

## **Towards better implementation of European environmental legislation**

The Green Deal currently being pursued by the Von der Leyen Commission is an important step in EU policy, a step in the right direction.

Previous Commissions, although frustratingly passive on green issues, also made an important point: implementation of environmental legislation must be improved. While the problem of the Commission being hesitant to go after Member States clearly exists in other domains, the particular problem of lacking implementation was identified as one of the four so-called 'enablers' in the 7<sup>th</sup> Environmental Action Programme covering 2014 to 2020. It was an aim of the Environmental Implementation Review launched by the Commission in 2016, with the third cycle to be reported in 2022. The review stated that weak implementation generates high societal, economic and environmental costs and an uneven playing field for businesses. The economic costs of non-compliance were estimated at around EUR 55 billion a year in 2018, including costs related to legal procedures against Member States. Improving implementation would be a profitable investment, and would not create budget deficits for the EU or the member states in the long term.

In 2019, the Commission's own evaluation of the EAP identified the need for "above all stepping up efforts to implement existing legislation". In July 2021, the Greens questioned the European Commission on its lack of consistent approach towards infringement procedures, highlighting 16 cases of mis-implementation of EU environmental law. The request remains unfortunately unanswered for now. In parallel, strong enforcement of environmental legislation would show citizens that the EU ensures the quality of drinking water, fights for cleaner air, protects the nature and biodiversity.

There are a number of reasons for the poor national implementation of environmental legislation. Among others, there is a simple lack of knowledge among governments and courts of what EU legislation actually requires. But there can also be crass calculations: the low risk of the Commission's reaction to infringements, and the length of the infringement processes that can drag – and be dragged – on for years makes the political cost of non-implementation low. Even if a Member State loses, the politicians most responsible will normally have moved on long ago, leaving ongoing infringement proceedings as toxic 'presents' to their successors. Furthermore, concrete cases are sometimes needed to clarify interpretation of the material substance of existing rules, which are too often the result of late-night compromises among exhausted negotiators.

Infringement cases can consume substantial resources in both staff time and money from the EU Commission and the courts.<sup>1</sup> So the Commission is compelled to 'turn a blind eye' to

---

<sup>1</sup> For EU Member States, it is the ECJ. For the EFTA States, it is the EFTA Court. <https://www.efta.int/eea/eea-institutions/efta-court>



even clear and conscious Member State violations of environmental regulations. The Commission and the courts simply need more resources to pursue cases of infringement against environmental regulations more actively. Otherwise, the gap between what is decided and what happens on the ground, in the water and in the air will just increase. Court action by NGOs, however valuable, is no substitute for the European Commission fulfilling its role as guardian of the Treaties.

At the same time, the Commission may be wary of the political cost of infringement proceedings in environmental cases. There is a risk that this can be portrayed and perceived as undue “Brussels” interference in domestic details. There is a real and warranted reluctance to feed right-wing authoritarian nationalism. However, in a moment of growing environmental and climate consciousness, particularly among youth, the way to re-gain support towards further European integration is through determination and proactivity. Instead of the current defensive approach, entailing passivity towards breaches of environmental law, citizens expect the Commission to act showing the effectiveness of the common tools we have developed within the EU framework to protect climate and biodiversity. Therefore, both the Commission and others, including Green politicians, need to better explain the benefits of common environmental action in the Member States and beyond. This is about protecting our common heritage at a time when the transition to a climate-neutral economy involves new forms of energy generation, industry, infrastructure, recycling and resource extraction that require careful integration into natural and human environment. It is about resisting the temptation to pawn off our future to avoid dealing with thorny conflicts here and now. It is about resisting the temptation for governments and corporations to try to gain a competitive advantage by undercutting common standards. It is about protecting governments and regions from ecological extortion by powerful commercial interests. And, at a time when the search for raw materials to replace fossil materials is intensifying, we need to prevent such a search from increasing the stress on already overstressed ecosystems and resources, and protect the resilience needed to deal with the impacts of climate change.

More broadly, the EU must do more to sanction wrongdoers. Legal persons and individuals that fail to comply with environmental rules or commit or facilitate the commission of environmental crimes must be held accountable. Through law enforcement and judicial cooperation, Europe must ensure that misconduct is effectively investigated and that wrongdoers are properly punished both at home and abroad. In particular, corporate liability for degrading the environment must be harmonised, enhanced and actually enforced.

**To sum up, the European Green Party calls:**

- The European institutions, the Member States and associated governments to commit more resources to pursuing cases against infringements of environmental



legislation and promote the implementation of high environmental standards across Europe with implementation at appropriate levels of governance;

- The European institutions and Member States to provide active and coherent support for implementation on all levels of governance, local, regional, Member State and European to improve the implementation of EU environmental rules;
- To make EU environmental legislation more clear and robust, to make it fully fit for its ultimate purpose of preventing environmental damage, by avoiding and correcting poor design in terms of interpretation ambiguities and procedural loopholes that are often an obstacle for its effective implementation at national level, as well as among other by providing for effective injunction procedures;
- To amend (Article 23a of) the Statute of the Court of Justice of the European Union to expand the urgent procedure for reference for a preliminary ruling to the area of environmental protection, to ensure that national courts can receive rapid interpretation of EU environmental legislation in order to apply it consistently;
- To ensure common progress in the full implementation of the Aarhus Convention including the prompt and adequate deployment of the third pillar of the convention within the EU legislation, thereby allowing access to judicial review for relevant NGOs, among others;
- The European institutions and governments in Member States and associated states around Europe to explain the need for common environmental action.