

**Report on the consultation of the
Subsidiarity Monitoring Network on
“Towards a 7th Environment Action
Programme (EAP) — better
implementation of EU environment law”**

**Report written by
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This report does not represent the official views of the Committee of the
Regions.**

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1 Introduction

Ms. Nilgun Canver (UK, PES, Committee of the Regions (CoR) rapporteur for the dossier *Towards a 7th Environment Action Programme (EAP) – better implementation of EU environment law*) asked for a targeted consultation of the Subsidiarity Monitoring Network (SMN). A questionnaire touching on subsidiarity-related issues¹ was therefore submitted to the SMN members. The consultation ran from 25 May to 6 July 6 2012.

The purpose of the consultation was to gather feedback on the European Commission's Communication of 7 March 2012 entitled *Improving the delivery of benefits of EU environment measures: Building confidence through better knowledge and responsiveness* (COM (2012) 95 final), in particular on the role of local and regional authorities in the implementation of EU environmental law and how the respondents view selected options for strengthening the implementation of environmental law, particularly regarding the principle of subsidiarity.

Furthermore, the consultation aims to provide input to the preparation of the CoR opinion, which will discuss the aforementioned European Commission's Communication and aims to feed into the work on the Commission's proposal for a 7th EAP.

In total, eight replies were submitted by one local and seven regional stakeholders from five Member States (MS): one from Germany, one from Italy, one from Portugal, four from Spain, and one from the United Kingdom.

¹ See Appendix I.

Table 1 shows the list of respondents.

Table 1: List of respondents to the consultation

#	Country	Authority	Administrative level	Network
1	Germany	Bavarian State Government (Bayerisches Staatsministerium für Umwelt und Gesundheit, Referat Fachübergreifendes Recht)	R	SMN
2	Italy	Marche Regional Legislative Assembly	R	SMN
3	Portugal	Madeira Regional Government (Direção Regional dos Assuntos Europeus e da Cooperação Externa)	R	SMN
4	Spain	Catalan Regional Government (Secretaria de Medi Ambient i Sostenibilitat)	R	other stakeholder
5	Spain	Catalan Regional Parliament ²	R	SMN
6	Spain	Extremadura Regional Parliament	R	SMN
7	Spain	Basque Government (Departamento de Medio Ambiente, Planificación Territorial y Agricultura y Pesca)	R	SMN
8	UK	Antrim Borough Council	L	other stakeholder

Note: L=Local, R=Regional

² The contributions from the Catalan Regional Parliament and the Government are identical.

2 Synthesis and Analysis of the Contributions

2.1 Implementation of EU environmental law by local and regional authorities (Question 1)

A. Transposition of EU law into national law.

Seven of the eight respondents report that their authorities are involved in the transposition of EU environment law into national law in their Member State (Germany, Portugal, Spain, and the UK). One respondent says that this task belongs mainly to the central level of government.

The Basque Government, Spain, comments that the Autonomous Community of the Basque Country has the competence to develop and apply basic regulations in the field of environment and, in this context, approves regulatory provisions and participates in the drafting of national legislation that transposes EU law.

In Italy, local and/or regional authorities are not involved: The Marche Regional Legislative Assembly responds that, in Italian law, the role of transposing European legislation into national law belongs primarily to the central level of government. National legislation can also identify the general principles that must be observed by regions when implementing measures.

B. Application of—directly applicable and transposed—EU law (e.g., issuing permits).

All eight respondents indicate that their authority, i.e., seven regional and one local authority, is involved in the application and enforcement of EU environment law, including directly applicable EU legislation and EU law that has been transposed into national law.

The Antrim Borough Council, UK, specifies that it is involved when applicable. The Marche Regional Legislative Assembly, Italy, states that, according to the division of powers outlined by Italian state law, the regions and local authorities exercise administrative power concerning the issuance of environmental permits. The Basque Government, Spain, explains that it adopts measures for the implementation of EU environment law by issuing permits.

C. Enforcement.

All eight respondents state that their regional or local authority is involved in the enforcement of EU environment law in their jurisdiction.

The Basque Government, Spain, comments that it is involved in the application of EU environment law by issuing permits (cf. item B. Application of EU law) and by carrying out the relevant enforcement work. The Marche Regional Legislative Assembly comments that in Italy enforcement activities are primarily entrusted to local authorities.

2.2 Subsidiarity: Improving knowledge on implementation — strengthening the provisions of the Access to Information Directive (Question 2)

Four respondents believe that the provisions of the Access to Information Directive³ should be strengthened to improve knowledge about the implementation of EU environment law, two respondents consider that this is not necessary, and one does not explicitly answer the question but indicates through a detailed comment that the provisions of this Directive are essentially able to ensure access to proper environmental information. One respondent does not answer the question.

Strengthening of the Access to Information Directive

Of those who believe that the provisions of the Directive should be strengthened, the Extremadura Regional Parliament, Spain, comments that the problem with the Access to Information Directive lies in the difficulty faced by citizens attempting to access and consult European law. Instead, it would be desirable to consider establishing a system that enables real-time access to existing environmental legislation.

While the Marche Regional Legislative Assembly, Italy, believes that the provisions of the Directive are essentially able to ensure access to proper environmental information, it also highlights rather technical issues that could be addressed in a possible revision of the Directive: In its view, it would be desirable to make environmental information accessible primarily through electronic information and communication technologies, which Article 7 of the Directive provides for only if available. It should also be envisaged to interconnect electronic databases containing environmental information and to consider binding rules for Member States that require the dissemination of information regarding the existence of these databases. In addition to these issues, the Marche Regional Legislative Assembly further states that the next Environment Action Programme as well as the next phase of EU cohesion funds for 2014-2020 should include specific measures to support not only

³ Directive 2003/34/EC on public access to environmental information and repealing Council Directive 90/313/EEC

environmental monitoring but also the implementation of systems that aim to disseminate environmental information.

No strengthening of the Access to Information Directive

The Basque Government, Spain, and the Bavarian State Government, Germany, believe that it is not necessary to strengthen the provisions of the Access to Information Directive and that its current provisions and existing national law are already providing citizens with sufficient access to information. The German respondent also states that the unconditional access to information through conventional means as well as through electronic media is comprehensively regulated by binding provisions in Germany.

The respondent from UK does not answer the question.

2.3 Subsidiarity: Inspections and surveillance in relation to the implementation of EU legislation at national level (Question 3)

Six respondents believe that the existing EU framework for inspections and surveillance at the national level,⁴ which currently applies only to industrial facilities, should be upgraded.

Three respondents think that this should be done through recommendations, and two call for binding provisions. One respondent believes that recommendations and binding provisions are needed.

Two respondents consider no upgrade necessary.

Upgrading of existing EU framework for inspections and surveillance at the national level

The three proponents of such an upgrade on the basis of recommendations are the Catalan Regional Parliament and Government, Spain, and the Antrim Borough Council, UK.

The Extremadura Regional Parliament, Spain, and the Marche Regional Legislative Assembly, Italy, call for binding provisions. The Extremadura Parliament believes that it is absolutely necessary to improve the system of inspections and surveillance by the EU through binding provisions that allow for

⁴ Recommendation 2001/331/EC providing for minimum criteria for environmental inspections in Member States and binding sectoral provisions.

the harmonisation of such matters, in contrast to recommendations, which may or may not be put into practice. The Marche Regional Legislative Assembly believes that binding legislation provides the guarantee that, in cases of inaction by the Member State regarding the transposition/implementation of EU legislation, the possibility of concrete forms of sanctions and deterrents exist.

The Madeira Regional Government, Portugal, calls for recommendations as well as binding provisions in this framework. It comments that, in regard to recommendations, methodologies and processes should be developed that ensure the standardisation of surveillance and inspection, while allowing for a better fit and flexibility in individual situations. With respect to mandatory provisions, it calls for the creation of conditions for simplifying and improving the efficiency of integration of different actors while avoiding overlaps and gaps.

No upgrading

The Basque Government, Spain, and the Bavarian State Government, Germany, argue that no upgrades of the framework for inspections and surveillance are necessary because the currently established system is sufficient. In the case of the Basque Government, the argument is that the current system of inspection and surveillance of industrial facilities is sufficient and appropriate. The Bavarian State Government explains that the law on environmental inspections in Germany has traditionally been characterised by a high degree of thoroughness. Constitutionally, the organisational structure of the surveillance and inspection administration is regulated in great detail at the regional level. In the interest of “better regulation,”⁵ the Bavarian State Government argues, new bureaucratic regulations are to be avoided. The respondent highlights that in Germany EU recommendations are taken into account at least equally. Moreover, in times of lean public budgets due to the financial crisis, the focus should instead be put on using the available administrative resources more intelligently and consistently on the basis of applicable environment law.

⁵ According to the response from the Bavarian State Government, Germany, Question 3, p.6.

2.4 Subsidiarity: Inspections and surveillance at EU level (Question 4)

Two respondents believe that the EU should create its own inspection and surveillance system to complement national mechanisms and measures in a targeted way. The other six respondents consider this unnecessary.

Inspection and surveillance system at EU level

The proponents of an EU-level inspection and surveillance system are the Madeira Regional Government, Portugal, and the Extremadura Regional Parliament, Spain. The latter comments that the environment is important enough to all EU citizens that giving the EU the powers to inspect and monitor facilities in all Member States in a uniform manner can be justified.

No inspection and surveillance system at EU level

The other six respondents reject such an EU system on the following grounds: The Marche Regional Legislative Assembly, Italy, believes that, instead of creating a system of inspections and surveillance at European level, it would be preferable to hold the national authorities more responsible at the central, regional, and local levels. Inspections by the EU should still be the second level of control and done for a representative sample.

The Basque Government, Spain, argues that the transfer of inspections and surveillance to the EU level would complicate such actions since the proximity of local and regional authorities allows for a more flexible and, therefore, more effective response to any incidents or breaches of legislation. However, the Basque Government considers it desirable to establish common criteria for action by the EU, with the objective of standardising the treatment of installations across the EU and hence avoiding dissimilar inspections procedures in the Member States that would imply dissimilar costs for both the administration and the operator of the installation as well as possible effects on competition.

The Bavarian State Government is against the creation of an environmental inspection and surveillance system, including the corresponding administrative structures, at the EU level. It argues that such proposals by the EU Commission should respect the principles of subsidiarity and proportionality; in particular, enforcement tasks at the EU level would contradict these principles. Furthermore, the respondent believes that a centralised organisation of environmental inspections from Brussels or Copenhagen could not meet the demands of local enforcement of EU law in any way.

2.5 Subsidiarity: Handling complaints at national level (Question 5)

Recommendations for the handling of complaints by Member States are preferred by three respondents, binding provisions are preferred by three, and one respondent selects both options.

The eighth respondent believes that the EU should not set criteria for the handling of complaints by Member States.

Criteria for the handling of complaints set at EU level

All respondents, aside from the Bavarian State Government, Germany, consider some set of criteria for handling complaints by Member States desirable.

Recommendations are favored by the Catalan Regional Parliament and Government, Spain, and the Antrim Borough Council, UK.

The Marche Regional Legislative Assembly, Italy, the Basque Government, Spain, and the Extremadura Regional Parliament, Spain, prefer binding provisions.

The Marche Regional Legislative Assembly states that claims regarding the breach of EU law in the field of the environment are included in the broader context of complaints — complaints that a European citizen may address to the European institutions, by resorting to the Ombudsman or the European Commission, for verification that the conditions for opening an infringement procedure are met. Before determining whether the EU needs to establish an ad-hoc mechanism to lodge complaints, the outcome of the instances described above should be assessed. If the introduction of a separate method of appeal is considered, it would be preferable for it to happen through a legislative act rather than through non-binding acts. Furthermore, to ensure the uniform treatment of complaints, the Marche Regional Legislative Assembly would prefer the creation of a European authority dedicated to them or the expansion of the jurisdiction of the European Court of Justice.

The Basque Government believes that the handling of complaints by Member States should be as homogeneous as possible, offering citizens and operators of facilities all the necessary guarantees⁶, and thus be done through legally binding provisions, provided that the legislation of each Member State permits that such

⁶ The respondent from the Basque Government does not specify what guarantees would be necessary.

criteria are set at EU level, which is not certain, because it may involve sensitive matters such as criminal law.

The Madeira Regional Government, Portugal, supports both recommendations and binding provisions.

No criteria for the handling of complaints

The Bavarian State Government does not see a need for the EU to set criteria for the handling of complaints by Member States on the basis of recommendations or binding provisions.

2.6 Subsidiarity: Access to justice (Question 6)

Seven of the eight respondents believe that the EU should define the conditions for efficient and effective access to national courts with respect to all areas of EU environment law.

One respondent rejects EU action in this field.

Definition of conditions for access to national courts by the EU

Two of the seven respondents preferring EU action call for formulating the conditions as recommendations: the Antrim Borough Council, UK, and the Madeira Regional Government, Portugal.

The five respondents preferring binding provisions are the Marche Regional Legislative Assembly, Italy, the Catalan Regional Parliament and Government, Spain, the Basque Government, Spain, and the Extremadura Regional Parliament, Spain.

They detail their views as follows:

The Marche Regional Legislative Assembly believes that, if the monitoring of infringement proceedings in EU environment law should signal it appropriate to introduce new provisions concerning access to justice, universally binding rules should be used, i.e., in the form of a directive or regulation. The Basque Government reiterates its remark on the extent to which laws in the Member States would allow the EU to adopt legally binding legislation on judicial issues. Finally, the Extremadura Regional Parliament believes that the environment is an extremely important matter that would, at a minimum, require a series of agreements between Member States, which commit them to maintain uniform standards and compulsory commitment to access to justice in regard to the environment.

No definition of conditions for access to national courts by the EU

The Bavarian State Government argues that the procedures for legal protection are already part of the key aspects of German constitutional and secondary law.⁷ According to the respondent, the German system of legal protection is regulated intensively both in terms of the administrative procedure and access to the courts and the applied legal tests are, moreover, characterised by an extraordinarily wide scope.

The respondent further highlights that access to the courts is currently re- and more broadly defined also for recognised associations, in accordance with the Aarhus Convention and the ruling of the European Court of Justice from 5 December 2011 (Trianel). Additional measures by the EU beyond the Directive 2003/35/EC on Public Participation and Access to Justice would, therefore, not be necessary and are rejected on the basis of lack of the necessary EU competencies.

⁷ Secondary law refers to legislation that is derived from primary law.

3 Conclusions

The small sample of contributions (four from Spain, one each from Germany, Italy, Portugal, and the UK) to the consultation “*Towards a 7th Environment Action Programme (EAP) - better implementation of EU environment law*” that are summarised in this report is not sufficient to provide a representative overview of the positions of the members of the SMN and other stakeholders regarding the issues raised by the six questions.

They nonetheless demonstrate that a variety of opinions exists among the respondents with respect to the issues covered by the consultation and their relation to the subsidiarity principle.⁸

First, the contributions indicate that regional authorities are involved in the transposition, application, and enforcement of EU environment law in Germany, Portugal, and Spain, which highlights the relevance of the issues at stake at the regional level.

In Italy, however, EU environment law is transposed at the central level, while regional and local authorities participate in its application, and local authorities are primarily entrusted with its enforcement.⁹

Finally, the respondent representing a local authority in the UK indicates that local authorities are involved in the transposition of EU environment law and — when applicable — in its application and enforcement.¹⁰

Questions 2, 3, 5, and 6 address the possibility for increased EU action in the implementation of EU environment law; in particular concerning access to environmental information, inspections and surveillance *at the national level*, the handling of complaints, and access to justice. The majority of respondents would not see any breach of the **subsidiarity principle** if the EU acted in these fields: With respect to **access to information** (question 2), four out of seven respondents see a need to strengthen the Access to Information Directive in order to make the relevant provisions more efficient. The general argument against such EU action, given by the other respondents, is that the provisions of the current Directive are sufficient to guarantee the rights of access to information of citizens.

⁸ According to the subsidiarity principle, in areas that do not fall within its exclusive competence the EU shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at the central level or the regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at the EU level. (Art. 5 (3) Treaty on European Union (TEU)).

⁹ According to the Marche Legislative Assembly, Italy.

¹⁰ According to Antrim Borough Council, UK.

The majority (six out of eight respondents) is also in favor of upgrading the existing **EU framework for inspections and surveillance to be applied at national level** (question 3), and seven out of eight respondents would welcome the **EU setting criteria for the handling of complaints by Member States** (question 5) and **defining conditions for efficient and effective access to national courts** with respect to all areas of EU environment law (question 6). According to the comments provided by the proponents of EU action in these areas, it can be concluded that such action would allow for greater effectiveness and standardisation (question 3), uniform treatment of complaints (question 5), and uniform standards for access to justice (question 6).

Furthermore, differences emerge concerning the issue of **proportionality**, when considering the form of such EU action, i.e., the use of recommendations or binding provisions. The majority of respondents (five versus two) prefer binding provisions only on the issue of defining conditions for access to national courts. The distribution is even (four versus four) in the case of setting criteria for handling complaints and in favor of recommendations (four versus three) on strengthening the EU framework for inspections and surveillance to be applied at national level.

However, the picture changes for **subsidiarity** concerning the creation of an **inspection and surveillance system at EU level** (question 4): Only two respondents see the necessity for EU action in order to complement national mechanisms and measures in a targeted way. Two contributions highlight in this context that national authorities are better placed to implement EU environment law in an effective way.

Finally it has to be noted that the German respondent rejects EU action on all issues covered by the consultation, highlighting that national legislation already covers the relevant aspects. EU action is thus not necessary and consequently not in accordance with the subsidiarity principle.

4 Appendix 1

4.1 Questionnaire (English)

COMMITTEE OF THE REGIONS – DIRECTORATE E – Horizontal Policies and Networks



Questionnaire

"TOWARDS A 7th ENVIRONMENT ACTION PROGRAMME (EAP) - BETTER IMPLEMENTATION OF EU ENVIRONMENT LAW".

Submitted by Ms Nilgun CANVER (UK/PES) for the purposes of consulting the Subsidiarity Monitoring Network (SMN).

Ms Canver is the rapporteur for the CoR opinion on *Towards a 7th Environment Action Programme (EAP) - better implementation of EU environment law*.

This opinion will discuss the European Commission's Communication of 7 March 2012 on *Improving the delivery of benefits from EU environment measures: building confidence through better knowledge and responsiveness*, COM (2012) 95 final, and aims to feed into the work on the Commission's proposal for a 7th Environment Action Programme (EAP), scheduled for the end of 2012.

Please complete and submit by **6 July 2012**. You can upload the completed questionnaire directly onto the Subsidiarity Monitoring Network website (<http://subsidiarity.cor.europa.eu> – remember to log in). Alternatively, you can send it by email to subsidiarity@cor.europa.eu.

Name of Authority:	
Contact person:	
Contact details (phone, email):	
Member of	

Please answer the following questions:

IMPLEMENTATION OF EU ENVIRONMENT LAW BY LOCAL AND REGIONAL AUTHORITIES

1. How is the implementation of EU environment law organised in your Member State? Is your local/regional authority involved:

- a) *in the transposition of EU law into national law?*
- b) *in the application of - directly applicable and transposed - EU law (e.g. issuing permits)?*
- c) *in its enforcement (e.g. surveillance, inspections)?*

a) *Yes/No*

b) *Yes/No*

c) *Yes/No*

The above-mentioned communication COM (2012) 95 considers enhancing and improving implementation as a priority objective of European environment policy. Accordingly, it examines "means of helping Member States achieve a fully systematic approach in knowledge collection and dissemination and greater responsiveness to problems on the ground" (introduction, p. 2).

SUBSIDIARITY

Improving knowledge on implementation

2. Should the provisions of the Access to Information Directive¹¹, which contains minimum requirements on the dissemination and quality of information, be strengthened?

Yes/No

Comment (max. 300 words).

Improving responsiveness at central, regional and local level

Inspections and surveillance in relation to the implementation of EU legislation at national level

3. Should the existing EU framework for inspections and surveillance at national level¹², which currently applies only to industrial facilities, be upgraded:

- a) *through recommendations?*
- b) *through binding provisions?*

a) *Yes/No*

b) *Yes/No*

Comment (max. 350 words).

Inspections and surveillance at EU level

4. Should the EU create its own inspection and surveillance system complementing national mechanisms and measures in a targeted way at EU level?

¹¹ Directive 2003/34/EC on public access to environmental information and repealing Council Directive 90/313/EEC.

¹² Recommendation 2001/331/EC providing for minimum criteria for environmental inspections in Member States and binding sectoral provisions.

Yes/No
Comment (max. 300 words).
Handling complaints at national level
<p>5. Should the EU set criteria for the handling of complaints by Member States (e.g. by providing general safeguards on confidentiality and timeliness; providing citizens with a means of bringing their grievances to the attention of an independent national administrative review body):</p> <p>a) <i>through recommendations?</i></p> <p>b) <i>through binding provisions?</i></p>
<p>a) Yes/No</p> <p>b) Yes/No</p>

Access to justice
<p>6. Should the EU define the conditions for efficient and effective access to national courts in respect of all areas of EU environment law:</p> <p>a) <i>through recommendations?</i></p> <p>b) <i>through binding provisions?</i></p>
<p>a) Yes/No</p> <p>b) Yes/No</p>
Comment (max. 350 words).

Privacy Statement: *The follow-up to your contribution requires that your personal data (name, contact details, etc.) be processed in a file. All the answers to the questions are voluntary. Your replies will be kept for a period of 5 years after the reception of the questionnaire. Should you require further information or wish to exercise your rights under Regulation (EC) No. 45/2001 (e.g. to access, rectify, or delete your data), please contact the data controller (Head of Unit E2) at subsidiarity@cor.europa.eu. If necessary, you may also contact the CoR Data Protection Officer (data.protection@cor.europa.eu). You have the right of recourse to the European Data Protection Supervisor at any time (www.edps.europa.eu).*

Please note that the questionnaire with your contribution and your contact details will be published online. Your questionnaire may be transmitted to CoR rapporteurs and other EU institutions for information purposes. If you do not wish your questionnaire to be made available for this purpose, please notify us accordingly.

5 Appendix 2

5.1 Contributions

#	Country	Authority	Administrative level	Network
1	Germany	Bavarian State Government (Bayerisches Staatsministerium für Umwelt und Gesundheit, Referat Fachübergreifendes Recht)	R	SMN
2	Italy	Marche Regional Legislative Assembly	R	SMN
3	Portugal	Madeira Regional Government (Direção Regional dos Assuntos Europeus e da Cooperação Externa)	R	SMN
4	Spain	Catalan Regional Government (Secretaria de Medi Ambient i Sostenibilitat)	R	other stakeholder
5	Spain	Catalan Regional Parliament ¹³	R	SMN
6	Spain	Extremadura Regional Parliament	R	SMN
7	Spain	Basque Government (Departamento de Medio Ambiente, Planificación Territorial y Agricultura y Pesca)	R	SMN
8	UK	Antrim Borough Council	L	other stakeholder

Note: L= Local, R=Regional

¹³ The contributions from the Catalan Regional Parliament and the Government are identical.