Project

MAKE IT WORK
Towards a roadmap for future EU environmental regulation

Background paper for the Expert workshop, 2-3 April 2014

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EXECUTIVE SUMMARY AND READING GUIDE

This background paper is produced to support a workshop which aims to discuss how to make EU environmental law smarter. The project is led by the Ministry of Infrastructure and the Environment in the Netherlands and the UK Department for Environment, Food and Rural Affairs.

Many Member States have already taken forward better/smart regulation initiatives and smart regulation is an important priority for the European Commission. It is, therefore, important to bring these strands of thinking together. In particular there needs to be a move to consider better or smart regulation of the body of law as a whole. To help do this, this project has – within the context of maintaining and improving the environment - three aims:

- To identify and analyse key areas where unjustified and avoidable differences and inconsistencies in EU environmental legislation occur, which lead or may lead to ineffective or inefficient implementation, or where improvement of coherence could lead to more effective application of EU law;
- To recommend ways to address these issues, in particular through the development and application of guidance aimed at making legislation more consistent and coherent;
- Feed into on-going efforts and discussions on how to improve the coherence and consistency of EU environmental law and its implementation and hence contribute to objectives set out in the 7th EAP.

Aspects of EU environmental law have been found to have a number of unintended effects or shortcomings which create problems for Member States in its implementation. These include:

- Complexity of law potentially leading to unintended poor application.
- Lack of sufficient clarity in some requirements potentially leading to incorrect implementation decisions.
- Lack of coherence between certain aspects of legislation, leading to conflicts or inconsistencies.
- Gaps in the law, resulting in issues being addressed in an uneven manner.
- Timeline for implementation being impracticable in some cases in the face of certain constraints or inconsistent with related law.
- Cases of unnecessary/ burdensome procedures or information/ data requirements.
- Cases of insufficient information/ data requirements.
- Lack of sufficient obligations to enforce effectively, leading to poor implementation in some cases.

As a result it is valuable to set out principles for a ‘smart acquis’ as a whole in order to help to overcome these problems. These principles include:

- Pursuing a high level of coherence in objectives across the acquis.
- A corresponding coherence in approach across the acquis, where appropriate.
- Ensuring the acquis delivers Treaty objectives for the environment and single market.
- Ensuring the subsidiarity principle is addressed.

- Removal of any unnecessary requirements in the acquis.
- Maximising win-wins for environment and society.
- Allowing for national administrative contexts where appropriate in the application of the acquis.

Many directives and regulations require that certain instruments are used, actions are undertaken and procedures are followed to implement the objectives of these directives and regulations. These instruments, actions, and procedures are often regulated in a different ways. Member States may seek to implement them in a consistent fashion, but this can be hampered by the lack of a coherent approach throughout the acquis. This is not a smart way of formulating legislation. Examples found in a range of different areas of the environmental acquis include:

- Developing environmental objectives and standards.
- Developing plans and programmes.
- Undertaking environmental assessment of projects, plans, developments.
- Requirements for permits, licences and other forms of prior authorisation.
- Undertaking systematic inspection and enforcement of requirements in law.
- Monitoring of activities or the environment.
- Reporting on a wide range of aspects of application of the law.
- Creating access to justice and access to information.
- Establishing public consultation on implementation of the law.

This background paper explores these issues. The workshop will also consider how the EU institutions can be supported in developing a smarter EU environmental acquis and in particular what actions can be undertaken to develop and apply practical guidance on making the acquis more consistent and coherent.

This background paper begins by providing background to the project and its aims, noting how it draws on developments currently taking place in Member States. It then examines some of the reasons for poor implementation of the environmental acquis in Member States and how the design of the acquis can contribute to this. The paper continues by exploring the principles of better and smarter legislation before examining the principles for a smarter environmental acquis as a whole and how these relate to specific instruments and procedures set out in environmental legislation which need to be implemented in the Member States. The paper concludes by noting that the workshop will explore ways to take forward the issues raised in the paper, engaging with the EU institutions.

1. BACKGROUND AND AIMS OF THE PROJECT

Many Member States have taken forward better/smart regulation initiatives in recent years in response to domestic priorities. In the environmental field of course a large proportion of Member State law is derived from the EU acquis. For Member State law to be smarter some corresponding efforts are required in achieving a smarter approach in EU legislation and the processes associated with it. Further, while some analysis has focused on individual laws, initiatives by Member States to consolidate legislation and/or administrative practice at national level have led to a greater emphasis on coherence and consistency across the body of environmental law as a whole. This needs to be distinguished from discussion of the objectives of EU environmental legislation which are not being questioned in this specific debate – or this paper.

Box: Better Regulation initiatives in the Netherlands and UK

The Netherlands has undertaken the task of substantially simplifying and improving environment and planning law (i.e. the regulation of human activities affecting the physical environment). The aim is to replace 17 existing Acts with an integrated Environmental Planning Act and to consolidate and streamline the implementation rules based on them. A significant portion of the Acts and implementation rules that are to be integrated serve to implement EU directives. In revising this legislation, the Netherlands is endeavouring as far as possible to follow the structure of the EU legislation, so that EU law can be transposed more simply and more efficiently both now and in the future. It has become apparent that various EU directives share the same patterns to some degree. These directives however also contain provisions that are not aligned, have cumulative and overlapping obligations, and unjustified differences in terminology and provisions.

In the mid-2000s the United Kingdom took the first step towards greater integration by introducing an integrated environmental permit in place of various sectoral environmental permits required under 17 EU directives. Opportunities for further integration are currently being explored.. The Department for Environment, Food and Rural Affairs is working to reduce complexity, inconsistency and duplication and to provide a more integrated and coherent structure for environmental regulation. This is covering the whole landscape of environmental regulation, i.e. legislation, guidance, information obligations and inspections. The short term priority is to simplify environmental guidance and information reporting obligations. Legislation represents the biggest challenge as there are some 25,000 pages of environmental laws in England alone, overlaid with a substantial body of EU legislation. Through the UK government's "Red Tape Challenge" reform initiative Defra is implementing most of the improvements to individual environmental policy areas practical within short timescales but there is a limit to what can be achieved without a more cross-cutting approach. Rather than do this through a 'big bang' legislative reform exercise, the preferred and more strategic approach is to describe what really good legislation looks like through a blueprint or roadmap and to then to shape activities accordingly and take the opportunities that arise over the next 5-10 years. This will include looking at simpler ways of implementing EU legislation.

Hence there is a need to consider a more holistic approach to smarter regulation for the EU environmental acquis as a whole.

Improving implementation of the environmental acquis continues to be a key strategic objective of the EU. This objective is reiterated in the recently adopted 7th Environment Action Programme (7th EAP)[1] which *inter alia* seeks to ensure that by 2020 compliance with specific environment legislation has increased, EU environmental law is enforced at all administrative levels and a level-playing field in the internal market is guaranteed. Better implementation requires a range of different actions at different stages of the policy cycle and across governance levels.

At the same time, the Commission continues to pursue efforts to improve the effectiveness, efficiency, and transparency of EU legislation and the way in which it is developed. This is currently being taken forward under the so-called 'smart regulation' agenda[2] which places significant emphasis on improving the quality of EU legislation throughout the policy cycle. The need to evaluate the functioning and effectiveness of existing legislation is also emphasised and a process of more comprehensive ex-post policy evaluations known as 'fitness checks' has been launched. In 2012 this was followed up by a Communication on EU Regulatory Fitness[3] which introduces the concept of a Regulatory Fitness and Performance Programme (REFIT) with an increased focus on simplification and reduction of administrative burden. The Communication also calls for a closer co-operation with Member States as well as a greater focus on implementation and evaluation.

A broader, strategic interpretation and approach to smarter EU environmental law will lead to better implementation to the extent that it helps to improve the quality and coherence of EU environmental law thus helping to achieve the benefits associated with the law while delivering a more level playing field across the EU.

This project is being carried out by the Institute for European Environmental Policy (IEEP) for the Ministry of Infrastructure and the Environment in the Netherlands and for the UK Department of Environment, Food and Rural Affairs. Aim of the project is to identify opportunities for smarter development of EU environmental legislation to make it easier to implement, thus contributing to the strategic objectives of meeting the goals of EU environmental legislation in an efficient way. The project seeks to:

- identify and analyse key areas where unjustified and avoidable differences and inconsistencies in EU environmental legislation occur, which lead or may lead to ineffective or inefficient implementation or where improvement of coherence could lead to more effective application of EU law;
- recommend ways to address these issues, in particular through the development and application of guidance aimed at making legislation more consistent and coherent;

[1] Decision No .../2013/EU of the European Parliament and of the Council on a General Union Environment Action Programme to 2020 "Living well, within the limits of our planet"
[2] EC (2010), Communication on Smart Regulation in the European Union, (COM(2010)543), 8.10.2010, Brussels.
[3] EC (2012), Communication on EU regulatory fitness, (COM(2012)746), 12.12.2012, Brussels.

- feed into on-going efforts and discussions on how to improve the coherence and consistency of EU environmental law and its implementation and hence contribute to objectives set out in the 7th EAP.

The intention is to run this project in a phased approach. A preliminary scoping phase was carried out in autumn/winter 2013. This background document contains the main findings of this scoping. The objective of the Expert workshop in April is to discuss these findings with experts from Member States and EU institutions. The workshop will offer an opportunity to discuss the key issues identified, whether any others should be added, along with examples from Member States and the further steps to take.

2. UNDERSTANDING SOME OF THE REASONS FOR POOR IMPLEMENTATION OF EU ENVIRONMENTAL LAW

In 2011 environment stood out again as one of the four most infringement-prone EU policy areas (the others being transport, internal market and taxation)[4]. The implementation gap is a source of internal market distortion and costs, as well as unsatisfactory environmental outcomes. For example, a 2011 study for the European Commission estimated that the costs of not implementing key environmental law in the areas of water, air, nature, biodiversity, waste, chemicals and noise may represent about €50 billion a year[5]. Although these figures are an indicative first order-of-magnitude estimate, they show that lack of full implementation can have major economic, social and environmental impacts.

When discussing issues of inadequate implementation one needs to distinguish between matters that should be legislated at the EU and at the national level, i.e. the application of subsidiarity (see Box below). The EU environmental acquis does not and should not look like a body of national environmental law as the application of subsidiarity requires that some elements of environmental law should be developed at national level. However, we can expect that it is written in such a way as to facilitate transposition into effective and efficient national law that can be fully implemented.

All Member States should work towards a body of coherent environmental legislation. The challenge to do this might perhaps be most obvious in those countries or regions which have created and maintain a single piece of legislation covering much of the environment. Examples include Sweden as well as the current redesign of legislation in the Netherlands under an overarching Environment and Planning Act (Omgevingswet).

Box: Distinguishing between the national and EU competencies

The EU environmental acquis should encompass those aspects of protection of the European environment which are justified under the Treaty. Relevant aspects include the environment Article, the functioning of the single market and avoiding environmental damage from other policies (such as the Common Agricultural Policy (CAP)). They encompass all aspects of environmental law at national (or sub-national) level. For example, implementing the Habitats Directive is important for protecting and enhancing Europe's biodiversity. However, reliance by Member States on Natura 2000 sites alone would fail to protect much of our biodiversity resource. Hence there is a multitude of national level or more local designated sites supporting other aspects of biodiversity with different levels of protection. A 'gap' in the coverage of the acquis is not necessarily, therefore, an oversight which per se needs to be filled at EU level, but may reflect the appropriate Treaty division of responsibilities between EU and Member State level[6].

[4] EC (2011) Report from the Commission, 29th Annual Report on Monitoring the Application of EU Law (2011), (COM(2012)714), 30.11.2012, Brussels

[5] COWI, Ecorys and Cambridge Econometrics (2011a) The costs of not-implementing the environmental acquis. Final report for DG ENV, Brussels, http://ec.europa.eu/environment/enveco/economics_policy/pdf/report_sept2011.pdf, [accessed 19/7/2013]

[6] Note the issue of subsidiarity is also under examination in some Member States, such as the UK's review of the 'balance of competencies' and the exercise undertaken in the Netherlands to test European legislation for subsidiarity and proportionality. We do not comment here on where the 'balance' lies, but simply note that some environmental issues are not (and should not) be in the scope of EU law.

In some cases however, the way in which the scope of 'environmental law' is defined differs between the EU and national levels. Some jurisdictions may define the body of specifically environmental law by reference to the subject, others by which ministry or Commission Service is responsible. For example, the re-organisation of the Commission in 2010 saw the creation of DG CLIMA, removing climate-related legislation from DG ENV, and the transfer of legislation on issues such as pesticides and GMOs to DG SANCO. A national level authority might seek synergies between the Industrial Emissions Directive and the Emissions Trading Directive or between the Water Framework Directive or Drinking Water Directive and the Pesticides Directive, but at EU-level these come under the responsibility of different DGs. This has an influence on how EU level legislation is developed and implemented.

The reasons for poor implementation of EU environmental legislation vary across different parts of the acquis and among different Member States. These reasons are in most cases well-rehearsed and relate to *inter alia*:

- **Overall compliance costs:** This includes for example investment costs for infrastructure and systems needed to meet legal requirements, as well as for the private sector.
- **Costs to public administrations**: In practice these can be limited capacities and lack of resources in public administrations to undertake procedures and processes necessary to deliver implementation in the start-up phase and throughout the lifecycle.
- **Administrative burdens**: Unnecessary burdens and long procedures may result in resistance and implementation problems.
- **Complexity of the acquis**: Complexity contributes to mis-interpretation of requirements, unintended outcomes, etc., which can add to costs and incomplete implementation.
- **Late transposition**: Delays by Member States in the transposition of EU legislation into national measures may cause delays in meeting requirements and deadlines.
- **Wrong interpretation**: The way the law is transposed or the practical application of the transposed law may incorrectly interpret EU law and so result in implementation failure.
- **Lack of information and/or data**: Implementation requires decisions based on information that may not be currently available in some countries or for certain issues.
- **Poor enforcement checks**: Insufficient supervision leads to poor compliance by regulated entities or organised crime which undermines objectives.
- **Lack of awareness**: A failure to communicate legal requirements to businesses or individuals may lead to non-compliance behaviour.
- **Different cultural/political contexts**: Different institutional designs in Member States, e.g. centralised systems versus decentralised systems may also contribute to implementation problems.
- **Lack of political will**: For various reasons there may be hesitation at a political level to implement certain provisions which in turn delays implementation or results in inadequate implementation.

While the 'blame' for failure to implement EU law may rest squarely with actors at Member State, regional or local level, the nature of EU law itself also can be to blame, or at least contribute to the problem in certain cases. Some examples are set out in Table 1 below.

Table 1: Reasons why the particular requirements of EU law may contribute to poor implementation[7]

Reason	Explanation	Example from literature[8]
Complexity of law	The more complex EU law is, the more likely it is that errors are introduced in its application during transposition and practical implementation at Member State level.	The way REACH and forthcoming biocides regulations are written are said to require significant interpretation and guidance.
Law is unclear	Where specific provisions in EU law are unclear (e.g. lack of a definition), Member States (or administrations) may make their own interpretations, resulting in potential for incorrect implementation.	Lack of agreed definition of 'waste' is said to be a particular problem for construction, quarrying, and waste management sectors.
Lack of coherence	Lack of coherence in EU law means that Member States may be faced with conflicting obligations and priorities across different pieces of legislation, leading to choices being made which may or may not deliver sufficient implementation.	Activities regulated under EIA, IED and waste legislation all require different forms of environmental assessment and improved coherence would enhance the value of assessments and reduce costs.
Gaps in the law	Implementation may be hampered by certain elements which are missing from the EU acquis.	European Waste Catalogue codes do not have unique coding on both non-hazardous and hazardous waste, thus WEEE data misreported as scrap metal.
Timeline for implementation	The timetable set out in EU law may be too tight for its realistic implementation. In particular, increasingly short timetables for transposition can hinder Member States in their analysis of options for lower cost implementation choices, while timetables for practical implementation can present problems where significant investment is needed.	The transition periods negotiated for some newer Member States will not be met in some cases for some facilities and the impracticability of meeting such timetables was evident at the time of negotiation.
Coherence of timelines	Differing timetables in different legislative measures can present problems for delivering practical coherence on the ground, hampering efficient and effective implementation.	WEEE and Waste Batteries registration and reporting are not coherent and bringing these together could reduce costs.
Unnecessary/ burdensome procedures or information/ data requirements	Present burdens on administrations and businesses.	EU requirements on businesses to report on all substances to the pollution Inventory considered unnecessary
Insufficient information/ data requirements	Conversely a lack of the right data requirements can result in a failure to understand issues which are necessary for effective implementation.	Low awareness/understanding of REACH among manufacturers.
Lack of obligations	For some Member States obligations in the EU	Despite significant investments to

[7] Sources for examples here drawn from UKELA et al. 2012. The State of UK Environmental Law in 2011-2012. Is there a case for legislative reform and DEFRA 2013. Smarter Environmental Regulation Review, Phase 1 report: guidance and information obligations, Executive Summary, 16 May 2013.

[8] Note that these are reported examples and further analysis may be required to determine if such cases are robust.

to enforce	legislation to enforce may be needed to ensure full application of the law.	comply with F-gas provisions there has been little or no enforcement.

Issues for discussion at the workshop

1. What are the most important reasons behind poor implementation?
2. Are there areas where the way in which EU environmental law is formulated has proven to be or is perceived as an obstacle to effective and efficient implementation at national/regional level?
3. Are there examples of changes in EU law which have aided implementation (and why)?

3. PRINCIPLES FOR BETTER AND SMARTER EU ENVIRONMENTAL LEGISLATION

According to the Commission, ''smart regulation' means delivering EU policies and laws that bring the greatest possible benefits to people and businesses in the most effective way"[9]. Smart regulation aims to ensure that regulation delivers its objectives with minimum unnecessary impacts. Thus EU environmental law should aim to deliver, inter alia, environmental protection objectives and other relevant policy goals[10] while minimising costs to business, burdens to administrations and perverse effects[11]. Much of the debate on smart/better regulation has been on individual items of legislation and it is useful briefly to consider smart regulation at this scale first, though the aim of this project and this paper is to consider how the environmental acquis as a whole can be 'smart'.

For individual pieces of EU environmental legislation to be considered 'smart' they would need to follow a number of principles. Some of these are set out below:

1. **Focused on outcomes:** Law should be designed to deliver the outcomes for which it is adopted, such as reducing a specific environmental problem. It should refrain from introducing requirements that do not directly contribute to these outcomes. In this way law is efficient.

2. **Proportionate obligations**: The degree of regulation in law should be sufficient to address the problem that the law is designed to address, it should not introduce obligations which are disproportionate to that problem.

3. **Simple procedures**: Simplicity (for the administration and those being regulated) should be a continual aim for each item of law to the extent possible. The simpler the law, the more likely it is to be implemented effectively.

4. **Coherence**: Each item of EU law should be coherent with other pieces of EU environmental and non-environmental law wherever possible. This allows for synergies in implementation, enhancing outcomes and reducing costs. Lack of coherence can affect outcomes, increase costs and hamper implementation.

5. **Integration of cost-effectiveness in design**: Provisions in EU law may result in costs to administrations, businesses and individuals. They may also result in savings or opportunities for new income, for example when they support smooth operation of the single market. Smart regulation seeks to deliver the associated benefits of environmental law at the least possible cost. Delivering this requires a sound analysis of costs and benefits[12], especially of alternative approaches to delivering associated

[9] EC (2013) Smart regulation, http://ec.europa.eu/smart-regulation/index_en.htm [accessed 7/11/2013]
[10] Other goals may, depending on the legislation, include impacts on communities, health, public goods as well as delivering objectives for issues such as access, equity, burdens, knowledge, employment, etc.
[11] Note that this is true for legislation in other contexts, not just that of the EU.
[12] Note the emphasis on costs and benefits. Some recent Member States have highlighted the costs of EU regulation with little or no consideration of the benefits, which is an unbalanced approach.

benefits. This should be integrated in the design of the law and may include allowing for flexibility of implementation by Member States to make cost-effective choices[13].

6. **Monitoring/reporting only as needed**: Monitoring and reporting obligations can represent significant recurring costs. As a result such obligations should be limited to those which are necessary to ensure compliance of regulated entities and to judge progress towards environmental objectives, etc.

7. **De minimis principle**: Where the law acts on regulated entities it may capture small or even trivial activities in its scope where such regulation produces no or hardly any benefit, but would impose significant costs. Allowing for the exclusion of such activities is smart.

8. **Ensuring implementation is achievable and achieved in practice**: Laws should be implemented in a timely fashion. Legislation which is so 'difficult' or complex that implementation cannot or will not occur is not smart. Furthermore, legislation written in such a way as to make it difficult to determine how to measure implementation is not smart. Opaque processes, vague obligations, unrealistic ambitions should be avoided. Objectives and procedures should be simple and clear[14]. A coherent acquis will help to avoid implementation conflicts. The checklist to assess the practicability and enforceability of existing and new legislation developed for IMPEL could for example be a useful tool in this regard[15].

Issues for discussion at the workshop

1. What are your views on the principles for smart individual pieces of EU environmental legislation as as described above?
2. In recent, new or amended EU law do you see elements which are 'smart'?
3. In recent, new or amended EU law do you consider that there are cases where opportunities for smart regulation have been missed?

[13] Allowing such flexibility is highly attractive, but Member States do not always make least cost choices, which is frustrating to business and to the Commission which gets the blame.

[14] Seeking for clear, simple and straightforward legislation may mean that the level of flexibility for MS will be limited.

[15] Pallemaerts, M., ten Brink, P., Farmer, A., Wilkinson, D., (2006) IMPEL Project "Developing a checklist for assessing legislation on practicability and enforceability", http://impel.eu/wp-content/uploads/2010/02/2006-15-pe-checklist-FINAL-REPORT.pdf

4. TOWARDS A SMARTER ENVIRONMENTAL ACQUIS

Taking forward smart regulation principles is possible in the context of developing or reviewing a single piece of legislation. However, re-imagining the entire EU environmental acquis in a smarter form is significantly more difficult. There is currently no opportunity to review the entire body of the EU environmental acquis and there may be understandable opposition to such a move in particular given present fears of the potential 'roll-back' of EU environmental policy in the current economic and financial climate. It would also be a major undertaking involving many departments, ministries, units, etc., in the EU institutions, Member States, stakeholders, etc. Nonetheless, the value of having a more coherent body of EU environmental legislation is evident and could bring multiple benefits including to the better implementation agenda.

A first step in an approach towards a smarter EU environmental acquis is to set out a series of design elements, principles, and considerations which such an acquis should reflect. These elements could subsequently guide the development and review of the acquis as opportunities arise over time. Some possible key principles a smarter EU environmental acquis could adhere to are set out below. These draw on better regulation principles for individual items of law already developed in various analyses and summarised in section 3, but are here reformulated in the context of the acquis as a whole.

1. **Coherence in objectives**: The EU environmental acquis includes many binding and non-binding objectives. Some objectives are strategic or high level (e.g. on resource efficiency) while others are highly specific (e.g. an environmental standard). Furthermore, some objectives are detailed in EU policy while others are to be elaborated by the Member States. However, there would be benefits in having clear objectives for the environment (including health) at EU level (e.g. in overarching law, Environmental Action Programme, etc.) and description of how individual elements/sub objectives contribute to these in a coherent way providing clearer direction and motivation to actors at national level.

2. **Coherence in approach**: EU law requires the application of a wide range of different policy instruments and approaches problems in different ways. At the simplest level, the acquis addresses some environmental problems by setting quality objectives, while for others it tackles the source of pressure. It may require plans, permits, inspections, assessments, etc. of widely differing types. These have evolved over time, drawing on experience in one Member State or another. However, the totality in the acquis is far from coherent in its approach to these procedures, leaving some Member State actors facing problems as they attempt to put the pieces together[16]. This issue is considered in more detail in the following section.

3. **Delivering Treaty objectives for the environment and the single market**: The fundamental purpose of the environmental acquis must not be lost in designing a smarter acquis. There is a need for EU policies and law to ensure the protection of

[16] Note that enhancing coherence is not the same as standardisation – requirements in different directives can vary to respond to different situations, but coherence is still desirable and achievable to enhance synergies.

the European environment, the health of its citizens and the operation of the single market. Provisions of some pieces of legislation may be unnecessary in this regard, some may be duplicative and there may be gaps for new policies to fill. A smarter acquis would ensure that the Treaty obligations for the environment, health and single market are met in a (cost-)effective manner.

4. **Ensuring the subsidiarity principle is addressed**: While it is essential that the acquis is sufficient and comprehensive enough to meet the Treaty objectives, it is also important to recognise the role of the subsidiarity principle. This is difficult to ensure in some cases, however, as defining up front the issues or details appropriate for law at EU level is not always simple. A complicating factor is that some MS may be tempted to push for making rules at EU level only because they would find it difficult to get those rules agreed upon at national level.

5. **Removal of unnecessary requirements: Unnecessar**y requirements in law place burdens on administrations, businesses and individuals for no purpose, bringing the acquis into disrepute. Of course there is a debate over what might be necessary, however all provisions should be examined as to their necessity (e.g. to meet objectives, ensure implementation, etc.) both during the development of legislation and in subsequent reviews[17]. Examination of the acquis as a whole will identify synergies and opportunities to remove unnecessary requirements.

6. **Maximising win-wins for environment and society**: the aims of the environmental acquis are to protect the environment and health and ensure operation of the single market. The acquis should also aim for maximum benefits to society as a whole, including economic benefits[18]. In some instances there will be conflicts between environmental and social/economic objectives and trade-offs may be needed. In other cases good design of the law can deliver win-wins for environment and society. These win-wins are sometimes easy to identify, sometimes not, but the principle should be that the environmental acquis should consider the wider societal obligations of the Treaty in its detailed provisions. Indeed, proofing of proposals (and revisions) of EU law to maximise such synergies and minimise trade-offs would help contribute to this objective.

7. **Allowing for national administrative contexts**: National administrative contexts vary significantly, with devolved, centralised, fragmented, etc., models for different areas of public administration generally and environmental management in particular. Some differences arise from the application of quite different and opposing views of public administration (e.g. separation, or not, of licensing and enforcement, application of cost-recovery, etc.). The acquis must allow for these different

[17] Removal of provisions in EU law following review has not been common, but it has occurred more often than many would suppose. The principle of removal of unnecessary obligations in the environmental acquis is established.

[18] For example, measures to promote resource efficiency may stimulate certain key enabling technologies with benefits to business in Europe and opening export markets to non-EU countries. An alternative policy could stimulate the import of other technologies from third countries, with very different consequences for European business and employment.

principles and traditions within reason and without adopting excessive elasticity. This is potentially most problematic where highly detailed procedures are prescribed in EU law. Of course, where national administrations are deficient, the acquis can be an important stimulus to reform (and hence creation of a more level playing field).

Issues for discussion at the workshop

1. What are your views regarding a smarter EU environmental acquis? What are the elements/details of such an acquis?
2. What do you consider to be the relative influence on delivering a smarter EU environmental acquis by the Commission, Parliament and Council?

There are several types of instruments and procedures set out in different pieces of EU environmental law, e.g. standard setting, permit obligations, development of plans and programmes, inspection and monitoring requirements etc. Such instruments and procedures cut across different pieces of legislation and in certain cases may be incoherent. Aligning these instruments and procedures to the extent possible and ensuring a more coherent approach to how they are used and carried out can contribute to improved implementation and reduced burdens.

It should be noted that at EU level examination of coherence across different directives is sometimes being looked at, at least to a certain extent. The on-going REFIT process and the so-called 'fitness checks' which have already been initiated or are planned in a number of areas of the acquis provide new opportunities for taking this agenda forward, albeit also raising a number of challenges at the same time. While these processes can allow for the smarter design of, for example, the air or waste acquis, this is largely within the confines of that particular area of law or policy. Although issues of coherence with other environmental and non-environmental law can be identified, these review process do not necessarily lead to action on these issues and, in any case, it will be from the perspective of that specific area of law rather than a more comprehensive, overarching approach.

Parallel to this the Commission is taking forward horizontal initiatives which have the potential for addressing coherence issues. The example of a possible 'inspections' instrument is set out in the following box.

An 'inspections' directive

The Commission is currently considering a possible instrument to enhance the inspection/supervision requirements of the environmental acquis. The objective would be to ensure that Member States take sufficient measures to enforce the many different provisions of the acquis. This initiative highlights coherence issues on inspection and enforcement across the acquis. How far consistency concerns will be addressed by a new instrument remains to be seen.

Some of these cross-cutting approaches, how they interact and their impacts are set out below, with some additional examples in the subsequent box:

- **Developing environmental objectives and standards**: Various types of environmental objectives/standards are identified in EU directives. Some are quantitative or qualitative, with or without options for (precisely delineated) deviations; some are fully determined by Member States, with or without a deadline for implementation, with or without exceptions, with or without room to consider feasibility/affordability, with or without the option to claim impossibility/force majeure, with or without an absolute or relative ban on deterioration (standstill)[19].

- **Developing plans and programmes**: Plans are required by many directives[20] – air quality management plans, River Basin Management Plans, Marine Strategies, waste management plans, etc. These plans may develop objectives or fulfil those explicitly set out in EU law. Member States are to define areas to which the plans apply, establish obligations, ensure obligations are met, monitor progress, etc. In some cases directives do not consistently use a single term for programmes[21] and the approach taken to the regulation of plans (e.g. impact, function, procedures to establish and review periods) varies. Each type of plan is different, but there would be a benefit from delivering more coherent approaches to planning, particularly for authorities responsible for implementing the multiplicity of plans across their territory.

- **Environmental assessment**: A number of directives require assessments of environmental impacts to be undertaken. This is obviously the subject of the EIA Directive, but is also a key requirement of the Industrial Emissions Directive, as well as appropriate assessments under the Habitats Directive, etc. a more harmonised approach towards these requirements is acknowledged as desirable. A more systematic synthesis and harmonisation of these obligations would be smarter.

- **Requirements for permits, licences and other forms of prior authorisation:** A range of EU environmental laws include requirements for permits, licenses and other forms of prior authorisation. Within the Industrial Emissions Directive the requirements are set out in considerable detail. In contrast the Water Framework Directive refers to prior authorisation as a measure without elaboration. Other examples are found in the waste acquis, etc.

- **Inspection and enforcement**: Much of the acquis is limited in its explicit requirements on inspection and enforcement. There is an implicit obligation on Member States to ensure such activities. However, some legislation has specific obligations in this regard. A possible new horizontal instrument (see box above) may aid coherence, but it remains to be seen if it allows for (and encourages) smart supervision and surveillance in Member States.

[19] Wöltgens, L. and Stoop, J. 2012. EU as starting point for the Environmental Planning Act

[20] Note that while spatial (or land-use) planning is largely treated as the competence of Member States, this has not prevented plans based on a spatial approach being required for a range of different purposes.

[21] Wöltgens, L. and Stoop, J. 2012. EU as starting point for the Environmental Planning Act

- **Monitoring:** Monitoring of the environment, the performance of individual activities, how well Member States are progressing towards targets, etc., is an obligation under much of the acquis. Monitoring is required to support regulatory decisions (e.g. enforcement), improve plans, provide the basis for reporting, etc. Obligations are developed for each directive and regulation, occasionally consideration being given to obligations in related parts of the acquis. However, the burden on administrations and business can be considerable. In some cases it is not always clear to those providing the information (e.g. businesses) why information is needed or whether and how it is used by the regulator[22]. A thorough monitoring audit aiming for maximising of synergies across the acquis could deliver significant benefits.

- **Reporting**: Almost every piece of EU environmental law requires reporting. Information and data flow intermittently or continuously from Member States to the Commission (and EEA). The use of some of these data is clear, but other data are of limited value. For example, in the water acquis the Commission has expressed its view that reporting for directives such as the Urban Waste Water Treatment Directive is of little value given that by the time it is published by the Commission the data are already several years old. Developments such as INSPIRE present a change in approach and consideration is being given to developing interoperability between Member State and EU level information systems. These could offer potentially positive and smarter solutions to reporting, reducing potential overlaps between reporting requirements of different pieces of legislation. However this would require an audit of requirements to identify who needs to know what, when and why in order for the information gathered to be of greatest value.

- **Access to justice and access to information**: It is important for the public to have access to the necessary information to contribute to decision making and make informed choices. It is also critical that the public has access to justice to redress issues of concern. How these provisions are established in law can facilitate these objectives or hinder them, creating unnecessary burdens or reducing them.

- **Public consultation:** Much EU law requires public consultation, such as on draft plans, licensing proposals, etc. In some cases the requirement seems cursory and limited. In others, such as the Water Framework Directive, there is encouragement for 'active' public participation and support for a range of innovative approaches. At Member State level there needs to be consistency of approach, for example in what a member of the public can expect in terms of information provision, timing, procedures, etc.? Furthermore, it is important to avoid consultation fatigue. The challenge is to develop platforms that allow for active engagement and achieve this, but much of the acquis fails in this regard. A fully coherent approach to how to engage with Europe's citizens is needed in a smart acquis.

[22] DEFRA (2013) Smarter Environmental Regulation Review, Phase 1 report: guidance and information obligations, Executive Summary, 16 May 2013

Examples of instruments or procedures across the environmental acquis:

- Environmental objectives include specific standards in law (e.g. air limit values), objectives described in detail in law but required specific elaboration on the ground (e.g. good status under the Water Framework Directive. Objectives also include those in the Waste Framework Directive (re-use, recycling, etc.), broad objectives for resource efficiency and individual objectives for particular waste streams (packaging, etc.).
- Several directives require plans to be developed. For example, air quality management plans are required where air quality problems exist, river basin management plans are required, in contrast, for all river basins, marine strategies for all marine areas and waste management plans for coherent areas of local government. All require procedures to be put in place to meet objectives. Some commonalities exist between some types of plans (e.g. river basin management plans and marine strategies), but even here there are coherence issues.
- Inspection obligations vary across the acquis, with specific obligations found in the Industrial Emissions Directive, WEEE Directive, Seveso III, Waste Shipment Regulation, etc. These obligations differ and a coherent approach is lacking, for example the Industrial Emissions Directive and the Seveso III Directive set out different inspection frequencies for the same facility.

Issues for discussion at the workshop

1. What critical experience could the Member States bring and how can this be incorporated when thinking about EU acquis as a whole
2. Which aspects of coherence across the acquis would be the most important starting points in developing a smart approach?
3. How can a more coherent approach to the cross cutting instruments and procedures described above be ensured while maintaining environmental objectives?

5. TAKING THE AGENDA FORWARD: KEY MESSAGES FOR EU POLICY MAKING

The Expert workshop in April is the formal kick off of the project and will first of all focus on seeking to understand the characteristics of a smart (consistent and coherent) acquis as a whole. Secondly workshop participants will be invited to consider feasible and realistic ways to progressively make the acquis smarter, while maintaining current levels of environmental protection. Workshop participants will be asked to explore in particular as a way forward the option of developing practical guidance on applying smart regulation principles to the acquis, which can be used during the creation of new law or the review of existing law. This guidance would be based on a thorough analysis of how cross cutting instruments and procedures in directives and regulations are currently regulated, identifying unjustified and avoidable differences and recommending concrete ways how these can be prevented in the future.

Issues for discussion at the workshop

1. What can Commission, Council and European Parliament do to support the development of a smarter, more consistent and coherent environmental acquis?
2. How could guidance be produced on a smarter acquis and what form could this take?
3. How can we arrange that this guidance is tested and applied in practice? In what ways can guidance be fit in different EU legislative initiatives and processes, like the development or revision of directives under the next presidencies, REFIT and other Better Regulation programmes etc?