planning and the public organizations for alternative dispute resolution the enforcement competence lies within the municipalities (Art 118 para. 3 clause 8 and Art 118 para. 6 B-VG).

The implementation of the EU environmental law therefore is mainly a duty of the federal states (*Bundesstaaten*).

2 Scope, hierarchy and coordination of complaint-handling procedures

2.1 Description of main actors and relationship between mechanisms

There is no centralised environmental complaint-handling body responsible for the handling and resolution of complaints relating to breaches of (EU) environmental law in Austria. Moreover, there is no specific complaint-handling mechanism on this matter.

In general the environmental complaints are handled by the competent authorities responsible for the enforcement of environmental law. The majority of complaints in relation to the alleged illegality or non-compliance by a private person or company in relation to EU environmental law are in the first instance handled by the **district commissions** (*Bezirkshauptmannschaften*) depending on the nature and the scale of the illegal activity, with some exceptions (see in detail under 2.2 application of scenarios). Complaints related to the failure of a public or private body to provide an environmental service or of a public body to respect procedural or administrative guarantees will be mostly handled by the district commissions too.

For the second instance in general and for the first instance in the sectors of water, EIA and management of hazardous waste the **state government offices** (*Amt der jeweiligen Landesregierung)* are the competent authorities. According to Steiner (pers. comm., 2012), however, in general the state government offices are delegating the complaints they receive downward to the district commissions.

The **Federal Criminal Agency** (*Bundeskriminalamt*) organized as a department of the Ministry of the Interior (*Bundesministerium für Inneres*) operates a central contact point for the report of environmental crimes (*Meldestelle Umweltkriminalität*).[11] According to Dr. Heissenberger (e-mail comm., 2012) there is no general and regular exchange between this institution and the district commissions in terms of environmental complaints/crimes.

Complaints can be filed to the **Ombudsman Board** (*Volksanwaltschaft*) by citizens or NGOs in all cases of maladministration, independently from the scenario. It follows up citizens' complaints, checks the legality of decisions by authorities and examines possible cases of maladministration in the public administration. The Ombudsman Board however is not competent for legal issues and problems resulting between individuals or between individuals and enterprises. Rulings by the independent courts are also not subject to the Ombudsman Board's examination. Examinations can only be initiated after the administrative proceedings have been concluded and there is no further legal remedy against the grievance. The complaint-handling mechanisms provided by the Ombudsman Board stand outside the administrative complain-handling system and are not part of the appeal stages.

A unique figure in Austrian environmental law and policy is the **regional environmental Ombudsman** (*Umweltanwaltschaft*). The environmental Ombudsman is an independent, state funded, but regionally organized, institution that was created to defend the interests of nature and the environment and to function as a mediator between the government and the general public in environmental matters.

There is currently a – highly controversial –[12] reform going on in Austria concerning the building up of nine first instance administrative courts at the *Länder* level and two at the federal level meant to replace 120 appeal bodies and special authorities. The respective amendment (*Verwaltungsgerichtsbarkeits-Novelle 2012*) shall be become effective by January 2014. This reform is meant to create a "one-stop-shop" for all appeals procedure and disciplinary actions and could have an impact on the existing system of complaint-

[11] http://www.bmi.gv.at/cms/BK/meldestellen/umwelt/start.aspx

[12] See for example http://www.krone.at/Nachrichten/Justizvertreter_warnen_vor_politischem_Einfluss-Verwaltungsgericht-Story-300680, 27 October 2011 (in Austrian only).

handling in Austria, especially concerning the role of the state government offices and the regional environmental Ombudsmen, that is in both cases a decreasing importance to the point of an abolition of these institutions (Steiner, pers. comm., 2012).

2.2 Application to scenarios

2.2.1 Is there a mechanism/are there mechanisms for alleged illegality or non-compliance of a private person/ company?

For the case of the operation of a clandestine/non-authorised business for end-of-life-vehicles and disposal of waste (see Directive 2000/53/EC – ELV Directive) a competitor can send his complain to the district commission of his district. He could address the board of commerce or – in case of pollution – the nature protection department. In general it is sufficient to address the district commission as a whole as the complaint will then be handed over to the competent department.[13] There is no restriction concerning the group of people, everybody can be party to this proceeding.

If a facility with an IPPC-license (see Directive 2008/1/EC of 15 January 2008 - IPPC-Directive) is in breach of one of its permits conditions a private person has to send the complaint to the competent nature protection board of the administrative office of the state government (*Amt der Landesregierung*). There are no specific conditions concerning form and contents of the complaint, it is however recommended to hand in a written complaint. The competent authority is obliged to pursue the complaint.

In case an industrial company which has an eco-label (see Regulation 66/2010/EC of 25 November 2009) is claimed to be not respecting the criteria the complaint has to be addressed to the commerce board of the responsible district commission. No specific conditions have to be respected either.

As the enforcement competence in water issues lies within the federal states the illegal discharge of pollutants to a river (see Water Framework Directive 2000/60/EC) from a small commercial company (that does not fall under the IPPC-Directive) has to be filed to the governor/state government offices of the respective federal state. If the complaint has been directed to the district commission then the governor has to be informed about the case. In general the further proceeding is done by the district commissions (by delegation) as the staff in general knows better about the respective sites.

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[13] According to Wachter (pers. comm., 2012) this in general works without causing significant delays.

As there are no coasts in Austria the case of illegal activities in a coastal areas is not of relevance in this case-study.

If illegal timber that is on the CITES list (see Annex in Regulation 338/97/EC) has been imported to Austria the competent authority are the customs authorities (since 2009 the control and the criminal proceedings are both within the competencies of the customs, before there was a split competence between the district commissions and the customs).

For the case of wide-spread illegal trapping/hunting of wild birds protected under the Birds Directive (see Directive 2009/147/EC of 30 November 2009) the complaint has to be directed to the nature protection board of the respective district commission.

2.2.2 Is there a mechanism/are there mechanisms for alleged illegality or non-compliance of a public body/utility in relation to providing an environmental service?

In case a municipality fails to treat properly its urban waste water load (for example treatment plants are under capacity) in compliance with Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment the complaint should be directed to district commission (see Section 98 cl. 2 WRG for the first instance). No specific conditions have to be respected in this case.

For both of the scenarios (a private water utility[14] is providing drinking water containing E. coli due to a lack of disinfection of the water source (see Directive 98/83/EC of 3 November 1998) and a municipality is operating a landfill (see Directive 99/31/EC of 26 April 1999) on behalf of a town and is claimed to have serious odour problems) the complaint should be addressed to the district commission. There are no specific conditions to be respected.

2.2.3 Is there a mechanism/are there mechanisms for alleged failure of a public body to respect procedural requirements or some other required administrative standards?

If a competent authority responsible for EIA is claimed to have approved an environmentally relevant project without an EIA or a screening (see EIA Directive) there is a general competence of the federal states. Private persons do not have a legal standing in EIA-procedures. According to Wachter (pers. comm. 2012) a private person or a NGO would

[14] In Austria there are no private water utilities; the utilities have a public legal form (*kommunale Anlage* or *Wasserverband* or *Genossenschaft*).

have to contact the regional environmental ombudsmen (*Umweltanwaltschaften*) in their federal state and ask them to become active.

If an authority responsible for a protected Natura 2000-site is allowing small-scale housing on this site without any appropriate consideration of the respective individual and/or cumulative effects (see Art. 6.3 Directive 92/43/EEC of 21 May 1992 – Habitats Directive) the private person or the NGO should first contact the building authority that is in the first instance the mayor of the municipality. If there is no building permit or the building permits the person could also complain to the nature protection department of the district commission in the first instance. As private persons and NGOs in general do not have legal standing in nature protection law (with the exception of a neighbor that can prove that his private interests are at stake) the competent authority is not obliged to pass a formal administrative decision (*Bescheid*) that the private person/NGO could appeal. The more effective way would therefore be to address the ombudsman in this case (see in detail under 4.1).

3 Characteristics of the complaint-handling systems identified

In the following the specific features of the environmental complaint-handling mechanisms will be described with the focus on the mechanisms provided by the district commissions (*Bezirkshauptmannschaften*) as there is a quasi universal competence of these in the sector of environmental complaint-handling (Steiner, pers. comm., 2012). The mechanisms of the state government offices (*Amt der Landesregierung*) will only be mentioned if there are specific features that are of relevance for this study.
The specific features of the complaint-handling mechanisms of the Ombudsman (*Volksanwaltschaft*) and the regional environmental ombudsmen (*Umweltanwaltschaft*en) can be found under 4.

3.1 Procedures/procedural guarantees

Procedures

There is no requirement concerning the format of the complaint from the side of the authorities (Steiner, pers. comm. 2012). According to Sect. 13 cl. 1 Administrative Procedures Act (*Allgemeines Verwaltungsverfahrensgesetz*) complaints, requests, suits and other communication in general can be placed in written or oral form or by phone. The written form includes e-mail only if there are no specific electronic forms designed for the communication between the authority and the complainant that have been published in the

internet. The authority can charge the applicant to place the complaint in written or oral form within an appropriate time-limit if it is of the opinion that the transmission by phone is not appropriate in relation to the matter. Insufficiencies in the (requested) written form do not legitimate the authority to reject complaints, it can, however, charge the complainant to correct the complaint within a reasonable time-limit and announcing the refusal of the complaint in case of inaction. According Sect. 13 cl. 5 Administrative Procedures Act the authority is not obliged to deal with requests that do not specify the matter they are dealing with.

According to Wachter (pers. comm., 2012) the complaint generally should be handed in in written format as this makes it easier to prove that an attempt to contact the public authority has been made in the case of inaction.

Several districts offer a great variety of standard forms (for download or even online) on their websites for applications in the environmental sector (such as application for an approval of permanent removal of wood and bushes pursuant nature protection law, etc.)[15], but no general form for complaints in the environmental sector is available (Steiner, pers. comm., 2012).

The general online service for official channels[16] (*Online Information für Amtswege*) provides – as a part of the e-government – official online forms also for applications in the environmental sector; for the case of complaints there is a general link to the central contact point for the report of environmental crimes (*Meldestelle Umweltkriminalität*) with phone numbers, postal and email address and the general advice that offenses can also be reported to police inspections.

In general – as there is quasi universal competence of the district commissions for environmental complaints and as the existence of their Citizens' Advice Bureaus (*Bürgerbüros*) is widely known – the complainants and NGOs are normally aware which authority should be contacted for their requests and in case of remaining uncertainties can address the Citizens' Advice Bureaus.

Record-keeping and availability of IT systems for handling complaints

The complaints are in general allocated by the digital act. There is no common record-keeping IT-system of all the district commissions dealing with environmental complaints; in general this is even not the case within a single district commission so that in many cases for

[15] See for example: http://www.salzburg.gv.at/buerger-service/formulare/formulare-unw.htm and http://www.noe.gv.at/Umwelt/Umweltschutz/Antraege-Formulare.wai.html.

[16] https://www.help.gv.at/.

example the waste department is not informed about the procedures of the water department and *vice versa* (Steiner, pers. comm., 2012).

Sect. 18 cl. 4 Administrative Procedures Act (*Allgemeines Verwaltungsverfahrensgesetz*) determines that official copies have to contain the indication of the authority, the date and the name of the authorizing officer. If the copy is an electronic document it has to signed with a specific signature correspondent to the act on e-government (*E-Government-Gesetz*).

Publicity

In general no specific information on the complaint-handling mechanisms, procedures and their conditions can be found on the homepages of the district commissions or the state government offices. The Citizens' Advice Bureaus of the district commissions (*Bürgerbüros*), however, offer assistance on the procedures and can be contacted via (e-)mail, phone, fax or personally.

On the relevant websites of the district commissions and state governments in general information on the responsible persons within the department for environment with their phone numbers, postal and e-mail addresses, general online forms and in some cases their mission statement is given.[17]

Official announcements on environmental proceedings (*Kundmachungen zu Umweltverfahren*), for example an official notification (*Bescheid*) of the positive EIA of the construction of a highway, and public sanctions, are in general available on the websites in addition to the publications in the official journals.[18]

Complaints and their follow-ups are in general not available publicly. As most of the complaints end up in criminal proceedings the anonymity of the complainants and the confidentiality of the information have to be preserved. There is one exception for the cases of corruption where removal of the anonymity of the accused persons are currently being discussed (Steiner, pers. comm., 2012).

Anonymity and confidentiality

[17] See for example: http://www.noe.gv.at/Politik-Verwaltung/Landesverwaltung/Amt-der-NOe-Landesregierung/LV_Gruppe_RU.wai.html and http://www.noe.gv.at/Land-Zukunft/Landesentwicklung-Strategie-NOe/Leitbild/Leitbild.wai.html (*Amt der Landesregierung*) and http://www.tirol.gv.at/bezirke/kufstein/organisation/umwelt/ (*Bezirkshauptmannschaft*).

[18] See for example: http://www.noel.gv.at/Umwelt/Umweltschutz/Umweltrecht-aktuell.html

The Administrative Procedures Act (*Allgemeines Verwaltungsverfahrensgesetz)*[19] and the Data Protection Act (*Datenschutzgesetz*)[20] provide rules on confidentiality and constraints for the use of personal data. A general assurance of confidentiality and protection of anonymity, however, does not exist regarding environmental complaint-handling procedures (Steiner, pers. comm., 2012 and Dr. Heissenberger, e-mail comm., 2012).

Deadlines for analysis of complaints

According to Sect. 73 Administrative Procedures Act (*Allgemeines Verwaltungsverfahrensgesetz*) the authorities are obliged to issue an administrative decision "without unnecessary delay", latest after the period of six months, after the reception of the claim, or a complaint respectively. If the decision is not issued within this time period the responsibility for the decision is transferred to the competent superior authority on request of the party, here the complainant. If the delay was not caused by a predominant default of the authority the request is refused.

Additionally - derived from the freedom of information acts of the federation and of the federal states (*Auskunftspflichtgesetze*) - the public authorities are in general obliged to react on every contact attempt of a private person within a time period of eight weeks.

Feedback

Pursuant to Sect. 17 Administrative Procedures Act (*Allgemeines Verwaltungsverfahrensgesetz*) the parties to the respective proceedings can access records related to their requests with the exception of parts that could lead to a damage of legitimate interests of parties or third persons, an endangering of the assignments of the authority or a negative interference on the purpose of the procedure. There is no legal remedy against the refusal of accessing the reports.

Enforcement

The district commissions on the basis of the Administrative Enforcement Act (*Verwaltungsvollstreckungsgesetz*) dispose of the necessary sanctions mechanisms in order to enforce their own decisions or the decisions of other authorities at the request of the latter.

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19 Section 17 cl. 3 Administrative Procedures Act (*Allgemeines Verwaltungsverfahrensgesetz*).

20 Sections 6 et seqq. Data Protection Act (*Datenschutzgesetz - DSG 2000*).

3.2 Technical, scientific and legal expertise of EU Environmental law

In general the staff of the district commissions and the state government offices consists of lawyers. In the nature protection department there is at least one specialist for expert opinions (*Amtssachverständiger*) in nature study, the water protection has at least one expert for water issues, the commerce department has at least one specialist in commerce law, etc. These specialists are permanent employees of the district commissions. In general they are organizationally based in decentralized bureaus in order to be able to work more independently and to react more rapidly on the requests (Steiner, pers. comm., 2012).

3.3 Reporting and statistics

The state governments have to report on the environment measures and projects to the president of the *Landtag* every year (*Jahres-Umwelt(-schutz)bericht*).[21] In the consulted reports no information/statistics on complaint-handling and related costs could be found. According to Steiner (pers. comm., 2012) there is no information on the environmental complaint procedures also because it is not requested by the superior authorities or the *Landtag*.

As for the district commissions general statistics on proceedings in the environmental sector (e.g. waste law and other proceedings in environmental law) are available, but they do not contain information on costs for the proceedings etc.[22] These reports in general mention numbers of proceedings in the environmental protection sector (for example waste-related procedures, procedures regarding the law on mineral raw materials and other procedures regarding environmental provisions) and their trends over several years. There are, however, no specific numbers on environmental complaints handled.

3.4 Review

The Austrian audit courts of the federal state and of the *Länder* (*Rechnungshöfe des Bundes und der Länder*) investigate the tasks (that is administrative penalty proceedings, proceedings concerning operational plants, citizens' services and establishment of an internal control system) of selected district commissions of the different *Länder* along the criteria of friendliness towards citizen, effectiveness and cost-effectiveness in order to be

[21] See for example: http://www.noe.gv.at/bilder/d52/NoeUmweltbericht2009.pdf

[22] See for example for the years 2004-2011: http://www.tirol.gv.at/bezirke/kufstein/statistiken/

able to compare their value performance.[23] There are no specific analyses of the complaint-handling mechanisms and the investigation of the citizens' services focuses on the performance of services such as the issuing of passports or driving licences. However, it can be deduced form the report that there is a general lack of customer surveys, (IT-based) grievances management systems and of internal quality standards (addressing criteria such as lengths of executions of tasks, accessibility, waiting times, negotiation competences of the staff, etc.) and controlling mechanisms. In addition to this the Austrian Ombudsman Board (*Volksanwaltschaft)* controls the activities of the district commissions.

The district commissions, however, do not have to present their own economic reports (Steiner, pers. comm., 2012).

Besides this there exists a regular internal evaluation of the activities of the district commissions through the State Office Directorate (*Landesamtdirektion/Innenrevision*) (Dr. Heissenberger, e-mail comm., 2012).

3.5 Frequency and regularity of complaints and trends

There is no information available on the frequency/regularity of environmental complaints within the district commissions and/or the state government offices. On the basis of the Environmental Information Act (*Umweltinformationsgesetz*) a site in the internet has been established which offers open data on the federal and the *Länder* level *inter alia* for the environmental sector.[24] However, this data is not related to environmental complaints.

3.6 Existence of features to address challenging complaints

According to Sect. 44a Administrative Procedures Act (*Allgemeines Verwaltungsverfahrensgesetz*) the authority is entitled to announce the request/s by means of an edict (*Edikt*) if there are more than 100 persons involved in an administrative proceeding. The public edict contains *inter alia* a deadline of a minimum of six weeks within which objections can be made; the authority can decide that a person is no longer party to the proceeding once she/he missed to make an objection within this time period (see Sect. 44 b).

[23] See for example: http://www.rechnungshof.gv.at/fileadmin/downloads/2012/aktuelles/presse/kurzfassungen/salzburg/Kurzfassung_Salzburg_2012_05.pdf of 11 June 2012 (only in Austrian).

[24] See http://data.gv.at/suche/?search-term=umwelt&katFilter=umwelt (beta-version).

In some cases mediation procedures have been installed before the official start of administrative procedures, especially if there was a high number of requests or if a case was publicly discussed in a controversial manner (Steiner, pers. comm., 2012, see also under 5).

3.7 Costs

The costs of the administrative proceedings are regulated in Sections 74-79a of the Administrative Procedures Act (*Allgemeines Verwaltungsverfahrensgesetz*). In general costs for the activities of the administration have to be carried by the public authorities (Sect. 75). If the administrative bodies had costs related to their official acts, for example fees for experts, they have to be substituted by the applicant. There is no specific information available on the internal administrative costs and number of staff-members involved in environmental complaint-handling. According to Dr. Heissenberger (e-mail comm., 2012) the costs of the environmental complaint-handling procedures vary widely depending on the complexity and extent of the respective issues and therefore no general statements on the costs can be made.

3.8 Particular problems encountered

According to the representative of the *Umweltbüro* in Vienna (Wachter, pers. comm., 2012) the complaint-handling mechanisms usually work. The NGO indicated a number of cases illustrating that politically sensitive projects tend to divert from the regular procedures and that in these cases the NGOs as a last resort tend to more often refer the cases for an investigation by the European Commission. As for the strategic environmental assessment the NGO raised concerns because there appears to be no control possibility of the respective decisions.

4 Existence of specific additional institutions/authorities for the sector of environmental complaint-handling

4.1 Austrian Ombudsman Board (Volksanwaltschaft)

The Austrian Ombudsman Board (*Volksanwaltschaft*) consists of three members who work together as colleagues.[25] They are elected by Parliament for a term of six years and can be re-elected once. The members are independent according to the constitution. They cannot be deselected, recalled, or divested of office. The ombudspersons are sworn in by the Federal President. At the beginning of their term of office, the members of the Ombudsman Board agree on an allocation of duties. In doing so, each ombudsperson takes over a certain sphere of business and is thus responsible for predefined issues. More than 30 experienced case handlers assist the members in their work. Mag.a Terezija Stoisits is the responsible person for environmental issues at federal level and for nature protection issues at the state level since 2007.

The Ombudsman Board deals with complaints against the public authorities in general, alleged illegal activities or any other grievance (*Missstand*). The Board can only be active in case that the administrative process came to an end and the complainant decides not to access the court.[26] The Ombudsman Board can initiate control procedures *ex officio* (Art 148a cl. 2 of the Austrian Constitution – *B-VG*) if they suspect grievances or irregularities and also during current administrative proceedings. There are no (statutory) specifications on the *modus operandi,* the Ombudsman Board therefore is entitled to query the persons concerned, to summon witnesses, to do onsite-inspections, etc. According to Dr. Porsch (pers. comm., 2012) this is above all a question of time.

The Ombudsman Board, however, does not have a legal standing in the proceedings and therefore is not empowered to bring public authorities to trial.

The Ombudsman Board has the constitutional obligation to examine every complaint, to check if there is a case of maladministration and to inform the complainant on the results and eventual further proceedings (Art 148a cl. 1 s. 3 B-VG). Therefore the Ombudsman generally confronts the respective competent public authority with the complaint and asks them react,

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25 Dr. Peter Kostelka, Dr. Maria Theresia Fekter and Mag. Terezija Stoisits were elected by the National Council for the term of office from 1 July 2007 to 30 June 2013. The chair in the Ombudsman Board changes every year at the end of June.

26 Interview with Dr. Manfred Porsch, Staff member Volksanwältin Stoisits, 21 May 2012.

in general by giving a recommendation. The public authority is obliged to react within eight weeks if it accepts the recommendation or not and stating its reasons.

The Ombudsman Board gives a high priority to presentation of their work in the media and public relation (see also under 5.1.1 Publicity). According to Dr. Porsch (pers. comm., 2012) the Ombudsman Board sees itself as "translator" between the public authorities and the citizens. Most of the complaints according to Dr. Porsch (pers. comm., 2012) are not justifiable and the Ombudsman Board tries to make the private person understand the administrative decision by explaining its contents in easier terms and by naming the relevant legal provisions.

In seven of Austria's nine provinces, the Ombudsman Board also monitors the provincial and municipal administration. Tyrol and Vorarlberg have their own provincial ombudspersons for this purpose. [27] In these provinces, the Ombudsman Board only deals with complaints about the federal administration.

4.2 Specific features of the complaint-handling system of the Ombudsman Board

4.2.1 Procedures/procedural guarantees

Art. 148 a B-VG entitles everybody (*jedermann*), that is private and legal persons, NGOs, foreigners, etc., resident in Austria, to complain about alleged maladministration to the Ombudsman Board once he is affected by these grievances and has exhausted his administrative remedies.

The Ombudsman Board provides a simple electronic complaint form[28] and a general description of the proceeding on its website. Complaints also can be made by telephone (a toll-free service number exists), in writing, and personally.

Besides this the ombudspersons hold over 200 consultation days a year all over Austria providing the opportunity to lodge complaints in a personal conversation near to the place of residence of the potential complainants.

Publicity

The Ombudsman Board is mainly known publicly by its weekly TV show "Advocate for the People" ("*Bürgeranwalt*") operated by the Austrian national public service broadcaster ORF

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[27] See under http://www.tirol.gv.at/landtag/volksanwalt/ and http://www.landesvolksanwalt.at/information

[28] See http://volksanwaltschaft.gv.at/beschweng.pdf

on Saturdays from 5:30 to 6:15 p.m. since 2002.[29] Each week particularly striking cases are presented to an average audience of 320,000 viewers. Dialogues between one of the Ombudsman and representatives of the competent public authorities and/or the complainants are part of this show.

Guarantees

According to Sect. 5 of the Act on the Ombudsman Board (*Volksanwaltschaftsgesetz*) the Sections on procedural guarantees in the Administrative Proceedings Act (for example regarding the competence, rules on prejudice, forms, service of process, deadlines, taking of evidence, etc.) are to be applied analogously to the proceedings of the Ombudsman Board.

4.2.2 Availability of technical, scientific and legal expertise in EU environmental law

The case handlers (*Prüfreferenten*) are lawyers without exceptions. The Ombudsman Board however has no technical and scientific expertise in-house and in general asks the respective public authorities, that is in general the district commissions, to deal with the specific questions involving the appropriate specialists (*Amtssachverständige*).

The Ombudsman Board also has the right to commission independent experts but according to Dr. Porsch (pers. comm., 2012) this is rarely done mainly due to budget restrictions.

4.2.3 Reporting

The Ombudsman Board is obliged to report yearly to the parliament (*Jahresbericht*) as well as to the state governments of the federal states (*Bundesländerberichte*).[30] From July 2012 on the Ombudsman Board can report on specific matters to the parliament on an irregular basis.

The annual reports focus on the amount of complaints and subsequently initiated investigative proceedings. Thus, the reports of the last three years neither contain information regarding personnel and non-personnel expenditures nor data relating to the average costs of investigative proceedings.

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29 See http://kundendienst.orf.at/programm/fernsehen/orf2/buergeranwalt.html and http://tvthek.orf.at/programs/1339-Buergeranwalt

30 See http://volksanwaltschaft.gv.at/en for short versions in english.

The reports do not state any information on the duration of environmental investigative proceedings either. However, the average duration of all investigative proceedings taken is given. On average, investigative proceedings took 47 days in 2009, 46 days in 2010 and 49 days in 2011.

4.2.4 Review

According to Dr. Porsch (pers. comm., 2012) an internal evaluation process also in order to further reduce the length of the proceedings (in general between 3 and 4 months) is being done.

4.2.5 Frequency/regularity of complaints and trends

Environmental proceedings[31] account for less than 10 % of the activities of the Ombudsman Board, that is 400-500 proceedings out of 6000 proceedings per year (Dr. Porsch, pers. comm., 2012). Most of the complaints (28,3 % in 2011) are related to the field of social services/social affairs followed by complaints regarding the judiciary (13,8 % in 2011).[32] As in recent years, in investigative proceedings at the regional and municipal level, various thematic focal points predominate. At the top of the list are problems in the areas of regional planning and building law (711 cases that account for 27,12% in 2011).[33] The area of nature conservation and environmental protection and waste management is represented by 39 cases that account for 1,49% in 2011.

4.2.6 Existence of features to address challenging complaints

The Ombudsman Board generally receives no challenging complaints of this nature. NGOs and citizens' initiatives mostly have an authorised representative that is in contact with the Ombudsman Board during the proceedings.

[31] Covering waste management law, EIAs, water and forestry law, commerce law and nature protection law.

[32] See http://volksanwaltschaft.gv.at/downloads/8t3lu/parlamentsbericht35.pdf for more details and short version in English under http://volksanwaltschaft.gv.at/downloads/a58n2/Intern%20KB%202011_Web.pdf.

[33] See http://volksanwaltschaft.gv.at/downloads/a58n2/Intern%20KB%202011_Web.pdf.

4.2.7 Costs

The complaints procedure is offered at no charge for the individuals/complainants.

According to the website of the Austrian parliament the annual budget for the Austrian Ombudsman Board amounted to EUR 6.8 m in 2010[34], EUR 6.6 m in 2011[35] and EUR 7.4 m in 2012. This year's budget is likely to increase, since it does not yet contain the expenses, which will be necessary to expand the Board in order to establish the human rights monitoring demanded by OPCAT (Optional Protocol to the Convention against Torture).

There are currently 59 people working for the Board.

4.2.8 Benefits

According to Dr. Porsch (pers. comm., 2012) the complaints mechanisms provided by the Ombudsman Board contribute to an appreciation of the work of the public authorities in general, although no statistics/evaluations on this issue are available.

The fact that specific cases are discussed during the TV show with a direct confrontation of the responsible authorities with the complainants and one of the ombudspersons also could contribute to increased efforts of the public administration when it comes to complaints of citizens and in general a better implementation also of EU environmental law as there exists an independent control body.

4.2.9 Contributions to the effective implementation of EU environmental law

Especially in the cases where citizens and/or NGOs do not have a legal standing, e.g. cases of maladministration concerning factual bird protection areas on the basis of the Birds Directive, the Ombudsman Board contributes to an effective implementation of EU environmental law. The possibility of *ex officio* proceedings is of a high relevance in this field, however, these proceedings only account to less than 10% of all environmental proceedings (Dr. Porsch, pers. comm., 2012).

34 http://www.parlament.gv.at/PAKT/PR/JAHR_2010/PK1006/

35 http://www.parlament.gv.at/PAKT/PR/JAHR_2011/PK1014/

4.2.10 Particular problems encountered

The split competencies in the sector of environmental law lead to problems concerning the effective implementation of EU environmental law (Dr. Porsch, pers. comm., 2012). Concerning the work of the Ombudsman Board more in-house expertise especially in the environmental sector would be helpful in order to enhance the effectiveness of the respective proceedings.

4.2.11 Comments and cases that can serve as good/bad examples

Dr. Porsch (pers. comm., 2012) stressed that it is not easy to assess the success or failure of their proceeding as the Ombudsman Board has to act as a neutral institution as far as interests of the persons/authorities are concerned. If one measures the success as a level of profundity of the proceeding the following case can be given as a good example:

This case concerns the protection of a groundwater well close to Vienna. The operators of the well demanded the enactment of a water protection area (*Wasserschongebiet*). The competent state governor enacted a water protection area that according to the operators is too small. The operators of the well contacted the Ombudsman Board once they received this decision. Currently there is a controversy on the necessary extent of the area going on within the involved experts. Conflicting interests, especially interests of the surrounding farmers and the interests of the operators, are obvious. According to Dr. Porsch (pers. comm., 2012) the participation of the Ombudsman Board and the media pressure connected herewith have for sure sped up the proceedings.

4.3 Regional environmental ombudsmen (*Landesumweltanwaltschaften*)

Regarding nature protection, which falls within the jurisdiction of the federal states (*Bundesstaaten*), a specific institution has been created – environmental ombudsmen (*Landesumweltanwalt*)[36] – by provincial law and appointed and financed by the state governments. The period of appointment varies. Most of them (exception Tyrol) do not answer to the government and are quite independent. Their main competence is to

[36] http://www.umweltanwaltschaft.gv.at/

participate in nature protection and environmental impact assessment procedures.[37] As an environmental advocate, the environmental ombudsman gives a voice to the environment and represents its interests in all proceedings involving possible negative impacts on nature. They are parties to the proceedings and have the power to file an appeal to the second instance, i.e., the state government or the Administrative Court and in general[38] also the Supreme Administrative Court (*Verwaltungsgerichtshof)* as the highest instance in Austria.

Their party status is defined in Sect. 8 of the Administrative Procedures Act (*Allgemeines Verwaltungsverfahrensgesetz*):

> "Persons who make use of the services performed by an authority or are affected by the activity of such authority are persons involved and, to the extent that they are involved in the matter on the grounds of legal title or interest, they are parties."

The Environmental Ombudsmen are mostly active as a party in proceedings based on the Nature Conservation Laws of the federal states and the Environmental Impact Assessment Law (*UVPG*). Although these are the most frequent, they are not the only laws in which the Environmental Ombudsman has party status; a party status also exists in the Waste Management Law 2002 (*AWG*), the Agricultural Amendment Act 2004, the Environmental Management Law (*UMG*), the Alpine Convention (and its protocols) and the Federal Environmental Liability Law (*B-UHG*) once nature protection issues are at stake.[39]

As a party to the proceedings, the Environmental Ombudsman has the following rights:

- Right to access files
- Right to be heard
- Right to comment on the evidence taken
- Right to challenge an expert witness (except where the expert is an *Amtssachverständiger*, i.e. a public servant of the authority involved, in which case an appeal must be lodged)
- Right to issue and deliver an official notice

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37 The Tyrolean Environmental Ombudsman, for example, has a general duty to represent the interests of nature conservation in the light of the objectives listed in Art. 1 para. 1 of the 2005 Tyrolean Nature Conservation Law.

38 The Tyrolean Environmental Ombudsman has no right of appeal to Austria's two supreme courts of public law, the Administrative and the Constitutional Court, except in matters of procedural law (e.g. failure to respect a party's rights).

39 Interview with Lukas Wachter, Ökobüro Vienna, 22 May 2012.

- Right to lodge an ordinary legal remedy
- Right to lodge an extraordinary legal remedy (application for a re-hearing, *restitutio in integrum*)
- Insistence on the authority's duty to decide

In addition to his role as a party in nature conservation proceedings initiated by the authorities or by citizens, the environmental ombudsmen can also take the initiative themselves, e.g. in proposing new protected areas, drawing attention to problems and so on. The Offices of the environmental ombudsmen also serves as a contact for members of the general public in matters concerning nature conservation.

According to Wachter (pers. comm., 2012) environmental NGOs have a regular exchange with the regional environmental ombudsmen. The environmental ombudsmen are a very important institution in the environmental protection sphere in Austria.[40]

According to the environmental protection laws of the *Länder*[41] members of local communities/municipalities, that is Austrian and European citizens that have their principal residence in the respective communities, are entitled to submit complaints to the environmental ombudsmen if they are not parties to the respective proceedings. It is however not in general possible to submit complaints to the environmental ombudsmen as they do not have the legal characteristics of a public authority but do have party status themselves. Therefore their internal procedures are not analysed in detail in this study.

5 Mediation mechanisms

There is no formal mechanism of mediation especially and solely for the environmental sector in Austria.

Following the decision in 1993 to pilot test mediation in Austria, the method was implemented within the framework of a model experiment on family mediation during the period 1994 – 1995. The highly promising results with regard to the functioning, effect and use of mediation have led to the introduction of a number of legislative measures placing mediation on an increasingly solid legal foundation:

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40 Interview with Lukas Wachter, Ökobüro Vienna, 22 May 2012.

41 See for example the environmental protection law of Upper Austria (*Oberösterreichisches Umweltschutzgesetz*): http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LROO&Gesetzesnummer=10000480&ShowPrintPreview=True

- 1998: Order concerning Lawyers (*Rechtsanwaltsordnung*);
- 1999: Act amending Marriage Law (*Eherechts-Änderungsgesetz*);
- 1999: Order concerning Notaries (*Notariatsordnung*);
- 2000: Implementation Directive concerning § 39c Family Burden Equalization Act (*Ausführungsrichtlinie zu § 39c FLAG*);
- 2000: Environmental Inspection Act (*Umweltverträglichkeitsprüfungsgesetz*) - stating in Art 16 cl. 2 that an EIA can be suspended once a mediation is operated; 42
- 2000: Act amending Parent and Child Law (*Kindschaftsrechts-Änderungsgesetz*);
- 2003/2004: Civil Law Mediation Act (*Zivilrechts-Mediations-Gesetz*) – that has established a legal framework for mediation to ensure its functioning, to secure quality standards and to strengthen public confidence in this new method of dispute management. Here, mediation is positioned "upstream" of the ordinary courts and serves to resolve or at least to prepare disputes which the ordinary civil courts would, in the end, have the competence to settle;
- 2004: Act amending Neighbours Law (*Nachbarrechtsänderungsgesetz)* – committing neighbours to aim for alternative dispute resolution mechanisms before the commencement of a suit.

There are, however, no general legal requirements (with the exception of the rules in the Civil Law Mediation Act which refer to mediation processes which fall under the competence of the civil courts) on how to undertake the mediations, which rules to respect, competences of the mediators, etc. for the mediation in the administrative sector, especially concerning environmental complaint-handling (Steiner, pers. comm. 2012).

The Ombudsman Board (*Volksanwaltschaft*) sees itself as “mediator” between the citizens and the administrative bodies. The case-handlers all have participated in workshops on mediation (Dr. Porsch, pers. comm., 2012), there are not trained mediators based on the provisions of the Civil Law Mediation Act, however.

The regional environmental ombudsmen are predestinated for the participation at environmental mediation processes especially in EIA-procedures where their party status is explicitly regulated, see Sect. 3 cl. 7 EIA Act (*Umweltverträglichkeitsprüfungsgesetz*). One of the biggest environmental mediation cases in Europe – the mediation concerning the airport

[42] See as a practical example the mediation concerning the construction of the airport in Vienna-Schwechat, http://wua-wien.at/home/buergerbeteiligung/flughafenmediation/

in Vienna involving some 50 stakeholders – ended up with a binding mediation agreement in 2005. The environmental ombudsman board of Vienna was one of the parties. Following the conclusion of the mediation process, the *Verein Dialogforum Flughafen Wien*[43] is continuing the dialogue between the stakeholders and monitoring the implementation of the mediation agreement.

The mediation concerning the Vienna Airport according to Steiner (pers. comm., 2012) is suited as a good-practice example for a mediation process although it turned out to be quite time-consuming. It started at an early stage of the EIA-procedure, involved a high numbers of stake-holders and came to a binding agreement.

In general mediation procedures in Austria are still rare and therefore the culture of actively listening to each other and giving priority to disturbances necessary for mediation processes has not developed in the environmental sector yet (Steiner, pers. comm. 2012). The district commissions according to Steiner (pers. comm., 2012) could be the adequate authorities to enforce mediations in the environmental sector as they are the main point of reference in environmental complaint-handling. The procedures in family law in Austria (the arbitration body is an obligatory stage regulated by law before entering the divorce proceeding) could be taken as a model for the administrative procedures in environmental complaint-handling. It then would be essential to safeguard the independent status of the mediators, similar to the status of the experts (*Amtssachverständige*), from the side of the complainants as well as the political decision-makers (Steiner, pers. comm., 2012).

6 Conclusion

As district commissions have a quasi universal competence for environmental complaint-handling and receive most of the complaints their procedures are in the focus of the following conclusions.

Accessibility

Overall, the accessibility of the Austrian environmental complaint-handling system provided by the public authorities is satisfactory as there is the widely known institution of the Citizens' Advice Bureaus (*Bürgerbüros*) based at the district commissions providing assistance in case of doubts which authority to address. Besides this the regional environmental ombudsmen (*Umweltanwaltschaften*) step in offering information and assistance in the field of submitting environmental complaints. The staff of the Citizens' Advice Bureaus, though,

[43] See http://www.viemediation.at and http://www.dialogforum.at

has in general no formation in mediation or in moderation techniques so that in some cases an (already) upset complainant might not be emotionally caught up (Steiner, pers. comm., 2012).

However information on the specific responsibilities of the different authorities, on how to make a complaint and/or online complaint forms in the environmental sector are in general missing at the websites of the relevant administrative bodies, be it the offices of the state governments (*Amt der Landesregierung*), the district commissions (*Bezirkshauptmannschaften*) or the municipalities (*Gemeinden*).

The information of the Ombudsman Board (*Volksanwaltschaft*) especially on complaints is easy to access and to understand. An electronic complaint form is available as well as contact possibilities by e-mail, letter-post, phone and directly in person during the consultation days (*Sprechtage*).

The regional environmental ombudsmen (*Landesumweltanwaltschaften*) in general offer well-structured information on their websites on their tasks and responsibilities. As they do not have the legal characteristics of a public authority and therefore are not themselves entitled to handle complaints but hand them over to the competent authorities or act as complainants themselves their activities were not in the focus of this study when it came to the analysis of the complaint-handling mechanisms.

Transparency

Transparency is not satisfactory. There are no obligatory requirements in record keeping and reporting of environmental complaint-handling. This makes it potentially difficult to keep track with the complaint-handling activities of the competent authorities.

There is no requirement to positively inform complainants of the progress of the investigation of the complaint or of an online system where complainants may have access to follow-up information. Complainants can access records related to their requests, but there is no legal remedy against the respective refusal.

There is no common record-keeping IT-system of the district commissions dealing with environmental complaints; in general this is even not the case within a single district commission.

This “constricted transparency” (Steiner, pers. comm., 2012) is in need of improvement, none of the interviewees, however, mentioned this as a problem in regard to the public trust of public authorities.

The website of the Ombudsman Board (*Volksanwaltschaft*) provides general information on the different steps of the complaint procedure. The Ombudsman Boards informs every complainant of the results of the investigative proceedings in writing and in detail.

Simplicity

Due to the lack of general information on the complaint-handling mechanisms online on the websites of the public authorities (see "accessibility" above) making a complaint for a citizen is not that simple as it should be. However, as already mentioned above, the Citizens' Advice Bureaus (*Bürgerbüros*) of the district commissions step in and give assistance in case of doubts.

The institutions of the regional environmental ombudsmen (*Landesumweltanwaltschaften*) also offer to assist citizens in this regard and this seems to work quite well as reported by the interviewees.

The complaint procedure offered by the Ombudsman Board (*Volksanwaltschaft*) is simple and easily to understand.

Fairness

The fairness of complaint-mechanisms in general is ensured by the overall transparency of the system and the possibility for complainants to keep track of their complaint throughout the proceeding. In Austria there is – as already above – a lack in transparency as there are no obligatory requirements in record keeping and neither a common practice of the district commissions. The possibility for the complainants to keep track of their complaint is restricted and no legal remedy is given in case of a refusal to access records.

There are no general external audits concerning the complaint-handling procedures of the district commissions, but it has been reported that internal auditing exists.

The existence of the Ombudsman Board (*Volksanwaltschaft*) and the regional environmental ombudsmen (*Umweltanwaltschaften*) help to ensure the fairness and contribute to a system of check and balances. However, the Ombudsman Board (*Volksanwaltschaft*) is not entitled to bring cases of maladministration to the courts in case the competent authority does not react in satisfactory way to its questions. But this is outweighed by the possibilities the Ombudsman Board has by bringing the cases in the TV show and the media pressure herewith connected.

Confidentiality

Although there is no general assurance of confidentiality and protection of anonymity especially regarding environmental complaint-handling, confidentiality is not an issue in Austria, that means that anonymity in general is safeguarded by the local authorities. There seems to be a "culture of confidentiality" based on a common morality (Steiner, pers. comm., 2012). No specific guarantees for „whistle-blowers" are provided in Austria. These two aspects could lead to a certain degree of insecurity regarding the confidentiality and a fear to become subject to arbitrariness – this, however, is not confirmed by any of the interviewees.

Independence

The majority of complaints are handled by the district commissions with their quasi universal competence in this field. The state government offices in general delegate the complaints they receive downward to the district commissions and in general do not show a high interest in the follow-up and the outcomes of the complaint-handling procedures (Steiner, pers. comm., 2012).

This raises certain problems in terms of independence as there is a lack of a superior body that controls the activities also in case there are no formal defects, etc. that lead to a second instance procedure.

The permanently employed experts at the district commissions (*Amtssachverständige*) in general work and are estimated of being highly competent and independent. Their independence is safeguarded as they are in general organizationally based in decentralized bureaus.

The institutions of the Ombudsman Board (*Volksanwaltschaft*) and the regional environmental ombudsmen (*Umweltanwaltschaften*) contribute to a certain level of independence in the system of the environmental complaints. However, as the regional environmental ombudsmen are state funded, it is very important to guarantee the independence as regards the content of their work (what is not the case for Tyrol).

Flexibility

The lack of strict legal rules and benchmarks on how to govern the complaint-handling mechanisms ensure that the system is flexible in terms of responding to different types of complaints and needs of the complainants. There is, however, a lack of constant internal or external reviewing processes and exchanges on good practices that could lead to a regular improvement of the complaint-handling mechanisms. Such an exchange of good practices, however, does exist in the field of participation procedures with its Strategic Group on

Participation that are concerned with contexts and quality criteria for participation processes and with the benefits of and the limits and obstacles to participation.[44]

Comprehensiveness

An enforcement gap has already been mentioned in the section on "independence" (see above). There is another enforcement gap relating to missing competences of the Ombudsman Board (*Volksanwaltschaft*): Even if the Ombudsman Board arrives to the conclusion that a grievance (*Missstand*) is given, a valid administrative decision can only be remedied in case of the existence of reasons as set down in the respective legislation, the Administrative Procedures Act (*Allgemeines Verwaltungsverfahrensgesetz*), for example in case of a formal defect. That means that in some cases the complainant might be confronted with a formally valid decision (with no further remedies) that according to the Ombudsman Board does fulfill the requirements of a grievance.

The authorities, especially the district commissions, have enforcement powers for making sure their decisions (as a consequence of a legitimate complaint) are properly implemented.

There are many possibilities for the citizens to submit complaints, however, the mediation mechanisms according to Steiner (pers. comm., 2012) could be used much more often in the administrative sector as they have proven to be beneficiary for the overall system.

Effectiveness

As there is a general lack of reports of the district commissions that deal in detail with environmental complaints/complaint-handling (giving statistical information on lengths of procedures, settlements, number of complaints, etc.) it is very difficult to monitor the effectiveness of the complaint-handling mechanisms. The investigation of selected district commissions by the Austrian audit court addressed criteria such as friendliness towards citizen, effectiveness and cost-effectiveness, it did, however, not address the complaint-handling mechanisms specifically. However, it can be deduced form the report that there is a general lack of customer surveys, (IT-based) grievances management systems and of internal quality standards (addressing criteria such as lengths of executions of tasks, accessibility, waiting times, negotiation competences of the staff, etc.) and controlling mechanisms.

[44] See http://www.partizipation.at/index.php?english and especially http://www.partizipation.at/standards_pp.html

One can reason from the reports of the Ombudsman Board[45] that at least the lengths of procedures especially in the field of complaint-handling in the water protection sector are an issue for the activities of the Ombudsmen.

Thanks to the high publicity of the work of Ombudsman Board (*Volksanwaltschaft*) via the TV show improvements in the complaint-handling system have been made, although the environmental sector only forms a small part of the overall work of the Ombudsman Board.

The existence of the regional environmental ombudsmen (*Umweltanwaltschaften*) adds to the overall effectiveness of the complaint-handling system as the environment has a special voice also in case there is no one directly affected by the illegalities of private persons or the public bodies.

But still resorting to the EU Commission according to Wachter (pers. comm., 2012) in general ensures a much higher likelihood that complaints in relation to EU environmental law will be taken seriously by public authorities.

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[45] See for example the report for 2010 on page 141, available at http://volksanwaltschaft.gv.at/downloads/4oj3c/Parlamentsbericht%202010.pdf, that gives an example of an administrative procedure in water issues of the district commission of Gmunden that already lasts for four years.

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II. DENMARK

1. Institutional, administrative and legal context

1.1. Institutional and administrative context

Denmark is a constitutional monarchy with a tradition of independent, representative democracy. The principle of separation of power between the legislature, the executive and the judiciary was laid down in the Constitution of 1849. Denmark has traditionally been a centralized country with a highly centralized policy-making system (Bursens, 2002, p.188). While policy-making remains largely centralized, in 2007, Denmark engaged in a major reform of decentralization of the structure, organization and enforcement of its administrative system. The 14 existing counties were abolished and were replaced by the creation of five regions: Hovedstaden (the Capital region), Midtjylland, Nordjylland, Sjælland and Syddanmark which develop their own regional development plans. Municipalities were regrouped making the total of municipalities to 98 from 271 previously. As a consequence, responsibilities and competencies in many matters including environmental matters were delegated mainly to municipal and accessorily to regional levels. Environmental complaints became an important sphere of expertise and responsibility of municipalities.

Environmental responsibilities are divided between central and regional administrations and municipal departments. In first instance, the competence in environmental and nature protection matters lie within municipalities (Milieu, 2007). The Regional State Administration carries out the supervision of municipalities. The Regional State Administration supervises that municipalities and municipal associations comply with the legislation that applies in particular for public authorities. The Regional State Administration does not supervise to the extent that special appeals or supervisory authorities can take a position on the case in question. The Regional State Administration can make statements on the legality of municipal measures or omissions and it can annul municipal decisions that have been made contrary to legislation. Under circumstances stated in the legislation, the Regional State Administration can also impose default fines, institute damages and declaratory actions, as well as enter into agreements on penalties under the law of tort (Bruun, pers. comm., 2012).

The Danish Ministry for the Environment is in charge of some competencies which includes Environmental Impact Assessment (EIA) and IPPC Installations. Below the Ministry, there is the Department ("*Departementet*") on which four structures depends: the Environmental Board of Appeal (*Natur- & Miljøklagenævnet*), the Nature Agency *(Naturstyrelsen)* and the National Survey and Cadastre (*Kort & Matrikelstyrelsen)* and the Environmental and

Protection Agency *(Miljøstyrelsen)* (see figure 1). Each of the three agencies is responsible for legislation and enforcement in their respective jurisdictions.

The Environmental Protection Agency is responsible for legislation and enforcement in the sectors of agriculture (e.g. environmental permits for livestock holdings), industry (e.g. environmental permits for heavy polluted industries, regulation of air pollution, offshore activities), pesticides, chemicals, air (e.g. air pollution coming from stoves, traffic and shipping), noise, waste and soil (e.g. electrical waste) and biocides.

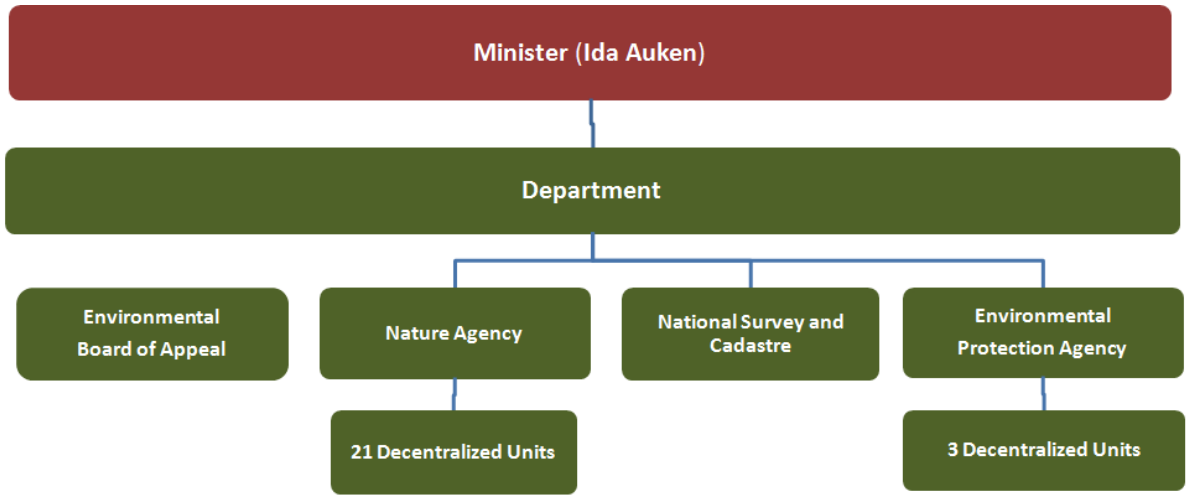
The Nature agency is responsible for the marine sector, water (including water and sewage supply, and watercourse, hunting and wild life legislation, the legislation on forestry and exploration and extraction of raw materials in territorial waters and continental shelf. Environmental protection, the Environmental Impact Assessment, planning and nature conservation are also under the jurisdiction of the Nature agency. The Nature Agency has 21 decentralized units across the country, and four units belonging to the Copenhagen region divided between:

- Water resources, planning and marine environment, water, urban environment and climate change, and adaptation
- Countryside and outdoor activities, cross-department planning
- Nature planning and biodiversity
- Finance, forestry and land management

However, the organization of the Nature Agency is being reviewed at the moment (a decision is expected by the end of June/beginning of July). The tasks of the Agency will remain the same as today. The changes will be made to the divisions of tasks between the decentralized units and the central unit in Copenhagen (Bruun, pers. comm., 2012).

The National Survey and Cadastre is the national authority for Spatial Data Infrastructure, surveying, mapping, and cadastral and chartered surveyor administration in order to support the activities of the public administration and the private sector.

Figure 1. Organization of the Danish Ministry for the Environment



Reference: Danish Ministry of the Environment

In Denmark, environmental regulations play a major role in environmental policies, especially in land-use and spatial sectors. Severe regulation in waste incineration regulation have led to the development of energy produced by cogeneration and used for instance for district heating. Denmark continues to be very successful in implementing EU legislation (OECD, 2008). Policy making is open and consultative and is based on the polluter pays and extended producer responsibility principles advocated by most of the EU environmental directives. The development of environmental measures is done extensively through economic instruments (e.g. Feed-in-Tariffs in the development of wind power generated electricity, or the 1997 waste water tax led to significant reduction of nitrogen, phosphorus and organic matter in wastewater (OECD, 2008). Despite strong environmental policies and trends, a report by the OECD (2008) notes that the environmental performance of the country is not always high by its standards (e.g. SOx emission intensity, public waste water treatment, energy intensity). The report attributes this weak performance to a difficulty for the country to counter the pressures exerted on the environment from transport, agriculture, fisheries and other economic activities, as well as from consumption patterns. With regards to biodiversity in Europe, Denmark has well contributed by achieving a good state in coastal and marine eco-systems, however there is still a lot of heavy pressure in the sector of biodiversity (EEA, 2010).

1.2 Legal context: main governing acts to relating to Environmental Law

EU environmental law has been transposed into national law through a range of different legislative frameworks. The most significant environmental legislative acts are the following:

- Environmental Protection Act No. 698 of 22 September 1998 (*Bekendtgørelse af lov om miljøbeskyttelse, LBK nr. 879 of 26/06/2010*)
- Water Supply Act No. 635 of 7 June 2010 (*Bekendtgørelse om lov om vandforsyning m.v. LBK nr 635 af 07/06//2010*)
- The Planning Act No. 937 of 24 September 2010 (*Bekendtgørelse af lov om planlægning, LBK nr. 937 af 24/09/2010*)
- Act on Environment and Genetic Engineering No. 869 of 26 June 2010 *(Bekendtgørelse af lov om miljø og genteknologi, LBK nr 869 af 26/06/2010)*
- Nature Protection Act No. 933 of 24 September 2009 (*Bekendtgørelse af lov om naturbeskyttelse, LBK nr 933 af 24/09/2009)*
- Environmental Information Act no. 660 of 14 April 2006 (*Lov om aktindsigt i miljøoplysninger, LBK nr 660 af 14/06/2006*)
- Forest Act No. 945 of 24 September 2009 (Bekendtgørelse af lov om skove, *LBK nr 945 af 24/09/2009*)
- Act on Contaminated Soil No. 1427 of 4 December 2009 (*Jordforureningsloven LBK nr 1427 of 04/12/2009*) Environmental Assessment of Plans and Programmes Act No. 316 of 05 May 2004 *(Lov om miljøvurdering af planer og programmer LOV nr 316 af 05/05/2004)*
- Act on Chemical Substances No. 878 of 26 June 2010 (*Bekendtgørelse af lov om kemiske stoffer og produkter, LBK nr 878 af 26/06/2010)*
- Environmental Assessment of Plans and Programmes Act no. 936 af 24 September 2009 *(Lov om miljøvurdering af planer og programmer, LBK nr. 936 af 24/09/2009.*
- Livestock Farming Environmental Approval Act No. 1486 of 4 December 2009 *(Bekendtgørelse af lov om miljøgodkendelse mv. af husdyrbrug, LBK 1486 af 04/12/2009)*

2 Scope, hierarchy and coordination of complaint-handling procedures

2.1. Description of main actors and relationship between mechanisms

A complaint generally precedes the launch of an administrative procedure. However, public authorities have the duty to enforce the law, and therefore do not wait to receive a complaint

to start a procedure if an illegal or alleged failure is found or known by other means than a complaint. Depending on the nature of the matter, different authorities are responsible to handle environmental complaint procedures:

- Notification/complaints to authorities on cases of illegality or non compliance to administrative decisions, including criminal charges through an administrative procedure to the local, regional or national authorities, or through a judicial procedure to the Courts of Denmark (*Danmarks Domstol*). The Danish system of courts is based on a unified structure. There are no special or constitutional courts of law, as well as no formal division within the courts. As a rule, all courts of law may adjudicate disputes in most of legal areas. The Danish Courts are composed of the Supreme Court, two high courts - the High Court of Western Denmark and the High Court of Eastern Denmark, the Maritime and Commercial Court, 24 district courts, the courts of the Faroe Islands and Greenland, the Special Court of Indictment and Revision, the Danish Judicial Appointments Council and the Danish Court Administration Appeals from a district court lies to the High Court.

  The decentralization reform of the national administrative structure which took place in 2007 made the municipalities the first instance responsible for most of the environmental matters. The 98 Danish municipalities are responsible for granting environmental permits, inspecting most companies and carrying out the majority of specific public sector duties including enforcing the law within their jurisdiction. Besides, they are typically the point of contact for the general public and for companies who need access to information on the environment (EPA, 2012).

- Appeals to the Environmental Board of Appeal. According to the Public Administration Act (Chapter 7, Section 25), the possibility to appeal administrative decisions and details on procedure must be mentioned:

  > *Written decisions that are subject to appeal Written decisions which can be appealed against to another administrative authority shall be accompanied by written advice on the right to appeal indicating the appeals authority and the appeals procedure, including any time limit. This shall not apply if the decision is in every particular in favour of the party concerned.*

- Furthermore, the law of Spatial Planning Act, no. 937 of 24 September 2009 (*Bekendtgørelse af lov om planlægning, LBK nr 937 af 24/09/2009*) provides Non

Governmental Organizations (NGOs) which count more than 100 members with the right to appeal administrative decisions before the Environmental Board of Appeal.

- It is possible to appeal directly to the Environmental Board of Appeal, an entity independent from the Ministry for the Environment and to the High Court.
- Ombudsman (*Folketingets Ombudsmand*).The Ombudsman is a lawyer elected by the Danish Parliament. He/she considers complaints about public authorities and administrative decisions. His/her role is to decide whether administrative practices and procedures have been respected according to the law. The present Ombudsman is Jørgen Steen Sørensen.

Generally, there is no hierarchy in handling environmental complaints in Denmark. Typically, a complainant would first address his/her complaint to the local, regional or State relevant authority. In order to place an appeal before to the environmental Board of Appeal, the appeal should first be addressed to the primary relevant authority which has the duty to transfer it to the Environmental Board of Appeal.

Within the provision of the relevant legislative Act, a complainant can complain simultaneously to the authorities and the Danish Courts as well as to the Danish Courts and to the Environmental Board of Appeal, however a case cannot be treated simultaneously by the two authorities and the complainant would have to decide which of these two entities should handle the complaint. The decisions taken by the Environmental Board of Appeal can be taken before the High Court. This type of cases usually concerns EU legislation (Rasmussen, pers. comm., 2012). There is no requirement to exhaust all administrative procedures to file a case to the Court, except to one of the High Courts. The ombudsman requires all administrative procedures to be exhausted before handling a complaint case.

2.2 Application to scenarios

2.2.1 Is there a mechanism/are there mechanisms for alleged illegality or non-compliance of a private person/company?

In the case of the operation of a clandestine or non-authorized business end-of-life vehicles and disposal of waste (see Directive 2000/53/EC – ELV Directive) a competitor can address his/her complaint to the municipality where the operation is taking place. Any citizen or entity can address such a complaint and he/she/it can also address a complaint to the court.

Similarly, if an industrial installation which holds an IPPC License breaches one of its permit conditions, an entity would complain to the municipality.

If a company which has an eco-label (**Regulation 66/2010/EC of 25 November 2009)** is claimed not to be respecting the criteria, an entity should address its complaint to the Ministry of Food and Agriculture, or could also go directly to the police, or the court.

In the case of an illegal discharge of pollutants to a river from a small commercial company the complainant will also send his/her complaint to the municipality. Depending on the degree of pollution, the municipality might close the company straight away for causing the pollution.

If an illegal activity occurs in a coastal area, the Coastal Directorate which belongs to the Ministry of Transport would be responsible for handling the complaint (Jørgensen, pers. comm., 2012). Coastal issues may also be handled by the Forest and Nature Agency (Rasmussen, pers. comm., 2012).

In the case of an importation in Denmark of illegal timber included in the CITES list, the complaint should be addressed to the Nature Agency. The complainant could also address its complaint to the police or to the Ministry of Taxation.[46]

If an individual or an entity engaged in wide-spread illegal trapping or hunting of wild birds protected under the Birds Directive (Directive 2009/147/EC of 30 November 2009), a complaint can be addressed to the EPA.

2.2.2 Is there a mechanism/are there mechanisms for alleged illegality or non-compliance of a public body/utility in relation to providing an environmental service?

Should a municipality failing to treat properly its urban waste water load (for example treatment plants are under capacity) in compliance with Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment, any entity can send a complaint to the Nature Agency. Wastewater treatment is handled by limited companies founded by the municipalities which are not authorized to make profits. The shares of the companies are owned by the municipalities.

In the case of a lack of disinfection of the water source the drinking water contains E. coli by a private water utility providing drinking water (see **Directive 98/83/EC of 3 November 1998)** the complaint must be addressed to the municipality, and depending on the degree of

[46] Differing responses were given on where to address this type of complaint. The Nature agency said it was under their jurisdiction while according to the municipality of Vejle the complaints should be addressed to the Ministry of Taxation.

pollution, because administrative authorities have suspensory effect, the municipality may close the utility immediately and would be responsible for providing drinking water according to legal requirements.

In the case of a municipality which is operating a landfill (see Directive 99/31/EC of 26 April 1999) on behalf of a town and is claimed to have serious odor problems, complaints should be addressed to a decentralized unit which depend on the Danish EPA.

2.2.3 Is there a mechanism/are there mechanisms for alleged failure of a public body to respect procedural requirements or some other required administrative standards?

This type of complaint is mostly handled by the Environmental Board of Appeal, and the Court.

That would be the case if for instance an authority responsible for a protected Natura 2000-site is allowing small-scale housing on this site without any appropriate consideration of the respective individual and/or cumulative effects (see Art. 6.3 Directive 92/43/EEC of 21 May 1992 **–** Habitats Directive).

In the event of a competent authority responsible for EIA which claimed to have approved an environmentally relevant project without an EIA or a screening (see EIA Directive), an appeal can be addressed to the Environmental Board of Appeal and the Court. All decisions covered by the EIA Directive can be addressed to the Environmental Board of Appeal.

3 Characteristics of the complaint-handling systems identified

This section details the specific features of the environmental complaint-handling mechanisms from municipalities which handles most of environmental complaint. It also includes some information on judicial procedures. Features related to complaint-handling to the Ministry for the Environment and its three agencies as well as other Ministries are not covered in the scope of this report. The specific features of the complaint-handling mechanism of the Ombudsman and the Environmental Board of Appeal will be treated in section 4.

3.1 Procedures/procedural guarantees

Procedures

In Denmark, environmental and nature protection legislation are considered an integrated part of public law and is thus based on public administrative law (Public Administrative Act, Act No. 571 of 19 December 1985). The Administrative Act concerns Violation of

environmental law both by act or omissions by a public authority, individuals or private companies are considered as infringements in which case individuals with legal standing or NGOs can start an administrative or judicial procedure. Legal standing is defined by having a legal interest in the outcome of the procedure. However there is little jurisprudence concerning legal standing for individuals, and most of environmental cases are solved by the Environmental Board of Appeal.

Since the decentralization reform in 2007, environmental powers have been delegated to municipalities. Municipalities are granting environmental permits and are in charge of monitoring and enforcing administrative decisions in cases of alleged illegality or non compliance of a private person or company (covering most of the 1st and 2nd type of complaints, see scenarios) within their area of jurisdiction.

It is extremely easy for an entity or an individual to fill an environmental complaint in Denmark. According to the Administrative Law no. 00 of 10 February 1967 (*LOV 1967-02-10 nr 00: Lov om behandlingsmåten i forvaltningssaker*), there are no specific requirements in the way of how to address an environmental complaint to administrative authorities. A complaint can be addressed in the form of a letter, an email, a telephone call, or simply verbally directly to a public servant and in any language. This is based on a general principle of public law, there is mostly no specific requirements to address a complaint in order to allow anyone to be able to fill a complaint according to his/her capacities. Public authorities are required to consider any form of complaint, regardless of how it is communicated (verbal or written).

Furthermore, the Administrative Public Act Act No. 571, 19 December 1985 (Chapter 3, Section 7) stipulates that:

> *Any written enquiry that falls outside the purview of the administrative authority to whom it has been sent, shall as far as possible be forwarded to the proper authority.*

Therefore if an entity or an individual wants to fill a complaint and does not know which authority is competent, he/she can simply address his/her complaint to any public authority which has the duty to transfer it to the relevant authority.

Upon receiving a complaint, providing that the complainant has legal standing, the municipality will acknowledge the complaint under the form of a letter and indicate that the complainant will be informed regularly on further relevant steps. This will be followed by a preliminary evaluation of the matter in order to assess the situation. In a non escalating

situation (that is if the matter is not dangerous to public and environmental health), upon the preliminary assessment, the municipality will send a report. The alleged entity will be given a certain period of time to comment on it and to propose a solution. In the event the matter could not be arranged, the municipality will first make a "kind demand" ("*Henstilling*"), followed by an emphasize ("*Indskærpelse*"). If unsuccessful, the municipality will then issue an order ("*Påbud*"), and as a last resort, the municipal will fill a complaint with the police ("*Politianmedelse*").

Judicial procedure

A complainant can also start a judicial procedure before the Courts of Denmark. The Article 63 of the Danish Constitution grants the right to any entity to file a complaint to the Danish Courts. Civil and criminal cases are tried by the district courts (first tier). Under certain conditions a civil case may be referred to a high court (Courts of Denmark, 2012).

Individuals and NGOs can participate in court cases supporting one of its parties on the condition that they have legal interest as mentioned in the Act on Judicial Procedures. The procedure would be, depending on the nature of the case, to engage either a civil or a penal procedure. Public prosecutor has the monopoly to initiate criminal proceedings before the courts. In the case of a penal procedure, the complainant would have first to file a complaint with the police which would first investigate the case (relevant for the first type and second type of complaints). However in practice, the police forces do not have an extensive expertise in environment and would first turn to the municipalities to investigate the case, and thus depend on municipalities (Jørgensen, pers. comm., 2012). In case of criminal proceedings, the public can take up the case to the municipality or the police/prosecutor but eventually authorities are taking the final decision on proceeding or not with the case. There is no obligation to exhaust the administrative review procedure before bringing the case before a court. An administrative decision can be taken before the Court within 6 months from the date it has been taken. Appeals before the courts do not have a suspensory effect unless the court so decides.

Procedural guarantees

Municipalities are subject to the *Law on Quality Assurance no. 506 of 7 June 2006 (Lov. Nr. 506 af 7. Juni 2006 – Kvalitetsstyringsloven.* This law stipulates that each municipal council must develop and implement a quality management system (*Chapter 1, § 1 "Kommunalbestyrelsen skal indføre og anvende et kvalitetsstyringssystem"*), and that the quality system must include case management according to the relevant laws and

regulations (Chapter 1, § 2). These laws and regulations includes the Environmental Protection Act, the Act on water supply, the Act on contaminated soil, the Act on the Protection of Marine Environment, the Act on chemical substances and products, the Mining Code, the Act on nature conservation and the Planning Act, with respect to EIA cases[47].

Each municipality is free to decide which resources to allocate to environmental issues and to the handling with complaints and to which extent they wish to deal with environmental matters. In this respect, it is free to develop and implement its own management system for environmental complaints, therefore the handling of environmental complaints vary from municipality to municipality. However it must comply with the law on Quality Assurance which stipulates that "*the municipal council shall establish a quality policy for the municipality's proceedings, and when necessary provide local quality. The local council's quality policy must include the local council's intentions in relation to ensuring academic quality, efficiency and uniformity in procedure and in relation to ensuring corporate and public confidence in and satisfaction with the procedure. The quality policy must:*
- be adapted to local duties, by local conditions,
- provide a framework for setting local performance targets
- be known by municipal employees
- be annually reviewed for possible revision (Chapter 2, § 5)."[48]
The local council's local performance targets must be measurable and must meet the requirements detailed above.

The quality management system must be certified by an accredited body to certify municipal council Quality Management System complying with requirements of the Act and rules from the Act. The accreditation must be made by The Danish Accreditation and Metrology Fund (DANAK) or by an equivalent accreditation body that is signatory to the EA (European co-operation for Accreditation) multilateral agreement on mutual recognition (Chapter 3, § 14)[49].

Environmental complaints tend to be first addressed to municipalities, mostly due to financial considerations and then to the Environmental Board of Appeal who is in practice dealing with most of the cases. Costs for engaging a judicial procedure can be costly for individual complainants (Jørgensen, Rasmussen, pers. comm., 2012).

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[47] For a full list, please refer to the original law available at https://www.retsinformation.dk/forms/r0710.aspx?id=12928#K2 [in Danish].

[48] Please note that an official translation could not be found.

[49] As above no English official translation could be found.

Administrative authorities including municipalities must conduct environmental inspections in compliance with the Acts within their jurisdiction, in the case of municipalities, for instance the Danish Environmental Protection Act or the Danish Livestock Farming Environmental Approval Act. This means that they must ensure that environmental permits, regulations and orders do comply with their granted conditions. Therefore, it does happen that when a municipality receives a relevant complaint, the matter is already being dealt with (Jørgensen, pers. comm., 2012). Statistics were not available to support this fact.

Deadlines

There is a tendency not to have deadlines on how to address complaints in Denmark. The reason is that every complaint is different and necessitates different procedures, therefore general guidelines in terms of length cannot be established. The principle is to deal with the complaint as effectively and efficiently as possible (Jørgensen, pers. comm., 2012). However this may differ from municipality to municipality.

In 2011, the Vejle municipality, the 6th largest city in Denmark which counts 170 000 inhabitants located on the Jutland peninsula in southeast Denmark, which brands itself as an environmental friendly municipality would for a medium case, spend 15 hours dealing with the case, but it very much depends on the nature of the case and there are no specific guidelines about the processing time of a complaint since all complaints are different (Jørgensen, pers. comm., 2012).

3.2 Technical, scientific and legal expertise of EU Environmental Law

It was not possible to assess the level of expertise of EU Environmental Law in municipalities. No information was available on the existence of trainings in EU environmental law at the administration level in general either.

3.3 Reporting and statistics

According to the *Bekendtgørelse nr. 99 af 11/02/2011 med ændringsbekendtgørelse nr. 1345 af 21/12/2011 om beretninger om miljøtilsyn og miljøgodkendelser m.v.*[50] all the Danish municipalities are obliged to annually report to the Environmental Protection Agency. There is no requirement, however, to report on the (number of) complaints. Some municipalities

[50] www.retsinformation.dk

report on a voluntary basis on the environmental complaints depending on their tasks according to the Law on Quality Assessment.

The municipality of Vejle reports annually on the complaints it has received during the year, unless it concerns a case falling in public or political interest which would then be reported (Jørgensen, pers. comm., 2012). In 2011, the municipality of Vejle handled 43 complaints of which 10 concerned waste matters. In this municipality, typical cases concern smoke and noise (Jørgensen, pers. comm., 2012).

3.4 Frequency/regularity of complaints

The municipality of Vejle which has been interviewed for this study provided the following table as regards the development of environmental complaints from the years 2008 until 30 June 2012:

		2008		2009		2010		2011		2012	
Complaints		Rec.	Comp.	Rec.	Comp.	Rec.	Comp.	Rec.	Comp.	Rec.	Comp.
	Air	3	6	4	7	15	12	18	13	6	4
	Noise	9	8	15	21	11	16	8	7	9	7
	Waste water	2	0	3	2	0	0	2	1	1	1
	Waste	1	0	1	3	7	5	5	4	1	1
	Resources	0	0	0	0	1	1	0	0	0	0
Sum		**15**	**14**	**23**	**33**	**34**	**34**	**33**	**25**	**17**	**13**

Source: Industrimiljø afdelingen i Vejle Kommune har netop lavet en opgørelse over udviklingen i klagesager for kalenderårene 2008 frem til 30. juni 2012

3.5 Existence of features to address challenging complaints (e.g. multiple complaints on the same issue)

There are no specific features to address challenging complaints in Denmark.

3.6 Costs (administrative costs and costs for complainants, number of staff involved)

There is no cost associated with filing a complaint to municipalities. The municipality of Vejle has an environmental department of 80 employees who deal with environmental matters

including complaints. This department shares a legal secretariat with the technical department of the municipality. The legal secretariat counts three lawyers, including one who is working full-time with the Head of Legal department on environmental law-related issues. As we have seen, the allocation of resources for environmental complaints may differ from municipality to municipality, but they have to comply with the Law on Quality Assessment.

3.7 Particular problems encountered

In practice, the constant adjustments of EU Directives tend to complicate the work of municipalities when dealing with complaints (Jørgensen, pers. comm., 2012). EU laws tend to be well transposed into Danish national law but in some cases it is difficult for authorities to understand and apply them correctly.

The decentralization process seems to facilitate the handling of complaints. Before the decentralization, regions were responsible for regional and rural planning while municipalities were responsible for urban planning which created overlapping between the different responsible levels (Larsen Saarnak, pers. comm., 2012). Furthermore, it was more difficult for small municipalities to handle law cases because of a lack of resources.

3.8 Comments and cases that can serve as good/bad examples

The role of Non Governmental Organizations (NGOs) in the environmental complaint mechanism is specific to Denmark. According to the Spatial Planning Act, no. 937 of 24 September 2009 (*Bekendtgørelse af lov om planlægning, LBK nr 937 af 24/09/2009*), NGOs which count at least 100 members are entitled to file an appeal before the Environmental Board of Appeal. The Danish Society for Nature Conservation counts 130 000 members and 1 500 local volunteers and as such is one the largest NGOs and is filing a significant amount of complaints every year, and hence play an important part in the environmental complaint-handling in Denmark.

The Danish Society for Nature Conservation appeal between 200 and 300 times every year (221 in 2011, 270 in 2010) (Danish Society for Nature Conservation, 2012). The NGO is systematically informed of decisions taken by municipalities. Most of decisions are then screened by the local volunteers who meet once a month to discuss relevant issues and inform the internal complaint board of the Danish Society for Nature Conservation, based in Copenhagen, who then decide to file the complaint or not. Usually, the municipality will send the appeal to the board and in cases in which the municipality does not appear cooperative or responsive, appeals are filed directly by the NGO to the Environmental Board of Appeal. In some cases, the NGO will first contact the municipality to discuss the case or ask for further information, and in case of a favorable outcome, the appeal will not be filed. Some

municipalities welcome the work done by the NGO which may provide support where environmental issues could be neglected in favor of industrial or farming groups (Larsen Saarnak, pers. comm., 2012).

A common type of complaint concerns nature and planning matters. In the case of local planning, appeals can only be addressed on the decision process, however in the case of nature legislation, it is possible to appeal about the decision process and the decision itself. Common appeals concern matters related to local planning and nature protection. Matters that are systematically appealed are raised with the Environmental Board of Appeal in bilateral meetings (Larsen Saarnak, pers. comm., 2012).

Following the decentralization reform engaged in 2007 in Denmark in which the number of municipalities decreased from 271 to 98, NGOs also had to adapt their methods of information gathering. They note that some important information at the regional level has been missing and it has been more difficult to obtain information on the state of local environment, the protection rules in local (Larsen Saarnak, pers. comm., 2012).

4 Existence of specific additional institutions/authorities for the sector of environmental complaint-handling

4.1 The Environmental Board of Appeal

As appeal procedures play a significant role in Denmark the following information is included in the study in order to complete the picture although access to justice issues in general are outside the scope of the study.

The right of appeal was extended in Denmark as a consequence of the ratification of the Aarhus Convention in 2003. The right of appeal has been introduced for individuals with significant individual interest, and nationwide associations and organizations that have protection of nature and the environment as their primary objective. Special regulations have also been introduced on the right of appeal for organizations representing important recreational interests (Bruun, pers. comm., 2012). Every legislative Act enacted by the Parliament has specific provisions regarding legal standing before the Board. For instance, according to the Environmental Protection Act, individuals, local and national organizations working on safeguarding nature, environment and recreational interests can appeal before the Board. However in the case of the Water Supply Act, mainly persons with significant individual interest can appeal before the board while organizations have only limited rights to appeal according to this Act (see Milieu, 2007, pp. 11-14 for details).

Appeals boards are the ultimate interpreters of the legislation within their competencies and within the administrative system. There is usually always the possibility to appeal one time. All decisions taken by the Appeal Boards may be appealed before the Courts of Denmark.

Boards and councils are headed by an assembly of persons rather than a single person, and they are, to a varying degree, independent of the government and Parliament (International Law Council, 2010). The Environmental Board of Appeal is independent from the Parliament and the Ministry of Environment. However, the budget of the Board comes from the Ministry of Environment. In 2012, the budget of the Board amounted to approximately 80 million DKK. The budget has increased for the last two years in order for the Board to be able to deal with a considerable increase of complaints related to the Livestock Farming Environmental Approval Act. However, the budget is expected to decrease in 2013 (Rasmussen, pers. comm., 2012).

An appeal must be made within 4 weeks after the decision has been taken. Any entity who wishes to complaint would notify first the primary body concerned with the complaints (the municipalities in most cases) which would then send the case to the Board, except for the Spatial Planning Act in which case the appeal must come directly to the Board (however this is due to be amended in the near future).

The Board receives between 2000 and 3000 complaints a year. In general terms, policies and legislation affect the type of cases the Board is receiving. The percentage of complaints in areas where authorities are familiar with the legislation in place and its practice is relatively small compared with the percentage of complaints falling under a new and complex legislation or following new political initiatives is higher (Rasmussen, pers. comm., 2012). For instance, due to the Danish Energy Policy in increasing the share of renewable energy in its energy mix, there are also many complaints related to windmills. Similarly, since 2008, there has been a large increase in number on complaints about livestock following the new Act on Livestock Farming Environmental Approvals no. 1572 of 20 December 2006. As the Board has established some principles with its decisions, it has helped the municipalities in better understanding the legislation and such cases have recently started to decline (Rasmussen, pers. comm., 2012). The Board notes a certain number of cases on issues related to EU legislation such as the EIA Directive (85/337/EEC) and the Habitat Directive (92/43/ECC). These Directives are difficult to understand and implement, and consequently there has been a significant increase of cases related to the implementation of these Directives. The Board is foreseeing coming complaints related to the implementation Water Framework Directive (2000/60/EC) (Rasmussen, pers. comm., 2012).

Table 1: Turnaround time of complaints handled for the period 2003 - 2011 (percentage) (including the previous Nature Protection and Environmental Board of Appeals)

	Less than 3 months	3-6 months	6-12 months	More than 12 months
2011	37%	13%	17%	33%
2010	22%	11%	20%	47%
2009	18%	10%	13%	59%
2008	21%	12%	18%	49%
2007	34%	21%	23%	22%
2006	42%	13%	10%	35%
2005	49%	10%	14%	27%
2004	44%	13%	20%	23%
2003	63%	17%	6%	14%

Source: Environmental Board of Appeal, 2011 Annual Report, p.12 and Environmental Board of Appeal, 2010 Annual Report, p.17.

The Board is permanently improving its working procedures and workflow in order to bring more added value to the services it provides (Rasmussen, pers. comm., 2012). Currently the board is still dealing with cases which occurred before the merging of the two boards, and is aiming at concluding them by the end of 2013. Every new complaint is scanned by a unit which decides on how to proceed with the complaint. Complaints must be handled within a period of 12 months maximum. Depending on the complexity of the cases, the unit assigns each complaint to three different tracks: track 1 (case to be dealt within 8 weeks), track 2 (case to be dealt within 5.5 months) and track 3 (12 months maximum). In its yearly report, the Board publishes statistics on complaints, including indicates the length taken for dealing with the complaints. In 2011, the average length of procedure was 369 days (70 days for incoming cases and 578 days for cases inherited from the previous two boards).

Prior to 2011, Denmark had two Board of Appeals dealing with environmental matters: the Environmental Board of Appeal which was dealing with environmental legislation and the Nature Protection Board of Appeal which was responsible for matters related to nature legislation. In 2011, the two boards were merged by the Parliament to create the Environmental Board of Appeal (hereafter "The Board").[51] The merging is allowing the new Board to deal more efficiently with complaints facilitating internal administrative procedures (Rasmussen, pers. comm., 2012). The Board based in Copenhagen counts 120 employees including environmental experts and lawyers, while the number of lawyers is increasing compared to the number of environmental experts (Larsen Saarnak, pers. comm., 2012).

[51] According to the English version of the webpage of the Ministry of the Environment the official name is "Environmental Board of Appeal".

The fee associated to filing a complaint to the Environmental Board of Appeal amounts to 500 DKK per complaint for a private person, and must be paid within a certain period of time or else the case will be dismissed. If the Board decides on the favor of the complainant, the amount is reimbursed to the complainant. For private companies and NGOs, the cost is currently 3000 DKK, but the Parliament has voted a motion to decrease it to 500 DKK in the near future. Fees are paid to the Ministry of Finance.

The Environmental Board of Appeal publishes its decisions within one week. It publishes a newsletter four times a year in which some cases are detailed. A yearly report detailing how many cases were treated and the pursuant decisions is published. The new rules of procedure since the merging of the two boards in 2011 requires the publication of a more substantial report on the Board activities which will allow to better disseminate knowledge about decisions, and could also be used as guidelines for municipalities (Rasmussen, pers. comm., 2012).

4.2 The Danish Ombudsman (Folketinget Ombudsmand)

The role of the ombudsman is, as stated in the section 21 of the Ombudsman Act amended in 1997, as follows:

> *"The ombudsman shall assess whether any authorities or persons falling within his jurisdiction act in contravention of existing legislation or otherwise commit errors or derelictions in the discharge of their duties."*

With regards to environmental complaints case, the role of the ombudsman is to evaluate and criticize acts or decisions taken by the administration (3rd type of complaint related to alleged failure of a public body to respect procedural requirements or other administrative standards). In this regard, the Ombudsman does not deal specifically on environmental issues and hence has no specific expertise in the environmental field. His role is to ensure good administrative practice. In 2010, operating costs of the Ombudsman amounted to 54 million DKK.

A complaint to the Ombudsman must be done within one year of the date the decision was taken, and all administrative procedures must have been exhausted. There is no financial cost to complain to the Ombudsman.

The Danish Ombudsman receives complaints from citizens concerning all public bodies including municipalities, the Ministry of the Environment and its agencies or the Environmental Board of Appeal. The Danish Ombudsman receives between 400 and 500

cases every year on environmental issues. It is relatively stable figure for the last 10 years (Engberg, pers. comm., 2012).

Most environmental complaints concern issues related to planning matters, and other issues, ranging from the cost of waste removal and who should be responsible for covering this cost, to more serious concerns related to environment, water streams, noise pollution (noise generated from shooting lanes activities for instance). Environment and Building belong to the same section handled by the 4th Division of the Ombudsman. Environmental and building cases made 9.5 % of the 4 853 cases received in 2010 (The Danish Parliamentary Ombudsman, 2010). For the past 10 years, environmental complaints received are stable, complaints have been rising but not the share of environmental complaints (Engberg, pers. comm., 2012).

The Ombudsman works effectively by establishing specific targets in dealing with complaints received. In 2010, the target to handle rejected cases within two months was 90% and the Ombudsman reached a rate of 86,2%. 76,3% of substantive cases concluded within six months were effectively handled meeting the target of 75%. 89,6% of cases to be treated within 12 months were handled almost reaching the target of 90% (The Danish Parliamentary Ombudsman, 2010).

Overall, on 400/500 annual cases related to environment and building, 70 or 80% case are rejected temporarily because all administrative procedures have not been exhausted. For many citizens, the legal structure can be very hard to understand: “We do inform, but it would be a huge task to communicate this knowledge. That is not feasible and so we have to pass the cases on to other authorities” (Engberg, pers. comm., 2012). Other reasons for rejection include the fact that the complaint comes too late, people do not state their name, or do not reply to further requests on the case. Furthermore, the Ombudsman has the right to refuse to handle a complaint even it fills all the required criteria. This may concern insignificant or too complex cases (Engberg, pers. comm., 2012).

The Ombudsman publishes a detailed annual report in Danish and in English available for download on the Danish Ombudsman website.

5 Mediation mechanisms

Denmark has not implemented the European Directive on Mediation (2008/52/EC). Denmark is not bound by the directive—a prerogative the country has under a protocol annexed to the EU Treaties.

Formalized mediation of environmental disputes in Denmark is not an integral part of the dispute resolution universe. However, there might be some mediation taking place on a more

informal level, but this type of mediation is not officially registered (Adrian, pers. comm.., 2012).

There are no specific or official mediation mechanisms designed to handle environmental matters. According to Jørgensen (pers. comm., 2012) mediation is not relevant to environmental matters as there is no compromise to be done, but the law must be followed. Mediation is not part of the environmental complaint mechanism in Denmark in which the complaints have to be sent to primary authority who either discusses the matter with the object of the complaint which may lead to a favorable outcome, or forwards it to the relevant authority.

However, within the Environmental Board of Appeal, a specific committee was established by the government in 2011 to recommend initiatives to improve the working procedures of the Board. In this context, mediation was discussed, and more specifically in reference to experience in this regard in the Netherlands (Rasmussen, pers. comm., 2012). However, an obligatory mediation procedure was not recommended in a report published by this committee in May 2011.

Mediation was also mentioned in a study entitled "SME access to ADR systems" published by the European Commission (DG for Internal Policies, 2011), in which it is noted that Denmark is showing a growing interest in mediation in the field of B2B. However, according to the study only 2% of B2B disputes were settled through Alternative Dispute Resolution (ADR) mechanisms.

6 Conclusion

Denmark is considered as being an environmental leader and traditionally there is an important awareness on environmental issues throughout the society. Denmark is one of the pioneers in environmental preservation. In 1971 Denmark established a Ministry of Environment and was the first country in the world to implement an environmental law in 1973. A study conducted by Burgens (2002) shows that EU Law is well transposed at the national level. Burgens (2002) attributes this to favorable constitutional, administrative and institutional conditions.

Accessibility

The accessibility of the Danish environmental complaint system provided by the public authorities is very satisfactory. Municipalities are in charge for handling the vast majority of complaints. Depending on the nature of the complaints, the three agencies depending from the Ministry for the Environment, and other ministries have also some competences in handling environmental complaints. While this may be confusing for the public, since the

decentralization reform of the Danish administrative structure in 2007, municipalities are playing a significant role in environmental matters. The Administrative Public Act Act No. 571, 19 December 1985 (Chapter 3, Section 7) stipulates that any authority which received a complaint that is not relevant to its competences has the duty to transfer it to the right authority, and inform the complainant in doing such.

It can be added that according to a comparative study on access to justice in environmental matters conducted by Milieu in 2007, based on criteria evaluating legal standing, effective remedies, costs and length, and transparency Denmark ranks the highest in access to environmental justice, and it is the sole country to receive the highest mark (Milieu 2007a).

There is no cost associated to filing an environmental complaint within the administration. Except for a fee of 500 DKK for citizen and 3 000 DKK for NGOs and private organizations, it is free to complain in Denmark. Furthermore, if the board decides in favor of the complainant, the fee is reimbursed to the complainant.

Transparency

Overall, statistics from most of administrative authorities were not available especially with regards to environmental issues. However, most of authorities are publishing an annual report available from their website which communicates on environmental complaints.

The Ombudsman publishes a report both in Danish and English.

Authorities seem to cooperate in some cases. The Danish Society for Nature Conservation noted that some municipalities were in fact welcoming their work as a factor that contributes to reinforce the importance of environment (Larsen Saarnak, pers. comm., 2012). There is a good awareness amongst administrative authorities and their role. There seems to be a good level of cooperation and communication between the authorities.

Simplicity

Filing an environmental complaint is extremely easy in Denmark. According to the Administrative Law no. 00 of 10 February 1967 (*LOV 1967-02-10 nr 00: Lov om behandlingsmåten i forvaltningssaker*), there are no specific requirements in the way of how to address an environmental complaint to administrative authorities. Public authorities are required to consider any form of environmental complaint and in any language. According to Jørgensen (pers. comm., 2012), the number of complaints has increased over the years and new generations tend to complain more, because citizens are more aware of their rights and of the possibility to complain.

70 to 80% of complaints received by the Ombudsman are not further processed for several reasons, including the fact attributed by the Ombudsman that people tend to send emails but often do not follow up on the complaints when further information are required (Engberg, pers. comm., 2012). This fact could illustrate that it is easy to complain but also that citizens may not be aware which authorities are relevant for their complaints.

It could not be evaluated in this study with certainty whether the general public is aware of environmental complaint procedures. A representative survey would need to be conducted.

Fairness

The fact that in the case of favorable decision to the complainant when filing an appeal before the Environmental Board of Appeal, the fee paid is reimbursed to the complainant shows a certain degree of fairness.

Independence

The Environmental Board of Appeal is considered to be independent, however its budget comes from the Ministry for the Environment, therefore it is up to discussion whether the Board is completely independent.

Flexibility

The environmental complaint-handling procedures in Denmark are fairly flexible due to the fact that there is no hierarchy in filing a complaint, except in the case of the Environmental Board of Appeal. NGOs are also allowed to appeal administrative decisions directly to the Environmental Board of Appeal.

Comprehensiveness

There are extensive possibilities for appeal, and the costs to use to complain within the administration is low (e.g. 500 DKK for an individual to file an appeal to the Environmental Board of Appeal, or even non-existent (if a case is won, fees are reimbursed to the complainant). Although, there are no official mediation mechanisms as such there is a certain cooperation between authorities (e.g. NGO and municipalities, NGO and appeal board).

Effectiveness

Statistics related to environmental complaints were generally difficult to obtain. For the purpose of this study, the municipality of Vejle was interviewed and no statistics were available on the processing time of complaints. Besides, each municipality is free to develop

and implement its own procedures and priorities, therefore it can vary from regions to regions. However, municipalities must comply with the *Law on Quality Assurance no. 506 of 7 June 2006 (Lov. Nr. 506 af 7. Juni 2006 – Kvalitetsstyringsloven)* which provides guidelines the development and implementation of procedures. This law stipulates that each municipal council must develop and implement a quality management system (Chapter 1, § 1 *"Kommunalbestyrelsen skal indføre og anvende et kvalitetsstyringssystem")* to be accredited by a recognized organization.

The municipality of Vejle highlighted that in a number of cases, at the time of a complaint, the authorities are in fact already dealing with the matter. However no statistics were available to assess this fact.

Environmental complaint mechanisms are governed by the principle of proportionality.

The fact that the Danish Society for Nature Conservation, one of the largest NGO in Denmark, is satisfied by the current environmental complaint system in Denmark, provides a good indication on the effectiveness of the environmental complaint-handling in Denmark.

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INTERVIEWS

Lin Adrian, Adjunct at University of Copenhagen, Law Faculty, Email communication

Karin Bruun, Lawyer at the Nature Agency, Email communication

Morten Engberg, Head of the 4th Division at the Danish Ombudsman, Phone Interview, Date: Wednesday 15 May 2012 between 11:30 and 12:30

Steen Jørgensen, Head of Legal Department at Vejle Municipality (Jutland), Phone Interview, Date: Tuesday 29 May 2012 between 11:15 and 12:15 and Thursday 31 May between 13:00 and 14:00, and Email communication

Anne-Marie Rasmussen, Head of the Environmental Board of Appeal, Phone Interview, Date: Thursday 24 May 2012 between 14:00 and 15:15

Nina Larsen Saarnak, Planning Officer at the Danish Conservation Society (NGO), Phone Interview, Date: Friday 25 May 2012 between 10:00 and 11:00

III. FRANCE

1 Institutional, administrative and legal context

France is a parliamentary democracy and a unitary State. Art 34 of the Constitution of France (1958) determines that the power of making laws for the State is vested in the National Parliament comprising the House of Representatives (*Assemblée Nationale*) and a Senate (*Sénat*).

France has a centralised structure, although the Law of 2 March 1982 initiated a process of decentralisation which gave more power to local authorities (*Régions, Départements* and *Communes*). Members of Regional Councils are democratically elected every 6 years (renewable) and Members of General Councils (Authorities of the *Départements*) are elected every 6 years with half of them being replaced every 3 years. However, a recent reform[52] aiming at clarifying and simplifying the system abolishes it and creates a unique body of territorial councillors (*Conseillers territoriaux*). The first elections following this reform should take place in 2014.

France has a total population of 65.35 million (including overseas territories) and has a steady and high demographic growth. Reports on the state of the environment point out several environmental areas where improvement is needed. Soils, water bodies, and coastal areas are still polluted while the high pace of urbanisation causes significant pressures on the environment, including on biodiversity.

1.1 Legal Context

EU environmental law in France has been transposed into national law through a range of different legislative texts. These texts – and additional national legislation on environment - are collected in the *Code de l'environnement* for which development started in 1989. The code, divided into seven books, is now complete (almost the totality of administrative legal acts (*décrets*) have now been codified). In addition, many legal areas related to environment are addressed in other codes (*Code de l'urbanisme, Code de la santé publique*, etc.). As a special branch of law, environmental law relies on various legal instruments (public administrative law, private law, penal law).

[52] Loi n°2010-1563 du 16 décembre 2010 de réforme des collectivités territoriales.

Historically, the first pieces of environmental legislation adopted in France were the following:

- Law of 15 July 1975 on waste
- Law of 10 July 1976 on the protection of nature
- Law of 19 July 1976 on classified industrial installations (with a wider scope than IPPC)

In 2004, a Charter on the environment was adopted, later integrated in the Constitution[53] and recognised by the supreme Constitutional Court. This text contains 10 articles and gives a fundamental status to basic principles such as the 'right to live in a healthy environment' or the 'polluter-pays' principle. Pursuant to the adoption of the Charter, article 34 of the Constitution setting the Parliament's competences was modified in order to include 'environment protection' in the list of areas ruled by legislation.

1.2 Bodies responsible for implementing EU environmental legislation

There are 3 levels of administration in France: regions (26), departments (i.e. counties, 100), and communes (about 37 000). These are administrative divisions emanating from the State and local authorities with specific powers and a certain degree of autonomy *vis-à-vis* central government.

In the environmental field, the authority to implement environmental policies mainly lies with administrative authorities representing the State:

- The Ministry of Ecology, Sustainable Development and Energy is in charge of defining and applying environmental policies at the national level.
- At the regional level, the Regional Councils for Environment, Land Planning and Housing (*Directions régionales de l'environnement, de l'aménagement et du logement- DREAL*) are in charge of implementing the environmental policies defined by the government. The DREAL are under the authority of the *Préfet de région*.
- At the level of departments, environmental policies are implemented by the Departmental Councils of Territories and Sea (*Directions départementales des territoires et de la mer – DDTM*), under the authority of the *Préfet de département*.
- At the *Communes* level, the Mayor has both competences emanating from the State and powers on his own in certain areas.

The current system is complex and responsibilities fragmented between several authorities, over different levels of administration.

[53]Loi constitutionnelle n° 2005-205 du 1er mars 2005 relative à la Charte de l'environnement.

2 Scope, hierarchy and co-ordination of complaint-handling procedures

2.1 Description of main actors

In France, environmental complaints are directly handled by the competent authorities responsible for the enforcement of environmental law.

Depending on the environmental sector considered, different authorities are in charge of applying environmental law. The following list provides an overview of the main bodies in charge of enforcing environmental policies as well as authorised to acknowledge infractions and possibly of taking administrative sanctions. In addition, the *Préfet* has general authority over *polices administratives spéciales*(i.e. administrative regime of prevention, authorisation, inspection, etc. in a specific area e.g. water, nature, noise etc.).

- Water

- The National Agency[54] for Water and water bodies (ONEMA): inspectors are present at the departmental level and carry out on-site inspections. ONEMA makes sure that the law is respected (water uses and aquatic environment) and can record breaches of law. Inspections are done on the basis of a plan made under the authority of the *Préfet*.

- Regional level: officers from DREAL co-ordinate water policy at the regional level.

- Industrial installations, risks and nuisances

The *Préfet de Département* and the DDTM are in charge of authorisation, inspection and administrative sanctions regarding 'classified' industrial installations. He/she is assisted in this task by inspectors, usually from the regional level (DREAL).

- Nature, wildlife, flora, fishing in freshwater, protected national parks

Competences in these areas belong to the French national agency for wildlife (ONCFS). This agency is present all over France in departments and regions. In some cases competences can also belong to ONEMA, National Parks, the Coastal Protection Agency (*Conservatoire du littoral*) and nature reserves.

- Polluted sites and waste

[54] Agencies are not independent, they are under the supervision of the State.

The mayor is competent when a site is polluted on his jurisdiction. He is also competent in the area of waste[55]. In other cases (breaches of environmental law in other sectors) and when other authorities are responsible, the mayor is only authorised to put an end to immediate hazards or serious inconvenience for public safety and health.

- Public Services

The *Communes* are in charge of public services such as water supply, urban wastewater treatment, and waste management.

2.2 Application to scenarios

2.2.1 Is there a mechanism/are there mechanisms for alleged illegality of or non compliance of a private person/company?

In case of alleged illegality or non-compliance of a private person or a company, complaints can be submitted to the relevant administrative authority.

For instance, in the area of 'classified' industrial installations (which cover industrial sites subject to the Industrial Emissions Directive, among others), complaints can be made about any nuisance generated by a 'classified' industrial installation (aesthetic issue, odour, noise, air pollution, water pollution, waste, impacts on safety, impacts on health, others), as mentioned in a form specifically dedicated to complaint-handling..

In other areas of environmental law, the scope of complaints which can be sent to the administration authorities is not specified. In general, official requests/complaints can be sent to the relevant authority by means of registered letter describing the observed facts.

For instance, in the case of abandoned waste (or for instance, non-authorised business for end of life vehicles and disposal of waste), any person can contact the Mayor of a Commune by registered letter, to request that a notice is given to the offender to evacuate the waste and clean the affected area. If the Mayor refuses (express written response or no response within 2 months) the complainant can refer the complaint to the *Préfet*. In the case of express or tacit refusal of the *Préfet*, the only remedy left is to refer a case to the administrative Court (*Tribunal administratif*).

In a situation of illegal discharge of pollutants to a river from a small commercial company: If the small company is covered by the classified industrial installations regime (which has a broader scope than IPPC) the relevant authority to be contacted is the *Préfet*; if the case

[55] Art. L. 541-3 ; case law *Conseil d'Etat*, 11 Jan. 2007, *Ministre de l'écologie et du développement durable c/ Sté Barbazanges Tri Ouest.*

relates to wastewater treatment or drinking water, the competent authority is the Mayor of the Commune. In other situations, the facts can be pointed out to the local branch of ONEMA which works in co-operation with the *Préfecture* services, by registered letter or by a simple phone call. If the complaint is addressed to the Mayor but falls out of his/her area of competence, he/she will transfer the complaint to the ONEMA or to the *Préfecture*.

To complain about a company which has an eco-label and does not respect it, customers can complain to AFNOR, the French standardisation authority delivering the Ecolabel, which is also in charge of controlling the correct application of corresponding legislation.

When an illegal activity is observed in a coastal area, if the area belongs to the territory of a Commune, the complaint can be sent to the Mayor of this Commune by registered letter. However, the *Préfecture* (DREAL) is competent on water bodies in coastal areas (e.g. wetland areas).

In a situation of illegal importation of timber that is on the CITES list (Annex in Regulation 338/97/EC), according to the Code de l'Environnement, Article L415-1, there are different agents that are empowered to record the breach, in particular the customs agents or any agents of judicial police (according to the French Penal Procedure Code, the Mayor, the police officers and gendarmerie officers are considered as agents of judicial police).

In the case of widespread illegal trapping/hunting of wild birds protected under the Birds Directive, a complaint can be addressed to the local branch of ONCFS, by registered letter (or by a simple phone call). ONCFS works in co-operation with *Préfectures*.

2.2.2 Is there a mechanism/are there mechanisms for alleged illegality or non compliance of a public body/utility in relation to providing an environmental service?

When a public body fails to provide an environmental service, citizens can lodge non-litigated complaints before the administration in charge of the public service.

Wastewater treatment and drinking water distribution fall within the area of competence of the Mayor.

For instance, where a municipality fails to treat its urban wastewater load in compliance with the relevant legislation, the citizen can send a registered letter to the mayor of the *Commune*. If the Mayor refuses, the complainant can go to the administrative Court.

The same occurs when the failure is committed by a private company acting on behalf of the public authority. In the case of a private water utility providing drinking water to a town of 2 000 inhabitants, which would not meet the required quality criteria, the complainant can

send a registered letter to the Mayor of the *Commune*. If he/she refuses, the complainant can go to the administrative Court.

Regarding landfills, they are subject to IPPC and are therefore under the competence of the *Préfet*. The complainant can therefore send a letter with acknowledgement of receipt to the *Préfet* and if the latter refuses to act or does not reply, the complainant can go to the administrative court.

2.2.3 Is there a mechanism/are there mechanisms for alleged failure of a public body to respect procedural requirements or some other required administrative standards?

In a situation of an alleged failure of a competent authority to respect the EIA screening requirements (for example in a case against a decision from a regional environmental authority (DREAL) to allow a project on its territory to be exempted from carrying out an Environmental Impact Assessment), a person or a NGO can use administrative remedies. The same procedure could apply if the *Préfet* responsible for a protected Natura 2000 site allows small-scale housing on this site without any appropriate consideration of the respective individual and/or cumulative effects.

Regarding the administrative remedies, when there is a breach of environmental law related to a decision taken by the administration, the decision can be challenged by two administrative (non-litigated) mechanisms:

- Right of appeal before the administration having issued the decision (*Recours gracieux*)
- Hierarchical right of appeal before the administration hierarchically above the one which issued the decision (*Recours hiérarchique*)

To be received the complaints must:

- be sent within two months following the administrative decision
- aim at cancelling or reviewing the administrative decision challenged
- be sent to the competent authority. In addition, pursuant to the Law of 12 April 2000[56] framing the relationships between administration and citizens, if the administration to which the complaint is addressed is not competent, it must be transferred to the competent administration.
- refer to a decision which can be reviewed

When a citizen is exercising a non-litigated remedy, his/her deadline to go to Court is extended by 2 months after the rejection of his/her request (or 2 months after the implicit

[56] Law n° 2000-321 of 12 avril 2000 « relative aux droits des citoyens dans leurs relations avec les administrations ».

rejection of his request, which happens if the authority fails to reply within two month after having received the complaint).

An alternative option for NGO and citizens in the two cases above is to bring the case directly to the Administrative Court.

2.3 Specific co-ordination mechanisms

There are currently 25 *polices administratives spéciales* in the environmental field, each of them with its own administrative and judicial rules. Hence, more than 70 categories of administrative staff members can be involved, depending on the breach of law at stake. The highest administrative Court, the *Conseil d'Etat*, has requested several times a simplification of procedures concerning implementation of environmental law[57].

A recently adopted ordinance[58], which will enter into force 1 July 2013, simplifies the current system of inspection and administrative sanctions, penal procedures and penalties. This text does not refer specifically to complaints-handling but rationalises the number of authorities competent for the enforcement of environmental law and policies, and aims at ensuring a better enforcement of environmental law.

In general, when an administrative authority receives a complaint which falls out of its scope of competence, the complaint must be sent to the relevant authority.

There can be hierarchal relationships between different authorities when a case may involve different levels of administration, for instance.

3 Characteristics of the complaint-handling systems identified

In the area of industrial installations, complainants willing to report an alleged breach of environmental law can fill out a specific form available on the website of the *Préfecture de region*-DREAL and other public websites. The form must be sent by post to the address specified (*Préfecture de département*). The form (*Formulaire de réclamation*) can be

[57] Conseil d'Etat, 2010, Public Report, L'eau et son droit.

[58] Ordonnance n° 2012-34 du 11 janvier 2012 portant simplification, réforme et harmonisation des dispositions de police administrative et de police judiciaire du code de l'environnement. http://www.legifrance.gouv.fr/jopdf/common/jo_pdf.jsp?numJO=0&dateJO=20120112&numTexte=6&pageDebut=00564&pageFin=00579.

downloaded from the *Préfecture* webpage.[59] The inspectorate will then perform the necessary verifications to check that the industrial installation is 'classified' and falls under its jurisdiction, in order to be able to assess its conformity in relation to relevant pieces of legislation. If the investigations reveal that the industrial installation is not classified, the complaint will be transferred to the competent authority i.e. the Mayor of the *Commune*. In all cases, an acknowledgment of receipt is addressed to the complainant. Complaints are considered 'processed' when the inspector of classified industrial installations (usually inspectors from DREAL) has transmitted its conclusions to the *Préfet de department* who is the authority competent to take action.

No formal procedures for the submission of cases exist in the other environmental areas. Hence, citizens and/or NGOs can send their complaints to one or several authorities (depending on the nature of the breach and of their awareness) by means of registered letter. For instance, as mentioned in the introduction, a person who acknowledges pollution of a water body can warn the ONEMA, which is allowed to write statements establishing the observed breach of law and to refer to the prosecutor if necessary. In practice, complains are also often made by simple phone call.

The administrative complaints-handling system in France relies mostly on local and regional State administrative authorities present all over the territory. The law of 12 April 2000 provides general rules framing relationships between the administration and citizens.

Specific features of the administrative complaints-handling system are described below.

3.1. Procedure/procedural guarantees

In principle, administrative authorities are obliged to take action when an alleged breach of law is brought before them.

Pursuant to the Law of 12 April 2000, a person establishing a relationship with public authorities has the right to know the first name, surname, function and administrative address of the public staff member in charge of handling his request/complaint.

In addition, any request addressed to an administrative authority must result in an acknowledgment of receipt (Law of 12 April 2000). This acknowledgment of receipt must

[59] Préfecture of Paris : http://www.prefecturedepolice.interieur.gouv.fr/Prevention/Salubrite-et-environnement/Installations-classees

show the date of reception of the complaint as well as the date where the request will be considered as accepted or rejected[60] if no decision has been taken before.

There do not seem to be guidelines or general rules on how to deal with complaints or how to register them, with the exception of rules provided by the Law of 12 April 2012.

Nevertheless, in the area of industrial installations, specific rules are in place. The strategic national inspection plan for 2008-201261 mentions commitments of the administration in terms of addressing complaints from citizens. Accordingly, an acknowledgment of receipt must be sent to the complainant within 15 days after a matter has been brought before the competent authority; and the follow up measures addressing the environmental matter raised must be communicated to the complainant within 2 months – providing that the complainant chooses to be informed (by ticking a box on the form). In addition, a specific box on the form allows the complainant to request confidentiality.

3.2. Technical, scientific and legal expertise of EU environmental law

The Commune authority (*Conseil municipal*) includes various members, each in charge of a specific mission. One of them (*conseiller municipal*) is usually specialised in issues related to environment protection, wastewater treatment, waste but also housing and land planning.

State services at the local level have specialised staff members with specific knowledge of the environment. For instance, the region *Basse Normandie* has 22 inspectors of classified installations, of which 14 are divided across the 3 *départements* of *Basse Normandie*.

In addition, State services at the local level work in co-operation with specialised agencies/bodies e.g. ONFCS, ONEMA, Natural Parks, *Conservatoires du littoral* etc. Staff members of these bodies have expertise in their specific areas of competence.

3.3. Reporting and statistics

At the national level, statistics have been published regarding the treatment of complaints in the area of classified installations pursuant to the objectives set in the strategic programme of industrial installations. In 2010 it appeared that overall only 45% of complainants received an acknowledgement of receipt within 15 days after they sent a complaint directly to the inspection of classified installations. These results were considered insufficient and the

[60] Décret n°2001-492 of 6 June 2001 applying Law 2000-321 of 12 April 2000. This decree rules the acknowledgments of receipt of requests addressed to the authorities

[61] Ministry of Environment, 2008, programme stratégique 2008-2012 de l'inspection des installations classées http://www.installationsclassees.developpement-durable.gouv.fr/IMG/pdf/PS_IIC_2008_2010.pdf

administrative services were required to increase their efforts to implement the national procedure.

Still in the area of classified industrial installations, the DREAL of the region Centre (a region containing 6 *départements*) published statistics on complaints received. They received 96 complaints in 2011. The number of complaints received and treated since 2006 has been varying: 131 in 2006 (of which 36 targeted non-classified industrial installations), 90 in 2008 (23 non-classified), 76 in 2010 (26 non-classified).

According to the national authorities, there are no statistics available in the other areas of the environment and no reporting requirements.

3.4. Review

There are no general specifications prescribing the obligation to carry out periodic reviews.

In the area of industrial installations, the complaint-handling procedure's quality is assessed through two indicators:

- percentage of complainants having received an acknowledgement of receipt within 15 days
- percentage of information provided to the complainant about the consequences/follow up measures of his complaint.

3.5. Frequency/regularity of complaints and trends

According to national authorities, there are no general specifications prescribing the obligation to monitor the frequency and regularity of complaints.

In the area of industrial installations, some regions publish periodical reports on their websites regarding the amount of complaints received and their effects. For instance, in 2011 in the region Centre 86.5%, of complaints received were processed in less than 6 months[62] against 76.3 % in 2010.

3.6. Existence of features to address challenging complaints

Article 2 of the Law of 12 April 2000 provides that the administration is not obliged to treat abusive requests (i.e. numerous or repetitive). According to article 20 of this Law, the authority is not obliged to provide acknowledgement of receipt when such abusive requests are submitted (see also conclusions below).

3.7. Costs

The complainants do not bear any costs.

[62] *Région Centre* encompasses 6 *départements*. In terms of population it ranks 10th on 26 regions.

The costs borne by national authorities for the treatment of complaints are not measured.

3.8. Particular problems encountered

None.

3.9. Comments and cases that can serve as bad/good examples

Standardised forms to make complaints regarding industrial installations available on the websites of every region and *département* constitute a good practice. There are no other similar standardised forms available in other environmental areas.

The law of 12 April 2000 providing general rules framing relationships between the administration and citizens illustrates the public administration's will to increase its efficiency and transparency. This trend goes even further in the area of industrial installation where specific rules apply to ensure that complaints are adequately treated.

4 Existence of specific additional institutions/authorities for the sector of environmental complaint-handling

There are no specific institutions/authorities dedicated to environmental complaint-handling.

5 Mediation mechanisms

Alternative dispute resolution mechanisms are not very well developed in France. This is explained by a tradition of judicial and conflictual resolution of disputes, and by the accessibility of administrative justice for citizens i.e. access to justice is free; the complainant is not required to be represented by a lawyer; and he/she does not bear any risk if the case is lost. However, a reflection is underway in France to develop dispute resolution mechanisms in the administrative area, especially in case of similar situations/issues without major consequences; or in case of highly complex issues with particularly significant potential effects.[63]

Along the same lines, highlighting that France is behind in the area of "administrative democracy", the highest administrative Court, Conseil d'Etat, recently released a report

[63] J-M. Sauvé, 2011, Intervention in a conference organised by the *Conseil d'Etat* on „the development of mediation".

aimed at improving consultation and democratic participation of citizens early in the administrative decision-making process.[64] As the political, social and technological context evolves faster and faster, the administrative Court considers it essential to question and review the relationship between administration and citizens. This decision shows a move towards a greater involvement of citizens, in opposition with the administrative tradition of unilateral decisions leaving little room for consensus and compromise.

According to national authorities, mediations can occur between the administration and citizens on environmental issues but they are not formally framed.

The applicable mediation mechanisms are described below:

5.1 Défenseur des droits, Mediator

The Ombudsman is called *Défenseur des Droits*. He can theoretically deal with issues related to damages to the environment. He is competent to defend rights in the framework of relationships with the State, and other public authorities including public bodies in charge of a public service.[65] He can also be referred to by any person (or company) that esteems that her/his/its rights have not been fully respected by the administration (Art 5). He can theoretically deal with environmental complaints but such cases do not seem to have occurred so far.

The *Défenseur* is generally not involved in cases involving breaches of law as such, but rather in cases where a strict application of law or rules has led to absurd situations, causing problems to a citizen (i.e. authorisations to work/stay on the territory denied; citizen receiving an excessive water bill etc.)

The *Défenseur des droits* can conduct mediation between citizens and public bodies in charge of providing environmental services (i.e. Ministries, *Préfectures*, *Communes*, etc.).

The general conditions for a complaint to be admissible are the following:

- A citizen disagrees with a decision or behaviour of a State service, a local administration (*région, département*) or any authority in charge of providing a public service;
- The existing administrative remedies have been exhausted.
- The complaint is lodged within two years after the facts

[64] *Conseil d'Etat*, 2011, „*Consulter autrement, participer effectivement*".

[65] Art 4 LOI organique n° 2011-333 du 29 mars 2011 relative au Défenseur des droits.

- The case must not have been brought before Justice

When citizens lodge a complaint before the *Défenseur des droits*, he evaluates his competence on the matter brought before him. If he decides not to react, his response shall include a justified statement. The observations made and declarations gathered during the procedure cannot be made public or used subsequently in civil or administrative legal procedures without the consent of the persons involved, except in specific situations.

The *Défenseur* authority encompasses *Médiateurs* specialised in mediation between citizens and public bodies/companies providing services, such as the *Médiateur de l'eau* (competent on water and sanitization services-related cases, created in 2009) and the *Médiateur national de l'énergie* (competent on energy services-related cases, created in 2006)

- The *Médiateur de l'eau* has one month to acknowledge receipt of a complaint and assess whether it is admissible. If the case is admissible, the authority has three months to proceed; this duration can be renewed once. Exchanges between the *Médiateur* and the parties must be done in written form. Once the case is closed, the *Médiateur* delivers an opinion (*avis*) and offers the parties a solution that they are free to follow or not. They have one month to inform the *Médiateur* and the other party(ies) of their choice.

  However, mediation related to water services focuses mainly on economic issues and not purely environmental issues. Hence, in the area of water, the most frequent cases relate to information displayed on water consumption meters i.e. in 2010, 87% of complaints received by the *Médiateur de l'eau* focused on bills-related issues.

  The 2011 report of the *Médiateur de l'eau*[66] underlines that people are aware of its existence only through individual communication made by water bodies on the occasion of issues with consumers. The *Médiateur* considered that its services could benefit a wider public if more communication was made and therefore encouraged its partner to communicate more and to envision setting up a system of online claims. In 2010 the authority received 1 002 complaints including 174 admissible cases.
- The number of complaints addressed to the *Médiateur National de l'énergie* is increasing. The authority received 8 044 complaints in 2011[67] compared to 1 350 in 2008 and 5 111 in 2009 also relating to issues of an economic nature. It is possible to formulate an online complaint on the Médiateur de l'énergie's website.

If the case submitted to the *Défenseur/Médiateur* services falls within the scope of competence of the administration, the Ombudsman must transfer it to the competent administrative authority.

[66] Médiation de l'eau, 2011, Press release *La médiation de l'eau, un secteur incontournable dans le secteur de l'eau* http://www.mediation-eau.fr/admin/common/files_docs/presse/6_conference.pdf

[67] Médiateur national de l'énergie, 2011, Rapport d'activité 2011 http://www.energie-mediateur.fr/fileadmin/user_upload/Publications/RA_MNE_2011.pdf

5.2 Penal transaction (*Transaction pénale*)

This mechanism (Art. L216-14 of the *Code de l'environnement*) has been applicable since 2006 for minor breaches of environmental law (*contravention* or *délit*) related to water, fishing in freshwater and national parks. This system has the advantage of quickly addressing environmental damages by prescribing reparation or restoration measures and fines; hence avoiding long judicial procedures. This mechanism can be described as administrative and pre-judicial.

Administrative competent authorities can use this mechanism only when public prosecution has not yet been launched. The administrative local authority is competent to apply it, or the *Préfet de region* or *Préfet de département* depending on the severity of the facts.

The transaction proposal will depend on the circumstances of the infringement, on the author's personality and on his resources. It must mention the fine amount and the obligations imposed to the author in order to cease infractions, prevent new infractions, or repair environmental damages.

Public prosecution is finally extinguished once the author of the infraction has implemented his/her obligations within the time limit laid down.

This mechanism is increasingly used. In 2008, 714 statements established by the ONEMA, the ONCFS and the departmental competent authority resulted in a penal transaction.68

The ordinance of 11 January 201269 (applicable in July 2013) will extend this procedure to all areas of environmental law, under certain conditions.

5.3 Associations specialised in environmental mediation

Some NGOs are specialised in environmental mediation e.g. Organism of Mediation in Environment, health and consumption (*Organisme de Médiation en Environnement Santé et Consommation*) which conducts mediation between the State and citizens. For instance, this NGO carried out mediation between citizens and a private company regarding the installation of mobile phone antennas in the city of Nîmes.

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[68] Ministry of Environment, 2008, Police de l'eau, rapport d'activité 2008, http://www.eaufrance.fr/IMG/pdf/policeau_rapport2008.pdf

[69] Ordonnance n° 2012-34 du 11 janvier 2012 portant simplification, réforme et harmonisation des dispositions de police administrative et de police judiciaire du code de l'environnement.

6 Conclusion

The administrative complaint-handling system is not very formalised and not very developed, which can be partly explained because administrative justice is accessible, free and the complainant does not need to be represented by a lawyer.

The network of administrative authorities responsible for receiving complaints from citizens and taking actions is fragmented and complex. Therefore it might be difficult for citizens willing to report breaches of environmental law to identify the competent authority. Only complaints pertaining to 'classified' industrial installations (covering IPPC installations) seem to be strictly framed and closely followed-up. In general, citizens will refer to Communes or to *Préfectures*.

As for the Ombudsman', complaints seem to relate more to financial issues between consumers and environmental service providers than to actual infringements of environmental law. Mediation in the environmental area is not well developed and issues often end up in Courts even though long procedures are not always compatible with fast remediation and reparation of damages, essential in the environmental sector.

Penal transaction provides an interesting alternative for minor breaches of environmental law.

Accessibility

The administrative complaint-handling system is easily accessible by citizens and NGOs, since it is free and in most cases, a simple letter can be sent to the relevant authority. However, it can be difficult for citizens to identify the competent authority, since in many cases, competences are shared among different actors.

Citizens can also easily seize the Ombudsman, based on an extensive network of territorial delegates. Associations conducting mediation are easily accessible with information available online.

Transparency

The Law of 12 April 2000 introduced more transparency into the relationship between the administration and citizens, in particular by obliging the administration to communicate the contact details of the person in charge of handling the complaint.

However, information on how to complain is not always easy to find on competent authorities' websites and the quality and quantity of information available is highly variable. In general there is no identifiable webpage explaining how to lodge a complaint; with the exception of

the system set up for classified installations. However the latter does not seem to be well-known among the administration Members. Apparently there have not been any awareness campaigns made on this subject.

The procedure to complain to the *Défenseur des droits* is transparent and detailed on its website. However, the *Médiateur de l'eau* specialised in water public services suffers from a lack of visibility and envision therefore setting up a system of online complaints.

Information regarding informal mediation conducted by public authorities is not available.

Simplicity

The mechanism to submit complaints to administrative authorities is simple since most of the time a mere registered letter is sufficient. In some cases, authorities are even contacted by means of simple phone calls describing the breach of environmental law observed.

However, it appears less easy to identify the relevant authority due to the diversity of levels of administrations and specific agencies. However, article 20 of the law of 12 April 2000 specifies that if the administrative authority receiving a letter is incompetent, she must transfer the complaint to the relevant authority. In addition, a law simplifying the administrative organisation was recently adopted.

Addressing a complaint to the Ombudsman is quite simple. The complainants must send to the Ombudsman the documents and evidences supporting his case, or bring these documents directly to the authority.

Confidentiality

There are no general obligations regarding confidentiality except in the case of industrial installations where the form leaves open the possibility to submit an anonymous complaint. Even though the right to opt for confidentiality is not explicitly stated for other types of environmental complaints, complainants are entitled to submit an anonymous complaint or to explicitly request confidentiality.

As for *the Défenseur des droits*, the observations made and declarations gathered during the procedure cannot be made public or used subsequently in civil or administrative legal procedures without the consent of the persons involved, except in specific situations.

Fairness

The French legal system does not refer to the principle of fairness (in the sense of equity). However, the national authorities are under the obligation to apply strictly the law and to remain neutral and objective, ensuring fairness.

On the contrary, the Ombudsman issues opinions/recommendations which are based on the principle of fairness and ensures that a compromise is found between the parties.

Independence

The administrative authorities involved in the process of complaint-handling apply strictly legal requirements but are not independent *vis à vis* the State. If a complainant disagrees with an administrative decision, he/she can appeal the decision before the administration hierarchically above, or go to the administrative Court. The power of taking administrative decision is not concentrated in the hands of a single person/office, which safeguards the independence of the complaint-handling system.

The *Défenseur des droits* has a status of independent administrative authority and exercises its function independently from the State. It guarantees, in principle, the independence of its decisions.

Comprehensiveness

The complex network of public bodies in charge of ensuring that environmental law is applied ensures that all the areas of environment are adequately protected.

The Ombudsmen can theoretically deal with environmental complaints but it does not occur in practice. Information regarding mediation conducted by State administration is not available; it is therefore not possible to evaluate the scope of this mechanism. In general, mediation in the environmental area seems to be underdeveloped.

Flexibility

As it has not yet been standardised, the complaint-handling system appears to be somewhat flexible i.e. complainants can address letters to the authorities about different types of environmental complaints. If the authority is not competent, the complaint will in principle be transmitted to the competent authority.

Flexibility is provided by the existing mediation mechanisms which seek fair solutions acceptable by all the parties, but it does not seem to apply to the environmental sector, in general.

The mechanism of penal transaction provides a flexible and fast solution adapted to environmental cases which require fast reparation rather than long judicial processes.

Effectiveness

According to the authorities, the effectiveness of the system of complaint-handling is not assessed by the administration except in rare cases (IPPC). Therefore it is difficult to have a clear view of the effectiveness of the system. The Law of 12 April 2000 and subsequent general initiatives (such as a Charter aiming at improving the quality of State services70), aim at ensuring –among others- that requests addressed to the administration are dealt in an effective and timely manner. However, these provisions are quite general and do not specifically target environmental complaints.

The mediation system framed by the Ombudsman seems effective since the number of complaints addressed is increasing, but does not seem to be used in the environmental sector.

Mechanisms to address multiple complaints

Article 2 of the Law of 12 April 2000 provides that the administration is not obliged to treat abusive requests (i.e. numerous or repetitive). According to article 20 of this Law, the authority is not obliged to provide acknowledgement of receipt when such abusive requests are submitted. However, in practice, due to the need of administration members to remain neutral and objective, they might be reluctant to qualify a request of abusive and to avoid replying, except in obvious cases.

70 Marianne Charter (*Charte Marianne*) adopted in 2005, http://www.service-public.fr/gazette/2008/novembre-2008/001014.html

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Association of Mediation in Environment, Health and Consumption (*Organisme de Médiation en Environnement Santé et Consommation)*, Laurent Vassalo

Legal Department of LPO (*Ligue pour la protection des oiseaux*)

IV. GERMANY

1 Institutional, administrative and legal context

1.1 Legislative competencies in Germany

The Federal Republic of Germany as a federal state consists of two state levels: the Federation and 16 Federal states (*Länder*: Baden-Württemberg, Bavaria, Berlin, Brandenburg, Bremen, Hamburg, Hesse, Mecklenburg-West Pomerania, Saarland, Lower Saxony, North Rhine-Westphalia, Rhineland-Palatinate, Saxony, Saxony-Anhalt, Schleswig-Holstein, Berlin, and Thuringia). The Federation and the *Länder* both have legislative competencies. Federal laws apply for the whole territory of the Republic, whereas *Länder* can only adopt legislation for their territories. The allocation of legislative competencies is prescribed in the German constitution, which is known as Basic Law (*Grundgesetz*).

As to the division of legislative competencies, the following principle applies: As a general rule, the *Länder* have the power to adopt legislation for their territories. As an exception to that, Articles 70 et. seqq. of the Basic Law enumerate the legislative powers that are given to the Federation. The latter has an exclusive legislative power (*ausschließliche Zuständigkeit*) in certain fields (such as foreign policy, defense, citizenship, currency etc), which means that *Länder* are excluded from the legislative in these fields. In other fields, the Federation has a so called concurrent legislative power (*konkurrierende Zuständigkeit*), i.e. the *Länder* have the power to adopt legislation provided and in so far as the Federation makes no use of its legislative powers in the same field. As a result, the Federation is able to assume the legislative power in these fields to regulate matters uniformly for the whole Republic. These fields include *inter alia* civil law, criminal law, the prison system, road traffic, the law of association and assembly, the law relating to the residence and establishment of foreign nationals, business law. In any fields not listed in Articles 70 et. seqq. Basic Law, the *Länder* have the power to regulate matters.

With regard to legislative competencies, environmental law is not a clear defined field of law. It is of cross-cutting/sectoral nature. Therefore, there is no clear jurisdictional power for environmental legislation set out by the German Basic Law. Environmental legislation is based on several individual competencies (such as on soil protection, waste disposal, air pollution, nature conservation, water resource management, economic matters, nuclear energy). Nevertheless, these fields are subject to concurrent legislative power. Therefore,

most environmental legislation is adopted at national level. *Länder* acts generally only complete the national laws, especially to determine the responsible authorities.

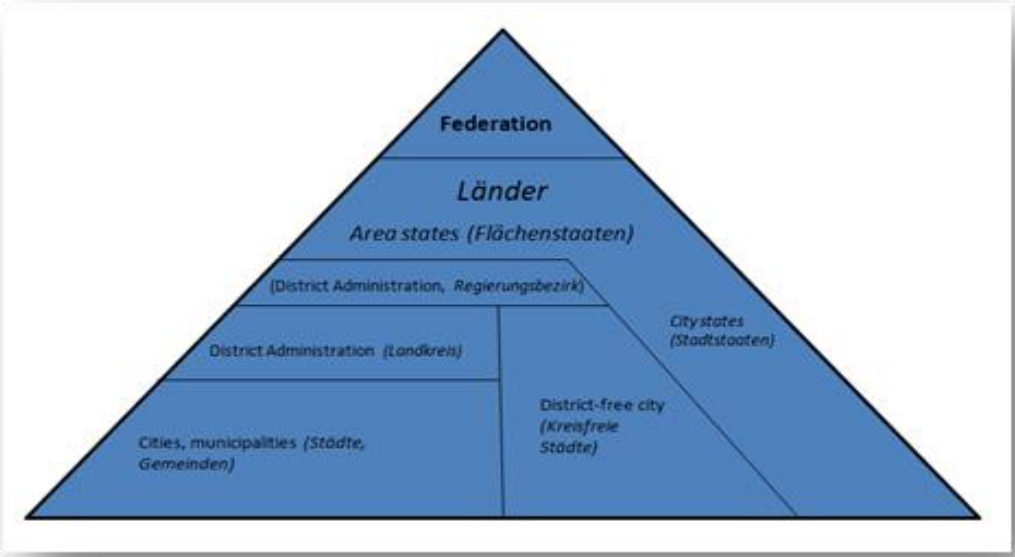
The federal structures have been reformed comprehensively in 2006 (*Förderalismusreform*). Competencies were reallocated to make the legislative process more effective. More fields of law were shifted to the concurrent legislative powers which allows for more legislation to be adopted at national level, including all fields of environmental law.

The responsibilities to implement EU (environmental) legislation follow the same rules, i.e. Article 70 et. seqq. Basic Law. Thus, most EU environmental legislation is implemented at national level. The 2006 revision of the Basic Law (including the transfer of the environmental competencies into concurrent legislative power) generally streamlines the transposition of EU environmental directives into German law (OECD 2012).

1.2 Executive competencies in Germany

As to the execution of the legislation, the clear focus of the competencies rests with the *Länder*. The Basic Law states in Article 30: "*Except as otherwise provided or permitted by this Basic Law, the exercise of state powers and the discharge of state functions is a matter for the Länder*." Details are laid down in Articles 83 et. seqq. Basic Law. As a general rule, the *Länder* execute both federal (in their own right or on federal commission) and *Länder* legislation. Again, the execution of EU legislation follows the same rules. Thus, the majority of EU environmental legislation is executed by the authorities of the *Länder*. This leads to different administrative rules and practices throughout the Federal Republic, including complaint-handling. The organisation of the administration varies between the *Länder*. In most cases, they have a three-tiered structure (ministry and higher state authorities, administrative districts regions/cities). Regions and cities enforce parts of the *Länder* legislation, but also have own governmental rights for their territory (*Recht auf kommunale Selbstverwaltung*).

Graphic: Administrative structure of Germany



Source: http://de.wikipedia.org/wiki/Datei:Administrative_Gliederung_Deutschlands.png

Thus, the enforcement of environmental law rests with different administrative units in Germany. General rules on any kind of administrative procedures are laid down in the Administrative Procedures Act (*Bundesverwaltungsverfahrensgesetz*, VwVfG[71]). The competent authorities are determined by the *Länder*.

For the scope of this study, it was not possible to illustrate complaint-handling mechanisms as carried out by all *Länder*/municipal authorities, but only for two *Länder*, Lower Saxony and Brandenburg.

In Lower Saxony, the Business Regulation Authority (*Niedersächsiche Gewerbeaufsicht*) with its ten departments (*Staatliche Gewerbeaufsichtsämter*) under the Lower Saxonian Ministry for Environment, Energy and Climate Protection (*Niedersächsisches Ministerium für Umwelt, Energy und Klimaschutz*) is in charge of handling environmental complaints.

In Brandenburg, environmental complaint-handling lays in the responsibility of the State Office for Environment, Health and Consumer Protection (*Landesamt für Umwelt, Gesundheit und Verbraucherschutz* LUGV) under the Ministry for Environment, Health and Consumer Protection (*Ministerium für Umwelt, Gesundheit und Verbraucherschutz* MUGV).

[71] *Verwaltungsverfahrensgesetz in der Fassung der Bekanntmachung vom 23. Januar 2003 (BGBl. I S. 102), das zuletzt durch Artikel 2 Absatz 1 des Gesetzes vom 14. August 2009 (BGBl. I S. 2827) geändert worden ist*

The State Office for Environment, Health and Consumer Protection is in charge of implementing EU environmental law such Natura 2000 and Water Framework Directive as well as approval procedures and supervision of plants. The State Office for Environment, Health and Consumer Protection itself consists of nine different departments, both regional and thematical.[72]

For this study, representatives of Business Regulation Authority of Lower Saxony and the Brandenburg State Office for Environment, Health and Consumer Protection were interviewed. They described how environmental complaint-handling is carried out in these *Länder*. Similar, but still different procedures are expected to exist in the other 14 *Länder*.

1.3 Main governing acts relating to environmental law

The cross-sectoral character of the German environmental law brings the effect that environmental rules can be found everywhere in the German legal order – public and administrative law, civil law and criminal law. There is no single legal environmental act, but a number of different ones. The most important acts in the field of environment are:

- Federal Water Act (*Wasserhaushaltsgesetz*[73]),
- Closed Substance Cycle Waste Management Act (*Kreislaufwirtschaftsgesetz*[74]),
- Federal Nature Conservation Act (*Bundesnaturschutzgesetz*)[75],
- Federal Immission Control Act (*Bundesimmissionsschutzgesetz*)[76],
- Renewable Energy Sources Act *(Erneuerbare-Energien-Gesetz*)[77],
- Federal Soil Protection Act (*Bundesbodenschutzgesetz*)[78].

[7272] See for organizational charts in English: http://www.mugv.brandenburg.de/cms/media.php/lbm1.a.2334.de/lugv_en.pdf.

[73] *Wasserhaushaltsgesetz vom 31. Juli 2009 (BGBl. I S. 2585), das zuletzt durch Artikel 5 Absatz 9 des Gesetzes vom 24. Februar 2012 (BGBl. I S. 212) geändert worden ist.*

[74] *Kreislaufwirtschaftsgesetz vom 24. Februar 2012 (BGBl. I S. 212).*

[75] *Bundesnaturschutzgesetz vom 29. Juli 2009 (BGBl. I S. 2542), das zuletzt durch Artikel 5 des Gesetzes vom 6.Februar 2012 (BGBl. I S. 148) geändert worden ist.* For English translation of the Act see http://www.bmu.de/english/nature/downloads/doc/46170.php.

[76] *Bundes-Immissionsschutzgesetz in der Fassung der Bekanntmachung vom 26. September 2002 (BGBl. I S.3830), das zuletzt durch Artikel 2 des Gesetzes vom 27. Juni 2012 (BGBl. I S. 1421) geändert worden ist.*

[77] *Erneuerbare-Energien-Gesetz vom 25. Oktober 2008 (BGBl. I S. 2074), das zuletzt durch Artikel 2 Absatz 69 des Gesetzes vom 22. Dezember 2011 (BGBl. I S. 3044) geändert worden ist.*

Other important acts with relevance for this assessment are:

- Environmental Impact Assessment Act (*Umweltverträglichkeitsprüfungsgesetz*)[79],
- Public Participation Act (*Öffentlichkeitsbeteiligungsgesetz*)[80],
- Environmental Appeal Act (*Umweltrechtsbehelfsgesetz*) [81],
- Environmental Damage Act (*Umweltschadensgesetz*)[82].

Moreover, rules with relevance to the environment are integrated in a number of acts in other fields of law, such as building law, transport law, agricultural and forestry law.

A great part of German environmental legislation implements EU environmental legislation. It is difficult to separate individual rules from the entire framework. In none of the complaint-handling mechanisms assessed for this study, such as distinction is made. Thus, if the study refers to environmental law, EU environmental legislation is included.

2 Scope, hierarchy and coordination of complaint-handling procedures

2.1 Description of main actors

The Federal Environment Ministry is at the top of the executive branch of the Federation. The Federal Environment Agency (*Umweltbundesamt*), the Federal Agency for Nature Conservation (*Bundesamt für Naturschutz*) and the Federal Office for Radiation Protection (*Bundesamt für Strahlenschutz*) are its subordinated authorities.

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[78] *Bundes-Bodenschutzgesetz vom 17. März 1998 (BGBl. I S. 502), das zuletzt durch Artikel 5 Absatz 30 des Gesetzes vom 24. Februar 2012 (BGBl. I S. 212) geändert worden ist.*

[79] *Gesetz über die Umweltverträglichkeitsprüfung in der Fassung der Bekanntmachung vom 24. Februar 2010 (BGBl. I S. 94), das zuletzt durch Artikel 5 Absatz 15 des Gesetzes vom 24. Februar 2012 (BGBl. I S. 212) geändert worden ist.*

[80] *Gesetz über die Öffentlichkeitsbeteiligung in Umweltangelegenheiten nach der EG-Richtlinie 2003/35/EG vom 9. Dezember 2006 (BGBl. I S. 2819).*

[81] *Umwelt-Rechtsbehelfsgesetz vom 7. Dezember 2006 (BGBl. I S. 2816), das zuletzt durch Artikel 5 Absatz 32 des Gesetzes vom 24. Februar 2012 (BGBl. I S. 212) geändert worden ist.*

[82] *Umweltschadensgesetz vom 10. Mai 2007 (BGBl. I S. 666), das zuletzt durch Artikel 5 Absatz 33 des Gesetzes vom 24. Februar 2012 (BGBl. I S. 212) geändert worden ist.* For English translation of the act see http://www.bmu.de/english/economy_products/doc/39621.php.

However, as explained above, the *Länder* authorities are the most relevant actors in the field of environmental complaint-handling. The environment authorities of the *Länder* as well as the regions/municipalities are in charge of the (proper) enforcement of environmental legislation, both Federal and *Länder* legislation (including EU environmental legislation). This includes the handling of any environmental complaints (including those handed in during administrative objection and public participation procedures). They are also addressees in administrative objection procedures.

Another important actor in the field of complaint-handling is the petition committee of the German Bundestag. Besides, there are petition committees in the *Länder* parliaments. Ombudsmen are established at *Länder* level as well (i.e. Mecklenburg-West Pomerania[83], Schleswig-Holstein[84], Thuringia[85], Bremen[86] and Rhineland-Palatinate[87] and at regional/municipal level[88]).

2.2 Overview of main complaint-handling mechanisms

In Germany, there is neither a centralized environmental complaint-handling body responsible for the handling and resolution of complaints relating to breaches of (EU) environmental law nor a centralized environmental complaint-handling mechanism. However, there are a number of general-complaint-handling mechanisms, which can be initiated if environmental matters are concerned.

First of all, it is generally possible to hand in any kinds of **complaints (or submissions, notifications, criminal charges)** (*Eingaben/Strafanzeigen*) to public authorities on cases of illegality or non-compliance of (EU) environmental law. It is their duty to act on these cases in their capacity as enforcement authorities.

Moreover, there are specific complaint-handling mechanisms, most of them being part of an administrative proceeding. These mechanisms are:

[83] http://www.buergerbeauftragter-mv.de/.

[84] http://www.landtag.rlp.de/Parlament/Buergerbeauftragter/.

[85] http://www.thueringen.de/de/bueb/bericht/2011/.

[86] http://www.bremen.de/buergerservice/buergerbeauftragte/.

[87] http://www.landtag.rlp.de/Parlament/Buergerbeauftragter/.

[88] See for example http://www.mannheim.de/stadt-gestalten/buergerbeauftragte.

- **Administrative objection procedure** in the context of administrative approval and planning procedures (*Widerspruchsverfahren*);
- **Public participation in administrative approval procedures** (*Öffentlichkeitsbeteiligungsverfahren*);
- **Non-formal remedies** (*Rechtsaufsicht, Fachaufsicht, Gegenvorstellung*);
- **Petition committees in the German parliaments** (at the *Bundestag* at the national level, at the *Länder* parliaments at the *Länder* level);
- **Ombudsman** (*Bürgerbeauftragte*).

Beside these complaint-handling mechanisms, citizens have the opportunity to seek support by bringing suits in administrative courts (access to justice). This includes cases in which public authorities are accused of having violated the rights of the plaintiff by taking a certain decision, by not acting or by omitting to take measures against third parties who violate environmental rules (Bundesregierung 2008). The assessment of access to justice does not fall under the scope of this study, however, any overlaps with complaints-mechanisms will be described.[89]

To complete the picture, it must be mentioned that it is also possible to use civil law to enforce compliance with the environmental provisions. Suits in civil courts to claim suspensory or prohibitory action or compensation for damages are admissibly, if legal rights of third parties on absolute protections are violated, including violations of environmental provisions (Bundesregierung 2008). Again, the assessment of these mechanisms is not covered by the scope of the study.

2.3 Relationship between mechanisms, hierarchy and coordination

Generally, there are no interdependencies between the different complaint mechanisms. However, there are a few rules that need to be considered:

- It is generally advisable to lodge the first complaint at the lowest administrative level possible. Otherwise, there could be delays, as the complaint would most likely be

[89] For an overview, see information in English at the webpage of the German Administrative Court: http://www.bundesverwaltungsgericht.de/enid/weitere_Informationen/Information_and_Decisions__EN__g0.html.

handed to the lowest competent level internally. Only if all remedies at the lowest level are exhausted, higher administrative level should be approached.

- Moreover, if applicable, formal complaint-handling procedures (administrative objection procedure, public participation) should be handed in at first in order to meet their deadlines. If there is no formal remedy available, the complainant should notify the competent authority (including the police) of the activity which it aims to be dealt with. If this all fails, the claimant, as a last resort, should approach the Ombudsman (at the *Länder* level) or the petition committees for help.
- The administrative objection proceeding needs to be exhausted for the admissibility of a court suit if this is aimed to be filed.

2.4 Application to scenarios

2.4.1 Is there a mechanism/are there mechanisms for alleged illegality or non-compliance of a private person/ company?

In case of alleged illegality or non-compliance of a private person/company, the individual or NGO concerned can submit a general complaint to the competent authority in order to inform it about the grievance. The competent authority has to be identified by the complainant in the individual case. Otherwise the complaint is forwarded internally to the competent authority.

In the case of operation of a clandestine/non-authorised business for end-of-life-vehicles and disposal of waste, the competent authority in Brandenburg is the State Office for Environment, Health and Consumer Protection. If non-hazardous waste is concerned, the regional authority is responsible for the complaint. This would need to be contacted by the competitor for submission of a complaint. Since the complaint concerns a specific installation, the information would be inserted in an installation register (*Anlageninformationsregister*, see below). The official staff that is in charge of this installation would then deal with the case. If the grievance is linked to certain administrative decisions (e.g. the operation of an industrial facility was approved though the activity causes air pollution higher than the admissible threshold), the claimant should – as long as he can proof standing – initiate an administrative objections proceeding.

In Lower Saxony it is the State Office for Environment that is responsible for the supervision of the disposal of end-of-life-vehicles and therefore should be notified in the case 1 scenario. Also in Bavaria it is the State Office for Environment that controls the disposal of end-of-life-vehicles. In other federal states, for example in Hesse, the regional boards

(*Regierungspräsidien*) are the competent authorities that deal with the illegal operation of a business for end-of-life-vehicles, initiate the orderly disposal and call in the department of public prosecution if necessary.[90]

If a facility with an IPPC-license (see Directive 2008/1/EC of 15 January 2008 - IPPC-Directive) is in breach of one of its permits conditions a private person has to send the complaint to the authority that is competent for monitoring such facilities. In Brandenburg this would be the State Office for Environment, Health and Consumer Protection (*Landesamt für Umwelt, Gesundheit und Verbraucherschutz*).[91] In Lower Saxony the administrative districts (*Landkreise*), the municipalities not associated with a county (*kreisfreie Städte*) and the big autonomous cities (*große selbstständige Städte*) are competent for monitoring such facilities and making the necessary dispositions.[92]

In case an industrial company which has an eco-label (see Regulation 66/2010/EC of 25 November 2009) is claimed to be not respecting the criteria the complaint can be addressed to the Ecolabel Helpdesk in Paris, France. A "Non-compliance with EU Ecolabel criteria complaint form" is provided on the ecolabel website.[93] The complainant also could notify the competent bodies in Germany which are the Federal Environmental Agency (*Umweltbundesamt*) and the RAL gGmbH, a nonprofit company that is entrusted with the awarding of the ecolabel.[94]

For the case of illegal discharge of pollutants to a river (see Water Framework Directive 2000/60/EC) from a small commercial company (that does not fall under the IPPC-Directive) the authority competent for the protection of water should be informed. In Brandenburg[95] and

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[90] See for example: http://www.rp-giessen.hessen.de/irj/RPGIE_Internet?cid=9307fc5ecdba46b8fbf091c6d7c00c30 (20/09/2012).

[91] See Section 1 of the Immissionsschutzzuständigkeitsverordnung Brandenburg (http://www.bravors.brandenburg.de/sixcms/detail.php?gsid=land_bb_bravors_01.c.46517.de (20/09/2012)).

[92] See No. 8.1 of the annex of the Zuständigkeitsverordnung Umwelt-/Arbeitsschutz Niedersachsen (http://www.nds-voris.de/jportal/portal/t/12fu/page/bsvorisprod.psml/action/portlets.jw.MainAction?p1=5&eventSubmit_doNavigate=searchInSubtreeTOC&showdoccase=1&doc.hl=0&doc.id=jlr-Umw_ArbSchZustVND2009pAnlage&doc.part=G&toc.poskey=#focuspoint (20/09/2012)).

[93] http://ec.europa.eu/environment/ecolabel/non-compliance.html (20/09/2012).

[94] http://www.eu-ecolabel.de/ (20/09/2012).

[95] See Sections 124, 126 of the Brandenburgisches Wassergesetz (http://www.bravors.brandenburg.de/sixcms/detail.php?gsid=land_bb_bravors_01.c.46539.de#126 (20/09/2012).

Lower Saxony[96] the administrative districts (*Landkreise*) and the municipalities not associated with a county (*kreisfreie Städte*) and in Lower Saxony also the big autonomous cities (*große selbstständige Städte*) are responsible for the protection of water and in this regard for hazard control. In other federal states, for example in Mecklenburg-West Pomerania, the mayors and the district administrators (*Landräte*) are responsible for dealing with complaints about water pollution.[97]

In the case of illegal activity in a coastal area the local authority responsible for coastal protection should be notified. In Lower Saxony this are the administrative districts (*Landkreise*), the municipalities not associated with a county (*kreisfreie Städte*) and the big autonomous cities (*große selbstständige Städte*).[98] In Schleswig-Holstein, the district administrators (*Landräte*) and the mayors are the competent authority.[99] In Mecklenburg-West Pomerania the National Offices for Agriculture and Environment (*Staatliche Ämter für Landwirtschaft und Umwelt*) are to be notified.[100]

If illegal timber that is on the CITES list (see Annex in Regulation 338/97/EC) has been imported to Germany the Federal Office for Nature Conservation (*Bundesamt für Naturschutz*) as the competent authority for chasing illegal imports and exports has to be notified.[101]

For the case of wide-spread illegal trapping/hunting of wild birds protected under the Birds Directive (see Directive 2009/147/EC of 30 November 2009) the complaint has to be directed

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96 See Sections 127, 129 of the Niedersächsische Wassergesetz (http://www.nds-voris.de/jportal/portal/t/13hq/page/bsvorisprod.psml/action/portlets.jw.MainAction?p1=45&eventSubmit_doNavigate=searchInSubtreeTOC&showdoccase=1&doc.hl=0&doc.id=jlr-WasGND2010pP129&doc.part=S&toc.poskey=#focuspoint (20/09/2012).

97 See Section 107 of the Wassergesetz Mecklenburg-Vorpommern (http://mv.juris.de/mv/gesamt/WasG_MV.htm (20/09/2012)).

98 See Sections 127, 129 of the Niedersächsische Wassergesetz (http://www.nds-voris.de/jportal/portal/t/13hq/page/bsvorisprod.psml/action/portlets.jw.MainAction?p1=45&eventSubmit_doNavigate=searchInSubtreeTOC&showdoccase=1&doc.hl=0&doc.id=jlr-WasGND2010pP129&doc.part=S&toc.poskey=#focuspoint (20/09/2012).

99 See Sections 105, 107 Wassergesetz Schleswig-Holstein (http://www.gesetze-rechtsprechung.sh.juris.de/jportal/portal/t/vvx/page/bsshoprod.psml/action/portlets.jw.MainAction?p1=3y&eventSubmit_doNavigate=searchInSubtreeTOC&showdoccase=1&doc.hl=0&doc.id=jlr-WasGSH2008pG26&doc.part=G&toc.poskey=#focuspoint (20/09/2012)).

100 See Section 107 para. 7 No. 2 of the Wassergesetz Mecklenburg-Vorpommern (http://mv.juris.de/mv/gesamt/WasG_MV.htm (20/09/2012)).

101 See http://www.nlwkn.niedersachsen.de/portal/live.php?navigation_id=7930&article_id=45553&_psmand=26 (20/09/2012), link "Zuständige Behörden in Deutschland".

to the nature protection authority of the respective district. In Brandenburg[102] and Lower Saxony[103] the administrative districts (*Landkreise*) and the municipalities not associated with a county (*kreisfreie Städte*) are responsible for nature protection. Also in Thuringia, the administrative districts (*Landkreise*) and the municipalities not associated with a county (*kreisfreie Städte*) form the lower authorities for nature protection.[104] In Saarland, on the other hand, the State office for Environmental and Employment Protection (*Landesamt für Umwelt- und Arbeitsschutz*) would have to be notified.[105] No specific conditions have to be met.

2.4.2 Is there a mechanism/are there mechanisms for alleged illegality or non-compliance of a public body/utility in relation to providing an environmental service?

At first, the claimant should – as in the first category -, notify the higher authorities of the alleged illegality or non-compliance by the public body/utility. In Brandenburg, this would again be the. If this fails, the claimant should seek support from the competent petition committee.

In case a municipality fails to treat properly its urban waste water load (for example treatment plants are under capacity) in compliance with Directive 91/271/EEC of May 1991 concerning urban waste-water treatment in Brandenburg the State Office for Environment, Health and Consumer Protection, water or waste department as the superior authority should be notified by the claimant. In Lower Saxony the complaint should also be directed to the higher authority, i.e. the Ministry for Environment, Energy and Climate Protection that – with regard to sewage disposal – is supported by the State Office for Water Management, Coast and

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[102] See Sections 52, 54 of the Brandenburgische Naturschutzgesetz (http://www.bravors.brandenburg.de/sixcms/detail.php?gsid=land_bb_bravors_01.c.47293.de#52 (20/09/2012)).

[103] Sections 54, 55 of the Niedersächsische Naturschutzgesetz (http://www.schure.de/2810001/nnatg3.htm (20/09/2012)).

[104] See Section 36 of the Thüringer Naturschutzgesetz (http://www.bundesrecht24.de/cgi-bin/lexsoft/bundesrecht24.cgi?t=13481334426903565 9&sessionID=12730404411555325511&source=link&highlighting=off&xid=172010,41 (20/09/2012)).

[105] See Section 47 of the Saarländische Naturschutzgesetz (http://www.sadaba.de/GSLT_SNG.html (20/09/2012)).

Nature Protection (*Niedersächsische Landesbetrieb für Wasserwirtschaft, Küsten- und Naturschutz (NLWKN)*).[106]

If a private water utility is providing drinking water (see Directive 98/83/EC of 3 November 1998) to a 2000 people town and due to a lack of disinfection of the water source the drinking water contains E. coli, the complaint should be addressed to the responsible local health authority.[107] In Brandenburg[108] and Lower Saxony this would be the local health authorities of the administrative districts (Landkreise) and the municipalities not associated with a county (*kreisfreie Städte)*.

In case a municipality is operating a landfill (see Directive 99/31/EC of 26 April 1999) on behalf of a town and is claimed to have serious order problems, the highest waste management authority should be notified. In Brandenburg this is the State Office for Environment, Health and Consumer Protection,[109] in Lower Saxony it is the Ministry for Environment, Energy and Climate Protection.[110]

2.4.3 Is there a mechanism/are there mechanisms for alleged failure of a public body to respect procedural requirements or some other required administrative standards?

Under the third category, the complainant must express his objections during the relevant administrative planning/approval procedures. Public participation is explicitly provided in Environment Impact Assessment procedures. If, though citizens (if directly concern by the project in question, such as neighbours) and NGOs expressed their concerns during the Public Participation procedure, the activity in question was approved by the competent authority, they would have to file a suit in the competent administrative court against this approval decision.

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106 See http://www.umwelt.niedersachsen.de/portal/live.php?navigation_id=2307&article_id=9006&_psmand=10 (20/09/2012).

107 See Section 9 of the Trinkwasserverordnung (http://www.gesetze-im-internet.de/bundesrecht/trinkwv_2001/gesamt.pdf (20/09/2012)).

108 See http://www.luis.brandenburg.de/service/adressen/S7100011/ (20/09/2012).

109 See Section 42 of the Brandenburgisches Abfall- und Bodenschutzgesetz (http://www.bravors.brandenburg.de/sixcms/detail.php?gsid=land_bb_bravors_01.c.47202.de#42 (20/09/2012)).

110 Section 41 of the Niedersächsische Abfallgesetz (http://www.recht-niedersachsen.de/2840001/nabfg.htm (20/09/2012)).

An EIA, for example, has to be executed prior to the enactment of a landscape framework plan (*Landschaftsrahmenplan*). In Brandenburg[111] and in Lower Saxony[112] the administrative districts (*Landkreise*) and the municipalities not associated with a county (*kreisfreie Städte*) are responsible for the landscape framework plans and in this regard for the EIA. Citizens and NGOs first would have to express their concerns during the public display of the draft landscape framework plan and then – in case the project is approved – they can file a suit.

If the competent authority responsible for screening impacts is claimed to have approved an environmentally relevant project without an EIA or a screening (see EIA Directive), only a person who is directly affected by the project can file a suit. Because of the procedural character of the EIA, the German courts do not grant a general right to the enforcement of an EIA.

If an authority responsible for a protected Natura 2000-site is allowing small-scale housing on this site without any appropriate consideration of the respective individual and/or cumulative effects (see Art. 6.3 Directive 92/43/EEC of 21 May 1992 – Habitats Directive) the private person/NGO first should contact the building authority, which for example in Brandenburg[113] and Lower Saxony[114] are the administrative districts (*Landkreise*), the municipalities not associated with a county (*kreisfreie Städte*) and the municipalities (*Gemeinden*). According to Article 63 paragraph 2 Nature Conservation Act, recognized NGOs have to be involved "*prior to granting of exemptions from requirements and prohibitions for protection of areas within the meaning of Article 32 (2), Natura 2000 sites, nature conservation areas, national parks, national nature monuments and biosphere reserves, even if such areas are included or replaced by a different decision".* If they had no opportunity to express their concerns, they can appeal against the decision (Article 64 Nature Conservation Act). This is not possible for individual citizens.

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[111] See Section 6 of the Brandenburgische Naturschutzgesetz.

[112] See Section 3 of the Niedersächsische Ausführungsgesetz zum Bundesnaturschutzgesetz (http://www.nds-voris.de/jportal/portal/t/1awq/page/bsvorisprod.psml/action/portlets.jw.MainAction?p1=6&eventSubmit_doNavigate=searchInSubtreeTOC&showdoccase=1&doc.hl=0&doc.id=jlr-BNatSchGAGNDpP3&doc.part=S&toc.poskey=#focuspoint (20/09/2012)).

[113] See http://service.brandenburg.de/lis/detail.php?gsid=land_bb_boa_01.c.14049.de (20/09/2012)).

[114] See http://www.ms.niedersachsen.de/portal/live.php?navigation_id=5070&article_id=14170&_psmand=17 (20/09/2012).

3 Characteristics of the complaint-handling systems identified

It is generally possible to hand in environmental complaints to any responsible public authority. Since public authorities are in charge of enforcing (EU) environmental legislation, it is part of their function to handle every complaint. As explained above, the enforcement responsibilities rest mainly with the *Länder* authorities. This division has to be taken into consideration when exploring environmental complaint-handling.

Thus, as an intermediary result, it was not possible to illustrate all features of environmental complaint-handling in Germany. The scope of the study did not allow exploring complaint-handling in all 16 *Länder*. Environmental complaint-handling is exemplified by the cases Lower Saxony and Brandenburg.

3.1 Procedures/procedural guarantees

3.1.1 General

As explained, any citizen can contact the authorities in order to make them intervene in cases of alleged illegality or non-compliance with (EU) environmental law. It is the intended role of administrative bodies/authorities to enforce legal rules. This obligation is also emphasized in the relevant environmental rules themselves. For example, the German Federal Nature Conservation Act (*Bundesnaturschutzgesetz*) prescribes in Article 3 that

> *"(2) Within the scope of their responsibility, Federal and Länder authorities shall support the realisation of the purposes of nature conservation and landscape management."*

This obligation can also be derived from Member States obligation to enforce EU legislation, if this is concerned. Moreover, in case of emergencies/threats authorities have to act on hazard control on the basis of the policy acts of the *Länder (Gefahrenabwehr)*. It is important to note in this context, that German state authorities have a constitutional protection duty – also in environmental matters - if any risks for life and health occur (Murswiek 2009, Art. 2 paras 40, 198). The thematic coverage of this complaint-mechanism is broad and concerns generally all fields of environmental law.

Characteristics of administrative procedures (including complaint-handling) are laid down in the Administrative Procedures Act (*Verwaltungsverfahrensgesetz*).[115] However, this law does only apply to authorities of the Federation. The 16 *Länder* have adopted their own rules for their administrative procedures.[116] These are published in the official gazettes. As to procedural remedies, it is regulated amongst other that in any administrative procedure:

- Anyone has the right to be represented by another person or to consult a legal advisor (Section 14).
- The involved parties are allowed to express their concerns if the responsible authority seems to be biased. The head of the authority has to deal with such accusation and must – if proven true – delegate the case to another person (Section 21).
- If a provision gives discretion to an authority, it can decide on reasonable grounds whether to start an administrative procedure or not (Section 22, discretionary powers principle / *Ermessensentscheidung*) (Ohms 2011, page 336), even if the case fulfils all requirements for a violation of an environmental rule.[117]
- The complainant (or any other citizen in an administrative procedure) can claim information and advice of the official staff (Section 25).
- The parties of an administrative procedure have access to the relevant records (Section 19).

Though the Administrative Procedures Acts of the *Länder* are very similar (partly identical) to the federal Administrative Procedures Act, the actual complaint-handling varies slightly in the different *Länder*. This is because different working processes have been established within the *Länder* authorities. In some cases (such as in Lower Saxony, see below), further rules on administrative procedures (including complaint-handling) were laid down in administrative rules (*Verwaltungsvorschriften*). It must be added that administrative rules have only binding

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[115] *Verwaltungsverfahrensgesetz in der Fassung der Bekanntmachung vom 23. Januar 2003 (BGBl. I S. 102), das zuletzt durch Artikel 2 Absatz 1 des Gesetzes vom 14. August 2009 (BGBl. I S. 2827) geändert worden ist*

[116] In Brandenburg this is *Verwaltungsverfahrensgesetz für das Land Brandenburg*

(VwVfGBbg) Vom 07. Juli 2009 (GVBl.I/09, [Nr. 12], S.262, 264); in Lower Saxony this is *Niedersächsisches Verwaltungsverfahrensgesetz*

(NVwVfG) Vom 3. Dezember 1976, *Nds. GVBl. 1976, 311*.

[117] This approach has been criticised during the interview with the representative of the NGO BUND. He called for a general claim to enforce environmental rules that NGOs and citizens should have. This was lacking in the German administrative and judicial system (Interview, BUND, 2012, May 16).

effect for the authorities internally. They do not create rights and obligations for citizens. However, citizens can invoke administrative provisions, if the authority in questions treats their case differently than other similar cases without reasonable explanation (Principle of Equality under the Law, Article 3 Basic Law for the Federal Republic of Germany).

Administrative rules on complaint-handling for authorities in Lower Saxony can be found in the Administrative Instruction for the Business Regulation Authority (*Dienstanweisung für die Staatlichen Gewerbeaufsichtsämter in Niedersachsen).*[118] It is published in the Lower Saxonian gazette and determines *inter alia* that

- the Business Regulation Authority shall aim – through approval and supervision – to secure activities in conformity with the law, including environmental rules,
- the staff shall deal with complaints immediately and shall arrange appropriate measures if the accusation proofs true,
- the source of the complaint shall not be disclosed,
- the staff shall meet minimum standards (so called *Kennzahlen*) that have been agreed in the context of a regular quality management,
- that complaints shall be treated as priorities and shall be dealt before other issues,
- that inspections have to be carried out.

As to complaint-handling by the State Office for Environment, Health and Consumer Protection (*Landesamt für Umwelt, Gesundheit und Verbraucherschutz* LUGV) in Brandenburg, no such internal administrative regulations exist.

Administrative regulations do also exist on the federal level. The Joint Rules of Procedure of the Federal Ministries (*Gemeinsame Geschäftsordnung der Bundesministerien*) contain *inter alia* provisions on complaint-handling. They are published in the internet. They determine that:

- Complaints are to be dealt with as soon and as simple as possible. If the procedure takes longer than one month, the complainant has to receive an interim notification.
- In case of a complaint concerning an administrative action, the superior person has to be informed.

[118] Of 9th July 2009, *Nds. MBL. Nr. 25/2009*.

- Moreover, the format of the answer to the complaint is set out (oral in simple cases, written in more complex cases).

However, since environmental complaints are mainly handled by *Länder* authorities, these joint rules are of minor importance for this analysis.[119]

3.1.2. Format

As to the cases that have been assessed (Lower Saxony, Brandenburg, federal ministries), no special format for complaints is required. They can be submitted orally or in writing.

3.1.3. Internal handling of complaints

In Lower Saxony and Brandenburg, the internal system of complaint-handling resembles, but is slightly different. In Lower Saxony, any official staff from the Business Regulation Authority takes up the complaint. Data on complaints that cannot be handled immediately and that concern a certain commerce/industry installation are added to a register for all such installations/businesses (*Betriebsregister*). The register contains a special tool for complaints. The official staff uses a special questionnaire for complaints to receive all information from the complainant. He then forwards the complaint to the person responsible for the installations/businesses in question. However, as explained, not all complaints are added, only those of a certain importance. Therefore, the data are not representative. Moreover, the register is not public.

In Brandenburg, in each department of the State Office for Environment, Health and Consumer Protection, there is one person responsible for receiving complaints, sending an acknowledgment of receive, allocating a registration number to the complaint, adding information to a similar register (*Anlageninformationssystem*) and forwarding complaints to the person in charge of the installation in questions.

3.1.4. Information

In both cases, Lower Saxony and Brandenburg, it is possible to find information on the responsible authority for handling environmental complaints at the relevant website.[120] However, during interviews with representatives of both authorities, need/room for improvement was identified. It was stated that access to complaint-handling mechanisms

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[119] We were referred to the enforcement authorities at *Länder* level in the interview with representatives of the Federal Environment Ministry.

[120] Lower Saxony: http://www.gewerbeaufsicht.niedersachsen.de/portal/live.php?navigation_id=11325&article_id=52142&_psmand=37; Brandenburg: http://www.mugv.brandenburg.de/cms/detail.php/bb2.c.514992.de.

and efficient handling of complaints would be improved, if a special internet-based input format was provided. The *Land* Berlin for instance provides these input formats, such as special input formats for complaints on noise.[121]

In Lower Saxony, a working group was established to discuss this and other issues on complaint-handling (*AG Beschwerden*). It consists of all heads of the departments of the Business Regulation Authority. Recently in the beginning of 2012 they decided to adapt the web presence of the authority in order to allow a better access to existing complaint-handling mechanisms. It was agreed that the complainant should be able to access it via "service/complaint-handling" with just two clicks from the start page. It was also decided to create an internal, web-based information pool for handling complaints in the intranet.

3.1.5. Publicity/Transparency

In both, Lower Saxony and Brandenburg, the status of the complaint-handling process is not published. Both registers are not publicly accessible. However, it was reported that in long cases, an interim notification is send to the complainant.

3.1.6. Deadlines

Administrative authorities are generally required to deal with any submission in a reasonable time. However, this obligation is not specifically laid down in the administrative provisions, but was shaped by case law. Moreover, public authorities are required to accelerate any procedure (Section 25 of the Administrative Procedures Act). As a rule, any submissions have to be dealt with by the responsible authority within three month the latest. Otherwise, under certain circumstances, an action for the failure to act against the authority would be admissible (Section 70 of the Rules of the Administrative Courts / *Verwaltungsgerichtsordnung*).

According to the administrative rules of the Business Regulation Authority in Lower Saxony, the official staff is obliged to deal immediately and treat them as priorities. According to the standards (*Kennzahlen*) developed during the regular quality management, the complainant has to receive a first acknowledgment after two weeks. This letter has to be in writing and needs to be documented. It must be noted that the standards agreed in the quality management are not published but only for internal use.

No deadlines are set out for complaint-handling by the State Offices for Environment, Health and Consumer Protection in Brandenburg.

[121] http://www.berlin.de/umwelt/service/vordrucke.html.

3.1.7. Challenging complaints

There are no specific rules on handling challenging complaints both in Lower Saxony and Brandenburg. However, the officials that were interviewed reported of certain strategies to cope with challenging complaints.

If a big number of complaints are involved (such as big wind parks, airports), the authorities try to initiate so called neigbourhood dialogues (*Nachbarschaftsdialoge)*.[122] In a neigbourhood dialogue, a communication dialogue between all parties to a conflict is initiated and accompanied by the authorities. This concept is used in Lower Saxony since the 1990ies. Later, the concept was adopted and further developed by the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL). IMPEL is an international non-profit association of environmental authorities of the European Union Member States, which supports networking and information exchange between these authorities:[123] Neigbourhood dialogues are suitable in cases, in which an activity is not illegal but still causes a conflict (i.e. industrial operations in mixed, industrial/residential areas) or in cases, in which illegality is given but cannot be solved immediately.

Complaints are also challenging, if one complainant repeats to hand in the same complaint constantly (constant complaints), even if the issue was already sorted out. In these cases, the authorities will adopt a final negative decision which is binding for the complainant.

3.1.8. Costs

The procedures described are free-of-charge. However, the expenses of the complainants – if any – are not compensated.

No information, however, was available on the costs incurred by the authorities dealing with environmental complaints.

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[122] See for English description of this concept: *Enterprises and their neighbours: Building confidence to resolve conflicts* http://www.gewerbeaufsicht.niedersachsen.de/portal/live.php?navigation_id=11460&article_id=52128&_psmand=37

[123] See http://impel.eu/projects/resolution-of-environmental-conflicts-by-neighbourhood-dialogue-exchange-of-experiences-from-and-promotion-of-the-use-of-neighbourhood-dialogues-through-the-development-of-a-toolkit/.

3.2. Special submissions

In addition to the general possibility to submit complaints, there are special complaint procedures prescribed in a number of environmental rules. The authorities responsible for dealing with such complaints are determined by *Länder* legislation and have to be identified in the individual case.

- As case in point is the Environmental Damage Act (*Umweltschadensgesetz*) aiming to implement 2004/35/EC. It governs

  > "*as far as laws and regulations at federal or state (Länder) level do not cover the prevention and remediation of environmental damage in specific detail"* (Section 1).

  As for complaints, it prescribes in Section 10 (request to action),

  > *"The competent authority will take action towards the enforcement of the remedial obligation under this Act ex officio or when an affected party or an association, entitled to appeal under § 11 Sec. 2, submits a corresponding application and when the facts on which that application is based plausibly suggest the occurrence of an environmental damage."*

  Also recognized environmental associations (NGOs) have generally the right to request actions (see Section 11 Environmental Damage Act). The representative of the BUND reported that the requirements are generally very high. Thus, there are hardly any cases in which this provision has been applied (Interview, BUND, 2012, May 16).

- There are a number of special claims against authorities in the Federal Immission Control Act (*Bundesimmissionsschutzgesetz*) and other laws. For example, according to Article 17 paragraph 1 sentence 2, certain individuals have a claim against the competent authorities for immission control:

  > *"If after the issue of such a licence or after an alteration notified under section 15 subsection (1), the protection of the general public or the neighbourhood against any harmful effects on the environment or any other hazards, significant disadvantages and significant nuisances turns out to be inadequate, the competent authority shall issue subsequent orders."*

  The competent authority to adopt relevant orders is the immission control authority which is determined by *Länder* legislation. In Lower Saxony, competent immission control authorities are the Business Regulation Authorities and the administrative

districts at the regional and municipal level (including cities).[124] In Brandenburg, competences in the field of immission control are distributed to different authorities.[125]

- Lastly, citizens have the possibility to report environmental offences and press criminal charges at the police. Criminal law contains a number of provisions to protect the environment that penalizes impairments of the environmental media (water, soil, air, etc).[126] Moreover, the different environmental acts set out offences for certain activities.

3.3. Technical, scientific and legal expertise of EU Environmental Law

In Germany, there are no specific official institutions dealing exclusively with (EU) environmental law enforcement. All complaint-handling mechanisms have a much broader coverage, as they include all EU environmental legislation. As to complaint-handling, there is no information that authorities distinguish between EU and national environmental legislation. There is also no information available whether the complaint-handling bodies employee personnel with specific expertise on EU environmental law.

In the State Office for Environment, Health and Consumer Protection in Brandenburg (*Landesamt für Umwelt, Gesundheit und Verbraucherschutz LUGV*), there is one person responsible with dealing with incoming complaints. She forwards the complaint to the competent colleague if the complaint concerns a specific industry installation or business. She handles the complaint herself in all other cases. In Lower Saxony, the Business Regulation Authorities agreed to establish an internal information pool in the internet on complaint-handling. Moreover, special trainings will be introduced. Moreover, information on complaint-handling are provided in the Administrative Instruction for the Business Regulation Authority (*Dienstanweisung für die Staatlichen Gewerbeaufsichtsämter in Niedersachsen*) and the complaint-handling standards that have been developed during the quality management.

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[124] See *Verordnung über Zuständigkeiten auf den Gebieten des Arbeitsschutz-,Immissionsschutz-, Sprengstoff-, Gentechnik- und Strahlenschutzrechts sowie in anderen Rechtsgebieten*

(ZustVO-Umwelt-Arbeitsschutz) vom 27. Oktober 2009, Nds. GVBl. 2009, 374.

[125] See *Verordnung zur Regelung der Zuständigkeiten auf dem Gebiet des Immissionsschutzes*

(Immissionsschutzzuständigkeitsverordnung- ImSchZV) vom 31. März 2008 (GVBl.II/08, [Nr. 08], S.122), zuletzt geändert durch Verordnung vom 24. Februar 2012 (GVBl.II/12, [Nr. 13]).

[126] See Crimes Against The Environment, Sections 324 et. seqq. in the German Criminal Code, for English translation see http://www.iuscomp.org/gla/statutes/StGB.htm.

3.4. Reporting and statistics

In Germany, there are no obligations to report on environmental complaint-handling, neither for *Länder* authorities nor for regional and local authorities. Both in Lower Saxony and Brandenburg, complaints are not registered centrally, but only in the context with certain installations/businesses (*Betriebskataster, Anlageninformationsregister*).

In Lower Saxony, the Business Regulation Authorities reports annually about their activities (*Jahresberichte*)[127]. One chapter deals with environmental issues. However, it only illustrates 'products' (such as inspections, measurements, studies). It does not show why the product was carried out. Therefore, there is no proper statistic and reporting on environmental complaint-handling in the competent authorities in Lower Saxony. The same applies to the State Office for Environment, Health and Consumer Protection (*Landesamt für Umwelt, Gesundheit und Verbraucherschutz LUGV*) in Brandenburg. It is EMAS-certified and is obliged to a certain environmental reporting. However, complaint-handling is not part of this reporting, as only the activities with an impact on the environment of the authority itself are illustrated. The State Office for Environment, Health and Consumer Protection publishes an annual environment report.[128] However, it does not include information on complaint-handling.

3.5. Review

The Business Regulation Authority in Lower Saxony carries out a continuous quality management. The corresponding quality management handbook (*Qualitiätsmanagement-Handbuch*) is updated regularly (but not published), based on the results of the quality management process. The quality management deals with complaint-handling explicitly. In the handbook, an efficient complaint-handling procedure is described to guide the official staff. Moreover, the heads of the different departments of the Business Regulation Authority build a working group on complaint-handling (*AG Beschwerden*) in order to improve processes. The group was closed in 2012. It agreed on a number of actions. For example, it decided to improve the access to information at the internet presence of the authority. Moreover, an internal information pool (*Infopool*) for staff handling complaints will be provided.

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127 For download see here: http://www.ms.niedersachsen.de/portal/live.php?navigation_id=5096&article_id=13898&_psmand=17.

128 For Download (also in English) see: http://www.mugv.brandenburg.de/cms/detail.php/bb1.c.203517.de.

In Brandenburg, there is no such formal review. The State Office for Environment, Health and Consumer Protection is EMAS certified. However, this does not include an evaluation of the internal complaint-handling.

In both cases, Lower Saxony and Brandenburg, there was a consensus that an early and quick handling of complaint is an efficient manner to handle complaints in general. Delays are generally responsible for a more difficult conflict, which would need much more resources to get solved. Processes are also shaped to be more effective and efficient by the daily workflow and lessons learned.

3.6. Frequency/regularity of complaints and trends

The majority of complaints is handled at *Länder* or regional/local level, by innumerable authorities. There is no information available on frequency and regularity of complaints. No statistics were available in the authorities that have been interviewed for this report.

3.7. Costs (such as number of staff-members involved)

There is no information on costs (administrative costs) available on complaint-handling. None of the authorities assessed keeps track with the number and resources of complaint-handling. In the department of the State Office for Environment, Health and Consumer Protection in Brandenburg that was contacted for this study, one person is responsible for dealing with incoming complaints. However, she forwards the majority of complaints to other colleagues that are responsible for the installation/business in question.

4 Existence of specific additional institutions/authorities for the sector of environmental complaint-handling

4.1 Administrative objection proceeding (*Widerspruchsverfahren*)

Another possibility to complain about illegality or non-compliance with legislation is filing an objection proceeding as set out in §§ 68 et seqq. of the Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung*)[129]. It is also known as preliminary proceeding, as the admissibility of legal actions in administrative courts (such as rescissory actions and

[129] See English translation at http://www.gesetze-im-internet.de/englisch_vwgo/englisch_vwgo.html.

actions for mandatory injunctions[130]) generally requires that this remedy was exhausted. Only in a few cases, such a proceeding is dispensable.[131]

However, formal objection proceedings can only be lodged against the adoption or non-adoption of administrative acts. In Section 35 of the Administrative Procedure Act (*Verwaltungsverfahrensgesetz),* an administrative act is defined as

> "*order, decision or other sovereign measure taken by an authority to regulate an individual case in the sphere of public law and intended to have a direct, external legal effect."*[132]

Hence, objection proceedings always need to refer to a specific administrative proceeding (such as the approval of an industrial installation, building, wind power plant park etc.) and cannot be lodged out of the blue.

The objection proceeding is meant to ensure that the competent authorities deal with certain issues and check their own decisions before the appellant files a suit. They are able to reassess the lawfulness and expedience of their own decisions. The objection proceeding is also known to be a formal remedy, as a number of formal requirements have to be met.

According to Section 42 paragraph 2 Code of Administrative Court Procedure, the complainant needs to have standing. This is the case if he is either the addressee of the decision or if he is concerned by it in a certain way. The opponent must establish that his individual rights have been violated. An *actio popularis* or an action to enforce rights of third parties is not admissible.

A certain privilege applies to recognized environmental associations, as they do need to establish that their own rights have been violated (*Verbandsklage*). This is laid down for specific cases in the Federal Nature Conservation Act (*Bundesnaturschutzgesetz*) and the Environmental Appeals Act (*Umweltrechtsbehelfsgesetz*). According to the latter, association are eligible to oppose in approval proceedings in the following cases:

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[130] *Anfechtungs- und Verpflichtungsklage.*

[131] See Section 68. "*Such a review shall not be required if a statute so determines, or if 1. the administrative act has been handed down by a supreme federal authority or by a supreme Land authority, unless a statute prescribes the review, or 2. the remedial notice or the ruling on an objection contains a grievance for the first time*."

[132] For English translation of the Act see http://www.iuscomp.org/gla/statutes/VwVfG.htm.

- Administrative decisions on the admissibility of plans and projects which require an Environmental Impact Assessment (EIA). These projects/plans are laid down in the Environmental Impact Assessment Act (*Umweltverträglichkeitsprüfungsgesetz*);
- Certain other administrative decisions which are not listed in the Environmental Impact Assessment Act such on certain projects subject to the Federal Immission Act (*Bundesimmissionschutzgesetz*), Federal Water Act (*Bundeswasserhaushaltsgesetz*) etc.

The environmental associations are also allowed to appeal, if such a decision has not been adopted at all which resulted in an exclusion of the association in the approval proceeding (Section 1 paragraph 1 sentence 2 Environmental Remedy Act). More cases are listed in Section 64 of the Nature Conservation Act.

These privileges for NGOs have been lately invigorated by a judgment of the European Court of Justice.[133] In the *Trianel* decision, it stated that a recognized environmental association has standing in a court suit, if it assumes that a rule of environmental law is violated that provides a public interest only (instead of a rule that confer rights to individuals). The German law was in breach with Council Directive 85/3337/EEC, i.e. the EIA-Directive as amended by Directive 2003/35/EC, i.e. the Directive on Public Participation. Germany is now required to amend its Environmental Appeals Act accordingly. As long as Germany did not act on this ruling, the European Court of Justice declared the Directive on Public Participation directly applicable (Justice and Environment 2011).

4.2 Participation in administrative planning/approval procedures (*Öffentlichkeitsbeteiligung*)

It is also possible for individuals and recognized environmental associations to address certain issues on the application of (EU) environmental law by participating in administrative procedures. The most important ones are set out in the Federal Immission Control Act (*Bundesimmissionschutzgesetz*) and in the Act on the Environmental Impact Assessment (*Umweltverträglichkeitsprüfungsgesetz*), as amended by the Act on Public Participation (*Öffentlichkeitsbeteiligungsgesetz*) in 2006.

The general rule of participation is laid down in Section 73 Administrative Procedures Act (*Verwaltungsverfahrensgesetz*), to which a number of other acts refer. As a general rule,

[133] ECJ, *Trianel Kohlekraftwerk Lünen*, Case C-115/09, 12 May 2011.

plans are notified publicly in the municipality concerned for a period of four weeks. Citizens and associations have the possibility to complain within two weeks. Complaints need to be as specific as possible. If complainants did not raise their concerns during the administrative procedure, they are excluded with their complaints in subsequent legal actions (*Präklusion*).

Rules in participation have been modified in 2006 by the Infrastructure Acceleration Act (*Infrastrukturbeschleunigungsgesetz*) in order to speed up approval procedures for big infrastructure projects (streets, grid lines etc).

- NGOs do not have to be informed about planning procedures by the authorities; it is sufficient to notify the plans publicly in the municipalities concerned. Plans are also not published electronically. NGOs are forced to scan all local announcements regularly in order to get informed and to meet the tight deadlines. This is hardly possible.
- The planning documents are not sent to the NGOs but have to be assessed at the municipality.
- The authorities are no longer obliged to schedule public discussion of the plans (*Erörterungstermin*).
- The concerns that are raised by NGOs regarding the plans have to be as specific as possible.

As a consequence, if NGOs fail to meet the deadlines/requirements, they are excluded from the further proceeding (including court proceedings). It was reported by the representative of the NGO BUND that these requirements are generally too high in order to use them effectively (Interview, BUND, 2012, May 23). It can be concluded from this interview and also from the analysis of other sources that have been analysed, that these amendments generally impede the public participation of NGOs in planning/approvals (Interview, BUND, 2012, May 23; Schmidt 2011; Ekardt 2011; OECD 2012).

Especially costs for public participation in administrative planning / approval procedures are very cost intensive due to the strict requirements that are applicable (described above). This is considered as a major barrier by the NGOs concerned.

Further rules on participation in the field of nature conservation are also set up in the Federal Nature Conservation Act (*Bundesnaturschutzgesetz*). Section 63 lists a number of scenarios, in which recognized environmental associations "*shall be given the opportunity to respond to and examine relevant expert opinions*". In this capacity, the association act as advisers/supporters of the administration. Generally, no deadlines apply (Ohms 2011).

4.3 Non-formal complaints *(formlose Rechtsbehelfe)*

It is also possible to lodge non-formal complaints on poor services of authorities. The complaints are either addressed to the same authority or to the next higher authority in order to ask to

- reassess its decision/action, if it is the same authority (*Gegenvorstellung*);
- carry out an legal or technical oversight of an authority of a lower level (*Fach- oder Rechtsaufsicht*); or
- assess the delivery of duties of authority staff (*Dienstaufsichtsbeschwerde*).

These non-formal complaints are effusions of the right to petition in Article 17 Basic Law. They are considered non-formal, as no specific rules exist on the procedure. Therefore, it is unclear how procedural guarantees of the complainant are guaranteed.

Generally, it was reported that these remedies are considered "*form-, frist- und fruchtlos*" (non-formal, no deadline – thus no results), as their requirements are very difficult to proof/establish (Interview, BUND, 2012, May 16).

4.4 Petition's committees (Petitititionsausschüsse)

4.4.1 Petition committee in the German Bundestag (Petitionsausschuss)

In Germany, the right to petition is guaranteed by Article 17 of the German Basic Law.[134] Its function is to establish options to express certain matters to the competent state institutions and authorities outside legal proceedings (Pagenkopf 2009, Art. 17 para 6). Its attractiveness can be seen in the exemption from costs and procedural rules (such as deadlines, mandatory representation through a lawyer).

As required, the Bundestag appointed a Petitions Committee to which it hands over any petitions and requests.[135] This Committee – currently headed by Member of the Bundestag Kersten Steinke (Left Party parliamentary group in the Bundestag) – is in charge of examining the issues and make recommendations as to whether the Bundestag should take action on particular matters.

[134] Article 17 Basic Law: "Every person shall have the right individually or jointly with others to address written requests or complaints to competent authorities and to the legislature."

[135] Find information at http://www.bundestag.de/htdocs_e/bundestag/committees/a02/index.html

Only records of the petition committee in Bundestag were available. It keeps track religiously with the submission it deals with, especially to exemplify its work in its annual reports. It also publishes monthly statistics.[136]

Petitions can be submitted by everyone according to the Committee's procedural rules. These are published online. In addition to the general right of petition the Petitions Committee today also offers – after a two-year trial phase which began in 2005 – the possibility of submitting public petitions. Public petitions are published at the webpage of the Committee, if it concerns a matter of general interest.

The thematic coverage of the Petitions Committee is broad, as any kinds of submission can be submitted. Therefore, the Petitions Committee also deals with cases of non-compliance with environmental legislation. However, it only deals with petitions that concern the *Bundestag*'s legislative functions or that complain about federal authorities. The Committee forwards other submissions to the competent bodies (e.g. the parliaments of the *Länder*). No 5 of the Committee's procedural rules deals with its competencies and states that:

> *(1) The Petitions Committee shall deal with petitions which fall within the Bundestag's own area of competence, particularly federal legislation.*
> *(2) The Petitions Committee shall deal with petitions which fall within the area of competence of the Federal Government, federal authorities and other institutions discharging public functions. This shall apply regardless of the extent to which the federal authorities and other institutions are subject to supervision by the Federal Government.*
> *(3) Within the limits defined in the Basic Law, the Petitions Committee shall also deal with petitions concerning the other constitutional organs of the Federation.*
> *(4) The Petitions Committee shall deal with petitions concerning the execution if federal laws or EC legislation by the Laender as matters of their own concern (Articles 83 and 84 of the Basic Law) or as agent of the Federation (Article 85 of the Basic Law) only where the execution of such laws or legislation is subject to federal supervision or where the petition concerns a matter relating to federal laws or EC legislation.*
> *(5) The Committee shall deal with petitions concerning legal proceedings only where at federal level*
> *- the competent bodies as parties to the litigation are required to adopt a specific course of action in a lawsuit;*
> *- legal provisions are demanded which would make it impossible in future for courts to hand down the rulings criticized in the petitions;*

[136] http://www.bundestag.de/bundestag/ausschuesse17/a02/statistik/index.html.

> *- the competent bodies are called upon not to enforce a judgement in their favour.*
>
> *Petitions demanding encroachment upon the independence of judges shall not be dealt with.*[137]

The prerequisites for submitting a petition are relatively low, as this lays in the general nature of petitions. These rules are set out in the "Act on the Powers of the Petitions Committee of the German Bundestag" as well as in the Principles of the "Petitions Committee Governing the Treatment of Requests and Complaints (Procedural Rules)"[138].

The latter does distinguish between petitions, requests and complaints. Petitions are considered to be submissions in which requests or complaints are made on one's own behalf, for third parties or in the general interest. Requests are demands and proposals for acts or omissions by organs of state, authorities or other institutions discharging public functions. In particular, they include proposals for legislation. Complaints consist in objections to acts and omissions by organs of state, authorities or other institutions discharging public functions. Moreover, it is distinguished between several forms of petitions: multiple (individually written submissions concerning the same matter), collective (collections of signatures concerning the same matter), mass (large number of submissions concerning the same matter, the text of which is completely or largely identical) and public petitions (requests or complaints to the German Bundestag which are of general interest).

Every natural person and every legal person under private law resident in Germany shall have the basic right pursuant to Article 17 of the Basic Law. Petitions shall be submitted in writing. They can be submitted electronically, if an electronic form is used. All submissions have to include a certain request. The Bundestag will not act if they only include "*information and mere statements, critical remarks, reproaches, statements of approval or other expressions of opinion without a specific request*". Generally, a petitioner has the right that the relevant Petition Committee deals with his petition, i.e. not only obliged to accept it but also to examine its content (Pagenkopf 2009, Art. 17 para 23).

As explained above, the subject of the petition must fall in the competence of the German Bundestag before the Petition Committee can deal with it. In this case, the Petition Committee examines the content. It can request comments of other authorities if necessary. If the Committee concludes that the petition is justified, the German Bundestag can decide to

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[137] Excerpt of the Committee's Procedural Rules (*Grundsätze des Petitionsausschusses über die Behandlung von Bitten und Beschwerden - Verfahrensgrundsätze*). Available at http://www.bundestag.de/htdocs_e/bundestag/committees/a02/index.html

[138] English translation available at http://www.bundestag.de/htdocs_e/bundestag/committees/a02/rechtsgrundlagen_eng.pdf.

refer the petition to the Federal Government, coupled with the request that it takes remedial action or to use the request as background material in the preparation of bills, ordinances or other initiatives or studies.

The concept of public petitions has been launched in 2005. The recitals of the Guidelines of the Treatment of public petition explore on the meaning of this kind of petitions.

> *"This is intended to create a public forum for serious debate on important issues of general interest reflecting the diversity of views, assessments and experiences. This forum aims to offer people an opportunity to familiarize themselves from various perspectives with issues and requests relating to legislation as well as complaints, and to draw on these when forming their own opinion. The Committee would like to present as broad a spectrum of issues as possible on its webpage and enable as many petitioners as possible to set out their concerns. Petitioners are in no way disadvantaged within the process of parliamentary examination if the petition is rejected for publication."*[139]

They are published in the internet if this is requested and if they are of general interest. They can be signed by co-petitioners. If they – as it also applies to mass and collective petitions – reach a certain quorum (50,000), the Petition Committee schedules a public Committee meeting in order to hear the petitioner or several petitioners.

All information on the national petition committee and the procedure can be found online at the internet page of the German Bundestag.[140] The relevant provisions and an information brochure are available for download. Information in English is available as well.

The national petition committee publishes a report on its activities at an annual basis and publishes online.[141] In 2010, the petition committee received approximately 17,000 submissions, out of which 479 concerned environmental matters. This was an increase of 77 submissions compared to 2009. Moreover, in total, about one Million co-petitioners signed online public petitions. The committee reported that its public awareness has increased over the years, though not to a level that could be considered sufficient (Petition Committee 2011,

[139] Annex to Rule 7.1 (4) of the Procedural Rules Guidelines on the Treatment of Public Petitions pursuant to Rule 7.1 (4) of the Procedural Rules in: The Legal Framework for the Work of the Petitions Committee.

[140] http://www.bundestag.de/bundestag/ausschuesse17/a02/index.jsp

[141] http://www.bundestag.de/bundestag/ausschuesse17/a02/index.jsp

page 55). In order to increase its attractiveness, the committee amongst others plans to increase the user-friendliness of public petitions and its webpage in general.

4.4.2 Petition committees in the Länder

Petition committees are also set up in the parliaments of the *Länder*, i.e. in Bayern, Baden-Württemberg, Berlin, Brandenburg, Bremen, Hamburg, Hessen, Mecklenburg-Vorpommern, Niedersachsen, Nordrhein-Westfalen, Rheinland-Pfalz, Saarland, Sachsen, Sachsen-Anhalt, Schleswig-Holstein and Thüringen. These bodies are not in all cases called petition committees. In Bayern, it is called Committee for Submissions and Complaints (*Ausschuss für Eingaben und Beschwerden*), in Hamburg and Saarland it is called Submissions Committee (*Eingabenausschuss*). These committees will only deal with petitions that concern the competencies and legal control of the relevant *Länder* parliaments.[142] Due to time and budget constraints it was not possible to assess the mechanisms of these institutions.

4.5 Ombudsman (Bürgerbeauftragter)

There is no national Ombudsman at national level. However, there are a few Ombudsmen at *Länder* level. Due to time and budget constraints it was not possible to assess the mechanisms of these institutions.

5 Mediation mechanisms

5.1 Mechanisms for mediation in the environmental protection sphere

In Germany there is no formal mechanism of mediation especially and solely for the environmental sector.

On the 26 of July 2012 the law on the promotion of mediation[143] became effective in Germany. This act is applicable in all sectors, not only the sector of civil law. However, this

[142] See for example Section 2 of the Law on Petitions and Ombudsman in Mecklenburg-West Pomerania, http://www.landesrecht-mv.de/jportal/portal/page/bsmvprod.psml?showdoccase=1&doc.id=jlr-PetB%C3%BCGMVrahmen&doc.part=X&doc.origin=bs&st=lr.

[143] Mediationsfördergesetz vom 21.7.2012 (seit 26.7.2012 in Kraft).

act is not tailored to administrative law in conceptual matters and with regard to content (see also Chapter 6, section 1.3.1).[144]

Already before this law, judges were required by law to work towards a settlement before the court and had options to i) suggest an "out-of-court" conciliation procedure, ii) refer the parties to a specific judge without decisive powers for a conciliation hearing, or – in analogous application – iii) refer the parties with their consent to an "in-court" mediation by a judge at the same court.[145] With regard to option iii), section 9 of the law on the promotion of mediation allows these "in-court" judge-mediators to continue procedures that had begun before the law entered into force until the 1 of August 2013 under the name of "judicial mediation" (*gerichtliche Mediation*).

It remains to be analysed how this law will be implemented especially in the sector of public and environmental law and in the administrative practice. In general, it will leave only two options for mediation:

- The judge can – for conciliation hearings – refer the parties with their consent to another judge that does not have decisive powers in this case (*Güterichter*). This *Güterichter* can use all methods of resolution of conflicts, including mediation.[146] He also can – but does not have to – be at the same court as the referring judge. Since he is not directly involved in the case, he can also suggest specific solutions without losing his impartiality.
- The judge can also suggest an "out-of-court" mediation or other external resolution of conflicts. This procedure will be usually conducted by an expert mediator, who is certified according to section 5 of the law on the promotion of mediation.[147]

The Federal building code (*Baugesetzbuch*)[148] also contains a provision (Section 4b) that allows for the involvement of a third person in order to accelerate the land-use planning procedure. On this basis especially the preparation and implementation of the participation of citizens, nearby municipalities and public agencies (*Erörterungs-* and *Anhörungstermin*) can

[144] Von Bargen 2012, p. 469.

[145] See section 278 paras. 1 and 5 of the Civil Procedural Code (*Zivilprozessordnung*) before the *Mediationsfördergesetz*, also relevant for administrative law procedures via section 173 sentence 1 of the Administrative Procedural Code (*Verwaltungsgerichtsordnung*).

[146] See amended section 278 para. 5 of the Civil Procedural Code.

[147] See inserted section 278a para. 1 of the Civil Procedural Code.

[148] English translation available at http://www.iuscomp.org/gla/statutes/BauGB.htm.

be delegated to a third person that is in many cases a mediator and/or a professional project manager.

There are similar provisions in the Energy Industry Act (*Energiewirtschaftsgesetz*) and the Grid Expansion Acceleration Act of 2011 (*Netzausbaubeschleunigungsgesetz*): Section 43 g and Section 29 respectively allow for the involvement of a "project manager" especially for the preparation and implementation of the participation procedures.

5.2 Agencies / bodies / networks specialized in mediation and their specific features

There is no body that is specialized in mediation in the environmental sector as a whole but there are two agencies that offer mediation/arbitration as one possible procedure of dispute resolution in the public sector:

5.2.1 Clearingstelle EEG

The *Clearingstelle EEG*[149] is a facilitator, helping "to settle any disputes and issues of application arising under this act" - the Renewable Energy Sources Act (see section 57 EEG). The service of the *Clearingstelle EEG* exists since 2007 and is for grid operators and operators running plants in Germany only.

The *Clearingstelle EEG* offers alternative dispute resolution options such as mediation, joint dispute resolution, and arbitration that "… may prove more efficient and cost-effective to settle disputes." Furthermore, the *Clearingstelle EEG* provides general advice on how to apply the provisions of the Renewable Energy Sources Act. Information on the course of action and the preconditions of the procedures can be found on the website. A record keeping procedure is provided, each party receives a file number once the procedure has formally started (that is for the contradictory and mediation procedures with the

The *Clearingstelle* is commissioned and exclusively funded by the Federal Ministry for the Environment, Nature and Nuclear Safety. An amount of 1.7 million € is foreseen in the federal budget for the years 2013, 2014, 2015, 2016 and 2017 respectively.[150]

[149] www.clearingstelle-eeg.de.

[150] http://www.bundesfinanzministerium.de/bundeshaushalt2012/pdf/epl16/s160254621.pdf.

The *Clearingstelle EEG* has to report to the Federal Ministry for the Environment, Nature and Nuclear Safety every year and publishes these reports (*Jahresberichte*) on its website. These reports mainly contain the results of the completed procedures of the relevant year. Besides this all the results of the procedures are published on the website with respect to data protection. Statistical information, also dealing with the regularity of usage and trends, can be found on the website too.[151]

The staff of the *Clearingstelle* consists of fourteen (in full and part time positions): six fully qualified lawyers, a graduate industrial engineer (energy and environmental management), a graduate environmental engineer, five office staff persons and an IT staff person. Therefore the *Clearingstelle* has the basic technical, scientific and legal expertise in-house that can be applied within the mechanisms. The lawyers and the engineers all are mediators, they completed a two year training in mediation.

The procedures provided by the *Clearingstelle EEG* (still – as the introduction of fees is planned for the year 2013) are free of charge for the parties but both parties have to cover their own costs (travel costs, postal charges, costs for external expertise and/or legal counsel) by themselves or can decide on a different cost distribution between them.

5.2.2 Conciliation Body for public transport (Schlichtungsstelle für den öffentlichen Personenverkehr e.V. - söp)

This body[152] offers arbitration procedures in the public transport sector with the focus on the railway/bus/local passenger transport (air and ship transport is not covered as the airlines/ship companies are not yet members of the non-profit regulating organization that is a precondition for the participation). The *söp* was set up in 2010 after a publicly financed scheme[153] with similar coverage was discontinued.
Since cross-border travel is a growing sector and multiple transportation companies already entail cooperation by several national operators (including German), *söp* is attempting to expand its voluntary jurisdiction and aspires to become a pan-European ADR scheme covering all modes of transportation.

[151] http://www.clearingstelle-eeg.de/statistik.

[152] www.soep-online.de.

[153] From 2004-2009 Schlichtungsstelle Mobilität beim vcd.

An important strength is that online dispute resolution is offered, so complainants do not have to be physically present in Germany.

The staff of the *söp* consists of eight persons: The four persons assigned with the arbitration procedures are all fully trained lawyers.

The scheme, and with it the arbitration procedures, are financed by the transportation companies. Every member company must pay an annual fee, as well as case fees. The arbitration is therefore free of charge for the complainants. Though the scheme is privately founded and funded, its advisory council includes public authorities that hold around a one-third share. The other two-thirds represent associations that deal with consumer and travellers' rights, and transportation companies.

The *söp* publishes yearly reports on its website with information on the regularity of usage and trends and general information on the funding.[154]

6 Conclusion

The assessment has shown that there is not one central complaint-handling mechanism/authority in Germany. Complaint-handling in Germany is generally very complex. Since Germany is a Federal Republic, the competencies are distributed to a great number of authorities a *Länder* and regional/local level. No standards on complaint-handling were set out by the Federation. It was only possible to exemplify complaint- handling by describing systems in two *Länder*, Lower Saxony and Brandenburg. It is expected that complaints are handled similarly, but slightly different in the other 14 *Länder*.

Generally, it can be concluded that there is a comprehensive set of complaint-handling mechanisms available in Germany. This is generally proven by the fact that German citizens and environmental associations participate actively in administrative approval procedures with relevance for the environment and in the design of the German environmental policy in general. Generally, this is facilitated by a great public interest in environmental topics which can be traced back to the anti-nuclear movement since the 1970s which has formed from the core of society. Hence, today, environmental policy is no special policy field but is widely accepted of the German society. Additionally, there is a good trust in the work of the public authorities that are generally perceived to be partners in implementing environmental policy (Interview, BMU, 2012, May 16).

[154] https://soep-online.de/assets/files/Service/20120327_soep_Jahresbericht-2011.pdf

Accessibility

Overall, the accessibility of the German environmental complaint system is satisfactory. Information on how to make submissions/complaints can generally be found online. However, the division of responsibilities throughout the Republic (to *Länder* and regional/local authorities) makes it potentially difficult to identify the competent authorities. This could be improved if a simpler access to information on complaint-handling was provided online. This could be supported by specific input formats, which would make formulating and processing of complaints generally easier. This need was already identified and discussed in the authorities that were assessed for this report.

One specific issue is the way in which citizens and NGOs are informed about planning/approval procedures in order to involve the public in the administrative procedure. Since the documentation is not announced online, but only in the municipality concerned, it is difficult for NGOs and citizens to keep track of all procedures in which they have a right to participate.

Transparency

Transparency is not satisfactory. There are no obligatory requirements in record keeping and reporting of environmental complaints handling. This makes it potentially difficult to keep track with the complaint-handling activities of the competent authorities. Moreover, the status of complaints is not illustrated online. However, according to the officials that have been interviewed, the complainants are informed in writing on the status of their complaints.

Simplicity

It is very simple to submit general complaints to the authorities, as no formal requirements have to be met. The same applies to the petition committee procedures. The other complaint-handling mechanisms – administrative objection proceeding, public participation – are much more complex. Especially meeting the formal requirements of the formal public participation procedure proofs to be very difficult (see above). Nevertheless, claimants can claim support from the authorities in any administrative procedure according to Section 25 of the Administrative Procedures Act.

Confidentiality

According to the officials interviewed for the report, information on the complainant is not disclosed. There are no reasons to assume that confidentiality is an issue.

Independence

There was no information identified that the bodies handling environmental complaints (authorities, petition committee) are not independent. This is generally no issue in Germany.

Effectiveness

General complaint-handling within the authorities seems to be effective. The authorities assessed for the report seemed to have functioning strategies for handling environmental complaints. The Business Regulation Authority in Lower Saxony seemed to be better prepared in handling complaints compared to the Brandenburg authority, as it provides internal administrative rules on complaint-handling as well as an internal quality management for complaint-handling. However, as no statistics are available, it cannot be concluded whether this was better than the complaint-handling in the Brandenburg authority. There are also no reasons to doubt that the administrative objection proceedings (*Widerspruchsverfahren*) are not functioning well. This applies to petition committees as well.

It was reported by NGOs that not all specific complaint mechanisms work effectively. The requirements of the individual mechanisms are high and not always easy to meet. This applies to the public participation in administrative planning/approval procedures (*Öffentlichkeitsbeteiligung*) and non-formal complaint procedures (*formlose Rechtsbehelfe*) This can be understood in the context of the general conflict of objectives: the need to realise certain big infrastructure projects (such as power lines) while at the same time allow a comprehensive public participation. It is likely that these conflicts will increase. Fortunately, there is an ongoing discussion in Germany on the resolution of these conflicts.

In conclusion, with regard to the specific complaint-handling mechanisms, it must be assumed that complaint-handling could be more effective. Improvements, including the establishment of Ombudsmen at the national level, are requested by the German environmental NGOs (BUND 2011). However, again, there are no numbers to proof this.

In an interview with representatives of the German Federal Environment Ministry, the existing complaint mechanisms have been identified and discussed in depth. It was emphasized that the picture of complaint-handling in Germany would be incomplete if the involvement of citizens beyond the standard/set complaint-handling mechanisms was not considered. In Germany, there is a great interest in environmental policy. Therefore, citizens and associations participate and complaint actively in environmental issues, not only by formal but also by informal means.

A good example for the outstanding willingness is the participation in the administrative procedures on the plans to build new nuclear power plants in Poland close to the German

border. More than 20,000 German citizens have handed in complaints by January 2012, compared to a few hundred by Polish citizens.[155]

This wide participation is also facilitated by comprehensive environmental information that is provided by German authorities.[156] Moreover, new, informal means for participation and conflict resolution are offered. In a cooperation of *Länder* authorities, guidelines on the resolution of environmental conflicts by neighbourhood dialogue have been prepared and published.[157]

[155] For more information see http://www.euractiv.de/energie-und-klimaschutz/artikel/polnisches-atomkraftwerk-massive-kritik-aus-deutschland-005807; http://www.epd.de/landesdienst/landesdienst-ost/schwerpunktartikel/50000-einwendungen-gegen-polnische-atomkraftwerke.

[156] See for example http://www.bmu.de/umweltinformation/portalu/umweltportal_deutschland/doc/2173.php.

[157] http://www.stadtentwicklung.berlin.de/umwelt/immissionsschutz/pdf/nachbarschaftsdialog.pdf

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Bernd Reese, Staatliches Gewerbeaufsichtsamt Hannover (Business Regulation Authority Hannover, Lower Saxony), Behördenleiter (head of the authority), telephone interview, 17 July 2012

Dr. Franz Graßmann, Landesamt für Umwelt, Gesundheit und Verbraucherschutz, Regionalabteilung Süd (State Office for Environment, Health and Consumer Protection, Brandenburg), Referat Anlagen- und Umweltüberwachung (Department for supervision of installations and environment), interview in person, 31 July 2012

V. GREECE

1 Institutional, administrative and legal context

Over the past years before the economic crisis broke out, Greece's economy was experiencing a rapid economic development and was growing on an average of more than 4% per year. Greece was also a major beneficiary of EU funds (OECD, 2010). During these years the relatively untouched environment in Greece faced growing pressures from the development of large scale infrastructure. At the same time there had been positive developments that strengthened the implementation of environmental policies such as the creation of the ombudsman and the environmental inspectorate and more recently the establishment of the Ministry of the Environment, Energy and Climate Change.

The protection of the environment is acknowledged at the highest level of the Greek legislation which is the Greek Constitution[158]. After a revision which was carried out in 2001, the protection of the environment is considered a constitutional right and a duty of the State. Specifically, according to Article 24 the State is required to "adopt special preventive or repressive measures for the preservation of the environment, in the context of the principle of sustainability".

International agreements and most importantly EU legislation in the environmental area form the legal basis of the environmental law in Greece. Implementation of EU environmental law in Greece was imposed by the EU at a faster pace than the competent authorities could handle by adjusting the various legal and the relevant governance mechanisms. In the private sector, companies have been facing difficulties in adjusting their environmental practices in order to comply with an increasing amount of environmental legislation.

The experience so far has shown that, although Greece has sufficient and stringent enough laws to achieve a good level of environmental protection, in practice the poor enforcement of these laws leads to significant pressures on the environment.

Compliance with environmental legislation in Greece is enforced by various public bodies including relevant auditing bodies, environmental permitting authorities and inspection authorities (Inspectors-Controllers Body for Public Administration, Ombudsman, Special Secretariat for the Environment and Energy Inspectorate, Hellenic Environmental

[158] Greek Constitution of 1975/1986/2001/2008.

Inspectorate, regional authorities and parliamentary control). The role of each of these bodies is explained in sections **Error! Reference source not found.** and 3. Over the past ears, efforts have been made so that the complaint-handling mechanism integrates horizontally. These efforts aim to incorporate all aspects of the enforcement of environmental law through a holistic approach, in line with the new multi-level governance introduced in 2011 by the Kallikratis institutional reform of Self-Government and Decentralized Administration (Kallikratis Plan) in Greece (Law 3852/2010). The Kallikratis Plan puts forward a holistic administrative intervention based on the synergy of actions at the local, regional and national levels. This reform can lead to a more effective complaint – handling mechanism as it sets the basis for a more efficient intervention between the different competent authorities[159].

1.1 Description of main actors and relationship between mechanisms

In Greece the complaint-handling mechanism is fragmented and, depending on the type of environmental issue to be addressed, there can be a number of different authorities that have the competence to handle a specific complaint. For example, if a case concerns an illegal waste disposal site, the complaint needs to be filed to the local or regional authority as well as the forest inspection (if the alleged illegality is taking place in a forest), the Ministry of the Environment (if a Natura 2000 site is affected), the attorney[160] (if the activity consists of an offence under the penal law), the local urban planning authorities (if a breach concerns an illegal construction), etc. Overall, it is difficult for the complainant to identify which authority is competent to handle his case. WWF Hellas, which also provides guidance to complainants, commented that one of the main roles of the NGOs is to identify the relevant competent authority. In addition, according to the WWF, there have been cases where a complaint was not handled at all due to the difficulty in identifying the competent authority.

[159] Kallikratis plan is the new Greek Law 3852/2010 which reformed the administrative division of Greece by merging small Municipalities by creating a more decentralised administrative system.

[160] In Greece. depending on the nature of the matter the responsibility falls on different autorneys. In the Prosecution Department of Athens, a specific attorney has the responsibility to handle cases related to the protection of the environment.

The local (municipalities) and regional authorities[161] have an important role in the complaint – handling mechanism. The regional authorities are also responsible for the environmental licensing of category A2 projects (for category A1 projects the competent authority is the Ministry of the Environment)[162]. However, there is not a specific mechanism in place and complaints are made through the general procedures which apply to all types of requests (e.g. applications for documents and questions). Nevertheless, the public authorities are obliged to handle all requests by following specific procedures and within timeframes which are set by relevant legislation and guidelines (see section 3.1). One of the key actors in the complaint-handling mechanism is the Hellenic Environmental Inspectorate (HEI) (the national environmental inspection authority) which was established by the Law 2947/2001 that sets out the main responsibilities of the organisation[163]. One of the roles of HEI is to collect, record and assess the complaints. HEI also coordinates the exchange of good practices and knowledge transfer.

HEI covers the entire Greek territory and is also the main authority responsible for enforcing the environmental compliance. HEI is often asked to perform inspections after a complaint is made. The complaints are either made through other competent authorities (see section 1.2) or directly lodged with HEI. The main responsibility of HEI is to check and monitor the implementation of existing environmental legislation. This includes compliance of public and private sector activities with the environmental requirements. HEI is authorised to perform on-site checks of activities which are covered by the provisions on environmental protection or required for the effective operation of HEI. This applies regardless of any authorities being competent to perform similar inspections. The inspections which are carried out by HEI cover a wide range of fields and activities which fall under the Greek environmental legislation. This

[161] In the new administrative division which has been set by the Kallikratis Plan, there are 7 Decentralised Administrations, 13 Regions, and 325 Municipalities. The Regions and the Municipalities are self-governed whereas the Decentralised Administrations are controlled by general secretaries, appointed by the central government.

[162] According to the Ministerial Order 1958/12 (Greek Official Gazette 21/B/2012) projects are classified according to the level of danger which they impose to the environment. For example category A1 includes all the projects and activities constituting a serious danger to the environment and category A2 includes all the projects and activities constituting a serious danger to the environment II included are activities which may be related to serious but less harmful environmental impacts,

[163] The rules of the inspections carried out follow the EU recommendation 2001/331/EC for the minimum criteria for environmental inspections. More recently, the adoption of Law 4014/2011[163] has strengthened the role of HEI by bringing important changes. The effect of this law is described in more detail in the sections below. Law 3818/2010 which established the Special Secretariat for the Environment and Energy Inspectorate also has a significant impact

covers all construction and infrastructure activities which require environmental licensing (e.g. construction of roads and industrial activities) as well as other activities.

HEI is therefore responsible for checking whether the complaints which are made through the various competent bodies in Greece (including HEI) are valid. HEI is organised in three different geographical divisions (North, South and more recently a division of Central Greece was established). HEI is controlled by the Supervisory Board of Environmental Auditors which ensures that a proper execution of duties is carried out.

In addition, following the establishment of the Ministry of the Environment, Energy and Climate Change, the Special Secretariat for the Environment and Energy Inspectorate (SSEEI) was established. SSEEI has a supervising role in the implementation and the compliance with the environmental legislation by following a horizontal approach covering all competent authorities. In addition, the organisation verifies compliance with the environmental liability obligations both in the public and privates sectors and ensures that where necessary prevention and restoration measures are taken. SSEEI also has the responsibility to coordinate with HEI, other secretariats of the Ministry of the Environment as well as the competent regional authorities. In the context of complaint-handling, the role of SSEEI is not only to ensure a good operation of the mechanisms at all levels of governance but also to ensure that necessary action is taken to restore environmental damage.

Another key actor, the Ombudsman, intervenes in the case of conflicts between the civil society and:

- the State;
- local and regional authorities;
- other public bodies; or
- private entities (e.g. businesses and organisations) which are controlled by the state or other public authorities.

The mission of the Ombudsman is to provide mediation between citizens and public authorities with the aim to protect citizens' rights, compact maladministration and ensure compliance with the environmental law by all public authorities. Specifically, the Greek Ombudsman ensures the good operation of public authorities by making recommendations and proposals. Nevertheless, the Ombudsman is not authorised to impose sanctions on the public administration.

Depending on the nature of the complaint, the regional authorities (Decentralised Administrations and Regions) can also have a key role. Specific cases where these authorities get involved in the mechanism are described in section 2.2.

1.2 Application to scenarios

The complaint-handling mechanism is similar, regardless of whether an alleged illegality concerns a person, a company or a public authority, and follows the same steps in the cases where a situation concerns an alleged failure of a public body to respect procedural requirements.

1.2.1 Is there a mechanism/are there mechanisms for alleged illegality or non-compliance of a private person/company?

According to the Law 1650/86 on the protection of the environment, the authorities responsible for the collection of waste are the municipalities and the regional authorities. Specifically, municipalities are required to cooperate with the authorised treatment facilities for the collection of abandoned vehicles. According to the Presidential Decree 116/2004 and the Joint Ministerial Decision JMD 50910/2727/2003 on solid waste management, the licensing of facilities which treat ELVs falls under the regional authorities. In this context, in the case of the operation of clandestine or non-authorised ELVs a complaint will need to be submitted to the respective Decentralised Administration. For a clandestine or non-authorised disposal of waste a complainant will need to file his complaint to the local authority (municipality). If a complaint concerns air emissions from an industrial installation with an IPPC licence, a complaint can be made to the authority which is responsible for issuing the environmental terms and conditions. Depending on the category of the industrial installation, the competent authority can be the Ministry of Environment, or the respective regional authority (specifically a Decentralised Administration). Nevertheless, all IPPC installations which fall under category A1 are subject to an inspection which is carried out annually.

The first step for the complainant would be to request a copy of the environmental permit which specifies the terms of operation including emission limits. The second step is to make a request to the Ministry of the Environment (and specifically to HEI or to the Air Pollution and Noise Control Directorate or the competent regional authority which is responsible for the environmental permits) for an inspection. In cases where an emission record keeping is already in place the complainant can make a request of a copy of the measurements and

monitoring results which have been carried out. The specific areas which can be included in this procedure include the following:

- safety distances;
- installation of abatement technologies;
- use of specific primary and secondary materials and fuels;
- use of combustion control instruments;
- methods of odour control;
- height and cleaning of chimneys;
- emission limits for each pollutant type.

If the authority which handles the complaint confirms that an illegality has been committed the complainant can request the Air Pollution and Noise control Directorate to impose administrative sanctions. If the authority fails to provide an answer, the complainant has the right to appeal to the ombudsman.

In case of non-compliance of the eco-label criteria (Regulation 66/2012/EC), a costumer can submit his complaint to the Supreme Council for Awarding the eco-label at the Ministry of Environment. This authority is also responsible for issuing the eco-labels in Greece.

The Special Secretariat for Water of the Ministry of the Environment is responsible for the coordination of the competent authorities dealing with the aquatic environment. If a complaint concerns an illegal discharge of pollutants to a river, this should be submitted to the Regions and specifically to the Department of Hydro-economy which is responsible for the management and protection of the water resources.

If the illegal activity concerns an illegal activity in coastal areas, the complaints are handled by the Real Estate Services of the Ministry of Finances which is the responsible body for the management of coastal areas (e.g. definition of coastal zones, demolition of illegal construction and enforcement of fines). If the area is not characterised as a coastal area then the complaint would need to be submitted to the Local Planning Authorities or to the Port Authorities (if the concerned area falls under its jurisdiction).

If a case concerns the importation of illegal timber that is on the CITES, the complaint can be submitted to the competent authorities which in Greece are the central and regional CITES administrative authorities (parts of respectively the Ministry of Environment, and the Decentralised Administrations), the customs (places of introduction and export) and the police.

A complaint related to a wide-spread trapping or hunting of wild birds protected under the Bids Directive, would need to be submitted to the Forest Authorities which is the component authority for controlling hunting.

1.2.2 Is there a mechanism/are there mechanisms for alleged illegality or non-compliance of a public body/utility in relation to providing an environmental service?

As mentioned in section 1.2, the mechanism for alleged illegality or non–compliance of public authorities (or utilities) is the same as in the case of a private person or company. According to WWF's experience one of the main differences is that complaints which concern an alleged illegality (or failure) from a public authority are normally handled more quickly. In addition, the compliance of public authorities with the environmental law can be enforced by the Inspectors-Controllers Body for Public Administration which however does not have any authority on private persons and companies.

For cases related to the failure of a municipality to treat properly its urban wastewater load and depending on the level of sensitivity of the area in which the wastewater is disposed, a complaint can be submitted either to the Ministry of the Environment or to the Decentralised Administrations.

In Greece, the main authorities which are responsible for controlling the quality of drinking water are the Municipal Water Supply and Sewerage Companies (MWSSC). In Greece, MWSSCs often operate a division specialised on issues related to the protection of the environment. All citizens, private companies and public authorities have the right to request information on the quality of drinking water from a MWSSC. The sampling and the quality control of the samples can be carried out either by competent public authorities (e.g. in specialised laboratories of regional authorities or MWSSCS) or by certified private laboratories. In the case of an alleged illegality, a citizen or a private (or public) organisation can make a request in written to the Local and Regional Authorities (and specifically to the directorate of health) to carry out a sampling and a quality control.

Issues related to the operation of landfills should be addressed to the municipalities. In Greece there are still a considerable number of uncontrolled landfills operating and complaints of this nature are common. Therefore the complainant should request information about the specific landfill if it operates under the transitional framework which has been developed in Greece and whether there are restoration plans in preparation.

1.2.3 Is there a mechanism/are there mechanisms for alleged failure of a public body to respect procedural requirements or some other required administrative standards?

In the case of an alleged failure of a competent authority to respect the EIA screening requirements, a person could complain to the Ombudsman or to the Inspectors-Controllers Body for Public Administration. The same procedure would be also followed in the case where an authority responsible for a protected Natura 2000 site allows a small-scale housing on the site without any appropriate consideration of the respective individual and cumulative effects.

Nevertheless the complaint would first need to be addressed to the competent national authorities. Regarding the failure to respect the EIA screening requirements, and depending on the project category the complaint would need to be filed to the Ministry of the Environment or to the regional authorities. Similarly for a case concerning an infringement of Natura 2000 rules, the complaint will need to be first addressed to the Ministry Environment. If the issues persist after the communication with the competent authorities, the complaints can be filed to the bodies mentioned above.

2 Characteristics of the complaint-handling systems identified

2.1 Procedures/procedural guarantees

The complaint procedure normally starts with the sending of a letter to the competent authority. A standardised format of these letters does not exist. If more than one authority are concerned (which is often the case) a common letter can be sent by the complainant to all the relevant authorities. In Greece, there is not a common administrative body or procedure that would enable a centralised handling of the complaints.

In May 2012, the Ministry of Administrative Reform and E-Governance published the Guide of Good Administrative Behaviour (Guide)[164] which sets the general principles and rules which apply to all public servants. According to this guide, all public servants are obliged to issue receipt which includes a protocol number for all applications they receive. This is also

[164] Ministry of Administrative Reform and E-Governance (2012), Relationships between public servants and citizens, Guide of Good Administrative Behavior, available at: http://dimosio.net/wp-content/uploads/2012/04/Οδηγός-ορθής-συμπεριφοράς.pdf

required by the Law 2690/1999 on the ratification of the code of the administrative procedure. The deadline for handling the case and the potential of demanding a compensation for missing this deadline needs to be stated as well. According to the Guide, the public authorities are obliged to provide a complete and clear answer within 50 days (or 60 days if the handling of the request involves more than one authority). If a case or a request cannot be handled within this time frame the authority is obliged to notify the applicant in writing the reasons of the delay, the name of the officer in charge and his phone number to provide information and any other relevant information.

Under these principles, all authorities shall register each complaint they receive by allocating a protocol number. According to the Greek law, this lack of reaction can be considered as a rejection by silence. The Guide mentions that in cases where the law does not determine the jurisdiction and the procedure which needs to be followed, the public authorities have the freedom of action under the principle of administrative discretion. It is not clear whether this principle has a role in leaving some complaints unhandled.

Often a complaint is followed by an inspection procedure carried out by HEI. This happens upon receiving a request from a prosecutor, the Minister, the prosecutor, the General Inspector of Public Administration or other public authorities. These type of complaints fall in the category of non-programmed inspections. A five-year plan for the programmed inspection is currently being developed based on a risk assessment carried out by the EU Network for the Implementation and Enforcement of Environmental Law (IMPEL). If a complaint has been sent directly to HEI but concerns regional authorities (e.g. issues related to licensing), are forwarded to these authorities accompanied by a request for information. Each transmitted document has a protocol number. In principle whether a complaint will be handled by HEI or other competent authority, it depends on the significance of the case (in terms of the environmental risks which it poses) and the availability of inspectors.

If an inspection procedure is initiated, the first step is to prepare an inspection plan which is drafted by a team of inspectors followed by an on-site visit and examination of all relevant factors. If a violation of the environmental legislation is identified, an inspection report is prepared which includes a detailed description of the findings and the identified violations. This report is then sent to the offender, who also is called to account on his actions within 5 days (usually by submitting an apologetic statement).

After submitting the apology (or if the offender fails to make a submission within the given time limit), an act is drafted which confirms or not the infringement. A copy of this act is sent to the authority which granted the permit to the offender to construct or operate the activity under which the breach was made. A copy of the act is also sent to the prosecutor who

checks whether there have been some actions that fall under the penal law. Depending on the breach which has been made, a fine is imposed by HEI which is payable to the Ministry for the Environment.

The authority of HEI is not restricted to the private sector: inspections can also be performed within public authorities, including for issues related to administrative acts (e.g. review and annulment of administrative acts). The General Inspector of Public Administration is also involved in these types of inspections and has a crucial role in coordinating the whole process. SSEEI has an important role in checking the good operation of all competent authorities responsible for enforcing environmental law at all levels (national, regional and local). According to HEI, this role has a significant impact in improving the level of environmental compliance of public authorities. With regard to its role of ensuring a good performance of all public authorities, SSEEI works in parallel with the Inspectors-Controllers Body for Public Administration (see section 4.3) which has the role to improve a good performance of the whole public administration.

An amendment of this process is currently under consideration, according to which offenders will be diverted to the prosecutors only in cases of environmental damage, a lack of environmental license or other administrative offenses. It is estimated that this would reduce the number of cases handled by the criminal courts by 30%. This would also reduce the need for inspectors to attend courts as witnesses. In addition, under this amendment, HEI as well as the competent regional authorities issue a compliance plan to the offenders. If the offenders fail to comply with the plan, the financial guarantee which had been established for the licensing is transferred to the state.

2.2 Technical, scientific and legal expertise of EU Environmental law

According to WWF Hellas, the technical, scientific and legal expertise which is available in the complaint - handling mechanism is highly variable especially across the local and regional authorities. HEI has also recognised the need for further training of staff in the competent authorities (mainly referring to the Regional Authorities) but the organisation also pointed out that this is currently difficult due to the economic crisis.

2.3 Reporting and statistics

Activities of HEI are reported annually. This annual report provides a detailed review of the inspections carried out as well as some information on the total costs of the operation of

HEI[165]. The same annual report also includes a section which reviews the effectiveness of the scheme and identifies areas of improvement. Regional Authorities also publish annual reports. Overall these reports provide in great detail information on the annual activities of the authority which publishes them. However, information on complaint-handling is not provided.

The scope of the inspections carried out by HEI is wide and most of them concerned industrial activities (39% of the inspections). Other areas included landfills (both legal and illegal), other waste treatment facilities (e.g. recycling facilities, facilities that manage hazardous or medical waste) and natural protected areas. About 25 % of these inspections were carried in accordance with the annual inspection plan of HEI; the remainder were performed following a complaint (35% of the inspections), or after a request from the General Inspector of the Public Administration, the prosecutor or other public services. A significant number of inspections were also carried out following a report or a demand from the government.

2.4 Review

A review is carried out partially in the annual report of HEI by using indicators such as the total number of inspections and the number of inspections per category of activity. The annual reports also provide recommendations aimed at improving the overall effectiveness of the authority.

The same applies for the regional authorities, but the level of detail varies greatly between the regions. In principle, in large regions (e.g. the Region of Attiki) the annual reports provide more detailed and comprehensive information compared to smaller regions (e.g. region of Creta). In this context, the annual report of the Region of Attiki provides information on the number of complaints handled in most of its departments, but such information is not provided for the department of the environment. The annual review of the region of Creta does not provide information on complaints at all.

Such reports are not published by local authorities.

[165] Link to the annual report for 2010-2011 (in Greek): http://www.ypeka.gr/LinkClick.aspx?fileticket=LifXChvCP24%3d&tabid=367&language=el-GR

2.5 Frequency/regularity of complaints and trends

In 2011, HEI carried out 249 inspections which is less than in 2008 (313) but more compared to the number of inspections carried out in other years since the establishment of HEI (ranging from 142 to 248 following increasing trends). As mentioned in section 3.3, approximately 35% of these inspections were carried out after a complaint was registered.

Currently in Greece, the main environmental breaches are related to the contamination of surface water and groundwater (through industrial activity) and illegal waste disposal. Historically, illegal construction (including in protected areas) has been a particularly important issue in Greece. The operation of uncontrolled landfills remains an important issue although significant steps have been taken towards the closing and the restoration of illegal landfills across the country.

No information has been identified on the number and frequency of complaints on environmental issues to the regional authorities (see also section 3.4).

2.6 Existence of features to address challenging complaints (e.g. multiple complaints on the same issue)

In cases where the alleged illegalities do not only concern compliance with environmental law, but other aspects as well, a team of inspectors is created which includes competent persons from other authorities, to cover all issues involved. For example, this team may include health inspectors (e.g. when the activities threaten public health) or officers from the Financial Crime Prosecution Unit (e.g. when the offence involves illegal trading of protected species).

Such mechanisms have not been identified at the local or regional levels.

2.7 Costs

One of the issues which affect the complaint-handling mechanism in Greece is a shortage of inspectors authorised to perform on-site inspections. Even though not all complaints necessitate a follow–up by an inspectorate this issue creates difficulties in cases where the complainant does not have hard evidence to support his complaint. Indeed, according to the HEI, the working positions needed to carry out the inspections correspond to 78 employees and currently only 44% of these needs are met (35 inspectors and administrative staff). Because of the current economic crisis in Greece, additional staffing in public authorities can only be made internally. This imposes additional difficulties to the organisation and its effectiveness. Other competent authorities (e.g. the Regional Authorities) face similar issues.

The overall expenditure of the Ministry of the Environment in 2011 was €132.3 million whereas the budget for 2012 has been set at €114 million. HEI is funded by the Operational Programme "Environment–Sustainable Development, 2007-2012" with the amount of €12 million. However, there are also considerable revenues for the Ministry of the Environment which are collected from the fines. In 2010 this revenue reached €5.5 million.

At the regional or local levels, such information was not included in the annual reports reviewed in this study. The annual reports of the regions of Attiki and Crete provide information on expenses. However, in cases where a break-down by type of work is provided, administrative aspects of the complaint mechanisms are not included. Specifically, the annual report of the Region of Attica mentions the number of complaints treated in some departments none of which are related to environmental aspects.

There are no costs for the complaints unless a case is brought in a court which might possibly impose costs for legal advice and representation and costs related to the court proceedings. There is no information available on the administrative costs of the mechanism.

2.8 Particular problems encountered

A difficulty often encountered relates to cases where an illegal activity is taking place outside the working hours of the authorities (e.g. in the case of illegal pollutant discharges by an industrial facility, only during the night). According to HEI, this issue has largely been resolved through a close cooperation with the Environmental Police which proceeds with the examination of such cases and, if a breach is identified, the offenders are questioned immediately. Before the involvement of the Environmental Police, this process could last up to 4 to 5 years and in several cases companies were released without charge because they had access to good legal advice. Furthermore, in terms of enforcement of the environmental law, the Special Service of Demolitions was established with the role to identify illegal structures and proceed with demolitions where necessary (if the illegal constructions cannot be settled under the provisions which are set by the Law 4014/2011).

2.9 Comments and cases that can serve as good/bad examples

The recent Law 4014/2011166 sets mandatory, periodic, and special inspections which can be carried out not only by the competent public authorities but also by private inspectors. Practically, this will be done by developing a pool of competent private inspectors and their selection for inspection tasks will be carried out through a draw. This system will be closely monitored by HEI and, if necessary, additional inspections will be carried out by HEI inspectors. This system is expected to be implemented in the next 6 months.

Overall, the use of IT is not a widespread practice in all authorities involved in complaint-handling. The use of IT varies and depends largely on the training of the staff and the availability of the necessary equipment in the various authorities. However, under Law 4014/2011 an electronic environmental registry will be created in which companies will be assigned an "environmental identity" which will also include information related to the environment. This environmental ID will be necessary for the companies to carry out their activities. Companies that fail to comply with the environmental laws will be included in a black list which will be made public. Companies will have an additional incentive to comply with the environmental law as this would remove them from the list and possibly lead to a decrease in fines. The development of an electronic database to record and monitor projects and activities as well as inspection activities at central and regional level is also under consideration.

The Kallikratis plan puts forward the development of IT applications for citizens which would improve the interaction between the civil society and the regional and national authorities. For example, the Municipality of Thessaloniki has developed an online tool[167] through which citizens can submit complaints. Through this tool the complainants can track the status of their request at any time. Nevertheless, such applications are not widespread.

[166] Law 4014/2011 - Environmental authorisation of projects and activities, arranging arbitrary in relation to the creation of environmental balance and other provisions under the jurisdiction of the Ministry of Environment.

[167] Link to the online tool: http://www.thessaloniki.gr/portal/page/portal/HlektronikesYpiresies

3 Existence of specific additional institutions/authorities for the sector of environmental complaint-handling

3.1 Greek Ombudsman

The responsibilities of the Greek Ombudsman are structured in different themes. Issues related to the environment are included in the theme "Quality of Life". A dedicated team of investigators is responsible for cases of maladministration on behalf of national authorities on issues related to the environmental and urban planning legislation. The investigators also handle cases of illegal interventions in environmentally protected areas, environmental licensing of enterprises and industries, the process of characterising forest land, determination of sea shore and beach line, environmental licensing, installation and operation of infrastructure, illegal constructions, placement and operation of mobile phone antennas, problematic operation of food premises, long term liens on private property, protection of cultural heritage or access denial to environmental information.

The Kallikratis Plan established the Regional Ombudsman whose role is to handle complaints which affect directly the citizens and businesses and relate to maladministration of the Regional Authorities. The Regional Ombudsman supervises the Regions and ensures that the activities follow the legislative procedure. In addition this body acts as an auditing mechanism. The Regional Ombudsman is elected by the council of the Regions. According to the 2011 annual report of the Regional Ombudsman[168], in the Region of Attiki, from May 2011 (since this authority started to operate) until December 2011, 29 letters were received, none of which concerns environmental issues. This body has been established very recently and there is limited information on its effectiveness.

[168] Regional Ombudsman of the Regional Authority of Attiki, Annual review of 2011, Athens 2012.

3.2 Specific features of the Ombudsman procedures

3.2.1 Procedures

Any private or legal entity (individual or organisation) has the right to lodge a complaint with the Ombudsman. The complaints need to be made in written and shall not be made anonymously. These can either be sent by fax, by post or delivered in person to a specific office. Once the complaints are received these are entered in an electronic protocol to allow an easy tracking of each case and to ensure a good level of control and transparency of the whole process. The complainants are required to submit their complaints within 6 months after they became aware of the alleged illegality or failure from a public authority or entity. Following the electronic registration, a preliminary examination is carried out by the relevant department (for cases related to the environment, the responsible department is the 'Quality of Life'). Then the complaint is assigned to a specific investigator and a letter is sent to the complainant with the contact details of this investigator. If the complaint does not fall under the Ombudsman's jurisdiction a letter is sent to the complainant informing him which are the responsible authorities to handle his case and what procedure needs to be followed.

If the case falls under the Ombudsman's jurisdiction, the investigator will identify and examine the relevant legislation (possibly in collaboration with other authorities) and will request all relevant information from the public authority concerned. If necessary, the investigator might ask the complainant to provide additional information relevant to his case. The investigator might also interview individuals, carry out on site investigations, or set a team of experts. The General Inspector of Public Administration (see section 4.3) might also be asked to provide assistance in the investigation process. All collected evidence and relevant information are examined and if no illegality or maladministration is identified, the complainant is informed and the file of the complaint is archived. If this is not the case, the investigator makes recommendations to the concerned public authority. If these recommendations are not taken into account at a satisfactory level, the Ombudsman prepares a report with recommendations which is submitted to the responsible minister. This report might also include deadlines by which the recommendations need to be adopted. The Ombudsman might also decide to make this illegality or maladministration public.

The Ombudsman can also get involved in procedural issues such as the failure of a public authority to provide an answer to a legal authority within a predefined time period. In addition, if the public authority refuses to collaborate during the procedure or if there is a sufficient evidence of criminal acts, the Ombudsman may refer the case to the prosecutor.

In all cases, the complainant is informed about the status of his complaint in all stages of the procedure. In addition, the investigation is recorded and classified to speed up the procedure and to allow the development of statistical analyses in the future.

3.2.2 Availability of technical, scientific and legal expertise in EU Environmental law

According to WWF Hellas, the Greek Ombudsman has a strong legal expertise in the EU Environmental law but the knowledge on technical and scientific aspects is limited.

3.2.3 Reporting

The Ombudsman publishes an annual report which also includes the conclusions of complaints which were made to the authority[169]. These reports include statistical information such as the following:

- number of complaints received, including the share of those which fall under the Ombudsman's jurisdiction;
- share of resolved complaints;
- share of cases by public authority concerned;
- information on demographics;
- break-down of cases by the areas addressed.

The report mentions that the most affected areas in the domain of the natural environment are the ones related to the quality of drinking water as well as to the waste management. In residential environment the most critical aspect identified is access to public spaces.

Periodically, the Ombudsman also publishes special reports on critical issues. None of the reports which have been published so far relate to environmental issues.

3.2.4 Review

Periodic reviews of the effectiveness of the process have not been identified. In the annual reports, the Ombudsman provides recommendations to various public authorities. Nevertheless a review of the Ombudsman system is not carried out.

[169] Link to the annual report for 2011 (in Greek): http://www.synigoros.gr/?i=stp.el.annreports.65277

3.2.5 Frequency/regularity of complaints and trends

The table bellow shows the number of complaints received by the Ombudsman since its establishment as well as the number of those which concerned the department "Quality of Life".

Year	Total number of complaints	Number of complaints handled by the department 'Quality of Life'	Share of complaints handled by the department 'Quality of Life'
1998	1,430	417	29.16%
1999	7,284	1,735	23.82%
2000	10,107	2,470	24.44%
2001	11,282	2,256	20%
2002	11,762	2,334	19.84%
2003	10,850	2,145	19.77%
2004	10,571	2,075	19.63%
2005	10,087	1,989	19.72%
2006	9,162	1,883	20.55%
2007	10,611	2,004	18.89%
2008	10,954	2,137	19.51%
2009	13,433	2,355	17.53%
2010	13,179	2,287	17.35%
2011	10,706	1,429	13.35%
Total	141,418	27,516	

In 2011, 54.2% of complaints received fell under Ombudsman's Jurisdiction and 1.24% concerned the Ministry of the Environment and 12.59% concerned regional authorities (the nature of these complaints is not specified). The complaints which were handled by the department 'Quality of Life', about 85% concerned the residential environment (e.g. urban planning) and 11% the natural environment.

3.2.6 Existence of features to address challenging complaints (e.g. multiple complaints on the same issue)

As mentioned in section 4.2.1, the investigators have the option to establish a commission of experts if this is required by the nature of the complaint.

3.2.7 Costs

No information has been found on the administrative costs of the mechanism. The overall expenditure of the Ombudsman in 2011 was €8.5 million and the budget for 2012 has been set at €7.9 million.

3.2.8 Benefits (e.g. better implementation, improved public trust)

The Greek Ombudsman has increased the level of confidence towards public authorities by acting as a hub of legal aid and information and by making up for public areas of deficiency and dysfunction.

3.2.9 Contributions to the effective implementation of EU environmental law

The Greek Ombudsman contributes to an effective implementation of EU environmental law in several areas which the EU legislation has strong and direct impact such as the protection of Natura 2000 sites. Often cases which are handled by the Greek Ombudsman gain media attention which can act as a pressure for the public authorities to fully implement the environmental legislation. However, there are no statistics available concerning this aspect.

3.2.10 Particular problems encountered

In Greece, the Ombudsman has the authority to ascertain breaches of the law but does not have the ability to enforce possible solutions. There have been cases where unlawful acts were identified and the accused organisation neither took any action nor did it face any consequences. On certain occasions, the Ombudsman can proceed with a hierarchical appeal or refer the case to a disciplinary or prosecutorial control.

3.2.11 Comments and cases that can serve as good/bad examples

In Greece, the Ombudsman also cooperates with the civil society in many aspects which concern the environment. For example, together with the environmental NGO WWF Hellas, the Ombudsman published a “legal guide” which explains in a great detail several legal provisions that concern the environment, including issues and processes related to complaints.

3.3 Other institutions

Individuals or groups of citizens can also contact the Parliament in writing to make complaints or requests. Through[170] the parliamentary control, individuals and organisations can address complaints in the form of a) petitions, b) questions, c) current questions, d) applications to submit documents, e) interpellations, f) current interpellations and g) investigation committee. Parliamentarians may endorse such petitions. The Ministers are then bound to reply within 25 days to a petition endorsed by a MP. However, the parliamentary control in Greece is not regarded as an effective mean to submit a complaint. The answers which are given through this process are often imprecise and no further action is taken. However on some occasions the parliamentary control has been proven to be effective in adding publicity to environmental issues since the discussions which are taking place in the Parliament are followed by the media.

In addition, as mentioned in section 3.1, the Inspectors-Controllers Body for Public Administration (ICBA) also has an important role in checking and ensuring that the complaint-handling mechanism is operating smoothly. ICBA contributes significantly to the efficient and effective operation of public administration and especially by identifying and eliminating cases of corruption, maladministration, and low productivity or quality of the public services. Specifically, this organisation conducts inspections, controls and investigations and collects evidence for the public prosecution. The inspection which are carried out are either programmed or requested by Ministries, the General Inspector of Public Administration or the Greek Ombudsman. The inspections can be carried out on all public entities but not on private companies.

Complaints can also be made directly to this organisation as long as they concern maladministration or other legal breaches in public authorities. The complaints can be submitted by filling an online form[171] or by post. In 2010, about 7% of more than 7000 complaints lodged during the period 2004-2010 were related to the environment and more often concerned alleged illegalities of forest departments. Compared to the role of Ombudsman the General Inspector of Public Administration also has authority to enforce measures for the restoration of law.

[171] Link to the online form: http://rns.seedd.gr/PortalCont/Inet/z001ProtalContatsadd.asp

The Council of State, which is the Supreme Administrative Court in Greece, also has a key role not only in the enforcement of the environmental law but also in issues related to the complaint-handling mechanism. The Council of State and specifically the Fifth Division deal with violation of constitutional rights including in the environmental area. Specifically, it set the standards for the interpretation of the Constitution and the laws and for the advancement of legal theory and practice. Petitions for judicial review (annulment) of enforceable acts of the administrative authorities for excess of power are addressed in principle by the Council of State. In addition, case-law plays an important role in addressing and resolving environmental issues since it is generally regarded as a source of interpreting different cases. The fifth department of the State Council has a particularly significant role with regard to environmental issues.

4 Mediation mechanisms

In Greece, the Ombudsman is the only body which can officially act as a mediator (see above for a description of the role and processes in relation to the complaint-handling mechanism).

However, the HEI can also act as a mediator especially on issues which relate to compliance with the environmental law in public authorities. Compared to the Ombudsman, HEI can be more effective since the organisation also has the authority to impose sanctions.

In 2006, the Hellenic Centre for Mediation and Arbitration (HCMA) was established from a Greek association of limited liability companies as an effort to introduce the mediation process in businesses. The centre recommends experts who can act as mediators and organises information events. To date, only one mediation process has been held in Greece which is related to a dispute between a Greek and another US media company over the publication of an article.

In December 2010, the Greek Government adopted the Law on "Mediation in civil & commercial disputes"[172] (Mediation Law) which transposes the EU Directive on certain aspects of mediation in civil and commercial matters.[173] Article 10 of the Mediation Law, protects the confidentiality of the mediation which states that a confidentiality agreement

[172] Act 3898/2010, available at www.ethemis.gr/wp-content/uploads/2010/12/N-3898.2010-Διαμεσολάβηση-σε-Αστικές-Εμπορικές-Υποθέσεις-ΦΕΚ-Α-211-16.12.2010.pdf

[173] Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:136:0003:0008:En:PDF

must be agreed before the beginning of the mediation process. Principles such as independence, impartiality, transparency, effectiveness and fairness are not addressed by the Mediation Law but they are promoted by HCMA. According to the Mediation Law, all types of civil and commercial disputes may be settled as long as they are not related to issues such as taxes, customs or areas of administrative nature.

5 Conclusion

Accessibility

It is relatively easy for a citizen and/or company to file a complaint as it normally only requires sending a letter to the competent authorities. The mechanism is open to everyone but it is often difficult to identify the competent authority. The legal guide published by the NGO WWF Hellas together with the Greek Ombudsman (see section 4.2.11) provides a good insight of the mechanism, at least about the competent bodies. However, the guide was published before the establishment of the Ministry of Environment and the reformation of the regional system which took place under the Kallikratis Plan and therefore it will need to be updated.

There is a good level of awareness of the role of the Ombudsman. Concerning the regional authorities, the information provided to the public (e.g. in their websites) varies considerably between the different Regions but generally remains limited and does not cover environmental aspects. The level of information in websites, on how to make a complaint varies considerably between different authorities. This applies particularly on regional and local authorities. For example some authorities offer an electronic form for making complaints whereas others do not provide any information at all.

In addition, the fact that there are no costs to be borne by the complainants increases considerably the level of accessibility.

Transparency

Overall, there is a good level of transparency in the complaint-handling mechanism, but not always. For example, the conclusions of the complaints which are handled by HEI and the Ombudsman are published (e.g. through the periodic reports), but there is a low level of transparency for the complaints handled by the regional authorities. In cases where a complaint is handled by different authorities the level of transparency might decrease. There have been significant efforts to increase the level of transparency (e.g. the allocation of a

protocol number in requests), however, according to WWF Hellas there are still cases where complaints are left unaddressed. The recently published Guide of Good Administrative Behavior might have a significant impact in ensuring a minimum level of transparency by providing an explicit description of the responsibilities of public servants including the timeframes and procedures on how to handle Citizens' requests.

Confidentiality

No issues related to breaches of confidentiality have been identified. In general the complaints cannot be submitted anonymously, but the complainants can request that their identity remains confidential.

Independence

Certain mechanisms and specifically the Ombudsman and the Council of State can be considered as independent but for others (e.g. HEI, the regional authorities and other competent bodies) there can be significant intervention by the government. This intervention mainly takes the form of putting forward cases of particular importance.

Fairness

The complaint-handling mechanism is not always fair as there have been cases in which some complaints were not addressed at all. Nevertheless the recently published Guide of Good Administrative Behaviour might have an impact on reducing or eliminating these occurrences. In addition, depending on which authority is involved in the process, there are significant differences in the time needed to process the complaint (e.g. a regional authority vs. the prosecutor). The Ombudsman and the recently established regional Ombudsman has an important role in strengthening the fairness of the mechanism since it acts as a monitoring mechanism which is accessible to all citizens.

Simplicity

The complaint-handling mechanism in Greece is not simple since often it is difficult for the complainant to identify the competent authority/ies. The role of NGO's is often important in providing assistance on this issue (e.g. through the publication of the legal guide or providing direct assistance). In addition, the recent reformation of the local and regional governance together with the establishment of the Ministry of the Environment might have gradually a positive impact on the complaint-handling mechanism as a whole.

Flexibility

In the case of HEI the procedures of complaint-handling (and especially concerning inspection processes) are in general standardised without allowing a great level of flexibility. An exception to this is the fact that the mechanism allows the formation of teams of inspectors composed of persons from different disciplines. This allows an effective handling of more complex issues which often require considerable flexibility. In addition, challenging complaints can be given priority in the annual plan of HEI. In the case of other competent authorities (e.g. the regional authorities) the process seems to be more flexible since depending on the nature of the alleged illegality, it allows for the interaction of other bodies. Nevertheless, no benchmarks are used in the complaint-handling mechanism and therefore the system although flexible it is not designed to rely on efficiency.

Effectiveness

HEI's role has been gradually acknowledged by the public, resulting in an increased number of complaints towards this organisation. There is not much information on costs but efforts are made to reduce costs by resolving issues outside the courts. An example is the forthcoming establishment of the environmental identification and the black listing of companies. This type of measure can act as an additional incentive for companies to comply with the environmental law, while reducing the number of costly processes (e.g. follow-up inspections). In certain cases (e.g. the case of the Asopos river[174]) the complaint-handling mechanism has been effective but this has not always been the case[175].

The effectiveness of Ombudsman can be also regarded as high, especially since its establishment, this organisation has not only handled a large number of cases (see section 4.2.5.) but also identified areas of improvement.

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[174] Possibly the most characteristic example of a restoration action in Greece is the so-called "Asopos river tragedy". Asopos is located north of Athens and for several years it was polluted by several industries which discharged their residues directly into the river. Eventually, these activities caused serious environmental damages to surface and ground water, soil and biodiversity resources.

The industries are regarded as responsible to bear the costs for the implementation of prevention and restoration measures as well as for implementation of laboratory tests for the establishment of pollution limits. This action also includes the assessment of the extent and the characteristics of the environmental damage, the identification of specific remediation measures and the development of an objective cost allocation system to the operators.

[175] A number of resolved cases handled by the Ombundsman and HEI the annual reports: Hellenic Environmental Inspectorate, Annual report 2010- 2011, Athens 2011. Available at: http://www.ypeka.gr/Default.aspx?tabid=785&sni[524]=1833&language=el-GR# The Greek Ombudsman, Annual report of 2011, Athens 2011. Available at: http://www.synigoros.gr/?i=stp.el.annreports.65277.

An assessment of the regional system is difficult due to its very recent revision. However, there seem to be a lack of technical, legal and scientific expertise which reduces the effectiveness of the authority. In addition, the annual reports of the regional authorities include several information which is related to their performance. Nevertheless the structure and the content of the reporting process is not standardised and there is lack information on the complaints which are related to environmental issues. In this context, no incentives exist for these authorities to improve their performance.

Comprehensiveness

There have been significant improvements but the overall system cannot be regarded yet as comprehensive. The horizontal approach which has been put forward in the past years gives more confidence that the complaints will be handled properly and that a solution will be eventually reached. In addition, the overall system is becoming more reliable. Nevertheless, there are still numerous issues which need to be resolved especially regarding the clarification of the responsibilities of the various authorities.

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VI. IRELAND

1 Institutional, administrative and legal context

Ireland is a parliamentary democracy and a unitary state. Art 15 of the Constitution of Ireland 1937, determines that the sole and exclusive power of making laws for the State is vested in the National Parliament ("*Oireachtas*") comprising the President, a House of Representatives and a Senate. The National Parliament and the Government must act in accordance with the Constitution (Arts 15 and 28) which is interpreted by the Courts (Art 34).

Although Ireland has a relatively centralised administrative structure, the 20th Amendment to the Constitution of Ireland, 1999, gave for the first time clear constitutional recognition to local government (Art 28A(1)). There are 34 primary local authorities in Ireland, including 29 county councils and 5 city councils. Local authorities are democratically elected every five years through a system of proportional representation. Public authorities in Ireland are generally subject to the supervision of the courts. Judicial review of administrative decisions will generally be limited to the assessment of the legality of the decision i.e. whether the public body has acted within its powers and followed the correct procedures. The review of the merits of administrative decisions by courts has a limited scope in the Irish legal system. A decision will be quashed by a court on its merits only if the public body is found to have acted unreasonably or irrationally (*O'Keeffe vs An Board Pleanála* [1993] 1 IR 39).[176]

Ireland covers a land area of 68,895 km² and has a population of 4,588 million. While the population density (66,59 persons/km² in 2011) remains relatively low compared to the majority of other EU countries, Ireland has witnessed an important population growth in the last 20 years (Central Statistics Office, 2012). Combined with the steep rise in incomes, economic activities and urbanisation of the last decades (until the 2008 recession), this has led to new significant pressures on the environment and on the provision of environmental services such as municipal waste disposal or wastewater treatment (EPA, 2010). While significant steps in terms of improving implementation of EU environmental law have been taken in the last years, the "pace and scope of transposition of the EU legal framework, along with the subsequent implementation" have been generally "far from satisfactory" in the last

[176] For more information on access to justice, see Milieu Ltd. (2007) *Country report for Ireland on access to justice in environmental matters*, http://ec.europa.eu/environment/aarhus/study_access.htm

decade (OECD, 2010), as reflected by the high number of yearly enforcement proceedings against Ireland by the European Commission (EC, 2009 and 2010).

1.1 Main governing acts transposing EU environmental legislation

EU environmental law in Ireland has been transposed into national law through a range of different legislative frameworks. The most significant legislative acts are the following:

- Protection of biodiversity: Wildlife Act 1976, Wildlife (Amendment) Act 2000 and European Communities (Natural Habitats) Regulations 1997;
- Integrated pollution prevention and control: Environmental Protection Agency Act 1992 and Protection of the Environment Act 2003;
- Waste management: Waste Management Acts 1996 to 2008;
- Drinking water: European Communities (Drinking Water (No.2)) Regulations 2007;
- Wastewater: Urban Wastewater Treatment Regulations (as amended in 2004 and 2010) and Wastewater Discharge (Authorisation) Regulations, 2007;
- Water quality management: Local Government (Water Pollution) Acts 1977-1990;
- Air pollution (non-IPPC): Air Pollution Act 1987 (as amended);
- Land development: Planning and Development Acts and European Communities (Environmental Impact Assessment) Regulations, 1989-2000.

1.2 Bodies responsible for implementing EU environmental legislation

Responsibilities for implementing, monitoring and enforcing EU environmental law are shared between national and local authorities, which together are responsible for carrying out more than 500 environmental protection functions contained within around 100 pieces of legislation (O'Leary and Lynott, 2011).

Implementation of EU environmental law at national level is primarily under the responsibility of the Environmental Protection Agency (EPA). The EPA is statutory body entrusted, *inter alia*, with the formulation of certain national environmental policies (e.g. national hazardous waste management plans), monitoring and reporting on the state of the environment, the oversight over the statutory performance of local authorities, the enforcement of environmental regulations through inspections, auditing, and administrative and judicial actions, in particular the licensing and enforcement of licenses for large facilities. Under the EPA Acts 1992 to 2011, the Protection of the Environment Act 2003 and subsequent

regulations the EPA implements the IPPC Directive by licensing large industrial facilities through an integrated license covering emissions to water, air and land, waste reduction and energy efficiency. Under the Waste management Acts 1996 to 2011 the EPA controls certain activities in the waste sector not covered by the IPPC legislation (especially landfills and other waste disposal and recovering activities) through the issuing and enforcement of licenses. Since 2007 the EPA is also in charge for the licensing and certification of the discharge of dangerous substances by waste water from sewage systems operated by water services authorities. Nature and biodiversity protection and management, including the implementation of the EU Habitats and Birds Directives, is primarily under the responsibility of the National Parks and Wildlife Service (NPWS) which is now part of the Department of Arts, Heritage and the Gaeltacht. The NPWS is also the management and scientific authority for the implementation of CITES in Ireland. The Inland Fisheries Ireland (IFI) is since 2010 the national statutory authority responsible for the protection of fisheries, coastal waters and internal watercourses. The IFI is empowered, *inter alia*, to enforce the Water Pollution Acts 1977 & 1990 where e.g. wastewater discharges threaten sensitive fisheries. To comply with Commission Regulation (EC) No. 1013/2006 on transfrontier shipments of waste, the Transfrontier Shipment Office was designated as the National Competent Authority for controlling the export, import and transit of waste shipments under the Waste Management (Shipments of Waste) Regulations, 2007, taking over the responsibilities previously entrusted to local authorities. Lastly, the *An Board Pleanála* (the Board) is the national appeals board for planning applications. The Board has primarily the function to review planning decisions of local authorities, including third party appeals against planning permissions. The Board has also a first instance function in relation to planning applications made by state bodies when those require an environmental impact assessment.

Local authorities are responsible for setting development plans, waste management plans for non-hazardous waste and granting permission for local development, including the implementation, in cooperation with the EPA, of the EIA Directive requirements for local development plans likely to have a significant impact on the environment.[177] Their monitoring and enforcement responsibilities include licensing and assuring compliance by small and medium-sized businesses with legislation on air, noise, planning rules, waste, wastewater and water quality. In relation to air, local authorities are responsible, *inter alia*, for licensing

[177] The EPA is to be notified for any planning application that needs an EPA license. In case of planning permission it is for the EPA to impose conditions on emissions. The local authority can nevertheless refuse the application on environmental grounds regardless the position of the EPA.

certain facilities falling outside the scope of the IPPC licensing controlled by the EPA, monitoring emissions in their area as well as enforcing other legislation such as legislation on banned fuels, as established under the Air Pollution Act 1987. Similarly for waste they have responsibilities for granting waste permits for small scale recovery and disposal activities falling outside the waste licensing of the EPA, waste collection permits for commercial collection activities as well as a general responsibility to monitor waste activities in their respective area. As regards drinking water, under the European Communities Drinking Water Regulations 2007, local authorities are primarily responsible for ensuring the quality of the water that public/private water utilities distribute. As with all other environmental protection functions they are subject to the supervision of the EPA, which has to be notified in case of risks to human health and can issue binding directions to local authorities. The EPA also produces a yearly report on the quality of drinking water in Ireland containing information on each local authority water supply system.[178] Local authorities also deliver environmental services such as waste management, water supply and sanitation. In waste management, local authorities have expanded their role from waste collection and landfill management to preparation of local waste management plans, waste reduction and control of illegal dumping. In terms of waste collection, in many counties local authorities have withdrawn from the service and now merely regulate the services provided by the private sector (OECD, 2010).

2 Scope, Hierarchy and Coordination of complaint-handling

2.1 Description of main actors

While there is no centralised environmental complaint-handling body responsible for the handling and resolution of complaints relating to breaches of EU environmental law, the Irish complaint-handling system presents a clear hierarchy and structure. This structured approach was developed by the Environmental Enforcement Network (now renamed NIECE - Network for Ireland's Environmental Compliance and Enforcement) in 2007 through the establishment of a National Environmental Complaint Procedure. One of the objectives of

[178] For further information on the environmental protection functions of Irish public authorities see: http://www.citizensinformation.ie/en/environment/environmental_protection/eu_environmental_law.html

this procedure is ensuring that when an individual or NGO complains about an activity in breach of EU environmental law, their complaint will always be referred to the competent authority directly responsible for enforcing the relevant license or legislation (EPA, 2009).

In light of the high number of public bodies responsible for the handling of environmental complaints, the present case study will mostly focus on the specific features of complaint-handling activities of two most representative authorities both in terms of number and scope of complaints: local authorities and the EPA.

Local Authorities

The 29 county councils and 5 city councils are the primary units of local government under the Local Government Act 2001 (LGERG, 2010). Local authorities possess little fiscal autonomy: central government provides a large share of local authorities' capital and operating expenditure. The largest contributions come from the MoECLG's Local Government Fund. Smaller sources of local income include taxes on commercial and industrial property, housing rent, borrowing, and service charges, including for waste collection (OECD, 2010). In 2010, the share of local authority budgeted current income provided directly by the State amounted to €1.8 billion or 41% of total budgeted current income. Commercial rates account for 29%, with the remainder attributable to income in respect of charges for goods and services and other income (LGERG, 2010). Staffing levels (full time equivalent) vary significantly depending on the size of the county or city council, ranging from 6,480 in Dublin City to 302 in Leitrim. Staffing levels have been reduced by 5,000 between mid-2008 and 2010, representing a 13% reduction in the overall number of local government staff. Around 20% of the staff employed in city or county councils work in the area of environmental services, monitoring and enforcement (LGERG, 2010).

Environmental Protection Agency

The EPA is an independent body established in 1993 under the Environmental Protection Agency Act 1992 and externally funded by the Ministry of Environment, Community and Local Government. Since 1992 its statutory functions have been significantly expanded by the Waste Management Act 1996 and the Protection of the Environment Act 2003 and a broad range of secondary legislation (EPA Review Group, 2011). It is managed by a full-time Executive Board consisting of a Director General and four executive Directors appointed by Government, each responsible for one Office: Office of Environmental Enforcement (OEE), the Office of Climate, Licensing and Resource Use, the Office of Environmental Assessment and the Office of Communications and Corporate Services. The EPA overall employed 321 full-time staff in 2011 and comprises nine regional offices/inspectorates coordinated by one

national office. The EPA budget and staff number was considerably reduced since 2008 from more than €70 million in 2008 (with 340 full-time staff) to around €60 million in 2011 (EPA Review Group, 2011). The OEE, with 90 staff based in five locations throughout the country is the office responsible for handling environmental complaints. The OEE was created in 2003 to tackle illegal waste dumping and strengthen the overall environmental compliance (OECD, 2010). Its main functions now include, *inter alia*, the enforcement of IPPC and waste licenses and wastewater discharge authorisations, the prosecution of significant breaches of environmental law and the monitoring of the statutory environmental performance of local authorities.

2.2 Application to scenarios

The majority of complaints in relation to the alleged illegality or non-compliance by a private person or company in relation to EU environmental law are handled by the local authorities or the OEE depending on the nature and scale of the illegal activity. Complaints related to the failure of a public or private body to provide an environmental service will be mostly handled by the OEE under its license requirements and powers under s.63 EPA Act 1992, a catch all provision granting the EPA a supervisory function in relation to local authorities' environmental protection statutory responsibilities. When the failure of a public body is procedural, a complaint may be filed to the Ombudsman, which can only review the general appropriateness of the procedure and has no jurisdiction over the EPA (EPA Review Group, 2011). Third party appeals on the procedure or merits of planning permissions are generally filed before the *An Board Pleanála,* an administrative appeals tribunal.

2.2.1 Is there a mechanism/are there mechanisms for alleged illegality or non-compliance of a private person/company?

A two tiered approach to complaint-handling has been put in place by the OEE for complaints related to the operations of its licensed facilities (e.g. breach of IPPC licenses, waste licenses or waste water discharge licenses falling outside the scope of the IPPC). In the first instance the complainant is asked to contact directly the licensed facility. All EPA licensed facilities are required under their license conditions to maintain a written record of all complaints relating to the operation of the activity including the date and time of the complaint, the name of the complainant, details on the nature of the complaint, the actions taken on the basis of the complaint, the results of such actions and the response made to

each complainant. Information on complaints is to be reported to the OEE within a set time limit.[179] The OEE staff will then monitor and assess how the licensee dealt with the complaint during inspections and audits and will determine whether any further action is required. In the case the complainant receives no feedback from the licensed facility or the problem persists, the complaint may be filed directly to the OEE.

A two tiered structure is also formally available for complaints about pollution matters under the control of local authorities (e.g. water pollution, noise, littering, backyard burning, etc…). In that case a complaint should be made at first instance before the relevant local authority. Only in case the problem persists or the local authority fails to respond to the complaint, the complainant may forward the complaint to the OEE. As established by s.63 EPA Act 1992, the OEE has a supervisory role over the environmental protection functions of local authorities. The OEE may request information about their statutory performance, carry out audits of their environmental performance and even issue binding directions in case of an imminent danger of environmental pollution resulting from the failure of a local authority to carry out its statutory function. To avoid duplication and institutional conflicts the EPA will only investigate such complains in the case the complainant provides strong evidence that the local authority had been made aware of the complaint and given an opportunity to resolve the issue. Alternatively, the failure of a local authority to use its enforcement powers or properly respond to an environmental complaint may also be referred to the Office of the Ombudsman, which has the power to review under s.4 Ombudsman Act 1980 any issue of maladministration by local authorities.

As mentioned above, for other specific complaints about wildlife and nature conservation (e.g. illegal trapping or hunting of wild birds or import and trade of endangered species), the main competent authority is the National Parks and Wildlife Services. A 24 hours environmental complaint line for the pollution of watercourses and coastal waters by non-licensed facilities has also been set up by the Inland Fisheries Ireland. While the EPA and local authorities have some shared responsibilities in that regard, there is no structured hierarchy in relation to those complaints.

[179] For examples of license conditions see the EPA licenses online database http://www.epa.ie/terminalfour/ippc/index.jsp?disclaimer=yes&Submit=Continue

In case an industrial company which has an eco-label (Reg. 66/2010/EC of 25 November 2009) is claimed not to be respecting the criteria the competent authority is the National Standards Authority of Ireland. No formal complaint-handling system could be identified.

2.2.2 Is there a mechanism/are there mechanisms for alleged illegality or non-compliance of a public body/utility in relation to providing an environmental service?

The majority of environmental services provided by either local authorities or private utilities that are subject to EU environmental law are operated under the monitoring and enforcement powers of the OEE. In relation to wastewater discharge, all water services authorities operate under an EPA license, as established under, *inter alia*, the Waste Water Discharge (Authorisation) Regulations 2007. Similarly a municipality operating a landfill will be subject to EPA license conditions as established under the Waste Management Acts 1996 to 2011 and associated regulations. As a result the same complaint system described above applies in relation to those activities. Since the enactment of the European Communities (Drinking Water) (No.2) Regulations 2007, EPA has powers to serve binding directions on local authorities where there is a quality deficiency in a public water supply service. In this case a complaint would first have to be made to the local authority. In case of unsatisfactory results, a complaint may be made to the OEE which may take action under its statutory enforcement powers (s.63 EPA Act).

Procedural issues of maladministration in relation to, *inter alia*, waste and water quality management may also be investigated by the Office of the Ombudsman under s.4 Ombudsman Act 1980.

2.2.3 Is there a mechanism/are there mechanisms for alleged failure of a public body to respect procedural requirements or some other required administrative standards?

Generally when a complaint relates to alleged procedural irregularities during the approval process of a development plan or project (e.g. failure to respect the EIA Directive procedural requirements or failure to appropriately consider the cumulative or individual effects of small scale housing on a protected Natura 2000 site), the main avenue for a citizen or NGO opposing the legality of the procedure will be to lodge a third party appeal under the Planning and Development Act 2000 before the *An Board Pleanála,* an administrative tribunal entrusted with the power to review planning decisions. As opposed to the OEE, the appeal

Board has no enforcement powers in relation to local authorities but merely an *ad hoc* decision-making function. Alternatively a citizen may challenge the legality of the decision through judicial review in the case the *An Board Pleanála* has no jurisdiction or the citizen is unhappy with the decision of the Board.

The Office of the Ombudsman has limited jurisdiction on the planning process. Given the existence of an internal appeal process, the Ombudsman cannot examine any specific decision to grant or refuse a planning permission but has only very limited powers to investigate the general running of the planning process (e.g. complaints on the availability of planning documents, handling of objections to planning applications, etc). The EPA and the licensing activities carried out by this body are outside the jurisdiction of the Ombudsman.

2.3 Specific coordination mechanisms

Following the ECJ judgment against Ireland on 26 April 2005 (Case C-494/01) which highlighted a systemic failure to implement the Waste Framework Directive and the need to better integrate the activities of the variety of environmental enforcement authorities, the OEE established the NIECE to improve cooperation and coordination between the different enforcement agencies, including local authorities, the Garda Síochána (police), prosecutors, the OEE, the Health Services Executive, other statutory environmental protection agencies and the Ministry of Environment, Community and Local Government (O´Leary and Lynott, 2011). One of the achievements of the NIECE in the last years has been the development of the National Environmental Complaint Procedure, with the aim of enhancing and harmonising the complaint-handling procedures carried out by regulatory bodies as well ensuring that complaints are always handled and referred to the competent authority. Apart from establishing and disseminating information about the structured hierarchy of complaint-handling detailed in the section above, the NIECE established two additional key measures to enhance coordination in the handling of complaints.

The first is the establishment of a 24 hours national environmental complaint line run by the NIECE. This line - which now encompasses all environmental complaints - was recently established to replace the “DUMP THE DUMPERS” national line that was set up after the 2005 ECJ judgment to enhance the information gathering and responsiveness of enforcement authorities in relation to illegal waste handling activities. Details of complaints made through this line are registered by the call centre in an electronic database and directly forwarded by e-mail to the competent authority. A report is sent to the EPA every week

detailing all complaints received and the competent authority that has been notified for each complaint (MacGearailt, pers. comm., 2012).

The second key initiative promoted by the NIECE has been the creation of a network of "Environmental Complaint Coordinators" (ECCs). This initiative resulted in local authorities assigning the role of ECC to one staff member. The ECC has the responsibility for ensuring that complaints are appropriately considered and followed-up and is the contact point between the EPA and the local authority, making it easier for the EPA to supervise the handling of complaints at local level and ensure that complaints on the statutory performance of local authorities (s. 63 complaints) are appropriately resolved by local authorities without the need of further action (MacGearailt, pers. comm., 2012).

3 Characteristics of the complaint-handling systems identified

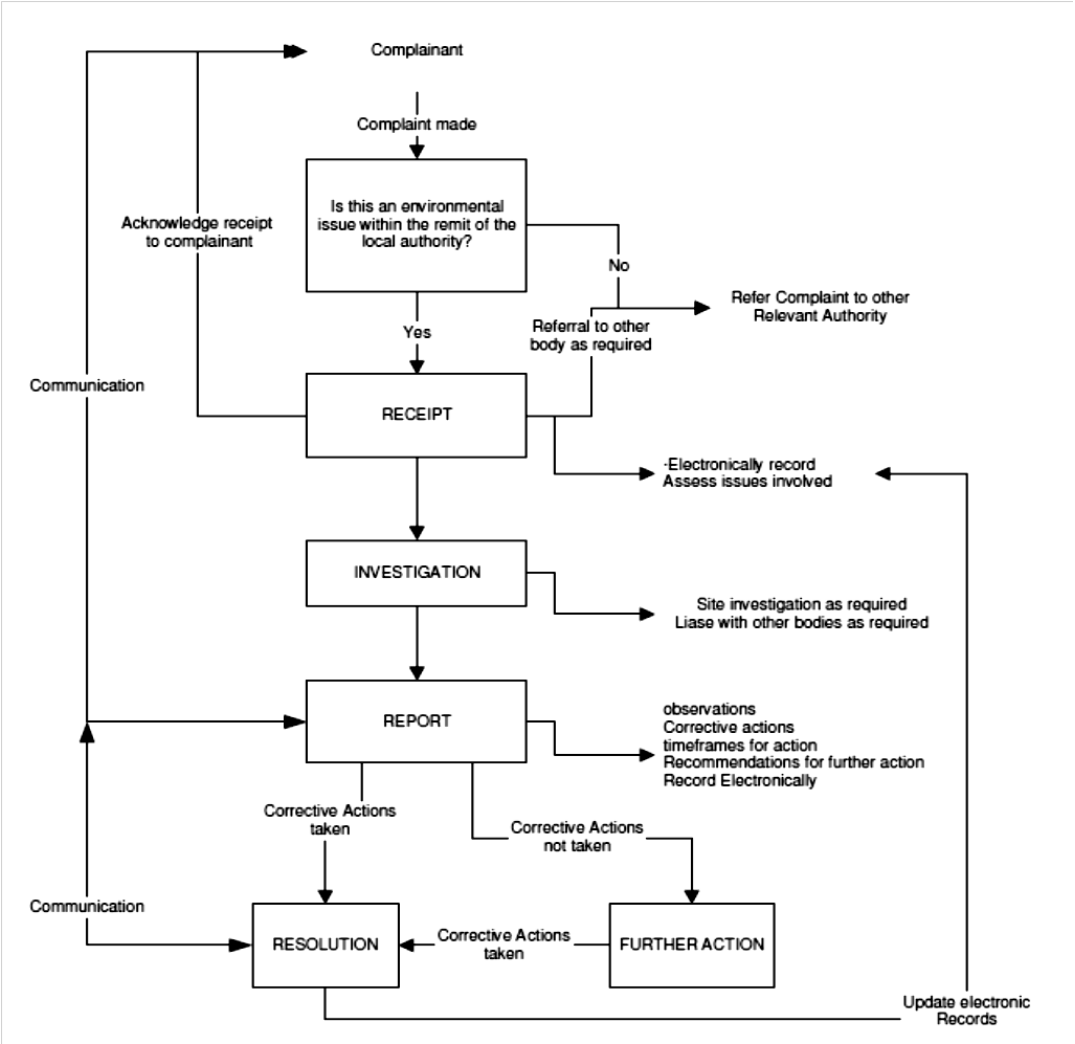
With the exception of complaints to planning authorities related to unauthorised developments under s.152 Planning and Development Act 2000,[180] complaint-handling mechanisms relating to EU environmental law are not established by law, nor are they directly regulated by any legal provision establishing rights and obligations. Local authorities and the EPA are generally bound to have regard to Ministerial Directions. Circular WPRR 04/08 under s. 60 Waste Management Act 1996, for example, directs the EPA and local authorities to prepare an enforcement policy in relation to Unauthorised Waste Activities, directed towards, *inter alia*, "an effective complaint-handling system". Most environmental complaints handled by local authorities, the EPA and other environmental enforcement authorities now broadly follow the National Environmental Complaint Procedure, a set of guiding principles developed within the NIECE that complement and harmonise already existing complaint mechanisms of local authorities (MacGearailt, pers. comm., 2012).

National Complaint Procedure for Local Authorities

[180] Art 152(1) When (*a*) a representation in writing is made to a planning authority by any person that unauthorised development may have been, is being or may be carried out, and it appears to the planning authority that the representation is not vexatious, frivolous or without substance or foundation […] the authority shall issue a warning letter to […] any other person carrying out the development and may give a copy […] to any other person who in its opinion may be concerned with the matters to which the letter relates.

The purpose of these guiding principles developed by the NIECE is to improve the transparency and effectiveness of complaint-handling at the level of local authorities, the ultimate aim of which is the reduction of complaints in relation their statutory performance before the OEE and the more effective responsiveness of local authorities to local breaches of environmental law. Compliance by local authorities with those guidelines is encouraged by a combination of soft coordination of local authorities' representatives through NIECE and the exercise of supervisory powers by the OEE under s. 36 EPA Act 1992 (Fenton, pers. comm., 2012).

Table 1: National Complaint Procedure for Local Authorities



Source: EEN Guidance Manual, 2007

The procedures established under these guidelines require, *inter alia*, minimum standards relating to record-keeping of complaints, acknowledgment of complaints, complainant confidentiality, investigation, reporting and feedback. Complaints received by local authorities should be recorded electronically and include a unique reference number as well as

minimum information including the date of the receipt, contact details of the complainant, the type and details of the complaint, the staff member in charge of investigating it and the eventual referral to other competent authorities. Complaints should then be forwarded to the competent personnel with a request for a timely report. Because of the diversity of possible environmental problems in terms of complexity and size, no specific timeframe is imposed by the guidelines. Once the subject matter of the investigation is determined, the competent personnel are required to liaise with other authorities, if relevant, in order to avoid duplication of work. The local authority should also be able at all time to inform, upon request, the complainant on the status of the investigation. A complaint investigation report should be made available once the issue has been effectively investigated. Lastly, the guidance requires the local authority to develop an effective internal management plan to ensure that complaints are effectively coordinated within the local authority (EEN Guidance Manual, 2007).

The National Complaint Procedure applied by the EPA

The EPA procedures to handle environmental complaints are in line with the above National Complaint Procedure developed for local authorities. Complaints to the EPA may be made by phone, mail, email and through a recently developed online system.[181] All environmental complaints are now entered in a centralised electronic system, through which complaints are assigned to the OEE team in charge of the subject matter of the complaint. Apart from a complaint coordinator with the responsibility of ensuring that complaints are appropriately handled, there is no specialised staff exclusively tasked with dealing with environmental complaints. Once a complaint is received by the relevant team, it will generally be assigned to the inspector dealing with the relevant licensed facility. In case the record of the complaint is found inadequate by the inspector, the complainant may be contacted again for gathering further information. If the record is found adequate, the first step will be generally to request the licensed facility or other regulatory addressees (e.g. local authorities) to submit a report within a certain timeframe set by the relevant inspector detailing the actions that they will take to address the issue. Once the report is received, it will be entered in the electronic system and the complainant will be automatically notified about the resolution of the complaint (MacGearailt, pers. comm., 2012).

[181] For the online application system see https://lema.epa.ie/complaints

3.1 Specific features of the national environmental complaint-handling system

3.1.1 Procedures/ procedural guarantees

Anonymity

Anonymous complaints are not encouraged and are generally given a low rating by local authorities or the EPA. Karen Dubsky (Coastwatch) reported that the National Environmental Complaint Line sometimes refuses to record complaints if the name of the complainant is not provided (pers. comm. 2012). Complainants may nevertheless request for their personal details to be kept confidential without the need to justify the reasons (EEN Guidance Manual, 2007; MacGearailt, pers. comm., 2012). The complainant's confidentiality is protected by law under s.26 of the Freedom of Information Acts 1997 and 2003. Nevertheless no general or sector specific legislative provision in Ireland grants any further legal protection to whistleblowers[182] in the context of reports on breaches of environmental law (Transparency International, 2010). The lack of such legal protection may often be problematic in a small country like Ireland and particularly for complainants exercising certain professions. Coastwatch reported that in their experience fishermen, port personnel and rangers were the most vulnerable to losing their jobs in case of controversial environmental complaints. Given the little trust in local authorities' capacity to guarantee confidentiality, NGOs as a result often function as intermediaries and make complaints on behalf of citizens by inventing fictional stories on how the breach of environmental legislation had come to their attention (Dubsky, pers. comm., 2012).

Record-keeping and availability of IT systems for handling complaints

Both the EPA and local authorities keep an electronic record of complaints containing the details of the complainant together with a reference number enabling the authority to provide feedback on the status of the complaint investigation (EEN Enforcement Manual, 2007; MacGearailt, pers. comm., 2012).

The EPA, as mentioned above, has now developed an online system whereby complaints may be filed directly through the EPA website. Those complaints are introduced directly into the EPA internal complaints database through which complaints are then assigned to the

[182] "Whistleblowing" is defined in the Transparency International Report as: "the disclosure of information about a perceived wrongdoing in an organisation, or the risk thereof, to individuals or entities believed to be able to affect action".

competent team. The EPA reported relatively high one-off costs in setting up the system, as it required the consolidation of different record keeping procedures in different regional offices. Local authorities on the other hand have generally no online complaint-handling system (MacGearailt, pers. comm., 2012).

Complaints made before the national environmental complaint line are recorded by an external call centre and inserted by the national line coordinator into a database accessible to environmental protection authorities. The recorded complaint form will be then sent by email to the relevant authority which will enter it into its internal database (MacGearailt, pers. comm., 2012).

Deadlines for analysis of complaints

General time frames for responding to complaints before the customer service of the EPA or local authorities are set under their respective Customer Charter (EPA) or Customer Service Action Plans (local authorities). Those reflect the relevant guidelines on quality customer service drawn up by the Ombudsman and the Ministry of the Environment, Communities and Local Government.[183] The EPA Customer Charter, for example, requires the EPA to provide a 24 hour contact service for urgent environmental matters, and promptly answer phone calls during office hours. When enquiries are made by letter, fax or e-mail, the Customer Charter requires the responsible staff to respond within 5 working days upon the receipt of the enquiry and within 20 working days in case the enquiry is particularly complex. Similarly when complaints on the quality of the customer service are made, a reply should be provided within 20 working days, In case the time frames cannot be met, this should be communicated to the customer. Deadlines in local authorities' Customer Service Action Plans slightly vary between the authorities. For example the Galway County Council and Westmeath County Councils have a public target to acknowledge complaints within 5 working days, South Dublin County council within 3 days. As to responses to complaints, for example, Dublin City Council has a target of 10 days, Galway County Council 15 and Westmeath County Council of 21 days. Environmental complaints are however generally treated separately from customer service complaints and the deadlines for analysing a complaint are more vaguely formulated given their more complex and diverse nature. The general ministerial policy direction in relation to environmental complaint-handling is that they should be carried out in a timely fashion. However there is no set deadline or benchmark for the analysis of

[183] See for example : Local Government Customer Service Group (2005) *Customer Complaints – Guidance for Local Authorities*; Office of the Ombudsman (1998) *Guide to Internal Complaints Systems*; EPA Customer Charter: http://www.epa.ie/about/qcs/

environmental complaints. For complaints before local authorities, after the complaint is forwarded to the competent personnel it will be accompanied by a request for a report within a certain timeframe. The timeframe is however determined by the local authority and will depend on the complexity of the issue at hand (EEN Guidance Manual, 2007). If the complainant deems that the time for addressing a certain complaint is unreasonable, he may refer the matter to the OEE or the Ombudsman. Similarly the OEE will request licensees or local authorities subject to a complaint to submit a report back to the OEE within a certain timeframe.

Feedback

Everyone making a complaint before the OEE and local authorities is assigned a reference number and a telephone number or other contact of the responsible personnel. While in practice the final investigation report will often be actively sent to the complainant at the conclusion of the investigation, the National Environmental Complaint Procedure sets no requirement on local authorities to actively inform the complainant about the progress of the complaint but requires the progress of complaints to be effectively traceable and the provision of further information to complainants upon request.

Publicity

The National Environmental Complaint Procedure has been widely publicised both in the websites of the EPA and local authorities and in the form of paper leaflets made available to the public by local authorities.[184] This wide ranging campaign named "*See something, Say something*", promoted by the NIECE, involved the wide dissemination of information to the public through a user-friendly leaflet detailing in simple language the steps the citizen should take when making a complaint, including an explanation about the authority that should be contacted first in each case, advice on what to do when filing a complaint and the basic procedural guarantees available to the complainant including access to information on the progress of the complaint and confidentiality. A list of the contact details of all enforcement authorities in Ireland is also provided. The recent launching of a national environmental complaint line covering all environmental complaints has clearly simplified the dissemination of information on the existence of environmental complaint procedures (MacGearailt, pers. comm., 2012). The line was advertised through local newspapers, radio communications and local authorities' websites (EEN Newsletter, 2010).

[184] See http://www.epa.ie/htmldocs/seesomething/seesomethingsaysomething.htm

3.1.2 Technical, scientific and legal expertise of EU environmental law

Both at the level of local authorities and the OEE, complaints are directly handled by staff specialised in inspections or environmental enforcement. As a result a level of legal and scientific expertise is always available when complaints are investigated. Notably the NIECE also regularly produces guidance documents and management systems for dealing with inspections and environmental complaints in a coherent manner (OECD, 2010). It also regularly organises capacity building and training workshops for environmental enforcement practitioners, including training on newly enacted legislation, inspection skills courses and workshops with all representatives of local authorities to share best practices in complaint-handling (EPA, 2009; O'Leary and Lynott, 2011; MacGearailt, pers. comm., 2012).

3.1.3 Reporting and statistics

Periodic reports are published by both the EPA and local authorities. The EPA publishes every three years a report on environmental enforcement[185] which generally outlines the enforcement activities and efforts undertaken by the agency in the three years under review. The report publishes statistics on the environmental complaints received by the OEE for the different areas of environmental protection under the remit of the agency as well as statistics on the number of inspections and enforcement actions undertaken. The Focus on Environmental Enforcement Report and other specific *ad hoc* reports on different areas of the law also provide some information on the statutory performance of local authorities, including s.36 complaints and enforcement actions. Statistics on enforcement and environmental complaints are also published annually in the EPA "Annual Report and Accounts". The EPA report analyses the enforcement activities of the agency as a whole and does not necessarily focus on the analysis of the performance of the environmental complaint mechanisms.

Local authorities report every year on the number of complaints received, complaints investigated, complaints resolved without the need of further action and enforcement procedures taken. Those statistics are reported directly to the EPA and to the Ministry of Environment, Community and Local Government and published in the yearly "Service Indicators in Local Authorities" reports.

[185] See EPA (2009) *Focus on Environmental Enforcement - A report for the years 2006 – 2008.* The 2009-2011 Report will be available by the end of 2012.

3.1.4 Review

There are no set benchmarks relating to the performance of complaint-handling mechanisms of the EPA or local authorities. Reviews of the performance of the National Environmental Complaint Procedure are often carried out in a collaborative fashion through the sharing of good practices and information in workshops organised between Environmental Complaints Coordinators organised under the NIECE.

A comprehensive external review of the activities, internal governance and practices of the EPA was recently carried out by a review group established by the Ministry of Environment, Communities and Local Government. The review was however *ad hoc* and the analysis of the performance of complaint-handling was a marginal consideration by the review group (*see* EPA Review Group, 2011).

On the other hand, the performance of local authorities in relation to complaint-handling activities is regularly audited by the OEE acting under its s. 63(2) EPA Act powers. The OEE communicates its findings and binding directions to local authorities through the EPA Integrated Audit Reports, which are regularly conducted over different thematic areas. Integrated Audits Reports are not published but are accessible to citizens upon request. The auditing of the complaint-handling activities of local authorities is often carried out by examining samples of complaints (including both s. 63 complaints referred to local authorities by the EPA and complaints made directly to the local authorities) and reviewing the actions taken on the basis of those complaints including the timeframe between the reception and investigation of the complaints, the correspondence with complainants and the enforcement actions. General assessments of the coherence, effectiveness, accessibility, and simplicity of complaints record-keeping systems are also carried out. Directions are also given in relation to the coordination between inspectors and complaint-handling personnel (MacGearailt, pers. comm. 2012).[186]

3.1.5 Frequency and regularity of complaints

Local authorities receive in absolute terms the highest number of environmental complaints per year. Complaints before local authorities mostly relate to litter, waste, water, noise and air pollution. The majority, are litter-related complaints and are often dealt with by specialised litter lines and litter wardens.

[186] Part of this information has been gathered by looking at a sample of unpublished Integrated Audit Reports carried out by the EPA in 2010 which were provided by the EPA.

Table 2: Local Authorities - overall number of complaints by year

Year	Number of Environmental Complaints	Number of Complaints investigated	Number of complaints resolved without further action necessary	Number of enforcement procedures taken
2006	67,666	65,205	No Data	9,878
2007	76,689	74,207	No Data	11,181
2008	66,385	64,259	50,806	18,714
2009	63,883	66,648	55,121	15,410
2010	58,299	56,605	47,701	11,417

***Source*:** Local Authorities Service Indicators reports 2007 to 2011

The complaints received by the OEE relate to the performance of the EPA licensed facilities, predominantly IPPC and Waste licensees.

Table 3: OEE – overall number of complaints by year on licensed facilities

Year	Total Number of environmental complaints about licensed facilities		
	Waste[187]	**IPPC**[188]	**Total**
2004	361	711	1072
2006	776	397	1173
2007	1760	374	2134
2008	1462	424	1886

***Source*:** Focus on Environmental Enforcement 2006-2008, 2009

[187] Around 80% of complaints related to odour with 90% of complaints received relating to 10 facilities (90% of which were landfills) out of a total of 208 licensed facilities. Complaints started to decrease in 2008 in connection to significant enforcement activities and the revision of licenses to require the development of odour management plans (EPA, 2009).

[188] The majority of complaints are air/odour related. Reduction in complaints is linked to significant investment in technologies to deal with odour emissions and improvement in the management of wastewater treatment.

The overall number of complaints filed before the OEE as regards local authorities' statutory performance in relation to environmental protection functions decreased significantly between 2006 and 2008.

Table 4: OEE – overall number of complaints on local authorities' statutory functions

Year	**Complaints on local authorities statutory functions**		**S. 63 powers used**	
2006	Overall: 499	Waste ≈ 320	Overall: 173	Waste ≈ 100
2007	Overall: 461	Waste ≈ 210	Overall: 64	Waste ≈ 30
2008	Overall: 253	Waste ≈ 100	Overall: 26	Waste ≈ 10

***Source*:** Focus on Environmental Enforcement 2006-2008, 2009

3.1.6 Existence of features to address challenging complaints

A way to address multiple complaints was developed by the OEE in addressing complaints about licensed facilities. As complaints about e.g. the same licensed landfill may come from different people at different times, the internal record-keeping system is designed to track the subject matter and addressee of the complaint rather than the individual making the complaint (MacGearailt, pers. comm., 2012).

3.1.7 Costs

No comprehensive information about administrative and other costs of the Irish complaint-handling mechanisms could be obtained.

In relation to the OEE, Cormac MacGearailt estimated that inspectors would generally dedicate about 35% of their time on investigating complaints (pers. comm., 2012).

Some indicative information on the budget and staff allocated to the handling of environmental complaints was provided by a sample of local authorities.

Table 5: Costs of complaint-handling for 3 County Councils and 1 City Council

Local Authority	Staff involved in handling complaints	The budget allocated	Average time spent by staff in handling complaints	The total number of complaints in 2011 (Waste, water, air, noise, litter)
Clare County Council	9 FTEs on routine work and 16FTEs non-routine work	€500,000	50 hours /complaint	780
Limerick County Council	35 staff but 12 FTE	€600,000	55 hours /complaint	1562
Limerick City Council	11 staff but 6FTE	€300,000	19 hours /complaint	2385
Kerry County Council	13 staff but 7FTE	€600,000	48 hours /complaint	820

***Source*:** Internal Survey carried out by Philippa King, Regional Waste Co-ordinator (Limerick/Clare/Kerry), 2012

3.2 Particular problems encountered

Most of the problems reported by NGOs in relation to complaint-handling in Ireland were related to the performance of local authorities, many of which, despite the procedures and guidelines in place are considered often unresponsive to citizens' complaints and inefficient in their enforcement actions. Specific problems reported included:

- The long lapse of time between the submission of complaints and enforcement action even in cases where a breach of the national legislation is identified. In the absence of enforcement action by the local authorities, as a last resort, but very often the environmental NGOs and members of the public refer the matter for investigation to the European Commission.
- The lack of a requirement to actively provide feedback to complainants, resulting in the perception that complaints are not being investigated and in environmental NGOs dedicating a lot of time to calling and writing to local authorities
- The lack of independence of local authorities due to the fact that Ireland is a small country and often local enforcement authorities may have personal connections with regulatory addressees linked to the fact that the OEE only intervenes at local level as a very last resort.
- The lack of appropriate protection of whistleblowers (Keane and Dubsky, pers. comm., 2012).

4 Existence of specific additional institutions/authorities for the sector of environmental complaint-handling

4.1 The Office of the Ombudsman

The Office of the Ombudsman was set up by the Ombudsman Act 1980, with the first Ombudsman taking office in 1984. The Office of the Ombudsman is relatively small, employing 89 staff members in 2011 and with an annual budget of around €7 million.[189] The Ombudsman is appointed by the President under the recommendation of both houses of Parliament. The jurisdiction of the Ombudsman is limited to the investigation of administrative actions and related maladministration of certain public bodies. The bodies under the Ombudsman jurisdiction include local authorities and government departments. The EPA has however until now remained outside the remit of the Ombudsman jurisdiction, although reforms aiming at extending the Ombudsman's jurisdiction are currently underway (EPA Review Group, 2011). The Ombudsman is empowered to make investigations and make non-binding recommendations to the relevant public authority.

Complaints are free of charge and can be made by anyone, including businesses and NGOs without any formal requirement to exhaust other administrative procedures. Complaints can be made in writing, by phone, by email and through an online application system. Reports of every investigation, including details on the follow-up actions of the public authorities, are published online.[190] Annual reports detailing the work of the Ombudsman and the most important investigations are also regularly published on the web.

As mentioned above the Office of the Ombudsman plays in practice only a marginal role in handling environmental complaints and is only seldom used by environmental NGOs (Keane, pers. comm. 2012) given that the primary responsibility to ensure that public authorities properly respond to complaints and enforce environmental legislation rests in the EPA or in the *An Board Pleanála* (in case of appeals against planning permissions), two bodies with particular expertise and powers in the environmental sphere.

[189] http://www.budget.gov.ie/Budgets/2012/Documents/CER%20%20Estimates%20Final%20Part%204.pdf (Table 2A)

[190] http://www.ombudsman.gov.ie/en/Reports/InvestigationReports/

There is evidence however of some complaints against the failure of public authorities to take action over complaints against unauthorised developments being investigated by the Ombudsman. An investigation report on a complaint made against Meath City Council could be found on the Ombudsman website.[191] The complaint related to the failure of Meath City Council for several years to take enforcement action upon repeated complaints over the unauthorised construction of a commercial shed near the property of a complainant. The investigation found the Meath City Council enforcement policy systematically contrary to good administration and other several failures within the Council internal administration. As a result of the investigation Meath City Council, following the recommendations of the Ombudsman accepted to pay compensation to the complainants for both past and future damages for the adverse effects of the shed on the complainants and their home.

5 Mediation mechanisms

A mediation mechanism in the field of environmental law (ELIG) is under development but has not yet been operational in practice. An arbitrator-type role is nevertheless carried out by the OEE in the case a citizen is unhappy about the statutory performance of a local authority in the context of environmental protection. In response to s. 63 complaints, OEE inspectors will sometimes meet face to face with both the local authority complaint coordinator and the complainant before any further action is taken (MacGearailt and Fenton, pers. comm., 2012).

The concept of mediation in Ireland is entrenched in a number of other legal and administrative spheres including, *inter alia*:

5.1 The Labour Relations Commission

The Labour Relations Commission (the Labour Commission) is a statutory body established in 1991 under s.24 of the Industrial Relations Act 1990 with the general responsibility for promoting good industrial relations in Ireland. The independence of the Labour Commission is established by the presence of an even number of government representatives, trade union representatives appointed by trade unions and employer representatives appointed by employer bodies at the head of the Labour Commission's executive. It offers a range of

[191] http://www.ombudsman.gov.ie/en/Reports/InvestigationReports/InvestigationReportonacomplaintmadeagainstMeathCountyCouncil/Name,12424,en.htm

alternative dispute resolution services including workplace mediation and conciliation. The procedures are voluntary and confidential and carried out by trained Labour Commission's officials, appointed by the Labour Commission executive. All Labour Commission officials have an independent public service background and are required to be trained and experience experts in mediation and conciliation techniques.

Workplace mediation involves the resolution of interpersonal conflicts and breakdowns of working relationships. The aim of workplace mediation is to give all the individuals concerned an opportunity to present their side of the story and work with the other party to reach a viable solution.[192] In the process the mediator is impartial and the fairness of the process is ensured by the confidentiality of the process (no information on the identity or nature of the dispute will be published unless both parties agree to it) and its voluntary nature (i.e. anyone can withdraw at any time without prejudice). The procedure is free of charge and carried out by skilled officers of the Commission's Conciliation and Advisory Services who have undertaken specific studies and training in workplace Mediation.[193]

Conciliation processes are a pre-judicial extension of official industrial disputes. The conciliation process involves an initial "conciliation conference" chaired by a Labour Commission conciliator where parties present their sides of the argument, side sessions where parties separately discuss their respective positions with the conciliator in order to explore possible solutions acceptable to both parties, and concluding joint sessions where parties are brought around the table to confirm the agreement. Solutions are only reached by consensus, whether by agreements reached between the parties or by parties accepting settlement terms proposed by the conciliator. 80% of industrial disputes are resolved through conciliation. In case the parties fail to reach an agreement the Conciliator will refer the matter to the Labour Court. While the process is voluntary, the Labour Commission may actively intervene and invite both parties to conciliation when no such request is made.[194] The fairness of the process is ensured by the fact that the opposing parties have full control of the process and outcome. It is clear from the outset that the settlement of the dispute will never be imposed on one party without that party fully subscribing to it. Procedures are free of charge and ensure that both sides have equal opportunities to present their arguments

[192] http://www.lrc.ie/document/More-on-Workplace-Mediation/3/742.htm

[193] http://www.lrc.ie/docs/Workplace_Mediation_Service/458.htm

[194] http://www.lrc.ie/document/Introduction-to-Workplace-Mediation/2/740.htm

although the two parties will be given different times to elaborate their position during side sessions depending on the number of problematic issues raised in the course of the discussion with the conciliator.[195]

5.2 Financial Services Ombudsman

The Financial Services Ombudsman (FSO) was established under the Central Bank and Financial Services Authority of Ireland Act 2004 (s. 16) and became operational on 1 April 2005. The FSO independently addresses complaints from consumers about their individual dealings with all financial services providers that have not been resolved by the providers. A process of mediation is provided for under the complaint-handling procedure of this Office. The possibility of mediation in this case will be proposed by the Ombudsman as an alternative to a formal investigation by the Office. The parties will be referred to a mediator by the Ombudsman only in the case they both agree to the process. Evidence of anything said during a mediation and any document prepared for the purposes of the mediation, are not admissible in any subsequent investigation of the complaint (unless consent is given by the relevant party) or in any proceedings before a Court. If however during the mediation an agreement is reached, that agreement will be recorded in writing, signed by both parties and will then be legally binding. The costs of mediation in this case are borne by the parties.[196]

5.3 Civil Liability and Courts Act 2004

S. 15 of this Act also provides that upon request of any party to a personal injury action, the court may direct the parties to attempt to settle the action through a "mediation conference". The parties may reach agreement to appoint a chairperson to the mediation conference or alternatively the court may appoint a mediator. The mediator would have to be a practicing barrister or solicitor with more than 5 years' experience or a person appointed by a body prescribed for by the Minister.[197] Similarly to the above, records of the proceedings may not be used as evidence in any proceedings and are to be kept confidential. The fees incurred in during the mediation process are borne by the parties to the dispute. A report is to be

[195] http://www.lrc.ie/viewdoc.asp?m=&fn=/documents/work/conciliation_service.htm

[196] http://www.financialombudsman.ie/complaints-procedure/how-complaints-are-dealt-with.asp

[197] Under the Civil Liability and Courts Act 2004 (Bodies Prescribed under section 15) Order 2005, a number of private bodies of mediators are recognised (Mediation Forum Ireland, Mediators Institute Ireland, the Chartered Institute of Arbitrators Irish Branch, Friary Law). Other recognised lawyers' associations (Bar Council, Law Commission Ireland) are also accredited for providing qualified mediators.

redacted by the mediator to provide evidence before the court of whether the mediation took place and the terms of the settlement entered into by the parties (s. 16).

5.4 Generic Mediation Services

In case there is an agreement between the parties of any civil dispute to refer the matter to a mediator in order to settle dispute out of court, there are a number of professional associations and networks of practitioners in Ireland offering mediation services.

6 Conclusion

Accessibility

Overall the Irish environmental complaint system is well accessible to both citizens and NGOs. Information on how to make complaints and to which enforcement authority, has been widely disseminated through several media with the use of clear, non-technical and accessible language. The overall result of this information campaign is that now citizens know how and where to make complaints (Keane, pers. comm., 2012). Significant progress in terms of accessibility has been made particularly through the establishment of a 24/24 National Environmental Complaint Line which refers environmental complaints to the competent authority. At the level of the OEE the establishment of an online system to make complaints also highly facilitates the submission of complaints for citizens.

Transparency

The national environmental complaint system ensures a minimum level of transparency by requiring local authorities to attach a reference number to all complaints and provide feedback to complainants upon request. Nevertheless, because of the lack of any requirement to positively inform complainants about the progress of the investigation of the complaint or of an online system where the complainant may have easy access to follow-up information, civil society organisations, particularly when dealing with local authorities, are required to spend considerable time in writing and calling the relevant authorities to ensure that appropriate actions are being taken. The failure to actively provide feedback to complainants (combined to the delays of local authorities in acknowledging receipt and taking effective action upon complaints) negatively affects the trust of civil society on the willingness of local authorities to enforce environmental law as gives the impression that no action is being taken (Keane, pers. comm., 2012).

Reports on individual complaints as well as audits carried out by the OEE on the performance of local authorities in terms of complaint-handling and other enforcement activities are not published although they are made available upon request by citizens, as provided by the Freedom of Information Acts.

Simplicity

The high number of regulatory agencies in Ireland and their overlapping responsibilities adds some complexity to the picture. Nevertheless the complaint system itself is simple insofar as procedures to refer the complaint to the competent authority are well structured and defined.

Confidentiality

See “anonymity” section above.

Fairness

The fairness of the complaint system is mostly ensured by the overall transparency of the system and the possibility for complainants to keep track of their complaint throughout the process. One of the pitfalls in terms of fairness of the complaint procedure is the lack of jurisdiction of the Ombudsman or any other monitoring body over the EPA and their handling of complaints, a jurisdiction which is sometimes being exercised over the handling of environmental complaints by local authorities (EPA Review Group, 2011).

Independence

The majority of complaints are handled by local authorities’ environmental enforcement officers. This raises certain problems in terms of independence. Ireland is a small country and at local level often local authorities’ officials personally know landowners and other persons against whom an environmental complaint is directed. Because of those personal connections with citizens, officers may often feel pressured not to act or to avoid coercive action to stop environmentally harmful activities. Moreover, acting as public utilities local authorities themselves allegedly engage in environmentally harmful activities in breach of environmental legislation. This lowers the credibility of their enforcement activities (Keane, pers. comm., 2012). If the independence of local authorities is in doubt nevertheless there are avenues to hold them accountable either through s. 63 complaints to the OEE or complaints of maladministration to the Ombudsman. The introduction of Environmental Complaint Coordinators ensures a further level of accountability as one identifiable person for each local authority is now responsible for the appropriate handling of complaints.

A 2009 survey by the Network of Heads of Environment protection Agencies classified the EPA, together with the majority of its European counterparts as a quasi-independent agency,

having strong ties and cooperation with the Ministry of Environment, Communities and Local Government (EPA Review Group, 2011). In relation to local polluting activities and complaints about local authorities however the EPA is very much independent, being a centralised body made of experts with no ties to local politics. The main problem with the EPA is, on the contrary, the lack of accountability. The EPA Review Group criticised the fact that the Ombudsman has no jurisdiction over alleged maladministration of the EPA. A further problem noticed was the lack of an independent body to review third party objections to its IPPC and Waste licensing activities, with the only avenue of redress being judicial review.

Flexibility

The lack of strict benchmarks and legal rules governing the complaint-handling system ensure that the system is flexible in terms of responding to different types of complaints and is open for constant review and improvement through the exchange of good practices between complaint-handling bodies within the NIECE.

Comprehensiveness

A gap in terms of complaint-handling in relation to EU environmental law relates to the lack of an independent body with enforcement powers over local authorities' failures to respect procedural requirements or other administrative standards in the planning permission stage, when plans or projects are likely to affect the environment (EIA Directive requirements) or are likely to interfere with Special Areas of Conservation (SAC) (Habitats Directive). The same enforcement gap also applies to developments by local authorities where no license from the EPA is required (Thornton, 2010). The avenues for complaints in that case are third party appeals before the *An Board Pleanála* or judicial review. As the *Galway County Council* case study highlighted, the Board, while easily accessible to third parties (particularly third parties who had made observations in relation to the planning application), does only have decision-making functions but no enforcement powers for making sure its decisions are properly implemented by local authorities.

Effectiveness

Overall the system has succeeded in making environmental complaints easily accessible to citizens and in ensuring that complaints are always referred in the first instance to the competent authority. In relation to the EPA, in the stakeholders' consultation conducted by the EPA Review Group, stakeholders commented that Agency's willingness to respond quickly to complaints and involve local residents as witnesses in legal proceedings against licensees has led to increased confidence among the public in relation to the perception of the Agency's willingness to prosecute offenders. In relation to emissions to air from licensed

facilities in fact, over 25 prosecutions between 2006 and 2010, 15 originated from complaints of odour (EPA Review Group, 2011). The establishment of the "Dump the Dumpers" line was also an important step to bring waste management and enforcement in Ireland in compliance with EU law after the 2005 ECJ case on the implementation of the Waste Management Directive decided against Ireland (EPA, 2009).

Thanks to the role of the OEE in monitoring local authorities and the creation of an active enforcement network to share good practice, promote improvements in the complaint-handling practices and enhance the coordination of enforcement authorities, the responsiveness of local authorities in relation to environmental complaints has been progressively improving. The drastic reduction in the number of s.63 complaints to the OEE on the statutory performance of local authorities between 2006 and 2008 (see Table 4 above), combined with the increase in routine and non-routine inspections related to waste, was interpreted by the EPA as evidence of the improvement of complaint-handling at local level. Nevertheless, the reduction of s. 63 complaints to the OEE may also be partly due to the overall decrease in housing development and other local economic activities due to the 2008 economic recession in combination with the fact that under the new system, complaints made to the OEE on matters falling under the remit of local authorities are systematically referred back to local authorities. The hierarchical structure whereby complaints under the remit of local authorities are always first referred to local authorities combined with an overly restrictive use of s.63 powers, has in fact frustrated some civil society organisations, which while having little trust on certain local authorities, are forced to go through their complaint process before being able to involve the OEE (Keane and Dubsky, pers. comm. 2012).

An important reason explaining distrust in local authorities' handling of environmental complaints is the length of time between when a complaint is filed and enforcement action is taken (Keane, pers. comm., 2012). The effectiveness of local authorities in handling complaints is also highly variable from one local authority and another (Dubsky, pers. comm., 2012). In 2007, for example, EPA audits of 15 local authorities found recurrent problems in relation to the tracking of enforcement activities and responding to environmental complaints (EPA, 2008).

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STATUTORY PROVISIONS

All the statutory provisions mentioned in this text can be easily located in the following website:

http://www.irishstatutebook.ie/searchall.html

Links to the main Irish statutory provisions transposing EU environmental law are also provided by the following website:

http://www.citizensinformation.ie/en/environment/environmental_protection/eu_environmental_law.html

INTERVIEWS

Camilla Keane, Natural Environment Caseworker & Research Officer (*An Taisce*, Ireland), Brussels (Phone Interview), 30 May 2012

Cormac MacGearailt, Inspector (Office of Environmental Enforcement, EPA), Brussels (Phone Interview), 14 May 2012

Karin Dubsky, International Coordinator, Coastwatch Europe, 5 June 2012

Pat Fenton, Ministry of Environment, Community and Local Government, Brussels, 24 May 2012

Philippa King, Regional Waste Coordinator (Limerick/Clare/Kerry), e-mail communication in May and June 2012.

VII. LITHUANIA

1 Institutional, administrative and legal context

Lithuania is a multi-party, parliamentary democracy. The State power is exercised by the Lithuanian Parliament (the *Seimas*), the President, the Government and the judiciary, which is made up of the Supreme Court, the Court of Appeal and district courts.

The Constitution of Lithuanian[198] gives legislative power upon the *Seimas*. The President is an executive head of state and is elected directly for 5 years. The president has a right to nominate (subject to the approval of the *Seimas*) the Prime Minister (the head of government) and his cabinet and a number of other top civil servants. Executive power is vested in the Government of Lithuania, consisting of the Prime Minister and Ministers (Council of Ministers). The Government is the main central policy-making and executive body. The *Seimas* is unicameral and has 141 members that are elected for a 4-year term.[199] The Ministry of the Environment is the main institution shaping the environmental policy of the Republic of Lithuania.

The territory of the Republic of Lithuania is divided into 10 counties: Alytus; Kaunas; Klaipėda; Marijampolė; Panevėžys; Šiauliai; Tauragė; Telšia; Utena and Vilnius. These counties are further subdivided into 60 municipalities (*savivaldybes)* that consist of 546 municipal districts also called “elderates” (*seniūnijas)* at a sub-municipal level. On 1 July 2010, the county administrations (*apskritys*) were abolished, and since that date, counties only remain as territorial and statistical units.[200] The functions of the county administrations have been assigned partly to the ministries of the Republic of Lithuania and partly to the 60

[198] The Constitution of the Republic of Lithuania; adopted by citizens of the Republic of Lithuania in the Referendum of 25 October 1992 and came into force on 2 November 1992. English version under: http://www3.lrs.lt/home/Konstitucija/Constitution.htm

[199] Based on: http://www.state.gov/r/pa/ei/bgn/5379.htm

[200] Contrarian information on the official website of the Ministry of the Interior (http://www.vrm.lt/index.php?id=808&lang=2):The current administrative division was established in 1994 and modified in 2000 to meet the requirements of the European Union. Lithuania has a three-tier administrative division: the country is divided into 10 counties (Lithuanian: singular — apskritis, plural — apskritys) that are further subdivided into 60 municipalities (Lithuanian: singular — savivaldybė, plural — savivaldybės) which consist of over 500 elderates (Lithuanian: singular — seniūnija, plural — seniūnijos).

municipalities (*savivaldybes*). The municipalities are independent self-governing authorities led by local authorities.

The monitoring of the implementation and enforcement of the environmental legislation is performed by the Environmental Protection Agency (EPA)[201], eight regional environmental departments (REPDs) and 60 city and district environmental agencies. The management of environmental protection in municipalities is carried out by relevant local municipal institutions,[202] in accordance with the order established by law.

Environmental protection in Lithuania is entrenched in Part 3 of Article 53 of the Constitution, which states: "the state and each person must protect the environment from harmful influences" and article 54 thereof. There is no single code designed for environmental protection. Lithuanian environmental law is highly regulated, addressing Environmental Protection, Protected Territories, Land and Forestry. The Code of Administrative Violations of Law, the Civil Code and the Criminal Code provide for liability for violations committed against nature.

The right to bring persons guilty of the violation of environmental law to account is regulated in the Code on Administrative Offenses of the Republic of Lithuania (approved 1994). Environmental provisions are also included in several Articles of the Criminal Code of the Republic of Lithuania (Article 245 - on offenses against environmental laws; Article 245 - on water, soil and air pollution; Article 330 - on illegal hunting; Article 331 - on illegal fishing or catching of rare and endangered animals; Article 332 - on the violation of the laws governing the continental shelf of the Republic of Lithuania, etc.).

The main governing acts relating to environmental law[203]

- Law on Environmental Protection, 1992[204]
- Law on Environmental Impact Assessment, 1996

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[201] On January 1, 2010, due to reorganization of the Agency the Centre of Marine Research and State Environmental Protection Inspectorate were incorporated into EPA together with their duties and resources.

[202] See for example http://www.alytus.lt/en/aplinkos-apsaugos-skyrius

[203] http://europa.eu/youreurope/business/doing-business-responsibly/keeping-to-environmental-rules/lithuania/index_lt.htm

[204] Environmental Protection Law of the Republic of Lithuania (*Lietuvos Respublikos aplinkos apsaugos įstatymas*), Official Gazette, 1992, No 5-75. English version under http://www.litlex.lt/Litlex/eng/Frames/Laws/Documents/45.HTM

- Law on Water, 1997
- Law on Ambient Air Protection, 1999
- Law on Environmental Monitoring, 1997
- Law on Wildlife, 1997
- Law on Fisheries, 2000
- Law on Wild Flora, 1999
- Law on Hunting, 2002
- Law on Land, 1994
- Law on Subterranean, 1995
- Law on Protected Areas, 1993
- Law on Forestry, 1994
- Law on Financial Instruments for Climate Change Management, 2009
- Law on Waste Management, 2002
- Law on the Packaging and Waste Management, 2001
- Law on the Management of Radioactive Waste, 1999

The Environmental Protection Law of the Republic of Lithuania is a framework legal act on environmental protection. It establishes also the tools for enforcement of environmental legislation. Article 34 of this law provides that legal or natural persons who violate environmental protection requirements shall be liable in accordance with the laws of the Republic of Lithuania.

The procedures for challenging violations of environmental legislation are integrated in the Law on Administrative Proceedings of the Republic of Lithuania and the Law on Administrative Disputes Commissions. Both, administrative and judicial structures are used for challenging violations of environmental legislation.

Bodies responsible for implementing EU environmental legislation

The implementation of EU legislation is the responsibility of the Ministries and other state institutions and agencies in their areas of competence (there are about 40 public institutions involved).[205] Professionals working in these institutions prepare directives and other EU legislation transposing and implementing the laws, government regulations or ministerial orders and take other measures to help to ensure the proper functioning of EU legislation in

[205] http://www.euro.lt/lt/apie-lietuvos-naryste-europos-sajungoje/lietuva-europos-sajungoje/es-reikalu-koordinavimas-lietuvoje/es-teises-igyvendinimas/

Lithuania.

The European Union law enforcement coordination and supervision department in the office of the Government of the Republic of Lithuania coordinates the transposition of EU legislation and the implementation process, i.e. develops and improves implementation of the EU legal framework in Lithuania, provides the planning, ensures that commitments are met on time, addresses problems, provides methodological assistance to other institutions, etc.

The European Law Department under the Ministry of Justice provides expert judgment on the national legislation compliance with EU law and represents Lithuania in the European Court of Justice.

2 Scope, hierarchy and coordination of complaint-handling procedures

2.1 Description of main actors

There is no centralized environmental complaint-handling body responsible for the handling and resolution of complaints relating to breaches of (EU) environmental law in Lithuania. Moreover, there is no specific complaint-handling mechanism on this matter.

In general, the environmental complaints are handled by the competent authorities responsible for the enforcement of environmental law. The handling of the complaints is shared between the environmental protection departments of the **municipalities,** the **regional environmental protection departments (REPDs)** and the **Environmental Protection Agency** depending on the field of environmental protection law that is concerned.

There are sixty **municipalities** in Lithuania. In the majority of the cases the municipalities are the competent authorities for environmental complaint-handling. According to the general provisions (point 9.15.) of the Environmental Protection Division of the Vilnius city municipality (later in the text – municipality), the municipality deals with requests and complaints from the institutions, organisations, and individuals on various environmental issues. In general, the municipality is responsible for the development and implementation of environmental policy in the city; the implementation of environmental protection measures or organisation of the implementation; it foresees pollution reduction measures; according to its competence carries out monitoring and evaluation of environmental components; and provides information to the public on environmental issues. It has the ability to apply

administrative fines for non-compliance with requirements for which a municipality is responsible. In the first instance, the municipality is responsible for the implementation and control of the waste water treatment regulations and waste management regulations. Furthermore, it is responsible for the control of the implementation of the environmental measures and norms foreseen in the integrated pollution prevention and control system (IPPC) permits; as well as it has to be consulted on the EIA programmes and reports; and prepares environmental conditions of spatial planning documents and controls how they are implemented.

There are eight **REPDs**: in Vilnius, Kaunas, Klaipėda, Šiauliai, Panevėţys, Utena, Alytus and Marijampolė. In contrast to the municipalities, the general provisions of the REPDs do not foresee that the REDPs deal with requests and complaints on various environmental issues. However, the inspectors of the REPDs carry out this task. The REPDs in general are responsible for the state environmental management policy implementation in different areas and the control of the compliance with the environmental regulations and norms (including IPPC requirements and norms, but with the exception of chemicals). In addition, the REPDs are responsible for the permitting of IPPC licenses, the EIA and SIA procedures; carrying out the state environmental monitoring according to the competence; carrying out the coordination of spatial planning documents; inspecting and proving whether the construction or reconstruction projects are in compliance with the environmental protection requirements; issue permits for logging, fishing and hunting; providing information to the public. Furthermore, the REPDs carry out the environmental damage assessment and can apply administrative sanctions (Masilevicius, email comm., 2012).

According to the general provisions (point 11.11.) of the **Environmental Protection Agency** (*Aplinkos apsaugos agentūra)*, it deals with complaints and requests from institutions, organisations, and individuals. In addition, according to the point 10.2.4, it deals with the disputes relating to the decisions taken by controlling institutions and officials. The EPA carries out the state environmental monitoring and the state environmental protection control. Besides this it methodically manages state and economics entities' pollution sources laboratory control. It undertakes the EIA for planned economic activities and coordinates and carries out methodological guidance for the REDPs in this issue. The EPA collects data on the use of water resources, discharges of waste water, waste generation and treatment, pollution of ambient air and surface water; manages the available registers and databases; and organizes and coordinates preparation of the publications on state of the environment. In general, the EPA is responsible for the control and the guidance of the REDPs work and

activities, the EPA establishes uniform procedures for this purpose (Masilevicius, email comm., 2012).

The **Administrative Dispute Commissions** are responsible for the pre-trial consideration of complaints contesting the adopted individual administrative acts and acts (or omission) of civil servants and municipality employees in the sphere of public administration. These institutions were established by the Law on Administrative Disputes Commissions in 1999. [206] The law provides for the establishment of municipal administrative disputes commissions, regional administrative disputes commissions and the Chief Administrative Disputes Commission. **Municipality Public Administrative Dispute Commissions** and **Regional or County Administrative Dispute Commissions** handle complaints related to individual administrative acts or actions (or omissions) taken by municipal or regional authorities respectively. The **Chief Administrative Disputes Commission**[207] hears individual legal acts or actions (or omissions) taken by entities of central public administration, e.g. ministries.

The **Seimas Ombudsmen's Office**[208] key function is to investigate complaints concerning abuses by authorities, exceeding their limits of powers. Complaints of individuals about the abuse by authorities and bureaucratic intransigence by State and municipal officials (with the exception of judges) may be examined by the Seimas Ombudsmen who review complaints and act as pre-trial institutions.[209]

Prosecutors of the state environmental protection inspectorate have a right to apply to administrative court in cases where public interests are violated but persons or officials from environmental protection institutions do not take action. In such a case, the prosecutor has the "procedural rights and duties of the party to the proceedings".[210] (Balandis 2006 in Milieu 2007, p.15-16).

Since 1998, Lithuania has a **Division of Violations of Ecology and Law** with the Police Chief Commissioner's Offices of Vilnius City, and the idea is to set up a similar department in Klaipeda and Panevezys.

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[206] Law on Administrative Disputes Commissions of the Republic of Lithuania" (1999 January 14, No. VIII-1031), http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=169800

[207] http://www.vagk.lt/en/

[208] http://www.lrski.lt/?l=EN

[209] Rules of the Seimas Ombudsmen's Office: http://www.lrski.lt/index.php?p=0&l=LT&n=296

[210] Law on Administrative Proceedings of the Republic of Lithuania, Article 56.

The **Ministry of Environment** has created the corruption prevention "hotline".[211] Every person, who believes that any illegal act committed by an officer or servant of the Ministry of Environment is related to corruption or crime and inadequate performance or failure to comply with their direct obligations, can phone, fax, post or contact per email 24 hours a day. The people can contact the Ministry of Environment or the Environmental Protection Departments. The goal of the corruption prevention is to prevent the emergence and development of corruption, and to remove the gaps of the legislation and the State authorities' actions and procedures which may result in conditions for corruption.

2.2 Relationship between mechanisms, hierarchy and coordination

According to the Public Administration Law, the public in general has the right to hand in a complaint or appeal to the superior authority in case it is not satisfied with the decision of the first instance authority. In relation to the sector of environmental law that implies that in case a municipality is carrying out illegal activities or is not fulfilling its functions the public has a right to hand in a complaint to a REPD as the superior body. In case the REPD is not fulfilling its functions or is carrying out illegal activities, the public has a right to hand in a complaint or appeal to the EPA as the superior body, respectively.

The institution of the Administrative Dispute Commission is meant to be a non-compulsory pre-trial remedy in case a person or an entity is convinced that her or his rights have been violated by administrative action or inaction and as such is – similar to the Seimas Ombudsmen's Office – standing outside of the administrative stages of appeal and will be analysed in more detail in chapter 4 and 5.

2.3 Application to scenarios

In general, the environmental complaints are handled by the competent authorities responsible for the enforcement of environmental law. The handling of the complaints in relation to the alleged illegality or non-compliance by a private person or company in relation to EU environmental law is shared between the environmental protection departments of the **municipalities** (*savivaldybės*), the **regional environmental protection departments**

[211] http://www.am.lt/VI/index.php#a/751

(REPDs) and the **Environmental Protection Agency** depending on the field of environmental protection law that is concerned. In case a municipality does not have the capacities to handle the complaints, however, it occurs that it forwards the complaint to the regional environmental department, regardless the formal responsibility for the issue. Sometimes the regional department then sends the complaint back to the municipal level and asks the **"elderates"** (*seniūnijas)* from the sub-municipal level to overtake the complaint-handling, since they know the place and people best.

There is a so-called "one window" principle in Lithuania - meaning that it in general does not matter which institution the complainant addresses as the complaint will be sent to the responsible institution by the institution that has been addressed first.

2.3.1 Is there a mechanism/are there mechanisms for alleged illegality or non-compliance of a private person/ company?

For the case of the operation of a clandestine/non-authorized business for end-of-life-vehicles and disposal of waste (see Directive 2000/53/EC – ELV Directive) a competitor can send his complaint to the environmental protection department of the respective municipality.

If a facility with an IPPC-license (see Directive 2008/1/EC of 15 January 2008 - IPPC-Directive) is in breach of one of its permits conditions a private person has to send the complaint to the competent environmental protection department of the respective municipality. There are no specific conditions concerning form and contents of the complaint, it is however recommended to hand in a written complaint.

In case an industrial company which has an eco-label (see Regulation 66/2010/EC of 25 November 2009) is claimed to be not respecting the criteria the complaint has to be addressed to the environmental protection department of the respective municipality.

The illegal discharge of pollutants to a river (see Water Framework Directive 2000/60/EC) from a small commercial company (that does not fall under the IPPC-Directive) has to be filed to the respective regional environmental department.

The case of illegal activities in coastal areas has to be reported to the respective regional environmental department.

If illegal timber that is on the CITES list (see Annex in Regulation 338/97/EC) has been imported to Lithuania the competent authorities are the environmental protection departments of the municipalities.

For the case of wide-spread illegal trapping/hunting of wild birds protected under the Birds Directive (see Directive 2009/147/EC of 30 November 2009) the complaint has to be directed to the respective regional environmental department.

2.3.2 Is there a mechanism/are there mechanisms for alleged illegality or non-compliance of a public body/utility in relation to providing an environmental service?

In case a municipality fails to treat properly its urban waste water load (for example treatment plants are under capacity) in compliance with Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment the complaint should be directed to the respective regional environmental department as the second instance or the superior authority in relation to the municipality.

For both of the scenarios (a private water utility is providing drinking water containing E.coli due to a lack of disinfection of the water source (see Directive 98/83/EC of 3 November 1998) and a municipality is operating a landfill (see Directive 99/31/EC of 26 April 1999) on behalf of a town and is claimed to have serious odour problems the complaint should be directed to the respective regional environmental departments as the second instance or the superior authority in relation to the municipalities.

2.3.3 Is there a mechanism/are there mechanisms for alleged failure of a public body to respect procedural requirements or some other required administrative standards?

If a competent authority responsible for EIA is claimed to have approved an environmentally relevant project without an EIA or a screening (see EIA Directive) there is a competence of either the regional environmental department in case the competent authority is a municipal environmental department or the EPA in case the competent authority is a regional environmental department.

If an authority responsible for a protected Natura 2000-site is allowing small-scale housing on this site without any appropriate consideration of the respective individual and/or cumulative effects (see Art. 6.3 Directive 92/43/EEC of 21 May 1992 – Habitats Directive) again the complainant could contact the respective regional environmental department in case the authority is part of a municipality or the EPA in case the responsible authority is a regional environmental department.

3 Characteristics of the complaint-handling system identified

This section deals with environmental complaint-handling at the regional and the municipal level since they share the responsibility in this field. This section is based on practices in place at the Vilnius regional environmental protection department (REPD) and the Vilnius municipality.

In the complaint-handling procedure, the regional environmental protection departments follow the Public Administration Act and internal rules of the regional department. The municipalities are subject to the national administrative law, however within the scope of this study it was not possible to establish whether practices in place in Vilnius do represent practices in the other 59 Lithuanian municipalities.

The specific features of the complaint-handling mechanisms of the Seimas Ombudsmen's Office and the Administrative Dispute Commissions can be found under Section 4.

3.1 Procedures/procedural guarantees

Procedures

In case of the **regional environmental protection department**, the complaints can be submitted in written (sent per post (the majority) or written in the department), per email (filling in the internet form, which is valid only with an electronic signature)[212], per phone (a big part of complaints), as well as the complaints sent from other institutions such as municipalities. Inquires per phone are not always related to complaints, the people only want to clarify certain issues or need a consultation. The complaints are accepted during the working hours.

In case of the **municipalities**, the public can make a complaint through giving a call directly to the municipality or giving a call to the hot-line, writing an email or a letter. The applications or appeals may be personal or impersonal. A personal request or complaint will be forwarded to the responsible municipal administration/management specialist to examine; an impersonal request will be published publicly. The personal request or complaint must specify the address and phone number. Many complaints are received through a hot-line,

[212] In some cases also the complaints without electronic signature are proved, but just in the cases when there is capacities to do this – according to the legislation the complaints per email without the electronic signature do not need to be answered.

which has been created about four years ago and became very popular. The hot-line is served by a person; working time is between 7:30 a.m. and 5 p.m. The hot-line is available only in Vilnius, and not in other municipalities in Lithuania.

The effectiveness of the complaint-handling is ensured by a 'one window principle' (see Art 3 of the Public Administration Law) which implies that in the case of the complaint not falling under the responsibility of the municipality or the REPD, the municipality or the REPD forwards the complaint to the responsible institution. The municipality or the REPD in this case will send an answer to the complainant with the respective information. However, there is an exception to this rule according to the administrative rules of the municipality: the answer is not provided to the same person, when he/she provides the same question a third or further times. It has been reported, however, that this procedure in general leads to a lag of time in the complaint-handling procedure (Masilevicius, email comm., 2012).

Procedural guarantees

The criteria used by the **regional environmental protection department** that guarantee that a complaint will be handled are the rightness of the information provided and the administrative capacities. In case there is lack of capacities or lack of resources (for example petrol) the complaints are handled just in written. Or the complaint is forwarded to other institutions. In some cases the violating person is invited to the department. The person that complained is informed in written about the activities/handling taken in response to the complaint. Only written complaints and complaints with electronic signature (email complaints) receive an answer (in written). The oral complaints (per phone) are handled just in case a complaint is relevant.

There is a strong cooperation in handling complaints with the municipalities. Municipalities have many competencies to handle different issues. Other cooperation partners are the inspections of environment, veterinary and construction (for example the construction inspection is involved in case the construction is carried on without building permit); in such cases, the municipality handles from the perspective of environmental issues – there is exchange of information with the municipality and the inspection in written. The issue of geology falls under the responsibility of the geological service that is subordinate to the Environmental Ministry.

There is an administrative requirement of the **municipality** to include in each reply to the complainant a text that provides information on how the complainant can accuse the

municipality against a court, in case he/she is not satisfied with the answer or the handling of the complaint.

Anonymity and confidentiality

Confidentiality procedures are treated in accordance to the provisions of the Law on Legal Protection of personal data.[213] All information related to personal data or information that could lead to an identification is un-personalised. If the complainant requests access to files or other material, all data that is not related to the complaint directly or related to a third party is hidden by the officer.

Publicity

In general, the web-sites of the **municipalities** and the **REPDs** provide a possibility to submit requests or complaints.

The web-site of the Vilnius City Environmental Protection Division provides contact information of responsible municipal authorities dealing with different environmental issues in collaboration with the Environmental Protection Division, e.g. where to dispose construction and repair waste or whom to contact in case of illegal landfills. In addition to this the free phone hot-line number to submit complaints can be found there.

Complaints and their follow-ups are in general not available publicly on the web-site of the **municipalities**.

Since five years a hot-line exists (provided on the **regional department** web-site of Vilnius) (only) for nature protection issues (for example, illegal fishing or hunting). There is a team that is on duty 24 hours and reacts to the complaints.

There are different initiatives organized by the regional department, which hinder environmentally harmful activities, and information about them can be found on the web-site of the regional department.[214] In addition, there is a good example of an initiative under the cooperation of the NGO (Baltic Environmental Forum, BEF) and the Regional Department

[213] Law on legal protection of personal data of the Republic of Lithuania, 21 January 2003, No. IX-1296 with amendments of 13 April 2004; for an English translation see: http://www.ada.lt/images/cms/File/pers.data.prot.law.pdf

[214] http://vrd.am.lt/VI/index.php#a/402

that is called "Report on harmed nature".[215] This initiative started in 2008. People can provide an information on harmed environment using an interactive map where they can place pictures and information.

Record-keeping and availability of IT systems for handling complaints

The **Municipality** of Vilnius runs the document management system 'Avilys' that, in addition to other functions, collects the information on all complaints (incl. environmental and social issues) received by the Municipality.

Deadlines for analysis of complaints

In accordance with the Public Administration Act, there are twenty working days foreseen for the **regional environmental departments** to handle a complaint coming from the public and ten working days to respond to the requests from the Parliament and the Government.

In accordance to the administrative rules of the **municipality**, a complaint has to be answered within a period of 30 days. It might be a final or an interim/intermediate answer. The latter has to specify another deadline with regard to answering or closing the complaint. During these 30 days, the municipality is obliged to explore and handle the case and to provide information on the handling procedure, i.e. what steps have been taken, its opinion/judgment whether the activities were legal or illegal, and whether a warning or fine was undertaken. An interim/intermediate answer is sent in the majority of cases, when certain measurements have to be made by a laboratory.

3.2 Technical, scientific and legal expertise of EU Environmental law

In the **regional environmental departments**, the inspectors are specialized in certain issues, like water, air protection etc. When there is a lack of competence in certain issues relevant institutions, for example the geology service under the Ministry of Environment, are requested to support. The department can also apply to the Ministry of Environment for financial support to finance an expert. However, this public procurement procedure takes half a year time. It has been reported that this in some cases hinders handling a complaint timely and effectively. Another possibility is institutional cooperation of the regional environmental

[215] In Lithuanian: *Pranešk apie skriaudžiamą gamtą*, see under http://www.bef.lt/ap_2pr_parama.php?id=1331284658

department and the Environmental Protection Agency, for example dealing with an EIA procedure. This could be the case if the public complains about the planned economic activity or claims that the EIA procedure was not carried out according to the requirements. 30 inspectors from the REPD of Vilnius were responsible for the control of 2350 industry objects in 2011; there was no information available on the number of inspectors involved in the environmental complaint-handling field.

Ten experts are employed in the Environmental Protection Division of the **Municipality** of Vilnius. This division depends to the Environment and Energy Department. Each expert in the division has a different field of responsibility, although the waste management field has four experts working with different waste streams. The Law Department in the Municipality of Vilnius provides legal and juridical expertise on different questions.

3.3 Reporting and statistics

The **REPDs** generally report annually on their activities (annual state control and protection activity' reports and results), including environmental complaint-handling. These documents are also submitted to the Ministry of Environment.

On the web site of the **REPD** of Vilnius, the following information is available:[216]

In 2011 there was a total of 767 complaints in the environmental sector (environmental quality; forests; nature and water) addressed to the REPD. Most of the complaints (472) were dealing with activities of industrial objects and territories (other than IPPC objects), followed by 130 complaints dealing with forestry issues, 101 complaints dealing with nature protection issues (of which 68 concerning fishery and 33 hunting) and 17 complaints dealing with water protection and the protection of water banks. The complaints in 2010 were slightly higher with a total number of 789 complaints, however, the breakdown to the different fields of environmental protection is nearly the same.

The Environmental Protection Division of the Vilnius **municipality** prepares an annual report on its activities, which also includes the information on complaints. This report is only for internal use. In addition, the division organizes an Annual Environmental Protection Forum. It invites the environmental NGOs, the Ministry of Environment, Regional Departments, and presents the activities of the division, including the free hot-line for environmental concerns.

[216] See under: http://vrd.am.lt/VI/index.php#r/24, http://vrd.am.lt/VI//files/0.885842001328607289.pdf (tables) and http://vrd.am.lt/VI//#r/23 (written reports and ppt).

3.4 Review

There was no information available on internal or external review processes neither on the level of the **REPDs** nor the **municipalities**.

3.5 Frequency and regularity of complaints and trends

In case of the **REPDs** seasonal trends can be noticed in relation to the incoming complaints. In spring, for example, there is a high number of complaints dealing with tree cutting and greenery management, in autumn there is a high number of complaints dealing with illegal fishing of salmon and green waste management, such as for example burning of leaves and in winter a high number of complaints deals with illegal fishing on ice.

In general the key issues handled by the REPD are - according to their frequency - :

- Illegal waste management, especially the household waste that is disposed behind the fence or in the yard, for example chemical substances that pollute the environment in the yard of an enterprise using these chemicals.
- Plant/greenery management in the city: for example, a tree might be nice for one neighbour but block the light for the other. It falls under the responsibility of municipality. The regional department only proves if there is a permit to cut a tree or greens; the permit is issued by the municipality; the regional department might prove if the permit was legally issued. When an issue is significant, the department collaborates with the municipality in handling the case. For example, in case the roots of a tree are damage during the construction works it is proved how much the tree is damaged and the damage to the environment in general; was the construction works done legally or illegally.
- Illegal construction works: for example, in the water environmental protection zones or protected areas. The inspector of the construction inspection proves if the permit exists and if it is legal; the REPD proves the pollution of water.
- Wastewater management: not all households are connected to the wastewater system. For example, the people pump out the local reservoirs of wastewater without existing permit.

The **REPD** of Vilnius carries out statistics on complaints for internal administration needs. The statistics of 2011 show that there were 800 complaints accepted per phone and 767 in written including per email. These statistics include not only the complaints that are

submitted to the department but also the complaints from the eight to the region belonging municipalities (in the case that the municipalities are forwarding complaints).

In 2011 from 767 complaints in written only 257 proved to be true or have been confirmed. It has been reported that quite often people complain about issues that (1) are not subject of the legislation or (2) to hinder and harm the activity of competitors (Masilevicius, pers. comm., 2012). There are no statistics available on the confirmation of oral complaints.

The **municipality** received approximately 590 complaints related to environmental matters in 2011. In some other years there were around 650 environmental complaints. The majority of these complaints were about (1) waste management, e.g. payments, illegal waste disposal sites; (2) air pollution and noise; (3) greenery and tree cutting, e.g. a permit to cut a tree (Braškienė, pers. comm., 2012). However, these numbers do not include the complaints that are immediately handled on phone, e.g. when a person consults on some issue. There are approximately 300 such 'not registered' complaints per year.

3.6 Existence of features to address challenging complaints

In case of the **REPDs**, quite often the community is complaining. There might be two communities in the same town that have opposite opinions about the same issue. Sometimes more than one institution forwards the same complaint to the regional department. For example, in case of assumed illegal tree cutting, people complain directly to the President and to the Parliament. The complaint is then forwarded to the regional departments through the Ministry of Environment.

In case of the **municipalities**, for example, in the case of several people living in the same building or area complain about the illegality of cutting a tree, the representative of municipality goes (immediately) to this place. He/she explores the situation, then calls the available residents of the home or the area and explains the situation. If necessary, and if there are written complaints, he/she will write a reply.

It is frequent that people provide multiple complaints on the same issue (in this case there is a collection of signatures). The answer is sent to the first person on the list, or the one that is indicated as a contact person. The person who receives the answer is obliged to inform the other persons on the list.

3.7 Costs

In case of the **REPD** 40% of the work of the inspectors is unplanned – this includes the complaint-handling but also the work delegated by the Ministry of Environment. There is a

general lack of finances in the department, and the complaint-handling is done according to the existing capacities.

The submission of complaints is free of charge for the public. According to the interviewees some people misuse this rule and send complaints in order to hinder the activity of competitors.[217]

There is no cost for the complainant to address an environmental complaint to the **municipalities** neither.

The municipality of Vilnius appointed one working place for the hotline. The free-of-charge hotline is financed from the budget of the 'Special Municipality Environmental Protection Support Program' (*Savivaldybes Specialus Aplinkos Apsaugos Remimo Programa*). The budget for the hotline amounts to 2000 LT Litas (ca. 579.24 EUR, 1 EUR = 3.45280 LTL) per year (only costs for telephone communications as opposed to internal costs such as salaries).

3.8 Contributions to the effective implementation of EU environmental law

According to Mr Masilevicius (pers. comm., 2012) the environmental issues are managed according to the EU requirements. Therefore, the improvements of the implementation of environmental standards in Lithuania through complaint-handling contribute directly to the effective implementation of EU law, for example, illegal use of certain pollutants.

According to Ms Braškienė (pers. comm., 2012) the complaints that are sent to the **municipality** show that there are major environmental issues in the city. This is taken into consideration by policy-making as well as in developing long-term plans in addition to the national laws and EU regulations.

3.9 Particular problems encountered

In case of the **REPD** the following key problems were reported:

- Lack of recourses, in particular, finances.

[217] In the pre-war Lithuanian, submission of complaints cost 100 Litas (in comparison a lot of money). When a complaint was confirmed the money was returned to the complaining person and the guilty was supposed to cover the costs of complaint-handling.

- The legal acts are often ambiguous; this hinders the complaint-handling procedure. For example, the people understand the legislation in a different way than the regional department does.

The representative of the **municipality** of Vilnius (Braškienė, pers. comm., 2012) reported that a relatively high number of complaints is not comprehensive or not valid (e.g. the investigation cannot observe the subject of the complaint, e.g. illegal waste disposal by neighbours). Hence there is a need to collect further information on the complaint to start the process. Such complaints done on a very local level could be handled by the "elderates" (*seniūnijas)* at a sub-municipal level. Since these municipal districts exist at a micro local level and thus are closer to the citizens, the citizens could complain to the elderates including asking all questions they may have, and in case the elderates would not be able to deal with the complaint or some aspect of it, they could delegate it to the municipality. This would allow the municipality to focus on strategic issues. However, people trust higher instances more often, believing that these have more power to deal with complaints.

In terms of waste management it has been reported, that the Waste Law does not foresee any sanctions in case the requirements of the law are not fulfilled. This has the effect, that people complain, but the municipality responsible for the complaint-handling cannot effectively react to the complaint because they do not have the necessary enforcement capacities.

3.10 Comments and cases that can serve as good/bad examples

A good example for the well-functioning and time-saving cooperation is the creation of a 'commission' consisting of representatives from the REPD, the Environmental Protection Division of the Municipality and the Environmental Health Center in order to handle a specific complaint (in the case for instance of the breach of IPPC permits conditions or whether a certain economic activity is allowed). The commission (1) goes to the place subject to the complaint, (2) discusses the issue, (3) writes a common opinion in its Common Assessment Protocol and (4) agrees on what has to be done further and who is responsible. The reply has to be confirmed and signed by the director of the Law Department of the respective municipality.

4 Existence of specific additional institutions/authorities for the sector of environmental complaint-handling

4.1 *Seimas* Ombudsmen's Office[218]

According to Article 3 of the Law of the Republic of Lithuania on the *Seimas* Ombudsmen[219] the role of the *Seimas* Ombudsman is "to protect a person's right to good public administration securing human rights and freedoms, to supervise fulfilment by state authorities of their duty to properly serve the people".

The activities of the *Seimas* Ombudsmen's Office aim to ensure that the State of Lithuania performs its duties arising out of the principles of a legal and social state, human dignity, freedom, equality and democracy. In 2010, the *Seimas* Ombudsmen's Office reduced its number of Ombudsmen from five to two. The two current Ombudsmen (as of July 2012) are Romas Valentukevičius, who investigates applicants' complaints regarding abuse of office by or bureaucracy of public officials, and Augustinas Normantas, who is entrusted with the investigation of abuse of office by bureaucracy of municipal officials (The *Seimas* Ombudsmen's Office of the Republic of Lithuania, p. 3).

The powers of the *Seimas* Ombudsmen are established by the Law of the Republic of Lithuania on the *Seimas* Ombudsmen. Ombudsmen have the right to submit a proposal before a court to dismiss the guilty officials from office.[220]

The *Seimas* Ombudsmen also investigate complaints of citizens of the Republic of Lithuania referred to him by the *Seimas* members.

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[218] Article 73 of the Constitution of the Republic of Lithuania: The *Seimas* Ombudsmen shall examine complaints of citizens concerning the abuse of powers by, and bureaucracy of, State and local government officers (with the exception of judges). The Ombudsmen shall have the right to submit proposals to the court to dismiss guilty officers from their posts. The powers of the *Seimas* Ombudsmen shall be established by law. As necessary, the *Seimas* shall also establish other institutions of control. The system and powers of said institutions shall be established by law.

[219] Law NoVIII-950 dated 3 December 1998 (*Lietuvos Respublikos Seimo kontrolierių įstatymas*), Official Gazette, 1998, No 110-3024; 2004, No 170-6238 as amended on 13 May 2010 - No XI-808.

[220] Constitution of the Republic of Lithuania (*Lietuvos Respublikos konstitucija*), Vilnius, 1992, Art. 73.

The activities of the President of the Republic, members of the *Seimas*, the Prime Minister, the Government (as a collegial institution), the State Controller and judges of the Constitutional Court and other courts, municipal councils (as collegial institutions) are outside the *Seimas* Ombudsman's powers of investigation.

The *Seimas* Ombudsmen also do not investigate complaints arising from the labour legal relations and about the legality and validity of court decisions, judgments and rulings.

The legality and validity of procedural decisions of the prosecutors, pre-trial investigation officers also are outside the *Seimas* Ombudsmen's powers of investigation, however, complaints about the actions of the prosecutors, pre-trial investigation officers, which violate human rights and freedoms fall within the investigative jurisdiction of the *Seimas* Ombudsmen.

The role of the Ombudsmen, however, is limited to assistance in bringing a case to court; the Ombudsman helps natural persons in formulating their challenges in the court, and cannot bring a case to court on behalf of natural person. The Ombudsmen have no powers to interfere in judicial proceedings and do not issue binding decisions.

In some cases, the Ombudsman office provides legal assistance to individuals with low incomes or citizens who are having difficulties in understanding the law. One day a month, each of the two *Seimas* Ombudsmen offer free consultations on legal assistance and advice. In 2010, the *Seimas* Ombudsmen's Office provided legal consulting to 1 038 persons (The Seimas' Ombudsmen's Office of the Republic of Lithuania, p. 9).

The Ombudsmen also regularly visit municipalities, to detention institutions and the prisons. The consultations on the adviser's level are given every day. This process includes mediation, legal advice, also helping to write down a complaint properly. This process is not used for the dealing with complaints of environmental issues in particular but covers all matters falling under the *Seimas* Ombudsmen's tasks.

4.1.1 Procedures/procedural guarantees

Procedures

The complainant has the right to file a complaint with the *Seimas* Ombudsmen about the abuse of office by officers or by bureaucracy of officers if he believes that his rights and freedoms have been violated thereby. As a rule, complaints are filed in writing. The

requirements of filing a complaint are defined in the Article 14 of the Law of the Republic of Lithuania on the *Seimas* Ombudsmen.[221] Anonymous complaints are not accepted. If a complaint is received verbally, by telephone or if the *Seimas* Ombudsman establishes from the mass media or other sources the presence of elements of abuse of office by the officers, bureaucracy or instances of violation of human rights and freedoms, the *Seimas* Ombudsman may open investigation into the matter on his own initiative. Verbal or written applications of complainants, other than related to good administrative practices are not treated as complaints (e.g. requests for explanations, other information or requested documents).

In cases where the complaints falls outside the *Seimas* Ombudsmen's remit, information on the responsible institution is provided.

Publicity

The web-site of the *Seimas* Ombudsmen provides comprehensive information about their role and how to contact the office and file a complaint (the *Seimas* Ombudsmen website has also a limited version in English[222]).

A free telephone line is also available.

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[221] 1. The following shall be stated in the complaint:

1) the addressee - the Office of the *Seimas* Ombudsmen (the *Seimas* Ombudsman);

2) full name and address of the complainant;

3) full names and positions of the officials against whom the complaint is filed, the institution or agency in which they are employed;

4) a description of the decision or actions complained about, the date and the circumstances under which they have been performed;

5) a formulated request addressed to the *Seimas* Ombudsman;

6) the date on which the complaint has been drawn up and the complainant's signature.

2. Attached to the complaint may be:

1) a copy of the contested decision;

2) the available evidence or its description;

3. Non-compliance with the form of the complaint prescribed by paragraph 1 of this Article or failure to present the required particulars may not be grounds for refusing to investigate the complaint, except for anonymous complaints and n cases where the investigation may not be opened due to insufficiency of facts of the matter, while the complainant fails to submit the facts on the *Seimas* Ombudsman's request or in case the text of the complaint is illegible.

[222] http://www.lrski.lt/?l=EN

Anonymity and confidentiality

Anonymous complaints according to Article 16 on the Law of Ombudsman are not investigated unless the *Seimas* Ombudsman decides otherwise. However, usually, if the matter and the circumstances disclosed are important, the investigation is carried out or the *Seimas* Ombudsmen may open investigation upon his own initiative (Agnė Petrauskienė, email comm., 2012).

The confidentiality of the complaints is guaranteed through:

- Confidentiality procedures are treated in accordance to the provisions of the Law on Legal Protection of personal data[223] and are available for consultation on the *Seimas* Ombudsmen web-site. All information related to personal data or information that could lead to an identification is un-personalised.
- If the complainant requests access to files or other material, all data that is not related to the complaint directly or related to a third party is hidden by the officer.

Deadlines for analysis of complaints

The deadline for filing complaints is "one year from the commission of the act complained about or adoption of the contested decision. Complaints filed after the deadline will not be investigated unless the *Seimas* Ombudsman decides otherwise".[224]

Feedback

With regards to the processing time of a complaint, according to Article 18 of the Law of the Republic of Lithuania on the *Seimas* Ombudsmen "a complaint must be investigated and the complainant must be given a response within three months of the day of the receipt of the complaint**,** except for the cases where the complexity of circumstances, abundance of information or continuity of actions being complained about necessitates prolongation of the complaint investigation. The complainant shall be notified of the *Seimas* Ombudsman's

[223] Law on legal protection of personal data of the Republic of Lithuania, 21 January 2003, No. IX-1296 with amendments of 13 April 2004; for an English translation see: http://www.ada.lt/images/cms/File/pers.data.prot.law.pdf

[224] Article 15 of the Law of the Republic of Lithuania on the *Seimas* Ombudsmen, Law No NoVIII-950 dated 3 December 1998 as amended on 13 May 2010 - No XI-808.

decision to extend the time-limit for the complaint investigation. Complaints shall be investigated within the shortest time possible".

4.1.2 Technical, scientific and legal expertise of EU Environmental law

Not relevant as regards the role of the Ombudsmen (see role of the Ombudsmen in previous sections).

4.1.3 Reporting and statistics

The *Seimas* Ombudsmen publishes an annual report containing a section related to all complaints received, followed by a section for each of the Ombudsmen in their area of expertise (public and municipal levels). It contains a fair amount of statistics and explanations received, dealt with or rejected during the year.

4.1.4 Review

The *Seimas* Ombudsmen's Office has an internal review process during which spheres for improvement are identified. This process covers all types of complaints and not specifically environmental complaints (Agnė Petrauskienė, email comm., 2012).

4.1.5 Frequency and regularity of complaints and trends

Overall, in 2010, the *Seimas* Ombudsmen's Office received a total of 1,986 complaints from natural and legal persons, 1,282 of which were newly filed complaints. There were 2,587 problems that were raised in the complaints submitted by applicants.

There is no exclusive distinction as such about environmental issues. However, amongst all complaints by subject matters the "right to a secure and ecological environment" represent 8% of the complaints, while for instance the rights of citizens whose freedom was restricted represents 30%. With regards to State Institutions, in 2010, 56% of complaints related to the Ministry of Environment and its subordinates were justified against 25% in 2009. The number of decisions taken regarding the activities of officials of the Ministry of Environment almost doubled from 2009 to 2010 (from 73 to 130 decisions). The *Seimas* Ombudsman attributes this increase to the abolishment of counties and the transfer of functions from the Ministry of Environment to the State Territorial Planning and Construction Inspectorate.

With regards to complaints done at the municipal level, the complaints related to the "right to a secure and ecological environment" represents 21.5% of the complaints after the "right to a good administration (36%), with a 1.5% increase from 2009 (The *Seimas* Ombudsmen's Office of the Republic of Lithuania, 2010).

With regards to the issues raised from citizens visiting the Ombudsmen Office, the right to a secure and ecological environment represents 87 complaints against 88 for consumers' rights, 152 with regards to process investigating complaints, 300 related to the right of ownership and 318 for the right for good public administration which represent the largest number of complaints.

4.1.6 Existence of features to address challenging complaints

Usually multiple complaints on the same issue will be treated as one investigation. An investigation can also start on the *Seimas* Ombudsmen's office own initiative since multiple complaints usually show that there is an on-going important issue. Through the investigation, the *Seimas* Ombudsmen's office can also issue recommendations in order to solve the issue (Agnė Petrauskienė, email comm., 2012).

4.1.7 Costs

In 2012, the State allocated a budget of 2,664,000 LTL (772,000 EUR) to the *Seimas* Ombudsmen's Office. Remuneration allocations amount to 1,850,000 LTL (536,000 EUR) in 2012. A breakdown of the part of the budget allocated to complaints on environmental matters is not available.[225]

4.1.8 Particular problems encountered

There are some specific ways to handle complaints related to fees charged for municipal waste management services. Citizens are usually dissatisfied to be liable waste management fees for residences they do not use on a regular basis such as summer houses. It is difficult to persuade municipalities to introduce reductions of fees.

Finally, there are difficulties for citizens to defend themselves especially in the field of territorial planning or construction, since according to Lithuanian law citizen are provided with

[225] More info available in Lithuanian at: http://www.lrski.lt/index.php?n=377&l=LT.

planning information only at the last stage of planning (Agnė Petrauskienė, email comm., 2012).

4.1.9 Comments and cases that can serve as good/bad examples

The Ombudsman Augustinas Normantas started an investigation on his own initiative on the requirements related to fees for waste management in one municipality. The conclusion was that for some people the requirement to pay is not legally based and the Ombudsman recommended the municipality to introduce some changes into the regulation of payments for waste management (Agnė Petrauskienė, email comm., 2012).

The Ombudsman Augustinas Normantas received a complaint that a tower of transmission for one telecommunication company was planned to be built. Citizens complained that the planned tower was too close to their homes and hence raised the concerns for their health due to the transmission of waves besides visual pollution. After an investigation, the Ombudsman concluded that the planning of the tower was illegal since its construction was not part of the general plan of the municipality. The Ombudsman recommended the institution responsible for the surveillance of planning and construction to lodge a complaint to the court. The complaint was lodged and the permit for construction was withdrawn (Agnė Petrauskienė, email comm., 2012).

4.2 Administrative Disputes Commissions

The Administrative Dispute Commissions are responsible for the pre-trial consideration of complaints contesting the adopted individual administrative acts and acts (or omission) of civil servants and municipality employees in the sphere of public administration. These institutions were established by the Law on Administrative Disputes Commissions in 1999. [226] The law provides for the establishment of municipal administrative disputes commissions, regional administrative disputes commissions and the Chief Administrative Disputes Commission. The procedures provided by these institutions, however, require that rights or interests of the complainant protected by law have been infringed by administrative acts or omissions. As this is only the case in few of the scenarios subject to this study and as the work of the administrative dispute commissions seems to be quite unknown for the field of

[226] Law on Administrative Disputes Commissions of the Republic of Lithuania, 1999 January 14, No. VIII-1031, http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=169800

environmental complaints, the specific procedures are only described roughly in the following sections. But as these procedures offer a non-judicial instrument to settle administrative disputes they will be discussed again under chapter 5. Mediation.

4.2.1 Procedures/procedural guarantees

Procedures

Pursuant to Article 27 of the Law on Administrative Proceedings a person's complaint concerning individual administrative acts adopted by municipal authorities may be filed with the Municipal Public Administrative Disputes Commission.

A complaint concerning individual administrative acts adopted by territorial entities of state administration located in the Region, their acts (or omission), also concerning individual administrative acts adopted by the entities of municipal administration located in the Regional territory or their acts (or omission) may be filed with the Regional Administrative Disputes Commission.

Complaints concerning administrative acts or acts (or omission) in the sphere of public administration, where one of the parties to the dispute is the central entity of State administration, may be filed with the Chief Administrative Disputes Commission[227].

Pursuant to Article 28 of the Law on Administrative Proceedings, persons as well as other entities of public administration, including state and municipality public administration employees, officers and agency heads have the right to file a complaint/petition against an administrative act adopted by an entity of public or internal administration or against the act (omission) of the above entities if they believe that their rights or interests protected by law have been infringed. Any person have the right to file a complaint/petition to the Administrative Dispute Commission against an individual administrative act adopted by an entity of public or internal administration or against the act (omission) of the above entities if he believes that his rights or interests protected by law have been infringed.

The complaint may be filed at the claimant's discretion either with the Administrative Disputes Commission or directly with the Administrative Court, except in cases related to challenging

[227] Law on Administrative Proceedings, articles 27, 28.

violations of environmental legislation, which must be filed directly with the Administrative Court.

When the complaints/petitions are filed in the first instance with the Administrative Disputes Commission for preliminary extrajudicial investigation of disputes, both parties of the dispute have the right to appeal to the Administrative Court if they are not satisfied with the decisions of the Administrative Dispute Commissions[228].

Complaints/petitions must be filed with the Administrative Disputes Commission in writing following the format and content prescribed by the law.

Deadlines for analysis of complaints

A complaint/petition must be lodged with the Administrative Disputes Commissions within one month of the publication of the challenged administrative act or the day of delivery to the party concerned of the individual act or its notification of the acts (omission) of the administration (employees) or within two months of the date of expiry of the time limit set for complying with the demand. In cases where the administration (employees) fail to perform their duties or delay the adoption of decisions, a complaint about such omission/delay may be lodged within two months of the date of expiry of the time limit set for the settlement of the issue.

A complaint/petition filed with the Administrative Disputes Commission must be investigated by extrajudicial procedure and a decision thereon must be made within fourteen days of the receipt of the complaint. If needed, the total time-limit for considering the dispute may be extended for an additional period of fourteen days upon a justified decision of the commission.

4.2.2 Costs

Appeals to the Administrative Dispute Commission are free of charge and there is no stamp duty required.

[228] Law on Administrative Proceedings of the Republic of Lithuania, Article 22.

5 Mediation mechanisms

Mediation as a form of dispute resolution in Lithuania is in its initial stages; there is no state policy towards mediation and the process is not very regulated. This may be the reason why Lithuanian courts do not order mandatory mediation yet. Reference to mediation does appear in a number of Lithuanian international treaties and in some domestic statutes and regulations. Until July 2008 the Law on Commercial Arbitration[229] of the Republic of Lithuania had special legal norms regulating the process of mediation. Chapter IX of this law, which is now invalid, was designed for the regulation of prior arbitration mediation. The above mentioned chapter was denounced after passing the Law on Conciliatory Mediation[230] adopted by the Parliament in 15 July 2008. This legislation formally establishes and defines mediation (the conciliatory mediation of civil disputes) as a procedure of the resolution of civil disputes in which one or several mediators assist the parties to a civil dispute in reaching a conciliatory agreement.

Arbitration in administrative matters is not yet a possible alternative. The settlement of an administrative dispute without referring the matter to the court is possible only in concrete cases, where it is explicitly provided for by law.
For example, according to Article 71 of the Law on Tax Administration, the taxpayer and the tax administrator may sign an agreement concerning the sum of the tax due and the tax rate when neither of the parties has enough proof to base its separate estimates upon. After such an agreement is signed, the taxpayer gives up the right to contest the correctness of the calculation of the tax, and the tax administrator - to set a higher rate than had been agreed.

As mentioned before, the only alternative to administrative dispute resolution provided by the courts are the municipal administrative disputes commissions, regional administrative disputes commissions, the Chief Administrative Disputes Commission, as well as the Commission on Tax Disputes. Application to these commissions is optional and only in specific instances, explicitly laid down in laws, obligatory (i.e., in certain tax disputes, the Commission on Tax Disputes must be applied to prior to addressing the court). In all instances, the decisions of such disputes resolution commissions may be appealed against to the administrative courts.

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[229] Law on Commercial Arbitration, Parliamentary record No.4 (1998).

[230] Law on Conciliatory Mediation in Civil Disputes of the Republic of Lithuania. Official Gazette. 2008, No. 87-3462.

The Vilnius Court of Arbitration (VCCA) conducts mediations involving disputes of a non-contractual, commercial, or other economic character. The exclusion of contractual disputes from mediation is a notable and unusual limitation. Moreover, the rules require that the parties whose dispute is under consideration by VCCA for the purpose of settlement of disputes may not apply to a court or an arbitral panel regarding the dispute in question. Such a provision is also atypical, in that mediation commonly occurs while litigation or arbitration is pending.

Mediators may be lawyers or other experts in any economic or commercial profession or area of expertise. They may be chosen from specialists entered into the list of arbitrators recommended by VCCA or any other persons appointed by the parties' mutual agreement. The parties may appoint up to three mediators, who are expected to work together toward settlement.

The VCCA rules also provide that the mediator(s) shall be personally liable for the fair settlement of the dispute based on legal and moral standards. Another unusual aspect of the VCCA rules is the provision that the mediator must advise the parties regarding matters of law. Further, a settlement agreement under the rules is described as binding on the parties, but there is no specific mention of enforceability. Finally, the rules refer to the need to maintain the confidentiality of some specific types of communications made during the mediation, but they do not include the more widely adopted provision requiring the blanket confidentiality of virtually any mediation communications.

6 Conclusion

Accessibility

Overall, the accessibility of the Lithuanian environmental complaint-handling system provided by the public authorities is satisfactory.

The “one window” principle as laid down in the Public Administration Law helps the complainants as their complaints will be handed over to the responsible authority internally so that the complainant does not have to find out which is the responsible authority to be sure that the complaint will be dealt with. This principle, however, may lead to a delay in time as what concerns the handling of the complaint by the authorities.

Access to the environmental protection departments at the municipal or regional level is possible per phone, per letter or email. Generally online complaint forms are provided. Hot-

lines are only rarely available yet. It is being discussed, however, to install more hot-lines at the municipal and regional level as the existing ones have proven to be efficient.

The information on the web-site of the *Seimas* Ombudsmen's Office is easily understandable and offers several possibilities to file a complaint.

Transparency

Transparency is not satisfactory. There are no obligatory requirements in record keeping and reporting of environmental complaint-handling. This makes it potentially difficult to keep track with the complaint-handling activities of the competent authorities.

There is no common record-keeping IT-system of the municipalities or the REPDs dealing with environmental complaints; in general this is even not the case within a single authority.

Simplicity

Since the "one window" principle exists making a complaint is quite simple as the complainant can rely on the fact that his complaint will be handed internally to the responsible authority. However, the distribution of competences in the field of environmental complaint-handling between the municipal and the regional level is not evident and may make it difficult to understand which authority is responsible of the respective field of environmental protection.

Fairness

The fairness of complaint-mechanisms in general is ensured by the overall transparency of the system and the possibility for complainants to keep track of their complaint throughout the proceeding. In Lithuania there is a lack in transparency as there are no obligatory requirements in record keeping and neither a common practice of the responsible institutions.

There are no general external audits concerning the complaint-handling procedures of the responsible institutions, but it has been reported that internal auditing exists.

However, the existence of the Administrative Dispute Commissions and the *Seimas* Ombudsmen's Office help to ensure the fairness and contribute to a system of check and balances. As the *Seimas* Ombudsmen's Office has no enforcement powers and therefore cannot force the respective institutions to follow its recommendations the control however is restricted.

Confidentiality

General rules on the confidentiality/safeguarding of anonymity can be found in the Law on legal protection of personal data. Confidentiality seems to be respected in Lithuania as there were no cases reported by the interviewees where this has been caused problems. No specific guarantees for „whistle-blowers“ are provided

Independence

The majority of complaints are handled by the municipal environmental protection departments or the REPDs. In terms of independence there is in general a superior body that controls the activities also in case there are no formal defects, etc. that lead to a second instance procedure.

Besides this the institutions of the Administrative Dispute Commissions and the Seimas Ombudsmen' Office guarantee a certain independence but both require that the complainant has been infringed in her or his rights or interests by the administrative acts and therefore only apply to a certain amount of matters for environmental complaints.

Flexibility

The lack of strict legal rules and benchmarks on how to govern the complaint-handling mechanisms ensure that the system is flexible in terms of responding to different types of complaints and needs of the complainants. There is a regular exchange and cooperation between the municipal and regional environmental departments that add to a flexible reaction on the complaints. However, both the environmental departments on the municipal and on the regional level reported that they suffer capacity constraints and are delegating complaints because of this fact and not in the first place depending on the matters of the complaints and on the respective competences in the authorities.

In addition to this there seems to exist a lack of constant internal or external reviewing processes and exchanges on good practices that could lead to a regular improvement of the complaint-handling mechanisms.

Comprehensiveness

Enforcement gaps do exist in relation to the work of the *Seimas* Ombudsmen's Office. It is being discussed, however, to change this in the near future.

The authorities, especially the municipal and regional environmental protection departments, have enforcement powers for making sure their decisions (as a consequence of a legitimate complaint) are properly implemented.

Effectiveness

As there is a general lack of reports especially of the municipal environmental protection departments and the REPDs that deal in detail with environmental complaints/complaint-handling (giving statistical information on lengths of procedures, settlements, number of complaints, etc.) it is very difficult to monitor the effectiveness of the complaint-handling mechanisms. According to the interviewees, however, the biggest problem seems to be the lack of (financial) capacities.

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VIII. POLAND

1 Institutional, administrative and legal context

Territorial administration, organisation and implementation of environmental policies

Polish administrative reform introduced a three-level territorial hierarchy from 1 January 1999. In addition to the regions (*voivodship*) and communes (*gmina*) that had existed since 1990, counties (*powiat*) were restored, having been abolished in 1975. The reform was designed to develop self-government and improve authorities' actions in the field. Much authority – including in environmental management – was transferred to 16 *voivodship*, 379 *powiat* and 2 478 *gmina*.

The three levels of Polish administration are described below. Each has its own responsibilities in the field of compliance with environmental law:

The *gmina* (commune) is the principal and smallest administrative unit in Poland. The executive authority is the mayor of the municipality, called *wójt* in rural *gmina*, *burmistrz* in urban-rural *gmina* and *prezydent miasta* in towns of more than 100 000 inhabitants. *Gmina*'s competences in the environmental field mainly include: environmental protection and conservation, water management, water supply systems and sources, sewage systems, removal of urban waste, water treatment, maintenance of cleanliness, landfills, and municipal waste.

The *powiat* (county (also known as district or prefecture) is the second-level unit of local government and administration. Since the local government reforms in 1999, the *starosta* (head of county (*powiat*)), the executive and the head of the county administration (*starostwo powiatowe*) have been elected by the county council (*rada powiatu*). In cities, these institutions do not exist separately – their powers and functions are exercised by the city council (*rada miasta*), the directly elected mayor (*burmistrz* or *prezydent*), and the city offices (*urząd miasta*). The *powiat* has some competences and decision-making powers in environmental protection, in particular in land surveying.

The *voivodeship* (*województwo* province, region), – is a higher level of administrative unit. Administrative authority is shared between the *voivode* (*wojewoda*), a government-appointed governor, an elected assembly and an executive appointed by that assembly, the leader of

that executive being called *voivodeship marshal* (*marszałek województwa*). The *voivode* coordinates environment protection and management.

Monitoring of compliance with environmental law, apart from the above mentioned local authorities, is the responsibility of several public institutions: the General Directorate for Environmental Protection (*Generalna Dyrekcja Ochrony Środowiska – GDOS*) with its 16 regional directorates, the Chief Inspectorate for Environmental Protection (*Generalna Inspekcja Ochrony Środowiska – GIOS*) with its 16 regional (*voivodship*) inspections, the Hunting Guard, the Forest Guard, and specialised guards for protected areas (natural parks, Natura 2000 areas) (which focus on the monitoring of protected species, the prevention of illegal hunting, etc.).

2 Scope, hierarchy and co-ordination of complaint-handling procedures

Under Polish law, two types of complaints exist:

- a complaint concerning a malfunctioning of public services is called *skarga* (complaint)
- a complaint concerning an alleged illegal activity is called *wniosek* or *wniosek o interwencję* (request or request for intervention).

Naturally, this differentiation also applies to environmental complaint procedures.

2.1 Description of main actors

Local and regional authorities

In many cases, the mayor of the municipality in *gmina*, the *starosta* or the *voivode* are the competent authorities for complaint-handling at local level.

Depending on the environmental area (e.g. air, water, waste, protected species and habitats, industrial installations, extraction of minerals, etc.) there are different competent authorities responsible for complaint and request handling. These competences result from various pieces of legislation covering different environmental themes.

Accordingly, the competences in complaint-handling of municipality local authorities – mayor of *gmina* or *voivode* – encompass issues covered by:

- Waste Act of 27 April 2001, as amended, e.g. article 34 of which provides that the *voivode* or mayor (*wójt, burmistrz* or *prezydent miasta*), by means of decision, may order the owner of waste to remove waste from a location not intended for its disposal or storage, indicating the method of execution of this decision,
- Environmental Law of 27 April 2001, e.g. article 363 of which provides that the *voivode* or mayor may order an individual whose activity has a negative environmental impact to take mitigation measures within a specified time,
- Water Act of 18 July 2001, e.g. article 29 §3 of which states that if modifications of the water level caused by a land owner have a negative impact on the neighbouring land, the *voivode* or mayor may order the land owner to restore the environment to its original state or install devices preventing environmental damage from occurring.
- Act of 13 September 1996 on maintaining cleanliness and order in municipalities
- Act of 16 April 2004 on Nature Protection
- Act on sharing information on the environment and its protection, public participation in environmental protection and environmental impact assessment of 3 October 2008.

Competences of the *voivodeship marshal* or *starosta* include handling complaints concerning for example illegal extraction of minerals or activities of installations which require an IPPC permit. In the latter case, if a facility does not have the required IPPC permit, the *starosta* shall order the cessation of its operations.

General (and Regional) Directorate(s) for Environmental Protection

The General (and Regional) Directorate for Environmental Protection is an environment protection authority competent in matters of environmental damage prevention and repair. Its main tasks include participating in Strategic Environmental Assessment, Environmental Impact Assessment and tasks in relation to Natura 2000 areas (e.g. preparing projects for lists of areas, monitoring area function) as well as tasks resulting from the Environmental Liability Directive. The General Directorate is the higher instance authority in relation to the Regional Directorates who are competent authorities at *Voivodship* level.

The Regional Director shall take action in agreement with the *voivode* when on the territory where he/she is competent there has been a direct threat of environmental damage or environmental damage has occurred. (Act on prevention and repair of environmental damage, article 7).

Chief (and Voivodeship) Inspectorate(s) for Environmental Protection

The main tasks of the Inspectorate for Environmental Protection are to monitor compliance with the law on environmental protection, carry out inspections and evaluation of the state of the environment. It is the main authority responsible for enforcement of environmental law in Poland.

Environmental complaints, as registered by the Chief (and *Voivodeship*) Inspectorate(s) for Environmental Protection, are related to various areas, mostly concerning air or water contamination, exceedance of noise or electromagnetic radiation levels, waste management (e.g. illegal disposal of waste by individuals or companies, illegal construction of landfills by communes), discharge of pollutants or other emissions by private companies, and harm to protected species.

In Poland, the authorities competent for environmental law enforcement are responsible for handling of complaints and requests in the environmental area. Complaints and requests reported in relation to the alleged illegal action or non-compliance with the environmental law by a person or company are handled by the local/ regional authority or the Inspectorate for Environmental Protection.

The National Sanitary Inspection

The National Sanitary Inspection[231] is a public institution specialised in executing tasks in the field of public health through control and supervision of hygiene conditions in different areas of life. This institution is responsible for controlling compliance with health and hygiene requirements, in particular water intended for human consumption, cleanliness of air, soil, water and other environmental elements. The Sanitary Inspection is subordinated to the Minister of Health and it is composed of the Chief Inspector, the national inspectors at *Voivodship* level and on *powiat* level).

In practice, many requests and requests for intervention are complex and their resolution requires the involvement of several competent public authorities.

2.2 Relationship between complaint-handling mechanisms

The authority handling a complaint or request is not always the same authority as the one entitled to take action to resolve the request. For example, the Inspectorate for Environmental Protection can be the right authority to handle the request, but the decision on resolving it is a competence of the *voivode.*

[231] Activities regulated pursuant to the Act of 14 March 1985 on Chief Sanitary Inspection.

If the competent municipal authority, e.g. mayor, has not resolved the complaint or request, the complainant should report this to the higher instance authority - municipal council or commune council. If the competent public administration authorities examined the case, and the complaints submitted to the municipal (or county) council did not bring the expected results and if in the complainant's opinion the problem has not been solved – the environment is still being damaged – the complainant should report this to the competent *Voivodship* Inspectorate for Environmental Protection.

According to the Regulation of Council of Ministers on organisation of receiving and handling complaints[232], if the examination of complaint or request requires prior investigation, the authority competent for investigating gathers the necessary materials. For this purpose, it may request other authorities to provide necessary materials and explanations. If a complaint or request concerns several issues to be examined by different authorities, the authority which receives a complaint or request shall deal with matters belonging to its competence and forward the remaining unresolved matters no later than within seven days to the competent authorities, by sending a copy of the complaint or request and at the same time notify the complainant.

There is a hierarchy regarding authorities that receive and process complaints and requests. According to the Code on Administrative procedure (art 258), supervision and monitoring of complaints and requests is the responsibility of:

- Ministers – regarding complaints handled by ministries and units subordinated to ministers
- Competent ministers in co-operation with the Minister for Public Administration – regarding complaints handled by government bodies
- Territorial government bodies – regarding complaints handled by units subordinated to these authorities
- (...)
- Prime Minister and *voivodes* – regarding complaints handled by local government bodies

[232] Regulation of Council of Minister on organisation of receiving and handling the complaints and requests, 8 January 2002 http://isap.sejm.gov.pl/Download?id=WDU20020050046&type=2

2.1. Application to scenarios

2.2.1 Is there a mechanism/are there mechanisms for alleged illegality or non-compliance of a private person/company?

If the irregularity concerns issues such as: visible pollution of air with dust and/or gases, unpleasant odours, pollution of water caused by the activity of an industrial facility which should have environmental permits, the right procedure to follow is to contact a competent *Voivodship* Inspectorate for Environmental Protection (in writing, by phone or in person, providing personal data).

If a complainant is not satisfied with the complaint or request handling by the *Voivodship* Inspectorate, he can report this to the Chief Inspectorate for Environmental Protection. It is important to highlight that the *Voivodship* Inspectorate will not handle a complaint or request that should be resolved by local authorities (at communal, municipal level).

If the complaint concerns issues such as: cutting trees without the required permit, illegal waste disposal (e.g. in the forest or in a place not meant for this purpose), waste incineration elsewhere than in an authorised installation, leaking from liquid waste containers, modifications of water levels which may have negative impacts on neighbouring land, the right procedure is to contact the competent local administration: commune office (*urząd gminy*) or city office (*urząd miasta*). The competent authority handling this kind of complaint will be the mayor (*wójt, burmistrz* or *prezydent miasta*). In cases when a non-authorised station is dismantling end-of-life vehicles, the complainant should report this to *Voivodship* Inspectorate for Environmental Protection which has the right to conduct a spot-checks of such stations and impose fines if illegal activity is discovered.[233]

The *starosta* is the competent authority for issues concerning illegal extraction of minerals or excessive noise.

Regarding installations that may cause significant pollution to the environment and requiring IPPC permits, if the operator has no required permit for the installation, the *Voivodship* Inspectorate for Environmental Protection should be informed. The Inspectorate shall then suspend the operation of the installation[234].

[233] Act of 20 January 2005 on recycling of end of life vehicles

[234] Environmental Law of 27 April 2001.

If the operator breaches the IPPC permit conditions, the public prosecutor should be informed in order to start criminal proceedings.

If a company whose products have an eco-label is claimed not to be respecting the criteria, the Polish Centre for Testing and Certification (Polskie Centrum Badań i Certyfikacji (PCBC), state owned company) is the competent authority to handle a complaint.[235]

For specific complaints and requests about wildlife and nature conservation (e.g. illegal trapping or hunting of wild birds, illegal activity in the coastal zone or in Natura 2000 areas, trade of protected species), the main competent authority is the Regional Directorate for Environmental Protection. If the alleged non-compliance broadly relates to these areas, there are different procedures for breaches caused by individuals and private companies:

- Breach caused by an individual:

  Alleged illegal activity concerning nature conservation on all Polish territory: if an offense or breach of law is observed, the public prosecutor or the police should be notified.

  Alleged illegal activity concerning nature conservation in Natura 2000 areas: the Regional Directorate of Environmental Protection should be notified (in maritime areas: the appropriate maritime office director) which then orders the immediate cessation of the activity and the undertaking of necessary actions to restore the concerned area or the protected species present in the area to their previous state (Art. 37 of Act on Nature Protection of 16 April 2004).

  If the issue concerns protected species, the competent body to address an environmental complaint is the Regional Directorate for Environmental Protection. If the case concerns discharge of pollutants or other illegal pollution that may affect protected species or habitats, the Regional Inspectorate for Environmental Protection should be notified.

- Breach caused by a private company concerning nature conservation: the legislation on environmental liability may be applicable, in which case environmental damage should be reported to the authorities – to the Regional Directorate for Environmental Protection, according to Directive 2004/35/EC (Environmental Liability Directive)

[235] The PCBC has been entrusted by decision of the Council of Ministers on 25 May 2004 on the establishment of an institutional system for applying in Poland the Regulation 66/2010/EC. The PCBC is the only organisation authorised to grant the EU Ecolabel environmental certification for products commercialised in Poland.

which was transposed into Polish law (in the opinion of the interviewed NGO, the Polish transposition of the ELD goes beyond the EU provisions in some aspects).

Trade of endangered species should be reported to the Regional or General Director of Environmental Protection and additionally to the department of Forestry and Nature Conservation in the Ministry of Environment.

If illegal trapping or hunting of wild birds is observed, the competent authority is the Regional Directorate for Environmental Protection; in addition it should be reported to the Police, the Forest Guard or the Hunting Guard as they can arrive quickly at the place of illegal activity.

Regarding illegal activities in the coastal zone, such as pollution of the maritime area, the Maritime Unit of Border Guard can be informed. This Unit is responsible for surveillance of the Polish maritime area, including detection of pollution in the sea and determining the offenders.[236]

2.2.2 Is there a mechanism/are there mechanisms for alleged illegality or non-compliance of a public body/utility in relation to providing an environmental service?

If the irregularity concerns the failure of a municipality to treat properly its urban waste water, the request for intervention should be reported to the Chief or *Voivodship* Inspectorate for Environmental Protection who will impose a penalty for the municipality[237]. According to the Act on maintaining cleanliness and order in municipalities, this matter will be dealt by the municipal or commune office which will order the mayor (*wójt, burmistrz* or *prezydent miasta*) to comply with the legislation.

If the water utility fails to properly disinfect drinking water, the Sanitary Inspectorate should be informed (at *Voivodship* or *powiat* level).[238]

Where a municipality fails to properly manage a landfill, the complaint should be reported to the *Voivodship* Inspectorate for Environmental Protection.[239]

In the field of environmental protection, in the case of an alleged illegality of a public body in relation to providing an environmental service, the public body is treated the same way as

[236] http://www.morski.strazgraniczna.pl/struktura.htm

[237] Act of 13 September 1996 on maintaining cleanliness and order in municipalities.

[238] Act of 14 March 1985 on Chief Sanitary Inspection.

[239] Act of 13 September 1996 on maintaining cleanliness and order in municipalities.

private companies. The legislation on environmental liability may be applicable, in which case environmental damage should be reported to the authorities (Regional Directorate for Environmental Protection), according to the Environmental Liability Directive as transposed into Polish law. The damage should be reported to the Regional Directorate for Environmental Protection, if it applies to the whole territory in general or to Natura 2000 areas[240]. If the case regards protected species, an environmental complaint or request should be reported to the police and to the Regional Directorate for Environmental Protection.

2.2.3 Is there a mechanism/are there mechanisms for alleged failure of a public body to respect procedural requirements or some other required administrative standards?

This chapter concerns complaints in general, about negligence or inappropriate execution of tasks (procedural beaches) by the authority, breach of law or non-respect of a complainant's interests or excessive delays in the procedure.

According to the Code on Administrative Procedure[241], public administration authorities comply *ex officio* with their designated territorial and operational competence.

According to the Code (articles 230 and 231), the competent body for examining a complaint concerning tasks and activities of an organisation is a body at a higher administrative level; if the complaint relates to the executive body of an organisation, the competent authority is the Prime Minister or relevant ministers supervising activities of this organisation. If the body which receives a complaint is not competent for examining it, it must forward the complaint to the competent body immediately and no later than within seven days and it must inform the complainant or indicate to him the competent body.

As a general principle provided by the Code on Administrative Procedure, complaints against a public authority administration should be reported to and processed by an authority which is higher in hierarchy or an internal audit office. Complaints against the Regional Inspectorate for Environmental Protection should be reported to the Chief Inspectorate for Environmental Protection; complaints against the mayor of the commune (*wójt)* should be reported to the

[240] The legislation makes a difference between Natura 2000 areas, protected areas and the whole territory in general.

[241] Legal act regulating the conduct of administrative procedures in Poland.

commune council, complaints against the commune council or county council should be reported to the *voivode,* etc.

In case the approval of a project by a competent authority without an EIA/screening (EIA Directive), an authority allowing housing development on a protected Natura 2000 site without an appropriate consideration of the individual/cumulative effects (Habitats Directive 92/43/EEC), the complaint should be reported to the Regional or General Directorate for Environmental Protection.

A complainant that obtained unfavourable result in a case in the first instance complaint-handling authority can complain to higher instance authority or finally to administrative court. The administrative appeal needs to be exhausted before the complainant turns to the administrative court.

3 Characteristics of the complaint-handling systems identified

Each public body is obligated to comply with their designated competence in relation to complaint-handling. Citizens wishing to report a complaint or request to the competent authority can do so in writing, by phone, electronically or in person. If several authorities need to be involved, the authority to whom the complaint or request has been reported is responsible for co-ordination with other bodies according to the specificity of the case, and for informing the citizen about the further action.[242]

3.1 Procedures/procedural guarantees

Procedures

Reception and processing of complaints and requests is handled in compliance with the Code on Administrative Procedure and the Council of Ministers regulation on the reception and processing of complaints and requests.[243]

According to the Code on Administrative Procedure, each authority competent for complaint and request handling disposes of a strictly defined amount of time required to investigate a

[242] Regulation of Council of Minister on organisation of receiving and handling the complaints

[243] General information on reception and processing of complaints and requests by the Ministry of Environment http://www.mos.gov.pl/kategoria/3306_skargi_i_wnioski/

complaint. If the authority which received a complaint or request is not competent to deal with it, it shall immediately and no later than within seven days send it to the competent authority and notify the complainant or indicate the competent authority to the complainant. The competent authority disposes then of thirty days to investigate the complaint or request. If it is not able to perform the required action within the thirty days, the competent authority is obligated to provide feedback and to inform the complainant about the time needed for resolving the complaint. The investigation means proceed with any control to check if there was a breach of law.

According to the Code on Administrative Procedure (article 254), complaints and requests made by complainants to the competent authorities are recorded and stored (together with all related documents) in a way that facilitates monitoring of the processing and timing of settlement of individual complaints and requests. No specific information about what elements are recorded has been identified.

For more details please see “Application to scenarios” section above.

Record keeping and availability of IT systems for handling complaints

There is no unified system of information as each competent authority registers information at its own level. For example, the Chief Inspectorate of Environmental Protection keeps an internal database where complaints and requests reported to the Chief and Regional Inspectorates are registered. This database is not available publicly due to the confidentiality of personal data.

Examining a complaint or request requires the complainant to give personal data. Personal data are stored as confidential.

Anonymous complaints or requests can in principle not proceed, unless they deal with a matter of great importance. Personal data of complainants are not communicated to the party against which the complaint was made.

Publicity

Availability of technical, scientific and/or legal expertise at the country scale is a problem. Individuals who observe a non-compliance or breach of law have limited access to information on how to lodge a complaint or request for intervention. In the opinion of the *Klub Przyrodników* NGO, procedures are difficult to understand for the general public and not many people are able to use them efficiently. The NGO invokes in particular limited access to information about protected species and habitats.

The Chief Inspectorate for Environmental Protection published on the official website a brochure containing instructions on authorities competent in the field of complaint and request handling[244]. It briefly describes some common situations for citizens and competent authorities to whom they should report the alleged irregularity or illegality.

Most local authorities that receive a large number of complaints or requests provide some basic information to citizens on how to lodge such complaints and requests[245]. For example, the authority may provide some general information on citizen's rights and rules on complaint and request handling. However, the information on some websites is not easy to find. Some authorities give only the contact information and opening hours of unit dealing with complaints and requests.

3.2 Technical, scientific and legal expertise of EU Environmental law

At the level of Environmental Inspection authorities, complaints and requests are handled by personnel specialised in enforcement of environmental law. They have a high level of legal and scientific expertise regarding handling complaints and requests and carrying out spot checks and audits. Public authorities organise trainings for Environmental Inspection employees regarding newly implemented legislation or developing skills which helps handling spot checks and audits.

It is difficult to make conclusions about the real level of technical and legal expertise of the national authorities. In principle personnel employed to handle complaints at the local level are required to have legal expertise in the field they work in.

3.3 Reporting and statistics

According to the Act on Inspection for Environmental Protection, the Chief Inspectorate for Environmental Protection was obligated to submit an annual report to the Minister of Environment on complaints and requests for intervention received and investigated by Chief and Regional Inspectorates, which represents only a portion of environmental complaints

[244] http://www.gios.gov.pl/artykuly/171/Organy-wlasciwe-w-sprawie-skarg-i-interwencji

[245] Please see an example of information provided to citizens on lodging complaints and requests on *Voivodship* Office in Warsaw website: http://www.mazowieckie.pl/portal/pl/543/9010/Skargi_i_wnioski.html?search=73427

reported at national scale. Although this practice is no longer obligatory since 2011, the Chief Inspectorate still maintains such a summary.

Local authorities publish reports regarding complaint-handling but without specifying complaints or request in the field of the environment. The reports are available for viewing; some local authorities publish their reports online.

Complaints and requests addressed to the Ministry of Environment are recorded in a central register of complaints and requests, maintained by the Office of Inspection and Internal Audit.

3.4 Review

According to the Code on Administrative Procedure (article 259), authorities responsible for controlling the reception and processing complaints and requests[246] are obliged to make an assessment on reception and processing of complaints and requests at least once every two years, with the aim of eliminating causes of complaints and making use of complaints to improve their own functioning.

Many authorities (e.g. Ministers, *Voivodship* offices) publish their results in the area of complaint and request handling in annual reports available on their websites[247]. They provide a description of complaints and requests handled by theme, the number of processed by unit, and the way in which they were processed. The authorities also give information about the timeliness of processing of complaints and requests, and possible errors, omissions and shortcomings in their handling. The report also lists actions taken to check reception and processing of complaints and requests.

These reports do not concern specifically environmental issues, although some reported complaints and request in this matter can be mentioned as examples in the analysis.

While authorities should act to improve their functioning in the area of complaint and request handling, there is no legal obligation to communicate publicly in a report about such actions.

[246] Ministers, Prime Minister, *Voivods* or high instance bodies, depending on their competence in dealing with complaints and request

[247] Please see an example of an annual report on complaint and request handling by a local authority: Analysis of complaints and requests processed by *Voivodship* Office in Gdańsk in 2010:

http://www.pomorskie.eu/res/BIP/PUW/Wydzialy/Nadzoru_i_Kontroli/Analizy_skargi_wnioski/analiza_rozpatrywania_skarg_i_wniosk__przez_puw__2010.pdf

3.5 Frequency/regularity of complaints and trends

The Chief Inspectorate for Environmental Protection (*GIOS*) administers a register of complaints and requests which are registered by the Chief and Regional Inspectorates. In 2011, the Chief Inspectorate registered 380 complaints and 7 279 requests for intervention (including Regional Inspectorates). Among the cases of request for intervention handled, issues concerning the following areas are predominant: waste management (2 244 cases), protection of clean water and waste water treatment (1 742), air quality protection (1 316) and protection from noise pollution (1 209).[248] In consequence of these requests for intervention, the Inspectorate at central or regional level has conducted 2 806 spot checks and audits. These controls resulted in 573 imposed fines, 1 556 post-control decisions of Environmental Inspection authorities, 48 cases have been reported to the police, and 336 reported to government authorities, 18 to general courts, 1 150 to the self-government authorities, and there have been 392 administrative proceedings initiated.

Of 104 complaints reported to the Chief Inspectorate against the *Voivodship* Inspectorates, almost 90% (91 complaints) have been considered as spurious by the Chief Inspectorate and dismissed. Only 5 complaints concerned cases when a *Voivodship* Inspectorate exceeded the time limit defined in the Code on Administrative Procedure regarding handling the complaint or request or regarding forwarding to the competent authority.

In 2010 the Chief and Regional Inspectorates registered 355 complaints and 6167 requests for intervention. In consequence there have been 2 708 spot checks and audits carried out. The structure of environmental fields in which complaints and requests were reported is similar to 2011 data. The number of complaints and requests handled by these authorities in 2010 remained at the level of 2009. According to authorities, the increase of the number of complaints and requests compared to 2010 results from the entry into force of provisions related to financial penalties under the law on waste and the law on recycling of end-of-life vehicles.

Information about the frequency of complaints is not accessible at the centralised level; each authority or organisation keeps this information at the local level. The *Klub Przyrodników* NGO estimates that there are about 10 environmental complaints or requests per month

[248] Report on task realisation in 2011 published by Chief Inspectorate for Environmental Protection http://www.gios.gov.pl//zalaczniki/artykuly/realizacja_zadan_2011.pdf

which they are aware of[249] (they have been notified by citizens complaining to the authorities).

3.6 Existence of features to address challenging complaints (e.g. multiple complaints on the same issue)

Many complaints or requests concern several areas of competence and need to involve several competent public authorities in their resolution.

The Regulation of Council of Ministers on organisation of receiving and handling the complaints regulates such cases. (Detailed in Relationship between complaint-handling mechanisms in section 2.1*)*

From the legislative point of view these are treated like any other complaints and no particular procedures are identified.

No examples about challenging complaints in the field of environment have been identified.

3.7 Costs

The processing of complaints and requests for intervention (administration of complaint) is free of cost for complainants. It also covers cases when complainant reports a complaint or request concerning the same issue to the higher authority if it has not been resolved by the competent authority. In the case of an appeal against the decision of the court, the administrative cost is 100-500 PLN (25-125 EUR) per case. In the opinion of the *Klub Przyrodników* NGO, these costs are not a barrier to access the procedure.

In case the complaint procedure requires conducting analyses in the environment, for example due to an activity that has a negative impact on the environment, entity responsible for this activity bear the cost of the analyses.

The costs to the administrative authorities are not measured.

3.8 Particular problems encountered

No particular problems identified.

[249] The NGO acts most often locally but sometimes is involved in cases at national scale.

3.9 Comments and cases that can serve as good/bad examples

No good/bad practice examples identified.

4 Existence of specific additional institutions/authorities for the sector of environmental complaint-handling

4.1 Ombudsman (Rzecznik Praw Obywatelskich)

The Polish Ombudsman (*Rzecznik Praw Obywatelskich* – Citizen Rights Defender*)* is an institution which aims to protect freedom, human and citizen rights defined in the Constitution or other laws. It monitors whether public bodies, laws and institutions infringe the human and citizen laws. A request may be lodged with the Human Rights Defender when actions or decisions of the public administration infringe the law or human freedom.

The Act on Citizen Rights Defender of 1987 which gives the legal framework for this institution, does not mention any specific situation in relation to environmental matters. In principle there is no reason to consider that the Human Rights Defender cannot deal with complaints or request in relation with environment, but in practice he does not handle environmental complaints. The reports on activity of the Human Rights Defender in the chapter “Environmental Protection” published in 2009, 2010 and 2011 mentioned a total of only 9 areas where non-compliance with environmental law could be observed and actions were undertaken to resolve it.

4.2 Petition

Article 63 of the Republic of Poland’s Constitution of April 1997 states: "Everyone has the right to submit petitions, requests and complaints in the public interest, its own interest or another person’s with their consent, to the public authorities and social organisations and institutions in relation with the performance of public administration duties. Processing petitions, requests and complaints shall be specified by a separate Act."

The right to submit petitions, requests and complaints is also mentioned in the Code on Administrative Procedure. In article 221, it states: "1. The right guaranteed by the Constitution to submit petitions, complaints and petitions to state authorities, local government bodies, local administrative authorities and to social institutions and organisations is carried out under the terms of the provisions of this chapter. 2. Petitions,

requests and complaints may be submitted to social organisations and institutions in relation with the performance of their public administration duties. 3. Petitions, requests and complaints can be submitted in the public interest, a person's own interest or another person's with their consent."

Although in April 2011, the government attempted to regulate (by the Act on petitions) the fundamental issues related to the exercise of the right of petition and submitted to the Parliament a draft act, the work on implementation has been suspended due to the legislative elections in October 2011. The work on the draft act on petitions has been resumed. In June 2012 the *Senat* (Parliament's lower house) decided to bring to *Sejm* (the upper house) a project of law for further works.[250]

5 Mediation mechanisms

In Polish civil law, mediation -which embraces conflicts in the area of environment- is regulated by the Code of Civil Procedure251. The Code refers mainly to cases concerning repair of damage resulting from breach of Environmental Protection law. According to the Code, mediation is initiated prior to the legal proceedings in first instance or, with the consent of the parties, in the course of a case.

Mediation is defined as a voluntary and confidential communication between parties in dispute with the assistance of a mediator i.e. an impartial and neutral third party. The aim is to reach a settlement satisfactory for parties participating in the mediation process.[252]

Even before the formal introduction of mediation in the civil code, the idea of dispute settlement was inherent to civil law in Poland. It is reflected in a number of provisions of the Code of Civil Procedure referring to settlements (e.g. article 10: "In cases where a settlement is admissible, the court should in any stage of the proceeding aim for the settlement", article 223: "The court should at the appropriate time encourage the reconciliation").

The legislator, looking for solutions to improve the judicial process and lighten the workload of the Courts, introduced the system of mediation in civil matters as a step towards the modernisation of civil procedure and as an alternative to the traditional model of judicial

[250] http://obywateledecyduja.pl/2012/06/senacki-projekt-ustawy-o-petycjach-juz-w-sejmie/

[251] Code of Civil Procedure 17 November 1964, as amended

[252] „Ethics code of a mediator", Polish Mediation Centre, Warszawa 2003

proceedings.[253] Hence, the Code of Civil Procedure was amended in 2005 and mediation in civil proceedings was introduced, together with definitions of principles governing mediation, of the procedure and of the role and qualification of mediators.

According to the Code, the settlement concluded before a mediator, after its approval by the court, has legal force of a settlement reached before the court. However, the court may find the settlement inadmissible if its content does not comply with legislation or with law and order, or if it is intended to circumvent the law.

In the environmental protection area, mediation is used mainly to resolve conflicts related to the location of roads, landfills, waste incinerators, and the development of natural protected areas (such as Natura 2000 network). This mechanism is adapted to environment-related cases where there is room for negotiation among the parties, rather than to obvious infringements of environmental law.

In order to reduce the workload of Polish civil courts, the Ministry of Justice encourages the use of Alternative Dispute Resolution methods[254] in different areas of disputes (e.g. family conflicts, inheritance, propriety issues, and business relations issues). Nevertheless, such methods of dispute resolution in the environmental related cases are not mentioned in the framework of this campaign. It could explain why those methods are not yet widely used in Poland.

Enlarging the use of mediation implies an approach differing from the traditional conflictual approach characterised by administration justice by a court. It requires a change of attitude in the approach to dispute by all parties involved and awareness rising.[255]

5.1 Associations and bodies specialised in environmental mediation

Since about a decade, mediation is being strongly promoted by various public institutions and associations, for example:

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[253] Judge Rafał Cebula, „Mediation in Polish civil law", Ministry of Justice, Warszawa 2011

[254] For example the Ministry of Justice issued series of publications on alternative dispute resolution methods in different areas http://ms.gov.pl/pl/dzialalnosc/mediacje/publikacje-akty-prawne-statystyki/

The Ministry conducted also a promotion campaign in media http://ms.gov.pl/pl/dzialalnosc/mediacje/kampania-mediacyjna-2011-2012/

[255] Civic Council for Alternative Dispute Resolution at the Ministry of Justice.

1. Civic Council for Alternative Dispute Resolution at the Ministry of Justice is an advisory body established in 2005 by the Ministry of Justice for matters of broadly understood Alternative Dispute Resolution (ADR). The Council is in charge of elaborating recommendations to the rules and operation of the Alternative Methods of Dispute Resolution and Conflict system in Poland. The tasks include adapting the Polish legal system to the requirements of the EU law, development of a standard mediation model in Polish legal system, dissemination of mediation proceedings standards, promotion of ADR mechanisms as a method for resolving conflicts among judicial system employees, law enforcement officers and the society, development of institutional conditions.

2. Polish Mediation Centre (*Polskie Centrum Mediacji*) is an association established in 2000 whose most important goal was to introduce mediation as a legal institution to the Polish judiciary system. One of the main missions has been to promote the ideas of the "reparation" justice among the judiciary system (judges, prosecutors, etc.) and the society.[256]

Environmental mediation process in practice

As reported by the NGO interviewed, usually in a case there are several parties involved in the procedure; one of them can call for the services of a professional mediator (which usually is a private company, sometimes a member of an institution (e.g. Regional Inspectorate for Environmental Protection) which has been trained as a mediator) and this person has to be accepted by each party involved in the procedure. In practice, the mediator is a person which helps parties to reach a compromise. [257]

According to the interviewed NGO, in practice, the mediator chosen by the involved parties (according to the expertise, previous experience, etc.) is accepted by public authorities, but sometimes the mediator can be a member of a public inspection office which has been given this role.

The interviewed NGO mentions two cases where parties have benefited from a mediation mechanism:

1. Plan for Natura 2000 protected area PLH120024 *Białka tatrzańska*

2. Participative planning of national protection programmes for grey seal (*Halichoerus grypus*) and harbour porpoise (*Phocoena phocoena*).[258]

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[256] http://mediator.org.pl/index.php?option=com_content&task=view&id=92&Itemid=97

[257] No legal framework identified.

[258] http://baltyk.mediatorzy.pl/pl/baltyk

In both cases, the mediation procedure was financed in the framework of the protection programme in question (according to the NGO, in most cases where mediation is applied, it is financed by the programme/plan funds). In the second case, the financing comes from the European Fund for Regional Development.

Public awareness of mediation mechanisms is very poor, mainly due to uncommon practice. Mediation is not part of a special administrative or judicial procedure. Situations where civil society proposes to resort to mediation are very rare; it is usually suggested by NGOs involved in the procedure or by public authorities.

6 Conclusion

Accessibility

Individuals who observe a non-compliance or breach of law have limited access to information on how to lodge a complaint or request for intervention. In the opinion of the Klub Przyrodników NGO, procedures are difficult to understand for the general public and not many people are able to use them efficiently.

According to the representative of the Chief Inspectorate for Environmental Protection, the increasing number of complaints[259] results from better environmental awareness of society and concerns about health issues related to air/soil/water pollution. The representative highlighted insufficient awareness concerning complaint-handling mechanisms: it happens frequently that citizens turn to Environmental Inspection authorities in the case of an environmental infringement, thinking that they are the competent authorities, while in most cases the competent body to handle environmental complaints and request is the local administration.

According to representative of the Chief Inspectorate, most requests for intervention are justified and result in the environmental issue being solved. However, it happens that complaints that are made by companies against their local competitors, or that individuals make unjustified requests for intervention against their neighbours.

Transparency

[259] Chief and Regional Inspectorates registered 7279 complaints and request for intervention in 2011- 1054 more than in 2010.

The system of complaints and requests handled by the Chief and Regional Inspectorates is very transparent. The annual report gives complete information about the number and nature of complaints and requests, actions undertaken by authorities and resolution of the issue. This is not identified at municipal and regional level in relation to complaints and requests reported to other competent authorities. Whereas the authorities are obliged to register and handle the complaints and requests in the same way, aggregate reports to reflect the situation about complaint-handling on the national scale are not prepared.

Each authority registers complaints and requests at its level and has a clearly defined amount of time available to process the complaint and to inform the complainant about the actions undertaken. Unfortunately, as the aggregated data for the competent authority altogether are not available at national scale it is very difficult to make a global analysis.

In general, information on how to complain about environmental issues is not very easy to find by the general public. Apart from the publication by the Chief Inspectorate for Environmental Protection of the brochure on competent authorities mentioned above, no such initiatives on the local level have been identified. Many local authorities provide on their websites some basic information on how to lodge complaints, but these are not always easy to find and in many cases only general provisions on complaint-handling from the Code on Administrative Procedure are provided.

Simplicity

The system appears to be simple to a citizen; one can report a complaint or request for intervention using several means - in writing, by phone, electronically or in person. The procedure might become complex when the case requires involving many competent authorities. In this case authorities are obliged to coordinate between them or to guide a citizen in addressing the competent authority or authorities.

From the inspection authorities' point of view, the main difficulties concerning the handling of complaints and requests for interventions are due to the complexity, the multidimensional aspects of cases, and the fact that they involve several competent bodies which need to co-operate efficiently in order to resolve the case. Many interventions require a great level of commitment from the authorities and the involvement of significant resources and efforts.

Confidentiality

Each complainant has right to request that his personal data are stored as confidential. In addition, they are not communicated to the party against which the complaint was made.

No irregularities have been identified.

Effectiveness

In relation to the Environmental Inspection authorities, the effectiveness of their actions can be assessed as effective considering a low number of complaints or requests that have been handled exceeding time limit provided by the Code on Administrative Procedure or not treated at all[260]. This conclusion cannot be made about the local authorities due to lack of such data at local level.

According to the interviewed NGO, in general the work of public authorities handling complaints has improved in recent years in terms of effectiveness thanks to improving knowledge about mechanisms and procedures. In order to further improve their performance, the NGO estimates that public service employees should be more trained in some technical and legal aspects of complaint-handling.

Fairness

In principle, the system of complaint-handling is fair because it is regulated; according to the legislation competent authorities dispose of same amount of time to handle each complaint or request. No specific issue has been identified.

Independence

The competent authorities dealing with the majority of complaints and requests apply the legislation and are not independent towards the governmental administration or the self-government administration.

Among the institutions described, only Ombudsman and petition mechanisms are independent from State but the activities of complaint-handling related to environmental matters are not developed by the Ombudsman and the petition mechanism has no clear legal framework yet.

Flexibility

There are strictly defined legal rules governing the existing complaint-handling system. However some flexibility is demonstrated in cases involving co-operation of several competent authorities that can result in exchange of good practices between them (no specific examples have been identified).

No benchmarks have been identified in the complaint and request handling mechanisms. Implementation of the legislation relative to the mediation and petition system could ensure

[260] According to the Chief Inspectorate for Environmental Protection officer, in 2011, 4% of requests for intervention and 2% of complaints have been handled exceeding the time limit provided by the law.

more flexibility in terms of responding to different types of complaints and requests and offer alternative solutions to complainants.

Comprehensiveness

Regarding the environmental complaint-handling system, all environmental fields are covered but existing legislation does not cover completely all available mechanisms. In particular petition, which is ensured by the Constitution but not implemented in the legislation. Also the mediation mechanism does not have a legislative framework which could ensure wider use of this procedure.

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Mrs. Janina Pająk, Chief Inspectorate for Environmental Protection, Department for Inspection and Jurisdiction, 31 May 2012.

IX. SLOVENIA

1 Institutional, administrative and legal context

1.1 Legislative Competencies and Executive Competencies in Slovenia

Slovenia – Member State of the European Union since 2004 - is a democratic republic with a parliamentary system. Its authority is based on the principle of the separation of legislative, executive and judicial powers. The National Assembly is the highest legislative authority which is composed of 90 deputies of the citizens of Slovenia. It assumes all legislative competencies, including environmental matters. The second chamber of the Parliament is the National Council, which is a supervisory and advisory body with representatives from social, economic, professional and local interests. The government comprises a prime minister (President of the Government) and ministers. Lastly, there is a directly elected president (President of the Republic) who has mainly representative functions.

Administrative bodies of the state are the ministries, subordinated bodies within ministries and lower administrative bodies. Administrative units for certain territories have been established – today 62 – in order to perform administrative tasks of the public state administration which require territorial organisation and implementation.

The responsible ministry of the environment is the Ministry of Agriculture and the Environment.[261] The Environment Agency and the Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning are subordinated authorities of this ministry. The Environment Agency is in charge of performing "expert, analytical, regulatory and administrative tasks related to the environment at the national level."[262]

There is a second state level: the so-called local self-government of certain communities, which is guaranteed by Part V (Art 139-144) of the Constitution of the Republic of Slovenia

[261] Please note that in 2012 the Ministry of Agriculture, Forestry and Food of the Republic of Slovenia was combined with the Ministry of the Environment and Spatial Planning of the Republic of Slovenia on part that concerns the environment. Consequently, the name of the ministry has been changed into the Ministry of Agriculture and the Environment of the Republic of Slovenia.

[262] http://www.arso.gov.si/en/

(Ustava Republike Slovenije/Ust).[263] Local self-government is granted to municipalities and regions. However, regions have not been established yet. The competencies of a municipality comprise local affairs which the municipality is allowed to regulate autonomously. The state may by law transfer to municipalities the performance of specific duties within the state competence if it also provides financial resources to enable such. State authorities shall supervise the proper and competent performance of work relating to matters vested in the local community bodies by the state.

Today there are 211 municipalities in Slovenia. The decision-making body is the municipal council. Administrative decisions are generally taken by the lower municipal administration (first level). The municipal mayor is the second administrative level. Details are prescribed in the Law of Local Self-Government.[264] With regard to environment, it lays down that municipalities have the duty to provide for protection of the air, soil and water sources, for protection against noise and for collection and disposal of waste, and perform other activities related to protection of the environment (Article 21 Law of Local Self-Government). Other relevant competencies are the regulation and maintenance of water supply and power supply facilities (Article 21 Law of Local Self-Government). They are also obliged to provide extrajudicial settlement of disputes (Article 25 Law of Local Self-Government).

The judicative comprises district courts, regional courts, courts of appeals, a Supreme Court and a Constitutional Court. Besides criminal and civil courts so-called specialized courts have been established comprising, amongst others, the Administrative Court that is responsible for the judicial review of administrative decisions.

1.2 Main governing acts relating to environmental law

The environmental laws are adopted at national level, including the implementation of EU environmental law. The most important acts with relevance for the environment are the Environmental Protection Act (*Zakon o varstvu okolja, ZVO-1*)[265], the Law on Nature

[263] Official Gazette RS, Nos. 33/91-I, 42/97, 66/2000, 24/03, 69/04 and 68/06, for English translation see here http://www.us-rs.si/en/about-the-court/legal-basis/constitution/

[264] Official Gazette of the RS, Nos. 100/05 official consolidated text OCF1, see English translation here: http://www.svlr.gov.si/en/legislation/legislation_on_local_self_government/

[265] Official Gazette of the Republic of Slovenia, No. 39/06 – official consolidated text, 49/06-ZMetD, 33/07-ZPNačrt, 70/2008 and 108/2009, see English translation here: http://www.arhiv.mop.gov.si/en/legislation_and_documents/legal_acts_in_force/

Protection (*Zakon o ohranjanju narave, ZON*)[266], and the Water Act (*Zakon o vodah, ZV-1*)[267]. Waste management is regulated by the Environmental Protection Act and regulations that are based on this act. Environmental Impact Assessment is governed by a decree also stemming from provisions in the Environmental Protection Act.

Moreover, a political environmental strategy has been adopted by the National Assembly. The National Environmental Protection Programme comprises four key areas (climate change, nature and biodiversity, quality of life, and waste and industrial pollution) and sets out the objectives, guidelines and strategy of environmental protection and of the use of natural resources for the next ten years.[268]

2 Scope, hierarchy and coordination of complaint-handling procedures

2.1 Description of main actors

The **Ministry of Agriculture and the Environment** is on top of the executive branch in the field of environment. It is divided into five directorates, i.e. the Agriculture Directorate, the Food Safety Directorate, the Environment Directorate, the Public Service for Environmental Protection and Investments in Environment Directorate and the Forestry, Hunting and Fisheries Directorate. The Ministry mainly implements the national legislation and prepares as well as monitors basic strategic documents in the field of the environment (for example, the National Environmental Protection Programme), other operational programmes, theme strategies and systemic tasks concerning the integration of environmental protection in policies of other sectors. It also adopts guidelines and administrative rules supporting the implementation of environmental legislations (including EU environmental law such as the Water Framework Directive, the Bathing Water Directive, the Nitrates Directive and the Marine Strategy Framework Directive). Moreover, it is the competent authority for initiating and conducting environmental impact assessments.

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[266] Official Gazette of the Republic of Slovenia, No. 56/99, see English translation here: http://www.arhiv.mop.gov.si/en/legislation_and_documents/legal_acts_in_force/

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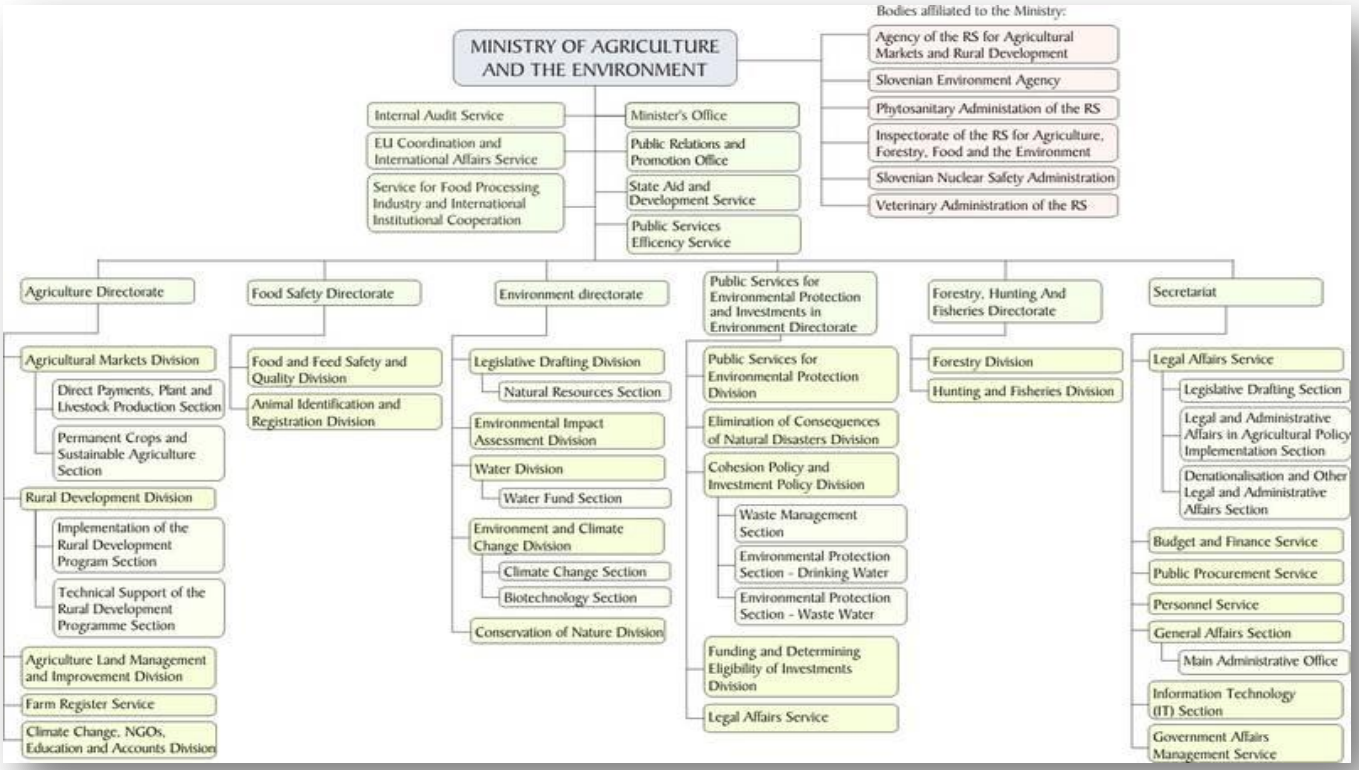


Graphic: Organisation of the Ministry of Agriculture and the Environment

Source: Ministry of Agriculture and the Environment at http://www.mko.gov.si/en/about_the_ministry/organisation/

It has a number of subordinated bodies, including the Slovenian Environment Agency and the Inspectorate of the RS for Agriculture, Forestry, Food and the Environment.

The **Slovenian Environment Agency** mainly provides data and scientific background for the Ministry. It performs expert, analytical, regulatory and administrative tasks related to the environment at the national level. It is also in charge of issuing environmental protection permits, and mention should be made here of an especially challenging project of issuing permits for large-scale polluters – IPPC permits. It keeps records of emissions, orders and monitors the implementation of rehabilitation programmes.

The **inspectorates** are bodies within ministries in charge of the control of the implementation of environmental laws. The Environment Inspectorate supervises the implementation of legislation, other regulations and general acts regulating the protection of the environment and the countryside, and the ecological control of the national border; the water regime, water regulation and management; spatial planning, urban planning and construction work; the meeting of basic building requirements; housing affairs; geodesic activities. There are also inspectorates at the municipal level.

According to Article 50a Law of Local Self-Government a **municipal inspection body** may be established within the municipal administration in order to carry out supervision over the implementation of municipal regulations and other legal acts through which the municipality regulates matters falling under its competence. By a general legal act defining the field of work and the organisation of the municipal inspection supervision, the conditions to be met by municipal inspectors for individual fields of the municipal inspection supervision shall be laid down. The decision-making in matters pertaining to the municipal inspection supervision may be delegated only to an official who has obtained at least a higher education degree and passed a proficiency examination on administrative procedure or any other proficiency examination for inspectors that includes the knowledge of the administrative procedure, if so provided by a special law (Article 50a Law of Local Self-Government).

2.2 Description of main complaint-handling mechanisms

The Slovenia mechanisms for handling complaints in the field of environment comprise:

- Administrative procedures,
- Inspectorate procedures,
- Non-formal complaints to authorities,
- Public participation in administrative approval/planning procedures,
- National Ombudsman, and
- Petition committee.

The **administrative procedure** is prescribed in chapter 25 of the General Administrative Procedure Act.[269] By initiating this formal procedure, the claimant can object a certain administrative decision about a right, obligation, or other legal interest of a natural or legal person. This procedure would for instance be applicable if a public body failed to respect procedural requirements or some other required administrative standards. It is not relevant for complaining on alleged illegality or non-compliance of a private person/company as well as of a public body/utility in relation to providing an environmental service, as these are usually not linked to a recent administrative approval decision on a specific installation.

[269] General Administrative Procedure Act, *Zakon o splošnem upravnem postopku ZUP, Tretjidel Pravna Sredstva, XV poglavje Pritozba*, Official Gazette of the Republic of Slovenia, No. 24/2006. Official consolidated version. Changes: No. 47/2009 Odl.US: U-I-54/06-32 (48/2 009).

It is a second stage administrative procedure, because it enables the administration to reassess its own decision before the issue is brought to court. As to the scope, it covers all administrative decisions that concern environmental matters, such as environmental permits and building permits (Milieu 2007, page 9). Moreover, the administrative procedure has a second function, as it establishes admissibility of legal actions. The claimant is required to file an administrative procedure, if he wants to have access to court (Milieu 2007).

It can be considered a formal complaint-procedure, as a number of requirements and a deadline have to be met. Only administrative decisions/acts and only those taken by lower administrative authorities can be subject to an administrative procedure. Moreover, the complainant has to prove standing, i.e. he needs to proof a material/legitimate right or interest which has been violated by the administrative decision. She or he also needs to file the complaint within 15 days of the notification of the contested decision. Other members of the general public have no standing. In case of administrative decisions representing environmental permits or environmental consents, only those who have property or possession inside the "impact area" (determined by the investor and only in theory checked by the competent authority) are considered to have the standing because damage to their health or property rights is *ex lege* considered to affect their rights or legal interests. *Actio popularis* are not admissible in administrative (or judicial) procedures. However, legal standing is granted to recognized NGOs if they are “acting in a public interest.” This is laid down in the Environmental Protection Act and in the Nature Conservation Act. Recognized NGOs have the right to act in the interest of environment/nature conservation in all administrative procedures and judicial proceedings (see Article 137 Nature Conservation Act).

The authority responsible for assessing the complaint is the authority at the next higher level, i.e. the municipal mayor for decision taken by municipal bodies, and the ministry for decisions reached by the ministerial bodies/units. The competent authority for handling the complaint is to be identified in the individual case and depends on the subject matter.

No complaint can be lodged against decisions taken by the higher authorities, which are the municipal mayor at the local self-government level and the government and ministry at the national level (single instance procedures). These can only be tested in court. Thus, after the administrative decision is final (because the decision was confirmed at second stage or a second stage procedure was not admissible), the complainant can file a suit at the administrative court against the administrative decision. Appeals or judicial reviews can be initiated by the same persons who have a right to participate in the administrative procedure.

Only administrative decisions can be subject to an administrative procedure. An administrative act is an individual or specific decision by an authority, in contrast to any general or normative acts.

The activities of **inspectorates** are generally regulated in the Law on Inspection Control (Zakon o inšpekcijskem nadzoru, ZIN).[270] Only natural or legal person against whom the proceeding has started (the person or entity that engage in harmful activity) can be party to the administrative procedure of the inspector (Article 24 ZIN). The person or NGO that notified the violation to the inspector is not eligible to be a party to the inspection procedure. The fact that the person notifying the violation is not a party to the inspection procedure also means that such a person has no legal enforceable right that an inspectorate procedure get started. However, the state is responsible for the material damage suffered by the person that notified the violation or any other person if the inspector has acted illegally or has illegally omitted the action required to stop harmful activity (Article 37 ZIN). The burden of proof regarding the damage, however, is on the person that notified the violation.

At municipal level, if there is a complaint against the Inspectorate's action, the next step is to complain to the Mayor's office, and finally to the court.

It is generally possible to notify to the competent authorities that a certain activity or omission is in breach with (EU) environmental law (**non-formal complaints to authorities)**, as it is the indented role of the administrative to implement laws (Art. 9 Public Administration Act). This applies to all scenarios: alleged illegality or non-compliance of a private person/company or of a public body/utility in relation to providing an environmental service or failing to respect procedural requirements or some other required administrative standards.

Complaints and other concerns can also be expressed in the context of **formal public participation procedures**, which are obligatory in certain administrative approval/planning procedures, such as the adoption of policies, strategies, programmes, plans and designs (for instance the National Environmental Protection Programme, action plans, the national plan for allocating emission coupons), the adoption of regulations (laws, decrees, rules and decisions) that might have a major impact on the environment (such as the Environmental Protection Act and the Rules on what is deemed to be a project in environmental impact assessments) as well as certain administrative procedures (for instance in issuing decisions confirming the acceptability of plans, environmental consent and environmental permits, especially IPPC facilities and Seveso plants) (HR Ombudsman 2010, page 100). The

[270] Official Gazette of the Republic of Slovenia, No. 56/2002 Changes: No. 26/2007, 43/2007-UPB1.

Environmental Protection Act is the general framework that regulates public participation in decision-making processes in the environmental matters (Csaba 2007, page 1). Not everybody is eligible to participate in the procedures, only those that have a legitimate/material interest (i.e. people that live in the neighborhood of the facility in question). Moreover, NGOs – if recognized – are generally privileged and are eligible to participate in administrative procedures. That is the case if they operate for a public interest. The recognition procedure for NGOs is laid down in Articles 153 et. seqq. Environmental Protection Act and in Articles 137 et. seqq. Nature Conservation Act for nature conservation matters in specific. The conditions are further detailed in the Rules on the conditions and criteria for obtaining the status of non-governmental organisations acting in the public interest in the field of the environmental protection. In order to participate, the public has to submit a request for entry into the procedure for issuing the environmental consent etc. The specific procedures are announced publicly (by local means, in the internet, and in one national newspaper). As a general rule, the public has the right, within a deadline of 30 days, to access documentation and to give its comments and opinions. It was reported by the Ministry of Environment, that opinions and comments can be submitted until eight more days after the closure of the public announcement (Planinšič, pers. comm., 2012).

The **National Ombudsman** generally is in charge of discovering violations of human rights and fundamental freedoms in relation to state authorities, local self-government authorities and bearers of public authority, work to eliminate them and suggest appropriate measures to the responsible authorities. According to Art 14 Environmental Protection Act he is also responsible for the protection of the right to a healthy living environment. In general, anyone who believes that his/her human rights or fundamental freedoms have been violated by an act or an action of a public body is eligible to lodge a petition with the Ombudsman in order to start the proceedings. The Ombudsman can also institute the proceedings on his own initiative.

According to Article 45 of the Slovenian Constitution, “every citizen has the right to file petitions and to pursue other initiatives of general significance”. The National Assembly provides a **Commission for Petitions, Human Rights and Equal Opportunities**. Only few information is available online.[271] It is in charge of discussing complaints and motions of citizens regarding specific problems in the implementation of laws and other legal acts, discussing complaints relating to individual cases, and acts as a facilitator in procedures involving other institutions and examining requests, complaints, and other initiatives of

[271] http://www.dz-rs.si/wps/portal/en/Home/ODrzavnemZboru/KdoJeKdo/DelovnoTelo?idDT=DT006

general interest addressed by citizens to the National Assembly and other state bodies, and establishes the reasons for such. It is assumed that the relevance of this Committee is rather low, as neither the interviewee in the Ministry of Agriculture and the Environment nor the interviewee of the NGO DOPPS had any information or were certain whether such a committee existed (Planinšič, pers. comm., 2012 and Jančar, DOPPS, pers. comm., 2012).

Moreover, access to justice in environmental matters is guaranteed and given in Slovenia as well. Though this topic is not subject of this assessment, it should be mentioned that Article 157 Ust, stipulates, that any administrative acts must be subject to judicial review. Moreover, Article 14 of the Environment Protection Act stipulates that,

> *(1) In order to exercise the right to a healthy living environment citizens may, as individuals or through societies, associations and organization, file a request at court that the person responsible for an activity affecting the environment ceases the activity if it causes or would cause an excessive environmental burden or presents or would present a direct threat to human life or health, or that the person responsible for the activity affecting the environment be prohibited from starting the activity if there is a strong probability that the activity would present such a threat.*

2.3 Relationship between mechanisms, hierarchy and coordination

Generally, there are no interdependencies between the different complaint-handling mechanisms. An exception is the administrative objection proceeding. This remedy needs to be exhausted for the admissibility of a court suit if this is aimed to be filed. Remedies should also be exhausted before approaching the Ombudsman.

It is generally advisable to lodge the first complaint at the lowest administrative level possible. Otherwise, there could be delays, as the complaint would most likely be handed to the lowest level internally. Only if all remedies at the lowest level are exhausted, higher administrative level should be approached.

Moreover, if applicable, formal complaint-handling procedures (administrative procedure, public participation) should be handed in at first in order to meet their deadlines. If there is no formal remedy available, the complainant should notify the competent authority (including the police) of the activity which it aims to be dealt with. If this all fails, the claimant, as a last resort, should approach the Ombudsman or the petition committees for help.

2.4 Application to scenarios

2.4.1 Is there a mechanism/are there mechanisms for alleged illegality or non-compliance of a private person/ company?

In cases of alleged illegality or non- compliance of a private person/company, the complaint has to be submitted to the local or national Inspectorate for the Environment. If the matter involves a health consideration, then the Ministry for Health and its Inspectorate for Health are responsible.

For the case of the operation of a clandestine/non-authorised business for end-of-life-vehicles and disposal of waste (see Directive 2000/53/EC – ELV Directive) a competitor can send his complaint to the respective municipal environmental inspectorate.

If a facility with an IPPC-license (see Directive 2008/1/EC of 15 January 2008 - IPPC-Directive) is in breach of one of its permits conditions a private person has to send the complaint to the local or national inspectorate for the environment. There are no specific conditions concerning form and contents of the complaint, it is however recommended to hand in a written complaint.

In case an industrial company which has an eco-label (see Regulation 66/2010/EC of 25 November 2009) is claimed to be not respecting the criteria the complaint has to be addressed to the environmental inspectorate at municipal level.

The illegal discharge of pollutants to a river (see Water Framework Directive 2000/60/EC) from a small commercial company (that does not fall under the IPPC-Directive) has to be filed to the municipal environmental inspectorate again.

Illegal activities in coastal areas have to be reported to environmental inspectorate at national or municipal level depending on the territory that is being affected.

If illegal timber that is on the CITES list (see Annex in Regulation 338/97/EC) has been imported to Slovenia the competent authorities are the national environmental inspectorates.

For the case of wide-spread illegal trapping/hunting of wild birds protected under the Birds Directive (see Directive 2009/147/EC of 30 November 2009) the complaint has to be directed to the municipal inspectorates. In the present case both the environmental and the hunting inspectors could be addressed. The hunting inspectorates, however, only cover the birds that are subject of the Slovenian hunting law which are just a few (Jančar, DOPPS, pers. comm., 2012).

Summing up under this scenario, the complainant can initiate the inspectorate procedure or – in emergencies – file charges at the police. As last resort, complaints should be lodged with the Ombudsman or the Petition Committee.

2.4.2 Is there a mechanism/are there mechanisms for alleged illegality or non-compliance of a public body/utility in relation to providing an environmental service?

In case of alleged illegality or non-compliance of a public body/utility, the complaint must be submitted to the national or municipal inspectorate, depending on which aspect of environmental law and what jurisdiction it affects. Municipal Inspectorates deal with all issues relating to municipal decrees. For instance, in the case of water provision, the national Inspectorate checks if the Water permit is available or if waste water treatment is ensured, or the national Health Inspectorate would intervene if water quality is affected, but the municipal Inspectorate would deal with aspects relating to the actual management of water supply.

In case a municipality fails to treat properly its urban waste water load (for example treatment plants are under capacity) in compliance with Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment the complaint should be directed to the respective municipal inspectorate. No specific conditions have to be respected in this case.

For both of the scenarios (a private water utility is providing drinking water containing E. coli due to a lack of disinfection of the water source (see Directive 98/83/EC of 3 November 1998) and a municipality is operating a landfill (see Directive 99/31/EC of 26 April 1999) on behalf of a town and is claimed to have serious odour problems) the complaint should be addressed to the municipal inspectorate. There are no specific conditions to be respected.

If the above mentioned procedure is not successful in any of these scenarios, the issue should be brought to the national level, i.e. to the Ministry of Agriculture and the Environment and the Environment Agency.

2.4.3 Is there a mechanism/are there mechanisms for alleged failure of a public body to respect procedural requirements or some other required administrative standards?

If a competent authority responsible for EIA is claimed to have approved an environmentally relevant project without an EIA or a screening (see EIA Directive) the complaint has to be directed to the inspectorate for the Environment and Physical Planning.

If an authority responsible for a protected Natura 2000-site is allowing small-scale housing on this site without any appropriate consideration of the respective individual and/or cumulative effects (see Art. 6.3 Directive 92/43/EEC of 21 May 1992 – Habitats Directive) the private person or the NGO should first contact the environmental inspectorate and additionally the building inspectorate at the municipal level.

3 Characteristics of the complaint-handling systems identified

In the following the specific features of the environmental complaint-handling mechanisms will be described with the focus on the mechanisms provided by the environmental inspectorates on the municipal level as they offer most of the mechanisms.
The specific features of the complaint-handling mechanisms of the National Ombudsman can be found under 4.

3.1 Procedures/procedural guarantees

Procedures

Private persons/companies but also public bodies are eligible to initiate an inspectorate procedure (Milieu 2007, page 12). Anyone can notify a violation of environmental law to the environmental inspectorate, building inspectorate or any other inspectorate which is responsible for the supervision of implementation of environmental rules.

Contact information (phone numbers as well as email addresses) are easily accessible online. The complaint can be made online (E-mail), per phone or in person.

Procedural guarantees

Procedural guarantees are set out in the Administrative Procedure Act.[272]

All complaints must be investigated. Moreover, the Decree on Administrative Operations prescribes that every authority should answer all letters received in physical and electronic form. The Decree also determines that each authority is obliged to answer each letter within 15 days after its receipt (Ombudsman 2011, page 76). Moreover, it is possible to inform the police of any illegal activities and claim their intervention.

[272] Admininstrative Procedure Act, Ur.l. RS št. 24/2006 (*Zakon o splošnem upravnem postopku, ZUP-UPB2*).

Record keeping and availability of IT systems for handling complaints

According to the representative of the Slovenian Ministry of the Environment and Spatial Planning who was interviewed, each department has an electronic system to handle complaints (Planinšič, pers. comm., 2012). The same applies to the inspectorates.

The municipal inspectorates all register incoming and outgoing communications (including complaints), but there is no information available of whether there are as well organised as the national inspectorates.

Every inspectorate has a database, where each complaint is registered with an identification number and date of arrival. Until now each written complaint was also scanned in, but resources may not allow this for the future.

Publicity

According to Article 6 of the Public Administration Act[273] the administration is obliged to make its service public subject to regulations governing the protection of personal data and secret information and other regulations.

Information about complaints generally is not published, but anyone, including the complainant, can have access to the material (based on the right to access of publically relevant information).[274]

Anonymity and confidentiality

The protection of personal data is guaranteed by Article 38 of the Slovenian Constitution. The use of personal data contrary to the purpose for which it was collected is prohibited. The collection, processing, designated use, supervision and protection of the confidentiality of personal data is provided by law. Everyone has the right of access to the collected personal data that relates to him and the right to judicial protection in the event of any abuse of such data.

It is possible to complain anonymously.

Deadlines for analysis of complaints

[273] Public Administration Act (*Zakon o državni upravi, ZDU*). English translation available here: http://unpan1.un.org/intradoc/groups/public/documents/untc/unpan015728.pdf.

[274] See Act on Public Access to Information, Ur.l. RS šr. 24/2003, 61/2005 (Zakon o dostopu do informacij javnega značaja, ZDIJZ).

The Slovenian Constitution states that everyone has the right to have any decision regarding his rights, duties and any charges brought against him made without undue delay by an independent, impartial court constituted by law. The Administrative Procedure Act[275] sets deadlines for decisions: 1st instance: one month (simple administrative procedure) or two months (other administrative procedures) after the beginning of the procedure. 2nd instance: two months after the beginning of the procedure.

If the authority which received the complaint does not feel to be competent, it has to identify the correct contact (Planinšič, pers. comm., 2012). The reaction from the Inspectorate is supposed to occur within 15 days (to determine if an illegality has taken place or not).

Feedback

The complainant is not informed about the result of the investigation unless the complainant provides his name and address. A report is prepared on the decision regarding the complaint (if further action is needed or not).

3.2 Technical, scientific and legal expertise of EU environmental law

The representative of the Ministry of the Environment and Spatial Planning reported that it employs a specialized group of lawyers responsible for complaints on environmental matters as well as a supportive group of technical experts. In case of infringements, a team comprising a lawyer and an expert is responsible for handling the complaints.

There is no information available whether the complaint-handling bodies employee personnel with specific expertise on EU environmental law. According to Article 69 Public Administration Act, however, the ministries shall provide local communities with expert assistance with respect to tasks transferred from state competence and with respect to tasks from the original competence of local communities. That implies that the local communities could ask the Ministry of Agriculture and the Environment for expert assistance in the field of environmental complaints.

3.3 Reporting and statistics

The environmental inspectorates on the municipal level have to report on their work to the Mayors as the second instance. The national environmental inspectorates have to regularly

[275] Administrative Procedures Act (*Zakon o splosnem upravnem postopku, ZUP*)

report on their work to the Ministry of Agriculture and the Environment. No statistics on complaint-handling are published (except by the Ombudsman, see below 4.1.3).

3.4 Review

No information on external or internal review procedures was publicly available or could been reported by the interviewees.

3.5 Frequency and regularity of complaints and trends

In general, the number of complaints that the authorities receive seems to increase, probably due to the growing amount of environmental legislation (EU and national) and a corresponding public awareness of the importance of environmental issues over the last decades. However, no comprehensive information on frequency and regularity of complaints could be identified, as no statistics are published. Only single and rough numbers are known. For instance, each year the national environment inspectorate receives 6.000 to 8.000 complaints.

3.6 Existence of features to address challenging complaints

Features to address challenging or multiple complaints do not seem to exist in the inspectorate procedures, at least, no information could be found on this issue in the relevant legal acts.

3.7 Costs

Fees for administrative procedures are in general set out in the Administrative Fee Act (*Zakon o upravnih taksah ZUT*), though fees are generally relatively low. There is no cost for making a complaint to the inspectorates and getting it processed. Expenses of the complainants are not compensated.

3.8 Particular problems encountered

The increasing number of environmental complaints is accompied by an increasing burden for the responsible authorities. It was reported that the number of staff is generally not adjusted to the growing needs. This does especially concern the environment inspectorate.The efficiency of the inspectorate procedure in generally is considered low by the NGO that was interviewed for this report (Jančar, DOPPS, pers. comm., 2012), mainly

due the lack of a sufficient staff capacity of the inspectorate. Moreover, it was reported that inspectors often seem only willing to act on alleged violations within their office hours. Thus, in emergencies, the interviewed NGO would contact the police instead of the inspectorate.

The Ombudsman reported in its latest annual report that he received complaints regarding lengthy inspection procedures, dissatisfaction caused by the lack of response of the inspectorate, as well as the failure to execute inspection decisions. Therefore, the Ombudsman has requested to reinforce the inspection services (HR Ombudsman 2011, page 13).

The Ombudsman highlighted iIn its 2010 Annual Report a case where the Ministry of the Environment and Spatial Planning replied not earlier than after four month to a complaint. The Ombudsman had to intervene to get this reply filed. The case concerned a large excavation of soil from land plot despite several requests (Ombudsman 2011, page 76).

There have been a number of complaints by NGOs on the way the provisions on formal public participation are implemented. Based on the analysis of interviews and literature, the main issue seems to be the loss of public trust caused by the hiding of private interests behind public interests. Often, authorities did not provide sufficient explanation as to why suggestions of the public were not accommodated. Thus, parts of the public seem to have become convinced of their lack of power to influence decisions (HR Ombudsman 2010, page 138).

For example, the NGO *Eko krog* reported that

> *"In the procedure for issuing an environmental-protection permit to Lafarge Cement, we witnessed a highly contemptuous attitude from the state authorities i.e. Environmental Agency of the Republic of Slovenia and the Ministry of the Environment and Spatial Planning, towards the public. By an incorrect designation of the zone of influence of Lafarge Cement and an inappropriate determination of the status of the installation at Lafarge Cement, a large part of the public was excluded from the procedure…* [Explanatory notes: only two participants were accepted]*…The entire procedure of issuing an environmental protection permit was extremely biased and conducted for the sole benefit of Lafarge Cement, while being rather humiliating for the secondary participant. The Slovenian Environmental Agency and the Ministry of the Environment and Spatial Planning uncritically accepted all 17 supplements to the application submitted by Lafarge Cement, but refused all comments and motions for admission of evidence which were submitted by Mr Macerl (altogether more than 60) without stating the grounds (except in one case) for their refusal."* (HR Ombudsman 2010, page 102).

Similar accusations were made by DOPPS (Birdlife Slovenia). In order to exemplify the problems they face, DOPPS provided a graphic which illustrate its efforts to get properly involved in the administrative procedure of an environmental impact assessment for the Volovja reber wind farm. In one case in relation to a deficient environmental impact assessment for the Volovja reber wind farm, it took the NGO several years to claim their right for public participation, including different administrative appeals and court cases (Jančar, DOPPS, pers. comm., 2012, see also picture in the annex to this report).

In its 2010 Annual Report, the Ombudsman also reported about deficient public participation, such as cases of dismissal of submitted comments without arguments in procedures for adopting spatial plans.

4 Existence of specific additional institutions/authorities for the sector of environmental complaint-handling

4.1 National Ombudsman

The Slovenian government has established a Human Rights Ombudsman, as it is prescribed in the Slovenian Constitution:

> ***Article 159 (Ombudsman for Human Rights and Fundamental Freedoms)*** *(1) In order to protect human rights and fundamental freedoms in relation to state authorities, local self-government authorities and bearers of public authority, the office of the ombudsman for the rights of citizens shall be established by law. (2) Special ombudsmen for the rights of citizens may also be established by law for particular fields.*

Its responsibilities and procedures are set out in the Human Rights Ombudsman Act. With respect to environment, competencies are laid down in Article 14 paragraph 2 of the Environmental Protection Act stating that the protection of the right to a healthy living environment falls within the responsibility of the Ombudsman.

The Human Rights Ombudsman is elected by the National Assembly, which is meant to ensure generally high level of authority. The Ombudsman is in charge of discovering violations, work to eliminate them and suggest appropriate measures to the responsible authorities.

4.1.1 Procedures/procedural guarantees

Procedures

In general, anyone who believes that his/her human rights or fundamental freedoms have been violated by an act or an action of a body is eligible to lodge a petition with the Ombudsman in order to start the proceedings. The Ombudsman can also institute the proceedings on his own initiative. Proceedings are non-formal and free-of-charge, except that petitions should be lodged in writing. Having received a petition, the Ombudsman has to screen it and decide on this basis either: (1) to give a 'fast-track' treatment to the case; (2) to launch a full investigation; (3) to reject the petition; or (4) to decline the petition because it is either anonymous or too late or insulting, thus abusing the right of petition.

Also the Ombudsman is keeping track with the submission it receives in order to illustrate its work in its annual reports.

Publicity

The Ombudsman procedure is relatively easy to access. The Ombudsman website contains clear instructions for the submission of a complaint or request to consider a complaint. A complaint form is available for download, together with the scheme for how the complaint is processed. The forms and procedure explanation is also available in English. An acknowledgment letter is sent to the complainant where it is also stated whether the complaint will be further processed or not and the reasons for this.

Deadlines for analysis of complaints

There is no fixed deadline for responding to the complaint. It is stated that the processing time depends on different circumstances and no guarantees are given.

Feedback

The website states that the complaint is registered in the main office of the Ombudsman. For explanations and information on the submitted initiatives, a toll-free telephone number can be used or questions sent via e-mail. Every working day, complainants may come in person to the head office of the Ombudsman in Ljubljana. Those whose initiatives are already under consideration can make an appointment with a counsellor responsible for their initiative. After investigations were completed, the Ombudsman drafts a report on his finding of the facts and forward it to the parties concerned. Within the deadline set by the Ombudsman, they may communicate their comments or proposals to complete the finding of the facts stated in the draft report. He considers them in his final report. If the Ombudsman concludes – after the proceeding – that human rights or fundamental freedoms have been violated, he is allowed

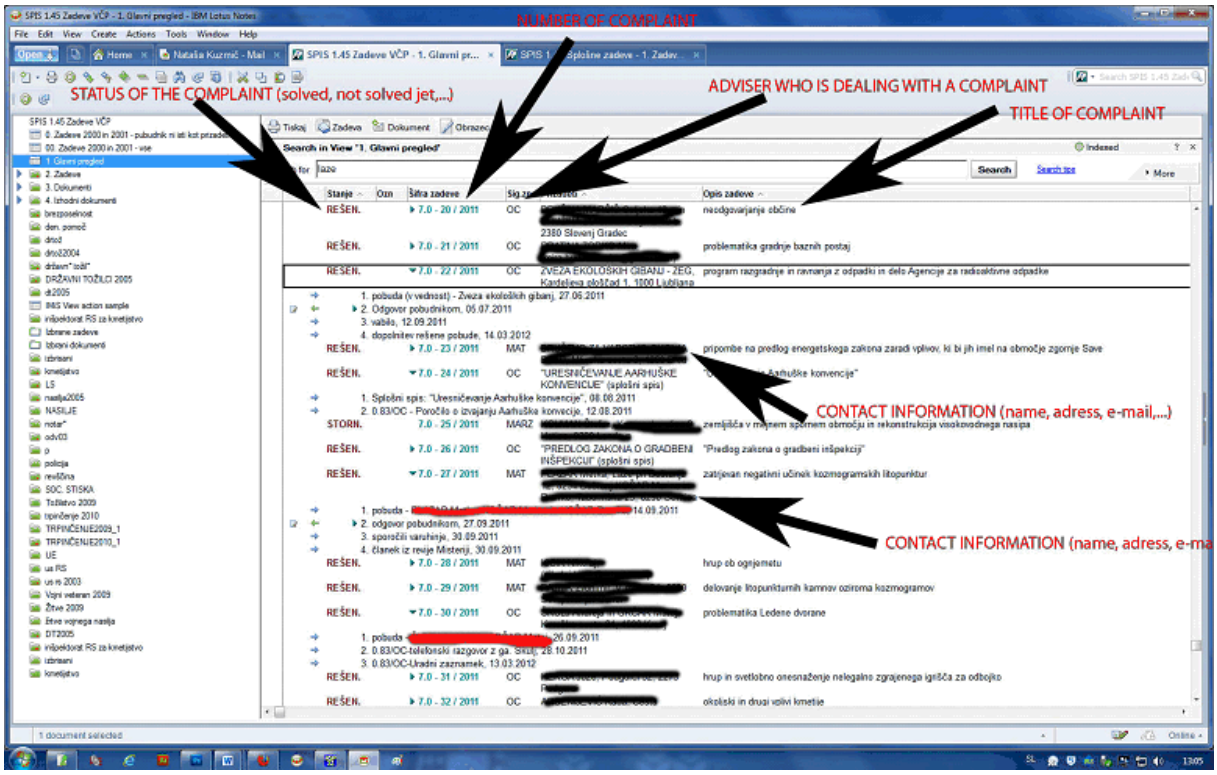
to issue proposals, opinions, critiques or recommendations to the public body which is in charge of the violations. The respective body has to inform the Ombudsman within 30 days about the steps taken in accordance with his proposals, opinions, critiques, or recommendations.

The Ombudsman can also submit initiatives for amending laws or legal acts to the legislative. He has no power to take legal actions, annul decisions or impose sanctions.

The Ombudsman can also propose the initiation of disciplinary proceedings against the officials of the bodies who did the established maladministration that led to an injustice.

Record-keeping and availability of IT systems for handling complaints

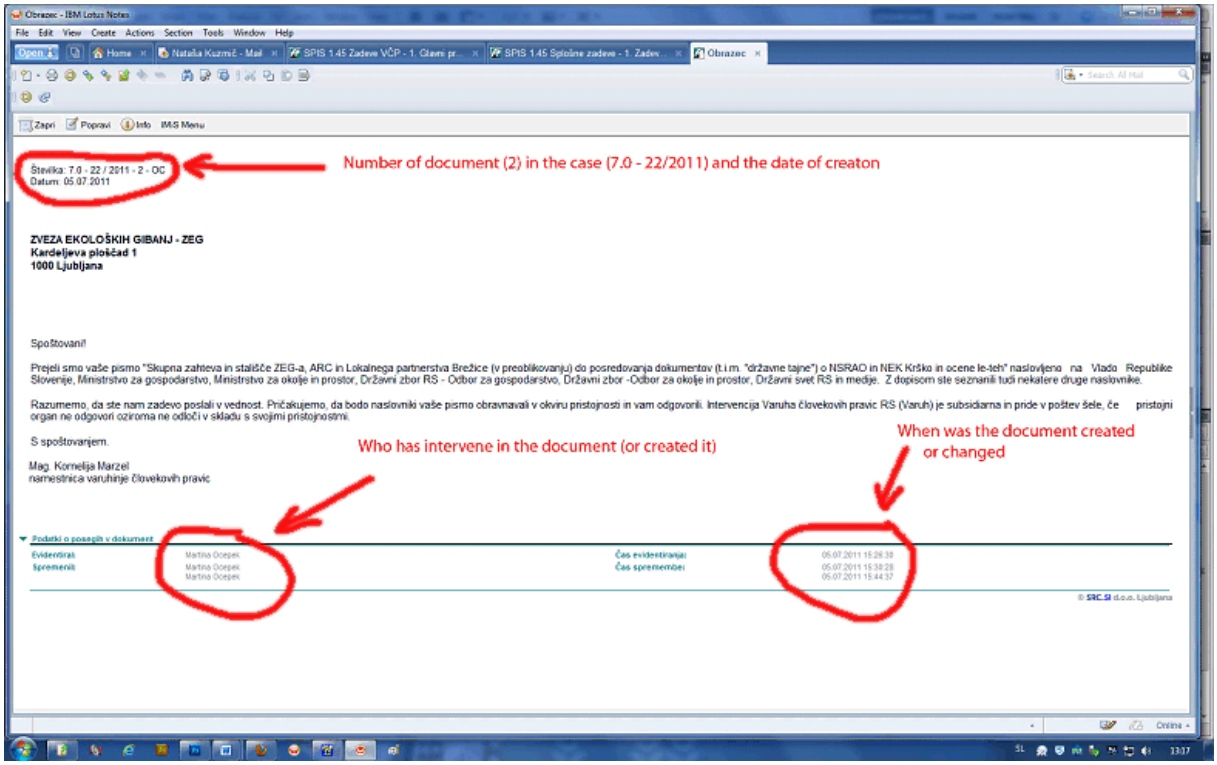
For the internal handling of complaints, the Ombudsman uses an IT application which is called Lotus Notes. Petitions to start the proceedings before the Ombudsman and other complaints and letters are received by the Main Office and recorded in the system. Petitions can be sent as an ordinary letter or e-mail, but they have to be signed and equipped with all contact information. Each petition gets its own number (for instance 1.1-2/2012) and a sign of adviser which is dealing with (see picture).



Graphic: Use of Lotus Notes for complaint handling

Source: Screenshots provided by the Slovenian Human Rights Ombudsman

Each complaint has several documents: the case starts with entry document. Every conversation or communication via telephone, in person or via post is kept in the system under the number of case. Intervention in the case is clearly tracked and therefore enables transparency.



Graphic: Use of Lotus Notes for complaint handling

Source: Screenshots provided by the Slovenian Human Rights Ombudsman

Anonymity and confidentiality

According to his statute, proceedings before the Ombudsman are confidential and the Ombudsman is bound to confidentiality in all cases handled. This means that the names of complainants whose complaints are being dealt with by the Ombudsman may not be disclosed to the public without the written and signed consent of the complainant. Only in exceptional circumstances may the Ombudsman report on individual cases that are still open, and in doing so must observe the provision on the confidentiality of proceedings before the Ombudsman (the full name of the complainant and other details which could identify the person involved shall not be disclosed). The purpose of reporting on important and interesting cases is to draw attention to examples of unsatisfactory work by bodies of the public administration, which should have a preventive effect.

4.1.2 Technical, scientific and legal expertise of EU environmental law

One deputy ombudsman and three employees are working on the environmental matters but they are not working only on this field but also on other subjects.

4.1.3 Reporting and statistics

The Ombudsman reports to the Slovenian Parliament once a year by submission of an annual report. According to the 2010 Annual Report, the number of complaints lodged with the Ombudsman in environmental matters is increasing. In 2010, the Ombudsman dealt with approximately 10 % more matters than in 2009. A great number of complaints concern poor consideration of the public in administrative approval procedures. Public comments were not examined sufficiently and often dismissed without founded arguments. Complaints concerned, amongst others, cases of

- Adoption of spatial plans,
- Building of domestic waste landfills,
- Cases referring to the use of phyto-pharmaceuticals in the urban environment,
- Odours originating from various sources,
- Noise from various sources (air conditioning devices, restaurants, airports, church bells),
- Impacts from polluted air,
- Landslides in nature and their rehabilitation,
- The exploitation of stone-pits,
- Cooperation in integrating electrical energy facilities in the environment,
- Building an overhead power line, and
- Problems of water areas and water permits.

From statistical data concerning the treatment of initiatives by the Ombudsman it is shown that in 2007, 123 cases were heard from the field of environment and spatial planning, in 2008, 132 cases, and in 2009, 133 cases, which means from 3% to 4% out of the total number of all initiatives received (HR Ombudsman 2010, page 87).

4.1.4 Costs

As to the costs of the complainants, the Ombudsman procedure is free of charge.

4.1.5 Particular problems encountered

Besides its intended role, the Ombudsman aims to interact and cooperate with officials and other stakeholder to improve the level of information for individuals and NGOs on the rights which they have in decision-making processes. The Ombudsman established that - due to a great level of ignorance – the public become too little involved in decision-making processes. Therefore, meetings on environmental matters with representatives of the civil society are organised by the Ombudsman almost every month. For each meeting, one topic is selected. According to the Ombudsman, these meetings are well attended (HR Ombudsman, page 87). Public relations at the Ombudsman's are carried out by various communication means within initiative-solving procedures (interviews, written communication, telephone conversations), by personal meetings with representatives of different publics, by publication, web communication and virtual social groups, by organizing events, conferences and similar.

It can be concluded from the interviews and literature, that the Ombudsman is very ambitious in handling environmental complaints. However, it is generally not satisfied with the acknowledgment of its work. It was reported, that in a number of cases authorities do not act on its recommendation and thus do not respect its conclusions. It also criticised that there is a tendency not to answer to the proposals of the Ombudsman at all. In one case – described in the 2010 Annual Report – the Ombudsman received an answer by the IRSOP after nine months. It considered this to be "*unacceptable and reflects the attitude of the IRSOP to the Ombudsman*" (HR Ombudsman 2011, page 75).

In order to improve this situation, the Ombudsman organised a conference on Public Participation in Environmental Matters in Theory and Practice" in 2010. High-ranking speakers attended, such as the President of the Republic, the Minister of the Environment and the European Commissioner for the Environment. The conference aimed to "*identify possible differences among the regulation set-up in the Aarhus Convention, national environmental regulations, and everyday practice*." The core question that was discussed in different lectures, discussions and workshops was whether individuals have effective legal means at their disposal in Slovenia to exercise their right to a healthy living environment. The Ombudsman stressed in its opening word that she was "*continually confronted with the realisation that Slovenia is not a country that carefully provides for the protection of the*

environment, and the opportunities for public participation seem particularly problematic."(HR Ombudsman 2010, page 22).

5 Mediation mechanisms

In Slovenia mediation is systemically regulated by the Mediation in Civil and Commercial Matters Act (MCCMA).[276] According to this law (Art. 3), mediation is a process in which parties, helped by a neutral third person (mediator), voluntarily try to amicably resolve a dispute relating to a certain contractual or other legal relation.

For the time being, mediation has formally only been established in civil and commercial disputes. However, there seems to be a political will – also within the administration – to establish such a mechanism also in environmental matters. The representative of the Ministry of the Environment and Spatial Planning reported that a conference on the nexus of energy and environment took place at May 9, 2010 in Brdo, which also discussed mediation as alternative dispute resolution mechanism. The conference concluded that more mediation should be used.

So far, alternative conflict resolution mechanisms have been applied in some cases by the parties on a voluntary basis. The representative of the Ministry of the Environment and Spatial Planning reported that in a number of conflict cases it brought the parties together in order to sort out the issue without legal actions (Planinšič, pers. comm., 2012).

6 Conclusion

Accessibility

Accessibility to environmental complaint-handling is mediocre. The system of existing complaint-handling mechanisms is good, but in a number of cases which were reported, NGOs and citizens were not accepted to participate or to raise their concerns respectively. This especially applies to the formal public participation.

In terms of the complaint-handling mechanisms of the inspectorates at the municipal or the national level information on how to complain and to whom are not easy to find and the procedure is quite complicated. There seems to exist a general rule, however, that the

[276] Ur. l. RS, no. 56/08.

authority that has been addressed has to internally delegate the complaint in case it is not responsible.

It has been reported that the inspectorates only are accessible during their office hours. Hotlines do not seem to exist or at least are not widely advertised.

Another issue is the petition committee of the National Committee. It is unclear whether it actually exists and how it can be accessed.

The National Ombudsman is easily accessible. The web-site contains clear instructions for the submission of a complaint or request to consider a complaint.

Simplicity

In general the inspectorates offer contact information (phone numbers as well as email addresses) on their web-sites. The complaint can be made online (E-mail), per phone or in person. However, no specific online forms are available for the submission of complaints.

The National Ombudsman offers a complaint form for download, together with the scheme for how the complaint is processed. Besides this a toll-free phone number exists and it is possible to come to the office of the Ombudsman in person during the working days.

Transparency

According to the relevant legal acts all complaints must be investigated. Moreover, the Decree on Administrative Operations prescribes that every authority should answer all letters received in physical and electronic form. The Decree also determines that each authority is obliged to answer each letter within 15 days after its receipt. Moreover, it is possible to inform the police of any illegal activities and claim their intervention.

The inspectorates have databases available where the complaints are registered with an identification number and the incoming date. The lack of (financial and personnel) capacities, however, seems to create problems in terms of the registration of written complaints and the timely response to the complaints.

The inspectorates have to regularly report on their work to their superior bodies. These reports, however, do not seem to be publicly available. There was no information on internal or external review processes.

The procedures of the Ombudsman are transparent. The registration system of the Ombudsman allows for a clear tracking of each intervention in the case and therefore enables transparency.

The Ombudsman reports to the Slovenian Parliament once a year by submission of an annual report. This report is publicly available and offers detailed information also on the complaints received and their respective handling.

Fairness

The fairness of complaint-mechanisms in general is ensured by the overall transparency of the system and the possibility for complainants to keep track of their complaint throughout the proceeding. Fairness is also guaranteed by fair treatment in administrative proceedings. In Slovenia there is a lack in transparency as there are no obligatory requirements in record keeping and neither a common practice of the responsible institutions. Moreever, overlength proceedings have been reported that cause doubts as to the fairness of the complaint-handling mechanisms.

There are no general external audits concerning the complaint-handling procedures of the responsible institutions, but it has been reported that internal auditing exists.

However, the existence of the National Ombudsman helps to ensure the fairness and contributes to a system of check and balances. As the work of the Ombudsman still lacks acknowledgment especially by the public authorities the control however is restricted.

Confidentiality

The collection, processing, designated use, supervision and protection of the confidentiality of personal data is provided by law. Everyone has the right of access to the collected personal data that relates to him and the right to judicial protection in the event of any abuse of such data. There were no reports on problems concerning the confidentiality in complaint-handling procedures in Slovenia.

According to his statute, proceedings before the Ombudsman are confidential and the Ombudsman is bound to confidentiality in all cases handled. This means that the names of complainants whose complaints are being dealt with by the Ombudsman may not be disclosed to the public without the written and signed consent of the complainant.

Independence

As the work of the municipal and the national environmental inspectorates is supervised by the respective superior bodies a certain independence is guaranteed.

The National Ombudsman acts as an independent authority and it has been reported that the present Ombudsman is keen to work in the field of environmental protection issues. However, the acknowledgement of the work of the Ombudsman especially by the public

authorities still seems to be low in some cases as the Ombudsman reported that it occurs that the respective authorities do not react on his recommendations or proposals or only with a huge lag of time.

Flexibility

The lack of strict legal rules and benchmarks on how to govern the complaint-handling mechanisms ensure that the system is flexible in terms of responding to different types of complaints and needs of the complainants. However, both the environmental inspectorates at the municipal level as well as at national level seem to suffer capacity constraints and therefore cannot react flexible on the incoming complaints and their specific nature.

In addition to this there seems to exist a lack of constant internal or external reviewing processes and exchanges on good practices that could lead to a regular improvement of the complaint-handling mechanisms.

Comprehensiveness

The authorities, especially the municipal and national environmental have enforcement powers for making sure their decisions (as a consequence of a legitimate complaint) are properly implemented.

Effectiveness

In theory, Slovenia has a satisfying framework for environmental complaint-handling in place, especially as it provides an environmental inspectorate. However, regarding the implementation of this framework, there seems to be room for improvement. This concerns for example the length of inspection and other procedures and the transparency of the environmental complaints-handling mechanism in general. This is completed by a lack of administrative personnel in order to handle all environmental complaints sufficiently. As a conclusion from the literature review and the interviews, the authors got the impression that trust in the public authorities could be improved if the issues identified were tackled. Also the implementation of a mediation mechanism in environmental matters is recommended. The Ombudsman is considered to be a very engaged actor in the field of environmental complaint-handling, not only by the complaints that it seems to handle with a high level of seriousness and professionalism, but also by the regular meetings and conferences that it organises. Together with the environmental NGOs, the Ombudsman can be considered as an important actor as to the strengthening of environmental complaint-handling, or as it was described:

In reality this is an interesting experience also for the Ombudsman since the cooperation of the Ombudsman and non-governmental organizations has had a long tradition which arises from the fact that both the Ombudsman and non-governmental organizations (civil society organizations) champion the rights of individuals and with irregularities established they apply pressure on violators. In this sense the Ombudsman and non-governmental organisations are natural allies who, together with the media, challenge authority. They meet at joint meetings, conferences and other events where conclusions are also adopted and the media is informed about them. (HR Ombudsman 2010, page 96).

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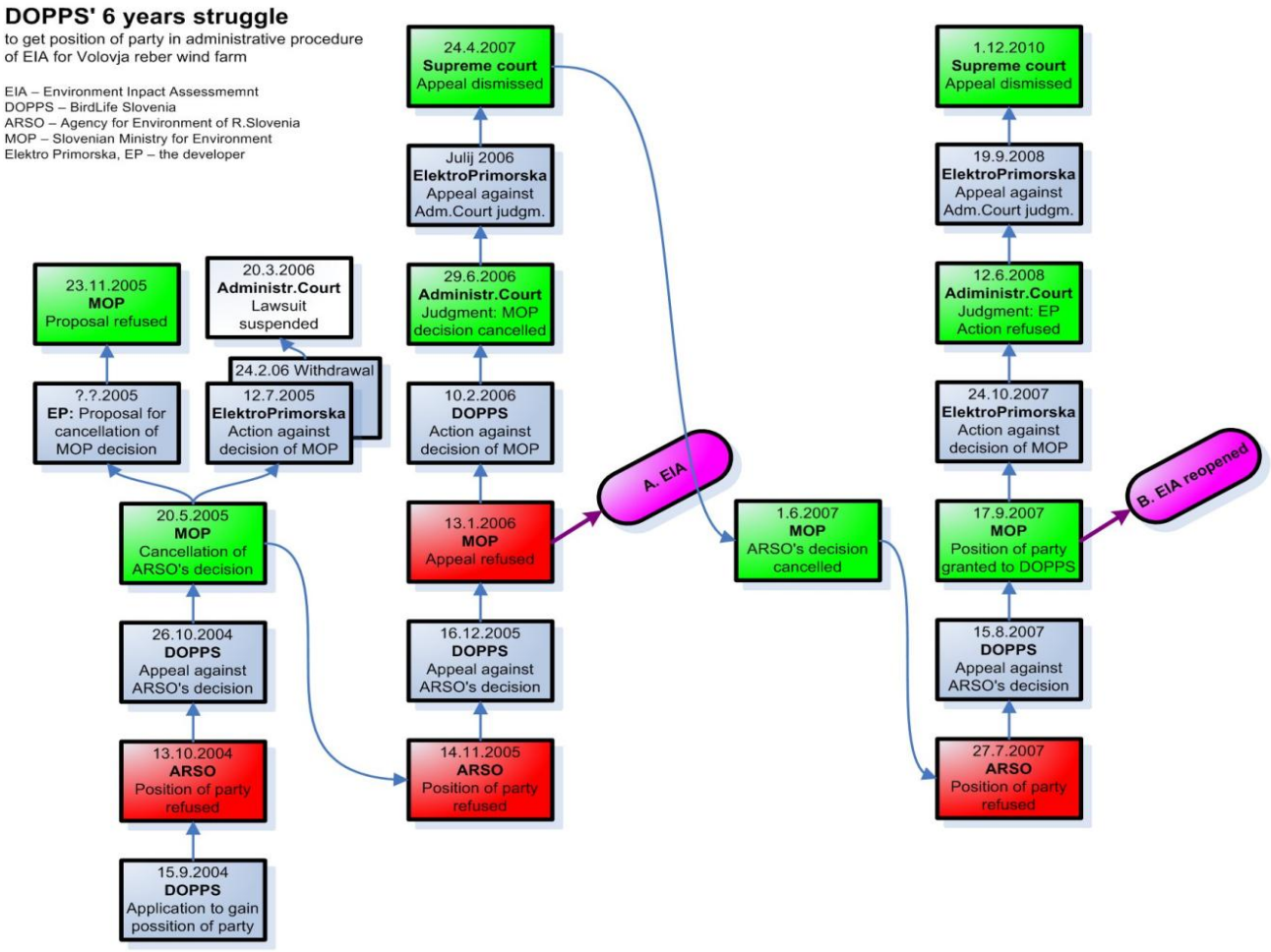
7 Annex

Annex to Section 3.8.



Source: http://commons.wikimedia.org/wiki/File:Volovja_reber_shema_postopka.jpg

X. SPAIN

1 Institutional, administrative and legal context

Spain is a parliamentary monarchy integrated by 17 autonomous communities (Andalucía, Aragón, Principado de Asturias, Baleares, Canarias, Cantabria, Castilla-La Mancha, Castilla y León, Cataluña, Comunidad Valenciana, Extremadura, Galicia, La Rioja, Comunidad de Madrid, Navarra, País Vasco, Región de Murcia) and 2 autonomous cities (Ceuta and Melilla). The State is presided by the King and divided into three branches; the executive power formed by a Council of Ministers led by the Prime Minister; the legislative power integrated by the bicameral Parliament (a Senate and a Congress of Deputies); and the judiciary power composed by the Courts, Judges and Magistrates. The government is territorially divided into; the national or general administration, the autonomous communities, the provinces and the municipalities[277]. Public administration is run through representative ministries and directorates (national administration), regional administrations (autonomous communities) and local administrations (provinces and municipalities).

Spain has one of the most decentralized government structures in the EU, and this can be identified in the level of independence that the regional and local administrations have from the national government. For instance, in their 2004 paper, Torres and Pina point out that the 17 autonomous communities manage "more than 35 percent of the total public sector expenditure" (Torres and Pina 2004). Furthermore, legislative and executive competences are shared with the general administration and in some cases the autonomous communities have full competency over the implementation and execution of legislation inside their territories.

Spain has a territorial extension of 504 645 km² and a population of 47 190 493 inhabitants according to the population census of the year 2011. The country's economy has evolved from being mainly agricultural and industrial in the middle and end of the last century respectively, to developing a strong base on the tertiary sector in the last two decades. In the last four years the country has struggled with sharp economic slowdown and rising unemployment rates which have led to strong austerity policies and emigration of the younger population.

[277]Article 137 of the Spanish Constitution of 1978: The State is territorially organised in municipalities, provinces, autonomous communities and national government.

1.1 Legal Context: main governing acts relating to environmental law

In light of Spain's decentralised legislative framework, it is true that most EU environmental law is implemented at the national level and subsequently transposed to the autonomous communities and municipalities. Some examples of environmental acts relevant to the topic of environmental complaint-handling in Spain include:

- Royal Decree 1/2008, of 11 January, which approves the revised text of the Law on Environmental Impact Assessments of Projects, with the modifications of the Law 6/2010, of 24 March and Law 9/2006, of 28 April, on the Evaluation of the environmental effects of determined plans and programmes;[278]
- Law 16/2002, of 1 July, as modified by the Law 27/2006, of 18 July and the Royal Decree 509/2007, of 20 April. This act establishes rules on prevention and control pollution, according to European Directive 96/61/CE, of the Council, 24 September;[279]
- Coastal Law 22/1988, of 28 July. This act repeals the law from 1969. This law identifies, protects and manages the public domain land;[280]
- Law 42/2007, of 13 December, on the natural heritage and the biodiversity and the Royal Decree 139/2011, of 4 February, on the development of the listing of wild species in the special protection regimes and the Spanish catalogue of threatened species;[281]
- Royal Decree 975/2009, of 12 June, on waste management of extractive industries and protection and rehabilitation of affected areas by mining activities;

[278] Real Decreto Legislativo 1/2008, de 11 de enero, por el que se aprueba el texto refundido de la Ley de Evaluación de Impacto Ambiental de proyectos, con las modificaciones operadas por la Ley 6/2010, de 24 de marzo; o Ley 9/2006, de 28 de abril, sobre evaluación de los efectos de determinados planes y programas en el medio ambiente.

[279] Ley 16/2002, de 1 de julio, de prevención y control integrados de la contaminación, modificada por la disposición final 2.1 de Ley 27/2006, de 18 julio y el Real Decreto 509/2007, de 20 de abril, por el que se aprueba el Reglamento para el desarrollo, y ejecución de la Ley 16/2002, de 1 de julio,de prevención y control integrados de la contaminación.

[280] Ley 22/88, de 28 de Julio, de Costas.

[281] Ley 42/2007, de 13 de diciembre, del Patrimonio Natural y de la Biodiversidad, Real Decreto 139/2011, de 4 de febrero, para el desarrollo del Listado de Especies Silvestres en Régimen de Protección Especial y del Catálogo Español de Especies Amenazadas.

- Royal Decree 1/2001, of 20 July, approving the revised text of the Water Act and which represents the basic national legislation concerning the exploitation and protection of water resources, as modified by Art. 129 of the Law 62/2003, of 30 December.[282]

1.2 Bodies responsible for implementing EU environmental legislation

All the levels of the State administration are responsible for the implementation of EU environmental legislation. The various hierarchies of the government have legislative competences which are endowed to them by the constitution. In general terms, the division of such competences can be outlined as the national administration having the responsibility for the development of frame or basic legislation which can then be further adapted and developed by the regional and local administrations (Milieu 2007). This further implementation must meet the minimum requirements prescribed by the national legislation and it is common that more stringent norms are adopted. For illustration, Table 1 below lists some of the competences of the autonomous communities in Spain.

Table 1. Some common competences for all autonomous communities (non-exhaustive list)

1	The organisation of the self-government institutions.
2	The creation of new municipalities and territorial adjustments in existing ones.
3	**The development of policies for territorial management, urban management and housing.**
4	The planning and development of public works.
5	The management of railways and roads whose infrastructures entirely belong to the autonomous territories.
6	**The implementation of policies in relation to agriculture and farming, in accordance with the state's general law of economy.**
7	**The management of forestry and the development and exploitation of public land.**
8	**Management of the environment and protection of nature.**
9	Projects relating to the construction and management of irrigation activities involving the upkeep of channels, hydraulic functions and mineral and thermal waters.
10	**Legal regulation of fishing in inland waters, fisheries, hunting, fluvial fishing and shellfish**

[282] Real Decreto Legislativo 1/2001, de 20 de julio, por el que se aprueba el texto refundido de la Ley de Aguas. Modificado en numerosas ocasiones, así por el artículo 129 de la Ley 62/2003, de 30 de diciembre.

exploitation.

11 The promotion of the economic development of the Autonomous Community within the objectives established in the national economic policy.

12 Heritage management.

Source: Adapted from Paredes, X.M., Territorial management and planning in Galicia: From its origins to end of Fraga administration, 1950s - 2004. MPhil Thesis, Dept. of Geography, University College Cork, Ireland, 2004, revised in 2007.

For the field of environmental protection the following distribution of competences applies: According to Art 149.1.23 of the Constitution the State has the exclusive **legislative** competence for the basic environmental protection laws, allowing the autonomous communities to adopt additional protection norms. The management of the environmental protection issues, and therefore the **enforcement** competences, according to Art 148.1.9 of the Constitution lie within the autonomous communities.

The political platform in Spain from which environmental policy is driven has undergone recurrent modifications throughout the country's recent history, with major restructurings taking place in the last two decades. This can be understood as an evolution resulting from the successive administrations' changing stances towards environmental matters and their relation to other policy sectors. In 1993, the Ministry of Public Works, Transport and Environment was the main authority for the development and execution of environmental policy in Spain, as well as for the coordination of actions and measures being taken in this realm. During the same administration, but in 1995, the Ministry of Agriculture, through its Directorate General for Nature Conservation, became liable for the development of criteria for the management of flora, fauna, habitats and ecosystems and the drafting of the environmental impact documents. In 1996, the Ministry of Environment (MMA) was created by the new administration to gather the competencies on environmental policy in a single specialized ministry. With the arrival of a new government in 2008, the Ministry of Environment was merged with the Ministry of Agriculture, Fisheries and Food to form the Ministry of Environment, Rural and Marine Affairs (MARM). This department was however short-lived, since in December 2011 the current administration replaced it with the Ministry of Agriculture, Food and Environment (MAGRAMA), which took over the competencies of the MARM. With its redesigned structure, the MAGRAMA is currently responsible for "proposing and implementing government policy in the fight against climate change, protection of the

natural heritage, biodiversity and the sea, water, rural development, agricultural, livestock and fisheries resources, and food".[283]

2 Scope, hierarchy and coordination of complaint-handling procedures

2.1 Description of main actors and relationship between mechanisms

In the field of environmental complaint-handling in Spain, the citizen has the following basic options:

- Filing a complaint to the environmental protection departments (*Consejerías de Medio Ambiente*) of the autonomous communities and/or the Ministry of Agriculture, Food and Environment (*Ministerio de Agricultura, Alimentación y Medio Ambiente - MAGRAMA*);
- Filing a complaint to the Ombudsman (*Defensor del Pueblo*) at the national[284] and/or autonomous levels (e.g. Andalucía[285], Aragón[286], Canarias[287], Cataluña[288], Galicia[289], País Vasco[290], Navarra[291] and Valenicia[292]).[293] The latter are independent from the

[283] Royal Decree 401/2012, of February 17.

[284] www.defensordelpueblo.es/

[285] www.defensor-and.es

[286] www.eljusticiadearagon.com

[287] www.diputadodelcomun.com

[288] www.sindic.cat

[289] www.valedordopobo.com

[290] www.ararteko.net

[291] http://www.defensornavarra.com/

[292] http://www.elsindic.com/va/index.html;jsessionid=6FDBB38CFF0EAC1E9BD23FCFE494F2DC

[293] However, not all autonomous communities have an ombudsman. Recently the autonomous community of Castilla-La Mancha has suppressed the position due to budgetary cuts.

former, however they are obliged to cooperate in case the national Ombudsman requires it[294];

- Presenting an administrative appeal to the competent administration;
- Submitting charges in a court of first instance (*Juzgado de Primera Instancia*);
- Lodging an administrative appeal to the Higher Court of Justice (*Tribunal Superior de Justicia*) of the respective autonomous community;

The fourth and fifth points listed above fall under the concept of access to justice, which is out of the scope of this study, and thus will not be discussed in further detail rather only when necessary to illustrate specific cases.

In general, environmental complaints are handled by the competent authorities responsible for the enforcement of environmental law. According to Art 25.2.f Basic Law on local regime[295] the **municipalities** (*municipios*) with their town councils (*ayuntamientos*) have general enforcement competences in the field of environmental protection. Under the Basic Law, all municipalities, regardless of size, have obligations regarding drinking water, sewage, and waste collection.[296] Municipalities with 5.000 or more inhabitants have additional responsibility for waste treatment services.[297] Finally, municipalities with over 50.000 inhabitants have a duty to protect the environment in general.[298] **Provinces** (*diputaciones provincales*) step in and assist the smaller municipalities with the provision of the (minimum) public services.

The majority of complaints in relation to the alleged illegality or non-compliance by a private person or company in relation to EU environmental law are therefore in the first instance handled by the **environmental protection departments of the autonomous communities** (*Consejerías de Medio Ambiente de las communidades autónomas*) depending on the nature and the scale of the illegal activity, with some exceptions (see in detail under 'application of scenarios'). Complaints related to the failure of a public or private body to provide an environmental service or of a public body to respect procedural or administrative

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[294] From the interview with José Núñez Núñez, Coordinating Advisor of the Territorial Planning Area in the office of the National Ombudsman.

[295] *Ley 7/1985, de 2 de abril, Reguladora de las Bases del Régimen Local*, available at: http://noticias.juridicas.com/base_datos/Admin/l7-1985.html

[296] Art 26.1.a

[297] Art 26.1.b

[298] Art 26.1.d. See also Campell 2009.

guarantees will be mostly handled by the autonomous communities, too (see in detail under 'application of scenarios'). The relevant legal provisions are the Law 7/1985, of 2 April, which regulates the bases of the local regime[299] and the Law 30/1992, of 26 November, which regulates the legal regime of the public administration and the Common Administrative Procedure[300].

Under the competences of the **Spanish Ombudsman** (*Defensor del Pueblo*) as well as the regional ombudsmen (for example *Defensor de Pueblo Andaluz*), falls overseeing the activities of all government levels (i.e. the national administration, the administrations of the autonomous communities, and the local governments) as well as those of the enterprises which provide public services (e.g. utilities). The ombudsmen only deals with cases between citizens and administrations, cases between individuals are heard by the courts.[301]

2.2 Application to scenarios

The main actors for the three types of complaints in relation to the scenarios as laid down above are the regions/autonomous communities and the local authorities.

2.2.1 Is there a mechanism/are there mechanisms for alleged illegality or non-compliance of a private person/ company?

For the case of the operation of a clandestine/non-authorised business for end-of-life-vehicles and disposal of waste (see Directive 2000/53/EC – ELV Directive) a complainant or a concerned member of the public can send the complaint to the Directorate-General of environmental quality and waste of the environmental protection department of the respective autonomous community (*Dirección General de Calidad y/o Evaluación Ambiental o Residuos de la Consejería de Medio Ambiente y Ordenación del Territorio de la Comunidad Autónoma afectada[302])* or to the Directorate-General of environmental quality

[299] *Ley 7/1985, de 2 de abril, Reguladora de las Bases del Régimen Local*, available at: http://noticias.juridicas.com/base_datos/Admin/l7-1985.html.

[300] *Ley 30/1992, de 26 de noviembre: Régimen jurídico de las admininstractiones públicas y del Procedimiento Administrativo Común*, available at: http://noticias.juridicas.com/base_datos/Admin/l30-1992.html.

[301] From the interview with José Núñez Núñez, Coordinating Advisor of the Territorial Planning Area in the office of the National Ombudsman.

[302] As to the community of Anadalucia: Council for Agriculture, Fishing and Environment of the Council of Andalucia.

and assessment of the Ministry for Agriculture, Food and Environment (*Dirección General de Calidad y Evaluación Ambiental, del Ministerio de Agricultura, Alimentación y Medio Ambiente).* In general, however, it is sufficient to address the town council (*ayuntamiento)* of the respective autonomous community as a whole, as the complaint will then be handed over to the competent department. There is no restriction concerning the group of people, everybody can be party to this proceeding. The complaint should be submitted in written format and should name the relevant environmental laws, for example the Law 22/2011, of 28 July, on waste and contaminated soil.[303] The naming of the relevant laws and the observation of written format, however, are recommendations of the competent authorities only, and there are no such legal requirements in the respective acts concerning the complaint-handling procedures.

If a facility with an IPPC-license (see Directive 2008/1/EC of 15 January 2008 - IPPC-Directive) is in breach of one of its permit conditions, a private person has to send the complaint to the competent Directorate-General of environmental quality and assessment of the environmental protection department of the respective autonomous community (*Dirección General de Evaluación y/o Calidad Ambiental de la Consejería de Medio Ambiente y Ordenación del Territorio de la Comunidad Autónoma afectada[304])* and/or to the Directorate-General of environmental quality and assessment of the Ministry for Agriculture, Food and Environment (*Dirección General de Calidad y Evaluación Ambiental, del Ministerio de Agricultura, Alimentación y Medio Ambiente).* There are no specific conditions concerning form and contents of the complaint, it is however recommended to hand in a written complaint and name the affected legal acts. The competent authority is obliged to pursue the complaint on the basis of the respective decrees of the autonomous communities[305] by which the Federal Juridical Regime of Public Administrations and the Common Administrative Procedure (*Ley 30/1992, de 26 de noviembre, de Regimen Juridico de las Administraciones Publicas y del Procedimiento Administrativo Comun)* is passed. This law does not comprise

303 Ley 22/2011, de 28 de julio, de residuos y suelos contaminados; Real Decreto 1481/2001, de 27 de diciembre, por el que se regula la eliminación de residuos mediante depósito en vertedero; Real Decreto 1304/2009, de 31 de julio, por el que se modifica el Real Decreto 1481/2001, de 27 de diciembre, por el que se regula la eliminación de residuos mediante el depósito en vertedero.

304 As to the autonomous community of Anadalucia: Council for Agriculture, Fishing and Environment of the Council of Andalucia.

305 As for the Autonomous Community of Madrid: *Decreto 245/2000, de 16 de noviembre, por el que se aprueba el Reglamento para el Ejercicio de la potestad sancionadora por la Administración de la Comunidad de Madrid, y por la Ley 30/1992, de 26 de noviembre, de Regimen Juridico de las Administraciones Publicas y del Procedimiento Administrativo Comun.*

specific provisions concerning the handling of complaints by the respective authorities. However, if the general provisions concerning the administrative regime are applicable for the complaint-handling procedure this is mentioned in the following under the various aspects of the complaint-handling procedure.

Due to time and budget constraints, it was not possible to assess the specific executing decrees of the 17 Autonomous Communities in detail.

In the case of an industrial company which has an eco-label (see Regulation 66/2010/EC of 25 November 2009) which is claimed to be not respecting the criteria, the complaint in general has to be addressed to the competent Directorate-General of Consumption belonging to the Department for Economy and Finance (*Dirección General de Consumo, Consejería de Economia y Hacienda de la Comunidad Autónoma afectada*[306]*)* and/or to Directorate-General of environmental quality and assessment of the environmental protection department of the respective autonomous community (*Dirección General de Calidad y/o Evaluación Ambiental o Residuos de la Consejería de Medio Ambiente y Ordenación del Territorio de la Comunidad Autónoma afectada*[307]*)* and/or to the Directorate-General of environmental quality and assessment of the Ministry for Agriculture, Food and Environment (*Dirección General de Calidad y Evaluación Ambiental, del Ministerio de Agricultura, Alimentación y Medio Ambiente).*

The illegal discharge of pollutants to a river (see Water Framework Directive 2000/60/EC) from a small commercial company (that does not fall under the IPPC-Directive) has to be filed to Directorate-General for Water or the inter-regional River Basin Authority (*Confederación Hidrográfica de las Cuencas Intercommunitarias*) seated at the national Ministry for Agriculture, Food and Environment. If the river basin is only on the territory of one autonomous region (*cuencas intracommunitarias*) the (intra-regional) River Basin Authority of this autonomous community would be the right authority to address.

Illegal activities in coastal areas have to be reported to the Directorate-General of the Sustainability of the Coast and the Sea of the Ministry for Agriculture, Food and Environment (*Dirección General de Sostenibilidad de la Costa y el Mar del Ministerio de Agricultura, Alimentación y Medio Ambiente*), with the exception of the autonomous communities of Andalucía and Cataluña, where the community itself is responsible for coastal protection. In

306 As this is the competent authority when it comes to complaints of consumer in relation to the labeling of products.

307 As this is the competent authority for the application of the revised system of the eco-label according to the Decree 216/2003, of 16 October.

these regions, the respective Directorate-General of coastal protection of the environmental protection departments (*Direcciones Generales de Costas de sus Consejerías de Medio Ambiente*) must be contacted.

If illegal timber that is on the CITES list (see Annex in Regulation 338/97/EC) has been imported to Spain, the competent authorities are the Directorate-General of customs of the Ministry for Economy and Finance (*Dirección General de Aduanas del Ministerio de Economía y Hacienda*) and/or the Directorate-General of environmental quality and assessment of the Ministry for Agriculture, Food and Environment (*Dirección General de Calidad y Evaluación Ambiental, del Ministerio de Agricultura, Alimentación y Medio Ambiente).*

For the case of wide-spread illegal trapping/hunting of wild birds protected under the Birds Directive (see Directive 2009/147/EC of 30 November 2009), the complaint has to be directed to the competent department for environmental protection of the respective autonomous community.[308]

2.2.2 Is there a mechanism/are there mechanisms for alleged illegality or non-compliance of a public body/utility in relation to providing an environmental service?

In case a municipality fails to treat properly its urban wastewater load (for example treatment plants are under capacity) in compliance with Directive 91/271/EEC of 21 May 1991 concerning urban wastewater treatment, the complaint should be directed to the Ministry for Agriculture, Food and Environment and/or the environmental protection department of the respective Autonomous Community (*Dirección General de Evaluación y/o Calidad Ambiental de la Comunidad Autónoma afectada*[309]*).* Again, it is recommended by the competent authorities to handin the complaint in written format and denominate the affected legal acts.

For the case of a private water utility providing drinking water containing E. coli due to a lack of disinfection of the water source (see Directive 98/83/EC of 3 November 1998), the

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308 As for the Autonomous Community of Madrid: Dirección General de Evaluación Ambiental de la Consejería de Medio Ambiente y Ordenación del Territorio de la Comunidad de Madrid. As for the Autonomous Community of Anadalucia: Council for Agriculture, Fishing and Environment of the Council of Andalucia.

309 As for the Autonomous Community of Madrid the complaint has to be addressed in first place to the Regional Ministry of Presidency, justice and spokespersons (Consejería de Presidencia, Justicia y Portavocia del Gobierno) as the competent authority when it comes to the control of the authorities that are responsible for the treatment of the urban waste-water load.

complaint has to be directed to the Ministry for Agriculture, Food and Environment and/or the Ministry for Health and/or the environmental protection department and/or the health department of the respective autonomous community (*Consejería de Medio Ambiente o Consejería de Sanidad de la Comunidad Autónoma afectada*[310]).

If a municipality is operating a landfill (see Directive 99/31/EC of 26 April 1999) on behalf of a town and is claimed to have serious odour problems, the complaint should be addressed to the department for environmental protection of the respective autonomous community (*Dirección General de Evaluación y/o Calidad Ambiental de la Comunidad Autónoma afectada)*.

If a municipality is operating a landfill (see Directive 99/31/EC of 26 April 1999) on behalf of a town and is claimed to have serious odour problems the complaint should be addressed to the department for environmental protection of the respective autonomous community. There are no specific conditions to be respected.

2.2.3 Is there a mechanism/are there mechanisms for alleged failure of a public body to respect procedural requirements or some other required administrative standards?

If a competent authority responsible for EIA is claimed to have approved an environmentally relevant project without an EIA or a screening (see EIA Directive) there is a general competence of the Directorate-General for Environmental Assessment of the department for environmental protection of the autonomous community and/or the Directorate-General of Environmental Assessment and Quality and Nature Protection of the Ministry for Agriculture, Food and Environment. According to Art. 4.1 Royal Decree 1/2008, of 11 January, which approves the revised text of the Law on Environmental Impact Assessments of Projects, with the modifications of the Law 6/2010, of 24 March, the Ministry for Agriculture, Food and Environment is the competent authority in case the respective project – on the basis of the relevant laws of the Autonomous Communities -- has to be authorised or approved by the General Administration of the State. If this is not the case the competent authority is the authority that has been designated by the laws of the respective Autonomous Community for these tasks (Art. 4.2) - in general the Directorate-General for Environmental Assessment of the department for environmental protection, If the Ministry for Agriculture, Food and Environment is responsible for the EIA the department for environmental protection of the

310 For example as for the Autonomous Community of Madrid the Department for Health (*Consejería de Sanidad de la Comunidad de Madrid*) is the competent authority to address.

Autonomous Community on which territory the project is planned has to be consulted (Art. 4.3).

If an authority responsible for a protected Natura 2000-site is allowing small-scale housing on this site without any appropriate consideration of the respective individual and/or cumulative effects (see Art. 6.3 Directive 92/43/EEC of 21 May 1992 – Habitats Directive) the private person or the NGO should first contact the Directorate-General for Environmental Assessment of the department for environmental protection of the autonomous community – in particular if a case of mismanagement is claimed to be the source of the failure. Besides this the complainant could contact the Directorate-General of Environmental Assessment and Quality and nature protection of the Ministry for Agriculture, Food and Environment.

3 Characteristics of the complaint-handling systems identified

This section describes the specific features of the environmental complaint-handling mechanisms with regards to the competent authorities of the autonomous communities, the *diputaciones provinciales* and the *ayuntamientos/municipios*. Due to the variety of the autonomous communities it was not possible to illustrate all features of environmental complaint-handling in Spain as a whole. The scope of the study did not allow for exploring complaint-handling in all 17 autonomous communities. Instead, environmental complaint-handling is exemplified by the cases of the Autonomous Communities of Andalusia and Madrid.

The procedures provided by the Spanish Ombudsman (*Defensor del Pueblo*) and the regional ombudsmen are analysed in chapter 4.

3.1 Procedures/procedural guarantees

Procedures

The majority of complaints are treated according to both the Law 30/1992, of 26 November (Juridical Regime of Public Administrations and the Common Administrative Procedure) and the Law 27/2006, of 18 July, in which the rights for the access to information, participation

and access to justice are regulated, and which incorporates Directives 2003/4/EC and 2003/35/EC.[311]

The Juridical Regime of Public Administrations and the Common Administrative Procedure is the fundamental legal norm that regulates the legal regime, common administrative procedure and the system of responsibilities of Public Administrations. Paragraph 1 establishes that, for this law's purposes, the name "Public Administrations" should be assigned to the following entities: General Administration of the State, the Autonomous Communities Public Administrations, and the Local Administration. It regulates the administrative proceedings in general without explicitly mentioning administrative complaint-handling procedures. Art. 70 of this act lays down the preconditions of initiating a request by citizens: The name and the medium that the citizens wants to use for the further communication with the authority, the reasons and facts that underline the request, the date and place of the underlying event and the authority that the citizen wants to become active.

According to Art. 42 of the Juridical Regime of Public Administrations and the Common Administrative Procedure, the administration is obliged to reply to each complaint that is handed in within a certain time-span (see in detail under deadlines).

As to the Autonomous Community of Madrid, it guarantees a reaction on each complaint that has been received within 48 hours on its website. A legal obligation of the authorities to send an acknowledgment of complaint within a specified time span, however, could not be detected in the relevant acts. Neither could a general requirement of the public administration to transfer the complaint to the competent directorate-general be found in the legislation. The latter, however, according to the information of the contacted public authorities seems to be administrative practice. The Autonomous Communities of Andalusia and Madrid provide a general contact point for citizens (*Oficina de Atencion al Ciudadano*) on their websites and guarantee to transfer the incoming suggestions and complaints to the competent directorates.

Publicity

There is no general electronically based system for the purpose of complaining to the competent authorities. In general, however, the Environmental Protection Departments of the Autonomous Communities (*consejerías*) are accessible via phone (available all day from 8

311 See Articles 20, 22 of the law of access to environmental information.

a.m. to 8 p.m. from Monday until Friday) or the "letter box" for citizens (*buzón del ciudadano*). The "letter box" is available 24 hours per day; everybody can send opinions, suggestions and requests. The *Consejería Anadalucia*, for example, according to the information on their web site, receives around 400 requests per month that are replied to within a time limit of 48 hours. Besides this there exists the virtual assistant, also available 24hours a day, with information on frequently asked questions regarding authorisations, subventions and other types of formal requirements.

Complaints, claims or formal denunciations can be made either online or a written complaint can be presented to any office of the registry of the Autonomous Administration or of the State, as described in the "Suggestions and Complaints book of the Council of Andalucía." There are Suggestions and Complaints Books in paper format in the general registries of all territorial and provincial delegations and in many other centers and it is also available online.

The Autonomous Community of Madrid on its website[312] provides general information on how to address a complaint to the competent authorities. The different possibilities (written or orally) are described and online forms are provided. It is stated that the complainant will receive a reaction within in a period of 48 hours. However, there is no particular information on complaining about environmental matters.

Anonymity/confidentiality

There are general rules (see Basic Law 15/1999, of December 13 about Personal Data Protection) that are safeguarding the confidentiality of the personal data. As to the Autonomous Community of Madrid, anonymous complaints are not accepted and complaints need to contain information in order to clearly identify the complainant. The respective fields (name and localisation) in the online forms are made obligatory. Anonymous complaints are accepted in the Autonomous Community of Andalucia, however it is noted that this may affect the investigation and complainants clearly will not receive answers to their complaints.

Feedback

According to Art 35 A) of the Juridical Regime of Public Administrations and the Common Administrative Procedure (*Ley 30/1992, de 26 de noviembro, Régimen jurídico de las administraciones públicas y del Procedimiento Administrativo Común*) the citizens have the

[312] www.madrid.org, "Sugerencias y quejas"

right to know at any time the stage of proceedings in which they are being concerned and to obtain copies of the respective documents. The Autonomous Community of Madrid offers an online access to the stage of proceedings and the related documents and a notification via the internet on the stage of proceedings. A legal obligation of the public authorities to give a general feedback about the stage of proceedings without such a request could not be detected in the relevant acts.

Record-keeping and availability of IT systems for handling complaints

The administrative authorities are obliged to keep a general registry in which all the existing, incoming and outgoing communication is included (Art 38.1 of the Juridical Regime of Public Administrations and the Common Administrative Procedure). The authorities are entitled to create other registries that are auxiliary to the general registry within their body in order to facilitate the presentation of documents and communication. These registries in general are not IT based.

The Autonomous Community of Madrid, however, commands an IT based registry for suggestions and complaints. All complaints that are handed in directly by using the facilities of the contact point for citizens or by using another medium are registered in this system and thereby the whole process from receiving the complaint until the response to the citizen can be retraced.

Deadlines for analysis of complaints

According to the Decree 21/2002, of 24 January, that regulates the proceedings with *inter alia* complaints handed in by citizens within the territory of the Autonomous Community of Madrid, the complaints in general and without prejudice to other provisions have to be answered within a time period of 15 days.

Likewise, the Autonomous Community of Andalucia requires complainants to receive an answer within 15 days. Once the complaint has been received in the relevant dependency, the dependency has 15 days to collect any clarifying information and inform the office of which it is a dependency, who will then notify the complainant about the actions that were taken and the measures implemented. It will then inform the interested party, and the corresponding peripheral office or the headquarters of the General Inspection Service. Formal complaints presented by citizens to the General Service Inspector's office oversight body about the services provided in a public agency will be sent to the corresponding agency so that appropriate measures can be taken. This agency must then notify the claimant about the actions taken and their results within 15 days and must also notify the same information to the General Service Inspector's office within 15 days.

Art 42. 2 of the Juridical Regime of Public Administrations and the Common Administrative Procedure foresees a general deadline of a maximum of six months for the resolution of any administrative process. If the applicable laws do not specify such a deadline, the deadline consists of a maximum of three months.

According to Spanish NGO experience there is a deadline of one or three months for replying to the complaints, depending on the complexity of the case.

In case the complaints are not handled by the authorities within the deadlines, private persons have first to contact the superior authority within the hierarchy of the administration and – in case this does not have any effects - to file a suit to the tribunals (*jurisdicción contenciosa*).

3.2 Technical, scientific and legal expertise in EU Environmental Law

According to the information provided by the Autonomous Communities of Andalusia and Madrid legal and technical expertise are available within the authorities, that is in the legal or technical departments that consult the persons dealing with the complaints. However, information on respective trainings of the staff could not be found on the consulted websites of the Autonomous Communities.

A Spanish NGO has raised concerns over the availability of expertise on EU environmental law and technical expertise within the competent authorities, mainly due to lack of funds within the public administration.

3.3 Reporting

There is no general duty to report about the complaint-handling in environmental matters for the respective authorities.

The administrative units according to the Law 27/2006, of 18 July, in which the rights for the access to information, participation and access to justice for environment-related issues are regulated, have to report yearly to the Ministry for Agriculture, Food and Environment on the number of complaints and reclamations concerning this law. Law 27/2006 implements the Aarhus Convention into Spanish law. It sets minimum standards, allowing the Autonomous Communities to adopt stricter standards, and is fairly extensive in scope.

3.4 Review

Information on periodic external or internal review processes for example on the effectiveness of environmental complaint-handling and especially its respective results is not publicly available in general for all the public authorities that are handling environmental complaints. However, as for the Autonomous Community of Madrid the administrative authorities, according to the Decree 85/2002, of 23 May,[313] are obliged to implement evaluation systems on the basis of a set of quality criteria in order to guarantee for an auto-evaluation of the public services provided by the administration. These mechanisms and its implementation activities are periodically evaluated by the Directorate-General of Quality of public services and attention to the citizen (*Dirección General de Calidad de los Servicios y Atención al Ciudadano*).

3.5 Frequency/regularity of complaints and trends

Information on the frequency/regularity of complaints and trends in general is not made publicly available by the administrative authorities. The environmental protection department of the Autonomous Community of Madrid reported that it could not any specific trends or frequencies in relation to the complaints that were addressed to them over the last years. It indicated that the total number of complaints is higher than the number of complaints that have been reported to the Ministry concerning the implementation of the Law 27/2006, of 18 July, in which the rights for the access to information, participation and access to justice are regulated (4 in 2011 and about the same number or less in the previous years). A Spanish environmental NGO reported that it is addressing 1-2 petitions or complaints per week to the different responsible authorities all over the country.

3.6 Existence of features to address challenging complaints

There are no specific features explicitly for addressing challenging complaints in Spain. Art. 33 of the Law 27/2006, of 18 July, in which the rights for the access to information, participation and access to justice are regulated, however, in case of a request that seems to have various interested parties, foresees the following approach: In the first place, the administrative proceedings are carried out with the representative or the designated person

313 Decreto 85/2002, de 23 de mayo, por el que se regulan los sistemas de evaluación de la calidad de los servicios públicos y se aprueban los Criterios de Calidad de la Actuación Administrativa en la Comunidad de Madrid.

for this purpose by the interested parties. If there is no such person expressly named by the interested parties, the proceedings are carried out with the person that it is listed in the first place. According to an environmental NGO, sometimes several NGOs present complaints on the same issue. A specific feature to handle these more demanding complaints has, however, not come to their knowledge.

3.7 Costs

Information on the costs of the environmental complaint-handling to the public authorities is not publicly available.

According to the environmental protection department of the Autonomous Community of Madrid, the budget that is approved for the anticipated expenses of the different administrative units does not show the exact costs that are destined for the complaint-handling. As complaint-handling is a process in which generally several units are involved it is very difficult to determine the costs.

The charging of costs depends on the kind of procedure:

There is no cost charged in the case of administrative appeals since these are handled by the office personnel in parallel to their common tasks.

There is a cost, however, for legal appeals. While environmental NGOs are exempted from such charges, lawyers and solicitors must pay. According to environmental NGOs, this poses a strong disincentive to continue with a case.

3.8 Particular problems encountered

Environmental NGOs in Spain faced as their main problem that some administrations would forward the complaints to other – allegedly competent – authorities, with the result being that the problem would remain unsolved, where the advanced competent authorities failed to treat the files or transfer them to the proper authority. For instance, in a case of pollution due to wastewater in Doñana, a complaint was filed to the Ministry of Agriculture, Food and the Environment, who then directed them to the Regional Environmental Council of Andalusia. The latter claimed then that the competency in this case belonged to the Guadalquivir River Basin Authority, which is in charge of this area, and falls under the first mentioned authority: the Ministry of Agriculture, Food and the Environment. This is a probem if complainents are unable to reach the competent authority or if significant time delays are created.

4 Existence of specific additional institutions/authorities for the sector of environmental complaint-handling

4.1 Ombudsmen

4.1.1 Spanish Ombudsman (*Defensor del Pueblo*)

In Spain, the Ombudsman or *Defensor del Pueblo* is the high commissioner in —and appointed by— the Parliament responsible for the dissemination of human rights and the protection of the fundamental citizen rights and civil liberties which are gathered in the Spanish Constitution. With the passing of Act 3/1981 of April 6 and the election of its first official, the institution started its operations. The office of the national Ombudsman is run with funding from the national administration and its annual budget oscillates between 15 and 20 million Euros.[314] The Ombudsman's mandate lasts for 5 years. Under its competences falls overseeing the activities of all government levels (i.e. the national administration, the administrations of the Autonomous Communities and the local governments) as well as those of the enterprises which provide public services (e.g. utilities). The Ombudsman only deals with cases between citizens and administrations, as cases between individuals are heard by the courts.[315] The internal division of the office of the national ombudsman in charge of handling environmental complaints is the Spatial Planning Department. This is the largest unit in the office and employs a total of 9 advisors (5 senior and 4 junior) and 5 administrative personnel. The unit focuses mainly on land use, urban planning and housing issues and, given the relative closeness of these subjects to environmental complaints, has been given the competence over the latter.

4.1.2 Regional ombudsmen

Any Spanish citizen or alien, regardless of age or legal status, who considers that his or her constitutional rights have been violated, is entitled to seek assistance from the Ombudsman, both individually and collectively. In addition to filing a complaint, under the requirements and

314 Ibid.

315 From the interview with José Núñez Núñez, Coordinating Advisor of the Territorial Planning Area in the office of the National Ombudsman.

in cases prescribed by law, the affected party may solicit the ombudsman to lodge a claim of unconstitutionality before the Constitutional Court.[316]

Regional ombudsmen do exist in, for instance, the autonomous communities of Andalucía[317], Aragón[318], Canarias[319], Cataluña[320], Galicia[321], País Vasco[322], Navarra[323] and Valenicia[324].[325] The regional ombudsmen are independent from the former, however, they are obliged to cooperate in case the national Ombudsman requires it[326.] Each region has opted for a more or less defined attribution of competencies to the regional ombudsmen. The regional ombudsmen, however, are only entitled to act if the complainant addresses public authorities in the territory to which the regional ombudsman belongs to.

Due to time and budget constraints, it was not possible to assess the mechanisms of these institutions in detail.

4.2 Procedures/procedural guarantees

The mechanism of collection and management of complaints is a formal, systemised process with no cost to the applicant. It is regulated by the Organic Act 3/1981, of 6 April, regarding the Defensor del Pueblo, modified by Organic Act 2/1992, March 5 (Official State Gazette nº. 109, May 7, 1981 and nº 57, March 6, 1992).[327] The stages of the process can be generally

316 http://www.defensordelpueblo.es/es/Derechos/papel/index.html

317 www.defensor-and.es

318 www.eljusticiadearagon.com

319 www.diputadodelcomun.com

320 www.sindic.cat

321 www.valedordopobo.com

322 www.ararteko.net

323 http://www.defensornavarra.com/

324 http://www.elsindic.com/va/index.html;jsessionid=6FDBB38CFF0EAC1E9BD23FCFE494F2DC

325 Not all autonomous communities have an ombudsman. Recently the autonomous community of Castilla-La Mancha has suppressed the position due to budgetary cuts.

326 From the interview with José Núñez Núñez, Coordinating Advisor of the Territorial Planning Area in the office of the National Ombudsman.

327 Ley Orgánica 3/1981, de 6 Abril, del Defensor del Pueblo. The english version is available at http://www.defensordelpueblo.es/en/Documentacion/Opcion4/Documentos/LOIngles.pdf

described as follows (see in detail Chapter 3 of the organic law regulating the complaints procedure):

- The complaint is received and filed into an electronic database (a receipt is immediately extended to the applicant).
- An initial assessment is undertaken to evaluate whether the complaint is admissible for investigation (i.e. whether it is properly founded and feasible). The average duration of this phase goes from one week to one month for common cases; those which are more complicated may take longer (environmental complaints commonly fall into this category).
- Upon admission of the complaint, the process of investigation is initiated and the relevant administration is contacted with an inquiry for further information on the case. If the complaint is not admitted, the applicant is informed by letter about the reasons for this decision and is offered orientation of the possible ways to proceed.
- The administration is required to issue a response to the complaint.
- Concluding the investigation, if the complaint is found to be substantiated, the office of the Ombudsman proceeds to prepare a recommendation to the administration. In the case a complaint is evaluated as unsubstantiated, the process ends and the Ombudsman communicates this to the applicant.
- If the applicant is not satisfied with the resolution, he or she has the right to submit the case to court.

In general, most of the complaints received follow the same procedure; however, special cases exist where the objection can be prioritized due to the significance of its consequences and/or its level of urgency. When large numbers of complaints regarding the same problem are received, these are accumulated and managed as a single case with multiple applicants. The recommendations to correct or ameliorate the situation extended by the Ombudsman are not executive (i.e. it is not the duty of the government to abide by them), however non-compliance has to be justified by the administration.

Publicity

In Spain, the various ombudsmen are publicized through their websites. These websites contain detailed information on how to complain and on how the complaint will be handled.

There is a complaint form available (only in Spanish, however, it is explained in detail also in English how to fill it in.[328]).[329]

Additionally, articles and appearances on other mass media are frequently used by the institution to communicate about relevant cases, resolutions and recommendations forwarded to the administrations.

Guarantees

According to Art. 22 cl. 2 of the Organic Act, the investigations and relevant procedures conducted by the Ombudsman and his staff shall be performed in absolute secrecy, with respect to both private individuals and offices and other public bodies and without prejudice to the considerations that the Ombudsman may consider appropriate for inclusion in his reports to Parliament. Special measures of protection shall be taken concerning documents classified as confidential.

Deadlines

The office of the Ombudsman maintains communication with the applicant during the whole length of the process in order to notify about the development of the case and the replies received from the administration. This goes from the point when the applicant presents the complaint and gets a receipt confirming that the complaint has entered the system, to when he or she is notified about a final decision and is presented with possible next steps. In all cases, the Ombudsman must ensure that in due time and manner, he resolves the requests and appeals that have been submitted to it.[330] Once a complaint has been accepted, the Ombudsman shall report the substance of the complaint to the pertinent administrative agency or office for the purpose of ensuring that a written report be submitted within fifteen days by its director, although this period may be extended as, circumstances warrant.[331]

328 http://www.defensordelpueblo.es/en/Queja/dudas/index.html

329 http://www.defensordelpueblo.es/es/Queja/presenta/modalidad.jsf

330 Organic Act, Art. 17.2

331 Organic Act, Art. 18.2

4.3 Technical, scientific and legal expertise in EU Environmental Law

Virtually all advisors in the Spatial Planning Department at the national Ombudsman have expertise and skills in environmental law, including professorships and master degrees in subjects like international law, urban development or environmental law.

4.4 Reporting and review

The national Ombudsman extends an annual management report to the Parliament. The reports include information on the number and type of complaints filed, of those rejected and the reasons for their rejection, and of those investigated, together with the results of the investigation, specifying suggestions or recommendations accepted.[332] These reports, together with the annual compilation of the recommendations made to governments are publicly accessible from the official Ombudsman's website. In order not to infringe privacy legislation, all information in the periodic reports is published without including the personal data of the parties involved.

4.5 Frequency/regularity of complaints and trends

The Spatial Planning Unit at the ombudsman office receives about 2,000 complaints per year, the majority of which are admitted for processing and investigation. In 2011, a total of 24.381 complaints were registered with national Ombudsmen, compared to 34.674 in 2010.[333] Of these, 16.353 were from individuals and 7.522 were collective complaints (versus 16.757 and 17.449 respectively in 2010). A total of 605.240 citizens complained *either* collectively or individually in 2011, compared with 75.431 in 2010.

In 2010, 823 complaints concerned the environment.[334] Subject matter included conservation of green zones in Madrid, fuel bunkering, water supply contamination, waste dumping, burning of forest waste, construction of a gas pipeline in a residential area, and mercury

332 Organic Act, Art. 33.

333 http://www.defensordelpueblo.es/en/Queja/estadisticas/index.html

334 http://www.defensordelpueblo.es/en/Documentacion/Opcion3/Documentos/resumen_informe_ingles_2010.pdf

emissions.[335] Comparatively, in 2009 there were 562 complaints concerning the environment[336] and 1.184 complaints in 2008.[337]

4.6 Existence of features to address challenging complaints

As mentioned, when large numbers of complaints regarding the same problem are received, these are accumulated and managed as a single case with multiple applicants.

The Ombudsman rejects anonymous complaints and may reject those in which he perceives bad faith, lack of grounds or an unfounded claim, and in addition those whose investigation might infringe the legitimate rights of a third party.[338]

Refusal or failure on the part of a civil servant or his superiors responsible for sending an initial report requested may be considered by the Ombudsman as a hostile act which obstructs his functions and the Ombudsman shall make such an act public and draw attention to it in his annual or special report.[339]

4.7 Costs

All complaints to the Ombudsman are free of charge for complainants.[340] Further, expenses occurred by individuals other than complainants who are requested to provide information are to be reimbursed.[341]

The Parliamentary Budget is to provide financial resources to cover the operation of the Ombudsman's office.[342]

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335 Ibid.

336 http://www.defensordelpueblo.es/en/Documentacion/Opcion3/Documentos/boletinresumen2009.pdf

337 http://www.defensordelpueblo.es/en/Documentacion/Opcion3/Documentos/boletinresumen2008.pdf

338 Organic Act, Art. 17.3

339 Organic Act, Art. 18.2

340 Organic Act, Art. 15.2

341 Organic Act, Art. 27.

342 Organic Act, Art. 37.

5 Mediation

It is the Autonomous Communities which are mostly developing this area. There is no mediation law at national level, although the Ministry of Justice is working on transposing Directive 2008/52/EC on Mediation which will provide a legal framework at national level which will provide the setting necessary for this institution within our procedural law, and will govern the Mediators' Charter (*Estatuto de los Mediadores*).

The Spanish legal system expressly refers to mediation in the employment, family and criminal fields.

Mediation is very common in employment matters. It is sometimes compulsory to attempt mediation before referring to the Courts. Collective disputes are usually subject to mediation and individual disputes are mediated in some Autonomous Communities.

The Autonomous Communities have employment mediation bodies which specialise in such matters. At national level, the interconfederal mediation and arbitration service (*Servicio Interconfederal de Mediación y Arbitraje, SIMA*) offers a free mediation service for disputes which go beyond the jurisdiction of the bodies of the Autonomous Communities.

Mediation in the civil and family fields

Mediation is not expressly regulated in civil legislation of a general nature, although it is always possible to resort to mediation in connection with matters in which the parties have freedom of choice, by applying for a suspension of the proceedings (Article 19 of the Code of Civil Procedure - *Ley de Enjuiciamiento Civil,* LEC).

Mediation in the civil field is only expressly referred to in the Code of Civil Procedure in the context of the matrimonial process; it states that parties can ask the judge to suspend the proceedings whilst they attempt mediation (Art. 770.7 LEC), and also that the parties start the process of mutual agreement once mediation has been carried out. Resorting to mediation is voluntary for the parties.

The services offered for family mediation vary considerably in the various Autonomous Communities, and even in the same Community may vary from one area to the next. In some Autonomous Communities it is the Community itself which offers the service, (as in Catalonia, for example, whilst in others it is the local authorities (*ayuntamientos*) which offer family mediation services.

The General Council of the Judiciary (*Consejo General del Poder Judicial*) supports and supervises the mediation initiatives which are carried out in the various courts in Spain, supported by the Autonomous Communities, universities, local authorities or associations.

Mediation in the criminal field

Mediation in the criminal field is aimed, on the one hand, at reintegrating the offender, and on the other at compensating the victim.

In juvenile justice (ages 14 to 18), mediation is expressly stipulated as a means of re-educating the minor. In this field, mediation is carried out by teams supporting the juvenile prosecution service (*Fiscalía de Menores*), though it can also be carried out by organisations from the Autonomous Communities and other bodies such as Associations.

In the field of adult justice, mediation is not regulated, though in practice it is carried out in some provinces based on criminal regulation and criminal procedure, which allows for conformity, and the reduction of the sentence by making good the loss, as well as in the relevant international rules.

Usually, mediation is carried out in connection with less serious crimes, such as petty offences, though it is possible to use it in cases of crimes if the circumstances suggest this.

The General Council of the Judiciary supports and supervises mediation initiatives which are carried out in the courts of preliminary investigation (*Juzgados de Instrucción*), Criminal Courts (*Juzgados de lo Penal*) and Provincial Courts (*Audiencias Provinciales*) in Spain. Up until now, the greatest experience in quantitative terms has been in Catalonia and the Basque Country.

Mediators are professionals who have received special training. Only certain laws and regulations in some Autonomous Communities refer to the training required to become a family mediator. Generally speaking, the mediator is required to have a university qualification, at least average grade, and in addition undergoes specific training in mediation with highly practical courses lasting more than 100 hours.

The specific training in mediation is normally offered by universities and professional associations, such as psychologists' or lawyers' associations.

Cost of mediation

Generally speaking, mediation connected with the court is free of charge.

In the employment field, the services of the Autonomous Communities and of SIMA are free of charge.
In the family field, the services offered by the bodies working with the courts are generally free of charge. In Catalonia, the cost of the mediation process is regulated in the case of people who do not receive legal aid.
In the criminal field, the mediation offered by public bodies is free of charge.
Outside of mediation connected with the court, the parties are free to use a mediator and to pay freely agreed fees.

Enforcement of an agreement resulting from mediation

Generally speaking, no specific rules exist about the enforceability of agreements resulting from mediation.

The possibility of enforcing a mediation agreement depends on the degree of availability of the issues about which the agreement has been reached:

In the employment field, the degree of involvement by the judge is high, since the level of availability is high.

In the civil field, the judge has a duty to deal efficiently with the mediation agreement, on the basis that it is a settlement (Art. 19 LEC), although in those fields where the parties do not have availability (matters of marital status between parties in matrimonial proceedings), the judge can approve or not approve the agreement, in whole or in part.

In the criminal field, the judge will take the agreement into account if it is not illegal, although he has a wide margin of discretion.

6 Conclusion

Accessibility

Access to the relevant public authorities of the Autonomous Communities is perceived as good. The authorities offer a great variety of contact possibilities such as electronic forms, virtual assistant, electronic “letter box”, phone numbers and more. In general, the Environmental Protection Departments of the Autonomous Communities are accessible via phone daily during business hours and the “letter box” for citizens is available 24 hours per day.

For the Ombudsman, a form (in Spanish only) is available on the website. Mail in forms are also accepted and information is available on the website in English and French, in addition to Spanish.

Transparency

The public authorities are in general required to register complaints. The complainants have the right to request information on the stage of proceedings and access to the documents related to their case at any moment. There appears to be no legal obligation for the administrative bodies to give feedback on their own initiative. However, at least in two of the Autonomous Communities, this seems to be administrative practice.

Periodic reports from the competent authorities of the Autonomous Communities, especially on environmental complaint-handling, in general are not publicly available.

It has been reported that the competent authorities at least in some of the Autonomous Communities have to implement a system of auto-evaluation on the basis of a set of quality criteria and are subject to (internal) audits. However, the results of these audits are not publicly available either. The transparency of the overall complaint-handling system could be made more transparent by doing so.

In terms of the proceedings of the National Ombudsman as well as the regional ombudsmen transparency exists as these institutions have to report to the Parliament annually in detail on their work and cumulatively about the complaint-handling. These reports in general are publicly available on the websites of the National Ombudsman and the websites of the regional ombudsmen respectively. Simplicity

Handing in complaints is quite simple However, due to the great number of competent authorities and the highly decentralised system it is not always easy to identify which authority to contact for particular issues (see, for example, the field of water protection).

Confidentiality

The confidentiality of the personal data during the complaint-handling of the authorities of the Autonomous Communities is legally guaranteed. The investigations and relevant procedures conducted by the Ombudsman and his staff shall be performed in absolute secrecy. The Ombudsman's office also assures that personal details are kept out of publications and periodic reports.

For complaint-handling, there are general rules in place (see Basic Law 15/1999, of December 13 about Personal Data Protection) for safeguarding the confidentiality of the personal data.

Fairness

The Ombudsman's office has legal obligations in place to ensure neutrality and fairness. For instance, within ten days of appointment and before taking office, the Ombudsman must terminate any arrangements that may affect partiality.[343] If any situations arise *after* taking office that would affect his neutrality, the Ombudsman must resign.

For the complaint-handling in the Autonomous Communities, such legal obligations and oversight were less clear and practices vary.

Independence

In the case of the Ombudsman, there could potentially be an independence issue given that the official is appointed by the Parliament, the origin of the budget.

However, the Organic Law provides that the Ombudsman shall not be subject to any binding terms of reference and shall not receive instructions from any authority, so that he "shall perform his duties independently and according to his own criteria." The Ombudsman also enjoys immunity in his official duties, as do the supporting Deputy Ombudsmen. Further, the Ombudsman is restricted from any political ties. For the Autonomous Communities, independence may be ensure with the help of tribunals and ombudsmen to control work of the administrative bodies. There is no general duty to report about the complaint-handling in environmental matters for the respective authorities.

Comprehensiveness

The Ombudsman has competences overseeing the activities of all government levels as well as those of enterprises which provide public services. However, the Ombudsman only deals with cases between citizens and administrations. Some Autonomous Communities have regional ombudsmen, but not all.

The majority of complaints in relation to the alleged illegality or non-compliance by a private person or company in relation to EU environmental law are handled by the environmental protection departments of the Autonomous Communities, depending on the nature and the scale of the illegal activity. Complaints related to the failure of a public or private body to provide an environmental service or of a public body to respect procedural or administrative guarantees will be mostly handled by the Autonomous Communities.

Mediation in the Spanish Autonomous Communities is mostly developing still and there is no mediation law at national level, although the Ministry of Justice is working on transposing

343 Organic Act, Art. 7.2

Directive 2008/52/EC on Mediation as a legal framework at national level. However most mediation is for the employment, family and criminal fields.

Effectiveness

The number of individuals complaining to the national Ombudsman increased significantly from 2010 to 2011. In 2010, the Ombudsman set out a total of 448 resolutions to the different public administrations in 2010: 106 recommendations, 197 suggestions, 140 reminders of legal duties and 5 warnings.[344] This is for 24.381 complaints (individual and collective). Of these, a total of 54 recommendations and 89 suggestions had been accepted at the time that the annual report was filed. In regard to the recommendations made in 2008 and 2009, by the end of 2010, a total of 77.78% (2008) and 70.52% (2009)of them had already been accepted; and in regard to the percentages related to the suggestions, they indicate a degree of acceptance for each one of these years of 65.26% (2008) and 59.82% (2009).[345]

Environmental complaints with the Ombudsman have vacillated, dropping significantly in 2009 but rising again in 2010. These complaints have been shown to be used for a wide range of environmental issues.

Information on periodic external or internal review processes, for example on the effectiveness of environmental complaint-handling and especially its respective results, is not publicly available in general for all the public authorities that are handling environmental complaints. As noted, however, as for the Autonomous Community of Madrid the administrative authorities are obliged to implement evaluation systems on the basis of a set of quality criteria in order to guarantee for an auto-evaluation of the public services provided by the administration. These mechanisms and implementation activities are periodically evaluated by the Directorate-General of Quality of public services.

Information on the frequency/regularity of complaints and trends in general is not made publicly available by the administrative authorities. A Spanish environmental NGO reported that it is addressing one or two petitions or complaints per week to different authorities across the country. Environmental NGOs in Spain also reported problems with administrations forwarding complaints to other authorities, with the problem going unsolved.

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344 http://www.defensordelpueblo.es/en/Documentacion/Opcion3/Documentos/resumen_informe_ingles_2010.pdf

345 Ibid.

Mechanisms to address multiple complaints

No extraordinary system was mentioned to be in place for addressing multiple complaints. Though as mentioned earlier, complaints from different applicants on the same issue are bundled - when large numbers of complaints regarding the same problem are received, these are accumulated and managed as a single case with multiple applicants.However it was not mentioned whether this is done automatically via a software or “by hand”.

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Chapter 5: Identification and analysis of good practice features as well as barriers of complaint-handling mechanisms

1 Introduction

The aim of this section is the identification of good complaint-handling practices and features across the Member States analysed under Chapter 4 of this report. These are practices that are likely to improve citizen confidence in the application of EU environmental law and at the same time ensure an effective and cost-effective system of checking implementation of environmental law.

Chapter 2 distinguished the following principles as key principles for ensuring citizens trust into a complaint handling system:

- transparency,
- accessibility and simplicity,
- confidentiality and
- independence and accountability.

Good complaint-handling practices also depend on the existence of a number of specific administrative practices, as stated in chapter 2, including:

- Availability of scientific, legal and other technical expertise
- Mechanisms/Benchmarks for ensuring timely response to complaints
- Mechanisms to review the performance of complaint-handling systems
- Electronic record-keeping mechanisms
- Mechanisms to address multiple/campaigning complaints
- Mechanisms shifting the burden of handling complaints on polluters

In the remainder of this chapter, we will underpin these principles of good governance and good administrative practice with illustrations of existing practice in the ten Member States that were subject to assessment under this study. Where possible and depending on

available information, we will also point to the main gaps and problems compared to the ideal-type implementation of complaint handling processes as described in chapter 2.

Quantitative data on complaint handling practices in the Member States are rare. There is a general difficulty with regard to comparing data as administrative structures and practices as well as legal obligations differ considerable. These apparent data difficulties aggravate a detailed assessment of social, economic and environmental impacts, which will mostly be discussed in qualitative terms. Specific considerations on the impacts of identified good practices will be based on the national context from where the good practice has been identified.

2 Identification and analysis of good practice features from country studies for good governance principles

In this chapter we identify and analyse good practice cases implementing the principles of transparency, accessibility, confidentiality and independence and accountability. Given the political and administrative diversity of Member States, specific rules and mechanisms vary to some extent from one Member State to the other. What functions as good practice in one Member State might be inapplicable in another as the administrative and policy context conditions are not appropriate. However general principles can be applied to all domestic administrative and political context conditions.

2.1 Transparency

A sufficient level of regulatory clarity, including provisions for registration, handling and reporting of environmental complaints, is a precondition for transparency. While some Member States are characterised by a strong participatory culture, administrative practices tuned to openeness and transparency and a public that is used to engage in open interaction with public authorities, clear provisions and legally secured rights are beneficial to ensure transparency. This is particularly the case for Member States where there is a low trust into the performance of public authorities.[346]

A key problem cutting across all case studies is the public perception that authorities are not systematically following up on complaints and that the rationale informing decision-making is

346 *Ibid.* In 2008 the level of trust on local and regional authorities was at 70% in Denmark, 67% in Austria and 65% in Germany.

not always made transparent. The absence of any formal obligation to communicate transparently about the status of the process beyond a letter of acknowledgement of receipt and provide information on the final decision taken is striking across all case study reports. In Member States with a strong participatory administrative culture administrative routines can level this out.

Box 1: Example insights from case studies

NGOs in Ireland argue that the lack of a requirement to actively provide feedback to complainants often results in complainants having the impression that local authorities are not following-up on the complaints. NGOs spend a considerable amount of time in calling and writing to local authorities in order to make sure that the complaint is being appropriately considered. However, even this process of active follow-up is facing its limitations if there is no overall administrative routine and practice for public authorities in having regular contacts with civil society. Similarly, in Greece it was highlighted that many complaints (in particular, those sent to regional authorities) are left unhandled without citizens being informed on the reasons why no action has been taken, as according to Greek law a complaint may be rejected by a public authority by simply not acting upon it ("rejection by silence"). This may result in a perception of arbitrariness and inefficiency in the enforcement of environmental rules.

The case studies highlight the lack of formal obligations to keep records of complaints or regularly report complaints to the public. There is evidence for Austria and Germany that this lack did not appear to have any repercussion on the public trust on complaint-handling authorities and the enforcement of environmental law in general, but the situation for the other Member States analysed remains unclear in this regard. Follow-up on complaints would also include informing complainants about the procedures to be taken by authorities when a complaint is regarded as being relevant. There is no formal obligation and systematic approach that could be identified in the Member States analysed. While there are undeniably overall problems with practical performance the country case studies point to a number of good practice examples which help to foster overall transparency.

Good practice 1: Obligation to acknowledge the receipt of complaints within a certain timeframe and provide traceability of the complaint

The obligation on complaint-handling authorities to acknowledge the receipt of a complaint within a certain timeframe in case the complaint is made by letter, e-mail or through an online system, is an important first step for ensuring the traceability of complaints. Acknowledging the receipt of a complaint provides the citizen with an initial guarantee of responsiveness and the confidence that the complaint is being considered by the relevant authority in a timely manner. While involving basic costs of correspondence (minimised when correspondence is in electronic form), the existence of deadlines and benchmarks for acknowledging complaints may also in certain cases contribute to reducing the administrative burden on the relevant

authority as until the deadline the complainant will not feel the need to communicate further with the authority.

The acknowledgment of receipt for complaints within a certain timeframe is a very common administrative requirement for public authorities in most Member States and is a feature common to all Member States that have been analysed in this study. Some indicative examples are presented below in box 2. For the formal acknowledgement of receipt, setting a clear time frame can be regarded as good practice. It increases the responsiveness of the system.

Box 2 Example insights from Member States analysed

In Slovenia, all public authorities are required by law (Decree on Administrative Operations) to respond to every written communication within 15 days. If the competent authority is not able to perform the required action within the thirty days, it is obligated to provide feedback and to inform the complainant about the time needed for resolving the complaint.

In Lithuania two different deadlines are legally set for the competent authority; twenty working days for the regional environmental departments and ten working days for the Parliament and the Government.

In France a general legal requirement on public authorities to acknowledge receipt of communications is explicitly provided in the Law of 12 April 2000. However, only IPCC authorities are required to acknowledge a receipt within a given time-frame (15 days, following requirements from the strategic national inspection plan).In 2010 only 45% of complaints were being acknowledged within the time frame.

A key good practice is providing the complainant with a reference number to ensure traceability of the complaint. This is, for example, the practice in Ireland. On the basis of the information that was being available for the case studies it was, however, not clear to what extent such reference numbers are being provided together with a letter of acknowledgement. This requires further consideration. Moreover, the key here is not only to provide a reference number, but to enable easy identification of a complaint and commit authorities to reply to complainants in a timely manner during the process, hence linking traceability and follow-up (see good practice 2).

Good practice 2: Mechanisms and obligations to provide feedback on the progress of the complaint

The obligation to acknowledge a receipt of a complaint needs to be distinguished from the obligation to provide a reply in substance to the complaint. For the detailed feedback on substance, a fixed timeframe for responding for all public authorities might not be optimal in all situations, as cases differ and relevant authorities might not always be available to contribute to the response in time. However, it can be considered an option that authorities have to determine an indicative time frame when complainants will receive the decision on the complaint individually and inform accordingly with the letter of acknowledgement. A

generic requirement to provide follow-up feedback once the decision has been reached can be regarded as good practice.

In many Member States "notification upon request" functions as administrative routine practice, principally. An example is Ireland, where both local authorities and national environmental protection authorities are required to give feedback at any time the complainant so requests. This practice offers a good degree of transparency and responsiveness. The problem of this solution is that complainants have to spend considerable time and effort in calling and writing to enforcement authorities to make sure that their complaint is being acted upon, whereas multiple follow-up requests may also potentially increase the administrative burden for enforcement authorities.

The lack of a need to take action on a complaint deemed relevant is an impediment to effective implementation and enforcement of environmental law. Committing authorities to take action upon complaints hence provides an option for addressing this shortcoming.

Box 3: Example insights from Member States analysed

In a few Member States individual acts commit authorities to act upon complaints. For example, in Germany authorities are committed by Environmental Damage Act to act upon formal complaints submitted by citizens in relation to specified activities under the Act and where the complaints are not considered being without substance. A similar case exists inIreland where public authorities are committed by the Planning and Development Act to issue warning letters to owners in case of proof or substantial evidence of unauthorized development. Also Danish authorities are legally required to investigate any complaint and follow up when formal complaints are submitted by citizens in relation to certain activities and in case the complaint is not considered without substance.[347]

Generally a legal obligation to address the problem that is being brought forward through complaint, if deemed relevant, may have the effect of reducing the risk of arbitrariness and is likely to increase the responsiveness of public authorities to reported breaches of environmental law. The prospects that authorities have to take action or justify clearly why they are not taking action in case of complaints that are addressing a relevant problem will increase the transparency of the decision making and therefore may lead to greater trust in public authorities. This would also facilitate greater engagement of the civil society in helping the authorities in identifying breaches.

Good practice 3: Publication of reports on complaint-handling

[347] See country studies in Chapter 4 for more specific information.

This concerns both the communication with individual complainants about their cases, but also public access to individual cases and publication of general common information about complaint-handling activities on an annual basis.

Clear communication on the actions taken upon individual complaints and/or on the decision not to act upon an individual complaint, is a key element for ensuring transparency. A benefit of this practice would be that it allows the complainant and/or the public at large and eventual independent authorities with the task of checking the performance of the complaint-handling body to monitor the enforcement activities of public authorities and their responsiveness to specific complaints. It also reduces the scope for arbitrary decisions being taken by local authorities, thus avoiding the public perception of bias and/or inefficiency when a public authority decides not to act, as decisions can be clearly traced.

Reporting back to individual complainants should be regarded as good practice. Individual complainants need to be notified about the outcome of their complaint. However, the public publication of each individual complaint can involve a higher administrative burden for authorities while it might add little value added as not every minor complaint is of relevant interest to the public. This burden will be particularly problematic in case of authorities handling a high number of small local complaints (all the authorities engaging in this practice identified above operate at regional or national level)..

Reporting back to individual complainants is not common practice among the Member States analysed for this study.

Box 4: Example insights from Member State cases

A noteworthy practice comes from Germany. The German Bundestag Petition Committee allows the publication of petitions (e.g. complaints over the compliance of public authorities with environmental legislation) on its website upon request of the petitioners.[348] This improves both the transparency and accountability of the complaint-handling system, as it allows the petitioner to ensure that the wider public is aware of the petition, thus putting the follow-up actions of the petition committee under the public spotlight. The publication of complaints may also have a "name and shame" effect, pushing the polluter to bring its conduct into compliance even in the absence of direct enforcement actions.

Another example is Ireland, where public authorities (EPA, local authorities) are required to draft a report on the actions taken upon each individual complaint handled. The reports are not, however, actively distributed but are made accessible to the public upon requests by citizens.

[348] The Petition Committee in 2010 received 17.000 submissions, out of which 479 concerned environmental matters.

Reporting to the larger public about individual complaints by local or regional ministries or agencies is not standard practice in Member States.

Reporting by local and regional authorities and by other institutions such as the Ombudsmen needs to be distinguished. Ombudsmen in Member States analysed are required to report on their activities by the rules of the European Ombudsmen network. They focus on fewer cases than local or regional authorities, often investigate administrative practice and hence benefit from a higher level of transparency and accountability towards the public and civil society organisations. The publication of those reports may also have at the same time a "name and shame" function.

Box 5: Example insights from Member State analysis

Key examples from our case studies concern the practice of Ombudsmen. The Irish Ombudsman regularly publishes reports on all completed complaints on its website.[349] The Greek Ombudsman has a similar practice. Key examples of other authorities publishing regular reports include the Hellenic Environmental Inspectorate and the Polish Chief and Regional Inspectorates that publish periodic reports including information on the complaints that have been concluded.

Apart from reporting on individual cases annual reporting on overall performance of environmental complaint handling, in terms of complaints received, content areas covered, decision-taken (positive/negative) and duration of decision-making processes should be considered a standard good practice. Such activity reports provide important information for the evaluation of the overall effectiveness and efficiency of the complaint-handling mechanisms in place. A series of annual activity reports also builds up a sufficient information base that can help underpin a better understanding of the needs to change relevant legislative provisions, non-legislative guidance or other capacity needs. While overall annula reporting is the case in a few Member States analysed for this study, it is not common place in all Member States. From the information provided it was also not possible to conclude if the information was actively used, ie if it fed into discussions about needed improvemenets to complaint-handling mechanisms. His leaves a major information gap in many Member States as it is not clear how many complaints are being made (given that not all complaints are registered) or how many complaints are effectively addressed and what percent of them were followed up by an investigation and an enforcement action. The lack of information also prevents identification if systemic implementation and enforcement problems exist for particular fields of environmental law (for example, illegal development, illegal

[349] The Ombudsman Office of Ireland received 3602 valid complaints in 2011.

landfills) and what lessons could be learned from existing practice, both within a Member State and between Member States.

Table 1 below summarises the good practices for ensuring transparency that have been identified in the country analyses of the 10 Member States considered in the present study.

Table 1. Transparency – Synthesis of Good Practices

Good Practices	Member State examples		
Obligation to acknowledge the receipt of complaints within a certain timeframe and provide traceability: • Acknowledgement of receipt is standard practice across the Member States analysed, but only 6 out of 10 Member States mandate a time deadline • Providing reference numbers with letters of acknowledgement can be regarded standard practice in all Member State analysed, but information is not definite	Slovenia: Decree on Administrative Operations requires every authority to all letters received in physical and electronic form and is obliged to answer any letter within 15 days. Lithuania: two different deadlines are legally set for the competent authority; twenty working days for the regional environmental departments and ten working days for the Parliament and the Government.	France: the strategic national inspection plan 2008-2012 provides that in the case of complaints regarding IPPC an acknowledgment of receipt should be sent to the complaint within 15 days after the matter has been brought before the competent authority.	In Ireland, authorities provide all complainants with a reference number.

Mechanisms and obligations to act and provide feedback on the progress of the complaint, both to individual complainants and public: • Providing feedback is common practice, but we could only trace two Member States that have concrete requirements for public authorities to systematically respond	Lithuania: 30days are required for authorities to give feedback. Germany /Ireland: requirement to give feedback to complainants on the actions taken upon the complaint upon any *ad hoc* request by the complainant.	France: Legislation provides that any person establishing a relationship with public authorities has the right to know the name, surname, function and administrative address of the public staff member in charge of handling his request/complaint. France: Strategic national inspection plan 2008-2012: the complainant may choose in the complaint form to be informed. In that case follow up measures addressing the matter communicated to the complaint within 2 months.	Poland: Competent Authority is required by law to investigate the complaint within 30 days. If the competent authority is not able to perform the required action within the thirty days, it is obligated to provide feedback and to inform the complainant about the time needed for resolving the complaint. Germany: Environmental Damage Act: competent authority will take action when an application is submitted by the affected party or an association entitled to appeal under the act, and the facts plausibly suggest the occurrence of environmental damage. Denmark: authorities are required to act in the case of alleged illegality/non-compliance whether they are informed of such cases through monitoring, news or formal complaints.

Publication of reports on actions taken upon complaints and overall compliant handling performance: (This is not standard practice for public authorities, but more of a standard practice for Ombudsmen who tend to report on individual complaints either voluntarly or upon request	Germany: petitions filed before the Bundestag Petition Committee can be made public and published on the Committee's website upon request. Ireland, Austria (Ombudsman): reports on actions taken upon individual complaints need to be drafted and made accessible to public upon request.	All Ombudsmen report on their work. In Austria the Ombudsman has a constitutional obligation to examine every complaint and inform the complainant on the results of the eventual further proceedings. It is an established practice for the Ombudsman to explain to the complainant the reasons why a complaint was not taken up	.

2.2 Accessibility and simplicity

Accessibility and simplicity of complaint-handling procedures are also a key element for ensuring citizen's trust in the application of environmental law and for ensuring that complaints on breaches of environmental law are actually reported to local or national authorities. The more procedures are publicised, open and understandable, the higher the possibility citizens will perceive the local and national complaint-handling systems as viable and useful avenues for interacting with enforcement authorities in order to bring to their attention alleged breaches of environmental law and/or seeking redress.

Country case analyses show that complex division of responsibilities between enforcement authorities is a common challenge in Member States. They aggravate an easy accessibility as it creates uncertainties for complainants which authority needs to be contacted. While it is principally relatively straightforward to produce explanatory guidance on key steps of the environmental complaint handling processes and relevant actors engaged therein, these kind of easy accessible information overview documents are not standard practice in the Member States analysed. In the country studies on Greece, Poland, Denmark, France and to certain degree Austria, for example, it was reported that there is generally insufficient information available as to where and how to lodge a complaint. In Denmark for example it was reported that 70-80% of cases lodged before the Ombudsman are rejected temporarily for procedural reasons (e.g. failure to exhaust other administrative procedures, failure to provide personal details or failure to submit the complaint within the prescribed time). Better information about the right channels for complaint-handling could easily improve overall performance.

The following four good practice features were identified in the country studies as means to improve accessibility and simplicity of complaint-handling systems:

Good practice 1: Dissemination of information on how to complain and to what authorities in clear and accessible language

Wide dissemination of information on how to complain and to which authority is likely to be the most cost effective way to ensure better access to the complaint-handling systems.

Member States analysed for this study have been engaging in various formats. In Ireland the network of environmental enforcement authorities coordinated by the OEE (NIECE) launched a coordinated information campaign ("*See something, Say something"*). Information on how and where to complain, the procedural guarantees available and contact numbers of all enforcement authorities were both made available on the websites and offices of all local and national enforcement authorities through a common leaflet and actively disseminated through local radio programs. NGOs interviewed maintained that the campaign highly improved the accessibility of the national complaint system as now the majority of citizens are aware or have easy access to information on where and how to lodge an environmental complaint.

Ombudsmen seem to more generally engage in information sharing and education activities, having relevant information on their websites in all Member States analysed.

Good practice 2: Possibility to submit complaints or petitions in electronic form

In light of the widespread and growing use of the internet in EU households[350] and the increasing use of websites as a primary means to obtain information, communicating and submitting information to public authorities,[351] the possibility to submit environmental complaints through online forms certainly facilitate and speed up access for a large section of society. It is important to note that this service is to be considered as a good practice as long as it is supplementary and not alternative to more traditional communication media (telephone, letter). Imposing online submission as the only media through which citizens may submit complains would likely have the opposite effect of restricting rather than enhancing accessibility. Registered letters may offer more secure traceability, in particular, in cases challenging non-action by the authorities.

While it is not always easy to establish, it is safe to assume that in all Member States analysed relevant authorities can be reached by email. However, the rather relevant question is if there are specific complaint handling portals or other interactive web-based solutions that

[350] 56% of EU citizens used the internet every day or almost every day in 2011 and the 73% of households had access to the internet compared to 49% in 2006 (Eurostat, 2011).

[351] In 2011 almost half of the internet users had obtained information from public authorities' websites within the previous 12 months. 28% of internet users declared to have submitted online forms to public authorities (Eurostat, 2011).

offer complainants an easy and uncomplicated way of lodging a complaint. In Germany the National Petition Committee and other authorities now offer the possibility to submit petitions and complaints via electronic forms and interactive portals. This is also the case for the Municipality of Thessaloniki[352] (Greece) which has now developed a portal through which complainant can submit complaints and track the status of the complaint online. Similarly in Ireland the Environmental Protection Agency (EPA) has recently set up a system allowing complainants to directly file complaints on licensed facilities (IPPC/Waste/Wastewater licensees) through the EPA website.

Good practice 3: Obligation on all authorities to refer the complaint to the competent authority in case the subject matter of the complaint falls outside their competences

In light of the problems of complainants to find the right authority to start the complaint with an obligation for every authority to transfer a complaint to the responsible authority could provide a significant improvement. This is already practice in some of the Member States analysed for this report. In France, Denmark, Lithuania and Poland all public authorities are subject to an obligation to refer the complaint to the competent authority in case the subject matter of the complaint does not fall under the remit of the authority receiving the complaint. In Poland and Lithuania, it is legally required that in case an authority is not competent to deal with a certain complaint, it has to immediately, and no later than within seven days, send it to the competent authority and notify the complainant about the action. The key here is to ensure that such an internal mechanism needs to be informed through clear time tables, as otherwise unnecessary delays emerge.Complainant needs to be informed as well.

Good practice 4: Centralised national environmental complaint line that refers complaints to competent authorities

The problem of accessibility and limited information can also be addressed through establishing a central hotline that complainants can refer to for further information. Across the Member States analysed for this study this practice only exists in Ireland where a centralised 24 hours national environmental complaint line was set up in 2011 for all types of complaints about environmental pollution. The complaints made through this national phone number are recorded by a centralised call centre and forwarded to the competent authority. The existence of such national line appears to be a much more effective solution for improving

[352] This was recently developed in order to implement the "Kallikratis plan" that encouraged the development of IT applications for citizens with a view to improving the interaction between the civil society and the regional and national authorities. This practice should however be seen as an exception rather than the rule in Greece, where a number of local and regional complaint-handling authorities were reported to be lacking basic electronic record-keeping systems.

accessibility than the system described above. Complainants who are not sure as to which authority is responsible for dealing with a particular breach of environmental legislation have just one simple and easily discoverable point of access to the whole national environmental complaint system. A specialised call centre is also likely to be able to refer the complaint to the competent authority in a much more effective and timely fashion.

Table 2 - Accessibility and Simplicity – Synthesis of Good Practices

Good Practices	Member State examples		
Dissemination of information on how to complain and to what authorities in clear and accessible language: (The dissemination of information on how to complain is done to various degrees across the 10 Member States but only Ireland has actively disseminated this information.)	Ireland: "*See Something Say Something"* campaign. Information on how and where to make complaints, has been widely disseminated through internet, leaflets, radio with the use of clear and non-technical language.	Germany: Information on petitions easily available on the internet in English and German.	Austria: Only regional environmental Ombudsmen provides citizens with information
Obligation on all authorities to refer the complaint to the competent authority in case the subject matter of the complaint falls outside its competences (Five of the ten Member States have an obligation for authorities to refer the complaint to the competent authority. This obligation can also be achieved by setting up a single complaint	Denmark and France: Authorities receiving complaints are required by law to refer the complaint to the competent authority in case the complaint is not under their remit	Poland and Lithuania: It is legally required that in case an authority is not competent to deal with a certain complaint, it has to immediately, and no later than within seven days, send it to the competent authority and notify the complainant about the action.	

handling authority, whose responsibility it is to forward the complaint to the competent authority.)		
Centralised national environmental complaint line that refers complaints to competent authorities (Of the ten Member States only Ireland has a centralised national complaint line in place.)	Ireland: a 24/24 National [Environmental] Complaint Line has been set up. Complaints made through this line are recorded and sent to the competent authority.	

Good Practices	Member State examples	
Possibility to submit complaints or petitions in electronic form: • (Submitting the	Ireland: complaints about licensed facilities may be now directly filed online on the EPA website. In Austria, district commissions and	Germany: some authorities, including the National Petition Committee offer to submit complaints via electronic forms/ interactive portals.

complaint as an email is common, only three out of ten Member States seem to use electronic forms/portals to submit complaints or petitions.)	state governments provide general information and online forms.	
Obligation on all authorities to refer the complaint to the competent authority in case the subject matter of the complaint falls outside its competences: (Five of the ten Member States have an obligation for authorities to refer the complaint to the competent authority. This obligation can also be achieved by setting up a single complaint handling authority, whose responsibility it is to forward the complaint to the competent authority.)	Denmark and France: Authorities receiving complaints are required by law to refer the complaint to the competent authority in case the complaint is not under their remit	Poland and Lithuania: It is legally required that in case an authority is not competent to deal with a certain complaint, it has to immediately, and no later than within seven days, send it to the competent authority and notify the complainant about the action.
Centralised national environmental complaint line that refers complaints to competent authorities (Of the ten Member States only Ireland has a centralised	Ireland: a 24/24 National [Environmental] Complaint Line has been set up. Complaints made through this line are recorded and sent to the competent authority.	

national complaint line in place.)

2.3 Confidentiality

Allowing for personal details and other information being kept confidential and not disclosed to the public, and in particular to the regulatory addressees against whom the complaint has been lodged, can enable complainants to come forward to complaint-handling and enforcement authorities without fearing threats and other forms of retaliation.

Problems in this regard have only been raised in relation to Ireland, where an NGO reported that from their experience with the system they had little trust in the ability of local authorities in keeping details of complainants confidential. Moreover, given that Ireland is a small country, even if details of a complainant are kept confidential complainants exercising certain professions (port employees, rangers, fishermen) are easily identifiable and particularly vulnerable to dismissal or retaliation. As a result NGOs often act as intermediaries between vulnerable complainants and local authorities in order to conceal the identity of the complainant. It was noted that further legal protection of complainants should be devised in the form of effective whistleblower protection provisions.[353]

However, in the Member States analysed in the case studies, it was reported that anonymous complaints are generally either rejected or given a low priority by complaint-handling authorities. Complainants are nevertheless given the opportunity to request authorities to keep their personal details confidential. This right is generally protected by law under Freedom of Information legislation or more specific legislation on the protection of personal data. Specific whistleblower protection provisions could not be identified in any of the Member States analysed under this study.

Table 3 below summarises the good practices for ensuring the confidentiality of complainants that have been identified in the country analyses of the 10 Member States considered in the present study.

[353] For a recent study on whistleblower legislation see Transparency International (2010) *An Alternative to Silence – Whistleblower protection in 10 European Countries*, Available at: http://www.transparency.org/whatwedo/pub/alternative_to_silence_whistleblower_protection_in_10_european_countries

Table 3. Confidentiality – Synthesis Table

Table 3: Confidentiality – Synthesis Table	
Complainant can request in writing for its personal details be kept confidential	
(In five of the ten Member States the complainant can request in writing for personal details to be kept confidential. In addition in Germany and Slovenia the anonymity of the complainant is the default.)	Complainants may request complaint-handling authorities to keep their personal details confidential.

2.4 Independence and accountability

The independence of enforcement authorities from political influence and private interests and the existence of mechanisms to hold enforcement authorities accountable to citizens are two interrelated elements which are fundamental for ensuring citizen's trust in the system dedicated to the enforcement of environmental law. Reporting and auditing practices, are a key tool in this respect, though they remain underdeveloped in most of the Member States analysed for this study as discussed earlier.

A good balance of independence and accountability ensures that public authorities' complaint-handling activities are not driven by bias and ulterior motives while ensuring at the same time that a 'system of checks' is in place to guarantee the efficiency of enforcement activities or the fairness of their procedures. Systems of checks may range from obligations to publish regular reports in order to enable the public and the authorities' themselves to scrutinise the activities of the complaint-handling body to the performance of external audits by specialised or hierarchically superior bodies. Systems for guaranteeing the independence and accountability of public authorities are often very specific to the particular administrative and legal culture and set-up of a specific member state.

As a result, while a set of good practices in different Member States could be identified, those can hardly be translated into general principles without risking a gross oversimplification, nor can they be assessed in isolation from their very specific national and local context. The following analysis therefore will be limited to a large extent to a descriptive account of different practices in the Member States. The choice of practices is also limited to the mechanisms that have a particular application in the sphere of pre-judicial environmental enforcement. General mechanisms of judicial review, for example, are outside the scope of the present section.

Concerns over the independence of environmental complaint-handling authorities are common place in many Member States. The Irish case is illustrative. In Ireland, the majority of environmental complaints are handled by local authorities. NGOs raised the issue that in such a small country however there is the perception that local authorities have little independence as enforcement personnel may often have personal connections with regulatory addressees. As a result officers may often feel pressured not to act or to avoid taking coercive action to stop environmentally harmful activities, resulting in bias in decision-making.

In terms of accountability on the other hand, concerns were raised over the Office of Environmental Enforcement, which is outside the jurisdiction of the Ombudsman or any other higher administrative authority.

A similar concern was raised in relation to the environmental complaint-handling system in Austria, where the great majority of environmental complaints are handled by District Commissions, which have no established higher administrative authority with the competence of checking their performance, apart from the Ombudsman, which has nevertheless only soft enforcement powers. This is more or less the case for all Member States analysed for this study.

Based on the analysis of interviews and literature, the main issue seems to be the loss of public trust as a result of authorities not providing sufficient explanation as to why suggestions of the public were not accommodated.

Good practice 1: Existence of an independent body with monitoring powers over the operation of environmental complaint-handling systems

The existence of an independent body with monitoring powers over the operation and performance of complaint-handling and related enforcement activities performed by public authorities ensures an important layer of accountability.

Establishing a specific independent monitoring and evaluation capacity in the field of environmental law is not common standard in the Member States analysed. One example is Greece, where the Special Secretariat for the Environment and Energy Inspectorate (SSEEI) was set up in 2010. SSEEI has a supervising role in the implementation and the compliance with the environmental legislation by following a horizontal approach covering all competent authorities. .

A similar monitoring function is carried out in Ireland by the EPA Office of Environmental Enforcement (OEE). However, complaints under the remit of local authorities made before the OEE are always referred first to local authorities in order to avoid institutional conflicts, overlaps and avoid overburdening the enforcement functions of the OEE.

In Ireland a network of “Environmental Complaint Coordinators” (ECCs) has been set up. This initiative resulted in local authorities assigning the role of ECC to one staff member. The ECC has the responsibility for ensuring that complaints are appropriately considered and followed-up and is the contact point between the Environmental Protection Agency (EPA) and the local authority, making it easier for the EPA to supervise the handling of complaints at local level and ensure that complaints on the statutory performance of local authorities are appropriately resolved by local authorities without the need of further action.

National Ombudsmen are a frequent feature in many Member States. Normally, they are empowered to investigate general complaints of maladministration against public authorities and make recommendations to the authorities when the investigation is concluded. Quite often the Ombudsmen function as a last resort when all other options have been exhausted. However, their mandate does not always explicitly (though often implicitly) cover the responsibility for the field of environmental law. In Greece, Austria, Denmark, Ireland and Lithuania, the jurisdiction of the Ombudsman is broad enough to encompass the failure of enforcement authorities to act appropriately upon an environmental complaint that they had received (e.g. systematic failure to act upon complaints, inefficient enforcement actions, etc.) thus adding an easily accessible layer of accountability to the environmental complaint-handling system Ombudsmen identified in Member State country studies are generally independent and have only soft accountability powers. Ombudsmen have normally also no specific expertise in the environmental sector and can more easily refuse a complaint even in case it fulfills the necessary procedural requirements. However, investigations and reporting by the Ombudsmen is normally a helpful support to individual complainants.In some countries such as in Denmark and Greece the Ombudsman has clear jurisdiction to investigate and criticize acts and decisions of all public authorities.

In Austria the members of the Ombudsman Board, once elected, cannot be divested of office before the end of their mandate, providing a greater political independence. The Ombudsman Board has very little statutory constraints on its *modus operandi* but has a constitutional obligation to examine every complaint of maladministration.

Table 4 below summarises the good practices ensuring independence and accountability of complaint-handling mechanisms that have been identified in the country analyses of the 10 Member States considered in the present study.

Table 4. Independence and Accountability – Good Practice Synthesis Table

Good Practice	Member State examples		
Existence of an independent body with monitoring powers over the operation of environmental complaint-handling systems (Five of the ten Member States have an independent body in place to review the operation of the complaint handling system.)	Greece: Special Secretariat for the Environment and Energy Inspectorate checks the operation of complaint-handling mechanisms of all competent authorities responsible for handling environmental complaints. In the context of complaint-handling, the role of SSEEI is not only to ensure a good operation of the mechanisms at all levels of governance but also to ensure that necessary action is taken to restore environmental damage.	Ireland: EPA Office of Environmental Enforcement has monitoring and enforcement powers in relation to the statutory performance of local authorities. Independent Audits carried out on local authorities also include the handling of environmental complaints. Ireland: A network of "Environmental Complaint Coordinators" (ECCs) has been set up.	Spain, Greece, Austria, Denmark and Ireland: Ombudsman has power to review practices of maladministration of public authorities specifically on environmental issues. This may include actions or failures to act in relation to environmental complaints.

3 Good administrative practice for handling complaints

The actual effectiveness and efficiency of a complaint-handling mechanism to a large extent depends on good administrative practice for handling the complaint. In this context a number of different good practices can be deduced from the country reports.

Good practice 1: Availability of scientific, legal and other technical expertise

The availability of sufficient legal, scientific and other technical expertise in bodies handling complaints on environmental matters is a fundamental criterion for ensuring the effectiveness of the complaint-handling system. Legal and scientific expertise is essential for both understanding the relevance of a complaint and devising the most appropriate enforcement action. Given the multidimensional nature of many complaints, a good knowledge of the responsibilities of other enforcement or complaint-handling authorities and the existence of systems facilitating cooperation, communication and coordination with other enforcement authorities in case of complaints cutting across different areas of expertise and responsibility is also central for ensuring that responses to environmental complaints are efficiently addressed.

Authorities can receive a high number of complaints. Appropriate training in "customer service" skills (e.g. appropriate oral and written communication manners) may also be important for ensuring a positive relation between the complaint-handling authority and the public, whereas lack of sufficient expertise of staff can severely hamper both effectiveness and legitimacy of the process.

The reality in many Member States is, however, currently characterized by a dwindling of available staff resources and a tendency to cover tasks which require specialist knowledge also through staff who might not have the relevant knowledge, due to capacity constraints. In smaller Member States, administrations do not always have the size to fully respond to all complaints, both including complex and more routine ones.

Finding solutions that maximize synergies across public authorities is hence a key good practice.

In Denmark, for example, the environmental enforcement department of the municipality of Vejle shares a legal secretariat with the technical department of the municipality. One lawyer in the technical department works full time on environment-related issues. It appears at first sight that sharing a common legal department across the various departments of local authorities may be a more cost effective solution. A common horizontal legal unit may be

also more efficient in reacting to complaints that may be cutting across legislation on health, consumer protection or housing legislation. Clearly this solution can only be envisaged for complaint-handling authorities that are integrated in broader administrative structures and would not be available e.g. for independent environmental protection agencies. Moreover it is doubtful to what extent this practice may be transferrable given the very different structures and responsibilities of municipalities in the different Member States. It is important to note, in fact, that the environmental complaints handled by this municipality in 2011 were merely 43. Meath City Council (Ireland), an area with a similar population number of Vejle Municipality, received 1511 environmental complaints in 2010, investigated 985 and took enforcement action in relation to 704 complaints. This suggests that an efficient solution for handling complaints in Vejle municipality may result to be inefficient in Meath City Council, where the high number of environmental complaints handled may run the risk of overburdening a common legal department unless it had a particularly strong environmental component separated from other legal issues.

An interesting practice for ensuring the availability of necessary expertise was presented in the country study on Greece, which highlighted the possibility to create interdisciplinary teams of inspectors to look upon complaints within the remit of the HEI including multidimensional aspects cutting across different policy spheres. For example, teams may include health authorities when a certain activity threatens public health, or the Financial Crime Prosecution Unit in case of illegal trade of protected species. This practice allows the various competent authorities to focus on their area of expertise while encouraging cooperation in case of cross-cutting issues and cross-cutting responsibilities.

In Ireland capacity building workshops and training of staff involved in the handling of complaints are regularly carried out by a structured network of environmental enforcement authorities (NIECE) coordinated by the OEE and including prosecutors, the police, health authorities, the Environmental Protection Agency, other specialised agencies and representatives of local authorities. Guidance material containing best procedural practices for handling complaints is also regularly updated and disseminated. This network appears to provide an effective solution to the provision of training staff involved in handling complaints, as it facilitates the sharing of expertise among public authorities, making sure that training modules reflect problems and priorities that are shared by a large number of members. The network also provides a channel for cooperation between different authorities in case problems cut across areas of expertise and responsibilities, and provides a good contact list and cooperation opportunities.

In Slovenia the Ministry of the Environment and Spatial Planning employs a specialized group of lawyers responsible for complaints on environmental matters as well as a supportive group of technical experts. In case of infringements, a team comprising a lawyer and an expert is responsible for handling the complaints.

Good practice 2: Mechanisms/Benchmarks for ensuring timely response to complaints

In a number of Member States, a key reason behind the lack of trust of citizens on the efficiency of complaint-handling authorities and their willingness and capacity to enforce environmental law is the long lapse of time between the day a complaint is filed and the day effective action or enforcement action is taken to stop the breach of environmental law. This could be explained by the fact that in the Member States studied there are either no or unclear provisions and benchmarks for providing a reply to the complainant in time, or they exist but might be constrained by a lack of resources or political will.

Setting up clear internal systems and benchmarks is hence an important element.

In Denmark, for example, in the context of appeals against environmental decisions the Environmental Board of Appeals established an internal system whereby complaints are initially assessed by a unit responsible for categorising the different complaints. Depending on the complexity of the case established in the preliminary assessment, the unit assigns each complaint to three different tracks: “track 1” for cases to be dealt within 8 weeks, “track 2” for cases to be dealt within 5.5 months and “track 3” for cases to be dealt within a maximum of 12 months. This type of system has both internal and external benefits. Internally, giving a timeframe for the response to each complaint may provide better information for ensuring a more efficient management of time and resources. Externally, as long as criteria for prioritizing one case over another are clear, accessible and explained, the communication of such benchmarks to complainants may ensure more trust in the enforcement system as complainants would be provided with a realistic guarantee that the complaint will be dealt with within a set timeframe. It is to be noted that the system described above has been set up in an administrative tribunal, not within an enforcement authority. The main difference is that timeframes for responding to complaints set by enforcement authorities would have to take into account other key factors, including, notably, the seriousness of the environmental damage reported in the complaint.

Good practice 3: Mechanisms to review the performance of complaint-handling systems

The benefits of review of performance are clearly understood. Yet they are not really a common practice in the Member States analysed. This is linked to an overall reluctance to

establish regular reporting which would enable the basis for effective analysis and comparison with a view to improve the overall performance.

The existence of such mechanisms has been reported in the country studies on Greece and Ireland. In Ireland for example, the Office of Environmental Enforcement carries out regular independent audits on local authorities. Audits review and propose recommendation both on the procedural practices set up for handling environmental complaints and the appropriateness and effectiveness of enforcement actions taken by analysing a representative sample of cases handled by the authority under review. This top-down approach is complemented by the existence of a network of environmental enforcement authorities (NIECE). Such network represents an interesting forum for mutual learning through the sharing of good practices and past experiences between different complaint-handling authorities. Guidance documents on good procedural practices for handling complaints are produced and regularly updated.

In Germany the Business Regulation Authority in Lower Saxony carries out a continuous, internal quality management through a quality management handbook. This is updated regularly and describes an efficient complaint-handling procedure to guide the official staff.

In all the examined Member States the Ombudsman provides an annual activity report. In Austria, for examples, the Ombudsman Board was obliged to report a yearly review of the complaint-handling system to the parliament as well as to the state governments but since July 2012 this can be done “less irregularly”. The annual reviews focus on the amount of complaints, subsequently initiated investigative proceeding as well as average duration of all investigative proceedings.

Good practice 4: Electronic Record-Keeping mechanisms

In light of the state of contemporary information technologies and the high number of complaints filed before certain complaint-handling authorities, the use of electronic databases to record environmental complaints and ensure that they are followed up is undoubtedly the most efficient and in the medium-long term the most cost-efficient method to keep track of complaints. Electronic databases allow for recorded complaints and reports to be retrieved in a matter of seconds, making the management of complaints both quicker and more efficient in terms of administrative costs. Unless the authority only receives a handful of complaints every year, after the one-off costs for setting up the database and train staff on how to use it, the ongoing administrative costs in terms of number of staff, time spent for managing each complaint and costs of maintaining the database functioning are estimated, generally, to be considerably lower (less labour intensive) than the costs of handling complaints through traditional paper-based record-keeping practices.

Electronic databases are widely used as the country reports show. The country study on Ireland provides an illustrative example. The internal database of the EPA for example, records all the complaints received (more than 2000/year in average) on licensed industrial installations or the local authorities' performance of their environmental protection duties, followed by a reference number and details on the nature of the complaint, the contact details of the complainant and the length of time a complaint has been pending. Complaints made online are directly integrated in the database through which complaints are distributed and assigned to the relevant teams of inspectors. A common database accessible to all enforcement authorities has also been set up in conjunction with the creation of a National Complaint Line. Complaints received by the national complaint line call centre are both forwarded to the competent authority by e-mail and introduced in a database accessible to all enforcement authorities.

In Slovenia every inspectorate has a database, where each complaint is registered with an identification number and date of arrival. Each written complaint is also scanned into the database but there are concerns that the strain on resources, due to increasing numbers of complaints[354], staff may not allow the scanning to continue in the future.

Good practice 5: Mechanisms to address multiple/campaigning complaints

Oftentimes different complaints concern the same problematic activity, but their different timings add to administrative burden and workload. Different mechanisms to deal with multiple or campaigning complaints were identified in the country studies.

In Ireland, as complaints about the same licensed facility (e.g. a licensed landfill) to the Office of Environmental Enforcement may come from different people during an incident or other times, the internal record-keeping system is designed to track the subject matter and the addressee of the complaint rather than the individual making the complaint. As a result, while the details of the complainant remain attached to his specific complaint, the complaints about the same facility and subject matter are *de facto* bundled up together in the same dossier. A similar system is adopted by the Spanish Ombudsman. Multiple complaints about the same problem are received and managed as a single case with multiple applicants.

In France, public administrations are not obliged to provide acknowledgement of receipt when numerous or repetitive requests are submitted. Relieving the authority from the obligation to provide an acknowledgment of receipt is a pragmatic response to the administrative burden risks created by having to respond to multiple complaints. The

[354] In 2010, the Ombudsman dealt with approximately 10 % more complaints than in 2009.

potential risk of this system, if strictly applied, is giving the public the impression that the relevant authority is unresponsive to their grievances.

Table 5 below summarises the administrative good practices that have been identified in the country analyses of the 10 Member States considered in the present study.

Table 5. Good Administrative Practices for Handling Complaints– Synthesis Table

Good Practices	Member State examples		
Availability of scientific, legal and other technical expertise • All Member States have scientific, legal and other technical expertise, but amount and organisation differ widely	Denmark: Environmental department of the municipality of Vejle shares a legal secretariat with the technical department of the municipality. One lawyer in the legal department works full time on environment-related issues. Slovenia: The Ministry of the Environment and Spatial Planning employs a specialized group of lawyers responsible for complaints on environmental matters as well as a supportive group of technical experts. In case of infringements, a team comprising a lawyer and an expert is responsible for handling the complaints.	Greece: Possibility to create interdisciplinary teams of inspectors to look upon cases including multidimensional aspects cutting across policy spheres. E.g. teams may include health authorities when activity threatens public health or Financial Crime Prosecution Unit e.g. in case of illegal trade of protected species.	Ireland: Training, capacity building workshops and guidance material for complaint-handling, inspection and enforcement are regularly developed within a network of environmental enforcement authorities.
Mechanisms/Benchmarks for ensuring timely response to complaints	Denmark (Environmental Board of Appeals): Complaints are initially assessed by the relevant unit. Depending on the complexity of		

	the cases, the unit assigns each complaint to three different tracks: track 1 (case to be dealt within 8 weeks), track 2 (case to be dealt within 5.5 months) and track 3 (12 months maximum).		
Mechanisms to review the performance of complaint-handling systems • A few Member States have mechanisms for internal review but the extent it covers assessment of complaint handling mechanisms is not known. Also there is no case for a full external review	Ireland: OEE audits the performance of local authorities in terms of complaint-handling and the NIECE network EEN provides a forum for discussing Innovations in the system and new developments.	Greece: Special Secretariat for the Environment and Energy Inspectorate checks the proper operation of complaint-handling mechanisms across all competent authorities responsible for handling complaints.	Ombudsmen report regularly. In Austria, Ombudsman Board was obliged to report a yearly review of the complaint-handling system to the parliament as well as to the state governments but since July 2012 this can be done "less irregularly". The annual reviews focus on the amount of complaints, subsequently initiated investigative proceeding as well as average duration of all investigative proceedings.
Electronic Record-Keeping mechanisms • All Member States are expected to keep an electronic track record, but there were only two cases where this was officially declared	Ireland: Electronic records kept by local authorities and EPA on complaints with reference number. EPA Online complaints directly introduced in internal database which assigns complaints to relevant teams. The internal system includes, *inter alia*, the length of time a	Slovenia: Every inspectorate has a database, where each complaint is registered with an identification number and date of arrival. Each written complaint is also scanned into the database but there are concerns that the strain on resources, due to increasing numbers of complaints, staff may not allow	

	complaint has been pending.	the scanning to continue in the future.	
Mechanisms to address multiple/campaigning complaints • It is standard practice to group complaints on the same issue from multiple sources	Ireland: As many complaints may concern the same subject matter, the internal record-keeping system is designed to track the subject matter and addressee of the complaint rather than the individual making the complaint	Spain (Ombudsman): When large numbers of complaints regarding the same problem are received, these are accumulated and managed as a single case with multiple applicants.	France: The authority is not obliged to provide acknowledgement of receipt when abusive (i.e. numerous or repetitive) requests are submitted.

4 Identification of opportunities and barriers in complaint-handling mechanisms

4.1 Technical issues

Lack of information on complaint handling procedures

Information on how to hand in a complaint and complaint handling procedures is often provided through websites, and in some cases Member States also allow for online submission of complaints. However, even in cases where these opportunities exist, widespread differences in the quantity and quality of information apply, especially between local and regional authorities. The information provided is often basic and general whereas the specific procedural steps which need to be taken are not explained sufficiently. Such variety on the comprehensiveness of the information and implementing IT services can be explained by the differences that exist in the priorities and capacities of different authorities.

Nevertheless, this problem can be easily addressed by simply describing the complaint handling procedures in the websites of the competent authorities. In this context, there are no significant technical barriers that prevent enhancing the accessibility of the mechanisms since such barriers can be easily removed by adding a general explanation in a simple and clear language.

Lack of information on how to submit a complaint

Individuals who want to submit a complaint oftentimes do not have the time or skills to read through very difficult to understand information on how, where and to whom to submit a complaint. For a complaint to be treated efficiently and timely it is essential to identify easily the responsible authority. This however is one of the main problem issues identified in the studies. The division of responsibilities across the different authorities tends to be complex not only in federal states (e.g. Germany and Spain) but also in unitarian states in which the distribution of responsibilities between national, regional and local authorities is not always evident. Treatment of a complaint by the authorities significantly depends on the comprehensiveness of information submitted by the complainant. The complaint handling process could benefit if at the very outset the public if informed about the standards and elements that need to be reflected in a complaint in order for it to be easily processed. The electronic formats would also make easier keeping online tracking of the status of complaints and therefore also enhance the transparency of the whole mechanism. Hot lines are not used, except for Ireland, but could provide major benefits to individual complainants.

As in the case of the lack of information on complaint handling procedures, any deficiencies related to information on how to submit a complaint can also be easily addressed by adding a description on the websites. Aspects that could be described include the specific responsibilities of the competent authorities and the elements that need to be addressed in the complaints.

Lack of requirements for reporting and subsequent incoherence

The country studies have identified that the authorities of all levels are very rarely required to report on their complaint handling procedures and their effectiveness, It would also appear that when such reports are developed they do not follow a standardised format which would ensure a sufficient quality and quantity of information across all authorities. Differences might occur between national and regional or local authorities but also across the same type of authorities. It also appears that even where information on complaint handling is collected and reported on, sector specific, like environment related complaints are not indentified as a separate group of complaints. The lack of standardised approaches in reporting makes difficult the preparation of aggregate reports which reflects the situation about complaint-handling on the national scale which could provide a basis for monitoring and comparing progress of the whole mechanism.

The specific technical barriers which hinder the effective reporting on environmental complaints include the deficiencies in registering the submitted complaints. Specifically, if the complaints are not registered, the required information for reporting is insufficient. Similarly, the lack of or insufficiencies in systems set to follow-up the complaints through all the stages of the process (from submission to closure) impose a barrier in keeping track of complaints and consequently hinder the reporting on their outcomes. Further, the development of effective reporting procedures is also hindered by the lack of reporting obligations. Overall, the Ombudsmen use IT more widely. The respective websites provide more information on complaint-handling including detailed procedural aspects, key contacts and often the possibility to submit complains online. The information on complaints is easier to access and to understand. This can be explained at least partially due to the fact that the core function of the Ombudsmen is to investigate complaints whereas in other authorities complaint-handling consists of one of the many responsibilities and possibly receives a lower priority.

4.2 Economic issues

The analysis of the country mechanisms showed that available financial resources and administrative capacities impact significantly the effectiveness of the complaint-handling mechanisms. In many Member States, there is no stable institutionalization. Staff is often

either missing or public authorities are often vulnerable to changes in budgetary decisions, which lead to cuts in personnel, missing training opportunities etc. Such issues were identified mainly in new Member States as well as in countries which are largely affected by the financial crisis. For example in Greece the identified lack of technical, legal and scientific expertise is caused also by the economic turndown. In this context, the need for further training of staff in the competent authorities is currently difficult to be implemented.

Such constrains have been identified in other Member States, for example in Slovenia and Lithuania, where the lack of staff capacity imposes difficulties in the handling of a generally increasing number of complaints. The lack of financial capacities hinders also the development of reporting and monitoring systems, thus affecting the effectiveness of the whole mechanism. Lack of technical and legal capacities were also identified in Poland, however it is not clear whether these deficiencies were caused at least partially by financial constrains.

4.3 Issues linked to administrative/political culture

The analysis of the complaint-handling mechanisms revealed several administrative and political characteristics which act as a barrier to effective processing of complaints.

In terms of accessibility, a common barrier which appears in most Member States is the difficulty for citizens to identify the authority which is competent to handle their complaint. Overall the enforcement of the environmental legislation is shared between a wide range of authorities and agencies and the respective responsibilities and competences are divided among different actors. Often, there are a high number of regulatory authorities with overlapping responsibilities. The complexity which often characterises the environmental policy framework in each Member State is also reflected in the complaint-handling mechanisms. This issue appears both in federal states and in countries with more centralised government systems. The fragmentation and complexity of the network of administrative authorities responsible for receiving complaints (as mentioned above) also affects negatively the simplicity of the complaint-handling mechanisms. However, this complexity does not only characterise the existing administrative structure which deals with environmental issues but often also the alleged illegalities or non-compliances which are investigated. Authorities are frequently required to deal with cases which entail multidimensional aspects. A prerequisite for the involvement of different authorities is the existence of a great level of commitment and the use of significant resources and efforts also due to the complexity of the administrative system as such. This issue could be resolved by a central complaint-handling

mechanism/authority but such centralised systems are generally not existent, especially in federal states.

Alternatively, an effective cooperation could be established or further enhanced through a Memorandum of Understanding (MoU) to be adopted by competent authorities. The purpose of the MoU would be to set a formal basis for cooperation for complaints that require the involvement of different authorities. Specifically, the MoU could provide the framework of roles and responsibilities among the authorities and eventually it could facilitate information exchange and eliminate a possible duplication of efforts.

In addition the level of ignorance of the rights related to environmental matters can also affect the level of involvement in the decision-making process. If citizens are not aware of these rights it is less likely that they will take action if they observe an illegality or non-compliance with environmental law. In countries such as Denmark which is characterised by a traditionally high awareness on environmental issues, citizens are more aware of their rights and of the possibility to file a complaint. This level of awareness affects mainly the accessibility of citizens, since companies normally have higher access to legal services.

The accessibility to complaint procedures is also affected by the level of transparency which characterises the whole mechanisms. The transparency can be greatly influenced by regular changes in the structure and responsibilities of competent authorities. Such changes are imposed mainly by the constant adjustments of EU Directives and by the decentralisation process which takes place in several Member States. On the one hand such changes might have a positive impact on the transparency and effectiveness of the whole complaint-handling process, but at the same time it might create confusion in identifying the authorities which are competent to handle a specific case. In addition, such changes tend to complicate the work of municipalities when dealing with complaints.

All structural changes need to be disseminated and all existing material and published information on the complaint procedure need to be updated. For example in Greece, a legal guide on environmental issues which was published in 2010 has become outdated due significant structural changes both at national and regional levels. Such regular updates might be costly in terms of resources and efforts.

The transparency of the complaint-handling systems is also affected by the difficulty of actively providing feedback to complainants. Often the authorities are required to attach a reference number to all complaints and provide feedback to complainants upon request. Nevertheless there are frequently delays by authorities in acknowledging receipt and taking effective action upon complaints. This affects negatively the public trust on the mechanism as an impression is given that action is not taken. In some countries (e.g. in Lithuania) the

requirements in record keeping and reporting of environmental complaint-handling are not obligatory and this imposes further difficulties in keeping track with the activities of the competent authorities.

In addition, the lack of frequent and standardised reporting (see section on the technical issues) lowers the transparency of the complaint-handling systems. The publication of such reports would set the basis for an effective monitoring of the complaint-handling and enforcement activities which are carried out by the public authorities.

In general, significant confidentiality issues were not identified in the Member States investigated. In most counties the confidentiality of personal data is protected by law. Often each complainant has the right to request the confidentiality of his personal data. Even in countries where the confidentiality is not assured the anonymity is still safeguarded. In Denmark, the right to anonymity might be affected by the fact that anonymous complaints are generally given a lower rating by local authorities. But even in Denmark the complainants may request the confidentiality of their personal data without providing specific reasons.

Although the confidentiality of the complainants is in general safeguarded the same does not seem to apply for whistle-blowers. The lack of such legal protection might impose problems for complainants who exercise specific profession. For example in Ireland fishermen are vulnerable to lose their jobs in case of controversial cases.

As regards the adaptability of the complaint mechanisms to different situations, the overall lack of strict benchmarks and rules on the complaint procedures allows a considerable level of flexibility. However, the ability to respond to different types of complaints and the needs of complainants is often hindered by capacity constrains which exist in some authorities. Moreover, a lack of benchmarks creates uncertainty and unclarity about the overall orientation and guidance for the complaint-handling process, with a negative impact on overall effectiveness and efficiency. Authorities do not have a yardstick against which performance can be measured, and such a situation can lead to either over-performance or under-performance of the complaint-handling mechanism over time. While the first case can lead to wasting public resources, the latter case can lead to continued loss of public trust and insufficient responses to breaches of law.

In addition, the complaint-handling mechanisms in all Member States analysed is characterised more or less by a lack of constant internal or external reviewing process. Undertaking reviews in a more systematic manner would allow a gradual improvement of the system through the exchange of good practices.

Another issue which might affect the effectiveness of the complaint processes are the high requirements of individual mechanisms (e.g. in Germany) which do not allow the system to work effectively due to possible conflicts of policy objectives. An example of such conflict which is met in Germany is the coexistence of the need to develop large infrastructure projects and the requirements on ensuring high level of public participation.

The level of fairness as identified in the country analyses seem to high. In Greece, complaints which are made by public authorities are normally handled more quickly and this can be considered as an unfair practice towards the citizens. Nevertheless, it can be assumed that such complaints are characterised by a high environmental importance and as such they receive a higher priority.

The systems for guaranteeing the independence and accountability of the complaint mechanisms seem to be formed based on the administrative and legal culture of the specific Member State. The country analyses raised several questions on independence as there seems to be a great level of intervention by the state which regulates and controls most of the authorities which are involved in the complaint process. Since competent authorities are legal accountable to the government, this is also reflected on the independence of the whole complaint-handling mechanism. However, the independence of the complaint process is not threatened only by the legal framework but problems can also be encountered in cases where projects receive political support. Such cases were identified in Austria.

The independence can be affected more when the complaints are handled by local authorities due to the personal relationships that might exist in the local communities. For example in Ireland, it is common that officers know personally individuals against whom an environmental complaint is directed.

In addition no single authority or superior body was identified which would monitor and ensure the independence of the complaint mechanisms (with the exception of OEE in Ireland). Partially the role of monitoring and controlling the independence of the complaint procedures falls on independent authorities such as the Ombudsmen. However such authorities are state funded and therefore the level of their independence is uncertain. In addition, normally the Ombudsman has soft enforcement powers and therefore is not in the position to enforce the procedural requirements or other administrative standards.

As regards the comprehensiveness of the systems, the country analyses revealed areas where the existing legislation does not cover adequately all available complaint-handling mechanisms (e.g. in Slovenia). However, even in Member States where comprehensive procedures and guidelines are in place (e.g. in Ireland), often the citizens perceive the authorities as unresponsive to complaints and inefficient in their enforcement actions.

Problems encountered include the long periods of time which are required to take enforcement action and the lack of requirement to actively provide feedback to complainants.

In addition the effectiveness of authorities in handling complaints (including monitoring and reporting) seem to be highly variable between different authorities, especially at the local and regional levels. Such differences can be explained on the basis of variation in the priorities across regions and municipalities as well as on the availability of the required technical, legal and scientific expertise.

Chapter 6: Identification and analysis of good practice features as well as barriers of environmental mediation

In this chapter firstly a synthesis of the findings of the case-studies will be given as regards the existing mediation mechanisms, both in and outside of the environmental sector, in the 10 selected Member States (Section 1). This will be followed by a short description and analysis of good practice examples for environmental mediation found in other EU Member States and in Non-EU Member States (Section 2). Last, barriers and opportunities for wider use of mediation in the environmental field are identified on the basis of the case-studies (Section 3).

1 Synthesis of the findings of the case-studies

1.1 Mediation mechanisms in the environmental sector

Specific or official mediation mechanisms designed to handle environmental matters generally do not exist in the 10 Member States that were selected for the case-studies. One of the reasons for this might be that environmental law (and especially if dealing with complaints about alleged illegalities) is often seen as a field where there is no space for compromise in following the law (see, for example, interviews in the case-studies of Denmark and Poland). One exception is in France, where a mediation-like mechanism (*transaction pénale*) exists in case of minor breaches of environmental law related to water, fishing in freshwater and national parks[355] involving administrative bodies and the offender (for details see the case-study for France). Other specific examples for mediation addressing promotion of renewable energies and public transport in Germany are presented below, in Section 1.2.

In general, if a body or a network of ombudspersons does exist it (also) offers to "mediate" between citizens and public bodies or sees itself as a "mediator" (see for example the case-studies of Austria, France, Greece and Ireland).

[355] The ordinance of 11 January 2012 (applicable in July 2013) will extend this procedure to all areas of environmental law, under certain conditions.

It must be mentioned, however, that – as the term "mediation" in general is not protected by law – it is not guaranteed that the general principles of mediation are respected in respective processes. Quite often the term "mediation" is an expression of the fact that the conflicting parties are brought into contact (again) or that an attempt is made to "translate" between a public authority and a citizen. For instance, the services carried out by the "*médiateur de l'eau*" in France or by the OEE in Ireland qualify them as arbitrators, but not as mediators in terms of the definition used here. As the Regional Ombudsmen (*Landesumweltanwaltschaften*) in Austria in general have a party status guaranteed by the country's main environmental laws such as the Nature Conservation Laws of the federal states and the Environmental Impact Assessment Law (*UVPG*), they cannot act as mediators due to their missing neutrality. However, as has been described in the case-study for Austria, the Regional Ombudsmen often suggest initiating a mediation process to the respective public authority and therefore act as multiplicators in mediation. The same applies for environmental NGOs (see, for example, case-study Poland).

The situation is slightly different in terms of mediation in the course of public participation procedures regarding environmentally relevant infrastructural or industrial facilities, the planning of national protection programmes (for Natura-2000 sites or for protected animals) or in the processes of EIAs: The respective laws of some of the 10 Member States include either the suspension of the processes once a mediation is operated (see the case-study for Austria regarding the EIA procedure) or the involvement of third persons/project managers (see the case-study for Germany regarding the laws that implement the green energy shift, the federal building code and the federal emission control ordinance), that are in many cases professional mediators, in order to facilitate the public participation processes.

One of the reasons why mediation is used more frequently in the course of the establishment of national protection zones could be that financing is often guaranteed in the framework of the respective protection programmes or from European funds (for example, the European Fund for Regional Development).

As for the use of mediation in the public participation procedures generally, there is a long-lasting tradition in some Member States (for example in Austria and Germany); in general, good experiences have taken place in this field. However, based on recent experiences with big infrastructural projects in Germany (especially Stuttgart 21), it is critical that mediation processes start at an early stage in a planning process and be as transparent as possible so as to allow conflicting parties to introduce their positions at a stage where the project still can be influenced substantially.

In general, mediation mechanisms are more common in the fields of civil law (especially family law and neighbours law), labour law and commercial law as well as consumer protection, where the respective laws incorporate voluntary, and in exceptional cases also compulsory, mediation procedures in the prejudicial and judicial field (see in detail under 1.3).

1.2 Agencies/bodies/networks specialised in green mediation and their specific features and procedures

None of the 10 Member States have bodies that specialise in green mediation as a whole.

However, specific agencies that offer mediation or arbitration exist in the sector of promotion of renewable energies (*Clearingstelle EEG* in Germany), public transport (*Schlichtungsstelle für den öffentlichen Personenverkehr* in Germany - *söp*) and thus covering both possible cases for mediation – that is, offering mediation between involved private parties, and between a private person/citizen/consumer and a public body. The specific features of these two agencies are described in more detail in the following.

1.2.1 Specific features of the *Clearingstelle EEG*

Germany's *Clearingstelle EEG* offers six different ADR mechanisms under the Renewable Energy Sources Act. Their specific features and prerequisites are laid down on the *Clearingstelle EEG's* website[356] and in its code of procedure.[357] The *Clearingstelle EEG* is **accessible** via a specific on-line application form or the application via fax or letter and gives a **transparent** overview on the different mechanisms in Sect. 5 of the code of procedure. The *Clearingstelle EEG* is **independent** in terms of its specific tasks regulated by law (Sect. 3). It is financed by the Federal Ministry for the Environment.

Sect. 7 of the code of procedure defines the possibility of the *Clearingstelle EEG* to enlist experts in order to guarantee for the **availability of scientific, technical or specific legal expertise**[358] in case this is needed for a certain case. There is a specific section on "**data protection and confidentiality**" and this is safeguarded by respective rules on the

[356] See for example for the mediation-like *Einigungsverfahren* under http://www.clearingstelle-eeg.de/eingv

[357] See http://www.clearingstelle-eeg.de/files/verfo.pdf

[358] The staff of the Clearingstelle EEG, however, consists of six trained lawyers and mediators and two persons with a background in industrial engineering/technical environmental protection.

preclusion of staff members in case of prejudice. The mediation-like procedure (*Einigungsverfahren*) requires the signature of a specific agreement (*Verfahrensübereinkunft*) between the involved parties and the *Clearingstelle EEG* that contains provisions, especially with regard to confidentiality.

The procedures of the *Clearingstelle EEG* are free-of-charge (with the exception of expenses for travelling of the parties to the seat of the *Clearingstelle EEG*, external legal counsel or expert opinions required by the parties) and therefore offer an easy to access and not prohibitively expensive possibility of mediation.

1.2.2 Specific features of the *söp*

Germany's *söp* offers conciliatory proceedings in the public transport sector with focus on railway/bus/local passenger transport, and is easily **accessible** via an online-form, e-mail, phone, fax or letter. The code of procedure contains a provision on the safeguarding of **confidentiality** and discretion (Sect. 13); the recommendations of the *söp* are only made public in an anonymised way. According to Sect. 8 of the code of procedure, the *söp* cares for a **timely handling** of the proceedings; it is in general limited to a maximum of three months beginning from the moment of the submission of all necessary documents as laid down on the website.[359]

As regards the **costs** of the procedures offered by the *söp*, they are free-of-charge for the complainant (*Beschwerdeführer*). The transportation companies have to carry the costs of the proceedings on the basis of a dues schedule of the *söp*.

1.3 Mediation practices in other fields

As mentioned above, mediation mechanisms are more common in the fields of civil law (especially family law and neighbours law), labour law, commercial law and consumer protection law in the selected 10 Member States. The following analysis focuses on these fields, as they are the most developed for use as good practice examples.

1.3.1 Civil law

The majority of the 10 Member States (Austria, Greece, Lithuania, Poland, Slovenia and Spain) provide specific acts that have established a legal framework for mediation in civil law

[359] See https://soep-online.de/ihre-beschwerde.html

(see, for example, Austrian Civil Law Mediation Act, Greek Law on Mediation in civil and commercial disputes, Lithuanian Law on Conciliatory Mediation, Polish Code of Civil Procedure, Slovenian Mediation in Civil and Commercial Matters Act, etc.).[360] Most of these are the result of the duty to transpose the EU Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters.

The Acts described in the following have in general helped (or possibly will help in the future) to make mediation better known as a method for dispute resolution and have strengthened public confidence by setting up quality standards in terms of the professional and structural things.

The **Austrian Civil Law Mediation Act,** after delivering a definition of the terms "mediation" and "mediation in civil matters" (Section 1), provides for sections on

- The constitution of an advisory board on mediation (Sects 4-7);
- The prerequisites of the registration of persons into the List of mediators and the further management of this list (Sects 8-14);
- The prerequisites of the registration of training institutions and courses into the List of training institutions and the further management of this list (Sects 23-28);
- Rights and duties of the mediators (Sects 15-21); and
- Suspension of time limits during the mediation (Sect. 22).

The rights and duties of the mediators contain specific provisions for the safeguarding of the neutrality of the mediator (for example, exclusion from the position as a mediator in specific cases, see sect. 16), the confidentiality and discretion (Sect. 18) and his/her skill enhancement (a minimum of 50 hours in five years time, see Sect. 20).

The mediator is obliged to conclude a contract with specific conditions as laid down in the law with an insurance company in Austria in case of claims for indemnity that result out of his/her activities.

[360] In Germany, the act on promoting mediation (Mediationsfördergesetz vom 21.7.2012) recently became effective. This act is applicable in all sectors, not only the sector of civil law. However, this act is not tailored to administrative law in conceptual matters and as regards content. In Spain, mediation is not expressly regulated in civil legislation of a general nature, although it is always possible to resort to mediation in connection with matters in which the parties have freedom of choice, by applying for a suspension of the proceedings (Article 19 of the Code of Civil Procedure).

Noticeable is the control of the mediators and their training institutions through the quality standards of the mediation procedures provided in Austria through the Federal Ministry of Justice. The Ministry of Justice is responsible for the setting-up and the management of the list of mediators and the training institutions and the respective application procedures of the mediators and the training institutions. The mediators and the insurance companies reporting duties on the compliance of their skill enhancement and each circumstance that could lead to a change or a restraint as regards the insurance coverage.

The **German Law on the promotion of mediation**[361] firstly defines mediation as a confidential and structured procedure in which the parties with the assistance of one or more mediators aim for an amicable resolution of their conflict on a voluntary and self dependent basis (Sect. 1 cl. 1). The mediator is defined as an independent and neutral person without power of decision elected by the parties who is responsible for guiding the parties through the mediation procedure (Sect. 1 cl. 2). She/he makes sure that the parties have understood the characteristics and the process of mediation and are participating voluntarily. On the request of the parties, the mediator discloses her/his professional and training background (Sect. 3).

Section 4 determines the duties related to the confidentiality and lays down in detail under which conditions the confidentiality might be offset.

According to Sect. 5, it is on the mediator's own authority to ensure an effective mediation process through suitable training courses[362] and regular skill enhancement. However, the mediator is allowed to carry the title of "certified mediator" only if she/he has absolved a training that follows the criteria of an ordinance. This ordinance might be issued by the Federal Ministry of Justice.

See also above Chapter 4, section IV. 5.1 for the implementation of these mediators within court procedures.

Section 10 of the **Greek Mediation Law** protects the confidentiality of the mediation and states that a confidentiality agreement must be agreed before the beginning of the mediation process. Principles such as independence, impartiality, transparency, effectiveness and fairness are not addressed by the Mediation Law, but they are promoted by Hellenic Centre

[361] Gesetz zur Förderung der Mediation und anderer Verfahren der außergerichtlichen Konfliktbeilegung (Mediationsfördergesetz) vom 21. Juli 2012, BGBl. I S. 1577, entered into force on 26 July 2012.

[362] Criteria for suitable training courses are laid down with a non-exhaustive list.

for Mediation and Arbitration. According to the Mediation Law, all types of civil and commercial disputes may be settled as long as they are not related to issues such as taxes, customs or areas of administrative nature.

Section 15 of **the Irish Civil Liability and Courts Act** provides that upon request of any party to a personal injury action, the court may direct the parties to attempt to settle the action through a "mediation conference". The parties may reach agreement to appoint a chairperson to the mediation conference or alternatively the court may appoint a mediator. The mediator would have to be a practicing barrister or solicitor with more than 5 years' experience or a person appointed by a body prescribed for by the Minister.[363] Records of the proceedings may not be used as evidence in any proceedings and are to be kept confidential. The fees incurred in during the mediation process are borne by the parties to the dispute. A report is to be redacted by the mediator to provide evidence before the court of whether the mediation took place and the terms of the settlement entered into by the parties (s. 16).

In **Poland**, the Code of Civil Procedure embraces environment-related conflicts, referring mainly to cases concerning repair of damage resulting from breach of Environmental Protection law and used mainly to resolve conflicts related to the location of roads, landfills, waste incinerators and the development of natural protected areas (such as Natura 2000 network) and in environment-related cases where there is room for negotiation among the parties, rather than clear infringements of environmental law. Mediation, defined under the Code as a voluntary and confidential communication between parties in dispute with the assistance of a mediator i.e. an impartial and neutral third party, is initiated prior to the legal proceedings in first instance or, with the consent of the parties, in the course of a case. The aim is to reach a settlement satisfactory for parties participating in the mediation process. The settlement, after approval by the court, has the same legal force as a settlement reached before the court.

1.3.2 Consumer protection law, especially financial services

The **Irish Financial Services Ombudsman** (FSO) was established under the Central Bank and Financial Services Authority of Ireland Act 2004 (s. 16) and became operational on 1

[363]Under the Civil Liability and Courts Act 2004 (Bodies Prescribed under section 15) Order 2005, a number of private bodies of mediators are recognised (Mediation Forum Ireland, Mediators Institute Ireland, the Chartered Institute of Arbitrators Irish Branch, Friary Law). Other recognised lawyers' associations (Bar Council, Law Commission Ireland) are also accredited for providing qualified mediators.

April 2005. The FSO independently addresses complaints from consumers about their individual dealings with all financial services providers that have not been resolved by the providers. A process of mediation is provided for under the complaint-handling procedure of this Office. The possibility of mediation in this case will be proposed by the Ombudsman as an alternative to a formal investigation by the Office. The parties will be referred to a mediator by the Ombudsman only in the case they both agree to the process. Evidence of anything said during a mediation and any document prepared for the purposes of the mediation, are not admissible in any subsequent investigation of the complaint (unless consent is given by the relevant party) or in any proceedings before a Court. If, however, during the mediation an agreement is reached, that agreement will be recorded in writing, signed by both parties and will then be legally binding. The costs of mediation in this case are borne by the parties.[364]

In **Germany,** consumer protection in the field of financial services or insurances is mainly regulated by the establishment of arbitration boards (for example the Ombudsman for insurances – *Ombudsmann für Versicherungen*)[365] that in general consist partly of lawyers and partly of experts from the respective fields or representatives from the parties/guild representatives. These arbitration boards in general are financed by the companies of the respective sectors, e.g. the insurance companies and are free-of-charge for the consumers.

2 Good practice examples for mediation mechanisms in the environmental sector

While less developed in the case-studies' Member States, good practice examples for mediation in the environmental sector can be found in other EU Member States and in Non-EU states.

The **Scottish Mediation Board** offers a clearly arranged website (The Scottish Mediation Register) for the purpose of finding mediators who meet the Scottish Mediation Network Benchmark Standards.[366] Search keys are the "type" (of mediation), providing for inter alia "environment&planning" and the "region". The search list then provides the names of the mediators with their contact details, including an email form. Additional information on the

[364] http://www.financialombudsman.ie/complaints-procedure/how-complaints-are-dealt-with.asp.

[365] See http://www.versicherungsombudsmann.de/home.html.

[366] See http://www.scottishmediation.org.uk/find-a-mediator.

(other) types of mediation offered, continuing practice development hours (training, supervision, mentoring, peer review and shadowing) undertaken in the last 12 months, the trainers and the date of the completion of the raining, the code of conduct to which the mediator works and the insurance provider is given. Information is provided on the prevailing costs for mediation services,[367] including the indication that some mediation services offer free or subsidised mediation and Legal Aid may be available to cover the costs if the dispute is involving a legal matter.

Similar – however not so extensively elaborated – websites exist in **Germany** and the **Netherlands**.[368]

In **Ontario, Canada,** amendments introduced into the Environmental Assessment Act in 1997 allow the Minister of the Environment to promote and facilitate constructive dispute resolution by referring unresolved issues to mediation. These provisions can be used before the terms of reference are approved by the Minister or before a decision has been made by the Minister or the Environmental Review Tribunal about approval to proceed with an undertaking. In an environmental assessment, if the proponent and the interested persons have not been able to resolve their disagreements through voluntary dispute resolution techniques, the proponent and/or any interested persons may request the Minister to refer a matter to mediation under these provisions of the act. In addition, the Director of the Environmental Assessment and Approvals Branch may promote or facilitate constructive dispute resolution by referring unresolved issues to mediation before a decision is made about a request to elevate an electricity or waste management project under an Environmental Screening Process. The Appendices in the Code of Practice[369] contain *inter alia* charts that summarise the tasks of a mediator in a complex, multi-party Environmental Assessment Act mediation. They also provide specific information and resources to assist both the mediator to discharge his or her role and responsibilities in the context of a mediation relating to an Environmental Assessment Act matter, and to assist the proponent and other parties to better understand what to expect when considering participating in an environmental assessment related mediation.

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[367] Mediation fees are usually given in an hourly or daily rate. The costs of mediation are usually shared between the parties in dispute.

[368] See http://www.mediator-finden.de/mediation (Germany) and http://www.mediation-mro.nl/onzemediators (the Netherlands). The Dutch website is offered by the Foundation for Mediation in Environmental and Spatial Planning Affairs (*Stichting Mediation in Milieu en Ruimtelijke Ordening*) and therefore focuses on mediation services in these fields.

[369] http://www.ene.gov.on.ca/stdprodconsume/groups/lr/@ene/@resources/documents/resource/std01_079522.pdf

3 Identification of opportunities and barriers in (environmental) mediation

Overall, mediation is not used widely for resolving issues related to the environment. More often, mediation is used for the settlement of civil and commercial disputes and does not act as an alternative solution to the resolution of alleged illegalities related to environmental issues.

There are examples of formal mediation procedures intended to address environmental problems, but currently, environmental mediation is limited mainly to informal procedures, such as the cooperation which is often developed between NGOs and authorities. In some Member States (e.g. in Ireland), the competent officers sometimes meet in person with both the complaint coordinator and the complainant before taking further action.

Because of the limited application of mediation for and in the environmental sector, information is not available to generally assess the effectiveness and costs in comparison to other means of dispute settlement. Instead, specific examples can be used to evaluate aspects of practices. In regard to costs, for example, Germany's *Clearingstelle EEG* and *söp,* exhibit no or limited costs for complainants, financed by the Federal Ministry for the Environment and annual fees for transportation companies respectively. For environmental cases under the Polish Code of Civil Procedure, mediation was financed in the framework of the protection programme in question (in the second case, the financing comes from the European Fund for Regional Development). In some States, such as Lithuania and Slovenia, mediation as a form of dispute resolution is in its initial stages. In addition, in many States environmental mediation receives low public awareness since it is not part of a special administrative or juridical procedure. This can explain at least partially the fact that such methods are not widely used.

Ombudsmen, in principle, act as mediators between citizens and the public administration. However, the Ombudsman normally does not have the authority to enforce possible solutions and therefore the effectiveness of its mediation role is hindered. In addition, the Ombudsman follows specific steps in the complaint process which normally does not allow for direct interaction between the complainant and the accused body. This reduces the potential benefits that mediation has to offer such as flexibility and time efficiency. Despite limited use of mediation, particularly in the environmental sector to date, the country analyses show that there is increasing political will among Member States to promote mediation with the intention to reduce the workload of courts. For this reason, some Member States (e.g.

Austria, Germany and Greece) have adopted relevant regulations which set out the aim and the framework of the mediation processes. However, this legislation follows a soft-law approach by focusing on the rules and the required competences of the mediators without addressing environmental complaint procedures in the administrative sector. In Slovenia, mediation has only been established for civil and commercial disputes, but there seems to be political will to establish a mechanism for environmental matters. In Ireland, a mediation mechanism in the field of environmental law is under development, but has not yet been operational in practice.

In general, mediation can be applied if there exists a certain scope of interpretation, that is, that the respective rules are not completely clear and unambiguous and that no court rulings on the respective rules which would limit scope exist (yet). This finding is in line with the experiences made as a mediator in the *Clearingstelle EEG*: The bigger the scope of interpretation, the higher the willingness of the conflicting parties to operate a mediation procedure. As soon as the rules are (or appear to be) unambiguous the parties will argue that there must be “right and wrong” and the more difficult it is to find a common solution based on their interests as a precondition for the mediation agreement.In addition, the attempt to use a mediation procedure in case of a (supposed) unambiguous rule can add to the skepticism of citizens, and especially NGOs, that mediation is a way of downsizing the environmental standards.

Chapter 7: Proposal for improvements in national complaint-handling and mediation mechanisms

This chapter provides proposals for improvements in national complaint-handling and mediation mechanisms. It describes different basic options on how to improve Member State practice for environmental complaint-handling and mediation with a view to promote compliance with EU environmental law and achieve a level playing field.

1 Options for improving national complaint-handling in the environmental field

1.1 Overview of options

In the remainder of this chapter, we distinguish three broad options:

- *No decisive action*, whereby the Commission would not take any deliberate action beyond the current status quo: progress forward would rely on processes of policy development and information exchange in and between Member States.
- *Soft policy coordination*, whereby Commission and Member States would agree to a structured process of lesson-sharing and mutual adaptation of good practice around a set of non-legally binding criteria for general as well as sector-specific concerns in the absence of a more formal framework. The Commission could foster this process by proposing an EU Recommendation providing minimum criteria for complaint handling processes.
- *Creating a legal framework*, whereby the Commission would start by proposing a set of legally binding criteria for general and/or sector specific concerns with the view to achieve a gradual harmonisation of Member States approaches and practice. The Commission could propose different legal instruments, including a Framework Directive, a Directive or a Regulation. However, the option of a Directive or a Regulation was ruled out during the course of this study in view of the complexity and diversity of national approaches.

These options are described in terms of their general design, coupled with an initial assessment of potential impacts. Given the scope and budget available for this study it was

not possible to provide a detailed assessment of impacts for these delivery options . The study rather provides an overview of the type of issues which need to be considered for each option.

1.2 The need for the EU to act

There is no general framework at EU level that stipulates how complaint-handling should be taken forward at domestic level. Parts of it are addressed through different pieces of EU law, parts of it rest on domestic provisions which differ quite widely, both in terms of content provisions and administrative procedures. The case studies carried out for this study illustrate wide practical differences between Member States in terms of providing access and responses to environmental complaints and providing overall safeguards in terms of transparency or accountability.

While there will always be a strong local and regional element to complaint-handling there are several arguments that speak in favour of efforts to achieve a greater coordination and coherence of environmental complaint-handling mechanisms in Member States.

Non- or poor-implementation harms the environment and human health; it creates uncertainty and unfair conditions for competition within the Single Internal Market and it can result in high costs when considering needs to remedy environmental damage. Cost on non- or poor implementation are broadly estimated at roughly 50 billion Euro a year.[370] As the Commission has noted recently, knowledge about problems on the ground and responsiveness to identified problems are key cornerstones of an adequate response strategy to non- or poor implementation.[371]

A strive towards greater coherence in framework conditions for environmental complaint-handling would support both needs. Authorities' knowledge about infringements of law is likely to improve if submission of individual complaints becomes simpler and more transparent. If individuals have a better understanding of entitlements and processes and if the necessary steps for complaint-handling are clearly institutionalised and can build on sufficient resources public authorities will achieve greater responsiveness, and hence improve implementation and create a greater level playing field of the Single Internal Market.

[370] COM (2012)95

[371] COM (2012)95

In most cases environmental complaints are about local cases that can and should be solved on a local or regional level. It is the local authorities that have the relevant knowledge and information as well as the ability to visit sites and arrange for discussions with those being affected. In the absence of local or national complaint-handling systems or public mistrust into their effectiveness a large range of complaints ends up being directed to the EU level, binding resources and creating unnecessary workload as the EU level is often not the appropriate level to deal with the complaints being brought forward.

1.3 General Criteria

In its Communication on Better Implementation of EU environmental law the Commission has proposed to consider binding or non-binding general criteria complemented by more sector specific binding provisions to cover[372]:

- *Complaints focusing on the need for competent authority intervention:* to ensure a EU-wide level playing field in terms of authorities' responsiveness and overall safeguards for general matters such as confidentiality, timeliness and record-keeping.
- *Complaints focusing on claims of administrative inaction or inadequacy*: enabling citizens to engage the attention of an independent national administrative review body such as an Ombudsman.

Notwithstanding the differences between Member States in terms of administrative organisation, legal frameworks and political responsibilities, key steps and principles of effective complaint-handling as discussed in chapter 2 can be advanced through a set of common criteria at EU level, either in binding or non-binding format. This includes provisions concerning transparency, accessibility, simplicity or accountability as well as good administrative practice such as timeliness of responses and good book-keeping. Criteria definition based on good practice should cover the whole process of an effective complaint-handling, from the early phase of acknowledgement of a complaint towards the follow-up on decisions at the end. A better definition of the different stages of the complaint-handling process can help Member States to address the wide range of complaint subject matters as illustrated in the cases for this study.

[372] COM (2012)95

A summary of possible steps in the different stages of an effective complaint handling process on the basis of the good practice identified for this study is provided.

Clearly present the available complaint-handling mechanisms and provide access

A key problem identified in the case studies concerns the lack of information for citizens where to complain, and knowing about the rules and entitlements concerning complaint-handling processes.

- *Clear guidance on complain-handling procedures:* There should be a clear reference document establishing minimum criteria with regard to organising, carrying out, following up and publicising, where relevant, the outcomes of decision-making processes in relation to complaint-handling at all levels of national authorities, in particular, enforcement authorities. This document should also describe the scope, content and application area of complaint-handling, and then follow up with descriptions for organising, carrying out, following up and publicising of related decisions. This reference (in form of a legally binding or non-binding document) should be made available through the public authorities. This should also provide guidance to the authorities about the scope of information they should provide to the public on how and where to submit a complaint.
- *Clear reference of key principles.* The reference document should mention and define the key principles such as fairness, accessibility, responsiveness, efficiency and integration across different areas of policy action, including for example environment, energy, and agriculture or transport etc.
- *Facilitating easier submission of complaints*: allow for online submission as general practice through a dedicated web-portal or making at least a central email available and provide a standard, easy accessible explanation about entitlements and process organisation for environmental complaint handling.

The minimum criteria needed in terms of process organisation can be further organised around the steps outlined below, based on good practice identified in the Member State case studies. The number of actions to be taken would help address shortcomings in Member States with regard to competent authority intervention, but also administrative inaction:

Acknowledge the complaint

Action is targeted toward competent authority intervention. A key problem is that complainants are often not informed in a timely manner. Complainants should get a timely response that allows them to track their case and have relevant contact information.

- *Formal acknowledgment of receipt of complaints within a time set*: many Member States analysed specify a time span of between 15-20 working days, which could be taken forward as a guiding principle
- *Better traceability of complaints:* assign clear reference numbers that are made available to the complainant. This action will also facilitate easier engagement of action to review inaction of public authorities by other actors such as Ombudsmen.

Assess the complaint

Action is targeted toward competent authority intervention. Whilst acknowledgement of a complaint can happen quickly, the screening of the complaint in order to assess its relevance, priority and internal responsibilities is another key step of an effective and responsive process. Case studies show that both members of the public and the competent authorities very often fail to identify correctly the competent authority. This results in delays or worse non-assessment of lodged complaints. Assessing the relevance of a complaint can be a quick exercise or can require a longer exercise.

- *Inclusive complaint handling*: Case studies show that complaints that do not fall within the scope of authorities' priorities are often inadequately or not at all treated. Mandating coverage of all complaints for relevant authorities is relevant, and– installing a respective mandate would be helpful.
- *Clear internal procedures for early assessment and priority setting*: Minimum criteria should enable clear guidance on how to screen a complaint, ie to ensure that all relevant aspects (potential impacts of the activity targeted, relevance of public policy etc.) are routinely checked. This can happen through making available a common evaluation template. Early assessment should be underlined as a key need as waiting with the initial screening can lead to a worsening of relevant complaint situations. In that sense complaint-handling managers also need clear guidance on how to prioritise the assessment of complaints, or parts of complaints.
- *Denominators for administrative coordination*: the authority in charge cannot be standardised as it differs per Member State. But it should be mandated as standard practice that a lead authority is designated and that complaints should be routinely circulated among relevant authorities, if needed. Ideally, all environmental complaints would be facilitated through a central access (website, email), where an intake unit can quickly screen them and forward them to the relevant authorities. This would help avoid a burden for more specialised agencies that have to deal with complaints that are outside their area of expertise. There could be a duty on the authorities that have received a complaint that is not within their competence to forward that complaint to

either a central screening unit or, if not available, to the relevant authority in charge. The complainant should be informed accordingly.

Plan the investigation

Action is targeted toward competent authority intervention. There should be clarity for all authorities involved how a complaint should be handled, and what needs to be investigated.

- *Transparent complaint handling*: set standards for electronic book keeping and clear and accessible benchmarks for case handling. Benchmarks can be set to accommodate all types of complaints. These should be set up and communicated internally, including the public.
- *Produce a written report, if needed:* It is common practice in many Member States to produce an internal plan to state what needs to be investigated, steps needed, time required, as well as options for addressing the complaint. However, to facilitate procedures, it can be helpful to provide a template. A plan also allows for correct planning, interaction and handover of files between authorities involved and hence avoid unnecessary delays.

Investigate the complaint

Action is targeted toward competent authority intervention, but a transparent case handling also linked to actions to address inaction of authorities. A clear, unbiased and well-informed investigation is critical in terms of overall fairness, but also needs to come to a balanced assessment of needs to act that avoids unnecessary follow-up action.

- *Transparent complaint handling*: set standards for electronic book keeping and clear and accessible benchmarks for case handling. Benchmarks can be set to accommodate all types of complaints. These should be set up and communicated internally, including the public.
- *Internal guidance on how to investigate a complaint:* These can guide complaint-handling managers with concrete information on how an investigation should be approached in principle (noting the differences that apply to cases) as well as the related requirements of administrative law and the needs to document evidence carefully.
- *Information sharing upon request:* information regarding the process and status of the case as well as decisions to close it and information supporting this decision should be shared with individual complainants.

Respond to the complainant

Action is targeted towards problems concerning competent authority intervention and administrative inaction.

- *Better notification of complainants:* Individual complainants should be informed about the decision regard their complaint in a sufficient manner, providing information on the rationale of the decision and contact information for follow up. It should also inform about the rights to appeal the decision. In minor cases, oral communication might suffice; in these cases it would be relevant to note this communication in a central book-keeping exercise.
- *Better communication about follow-up action:* In case the complaint is regarded as relevant, information should include information on the next steps to be taken.

Follow up on any concerns

Action is targeted towards problems concerning competent authority intervention and administrative inaction. Oftentimes, complainants are provided with a decision, but lack again the knowledge to what extent they can appeal that decision.

- *Provide an opportunity to require feedback:* In case of concerns about decision being taken the opportunity for follow-up (telephone, email) should be given. In the follow-up, complaints should be informed about options for external review (ie complaining to the Ombudsman).
- *Creating the ability to independently review claims of administrative inaction or inadequacy of action:* Ombudsman are relevant actors, but they have soft enforcement powers and face limits with regard to the comprehensiveness they can cover. It could be relevant to establish a specific capacity to independently review cases of administrative inaction as well as overall performance issues.

Overall reporting and period review

Action is targeted particularly at detecting causes of administrative inaction and potential for improving competent authority intervention.

- *Better reporting*: undertake annual, public reporting by competent authorities on complaint-handling practice and publish letters of formal notice to complainants;
- *Better (self-)evaluation*: commit relevant public authorities to report on their activities and indicate potentials for improving complaint-handling procedures and also shortcomings in the national legislation or administrative practices as well as creating an independent body to commit to an independent periodic review of the annual reporting and overall complaint handling practice.

Together the package of criteria addresses important shortcomings in the practice of Member States or help to establish complaint-handling opportunities in the first place. They help to establish a procedural benchmark to support both authorities in Member States and activate and channel citizen engagement effectively.

1.4 Option 1: No decisive action

Under this option, no attempt would be made at EU level to establish EU-wide criteria for improving environmental-complaint-handling procedures in EU Member States. Accordingly, future developments would rely on autonomous processes of policy development within and between EU Member States. There would not be a real attempt to structure a process through which all EU-27 Member States could share information and draw mutual lessons. The mixed picture of Member States with fairly advanced approaches and corresponding regulatory requirements, those with fragmented approaches and insufficient institutionalisation and those with no real complaint-handling frameworks would continue. This would also forego significant opportunities to resolve infringements of EU environmental law outside courts at national level.

This option would not require any additional action by Member States. Whether or not problems and failures of complaint-handling mechanisms of the type identified as part of the case studies under this study would be addressed would rely mainly on domestic factors. A similar account can be drawn for the type of best practices that have been identified by this study.

This option would not induce additional administrative costs and economic costs in a wider sense which would be borne by EU action. However, it would also fail to capitalise on the positive impacts on the environment which could be provided through a more substantial approach to environmental complaint-handling, or conversely aggravate negative impacts on the environment as well as higher costs for regulatory control as available options for activating additional information on, for example, company behaviour through form of complaints by citizens are not effectively utilised

Moreover, environmental-complaint-handling acts in concert with other tools and approaches to citizen engagement and public rights enforcement. For example, improving access to justice without improving complaint-handling can lead to frustrations in parts of civil society, because there are a number of cases where impacts on the one hand and costs of the other do not warrant going to court, but where complaint-handling could provide a useful tool. Citizens might feel frustrated and loose further trust into the policy system. Hence offering options for complaint handling according to certain minimum criteria is essential.

1.5 Option 2: Issuing a Recommendation – Soft Policy Coordination

The main instrument to use under this option could be a Recommendation (Art. 284 TFEU). A Recommendation would enable the Commission to establish minimum criteria that would not be binding for Member States but carry political weight to encourage actions towards more structured and coherent environmental complaint handling (see Section 1.2 above). It would be different from a Directive to the extent that it does not have obligatory power. But it could help to support corresponding legislative action at Member State level.

Content-wise a Recommendation could follow the set of steps, minimum criteria and good practice discussed above. A Recommendation could lift all criteria discussed as these address the whole chain of initiating and responding to a complaint. A Recommendation for minimum criteria could map the purpose, scope and key definitions as well as the organization and carrying out of key stages of a normal complaint handling process. It could indicate what would be the minimum expected in each of the steps to guarantee trust and transparency.

The Recommendation could also suggest a milestone by which a review of Member State progress for environmental complaint-handling would need to be conducted, i.e. after a 5-year period.

Developing a Recommendation would necessitate a sequence of steps. While this study has been looking into a sample of Member States and their good practice it did only look at a restricted number. Further preparation could benefit from a full account by either developing additional information through Member State analysis or establishing a consultation process among Member States about relevant practice to fill gaps that are missing. This accounting exercise is relevant as it will help to check for each of the proposed minimum criteria whether and to what degree it would imply institutional and legal changes for Member States. Since Member States would not be obliged to follow the Recommendation, this assessment would offer the potential to analyse real changes needed and opportunities that could arise, and help to tackle reservations which might be based on insufficient information about the real-world impacts of existing practices.

The content of the guidance would also require actions taken by the Commission to promote the guidance and enable Member States to benefit from it. It could be further facilitated through a process of information sharing, lesson-learning and mutual adaptation among Member States. This would include setting up a process of regular meetings of representatives of all Member States and the Commission in form of a working group to

establish a common account of complaint-handling procedures, lessons learnt and practices worth sharing, following the guidelines set out in the Recommendation.

The value of the Recommendation in combination with a process of lessons-learning and information exchange would be in both cases that the Recommendation offers a benchmark for comparison for both public authorities and individuals. It can convey the message that an efficient and effective complaint-handling mechanism is not only beneficial for the complainant but also for the competent authorities in gathering relevant information to address any shortcomings.

1.6 Option 3: Legislative Approach

A legislative approach would enable the Commission to propose and the Council and the Parliament to agree on a set of formally binding criteria and requirements for Member States in the field of environmental complaint handling. Different instruments are at hand, but, as discussed, a Framework Directive seems to be most suitable for framing requirements for Member States to translate environmental complaint handling criteria into their national law. Given the complexity and diversity of administrative and institutional context conditions, it appears doubtful if anything but a clear framework for operationalization helps improving environmental complaint handling in the Member States.

Compared with the soft policy coordination option a legislative approach offers the opportunity that the minimum criteria discussed under Section 1.2 above would be legally binding upon all Member States. The Framework Directive could specify an exact time line by which Member States would need to have operationalised corresponding complaint-handling mechanisms, and could subject this to an interim review of progress being made. A legislative option offers some additional opportunities, as it could create a legal obligation on enforcement authorities to take action upon complaint and oblige all authorities to refer the complaint to the competent authority in case the subject matter of the complaint falls outside its competences. A legislative option would not define specific policy outputs in the way that it would prescribe Member States what kind of institutional arrangements and bodies/actor to establish. It would rather set up procedural and outcome-based requirements that define what needs to be achieved (for example regular independent review of complaint-handling practice through a specified body) but leave the concrete operationalization to the discretion of the Member State.

The option of a Framework Directive would also enable a better coherence and coordination between the number of Directives and Regulations that are relevant for complaint-handling.

This option would ensure a greater certainty of effectiveness for improving environmental complaint-handling. Member States would be required to operationalise the framework mandated by the EU, and infringement mechanisms would be available to follow up on lack of progress.

1.7 Possible impacts and risks of the options considered

Within the budget available for this study it was not possible to provide a detailed assessment of impacts for these options. Given the diversity of Member State practices and institutional and administrative realities, costs and benefits would need to be assessed context-specifically, ie for each Member State. In the remainder of this chapter, we provide an overview of some of the general implications of options presented and issues that needs to be considered for each option in relation to delivering the identified good practices.

As discussed, a set of common criteria for environmental-complaint-handling can be advanced at EU level, either in binding or non-binding format. This includes provisions concerning transparency, accessibility, simplicity or accountability as well as good administrative practice such as timeliness of responses and good book-keeping.

Soft policy coordination

Since guidelines issued through a Recommendation are not binding for Member States it is difficult to estimate impacts of a soft-policy coordination option in terms of additional administrative burden or broader economic and social impacts in Member States. It is likely that a Recommendation and a related discussion and policy learning process would lead to more structured and transparent environmental-complaint-handling mechanisms in Member States. A Recommendation outlining concrete steps and requirements for each of the steps of a complaint-handling process could help authorities in Member States to either review existing practices or adapt where needed, or to establish approaches in case complaint-handling is not really developed. A Recommendation can become a key reference document for initiating policy discussions in Member States, and facilitate the exchange of ideas between Member States.

The impacts on the administrative burden, and hence broader economic costs, would naturally vary by Member State, but given the voluntary nature of action, one would expect Member States to start by integrating action that fits their existing frameworks and pick action

where the benefits are perceived to be greater than the costs. Some of the supported measures, when decided to be adopted by a Member State, could lead to an initial increase in administrative burden, i.e. in those cases where new complaint-handling mechanisms/steps are installed, which also need resourcing and can provide a need for companies to respond to complaint cases being brought forward.

For those with fairly advanced approaches for complaint handling, the minimum criteria suggested would often confirm existing practice. In our analysis of the ten case studies for this study we did not find a case where all criteria were being met effectively. Hence additional costs might be implied, but are expected to be limited to a moderate level.

More value added would be delivered in case of those Member States where current complaint handling practice is insufficiently institutionalised, or not really existent, where the Recommendation would provide the impetus for policy learning and deliberations about administrative and institutional change. In these cases, costs will be incurred. It is difficult to estimate the range of costs, though, as this will depend on existing capacities and structures.

However, adoption of supported measures could also lead to a reduction in the administrative burden as better and more efficient administrative practice is introduced following best practices of streamlining the complaint-handling process in other Member States. On overage, one could expect an overall neutral impact on the administrative burden, except for those cases where there is virtually no complaint-handling mechanism in place.

However, in these cases the better enforcement of EU environmental law might also lead to enhanced environmental benefits that overcompensate for higher costs related to new administrative procedures. Facilitating better access and more effective handling by complaints by authorities might lead in mnay cases to better implementation of environmental law which in turn can be expected to yield on average positive environmental impacts (medium).

In all cases, existing practice from the Member State studies carried out for this study suggest that the overall economic costs are not high (though this assessment might differ on an individual level). The economic costs are hence estimated to be low for Member States.

Final outcomes would depend on the quality of the guidance as well as the approach chosen by the Commission to promote the guidance and the supports it gets from the Member States, which is difficult to assess.

Legislative action

A Framework Directive can be expected to have positive environmental impacts in those Member States where no or only insufficient complaint handing mechanisms have been in place (medium to high). In Member States with more advanced complaint-handling systems there could also be a positive environmental impact as the EU requirement could reinforce the relevance and practical application of existing approaches. But there also might be drawbacks in cases where the EU wide approach lags behind existing national practice. In these cases, a risk might arise that incentives arise for cutting back of existing national provisions. In practice, the organisation of environmental law, its implementation and monitoring as well as administrative set up still sufficiently varies, as our case studies show, in spite of the existence of a dense body of EU environmental law.

The main drawback to this option could be that a lot of time could be spent towards developing a common ground with a group of very diverging Member States that do not support more detailed instructions, whereby there is no process in place for more collaborative lessons-drawing and learning. It also needs to be recognised that the very practice and culture of public administration in EU Member States varies considerably, and that in some cases real capacity-building is needed in addition to changes in the routines and cultures of engaging with citizens.

Harmonising environmental complaint-handling is likely to lead to higher administrative and economic costs in those Member States that do not really overlap with the conditions set out, though we do not expect these costs to be really high. However, in the longer term, the anticipated improved coordination between authorities encouraged by the Framework Directive is likely to reduce the overall administrative burden in the long term.

2 Elements and ideas for improving the national mediation mechanisms in the environmental field

2.1 Existing Experiences and Goals

Mediation mechanisms could generally – depending on their specific design – provide short-term benefits to the parties involved, including lower costs and a faster process when compared to court procedures. As could be shown by the case studies of the 10 selected Member States, mediation mechanisms can, as an amicable dispute resolution, also entail mid- and long-term benefits such as settlements that are equally beneficial to and accepted by the parties.

Despite the possible advantages of mediation procedures, they do not exist yet in environmental matters within the 10 Member States elaborated in the case studies. This lack of procedures could be addressed on an EU level to bring the aforementioned benefits to proponents and authorities alike, and also with a view to enhance consistent implementation and acceptance of EU-legislation in the long term.[373]

To achieve this goal, existing knowledge on and experience with mediation procedures within the Member States could be used: As highlighted in Chapter 6, most of these Member States (notably Austria, Germany, Greece, Lithuania, Poland, Slovenia, and Spain) already have a legal framework in place that allows mediation in other sectors, such as civil or commercial law. This shows the general familiarity with the concept of mediation mechanisms. Also, some best practice examples could be identified earlier:

- with regard to the Member States: specific (green) mediation bodies in Germany
- with regard to other (EU and non-EU) countries: a website compiling information on mediators in Scotland, UK, and the mediation procedure in environmental assessments in Ontario, Canada.

[373] 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, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0095:FIN:EN:PDF.

2.2 Possible benefits, impacts, risks, and costs of the options considered

As stated before, a detailed analysis of the cost estimates was out of the scope of this study. In this section, however, general deductions from previous chapters can lead to a specific look towards the possible benefits (and other impacts) of the options described below.

Given the scope and budget available for this study it was not possible to provide a detailed assessment of impacts for these options but rather to provide an overview of the type of issues that needs to be considered for each option in relation to delivering the identified good practices. The options described provide for a first step towards further thinking about options at hand.

2.2.1 Possible benefits and impacts

Mediation may be, depending on the case, simpler, more flexible, allowing for speedier and less expensive resolution, amicable settlement, expert dispute resolution, resolving disputes according to equitable principles and not just according to strict legal rules, and greater discretion.[374]

Lessons learnt from the conduct of mediation procedures show that – compared to administrative procedures – it is more efficient as both parties have a stronger interest to collaborate and make compromises. The process is also more intense, but altogether less painful. In particular, mediation helps to educate each side of the conflict about their real attitudes, values, and stereotypes. Usually, none of the stakeholders are left totally unsatisfied which helps to decrease the social tension. At the same time, this direct (and mostly beneficial) confrontation led to fewer problems in the future, when compared to the technique of avoiding confrontation. To ensure the effectiveness of a mediation procedure, however, the negotiated agreement has to be written down, implemented and monitored. Usually, the agreement lasts longer, as the party implementing it has been part of the negotiations.

One technique that mediators can use to manage the numerosity of voices and the challenges inherent in working with multiple disputants is to create coalitions of disputants

[374] European Commission for the Efficiency of Justice (CEPEJ), Better Implementation of Mediation in the Member States of the Council of Europe, Concrete rules and provisions, Recommendation Rec(2001)9 on alternatives to litigation between administrative authorities and private parties, available art: http://www.coe.int/t/dghl/cooperation/cepej/series/Etudes5Ameliorer_en.pdf

and then to encourage each coalition to choose one individual to be their negotiator. For these coalitions, the mediator can make sure that the chosen representatives conduct regular internal briefings with those not directly participating in the negotiation.

As the mediation mechanisms in general lead to a better understanding of the other party and especially her or his interests and needs the green mediation could render the overall responsiveness to grievances more effective if the environment would have a "voice", too (see for example the institution of the regional environmental ombudsmen in Austria).

2.2.2 Risks

As a general risk, it has to be noted that the use of alternative means could serve administrative authorities or private parties as a means of avoiding their obligations or the rule of law. However, this risk comes true only in cases when there is a lack of political and judicial competence to enforce existing laws. If prosecutorial actions of administrative authorities against a private company (for example in case of accidental pollution of groundwater by the latter) would occur behind the closed doors of a mediated session in order to safeguard confidentiality this could lead to concerns by the public. And in many cases this would be inconsistent with freedom of information requirements in the respective laws.

This situation could be tackled, however, on the one hand with strict limitations of the possible outcome of mediation procedures. These would have to be bound by existing laws and would only be applicable where authorities would have leeway for interpretation or discretion in their decisions (see also section 2.4 above).

On the other hand the mediation process could be made publicly or the mediator could fulfil the additional function to inform the public about the process in order to prevent the suspicion the mediation could be used to avoid legal obligations. Comparing content and scope of judicial procedures with those of mediation procedures, several risks could be seen in the different approaches:

- The described benefit of an amicable settlement between the parties of a mediation procedure could also be interpreted as a compromise that requires both parties to give up something from their position to achieve consensus. Opposed to that, in a judicial procedure, the rule of law could be applied in a way that could grant full remuneration for one party only, for instance.
- The principle of *ex officio* investigation (in a judicial procedure) generally makes way in a mediation procedure for a party-driven provision of informational background

upon which an agreement shall be reached. This implies the risk that a (financially) better equipped party to a mediation procedure could provide more evidence and/or influence on its behalf. A second risk could be derived in the direction that – due to the same reasons – the review of facts might take place to a lesser extent than compared to a judicial procedure.

Before addressing these potential risks, it could be necessary to differentiate between the possible disputing parties, which could include

- two businesses,
- a government prosecutorial action,
- or a "citizen suit" against developers.

The possible inclusion of this very wide range of actors in a mediation procedure necessarily brings a certain imbalance of power and resources that needs to be addressed by the procedure. It can make a big difference, for instance, if authorities are involved in the dispute and – if so – which (procedural) role they are in: a authority could be involved in a mediation procedure as a party itself or also just be the authority facilitating the exchange between an NGO and a investing business.

These imbalances can be only identified and addressed in specific cases as it depends on several factors such as available resources (which can be scarce on the side of an authority as well), knowledge of the subject matter as well as the procedure, available time to reach a settlement, etc.

Government agencies and private corporations usually have the resources and staff to participate actively in mediations, but many other parties lack sufficient staff or volunteers and the financial and technical resources to participate effectively. In particular, many non-profit organizations find it very difficult to participate in time-demanding mediations because they only have a few leaders who can participate in these exercises and who have the authority to make decisions for their organization. While mediated agreements are generally based on full consensus among the parties (an arrangement that empowers minority parties to prevent agreements), these numerical imbalances still present a real problem for minority parties. In negotiation, these imbalances may shift the burden of proof concerning whether and how a proposed action will impact the environment to the minority party or parties that advocate for more stringent environmental controls or restrictions on resources exploitation. Burdened by a higher standard of proof, these parties often need more data and more convincing technical arguments for their position than other parties require for their own.

The informality of mediation may also, where huge asymmetries in power are present, allow more powerful parties to impose their will on weaker parties. For example, powerful negotiators could limit the range of choices for negotiation to those that are most beneficial to the dominant party, which will typically be the business interest. Powerful organizations could also fool parties with less negotiation experience into accepting a less favorable resolution than could be secured in court.

This could be prevented by including codes of conduct that permit a mediator to end the mediation when power imbalances become too severe to allow meaningful discussions to continue. As a result, the mediator could be obligated to terminate the procedure (thereby limiting the ownership of the procedure by the parties), or offer a termination to the parties, due to imbalances of (man)power or financial funds, if the negotiations are headed towards a non-beneficial result for one of the parties or the environment. The termination of the procedure could be made mandatory in cases that would break existing (environmental) laws.

Another option to tackle imbalances between the parties could be a recommendation by the mediator to involve additional legal advice by a party. This way, the mediator could ensure a more fair and balanced procedure without losing his/her impartiality.

Mediated processes also allow people to maintain control over the dispute without delegating decision-making power to a third party or divulging confidential information. As a result, in mediation, parties can explore innovative means of dispute settlement that may offer joint gains for the parties and also improve environmental quality. In mediated processes, parties are also more likely to develop parallel dispute and information management processes such as joint fact finding sessions to navigate the inevitable scientific and technical complexities and uncertainties that exacerbate environmental conflict.

Also, for instance between two businesses, mediation procedures can fulfill a specific role where a dispute resolution process is mired in scientific and technical uncertainty. For instance, when scientists disagree in their analyses, the mediator can help parties to agree upon an expert whose opinions will be trusted in the course of reaching an agreement. Additional risks can be tackled better by mediation procedures compared to judicial procedures: Courts sometimes lack the time, facilities, and trained personnel to navigate the complex net of issues different parties bring to court, their conflicting interests, and the voluminous number of comments that circulate around multiparty cases. Moreover, procedural principles of standing, jurisdiction, and ripeness often artificially narrow the scope (subject matter, number of parties, time horizon, and remedies) of the dispute in court, which

may make the dispute easier to resolve in the immediate term, but does not necessarily create sustainable solutions for all parties over the long-term.

Where people hold deep ideologically driven values, litigation maybe most appropriate because in litigation a judge can render an opinion that is, at least in theory, in concert with broad public values on the matter. Further risks are rooted in the nature of the voluntary mediation procedure and the involved ownership by the parties of the procedure. Since the parties to a mediation procedure are able to halt negotiations at any time of the procedure, it is not guaranteed to solve the dispute within the mediation. To clear conflicts at an early stage that could lead to adverse negotiations, the mediator could analyse such potentials in advance and either introduce special rules of procedure to address these conflicts or recommend conventional procedures.[375]

Also, due to the influence of the parties on the procedure, and the lack of decision-making power of the mediator, the procedure could take longer and be more costly than other complaint handling mechanisms. However, this problem could be addressed by a stately funding mechanism (see for instance below for the approach of the *Clearingstelle EEG* in Germany).

2.2.3 Costs

Without a detailed assessment regarding costs within the scope of this study, along general estimates, costs could be prevented due to less judicial procedures. As mediation starts at an early level and goes along the interests of the involved parties, this could also lead to longer lasting agreements and avoid a limited amount of future disputes.

With regards to costs for the conflicting parties, costs could also be reduced: Mediation agencies and/or the introduction of (innovative) mediation mechanisms are often (at least partly) financed by specific public programs, for example the European Fund for Regional Development or national Ministries for the Environment (*Clearingstelle EEG*) at least during the years of their introduction, this allows to offer the respective mechanisms free of charge to the conflicting parties. Also, supplemental funding could be provided by private funds set up in the respective state. These could be funded, for instance, by companies in a specified sector (see above German *söp* as an example).

[375] See already the IMPEL Recommendation „*Umweltkonflikte im Dialog lösen*“ (Solve environmental conflicts in a dialogue), online at http://www.bmu.de/files/pdfs/allgemein/application/pdf/umweltkonflikte_imdialogloesen.pdf.

Costs for the mediation procedure are in general a matter of free commercial agreement between the mediator and the conflicting parties. However, it can be asserted that the mediation processes are less time-intensive than judicial remedies and therefore in general are also less cost-intensive.

2.3 Overview of options

To bring the benefits of mediation mechanisms in environmental matters to Member States, necessary elements of possible approaches on the EU-level have to be considered. This section gives an overview on possible options to take forward good practices in environmental mediation identified on an EU level, with the aim of achieving improvements in the (existing) mediation mechanisms in the EU Member States. The following two broad options can be distinguished:

- *Soft-law approach*, whereby the EU Commission would promote the development of mediation in the environmental field through a structured process with at its end potentially a binding instrument in the form of a Framework Directive.
- *Including essential provisions for the promotion of environmental mediation into the existing legal framework*, whereby the EU Commission could make use of the pending Directive on access to justice in environmental matters.

These options cover the principal actions at hand. Theoretically, the soft-law approach could also be framed through a EU directive or a regulation. However, this option was ruled out in view of the complexity and diversity of national approaches as evidenced through the case-studies carried out in the context of this study.

First, the general criteria for an environmental mediation procedure that should be covered by both of the options are laid out (section 2.4). The aforementioned options are then described in terms of their general lines (sections 2.5 and 2.6). Finally, an initial assessment of the time frame for implementation is made (section 2.7). As already stated for the brief impact assessment above (section 2.2), the assessment on the time frame for implementation (section 2.7) only provides an overview of the type of issues that needs to be considered – given the scope and budget available for this study it was not possible to provide a in-depth assessment.

2.4 General criteria

As has been similarly stated for the complaint handling mechanisms (chapter 7 section 1 above), despite differences between Member States in terms of administrative organisation,

legal frameworks and political responsibilities, general principles can be identified that are crucial to mediation mechanisms. These include basic necessities for the setting and handling of a mediation procedure. With an amicable dispute resolution as the declared goal of a mediation process, overall transparency, accessibility, simplicity, and confidentiality are just as important as requirements with regard to the mediator, such as neutrality and impartiality, fairness, and expert knowledge.

With the general options for improvements – soft-law and binding rules – in mind, it should be noted that this set of common criteria can be set out at EU level either in binding or non-binding format.

The general criteria required for a prospective mediation procedure include – listed by procedural requirements and personal requirements:

- Voluntariness – the parties can be recommended to pursue the dispute settlement via mediation, but should not be required to do it.
- Accessibility and simplicity – the parties should be enabled to start a mediation procedure on their behalf; procedural hurdles (such as fees and application procedures) should be kept to a minimum.
- Transparency – once the procedure begins, the parties should be enabled to follow the role and actions by the mediator along the way of the mediation procedure. Negotiations of just one party with the mediator should be disclosed.
- Effectiveness – the mediation procedure should fit its respective purpose in extent and effort. Linked to accessibility and simplicity (above), the process should be neither too time-consuming, nor involve rather costly procedures.
- Ownership – closely linked to the voluntariness, the parties of the mediation procedure should be able to shape the procedure and its result together with the mediator in their interests, or – as the consequence of a misleading procedure – be able to halt the procedure at any time. The mediator fulfils a decision-shaping function.
- Confidentiality – the parties to a mediation procedure should be guaranteed confidentiality of everything negotiated under the umbrella of the mediation mechanism.
- Neutrality and Impartiality of the mediator – this is needed to ensure an amicable and mutual dispute settlement.

- Fairness – closely linked to neutrality and impartiality, the mediator needs to be open to either side and grant equal rights within the mediation procedure.
- Expert knowledge – the mediator should be enabled via his/her background to fully perceive the positions of the parties involved and should also be able to provide feasible solutions in the respective field of the mediation procedure.

With special regard to environmental mediation, it has to be noted that environmental regulation – in many cases – is binding and does not allow authorities to negotiate or lower standards or limits. However, this could be addressed in an EU-based approach with the limitation of mediation procedures: They would be only allowed for the settlement of disputes in which authorities have either a right to interpret vague legal terms or the discretion to make specific decisions within a given frame of options. In any case, the outcome of an environmental mediation procedure has to remain within the existing legal framework.

A possible extended role for environmental mediation could be seen in the planning stage of projects with environmental impacts. It could prove to be particularly useful in the existing context of public participation requirements and add an option to settle occurring disputes.

2.5 Option 1: Soft-law approach

This approach consists in a structured process guided by the Commission with lesson-sharing, mutual adaptation and harmonisation of good practices in environmental mediation as a preparation for the binding instrument.

An example for this approach is the promotion of the development of Alternative Dispute Resolution in the consumer sector by the EU Commission: Two Recommendations (Recommendations 98/257/EC and 2001/310/EC)[376] adopted by the European Commission with quality criteria for ADR schemes were followed by the publication of a discussion paper on alternative dispute resolution (April 2002). In July 2004 the Commission organised the launch of a Code of Conduct for Mediators[377] which was approved and adopted by a large number of Mediation experts and in October 2004 the Commission adopted and submitted to the European Parliament and the Council a draft Directive on Mediation which was finally adopted in 2008 (Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters). Additionally a

[376] http://ec.europa.eu/consumers/redress/out_of_court/adr_recommendations_en.htm.

[377] http://ec.europa.eu/civiljustice/adr/adr_ec_code_conduct_en.htm.

specific specialised body - the European Consumer Centres Network (ECC-Net)[378] – provides consumers with information and assistance in accessing an appropriate ADR scheme in another Member State.

As an example for the structure and recommendations of a mediation agreement, the European Code of Conduct (CoC) for Mediators[379] can be highlighted: Although the CoC sets out the principles for mediation procedures in civil and commercial matters, the general descriptive approach could be also utilized in a soft-law approach in administrative and environmental matters. It mentions requirements along the lines of a mediation procedure – as already described in section 2.3 – starting with the competence of the mediator, recommendations regarding appointments for and fees of the procedure. Additional requirements for the person of the mediator are set out for their independence and impartiality, before turning to the procedure, mentioning fairness and describing ownership by the parties (in that they may withdraw from the mediation at any time without giving any justification). The overarching aspect of confidentiality is listed in the end of the CoC.

The Directive on Mediation in Civil and Commercial Matters (see above) explicitly excludes administrative matters from its scope and thus can only provide an example for the mediation principles enshrined. It also falls behind the (soft-law) CoC with regard to specified requirements for the mediation procedure. It includes only a provision for ensuring the quality of mediation (Article 4) which broadly covers effectiveness, impartiality and competence of the mediators. Also, confidentiality of mediation is required (Article 7) and the general procedure is defined as a voluntary measure (Article 3 (a) subpara. 1). The latter also implies – as can be read from recital (13) – the ownership of the procedure, so parties are "in charge of the process and may organise it as they wish and terminate it at any time." Due to its legally binding nature (for states to implement it into national laws), it does not, however, go beyond the minimal requirements, and hence does not include more sophisticated measures to ensure accessibility and transparency of the overall procedure, as well as an continued skill enhancement of the mediator.

Another example of requirements for the conduct of authorities and procedures can be seen, for instance, in the Recommendation on Environmental Inspections (Recommendation 2001/331/EC of the European Parliament and of the Council of 4 April 2001 providing for minimum criteria for environmental inspections in the Member States). It has to be noted that

[378] http://ec.europa.eu/consumers/redress/ecc_network/index_en.htm.

[379] European Code of Conduct for Mediators, 2 July 2004, revised in July 2009, online at http://ec.europa.eu/civiljustice/adr/adr_ec_code_conduct_en.pdf.

this Recommendation focuses on more authority-based activities such as site visits, monitoring and reporting, and is as such only of limited use as a model example for environmental mediation with its idea of a more amicable settlement. The Recommendation's structure and general approach, however, can be seen as a possible blue print to future recommendations in the area of environmental mediation. These could also be structured along the lines of the procedure (voluntariness, accessibility & simplicity, etc.), and set out recommendations to implement the basic principles already mentioned in section 2.3 above.

Thus, and also based on the good practice examples as detected in chapter 6, the required principles for mediation could be delivered through soft-law options:

Procedural aspects with particular relevance for the **start of a mediation procedure** such as voluntariness, accessibility and simplicity, could be bundled. Recommendations in these parts should stress the additional and optional role of the mediation procedure and include a limitation (or optional a prohibition) of additional fees for the procedure.

The procedural aspects for the actual **conduct of the mediation procedure**, such as ensuring ownership, fairness and transparency could also be further described in recommendations. In this regard, the parties to an environmental mediation procedure should be able to negotiate and influence the structure as well as the outcome of the procedure at all times. Bilateral negotiations between the mediator and only one of the parties should be either excluded or required to be disclosed to the other party. Also, the transparency of the overall procedure should be guaranteed at all times, including a requirement for the mediator to communicate the steps of the mediation procedure in advance and to inform the parties involved about their rights.

Aspects with regard to the person selected as a **mediator for the mediation procedure**, including confidentiality, neutrality and impartiality, as well as expert knowledge could be safeguarded either by the establishment of a specific **code of conduct** for the environmental mediators or by including **recommendations** concerning the respective rights and duties of the mediators. These could include specific provisions for the safeguarding of the neutrality of the mediator, the confidentiality and discretion and his/her skill enhancement. The latter could be implemented, for instance, via a certain amount of compulsory trainings, and/or practical training in the field of mediation over a specified course of time, or – more general – via education requirements such as degrees or further determined certificates. To make the principles of confidentiality and neutrality of the mediator a more personal liability, it could be also considered to recommend to include mediators in specific provisions that penalize the violation of secrecy (similar to lawyers, doctors, and such), via civil liability for damages or – even stronger – as a possible criminal offence.

In addition to the implementation of the mentioned principles, measures on the Member State level could address the overall low **public awareness of mediation procedures**, and – with raising awareness – possibly promote the actual use of the suggested mediation practices. This could also be included in recommendations.

2.6 Option 2: Including essential provisions for the promotion of environmental mediation into the existing legal framework on the EU level

For this option the pending Directive on access to justice in environmental matters (Commission Proposal, COM(2003) 624 final, for a Directive of the European Parliament and of the Council on access to justice in environmental matters) could be used in order to include the following basic provisions that might guarantee the promotion of environmental mediation:

- Requirement, without prejudice to the requirement of effective access to justice, to set up mechanisms for conflict resolution in the environmental proceedings;
- Establishing means for the involvement of a mediator between parties to the proceedings;
- Ensuring that these procedures are fair, non-discriminatory, equitable, timely and not prohibitively expensive, with the involvement of an independent mediator approved by all parties involved;
- Possibility to confirm settlement agreement by a mediator and make it enforceable;
- Require promotion and encouragement of training of mediators.

Based on the good practice examples as detected in chapter 6, and the forementioned principles in section 2.3 above, such provisions could be implemented similarly to Article 10 of the proposed Directive.

This article serves the purpose to overcome obstacles that prevent access to justice and – in line with Article 9 (4) of the Arhus Convention – it requires the establishment of **effective and adequate proceedings** that must be **fair, equitable, timely and not prohibitively expensive**. If expanded to environmental mediation procedures, this provision alone could ensure the implementation of principles such as easy **accessibility and simplicity**, **fairness**, **neutrality and impartiality**.

As the explanation of the proposal states, the Directive is also aiming for removing **obstacles due to a lack of ecological knowledge** within the administrative or judicial

bodies. This could be extended to environmental mediation procedures with regard to the required **expert knowledge** of the mediator. Also, the Directive stresses the importance of appropriate **legal certainty and transparency**, which could extend *mutatis mutandis* to mediation procedures.

Finally, the underlying idea of entitlement of private persons with a **legal standing** in the Directive can be seen in line with the stated principles of **voluntariness and ownership** of the parties involved in a mediation procedure. This would have to be, however, implemented in an additional provision. The same is true for provisions regarding **confidentiality** which is not covered by the Directive itself.

2.7 Time frame of the options considered

It can be seen that both options are very similar in their aims and possible achievements, but differ in the time frame estimated to have the discussed impacts: Although the decision-making process through the EU institutions (option 2) is generally more time consuming than the issuing of recommendations (option 1), in the case of a (framework-) Directive a time frame for the implementation by the Member States could be included. In this case, the overall implementation of the targets could be possibly achieved within two to three years (with the possible exception of delays by some Member States), whereas the implementation of (non-binding) recommendations could not be enforced altogether.

Also, the actual implementation of recommendations (option 1) is a time-consuming process. A lot of time might be spent towards developing a common ground with the EU Member States. Many of these still do not have a (legal) system of mediation in place and if there exists such a system it is still quite diverging. As can be seen in the case of the already mentioned Recommendations on Environmental Inspections (2001/331/EC), their implementation in some Member States was still lacking after 6 years, while in several countries, the level of implementation remained unclear and, in some cases, conclusions could not be drawn at national level.[380]

As a result, both options considered have a time frame that depends heavily on the cooperation and implementation by the Member States.

[380] Commission Staff Working Paper – Report on the implementation of Recommendation 2001/331/EC providing for minimum criteria for environmental inspections, 14.11.2007, SEC(2007)1493.