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UPSTREAM REPORTING OBLIGATIONS IN ENVIRONMENTAL LAW

FRANCE, GERMANY, LITHUANIA, MEXICO, SWEDEN and the EUROPEAN UNION

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BACKGROUND AND QUESTIONS

I. CONTEXT AND MANDATE

AUSGANGSLAGE

Das schweizerische Umweltrecht besteht aus 11 Gesetzen und 72 Verordnungen und ist organisch über mehrere Jahrzehnte gewachsen. Zum grössten Teil wird das Umweltrecht im föderalen Vollzug durch die Kantone umgesetzt.

Zwei vom Bundesamt für Umwelt (BAFU) in jüngerer Vergangenheit in Auftrag gegebene Untersuchungen zeigen, dass der föderale Vollzug des Umweltrechts heterogen ist, zum Teil vielschichtige Defizite aufweist und durch eine Vielzahl sich gegenseitig beeinflussender Faktoren geprägt wird.[1] Zusätzlicher Beleg zu diesen Erkenntnissen legen diverse Evaluationen zum Vollzug und zur Wirksamkeit einzelner Bereiche des Umweltrechts (z.B. Lärmschutz, Luftreinhaltung, Schutz von Trockenwiesen) oder zentraler Instrumente des Vollzugs (z.B. Instrumente und Strukturen der Programmvereinbarungen, Programmvereinbarung Waldwirtschaft) ab.

Information und Wissen bilden eine zentrale Ressource im Politikvollzug. Sie sind entscheidend, um den föderalen Vollzug vorerst zu konzipieren, dann effizient und wirksam umzusetzen sowie später zu überwachen, zu steuern und zu optimieren. Die Berichterstattung der Kantone (aber auch Dritter) an den Bund bildet in diesem Kontext eine zentrale, häufige und wiederkehrende Vollzugsaufgabe, die wesentlich zu einer Verstärkung des Vollzugs und dessen Wirksamkeit beizutragen vermag.

Gerade die Informationspflichten zu Aufsicht und Vollzug des Umweltrechts der Kantone an den Bund werden immer wieder kritisch hinterfragt. Zu erwähnen ist hier insbesondere der administrative Aufwand bei der Berichterstattung. Das BAFU hat deshalb entschieden, die Prozesse zur Berichterstattung zu analysieren und nach Optimierungsmöglichkeiten zu suchen.

GEGENSTAND: PFLICHTEN ZUR INFORMATION ÜBER AUFSICHT UND VOLLZUG DES UMWELTRECHTS

Gegenstand der Untersuchung sind Informationspflichten der Kantone an das BAFU zur Überwachung oder zur Aufsicht des Vollzugs des Umweltrechts. Die Untersuchung konzentriert sich auf jene Berichterstattungen, bei welchen den Kantonen eine Informationspflicht obliegt. Diese Pflicht ist in einem Gesetz, einer Verordnung oder einer Vollzugshilfe aus dem Umweltrecht festgeschrieben.

Nicht untersucht werden folgende Gegenstände:

- Berichterstattungen respektive die Lieferung von Daten durch die Kantone oder Dritter zum eigentlichen Zustand der Umwelt (so genannte Umweltbeobachtung [engl. environmental monitoring]).
- Berichterstattungen von Unternehmen, Forschungsinstitutionen und weiteren Akteuren.
- Berichte der Kantone im Rahmen von Vernehmlassungen/Anhörungen des Bundes oder von Stellungnahmen zu Grundlagen des Bundes.

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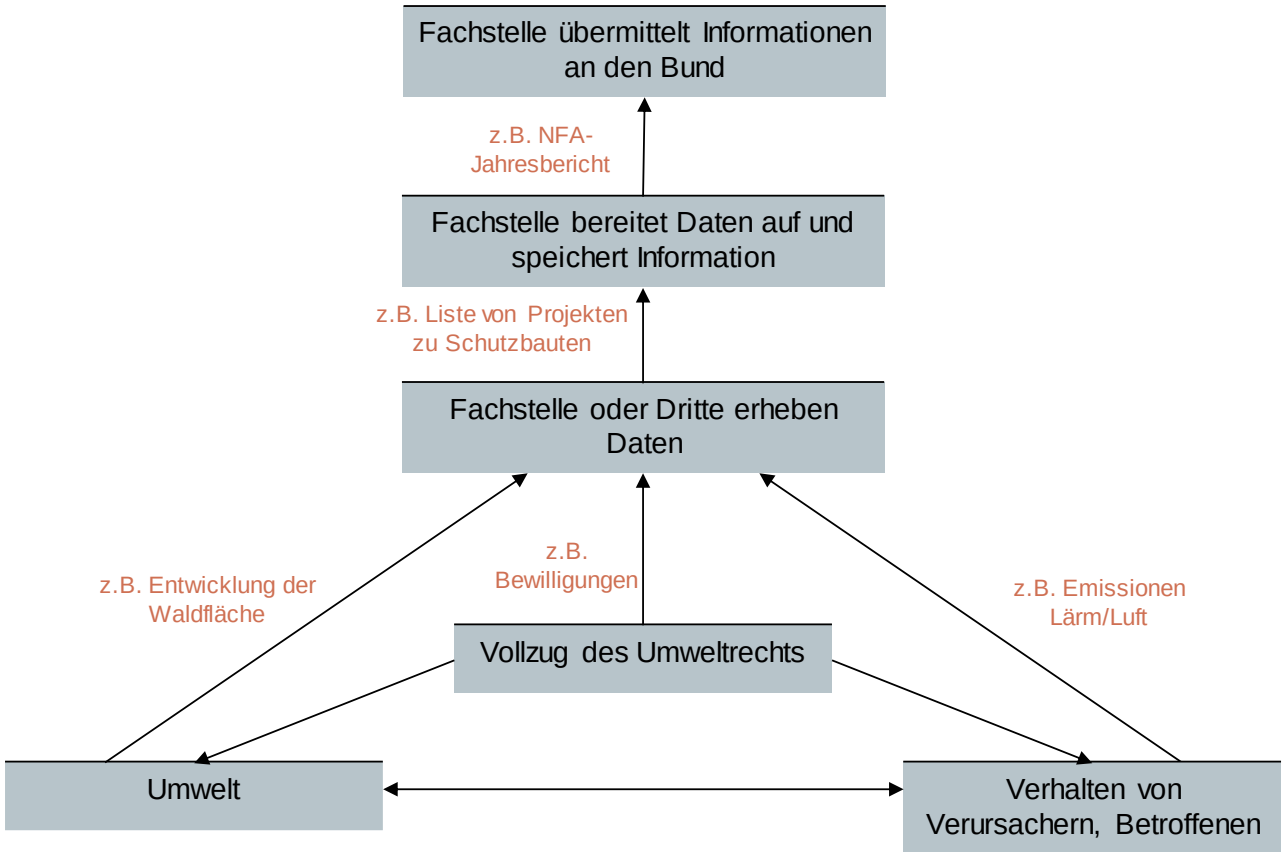
[1] Rieder et al. (2013): Stärkung des Vollzugs im Umweltbereich. Schlussbericht im Auftrag des BAFU. Kohli et al (2018): Erfolgsfaktoren im Vollzug verschiedener Umweltbereiche. Schlussbericht im Auftrag des BAFU.

- Informationen der Kantone, welche im Zusammenhang von vom Bund durchgeführten Evaluationen abzugeben sind.

Als Berichterstattung wird generell die Weitergabe von Information in Form eines Berichts, eines Formulars, eines Eintrags in eine Datenbank, einer mündlichen Mitteilung oder dergleichen verstanden.

In der folgenden Darstellung D1.1 ist der Prozess der Informationspflicht zu Aufsicht und Vollzug in einem einfachen Modell visualisiert. Dieses Modell ist aus dem Informationsmanagement abgeleitet, das Prozesse von der Erhebung und der Auswahl von Daten über die Kategorisierung, Indexierung und Speicherung von Informationen bis hin zur Verbreitung von Wissen umfasst. Die Darstellung veranschaulicht, dass Daten aus unterschiedlichen Quellen erhoben werden und die entsprechende Information über die Fachstellen der Kantone «nach oben» zum Bund weitergegeben werden muss.

D1.1: Modell zu Plichten der Kantone zur Information über Aufsicht und Vollzug gestützt auf das Umweltrecht



Quelle: Darstellung Interface.

ZIEL UND ZWECK DES RECHTSVERGLEICHS

Die Abteilung Recht des BAFU hat eine Untersuchung in Auftrag gegeben, die die Informationspflichten zu Aufsicht und Vollzug systematisch erfasst und analysiert. Darauf aufbauend sollen Möglichkeiten gefunden werden, diese Informationspflichten zu optimieren. Schliesslich sollen Optimierungen umgesetzt werden. Diese Untersuchung führt die Firma Interface – Politikstudien Forschung Beratung in Luzern im Auftrag des BAFU durch.

Mit dem Rechtsvergleich soll beschrieben und analysiert werden, ob und wie andere europäische Länder und die Europäische Union (EU) Informationspflichten zu Aufsicht und Vollzug in ihren jeweiligen Rechtsordnungen regeln. Es sollen Erkenntnisse für allfällige Optimierungen der Informationspflichten in der Schweiz gewonnen werden.

Das BAFU möchte daher das Schweizerische Institut für Rechtsvergleichung (SIR) mit der Erstellung eines entsprechenden rechtsvergleichenden Gutachtens betrauen. Die Ergebnisse des Gutachtens des SIR sollen dann von Interface in geeigneter Form in den Schlussbericht von deren Untersuchung eingearbeitet werden.

II. QUESTIONS

Fragen für die Fallstudien der Länder

1. Generelle Fragen zum Umweltrecht und zur Organisation des Vollzugs des Umweltrechts

1.1. Hat das Land eine Umweltschutzgesetzgebung analog dem Umweltschutzgesetz (USG) der Schweiz?
1.2. Hat das Land spezifische Gesetze im Bereich des Umweltschutzes (etwa zu den Themen Gewässerschutz, Wald, Klima, Jagd, Fischerei, Natur- und Heimatschutz etc.)?
1.3. Wie ist der Vollzug des Umweltrechts in diesem Land organisiert (z.B. zentralistisch oder dezentral)?
1.4. Welche Behörden sind für die Aufsicht und den Vollzug des Umweltrechts zuständig?
1.5. Verfügt das Land über eine nationale Umweltbehörde?
1.6. Verfügt die nationale Umweltbehörde über territoriale Organisationseinheiten, welche das Umweltrecht dezentral vollziehen?
1.7. Sind Aufgaben aus dem Umweltrecht an subsidiäre Gebietskörperschaften delegiert (z.B. Bundesländer, Regionen, Städte/Kommunen)?

2. Spezifische Fragen zur Regelung der Informationspflichten zu Aufsicht und Vollzug des Umweltrechts

2.1. Verpflichtet das Gesetz Gebietskörperschaften dazu, der nationalen Umweltbehörde über den Vollzug des Umweltrechts oder das Verhalten von Verursachern und Betroffenen Informationen zu liefern?
2.2. In welchen Rechtserlassen sind diese Pflichten verankert? Gibt es eine generelle Klausel in einem nationalen Umweltschutzgesetz? Falls vorhanden, gibt es entsprechende Klauseln auch in den spezifischen Umweltgesetzen?
2.3. Welchen Gebietskörperschaften bzw. welchen Verwaltungsträgern obliegt eine solche Informationspflicht?
2.4. Zu welchen Umweltthemen bestehen Informationspflichten zu Aufsicht und Vollzug?
2.5. Müssen Gesetze, Verordnungen und Richtlinien der subsidiären Gebietskörperschaften der nationalen Umweltbehörde zur Genehmigung unterbreitet werden (analog Art. 37 USG)?

III. COUNTRY AND EUROPEAN UNION REPORTS

A. FRANCE

1. General questions on environmental law and the organisation of the implementation of environmental law

1.1. Does the country have environmental protection legislation analogous to the Environmental Protection Act (USG) of Switzerland?

Il existe en France une norme comparable, dans son objet, à la Loi fédérale sur la protection de l'environnement. Il s'agit du **Code de l'environnement**. Ce code est toutefois beaucoup plus fourni et détaillé. Le projet de codification a été lancé en 1976, pour remédier à l'éparpillement des sources normatives internes, encore aggravé par la prolifération des normes européennes et internationales. Le Code de l'environnement a été approuvé en 2000.[2]

Outre le Code de l'environnement, la France dispose d'une **Charte de l'environnement**[3]. Ce texte a valeur juridique contraignante de niveau constitutionnel et se trouve par conséquent au sommet de la hiérarchie des normes. Cette valeur constitutionnelle a pour conséquence d'imposer la prise en compte de l'environnement et le respect des dispositions qu'elle contient par toutes les normes applicables en France. Sans qu'il y ait besoin de traduction législative, l'ensemble des dispositions contenues dans la Charte s'imposent. Elles ont toutes une valeur constitutionnelle et une portée normative et impérative[4].

1.2. Does the country have specific laws in the area of environmental protection (e.g. on water protection, forests, climate, hunting, fishing, nature and heritage protection, etc.)?

Le Code de l'environnement contient des livres relatifs à plusieurs domaines du droit de l'environnement :

- les **milieux physiques** : eau et milieux aquatiques et marins, air et atmosphère ;
- les **espaces naturels** : littoral, parcs et réserves, sites inscrits, classés ou protégés, paysages, accès à la nature, trames vertes et bleues contribuant à la conservation des habitats naturels et des espèces et au bon état écologique des masses d'eau ;
- le **patrimoine naturel** : protection du patrimoine naturel, chasse, pêche en eau douce et gestion des ressources piscicoles ;
- la **prévention des pollutions, des risques et des nuisances** : installations classées pour la protection de l'environnement, produits chimiques, biocides et substances à l'état nanoparticulaire, organismes génétiquement modifiés, déchets, dispositions particulières à certains ouvrages ou installations, prévention des risques naturels, prévention de la pollution sonore, protection du cadre de vie, sécurité nucléaire et installations nucléaires de base.

Par ailleurs, une partie non négligeable des lois et textes règlementaires concernant la protection de l'environnement a été **retranscrite dans d'autres codes** que celui de l'environnement. Ainsi, des normes peuvent être trouvées dans le Code rural et de la pêche maritime, le Code forestier, le Code

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2 A. Van Lang, Droit de l'environnement, 4ème éd., Paris 2016, N 175.

3 Charte de l'environnement, Loi constitutionnelle n° 2005-205 du 01.03.2005 relative à la Charte de l'environnement.

4 M. Prieur, Fasc. 360 : Droit à l'environnement, in Jurisclasseur Administratif, en ligne : Dalloz 2013, N 38.

de l'urbanisme, le Code pénal, le Code du patrimoine, le Code général des collectivités territoriales, le Code des marchés publics, le Code minier, le Code de la construction et de l'habitation ou encore le Code de la santé publique. Cependant, l'essentiel de ces normes a été rassemblé dans le Code de l'environnement.[5]

Les difficultés liées à la délimitation du périmètre du Code de l'environnement lors de sa création et à la volonté de ne pas démanteler les autres codes existants ont pour conséquence que **certaines normes pertinentes en matière de droit de l'environnement ne figurent pas dans le Code de l'environnement**. Sont ainsi absentes du Code de l'environnement des dispositions relatives aux monuments historiques, aux zones de protection du patrimoine architectural, urbain et paysager, à l'énergie hydraulique et à l'énergie nucléaire (à l'exception des déchets radioactifs), aux mines et à la forêt, sans compter les normes communautaires et internationales.[6]

1.3. How is the enforcement of environmental law organised in this country (e.g. centralised or decentralised)?

Les compétences sont réparties entre l'Etat et les différentes collectivités territoriales, et ce de manière différente en fonction des domaines du droit de l'environnement. Ainsi, le droit de l'environnement est appliqué et exécuté par une grande variété d'acteurs, notamment **l'Etat** (principalement le ministère chargé de l'Environnement) **et les collectivités locales** (régions, départements, communes), mais encore par **des établissements publics sous tutelle et des autorités administratives indépendantes**.

1.4. Which authorities are responsible for the supervision and enforcement of environmental law?

Les acteurs publics concernés par la protection de l'environnement sont essentiellement le ministère chargé de l'Environnement[7], les collectivités locales et certains établissements publics.

Le **ministère chargé de l'Environnement** est l'acteur public national. Ses missions actuelles sont précisées dans un décret de 2012[8] qui énonce qu'il :

> « prépare et met en œuvre la politique du Gouvernement dans les domaines du développement durable, de l'environnement et des technologies vertes, de l'énergie, […] du climat, de la sécurité industrielle, des transports et de leurs infrastructures, de l'équipement, de la mer, […] ainsi que dans les domaines de la pêche maritime et des cultures marines. Il élabore et met en œuvre la politique de lutte contre le réchauffement climatique et la pollution atmosphérique. Il promeut une gestion durable des ressources rares. Il est associé aux négociations européennes et internationales sur le climat. Il participe à l'élaboration des programmes de recherche concernant ses attributions. »[9]

En outre, le Code général des collectivités territoriales prévoit que **les communes, les départements et les régions** concourent, avec l'Etat, à la protection de l'environnement, à la lutte contre l'effet de serre par la maîtrise et l'utilisation rationnelle de l'énergie, et à l'amélioration du cadre de vie[10].

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5 P. Malingrey, Droit de l'environnement. Comprendre et appliquer la réglementation, 6ème éd., Paris 2016, p. 6.

6 Van Lang, Droit de l'environnement, *op. cit.*, N 176 et N 177.

7 Le ministère de l'Environnement porte actuellement le nom de ministère de la Transition écologique.

8 Décret n° 2012-772 du 24.05.2012 relatif aux attributions du ministre de l'écologie, du développement durable et de l'énergie.

9 Décret n° 2012-772 du 24.05.2012 relatif aux attributions du ministre de l'écologie, du développement durable et de l'énergie, article 1 *in limine.*

10 Code général des collectivités territoriales, article L. 1111-2.

Les **communes** possèdent un pouvoir de police comprenant notamment :

> « Le soin de prévenir, par des précautions convenables, et de faire cesser, par la distribution des secours nécessaires, les accidents et les fléaux calamiteux ainsi que les pollutions de toute nature, tels que les incendies, les inondations, les ruptures de digues, les éboulements de terre ou de rochers, les avalanches ou autres accidents naturels, les maladies épidémiques ou contagieuses, les épizooties, de pourvoir d'urgence à toutes les mesures d'assistance et de secours et, s'il y a lieu, de provoquer l'intervention de l'administration supérieure »[11]

En outre, les communes ont des pouvoirs de polices spéciales en matière d'assainissement et épuration des eaux, de collecte et élimination des déchets ménagers, de prévention des risques naturels, de protection des espaces naturels, de nuisances sonores, notamment[12].

A noter que plusieurs communes ont la possibilité de se regrouper au sein d'une organisation afin de développer plusieurs compétences environnementales en commun, dans le cadre de l'inter-communalité.

Les **départements** ont des compétences en matière d'environnement dans les domaines des espaces naturels sensibles, de la gestion de l'eau, de l'urbanisme, de la gestion des risques, de la gestion des déchets, de la protection de la biodiversité et des paysages, par exemple. Le département donne son avis à l'occasion de consultations. Il est représenté dans de nombreuses commissions et intervient directement dans divers domaines.[13]

Les **régions** interviennent dans des domaines tels que la gestion des déchets, la mise en valeur et protection du milieu naturel et des paysages, la qualité de l'air, le développement durable, la valorisation du territoire, l'organisation et l'aménagement de l'espace, le parc naturel régional, l'éolien, etc. La région est un échelon décrit comme particulièrement bien adapté pour l'élaboration de politiques protectrices de l'environnement et notamment de planification d'investissement.[14]

Il existe par ailleurs de **nombreuses instances consultatives locales**. Elles ont pour missions d'émettre des avis sur divers domaines ayant trait à l'environnement, tels que la faune et la flore, les risques majeurs, etc. Elles sont présentes aux niveaux départemental et régional.[15]

Enfin, le ministère chargé de l'Environnement a confié la réalisation de certaines missions à des organismes publics sous sa propre tutelle ou sous tutelle conjointe avec d'autres ministères. Il s'agit d'**établissements publics** autonomes. Ils ont pour mission de faciliter l'action du gouvernement sur le terrain. On citera par exemple les Agences de l'eau ou encore l'Office national des forêts.[16]

1.5. Does the country have a national environmental authority?

Le **ministère chargé de l'Environnement** est l'acteur public national (*cf.* 1.4.). Son administration centrale est composée :

- d'un secrétariat général (fonctions transversales et pilotages de la stratégie de réforme ministérielle, coordination de l'action des services et participation à son évaluation, etc.) ;

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11 Code général des collectivités territoriales, article L. 2212-2, 5°.

12 Malingrey, Droit de l'environnement, *op. cit.*, pp. 18 – 19.

13 Malingrey, Droit de l'environnement, *op. cit.,* pp. 20 – 21.

14 Malingrey, Droit de l'environnement, *op. cit.*, p. 21.

15 Malingrey, Droit de l'environnement, *op. cit.*, pp. 21 – 23.

16 Voir Malingrey, Droit de l'environnement, *op. cit.*, pp. 23 – 29.

- d'un commissariat général au développement durable (promotion du développement durable dans toutes les politiques publiques et auprès de tous les acteurs socio-économiques, pilotage de la recherche, élaboration et suivi de la stratégie nationale, etc.) ;
- et de six directions générales : la Direction générale de l'énergie et du climat, la Direction générale des infrastructures, des transports et de la mer, la Direction générale de l'aménagement, du logement et de la nature, la Direction générale de la prévention des risques, et la Direction des pêches maritimes et de l'aquaculture.

Le ministère est **assisté dans ses missions par des comités et conseils**, tels que la Commission du développement durable, le Comité de prévention et de précaution, le Conseil national de protection de la nature, etc. Il existe également **des services administratifs sous cotutelle et des structures interministérielles**, telles que le Conseil général de l'environnement et du développement durable (information et conseil aux ministres et pouvoirs publics, audit et inspection des services placés sous l'autorité des ministres) et l'Inspection générale des affaires maritimes (missions d'inspection, d'audit, d'expertise et d'études dans le domaine maritime et le secteur des pêches et cultures marines).[17]

1.6. Does the national environmental authority have territorial organisational units, which implement environmental law in a decentralised manner?

Le ministère chargé de l'Environnement dispose, à différents niveaux du territoire national, de l'appui de **services déconcentrés**.

Ces services extérieures ou territoriaux sont composés de services régionaux, interrégionaux, départementaux, interdépartementaux, de directions départementales des territoires, de directions interdépartementales des routes et de services territoriaux spécifiques.

Par exemple, les **Directions régionales de l'environnement, de l'aménagement et du logement** élaborent et mettent en œuvre les politiques de l'Etat en matière d'environnement, de développement et d'aménagement durables, dans de nombreux domaines tels que la prévention et l'adaptation aux changements climatiques, la préservation et la gestion de la biodiversité, des paysages, la qualité de l'air, la prévention des pollutions, le bruit, etc. Ces Directions régionales élaborent et mettent en œuvre les politiques de l'Etat en matière de logement ; elles assurent le pilotage et la coordination des politiques relevant du ministère de l'Environnement et du ministère chargé du Logement mises en œuvre par d'autres services déconcentrés ; elles veillent au respect des principes et à l'intégration des objectifs du développement durable, réalisent ou font réaliser l'évaluation environnementale de ces actions et assistent les autorités administratives compétentes en matière d'environnement sur les plans, programmes et projets. Elles promeuvent la participation des citoyens dans l'élaboration des projets relevant du ministère de l'Environnement et celui chargé du Logement ayant une incidence sur l'environnement ou l'aménagement du territoire. Elles contribuent à l'information, à la formation et à l'éducation des citoyens sur les enjeux du développement durable et à leur sensibilisation aux risques.

Les **Directions départementales des territoires** sont compétentes en matière de politiques d'aménagement et de développement durable des territoires. A ce titre, elles mettent en œuvre dans le département les politiques relatives, notamment, à la promotion du développement durable, à la prévention des risques naturels, à la protection et à la gestion durable des eaux, des espaces naturels, forestiers, ruraux et de leurs ressources ainsi qu'à l'amélioration de la qualité de l'environnement, y compris par la mise en place de mesures de polices afférentes, à l'agriculture et à la forêt, etc.[18]

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17 Malingrey, Droit de l'environnement, *op. cit.*, pp. 13 – 15.

18 Malingrey, Droit de l'environnement, *op. cit.*, pp. 13 – 18.

1.7. Are tasks from environmental law delegated to subsidiary territorial authorities (e.g. federal states, regions, cities/municipalities)?

Comme cela a déjà été indiqué, **les communes, les départements et les régions** concourent, avec l'Etat, à la protection de l'environnement (*cf.* 1.4.).

2. Questions spécifiques sur l'encadrement des obligations d'information relatives au contrôle et à l'application du droit de l'environnement

2.1 Does the law oblige local authorities to provide the national environmental authority with information on the enforcement of environmental law or on the behaviour of polluters and affected parties?

Nos recherches n'ont **pas permis d'identifier une obligation d'information** du ministère de l'Environnement sur la mise en œuvre du droit de l'environnement ou le comportement des pollueurs et des parties affectées, à la charge des collectivités territoriales. La raison peut en être le principe, à valeur constitutionnelle, de libre administration[19].

En revanche, **la responsabilité de la puissance publique peut être engagée devant le juge administratif**, notamment pour faute dans la surveillance de l'environnement[20].

Cela étant, des informations sont tout de même disponibles. D'une part, en ce qui concerne le comportement des pollueurs, **l'Office central de lutte contre les atteintes à l'environnement et à la santé publique** centralise les informations sur la délinquance et les infractions liées à l'environnement et à la santé publique. Il s'agit d'un service de police judiciaire qui coordonne les investigations au niveau national et intervient au titre de la coopération policière internationale.[21] D'autre part, toute personne à un **droit d'accès à l'information sur l'environnement**. L'Etat, les collectivités territoriales et leurs groupements, les établissements publics et les personnes chargées d'une mission de service public en rapport avec l'environnement ont l'obligation de communiquer de telles informations[22]. Le Code de l'environnement précise :

> « Est considérée comme information relative à l'environnement […] toute information disponible, quel qu'en soit le support, qui a pour objet :
> 1° L'état des éléments de l'environnement, notamment l'air, l'atmosphère, l'eau, le sol, les terres, les paysages, les sites naturels, les zones côtières ou marines et la diversité biologique, ainsi que les interactions entre ces éléments ;
> 2° Les décisions, les activités et les facteurs, notamment les substances, l'énergie, le bruit, les rayonnements, les déchets, les émissions, les déversements et autres rejets, susceptibles d'avoir des incidences sur l'état des éléments visés au 1° ;

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19 Voir V. Donier, Droit des collectivités territoriales, 1ère éd., Paris 2014, pp. 21 – 30.

20 Voir C. Viennet, France, in H. Westermark *et al.*, Legal opinion on general provisions, principles and procedures in environmental law, 2017, E-Avis ISDC 2019-08, pp. 21 – 22, disponible sous: https://www.isdc.ch/media/1711/e-2019-08-17-029-environmental-law.pdf (18.09.2020).

21 Décret n° 2004-612 du 24.06.2004 portant création d'un Office central de lutte contre les atteintes à l'environnement et à la santé publique. M. Prieur et al., Droit de l'environnement, 8ème éd., Paris 2019, N 583. Voir : Ministère de l'Intérieur, Gendarmerie nationale, Office central de lutte contre les atteintes à l'environnement et à la santé publique (OCLAESP), disponible sous : https://www.gendarmerie.interieur.gouv.fr/notre-institution/nos-composantes/au-niveau-central/les-offices/office-central-de-lutte-contre-les-atteintes-a-l-environnement-et-a-la-sante-publique-oclaesp (18.09.2020).

22 Code de l'environnement, article L. 124-3.

> 3° L'état de la santé humaine, la sécurité et les conditions de vie des personnes, les constructions et le patrimoine culturel, dans la mesure où ils sont ou peuvent être altérés par des éléments de l'environnement, des décisions, des activités ou des facteurs mentionnés ci-dessus ;
> 4° Les analyses des coûts et avantages ainsi que les hypothèses économiques utilisées dans le cadre des décisions et activités visées au 2° ;
> 5° Les **rapports établis par les autorités publiques ou pour leur compte sur l'application des dispositions législatives et réglementaires relatives à l'environnement**. »[23]

Les dispositions mentionnées relatives au droit d'accès à l'information sur l'environnement, telles qu'en vigueur aujourd'hui, sont le fruit de la transposition par la France[24] de la Directive européenne concernant l'accès public à l'information en matière d'environnement[25].

Outre cette obligation de communiquer lesdits documents, l'information des citoyens s'effectue également par le biais d'un rapport sur l'environnement que le ministère de l'environnement publie tous les quatre ans et dans lequel il met à disposition des citoyens des données environnementales ; un portail d'accès à l'information publique environnementale a été créé[26], et des observatoires thématiques fournissent des informations sur internet.[27]

Prenons **l'exemple des domaines de l'air et de l'atmosphère**. La surveillance de la qualité de l'air relève de la compétence de l'Etat avec le concours des collectivités territoriales. La coordination technique de la surveillance de la qualité de l'air est assurée par l'Agence de la transition écologique. La surveillance de la qualité de l'air est assurée par des réseaux de mesure de surveillance et d'alerte implantés sur l'ensemble du territoire.[28] A cette fin, le ministère de l'Environnement agrée des associations pour la surveillance de la qualité de l'air (AASQA). Elles sont en particulier chargées d'effectuer des études à la demande de l'Etat et des acteurs locaux, dans le cadre de leur mission de surveillance[29]. Ainsi, les AASQA sont présentes dans chaque région administrative et ont notamment pour missions d' « accompagner les décideurs par l'évaluation des actions de lutte contre la pollution de l'air et de réduction de l'exposition de la population à la pollution de l'air », ou encore « pour les

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23 Code de l'environnement, article L. 124-2 (mise en évidence ajoutée) ; par exemple, la loi fait obligation à l'Etat, aux régions, aux départements, aux métropoles, aux communautés urbaines, aux communautés d'agglomération et aux communes ou communautés de communes de plus de 50 000 habitants, ainsi qu'aux autres personnes morales de droit public employant plus de 250 personnes, d'établir un bilan de leurs émissions de gaz à effet de serre et une synthèse des actions envisagées pour réduire leurs émissions. Ce bilan est rendu public et régulièrement mis à jour ; les autorités régionales coordonnent la collecte de ces données, réalisent un état des lieux et vérifient la cohérence des bilans (Code de l'environnement, article L. 229-25).

24 Il s'agit en particulier de la Loi n° 2005-1319 du 26.10.2005 portant diverses dispositions d'adaptation au droit communautaire dans le domaine de l'environnement, article 2. La transposition française de la Directive européenne en question a été opérée, outre par cette loi, par la modification de la Loi n° 78/753 du 17.07.1978 modifiée portant diverses mesures d'amélioration des relations entre l'administration et le public et diverses disposition d'ordre administratif, social et fiscal, ainsi que par le Décret n° 2005-1755 du 30.12.2005 relatif à la liberté d'accès aux documents administratifs et à la réutilisation des informations publiques, pris pour l'application de la loi n° 78-753 du 17.07.1978, et enfin par le Décret 2006-578 du 22.05.2006 relatif à l'information et à la participation du public en matière d'environnement, modifiant le code de l'environnement et le décret n° 77-1133 du 21.09.1977 relatif aux installations classées pour la protection de l'environnement.

25 Directive 2003/4/CE du Parlement européen et du Conseil du 28.01.2003 concernant l'accès du public à l'information en matière d'environnement et abrogeant la directive 90/313/CEE du Conseil.

26 Ministère de la transition écologique, Système d'information du développement durable et de l'environnement, disponible sous : http://www.side.developpement-durable.gouv.fr/ (22.10.2020).

27 Ministère de la transition écologique, L'information environnementale, disponible sous : https://www.ecologie.gouv.fr/linformation-environnementale (22.10.2020).

28 Code de l'environnement, articles L. 221-1 et s. et R. 221-1 et s..

29 Malingrey, Droit de l'environnement, *op. cit.*, pp. 266 – 267.

régions concernées, [d']évaluer l'impact sur la qualité de l'air ambiant des réductions d'émissions de polluants atmosphériques générées par les Plans de Protection de l'Atmosphère […], lors de leur élaboration, évaluation ou révision »[30]. Il existe par ailleurs un Observatoire national sur les effets du réchauffement climatique chargé de collecter et de diffuser les informations sur les risques liés au changement climatique, en liaison avec des établissements et instituts de recherche concernés et le Groupe d'experts intergouvernemental sur l'évolution du climat. Il mène des actions d'information auprès du public et des collectivités territoriales.[31] Il élabore chaque année un rapport d'information, à l'intention du Premier ministre et du Parlement. Ce rapport, rendu public, peut comporter des recommandations sur les mesures de prévention et d'adaptation susceptibles de limiter les risques liés au réchauffement climatique.[32] A côté de ces principaux acteurs, d'autres encore sont présents dans les domaines de l'air et de l'atmosphère. On observe notamment, dans le cadre de la lutte contre la pollution atmosphérique et le changement climatique, le Citepa, association sans but lucratif et opérateur d'Etat pour le compte du ministère de l'Environnement. Il « satisfait aux obligations de rapportage des émissions de polluants atmosphériques et de gaz à effet de serre de la France sous différents formats d'inventaires CCNUCC, EMEP, Protocole de Kyoto et CEE-NU. [Ses] rapports d'inventaires concourent à la transparence des effets des politiques et mesures pour le climat et la qualité de l'air sur les émissions, et aident la décision publique »[33]. [34]

2.2. In which legal decrees are these obligations laid down? Is there a general clause in a national environmental law? If so, are there corresponding clauses in specific environmental legislation?

Non pertinent pour le droit français (*cf.* 2.1.).

2.3. Which local authorities or administrative bodies have such an obligation to provide information?

Non pertinent pour le droit français (*cf.* 2.1.).

2.4. On which environmental issues are there duties to provide information on supervision and enforcement?

Non pertinent pour le droit français (*cf.* 2.1.).

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30 Fédération des associations de surveillance de la qualité de l'air, Missions et gouvernance des AASQA, disponible sous : https://atmo-france.org/missions-et-gouvernance-des-aasqa/ (01.10.2020).

31 Code de l'environnement, article L. 229-2.

32 Code de l'environnement, article L. 229-3. Malingrey, Droit de l'environnement, *op. cit.*, p. 274.

33 Citepa, Qui sommes-nous ?, disponible sous : https://www.citepa.org/fr/presentation/ (01.10.2020).

34 Voir par exemple : Ministère de la transition écologique et solidaire, L'environnement en France, rapport de synthèse, 2019, disponible sous : https://ree.developpement-durable.gouv.fr/donnees-et-ressources/ressources/publications/rapports/edition-2019/article/rapport-sur-l-etat-de-l-environnement-en-france-edition-2019 (01.10.2020) ; où l'administration centrale, entreprenant de rédiger un rapport sur l'environnement en France, se réfère au « travail de surveillance et d'enquêtes, de collecte, de traitement et de valorisation des données, mené par des centaines de personnes au sein du ministère [de l'Environnement] ou de ses établissements publics, mais aussi dans le monde associatif et professionnel, dans les collectivités locales, et synthétisé par le service de la donnée et des études statistiques du ministère » (p. 7).

2.5. Do laws, ordinances and directives of subsidiary territorial authorities have to be submitted to the national environmental authority for approval (analogous to Art. 37 USG)?

Les collectivités territoriales n'ont pas à soumettre les normes qu'elles adoptent au ministère de l'Environnement pour approbation, à la différence de ce qui est prévu dans le droit suisse à l'article 37 de la Loi fédérale sur la protection de l'environnement.

B. GERMANY

I. Überblick über den allgemeinen Status des Umweltrechts und über dessen Durchsetzung

Beantwortet Fragen:
1.1. Does the country have environmental protection legislation analogous to the Environmental Protection Act (USG) of Switzerland?
1.2. Does the country have specific laws in the area of environmental protection (e.g. on water protection, forests, climate, hunting, fishing, nature and heritage protection, etc.)?

1. Stand des Umweltrechts in Deutschland

Die Bundesrepublik Deutschland ist ein **föderaler Staat**, in dem die **Gesetzgebungskompetenzen** zwischen Bund und Ländern **aufgeteilt** sind. Die Regel ist dabei, dass die Länder zur Gesetzgebung berufen sind, wenn und soweit dem Bund nicht ausschließliche Gesetzgebungskompetenzen zufallen.[35]

In Deutschland gibt es keine allgemeine Kompetenzbestimmung, nach der das „Umweltrecht" global entweder den Ländern oder dem Bund zufallen würde. Vielmehr gibt es eine Vielzahl von Kompetenztiteln, welche auf Umweltsachen Anwendung finden. Obwohl dies bereits vielfach angestoßen wurde,[36] verfügt Deutschland daher über **kein allgemeines Umweltgesetzbuch**, welches die diversen umweltrechtlichen Gesetze in einem Gesetz zusammenfassen würde.[37]

Bei den unzähligen spezifischen Bundes- oder Landesgesetzen, welche dem Umweltrecht zuzuordnen sind, handelt es sich in der Regel um **Bundesgesetze**: Denn viele Gesetzgebungsfelder im Bereich des Umweltrechts fallen unter die ausschließliche Gesetzgebungskompetenz des Bundes,[38] oder in den Bereich der so genannten konkurrierenden Gesetzgebung.[39] Nach der konkurrierenden Gesetzgebung steht dem Bund die Gesetzgebungskompetenz zu, wenn und soweit es einen nachgewiesenen Grund für eine bundeseinheitliche Regelung gibt.[40] Daneben können die Länder eigene Regelungen erlassen, wenn die Materie durch höherrangiges Recht nicht vollständig ausgeschöpft ist. Dies gilt für spezifische in Art. 72 Abs. 3 GG genannte umweltrechtliche Materien. So können die Länder im Bereich des Naturschutzes oder auch im Bereich des Wasserhaushaltes eigene Gesetze erlassen (und haben dies

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35 Art. 70 Abs. 1 GG.

36 Vertieft zu den diversen Bemühungen, in einem Umweltgesetzbuch eine einheitliche Regelung des Umweltrechts zu erzielen: Knopp, Umwelt- und Planungsrecht (UPR) 2009, 121 ff.

37 Der Entwurf des Umweltgesetzbuches, in dem diverse Regelungen des allgemeinen und besonderen Umwelt- und Planungsrechts zusammengefasst werden sollten, scheiterte unter anderem aufgrund der verteilten Gesetzgebungszuständigkeiten. Siehe Knopp, Rn. 2.

38 Der Bund hat ausschließliche Gesetzgebungskompetenzen in den folgenden umweltbezogenen Bereichen: Verträge und Warenhandel mit Drittstaaten (Art. 73 Abs. 1 Nr 5), Zivile Luftfahrt (Art. 73 Abs. 1 Nr. 6) Telekommunikation (Art. 73 Abs. 1 Nr. 7), Bundesstatistiken (Art. 73 Abs. 1 Nr. 11), Nutzung der Atomkraft (Art. 73 Abs. 1 Nr. 14).

39 Vergleiche die Liste in Art. 74 Abs. 1 GG: Umweltstraftaten, Wirtschaftskontrolle einschließlich des Energierechts, Arbeitsschutz, Lebensmittelsicherheit, einschließlich der Fischerei, Boden, Gesundheit, insbesondere Gefahrgüter, Lebensmittel, Abfallwirtschaft, Jagdrecht, Naturschutz, Bodenverteilung, Raumplanung, Wasserversorgung und -management.

40 Art. 72 Abs. 2 GG.

auch bereits getan). Diese Regeln verdrängen dann die bundesrechtlichen Regeln als spezielleres Recht (ehemalige Rahmengesetzgebungskompetenz).[41]

Die deutschen, umweltrechtlichen Einzelregelungen sind nach alledem sektoral ausdifferenziert und erfassen eine große Zahl von Sachbereichen. Teils finden sich allgemeine, übergreifende Gesetze, wie das Umweltinformationsgesetz,[42] das Gesetz über die Umweltverträglichkeitsprüfung,[43] das Bundesnaturschutzgesetz[44] oder das Umweltrechtsbehelfsgesetz.[45] Im Übrigen dominieren spezielle Gesetze, wie das Bundesimmissionsschutzgesetz[46], Wasserhaushaltsgesetz,[47] Gentechnikgesetz[48] oder das Klimaschutzgesetz[49], welche sich den jeweiligen sektoralen Fragestellungen widmen.

2. Durchsetzung des Umweltrechts in Deutschland

Beantwortet Fragen:

1.3. How is the enforcement of environmental law organised in this country (e.g. centralised or decentralised)?
1.4. Which authorities are responsible for the supervision and enforcement of environmental law?
1.7. Are tasks from environmental law delegated to subsidiary territorial authorities (e.g. federal states, regions, cities/municipalities)?

In Entsprechung der Zuständigkeiten im Rahmen der Gesetzgebung ist auch die Ausführung oder Durchsetzung umweltrechtlicher Gesetze in Deutschland **dezentral** geregelt. Für die Durchführung von Gesetzen gilt der Grundsatz des Art. 83 GG, nach dem diese Aufgabe grundsätzlich den **Ländern** zufällt. Insofern obliegt die Ausführung nahezu sämtlicher umweltrechtlicher Gesetze in Deutschland den Ländern (landeseigene Verwaltung) (2.1.). Allerdings können bestimmte umweltrechtliche Gesetze auch in Bundesauftragsverwaltung vollzogen werden, Art. 85 GG (2.2.), oder in bundeseigener Verwaltung, Art. 86 GG (2.3.).

2.1. Regel der landeseigenen Verwaltung

Aufgrund der Regel in Art. 83 GG obliegt den Ländern die Organisation und die Regelung des Verfahrens für die Ausführung der Umweltgesetze. Sie richten die entsprechenden Behörden ein, benennen entsprechende Zuständigkeiten und erlassen dazu die Gesetze. Dies geschieht in der Regel

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41 Vgl. den Katalog in Art. 72 Abs. 3 GG (ehemalige Rahmengesetzgebung).

42 Umweltinformationsgesetz in der Fassung der Bekanntmachung vom 27. Oktober 2014 (BGBl. I S. 1643), das zuletzt durch Artikel 2 Absatz 17 des Gesetzes vom 20. Juli 2017 (BGBl. I S. 2808) geändert worden ist.

43 Gesetz über die Umweltverträglichkeitsprüfung in der Fassung der Bekanntmachung vom 24. Februar 2010 (BGBl. I S. 94), das zuletzt durch Artikel 117 der Verordnung vom 19. Juni 2020 (BGBl. I S. 1328) geändert worden ist.

44 Bundesnaturschutzgesetz vom 29. Juli 2009 (BGBl. I S. 2542), das zuletzt durch Artikel 290 der Verordnung vom 19. Juni 2020 (BGBl. I S. 1328) geändert worden ist.

45 Umwelt-Rechtsbehelfsgesetz in der Fassung der Bekanntmachung vom 23. August 2017 (BGBl. I S. 3290), das durch Artikel 4 des Gesetzes vom 17. Dezember 2018 (BGBl. I S. 2549) geändert worden ist.

46 Bundes-Immissionsschutzgesetz in der Fassung der Bekanntmachung vom 17. Mai 2013 (BGBl. I S. 1274), das zuletzt durch Artikel 103 der Verordnung vom 19. Juni 2020 (BGBl. I S. 1328) geändert worden ist.

47 Wasserhaushaltsgesetz vom 31. Juli 2009 (BGBl. I S. 2585), das zuletzt durch Artikel 1 des Gesetzes vom 19. Juni 2020 (BGBl. I S. 1408) geändert worden ist.

48 Gentechnikgesetz in der Fassung der Bekanntmachung vom 16. Dezember 1993 (BGBl. I S. 2066), das zuletzt durch Artikel 95 der Verordnung vom 19. Juni 2020 (BGBl. I S. 1328) geändert worden ist.

49 Bundes-Klimaschutzgesetz vom 12. Dezember 2019 (BGBl. I S. 2513).

durch Erlass von Ausführungsgesetzen, in welchen die zuständigen Behörden im Sinne der Bundesgesetze benannt werden. Für die hier relevanten Bereiche (Abfallwirtschaft, Bodenschutz, Biodiversität, Biotechnologie, Boden, Chemikalien, Klima, Landschaft, Lärm, Luft, Naturkatastrophen, Management von Umweltgefahren, Wald- und Holzwirtschaft, Wasser) sind zumeist die von den jeweiligen Ländern benannten Landesbehörden zuständig.[50]

Allgemein kann zum Verwaltungsaufbau in den Ländern gesagt werden, dass aufgrund der in den meisten Ländern üblichen Dreiteilung der Landesverwaltung[51] die den Sachbereich erfassenden jeweiligen Ministerien die **obersten Landesbehörden** bilden. Sodann fällt die weitere Aufsicht den **oberen Landesbehörden** zu. Die **unteren Behörden** befinden sich dann zumeist auf Kreis- bzw. Gemeindeebene. Diverse umweltrechtliche Verwaltungsaufgaben fallen den Gemeinden allerdings auch originär zu. Dies gilt etwa für den Bereich Bauleitplanung,[52] die Landschaftsplanung,[53] Wasserversorgung, Abfallbeseitigung, Abfallentsorgung.[54]

Auf Länderebene finden sich auch spezifische Landesoberbehörden, die unmittelbar den jeweiligen Umweltministerien nachgeordnet sind. Dies sind z.B. die **Landesämter für Umwelt (und Naturschutz)**, welche alle Bundesländer eingerichtet haben.

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50 Beispielhaft soll hier die **Durchführung des KrWG (Kreislaufwirtschaftsgesetz (Abfallrecht)** dargestellt werden: Das KrWG spricht, wie üblich, für die Durchführung der Verpflichtungen nach dem KrwG jeweils nur von den „zuständigen Behörden“ oder den Landesregierungen, welche nähere Regelungen erlassen und weitere Zuständigkeiten durch Rechtsverordnung benennen können (vgl. § 11 Abs. 4; § 26 Abs. 4; § 28 Abs. 3; 47 Abs. 7; 52 Abs. 2 Nr.3; 68 KrWG). Die Länder treffen dann eigene Regeln auf Grundlage dieser Ermächtigungen (und benennen die zuständigen Behörden), siehe: Landesabfallgesetz (LAbfG) Baden-Württemberg; Gesetz zur Vermeidung, Verwertung und sonstigen Bewirtschaftung von Abfällen in Bayern, (Bayerisches Abfallwirtschaftsgesetz – BayAbfG); Gesetz zur Förderung der Kreislaufwirtschaft und Sicherung der umweltverträglichen Beseitigung von Abfällen in Berlin (Kreislaufwirtschafts- und Abfallgesetz Berlin - KrW-/AbfG Bln); Brandenburgisches Abfall- und Bodenschutzgesetz (BbgAbfBodG); Bremisches Ausführungsgesetz zum Kreislaufwirtschafts- und Abfallgesetz; Hamburgisches Abfallwirtschaftsgesetz (HmbAbfG); Hessisches Ausführungsgesetz zum Kreislaufwirtschaftsgesetz (HAKrWG); Abfallwirtschaftsgesetz für Mecklenburg-Vorpommern (Abfallwirtschaftsgesetz - AbfWG M-V); Niedersächsisches Abfallgesetz; Abfallgesetz für das Land Nordrhein-Westfalen (Landesabfallgesetz - LAbfG -); Landeskreislaufwirtschaftsgesetz Rheinland-Pfalz (LKrWG), Saarländisches Abfallwirtschaftsgesetz (SAWG); Abfallgesetz des Landes Sachsen-Anhalt (AbfG LSA); Sächsisches Kreislaufwirtschafts- und Bodenschutzgesetz; Abfallwirtschaftsgesetz für das Land Schleswig-Holstein (Landesabfallwirtschaftsgesetz - LAbfWG); ThürAGKrWG - Thüringer Ausführungsgesetz zum Kreislaufwirtschaftsgesetz. Sofern die zuständigen Behörden nicht in diesen Gesetzen benannt werden, werden zumeist in entsprechenden Zuständigkeitsverordnungen oder Ausführungsgesetzen benannt. Spezifische Zuständigkeitsgesetze haben die folgenden Länder getroffen: Verordnung zur Übertragung von Zuständigkeiten im Bereich der Abfallentsorgung (Abfallzuständigkeitsverordnung – AbfZustV) Bayern; Brandenburgische Verordnung zur Regelung der Zuständigkeiten auf dem Gebiet des Abfall- und Bodenschutzrechts (Abfall- und Bodenschutz-Zuständigkeitsverordnung - AbfBodZV); Bremische Verordnung über Zuständigkeiten nach dem Abfallrecht und zur Aufhebung der Verordnung über die Zuständigkeit für die Verfolgung und Ahndung von Ordnungswidrigkeiten nach der Straßenverkehrs-Zulassungs-Ordnung; Verordnung über Zuständigkeiten auf den Gebieten der Kreislaufwirtschaft, des Abfallrechts und des Bodenschutzrechts (ZustVO-Abfall) Niedersachsen; Verordnung über Zuständigkeiten nach abfallrechtlichen Vorschriften (AbfRZustV) Saarland; Verordnung des Sächsischen Staatsministeriums für Umwelt und Landwirtschaft über Zuständigkeiten bei der Durchführung von Vorschriften des Kreislaufwirtschafts- und Bodenschutzrechts; Abfallzuständigkeitsverordnung (AbfZustVO) Sachsen-Anhalt; Landesverordnung über die zuständigen Behörden nach abfallrechtlichen Vorschriften (LAbfWZustVO) Schleswig-Holstein.

51 Kloepfer, Umweltrecht, Beck 2016, § 3, Rn. 212 ff.

52 §§ 1 Abs. 6 NR. 7, § 1a BauGB.

53 § 11 BNatschG.

54 § 31 Abs. 3 KrWG.

Im Bereich der landeseigenen Verwaltung hat der Bund lediglich die Befugnis zur **Rechtsaufsicht**, Art. 84 Abs. 3 GG. Der Bund kann daher lediglich die Rechtmäßigkeit der Aufgabenerfüllung durch die Länder kontrollieren. Die Länder tragen die Kosten, die sich aus der Eigenverwaltung von Bundesgesetzen ergeben, Art. 104a Abs. 1 GG.

2.2. Bundesauftragsverwaltung

In Einzelbereichen[55] ist die Durchsetzung des Umweltrechts als Bundesauftragsverwaltung geregelt. Dann überwacht der Bund sowohl die Gesetz- als auch die Zweckmäßigkeit der Verwaltung durch die Länder (Art. 85 Abs. 4 S. 1 GG). Zudem hat der Bund umfassendere Weisungsbefugnisse (Art. 85 Abs. 3 GG). In diesem Bereich trägt der Bund die Ausgaben, Art. 104a Abs. 2 GG.

2.3. Bundeseigene Verwaltung

In den Bereich der bundeseigenen Verwaltung fallen nur wenige Umweltgesetze aus den hier relevanten Bereichen.[56]

2.4. Europäisierte Verwaltung: Verwaltungsverbund

Gerade das Umweltrecht ist in Europa stark europäisiert, weil von diversen sektoralen Richtlinien und Verordnungen überformt. Diese etablieren einheitliche Schutz- oder Verwaltungsstandards in der EU und stellen damit sehr spezifische Anforderungen an die Organisation der nationalen Umweltverwaltung.[57] Durch das EU-Recht werden auch spezifische Informationsverpflichtungen vorgegeben (etwa der Öffentlichkeit im Rahmen von Beteiligungsverfahren, zur Verbringung von Abfällen, s.u.). Wie der Abschnitt über die Informationspflichten nach dem EU Recht aber noch zeigen wird, sind hier hauptsächlich die Regeln des jeweiligen sektoralen Rechts maßgeblich.

2.5. Zentrale Umweltverwaltungsbehörde?

Beantwortet Fragen:

1.5. Does the country have a national environmental authority?

1.6. Does the national environmental authority have territorial organisational units, which implement environmental law in a decentralised manner?

2.1. Does the law oblige local authorities to provide the national environmental authority with information on the enforcement of environmental law or on the behaviour of polluters and affected parties?

2.2. In which legal decrees are these obligations laid down? Is there a general clause in a national environmental law? If so, are there corresponding clauses in specific environmental legislation?

2.3. Which local authorities or administrative bodies have such an obligation to provide information?

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55 Vor allem im Bereich der Kernenergie Art. 87c GG, umgesetzt durch das Atomgesetz (Atomgesetz in der Fassung der Bekanntmachung vom 15. Juli 1985 (BGBl. I S. 1565), das zuletzt durch Artikel 239 der Verordnung vom 19. Juni 2020 (BGBl. I S. 1328) geändert worden ist).

56 Vgl. Art. 87 Abs. 1 S. 2 GG, Art. 89 GG: Verwaltung der Bundeswasserstraßen und der Schifffahrt; Art. 87d (Luftverkehrsverwaltung); Art. 87e (Eisenbahnverwaltung); Art. 90 (Bundesstraßen).

57 Etwa im Bereich des Emissionshandels, dazu auch weiter unten, e., im Bereich der Natura 2000 Schutzgebiete (vgl. Richtlinie 92/43/EWG des Rates vom 21. Mai 1992 zur Erhaltung der natürlichen Lebensräume sowie der wildlebenden Tiere und Pflanzen, ABl. EU L 206, 22.7.1992, S. 7–50) (bezüglich der nach Art. 3 Abs. 1 dieser Richtlinie einzurichtenden Natura 2000 Schutzgebiete) oder der Verordnung Nr. 347/2013 des Europäischen Parlaments und des Rates zu Leitlinien für die transeuropäische Energieinfrastruktur und zur Aufhebung der Entscheidung Nr. 1364/2006/EG und zur Änderung der Verordnungen (EG) Nr. 713/2009, (EG) Nr. 714/2009 und (EG) Nr. 715/2009, ABl. L 115, 39, 17.04.2013 (bezüglich der Vorhaben von gemeinsamen Interesse – Projects of Common Interest gem. Art. 3 der TenE-VO).

2.4. On which environmental issues are there duties to provide information on supervision and enforcement?
2.5. Do laws, ordinances and directives of subsidiary territorial authorities have to be submitted to the national environmental authority for approval (analogous to Art. 37 USG)?

Aus dem vorgenannten ergibt sich, dass es in Deutschland **keine** zentrale Umweltverwaltungsbehörde (etwa nach dem Beispiel der EPA (Environmental Protection Agency in den USA) mit **umfassenden Exekutivkompetenzen** gibt, der standardmäßig Informationen über Zulassungsverfahren etc. übermittelt werden müssten.

Koordinierende und insbesondere **informierende** Aufgaben fallen dem **Umweltbundesamt** zu (UBA). Das UBA mit Sitz in Dessau wurde durch Gesetz von 1974 eingerichtet.[58] Das UBA ist eine selbstständige Bundesoberbehörde aus dem Bereich des Bundesministeriums für Umwelt, Naturschutz und nukleare Sicherheit.[59] Entsprechend hat das Amt mehrere Dienststellen, jedoch **keine weiteren dezentralen Einheiten**. Das UBA hat im Wesentlichen zwei Aufgaben:

1. Die wissenschaftliche Unterstützung des Bundesumweltministeriums in zentralen Umweltbereichen, insbesondere durch die Erarbeitung entsprechender Rechtsvorschriften und
2. Die Erstellung von Informationen über Umweltplanungen, sowie die zentrale Umweltdokumentation, auch zur Information der Öffentlichkeit sowie die Unterstützung der Behörden bei der Umweltverträglichkeitsprüfung im Bereich der Bundesverwaltung.[60]

Wenn und soweit dem UBA weitere Aufgaben übertragen wurden, nimmt es **spezifische Aufgaben** im Bereich des Vollzugs von Umweltgesetzen wahr.[61] Zumeist übernimmt das UBA diese Rolle, weil etwa nach EU-Recht die Benennung einer zentralen Stelle erforderlich ist (dies trifft z.B. auf den Fall des Chemikalienrechts, des Elektrogesetzes und des Treibhausemissionshandels zu). Diese spezifische Funktion des UBA wird im Folgenden vertiefter dargestellt.

Nach dem **Arzneimittelgesetz**[62] ist das Umweltbundesamt etwa mit der Aufgabe betraut, bei Anlagengenehmigungen die Auswirkungen auf die Umwelt im Einvernehmen mit der zuständigen Behörde zu bewerten.[63] Im Rahmen dieser Bewertungen hat die zuständige Behörde dem UBA die notwendigen Informationen zu übermitteln.[64]

Nach dem **Treibhausemissionshandelsgesetz**[65] ist das Umweltbundesamt die zentrale Behörde für den Vollzug des globalen marktbasierten Mechanismus.[66] In diesem Zusammenhang besteht nach § 20 Abs. 2 Nr. TEHG eine Verpflichtung der Betreiber sowie Eigentümer und Besitzer von Luftfahrzeugen oder von Grundstücken, auf denen sich Luftfahrzeuge befinden oder auf denen Anlagen betrieben werden, dem UBA erforderliche Informationen zu übermitteln, damit es seine Rolle

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58 Gesetz über die Errichtung eines Umweltbundesamtes vom 22. Juli 1974 (BGBl. I S. 1505), das zuletzt durch Artikel 114 der Verordnung vom 19. Juni 2020 (BGBl. I S. 1328) geändert worden ist (UBAG).

59 § 1 Abs. 2 UBAG.

60 Vgl. § 2 Abs. 1 UBAG.

61 § 2 Abs. 3 und 4 UBAG.

62 Arzneimittelgesetz in der Fassung der Bekanntmachung vom 12. Dezember 2005 (BGBl. I S. 3394), das zuletzt durch Artikel 2 Absatz 1 des Gesetzes vom 25. Juni 2020 (BGBl. I S. 1474) geändert worden ist (AMG).

63 § 28 Abs. 1 S. 1 AMG.

64 § 28 Abs. 1 S. 2 AMG.

65 Treibhausgas-Emissionshandelsgesetz vom 21. Juli 2011 (BGBl. I S. 1475), das zuletzt durch Artikel 2 des Gesetzes vom 8. August 2020 (BGBl. I S. 1818) geändert worden ist (TEHG).

66 § 18 Abs. 2 TEHG.

als nationale Emissionshandelsstelle wahrnehmen kann.[67] Nach dem TEHG ist das UBA auch befugt, anderen im Bereich des Emissionshandels zuständigen Behörden, wie der im Bereich der Hafenstaatkontrolle zuständigen Berufsgenossenschaft Verkehrswirtschaft Post-Logistik Telekommunikation[68] notwendige Informationen zu übermitteln.[69]

Das **Chemikaliengesetz**[70] weist dem UBA die im Sinne der Verordnung (EG) Nr. 1907/2006 des Europäischen Parlaments und des Rates vom 18. Dezember 2006 zur Registrierung, Bewertung, Zulassung und Beschränkung chemischer Stoffe (REACH) einzurichtende Rolle der Bewertungsstelle Umwelt zu.[71] Nach § 6 Abs. 2 ChemG obliegt ihm damit „umweltbezogene Risikobewertung einschließlich der Bewertung von Risikominderungsmaßnahmen" von Chemikalien. Bei der Erfüllung dieser Aufgabe arbeitet es mit dem Bundesamt für Chemikalien zusammen.[72]

Nach dem **Pflanzenschutzgesetz**[73] wirkt das UBA bei der Genehmigung von Pflanzenschutzmitteln und deren Inverkehrbringen mit.[74] Es erstellt in diesen Verfahren die Risikobewertungen und Wirkstoffprüfungen[75] bei den betreffenden Pflanzenschutzmitteln.

Informationspflichten gegenüber dem UBA bestehen auch nach dem **Elektrogesetz**.[76] Nach § 32 Abs. 1 ElektroG teilt die durch die Elektrogerätehersteller eingerichtete gemeinsame Stelle dem Umweltbundesamt als zuständiger Behörde sowohl das Verzeichnis der Hersteller von Elektrogeräten als auch die in § 32 Abs. 1 S. 2 ElektroG näher angegebenen Informationen über die pro Jahr verkauften Elektrogeräte etc. mit. Nach §§ 18, 40 **Infektionsschutzgesetz**[77] ist das UBA darüber hinaus in die Bewertung der Umweltverträglichkeit von Desinfektions- und Reinigungsmitteln involviert. Ähnliche Zuständigkeiten finden sich im **Wasch- und Reinigungsmittelgesetz**[78].

Neben dem UBA gibt es noch weitere Bundesoberbehörden, welche sich umweltrechtlichen Themenstellungen widmen und in ähnlicher Weise wie das UBA in die sektoralen Entscheidungsprozesse involviert sind. Diese sind: das Bundesamt für Strahlenschutz, das Bundesamt für Naturschutz[79], das Bundesinstitut für Infektionskrankheiten und nicht übertragbare Krankheiten („Robert-Koch-Institut"), das Bundesamt für Verbraucherschutz und Lebensmittelsicherheit.[80]

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67 § 18 Abs. 3 iVm. § 20 Abs. 2 Nr. 3 TEHG.

68 Vgl. § 19 Abs. 1 Nr. 1-3 TEHG.

69 § 20 Abs. 4 TEHG.

70 Chemikaliengesetz in der Fassung der Bekanntmachung vom 28. August 2013 (BGBl. I S. 3498, 3991), das zuletzt durch Artikel 296 der Verordnung vom 19. Juni 2020 (BGBl. I S. 1328) geändert worden ist.

71 § 4 Abs. 1 Nr. 2 ChemG.

72 § 12d Abs. 2 S. 1 Nr. 1 ChemG. § 12d Abs. 2 S. 2 Nr. 1-6 ChemG.

73 Pflanzenschutzgesetz vom 6. Februar 2012 (BGBl. I S. 148, 1281), das zuletzt durch Artikel 278 der Verordnung vom 19. Juni 2020 (BGBl. I S. 1328) geändert worden ist.

74 §§ 17 Abs. 2, 18 Abs. 4 S. 1, 29 Abs. 4, 34 Abs. 1 Nr. 3 PflSchG.

75 § 41 Abs. 2 S. 2 PflSchG.

76 Elektro- und Elektronikgerätegesetz vom 20. Oktober 2015 (BGBl. I S. 1739), das zuletzt durch Artikel 12 des Gesetzes vom 28. April 2020 (BGBl. I S. 960) geändert worden ist. Vgl. § 32 ElektroG.

77 Infektionsschutzgesetz vom 20. Juli 2000 (BGBl. I S. 1045), das zuletzt durch Artikel 5 des Gesetzes vom 19. Juni 2020 (BGBl. I S. 1385) geändert worden ist.

78 Wasch- und Reinigungsmittelgesetz in der Fassung der Bekanntmachung vom 17. Juli 2013 (BGBl. I S. 2538), das zuletzt durch Artikel 252 der Verordnung vom 19. Juni 2020 (BGBl. I S. 1328) geändert worden ist. § 12 WRMG.

79 Nach dem BNatSchG hauptsächlich zuständig für Einfuhr und Ausfuhr von wildlebenden Tierarten, invasive Arten und Belange des Naturschutz mit Bezug zum Bundesgebiet oder der deutschen ausschließlichen Wirtschaftszone in Nord- und Ostsee.

80 Vgl. Schlacke, Umweltrecht, Nomos 2019, Rn. 56.

Im Bereich der Landesverwaltung nehmen die **Landesumweltämter** einem dem UBA ähnliche Stellung ein. Sie übernehmen in der Regel den Bereich der Informationssammlung und Verwaltung, insbesondere wenn nach den Bundesgesetzen Berichtspflichten von den Landesbehörden auszuführen und zu verwalten sind (dazu weiter unten).

II. Sonstige Informationspflichten mit Bezug auf die Überwachung und Durchsetzung des Umweltrechts in Deutschland

Beantwortet Fragen:

2. Specific questions on the regulation of information obligations regarding supervision and enforcement of environmental law

2.3. Which local authorities or administrative bodies have such an obligation to provide information?

2.4. On which environmental issues are there duties to provide information on supervision and enforcement?

2.5. Do laws, ordinances and directives of subsidiary territorial authorities have to be submitted to the national environmental authority for approval (analogous to Art. 37 USG)?

Da dem UBA und auch den Landesumweltämtern in Deutschland lediglich in spezifischen Fachgesetzen besondere Risikobewertungs- und Umweltbewertungspflichten übertragen wurden, soll im Folgenden dargestellt werden, nach welchen Gesetzen in Deutschland Informationspflichten über die Durchführung umweltrechtlicher Regelungen bestehen und geregelt werden.

1. Anspruch Einzelner auf Umweltinformationen

Bedingt durch die Umsetzung der EU-Umweltinformationsrichtlinie[81] gibt es in Deutschland ein spezifisches Gesetz, welches sich mit der Bereitstellung von Umweltinformationen durch staatliche Behörden befasst, das Umweltinformationsgesetz (UIG).[82] Dieses normiert in seinem § 3 Abs. 1 UIG, dass jede Person Anspruch auf Zugang zu Umweltinformationen hat.

Aufgrund dieser Anspruchsausrichtung entsteht eine Pflicht des Staates zur Verfügungstellung von Umweltinformationen allerdings nur in den Fällen, in denen der Einzelne erfolgreich einen Anspruch auf Gewährung von Informationen durch die staatlichen Behörden geltend machen kann.[83] Gem. § 10 Abs. 1 UIG und entsprechend Art. 7 der Umweltinformationsrichtlinie besteht darüber hinaus eine Unterrichtungspflicht der zuständigen informationspflichtigen Stellen über umweltrelevante Informationen; etwa im Internet oder in anderen „leicht zugänglichen" Formaten.[84] § 10 Abs. 1 UIG normiert allerdings keine *allgemeine* Pflicht der Behörden zur Veröffentlichung bestimmter Informationen zu Maßnahmen und Tätigkeiten, die einen Umweltbezug aufweisen.[85] Denn die Unterrichtungspflicht ist beschränkt auf die bei der Behörde vorhandenen oder für sie zugänglichen

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81 Richtlinie 2003/4/EG des Europäischen Parlaments und des Rates vom 28.01.2003 über den Zugang der Öffentlichkeit zu Umweltinformationen und zur Aufhebung der Richtlinie 90/313/EWG des Rates, Abl. L 41, 26 (Umweltinformationsrichtlinie).

82 Umweltinformationsgesetz in der Fassung der Bekanntmachung vom 27. Oktober 2014 (BGBl. I S. 1643), das zuletzt durch Artikel 2 Absatz 17 des Gesetzes vom 20. Juli 2017 (BGBl. I S. 2808) geändert worden ist.

83 § 1 Abs. 1 S. 1 IFG, § 1 Abs. 1 S. 1 UIG.

84 § 10 Abs. 3 UIG.

85 Zur Definition der Umweltinformation: BVerwGE 108, 369 ff., Rn. 27. Vgl.: VGH Mannheim, Urt. v. 29.06.2017 - 10 S 436/15, BeckRS 2017, 118084, Rn. 26.

Informationen.[86] Sie ist überdies auch substanziell auf die in § 10 Abs. 2 UIG genannten Informationen begrenzt (völkerrechtliche Verträge, Pläne, Berichte, Daten, Zulassungsentscheidungen, Bewertungen nach dem UVPG).

2. Allgemeine Informationspflichten nach dem Gesetz über die Umweltverträglichkeitsprüfung UVPG

Im Übrigen sind die Verpflichtungen der zuständigen Behörden, Informationen über die Überwachung und Durchsetzung des Umweltrechts in Deutschland bereitzustellen, sektoral und in spezifischen Gesetzen geregelt.

Beispielhaft genannt werden können hier etwa die Bestimmungen im **UVPG** über die Bereitstellung von Informationen über **Umweltverträglichkeitsprüfungen**: das Gesetz sieht – nach einer Anpassung an die geänderten Vorschriften der UVP-Richtlinie[87] – seit 2017 vor, dass über UVP-pflichtige Vorhaben von Bund und Ländern in zentralen Internetportalen berichtet werden muss.[88] In diesen Portalen müssen, abhängig davon, ob Bundes- oder Landesbehörden über die Zulassung der jeweiligen Vorhaben zu entscheiden haben, Informationen bereitgestellt werden.[89] Sie dienen der Unterrichtung der Öffentlichkeit über die betreffenden Verfahren und zur Vorbereitung der Öffentlichkeitsbeteiligung. Entsprechend muss über bestimmte Informationen berichtet werden, etwa den Genehmigungsantrag, die Feststellung der UVP-Pflicht, den Ablauf des Beteiligungsverfahrens, uvm.[90] Sofern **Bundesbehörden** über die Genehmigung oder Planfeststellung entscheiden, betreibt das **UBA** das entsprechende Internetportal und hält die fraglichen Informationen vor.[91]

Die **Länder** halten die relevanten Informationen teils in einem Verbundportal, teils in Einzelportalen bereit.[92] Einzelne Länder wie NRW oder Sachsen haben auch die Pflicht aus § 20 UVPG als Anlass genommen, generelle Umwelt- oder Beteiligungsportale einzurichten, in denen sie insgesamt über Genehmigungsverfahren nach dem BImSchG informieren oder in dessen Rahmen die Öffentlichkeit aus verschiedenen Anlässen und in diversen Verfahren mit den Landesbehörden in Kontakt treten kann.[93]

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86 Gem. § 3 Abs. 1 UIG; *O. Reidt/G. Schiller*, in: Landmann/Rohmer (Hrsg.), Umweltrecht, UIG, 2019, § 10, Rn. 4; *S. Schrader*, in: Schlacke/Schrader/Bunge (Hrsg.), Aarhus-Handbuch, § 1, Rn. 197, bezeichnet die Unterrichtungspflicht daher auch als bloßen Programmsatz.

87 Richtlinie 2011/92/EU des Europäischen Parlaments und des Rates über die Umweltverträglichkeitsprüfung bei bestimmten öffentlichen und privaten Projekten, Abl. L 26, 1, 13.12.2011, geändert durch Richtlinie 2014/52/EU des Europäischen Parlaments und des Rates zur Änderung der Richtlinie 2011/92/EU über die Umweltverträglichkeitsprüfung bei bestimmten öffentlichen und privaten Projekten, ABl. L 124, 16.04.2014.

88 § 20 UVPG.

89 Siehe § 20 Abs. 1 UVPG.

90 Siehe § 19 Abs. 1 Nr. 1-8 und Abs. 2 Nr. 1-3 UVPG.

91 § 20 Abs. 1 S. 2 UVPG. Für das Bundesportal vgl. https://www.uvp-portal.de/ (zuletzt aufgerufen am 30.9.2020).

92 https://www.uvp-verbund.de /startseite; https://uvp.niedersachsen.de (zuletzt aufgerufen am 30.9.2020)

93 vgl. Für ein allgemeines Umweltportal z.B. das Portal des Landes NRW: https://www.umweltportal.nrw.de/genehmigungsverfahren (zuletzt aufgerufen am 30.9.2020), das alle Anlagengenehmigungsverfahren nach dem BImSchG listet. Für ein generelles Beteiligungsportal siehe https://buergerbeteiligung.sachsen.de/portal/smul/startseite (zuletzt aufgerufen am 30.9.2020).

3. Sonstige Informationspflichten

Darüber hinaus sehen diverse Gesetze spezifische Informationspflichten vor, welche teils durch internationales Recht (etwa: Washingtoner Artenschutzabkommen[94], Abkommen über den Handel mit gefährlichen Abfällen[95]) oder EU-Recht (etwa: IE-Richtlinie,[96] UVP-Richtlinie, s.o., Abfallrichtlinie,[97] Wasserrahmenrichtlinie[98]) vorgegeben sind. Diese Berichts- und Informationspflichten finden sich in den jeweiligen Fachgesetzen. Die Informationspflicht und –sammlung fällt in diesem Fall in der Regel den nach dem jeweiligen Landesrecht als zuständig bestimmten Behörden zu, wobei die obersten Landesbehörden zumeist die Weiterleitung an das Bundesministerium oder die nach EU-Recht zuständige Stelle übernehmen und die untersten Landesbehörden für die *Sammlung* der Daten (etwa beim jeweiligen Emittent) zuständig sind. Im Bereich der *Verwaltung* und ggf. Veröffentlichung der gesammelten Daten sind in der Regel die Landesämter für Naturschutz zuständig.

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94 Convention on International Trade in Endangered Species of Wild Fauna and Flora, 3. März 1973, vgl. etwa Art. VIII Abs. 6 der Konvention.

95 Basler Übereinkommen über die Kontrolle der grenzüberschreitenden Verbringung gefährlicher Abfälle und ihrer Entsorgung vom 22. März 1989, vgl. Art. 6 der Konvention.

96 Richtlinie 2010/75/EU des Europäischen Parlaments und des Rates über Industrieemissionen (integrierte Vermeidung und Verminderung der Umweltverschmutzung), Abl. L 334, 159, 24.11.2010.

97 Richtlinie 2008/98/EG des Europäischen Parlaments und des Rates vom 19. November 2008 über Abfälle und zur Aufhebung bestimmter Richtlinien, ABl. L 312, 3; etwa Art. 26.

98 Richtlinie 2000/60/EG des Europäischen Parlaments und des Rates vom 23. Oktober 2000 zur Schaffung eines Ordnungsrahmens für Maßnahmen der Gemeinschaft im Bereich der Wasserpolitik Amtsblatt Nr. L 327, 22.12.2000, S. 1.

C. LITHUANIA

Introduction

The Republic of Lithuania restored its independence on 11 March 1990 as a consequence of a national movement against the Soviet Union. The Constitution of Lithuania was adopted in a referendum of 25 October 1992. It stipulated core democratic values, such as state independence, the rule of law, the innate nature of human rights and freedoms.

The Lithuanian system of government and separation of powers is defined in Article 5 (paragraph 1) of the Lithuanian Constitution. It states that State power is executed by the Seimas, the President of the Republic, the Government[99] and the Judiciary.

The **Seimas** is the Lithuanian parliament, which is the supreme **legislative** body. The right of legislative initiative at the Seimas belongs to the Members of the Seimas, the President of the Republic and the Government.

The President of the Republic is the Head of State, who represents Lithuania. The Government of the Republic of Lithuania consists of the Prime Minister and the Ministers. The Government represents the **executive** power in Lithuania, which manages national affairs and executes legislation. It resolves public issues by majority-vote decisions in its sessions.

The right to self-government is guaranteed to municipalities and is implemented through corresponding municipal councils.

Justice is administered only by courts. Lithuania has a dual judicial system, which is comprised of ordinary and administrative courts. Courts of general jurisdiction are responsible for civil and criminal cases while the administrative courts deal with cases regarding public administration. The Lithuanian court system includes First Instance Courts (apylinkės teismai), five District Courts (apygardos teismai), one Court of Appeal (Lietuvos apeliacinis teismas), one Supreme Court (Lietuvos Aukščiausiasis teismas) as well as a Constitutional Court (Konstitucinis teismas). Lithuania belongs to the civil legal tradition – main laws are codified; therefore, precedent is generally not accepted as a binding source of law. Nonetheless, courts are bound by their own prior decisions.

1. General questions on environmental law and the organisation of the implementation of environmental law

1.1. Does the country have environmental protection legislation analogous to the Environmental Protection Act (USG) of Switzerland?

In Lithuania, environmental law is not codified and contains numerous separately enacted laws and ordinances that regulate various environmental issues at all levels in the legislative hierarchy.

The **cornerstone of Lithuanian environmental law** is the Law on Environmental Protection (*Lietuvos Respublikos Aplinkos apsaugos įstatymas*), which entered into force on 21 January 1992 and is the most closely analogous to the Swiss Environmental Protection Act (USG). It regulates key areas of environmental protection and contains general provisions that apply to all aspects of environmental

[99] "Government" is a defined term in the Lithuanian legal order that refers to a specific government body, not to the government in general.

protection. The Law on Environmental Protection establishes the principal rights and duties of legal and natural persons in preserving the biodiversity, ecological systems and landscape characteristic of the Republic of Lithuania, ensuring a healthy and clean environment, rational utilisation of natural resources in the Republic of Lithuania, the territorial waters, continental shelf and economic zone thereof.

1.2. Does the country have specific laws in the area of environmental protection (e.g. on water protection, forests, climate, hunting, fishing, nature and heritage protection, etc.)?

There are [numerous] additional laws that regulate specific areas of environmental protection. For example: the protection of water resources is regulated by the Law on Water of the Republic of Lithuania *(Lietuvos Respublikos Vandens įstatymas),* the protection of forests is regulated by the Forestry Law of the Republic of Lithuania (*Lietuvos Respublikos Miškų įstatymas),* protected zones are regulated by the Law on Protected Areas of the Republic of Lithuania *(Lietuvos saugomų teritorijų įstatymas),* etc.

1.3. How is the enforcement of environmental law organised in this country (e.g. centralised or decentralised)?

The environmental law system is organised within a system of multi-level governance as central and local administrations carry on their own tasks as well as working with each other.[100]

The main institution that formulates environmental protection policy, including approval of environmental strategy and ratification of main treaties in environmental protection, is the Lithuanian Parliament (*Lietuvos Respublikos Seimas*). According to Art. 6 of the Law on Environmental Protection, national environmental governance is implemented by the Government[101] *(Lietuvos Respublikos Vyriausybė)*, Ministry of the Environment *(Lietuvos Respublikos Aplinkos ministerija)* and other state institutions. State (central government) institutions formulate, organise, coordinate and control environmental protection policy. The state delegates some of the functions to local government – municipalities (*Vietos savivaldos*), which, along with independent functions in environmental protection, ensure that all residents have access to public services that meet their needs.[102]

The environmental law areas are divided among different state institutions. The major institution acting in the field of environmental protection is the Ministry of the Environment, which realizes the environmental goals through its subordinate institutions, *inter alia*, the Department of Environmental Protection (*Lietuvos Respublikos Aplinkos apsaugos departamentas*) or Environmental Protection Agency *(Aplinkos apsaugos agentūra).*

Although the Ministry of Environment, along with its subordinate institutions, plays a major role in environmental protection, other governmental authorities also have specific "environmental"

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100 Based on the EU Environmental Implementation Review 2019, Country Report – Lithuania, Commission staff working document, European Commission, SWD (2019), 125 final, 4. April 2019, p. 30.

101 The Government of Lithuanian consists of the Prime Minister and ministers. The Government represents the executive power in Lithuania. It resolves public issues by taking a majority-vote decisions in its sittings.

102 Public Audit Report "Does The System Of Functions Performed By Municipalities Enable Them To Operate Effectively?" 9. April 2019, p. 16, *(Valstybinio Audito Ataskaita "Ar Savivaldybių Vykdomų Funkcijų Sistema Sudaro Sąlygas Joms Veikti Efektyviai?" 2019 m. balandžio 9 d.).*

functions. For example, the Ministry of Agriculture of the Republic of Lithuania *(Lietuvos Respublikos žemės ūkio ministerija)* and its subordinate institutions are responsible in the field of land use and fishery, while the Ministry of Health of the Republic of Lithuania *(Lietuvos Respublikos sveikatos apsaugos ministerija)* has competence in establishing and controlling the norms of contaminants emitted to the environment in the field of hazardous waste and medical waste management.[103]

1.4. Which authorities are responsible for the supervision and enforcement of environmental law?

There are numerous state administrative authorities that are responsible for supervision and enforcement of environmental law. Mainly, state oversight of environmental protection is organized and monitored by the Ministry of the Environment, whereas regulation is mainly executed (implemented) by the Department of Environmental Protection which is a budgetary institution.[104]

As there is no single national environmental authority; supervision as well as enforcement of environmental protection is divided between different central administrative institutions as well as municipalities. The functions of these institutions cover multiple areas of environmental protection; in addition, tasks assigned to them often overlap. The list of key institutions having functions in environmental protection is described below.

Central authorities

The key administrative authority in environmental protection is **the Department of Environmental Protection.** It controls whether natural and legal persons comply with the requirements established in the laws regulating the protection of the environment and the use of natural resources, the liability of producers / importers and other legal acts. The main areas of scope of the Department of Environmental Protection are to:

- implement the state policy for the purposes of state environmental protection (pollution prevention, waste (except radioactive) management, fulfilment of obligations of producers / importers of use of chemicals and deliberate release of genetically modified organisms into the environment, genetically modified micro-organisms;
- control of the landscape, protection of biodiversity;
- use and protection of natural resources, except forests;
- implement the coordination and prevention of environmental emergencies and accidents in accordance with its competence. [105]

Moreover, the Department of Environmental Protection provides data and information on the results of state environmental protection control to national and international institutions and organizations, responsible institutions of foreign states, other users of environmental data and information in accordance with their competence.[106] It also provides methodological assistance to the Environmental Protection Agency, the State Forest Service, the State Service for Protected Areas under the

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103 Žvaigždinienė, Indrė, Environmental Law in Lithuania, Wolters Kluwers Int., Suppl, 127, 2018, Para. 41.

104 Art. 5-7 of the Law on State Control of Environmental Protection of the Republic of Lithuania, No. IX-1005, from 1. July, 2002 (amended on 1. May, 2020) *(Lietuvos Respublikos Aplinkos apsaugos valstybinės kontrolės įstatymas, Nr. IX-1005, 2002 m. liepos 1 d. (galiojanti redakcija nuo 2020, gegužės 1 d.).*

105 Art. 9.1 – Art. 10.39 of Statute of the Department of Environmental Protection, approved by by order no. D1-277 of 6. April, 2018 of Minister of Environment of Republic of Lithuania.

106 Art. 10.32 of Statute of the Department of Environmental Protection, approved by by order no. D1-277 of 6. April, 2018 of Minister of Environment of Republic of Lithuania.

Directorates of Parks and Reserves subordinated to the Ministry of Environment, and the Lithuanian Geological Survey under the Ministry of Environment in the field of state environmental control. [107]

Another key administrative authority is **the Environmental Protection Agency** *(Aplinkos apsaugos agentūra),* which is a subordinate Agency of the Ministry of Environment. Within its competence, it implements measures to:

- protect air from pollution, to maintain the lowest levels of air pollution in zones and agglomerations and to achieve the best possible air quality;
- implement measures to preserve and improve surface water;
- collect and assess and (or) otherwise manage and provide information on the state of the environment, flows of chemicals, pollution and pollution prevention measures;
- implement environmental regulation of economic activities, implement policies for the management of chemicals and preparations, ensure rational living resources and their proper protection in accordance with legal requirements, etc.*[108]*

The Environmental Protection Agency, in accordance with legal acts, also coordinates and carries out **state monitoring of air quality** as well as providing data and **information on air quality to national and international institutions and organizations**, responsible authorities of foreign states and other users of environmental data and information, in accordance with the procedure established by legal acts. It also organizes and co-ordinates the **state monitoring of the condition of surface water bodies**, dynamics of changes in the shores of the Baltic Sea and the Curonian Lagoon.

Moreover, it also grants various licenses with regard to environmental protection, such as hazardous waste management licenses, licenses for cremation activities, licenses for the organization of product and/or packaging in waste management, permits for special fishing/commercial fishing in inland waters, except for private inland waters, import (export) of wild animals or wild plants of protected species, their parts and products thereof, permits for trade in wild animals or wild plants of protected species, their parts or products thereof, and issues permits to lower the water level in ponds and dammed lakes.

Other key administrative authorities with responsibility to act in environmental protection include, to name but a few:

- the **Lithuanian State Forest Service** *(Lietuvos miškų tarnyba),* which is the central administrative body responsible for control and enforcement of protection of forests of all types of ownership;
- the **Ministry of Agriculture of the Republic of Lithuania** *(Lietuvos Respublikos žemės ūkio ministerija)* and its subordinate institutions, which are responsible in the fields of land use and fishery;
- the **Ministry of Health of the Republic of Lithuania** *(Lietuvos Respublikos sveikatos apsaugos ministerija)* has competence in establishing and controlling the norms of contaminants emitted into the environment in the field of hazardous waste and medical waste management.[109]

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107 Art. 9.1 – Art. 10.39 of Statute of the Department of Environmental Protection, approved by by order no. D1-277 of 6. April, 2018 of Minister of Environment of Republic of Lithuania.

108 According to Art. 1 and 2 of the Environmental Agency Statute, adopted by the Environmental Minister Ordinance Nr. D1-385, on 14. July, 2004 (amended on 9. March, 2018) *(Aplinkos Apsaugos Agentūros Nuostatai, patvirtinti LR aplinkos ministro 2004 m. liepos 14 d. įsakymu Nr. D1-385)*.

109 Žvaigždinienė, Indrė, Environmental Law in Lithuania, Wolters Kluwers Int., Suppl, 127, 2018, Para. 41.

- the **State service for protected areas** under the Ministry of Environment of Lithuania *(Valstybinė saugomų teritorijų tarnyba)*, responsible for the implementation of the state policy and strategy in the field of protection and management of protected areas. It also performs the functions of state management of protected areas.
- the **Environmental Projects Management Agency** under the Ministry of Environment of the Republic of Lithuania *(Aplinkos projektų valdymo agentūra)* manages projects that are funded by the European Union (European Regional Development, Cohesion Funds, LIFE + programs) and National funds (LEIF, Climate Change, Waste Management, Environmental Protection) in the environmental and climate change sector. The Environmental Projects Management Agency provides services to environmental protection project promoters to ensure that projects are implemented efficiently, rationally and in accordance with the set requirements.
- the **State Forest Enterprise** under the Ministry of Environment of the Republic of Lithuania *(Valstybinė miškų urėdija)*. The key areas of responsibility are: forest management; restoration and maintenance; growing of forest seedlings; sanitary forest protection and fire protection; maintenance of professional hunting areas and organization of hunting; implementation of forest management measures in forests, protection of species and habitats etc.
- the **Lithuanian Geological Survey** under the Ministry of Environment of the Republic of Lithuania *(Lietuvos Geologijos Tarnyba).* Its main function is to participate in, and implement, the state policy in the field of subsoil in accordance with the principles of sustainable development, ensure the rational use, research and protection of underground resources in the Republic of Lithuania, its territorial sea, the continental shelf and the economic zone, accumulate, store and manage the national geological information system as well as to protect the quality of the geological environment, monitor and forecast its changes.

Most of administrative institutions acting in the area of environmental protection are subordinate institutions of the Ministry of Environment of the Republic of Lithuania. The legal acts do not state an obligation, but rather a right, to give information to other institutions on environmental protection issues.

Separate tasks in environmental protection are also given to municipalities

There is no clear and harmonised rule on the areas for which municipalities are responsible, as they share their responsibility with central authorities as well as having sole functions.The Law on Local Self-Government[110] as well as separate legal ordinances/statutes enacted by each municipality provide for its responsibilities in the area of environmental protection.

Some sole functions of municipalities in the environmental protection include the following:

- establishment, protection and management of territories protected by the municipality;
- management and protection of landscape, immovable cultural values and protected areas established by the municipality;
- protection and management and creation of green areas in the territory of the municipality;
- organization and monitoring of inventory, accounting, cadastral measurements of individual green areas and their entry in the Real Estate Register;
- improvement and protection of the quality of the environment;
- development of physical culture and sports, organization of recreation of the population;
- organization of supply of heat and drinking water and wastewater treatment;

[110] Law on Local Self-Government of the Republic of Lithuania, 7. July, 1994 (amended on 1. September, 2020), Nr. I-533, (*Lietuvos Respublikos vietos savivaldos įstatymas, aktuali redakcija 2020 m. rugsėjo 1 d., Nr. I-533).*

- installation of municipal waste management systems, organization of collection and recycling of secondary raw materials, installation and operation of landfills;
- implementation of noise prevention and state noise management assigned to municipalities.[111]

There are numerous shared functions of the municipality in the supervision and enforcement of environmental protection. Usually it is a complementary task to bring the municipalities' (local) perspective on environmental protection topics.

1.5. Does the country have a national environmental authority?

In Lithuania there is no single national environmental authority. The Ministry of Environment; which realizes the environmental goals through the Department of Environmental Protection (*Lietuvos Respublikos Aplinkos apsaugos departamentas*) as well as the Environmental Protection Agency *(Aplinkos apsaugos agentūra).*[112] The above-mentioned institutions plays a central role in the implementation of environmental protection. Their functions are defined in the Answer to Question 1.4.

1.6. Does the national environmental authority have territorial organisational units, which implement environmental law in a decentralised manner?

There is no single national environmental authority. To date, the implementation of environmental law functions is organised on the central and the municipal levels. Each of these institutions **is responsible for implementation of the specific functions assigned to each of them.** Their functions are defined in the Answer to Question 1.4.

1.7. Are tasks from environmental law delegated to subsidiary territorial authorities (e.g. federal states, regions, cities/municipalities)?

On the central level, institutions form, organise, coordinate and control environmental protection policy. Namely, the Government implements the environmental policy while the Ministry of the Environment carries out the administration of environmental protection and regulation of the utilisation of natural resources.[113]

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111 Law on Local Self-Government of the Republic of Lithuania, 7. July, 1994 (amended on 1. September, 2020), Nr. I-533, Art. 6, Para. 25, 26, 28, 29, 30, 31, 35 (*Lietuvos Respublikos vietos savivaldos įstatymas, aktuali redakcija 2020 m. rugsėjo 1 d., Nr. I-533).*

112 According to the Environmental Agency Statute, adopted by the Environmental Minister Ordinance Nr. D1-385, on 14. July, 2004 (amended on 9. March, 2018) *(Aplinkos Apsaugos Agentūros Nuostatai, patvirtinti LR aplinkos ministro 2004 m. liepos 14 d. įsakymu Nr. D1-385)*, Art. 1 and 2 the Environmental Protection Agency is a subordinate Agency of Ministry of Environment, which within its competence, implement measures to protect air from pollution, to maintain the lowest levels of air pollution in zones and agglomerations and to achieve the best possible air quality, to implement measures to preserve and improve surface water, to collect and assess and (or) otherwise manage and provide information on the state of the environment, flows of chemicals, pollution and pollution prevention measures, implement environmental regulation of economic activities, implement policies for the management of chemicals and preparations, ensure rational living resources and their proper protection in accordance with legal requirements etc.

113 Art. 6 of the Law on Environmental Protection, No. I-2223, 21. January, 1992 (amended on 10. July, 2020), *(Lietuvos Respublikos aplinkos apsaugos įstatymas, Nr. I-2223, 1992 m. sausio 21 d. (galiojanti redakcija nuo 2020, liepos 10 d.).*

On the municipal level, municipalities are responsible for the administration of environmental protection in the territories of municipalities. In Lithuania, the protection and improvement of the environment, installation of municipal waste management systems, organization of collection and recycling of secondary raw materials, installation and operation of landfills, implementation of noise prevention, etc. are part of the **independent** functions of Lithuanian municipalities.[114]

Until 2018, the implementation of environmental law was organised on the central, regional and municipal levels. In 2018, however, the Lithuanian regional environmental authorities were reorganised; eight regional environmental authorities were dissolved and their rights and duties were transferred to the Department of Environmental Protection.[115] This decision was highly criticised for its irrationality. There is no information on the merits of this decision. [116]

2. Specific questions on the regulation of information obligations regarding supervision and implementation of environmental law

2.1 Does the law oblige local authorities to provide the national environmental authority with information on the enforcement of environmental law or on the behaviour of polluters and affected parties?

Under Lithuanian law, there is **no general obligation for municipalities to report to central authorities on the enforcement of environmental law**. The obligations to provide information on certain environmental issues that do exist are not harmonised with, and rarely concern, enforcement of environmental law; instead, they involve specific information in certain areas such as waste management.

The duties for companies to inform central or municipal authorities on the state of the environment are not harmonised; they are regulated by numerous legal ordinances and involve different areas of environmental protection. Usually, companies pursuing activities that require environmental permits must submit environmental reports to the Environmental Protection Agency. The requirement for companies who have an obligation to provide information, as well as the type of information that needs to be disclosed, is regulated in detail.[117]

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114 Art. 6, Para. 28, Para. 31, Para. 35 of the Law on Municipalities of the Republic of Lithuania, No. I-533, 7. July, 1994 (amended on 11. July, 2020), *(Lietuvos Respublikos vietos savivaldos įstatymas, Nr. I-533, 1994 m. liepos 7 d. (galiojanti redakcija nuo 2020, liepos 11 d.).*

115 Art. 1 and Art. 2 of the Order on Reorganization of regional environmental departments of the Ministry of Environment of the Republic of Lithuania, No. D1-277, 6. April, 2018 (*Įsakymas dėl Lietuvos Respublikos Aplinkos ministerijos regionų aplinkos apsaugos departamentų reorganizavimo, Nr. D1-277, 2018 m. balandžio 6 d.*).

116 Please refer to mass media reports, for instance, https://www.15min.lt/naujiena/aktualu/nuomones/paulius-saudargas-kodel-neveikia-aplinkosauga-18-1280574, https://www.respublika.lt/lt/naujienos/lietuva/lietuvos_politika/del_regionu_aplinkos_apsaugos_departamentu_reorganizavimo_abutkevicius_kreipesi_i_aplinkos_ministerija/ (last visited on 13.October, 2020).

117 According to Art. 6 and Art. 13 of Ordinance of the Minister of Environment of the Republic of Lithuania from 28. December, 2012 No. D1-1120 "On the Approval of the Description of the Accounting Procedure for Water Use and Wastewater Treatment" (amended on 7. January, 2020) (Dėl Lietuvos Respublikos aplinkos ministro 2012 m. gruodžio 28 d. įsakymo Nr. D1-1120 „Dėl Vandens naudojimo ir nuotekų tvarkymo apskaitos tvarkos aprašo patvirtinimo" pakeitimo (pakeistas 2020 m. sausio 7 d.) Companies, who abstract or plan to abstract 100 m^3 of water per day (average annual abstraction) or more and/or carry out public drinking water supply activities and/or take or receive 50

2.2. In which legal decrees are these obligations laid down? Is there a general clause in a national environmental law? If so, are there corresponding clauses in specific environmental legislation?

2.3. Which local authorities or administrative bodies have such an obligation to provide information?

As mentioned above (see question 2.1), there is no general obligation for municipalities to report to central authorities on the enforcement of environmental law. The obligations of natural and legal persons to inform authorities is also limited to specific environmental areas and is not harmonised (question 2.1).

In Lithuania, environmental control is divided into: (i) state environmental control and (ii) environmental monitoring. **State environmental control** refers to activities of state authorized institutions and officials with regard to economic entities and other natural and legal persons, aimed at ensuring compliance and law enforcement in the field of environmental protection. **Environmental monitoring** is a unified system that monitors the environment and its components according to monitoring programs that take into account the effect that state and legal persons have on the environment.

(i) State environmental control

State environmental control is organised and supervised by the Ministry of the Environment, implemented by the Department of Environmental Protection.[118] State control applies to various spheres of environmental protection, *e.g.,* compliance with laws and other legal acts concerning the use by natural and legal persons of land, including the territory under the surface, surface- and ground-water, air resources, vegetation (including forests), fauna (including fish resources) and other natural resources.[119]

(ii) Environmental monitoring

Environmental monitoring is executed on both the state and the municipal levels. [120]

State environmental monitoring is carried out in order to obtain information enabling integrated assessment of natural processes and the anthropogenic impact on the natural environment, as well as the quality of the natural environment in the territory of the Republic of Lithuania. It is organised by

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m^3 or more of water per day for production or other commercial activities (average annual intake or receipt) are obliged to inform the Environmental Protection Agency report on the amount of wastewater discharged, the pollutants discharged with wastewater, wastewater treatment facilities and their parameters, the collection of wastewater from the population and economic entities, and investments and expenditures for wastewater management.

118 Art. 5-7 of the Law on State Control of Environmental Protection of the Republic of Lithuania, No. IX-1005, from 1. July, 2002 (amended on 1. May, 2020) *(Lietuvos Respublikos Aplinkos apsaugos valstybinės kontrolės įstatymas, Nr. IX-1005, 2002 m. liepos 1 d. (galiojanti redakcija nuo 2020, gegužės 1 d.)).*

119 Art. 3 Para. 2 of the Law on State Control of Environmental Protection of the Republic of Lithuania, No. IX-1005, from 1. July, 2002 (amended on 1. May, 2020) *(Lietuvos Respublikos Aplinkos apsaugos valstybinės kontrolės įstatymas, Nr. IX-1005, 2002 m. liepos 1 d. (galiojanti redakcija nuo 2020, gegužės 1 d.)).*

Art. 7 and Art. 8 of the Law on Environmental Monitoring of the Republic of Lithuania, No. VIII-529, from 20. November, 1997, (amended on 1. May, 2020) *(Lietuvos Respublikos Aplinkos monitoringo įstatymas, Nr. VIII-529, 1997 m. lapkričio 20 d.) (galiojanti aktuali redakcija 2020 m. gegužės 1 d.)).*

the Ministry of the Environment according to the state environmental monitoring program[121] that is prepared by the Ministry of the Environment, approved by the Government[122] and carried out by various state institutions, *i.e*. the Ministry of the Environment or its authorized institutions, the Ministry of Agriculture or its authorized institutions, the State Food and Veterinary Service, or other state institutions[123] . The Ministry of the Environment and the Ministry of Agriculture are responsible for the implementation of the tasks of the State Environmental Monitoring Program.[124]

On the municipal level, each municipality is responsible for the implementation of monitoring in its own municipality. The Department of Environmental Protection is responsible for supervising the implementation of municipal environmental monitoring programs, the quality of monitoring data, and the compliance of methods applied with the requirements of legal acts.[125] Moreover, the municipalities submit the information relating to monitoring as well as yearly and final 5-year reports on the implementation of the Municipal monitoring program[126] to the Environmental Protection Agency.[127] The information must also be submitted to other state institutions if so stated in a Municipal monitoring program or in other legal acts.[128]
The oversight and obligation to inform other responsible institutions of violations of environmental protection regulation is also provided for in various legal acts that regulate issues with regard to environmental protection. For instance, control on the state-protected territories protection is also provided by state-protected territories officials who control whether persons or companies violate protected areas according to the regime on use and protection of state territories. If this is the case, they must inform (if it is not within the scope of their competence) respective institutions, *i.e*. state officials of land services, officials of state supervision institutions of territorial planning and state supervision of construction and officials of protection of immovable cultural heritage.[129]

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121 Resolution of the Government of the Republic of Lithuania on the Approval of the State Environmental Monitoring Program for 2018–2023, No. 996, 3. October 2018 *(Lietuvos Respublikos Vyriausybės nutarimas Dėl Valstybinės aplinkos monitoringo 2018–2023 metų programos patvirtinimo, 2018 m. spalio 3 d., Nr. 996).*

122 Art. 7 Para. 3 of the Law on Environmental monitoring of the Republic of Lithuania, No. VIII-529, from 20. November, 1997, (amended on 1. May, 2020) *(Lietuvos Respublikos Aplinkos monitoringo įstatymas, Nr. VIII-529, 1997 m. lapkričio 20 d.)(galiojanti aktuali redakcija 2020 m. gegužės 1 d.)).*

123 Art. 7 Para. 1 and 2 of the Law on Environmental monitoring of the Republic of Lithuania, No. VIII-529, from 20. November, 1997, (amended on 1. May, 2020) *(Lietuvos Respublikos Aplinkos monitoringo įstatymas, Nr. VIII-529, 1997 m. lapkričio 20 d.)(galiojanti aktuali redakcija 2020 m. gegužės 1 d.)).*

124 Annex to the Resolution of the Government of the Republic of Lithuania on the Approval of the State Environmental Monitoring Program for 2018–2023, No. 996, 2018 October 3 *(Priedas prie Lietuvos Respublikos Vyriausybės Nutarimas Dėl Valstybinės aplinkos monitoringo 2018–2023 metų programos patvirtinimo, 2018 m. spalio 3 d. Nr. 996).*

125 Art. 19 of the Order of the Minister of the Environment of the Republic of Lithuania on Approval of General Provisions on Municipal Environmental Monitoring, No. D1-436, 16. August, 2004, Vilnius *(Lietuvos Respublikos Aplinkos Ministras Įsakymas dėl Bendrųjų Savivaldybių Aplinkos Monitoringo Nuostatų Patvirtinimo 2004 m. rugpjūčio 16 d. Nr. D1-436, Vilnius).*

126 Each municipality has a separate municipal monitoring program that is usually established for 3-5 years period.

127 Art. 24 of the Order of the Minister of the Environment of the Republic of Lithuania on Approval of General Provisions on Municipal Environmental Monitoring, No. D1-436, 16. August, 2004, Vilnius *(Lietuvos Respublikos Aplinkos Ministras Įsakymas dėl Bendrųjų Savivaldybių Aplinkos Monitoringo Nuostatų Patvirtinimo 2004 m. rugpjūčio 16 d. Nr. D1-436, Vilnius)*.

128 Art. 24 and Art 24.1 of the Order of the Minister of the Environment of the Republic of Lithuania on Approval of General Provisions on Municipal Environmental Monitoring, No. D1-436, 16. August, 2004, Vilnius *(Lietuvos Respublikos Aplinkos Ministras Įsakymas dėl Bendrųjų Savivaldybių Aplinkos Monitoringo Nuostatų Patvirtinimo 2004 m. rugpjūčio 16 d. Nr. D1-436, Vilnius)*.

129 Art. 9.3, Art. 9.4 of Ordinance regarding the Approval of the provisions of the State Control for the Protection of Protected Areas, No. D1-43, 27. January 2004, Art. 30, Para. 1 of the Law on Protected

2.4. On which environmental issues are there duties to provide information on supervision and enforcement?

As Lithuanian environmental control systems are divided between state environmental control and environmental monitoring, each systems target supervision of specific environmental issues.

(i) Environmental state control

According to Art. 3 of the Law on State Control of Environmental Protection of the Republic of Lithuania, state institutions and officials control whether natural and legal persons: (i) lawfully use land, including what is below the surface, surface- and ground-water, air resources, vegetation (including forests), fauna (including fish resources) and other natural resources, and (ii) comply with the established norms for the emission and release of pollution into the environment as well as environmental quality requirements.

In addition, state control includes an extensive list of supervisory functions (for example, verification that chemical substances and products are classified, labelled, used, imported, etc. according to legal requirements, or that genetically modified micro-organisms and organisms have limited use and are released into the environment in accordance with the requirements established by legal acts).[130]

(ii) Environmental monitoring

According to Art. 5 of the Law on Environmental monitoring of the Republic of Lithuania, the following environmental issues are subject to oversight: the state of the air, water, underground, soil and wild life; the state of the natural and anthropogenically affected natural systems (natural habitats and ecosystems) and the landscape; physical, radiation, chemical, biological and other sources of anthropogenic impact and influence thereof upon the natural environment; the change and tendencies of the global processes taking place in the natural environment (acid rain, change in the ozone layer, greenhouse

2.5 Do laws, ordinances and directives of subsidiary territorial authorities have to be submitted to the national environmental authority for approval (analogous to Art. 37 USG[131])?

No.

Areas of the Republic of Lithuania (*Įsakymas Dėl Valstybinės Saugomų Teritorijų Apsaugos Kontrolės Nuostatų Patvirtinimo 2004 m. Sausio 27 d. Nr. D1-43, Str. 30, Para. 1 Lietuvos Respublikos Saugomų Teritorijų Įstatymo*).

130 Art. 3 Para. 11 and 12 of Law on State Control of Environmental Protection of Republic of Lithuania, No. IX-1005, from 1. July, 2002 (amended on 1. May, 2020) *(Lietuvos Respublikos Aplinkos apsaugos valstybinės kontrolės įstatymas, Nr. IX-1005, 2002 m. liepos 1 d. (galiojanti redakcija nuo 2020, gegužės 1 d.)).*

131 Art. 37 Cantonal implementing provisions
Cantonal implementing provisions on disaster prevention (Art. 10), the environmental impact assessment (Art. 10a), improvement (Art. 16–18), soundproofing of buildings (Art. 20 and 21) and waste (Art. 30–32 and 32abis–32e) require the approval of the Confederation to be valid.

D. MEXICO

1. General questions on environmental law and the organisation of the implementation of environmental law

1.1. Does the country have environmental protection legislation analogous to the Environmental Protection Act (USG) of Switzerland?

Mexico has an overarching piece of legislation with aspects that apply to all areas of environmental law: the General Law of Ecological Balance and Environmental Protection ("LGEEPA", its acronym in Spanish),[132] effective on 28.01.1988, which is analogous to the Environmental Protection Act (USG) of Switzerland. The LGEEPA addresses a broad range of environmental matters including different instruments of environmental policy (including environmental impact assessments ("EIAs")), water, air and ground pollution, resource conservation, and environmental enforcement.

Article 4 of the Mexican Constitution is the legal foundation for the LGEEPA, which imposes on the Mexican State the obligation to guarantee to all persons a healthy environment for their development and wellbeing. The Constitution also establishes that environmental damage and deterioration will generate liability under the law for whoever causes it.[133]

Separate laws governing specific types of environmental protection (as explained in the following question) and their corresponding regulations issued by the administrative agency in charge of the relevant sector,[134] complement the LGEEPA, as do the legislation of the thirty-two respective Mexican States, and several official Mexican environmental norms ("NOMs," their acronym in Spanish)".[135] International treaties supplement the domestic normative framework, together with the case-law of the Inter-American Court of Human Rights.[136]

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132 Ley General del Equilibrio Ecológico y la Protección al Ambiente, Diario Oficial de la Federación (updated 05.06.2018) available at: http://www.diputados.gob.mx/LeyesBiblio/pdf/148_050618.pdf (04.09.2020).

133 Art. 4, Constitución Política de los Estados Unidos Mexicanos (updated 08.05.2020): "Toda persona tiene derecho a un medio ambiente sano para su desarrollo y bienestar. El Estado garantizará el respeto a este derecho. El daño y deterioro ambiental generará responsabilidad para quien lo provoque en términos de lo dispuesto por la ley"., available at: http://www.diputados.gob.mx/LeyesBiblio/pdf_mov/Constitucion_Politica.pdf (04.09.2020).

134 These include regulations on hazardous waste, water, environmental audits, air emissions, natural protected areas and ecological ordinance. States and municipalities also issue environmental regulations. C. de Icaza, Environmental law and practice in Mexico: overview, Practical Law, Thomson Reuters (01.02.2019), available at: https://content.next.westlaw.com/Document/Ieb4a04311cb511e38578f7ccc38dcbee/View/FullText.html?transitionType=Default&contextData=(sc.Default)&firstPage=true (09.09.2020).

135 "Normas Oficiales Mexicanas" are technical standards issued by the competent administrative authorities. They set out binding specifications, standards, values and characteristics applicable to any products, process, facilities, systems, activities, services or methods of production. NOMs set out maximum allowable pollutant limits for contaminants in air, water and soil, and list hazardous waste, substances, and endangered species. *Id.*

136 L.A. Esparza, Mexico : Environment & Climate Change Regulations 2020, available at: https://iclg.com/practice-areas/environment-and-climate-change-laws-and-regulations/mexico (09.09.2020).

1.2. Does the country have specific laws in the area of environmental protection (e.g. on water protection, forests, climate, hunting, fishing, nature and heritage protection, etc.)?

Mexico has several specific federal laws in different areas of environmental protection. The most important are:

a) **Water protection**: National Water Law ("LAN," its acronym in Spanish), effective on 01.12.1992;[137] and the Law on Dumping in Mexican Marine Areas ("LVZMM" its acronym in Spanish), enacted on 17.01.2014.[138]
b) **Forests**: General Law for Sustainable Forest Development ("LGDFS," its acronym in Spanish), effective on 05.06.2018.[139]
c) **Climate**: General Law on Climate Change ("LGCC" its acronym in Spanish), effective on 06.06.2012.[140]
d) **Hunting**: General Wildlife Law ("LGVS" its acronym in Spanish) effective on 03.07.2000.[141]
e) **Fishing**: General Law of Sustainable Fishing and Aquaculture ("LGPAS," its acronym in Spanish), effective on 24.07.2007.[142]
f) **Nature and Heritage Protection**: General Law on Human Settlements, Land Use Planning and Urban Development ("LGAHOTDU," its acronym in Spanish), effective on 28.11.2016.[143] The LGVS also include provisions for the conservation and sustainable use of wildlife.
g) **Waste**: General Law for the Prevention and Integral Handling of Waste ("LGPGIR," its acronym in Spanish), effective on 08.10.2003.[144]
h) **Rural areas**: Sustainable Rural Development Law ("LDRS," its acronym in Spanish), effective on 07.12.2001.[145]
i) **Environmental liability**: Federal Environmental Liability Act ("LFRA," its acronym in Spanish", effective on 07.06.2013.[146]

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137 Ley de Aguas Nacionales (updated 06.01.2020), available at: http://www.diputados.gob.mx/LeyesBiblio/pdf/16_060120.pdf (09.09.2020).
138 Ley de Vertimientos en las Zonas Marinas Mexicanas (updated 13.04.2020), available at: http://www.semarnat.gob.mx/gobmx/biblioteca/leyes.html (09.09.2020).
139 Ley General de Desarrollo Forestal Sustentable (updated 13.04.2020), available at: http://www.semarnat.gob.mx/gobmx/biblioteca/leyes.html (09.09.2020).
140 Ley General De Cambio Climático (updated 13.07.2018), available at: http://www.semarnat.gob.mx/gobmx/biblioteca/leyes.html (09.09.2020).
141 Ley General de Vida Silvestre (updated 19.01.2018), available at: http://www.semarnat.gob.mx/gobmx/biblioteca/leyes.html (09.09.2020).
142 Ley General de Pesca y Acuacultura Sustentables (updated 24.04.2018), available at: http://www.semarnat.gob.mx/gobmx/biblioteca/leyes.html (09.09.2020).
143 Ley General de Asentamientos Humanos, Ordenamiento Territorial y Desarrollo Urbano (updated 06.01.2020), available at: http://www.semarnat.gob.mx/gobmx/biblioteca/leyes.html (09.09.2020).
144 Ley General para la Prevención y Gestión Integral de los Residuos (updated 19.01.2018), available at: http://www.semarnat.gob.mx/gobmx/biblioteca/leyes.html (09.09.2020).
145 Ley de Desarrollo Rural Sustentable (updated 12.04.2019), available at: http://www.semarnat.gob.mx/gobmx/biblioteca/leyes.html (09.09.2020).
146 Ley Federal de Responsabilidad Ambiental, available at: http://www.semarnat.gob.mx/gobmx/biblioteca/leyes.html (09.09.2020).

As mentioned, Mexican State laws complement the above-mentioned federal laws.[147] For example, the State of Mexico City has a specific law on the right to access, disposal and sanitation of water, effective on 27.05.2003.[148]

1.3 How is the enforcement of environmental law organised in this country (e.g. centralised or decentralised)?

A considerable number of authorities are responsible for the enforcement of environmental law in Mexico, being centralised in some areas and decentralised in others. Arts. 5 to 8 of LGEEPA establishes exclusive jurisdiction vested in each level of government exercised concurrently by the federation, states and municipalities, as explained in the answer to the following question.

1.4. Which authorities are responsible for the supervision and enforcement of environmental law?

Federal, state and municipal authorities have different and complementary responsibilities for the supervision and enforcement of environmental law, as explained below. When needed, a brief prior explanation is given to facilitate the understanding of supervision and enforcement activities in a specific area.

a) Federal authorities

Responsibility for the design of the environmental policy and its instruments lies with the Ministry of Environment and National Resources ("SEMARNAT," its acronym in Spanish),[149] created on 30.11.2000, through an amendment to the Organic Law of the Federal Public Administration.[150] A federal agency dependant of SEMARNAT is in charge of monitoring and sanctioning compliance with environmental legislation, regulations and norms: the Federal Attorney Office for Protection of Environment ("PROFEPA," its acronym in Spanish),[151] established on 04.06.1992.[152]

PROFEPA is the enforcement arm of SEMARNAT and it has the authority to carry out inspection visits; prosecute environmental non-compliance; apply sanctions; perform inspections and sanction the entities and individuals subject to air emissions reports under the LGCC; and generally enforce environmental laws and regulations. PROFEPA also oversees the federal voluntary environmental audit programme, established under Art. 38 to Art. 38 bis 2 LGEEPA. Companies that join the environmental audit programme must comply with Mexican environmental laws and, in some cases, international

147 Mexican State Laws, available at: http://www.diputados.gob.mx/LeyesBiblio/gobiernos.htm (09.09.2020).

148 Ley del Derecho al Acceso, Disposición y Saneamiento del Agua de la Ciudad de México (updated 04.07.2019), available at: https://www.congresocdmx.gob.mx/media/documentos/fefbc8a57339212425a75c3c3cba99b365b8d7e9.pdf (09.09.2020).

149 Secretaría del Medio Ambiente y Recursos Naturales, available at: https://www.gob.mx/semarnat (09.09.2020).

150 P. López Sela & A. Ferro Negrete, Derecho Ambiental, 2006, p. 231.

151 Procuraduría Federal de Protección al Ambiente, available at: https://www.gob.mx/profepa (09.09.2020).

152 López Sela & Ferro Negrete, *op. cit.*, p. 232.

environmental standards.[153] According to Art. 2 N° XXXI(a) of SEMARNAT Internal Regulations, PROFEPA is established as a deconcentrated[154] agency.[155]

Since August 2014, a specialized federal agency – the National Agency of Industrial Security and Environmental Protection for the Hydrocarbon Sector also known as Security, Energy and Environment Agency ("ASEA," acronym in Spanish of "Agencia de Seguridad, Energía y Ambiente")[156] – has exclusive competence in oil and gas activities. ASEA regulates and oversees industrial safety and environmental protection, and integrated waste management specifically concerning hydrocarbon-related activities and it is entitled to issue and create environmental policy instruments within its jurisdiction. ASEA also has inspection and surveillance functions, including the imposition of penalties.[157]

b) States authorities

At the state level, there is a duplication of the abovementioned federal scheme of policy development and monitoring compliance.[158]

According to Art. 7 LGEEPA, states are in charge of the formulation, conduct and evaluation of the state environmental policy, as well as the application of the environmental policy instruments and the establishment and regulation of natural protected areas, provided for in the local laws. As stated in the same provision, the following supervision and enforcement functions are under the purview of the states:

- the preservation and restoration of the ecological balance and the protection of the environment or environmental goods, in areas of state jurisdiction, in matters not expressly attributed to the Federation;
- the prevention and control of air pollution generated by fixed sources that operate as industrial establishments, as well as by mobile sources, which are not under federal jurisdiction;
- the administration and surveillance of natural protected areas provided for in local legislation, with the participation of municipal governments;
- the prevention and control of pollution generated by the emission of noise, vibrations, thermal energy, light, electromagnetic radiation and odours harmful to the ecological balance or the environment, from fixed sources that operate as industrial establishments, as well as, where appropriate, from mobile sources that are not under federal jurisdiction;
- the prevention and control of the pollution of waters under state jurisdiction, as well as the national waters assigned to them, and the regulation of their sustainable use;
- the supervision of compliance with the NOMs issued by the Federation, in matters such as environmental policy instruments, preservation and protection of the environment; collection,

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153 De Icaza, *op. cit.*

154 "Deconcentration" is a weak form of decentralization used most frequently in unitary states. It "redistributes decision making authority and financial and management responsibilities among different levels of the central government. It can merely shift responsibilities from central government officials in the capital city to those working in regions, provinces or districts, or it can create strong field administration or local administrative capacity under the supervision of central government ministries". World Bank, Decentralization & Subnational Regional Economics, http://www1.worldbank.org/publicsector/decentralization/admin.htm (14.09.2020).

155 Reglamento Interior de la Secretaría de Medio Ambiente y Recursos Naturales, available at: http://www.diputados.gob.mx/LeyesBiblio/regla/n25.pdf (14.09.2020).

156 Ley de la Agencia Nacional de Seguridad Industrial y de Protección al Medio Ambiente del Sector Hidrocarburos, available at: http://www.semarnat.gob.mx/gobmx/biblioteca/leyes.html (09.09.2020).

157 Esparza, *op. cit.*

158 Id.

transport, storage, handling, treatment and final disposal of solid and industrial waste that is not considered hazardous; and concerning noise, vibrations, thermal energy, light, electromagnetic radiation and odours.

Moreover, all states have State Ministries of Environmental Protection, and since 1991, several states have established State Environmental Prosecutors, both autonomous (including Mexico City, Guanajuato, Aguascalientes, Hidalgo, Veracruz, Sonora and Querétaro) and non-autonomous (Guerrero, Jalisco, Michoacán, Coahuila, Nayarit, Quintana Roo, Campeche and Morelos).[159]

c) Municipal authorities

According to Art. 8 LGEEPA, the municipalities are in charge of the formulation, conduct and evaluation of the municipal environmental policy, the application of the instruments of environmental policy foreseen in the laws at a local level, as well as the preservation and protection of the environment or environmental goods and areas of municipal jurisdiction, in matters that are not expressly attributed to the federation or the states. They also have two main supervision and enforcement functions of environmental laws and regulations:

First, municipalities are responsible for monitoring compliance with the official Mexican standards issued by the Federation in the following matters:

- the prevention and control of air pollution generated by fixed sources that operate as commercial or service establishments, as well as emissions of pollutants into the atmosphere from mobile sources that are not considered to be under federal jurisdiction, with the participation that according to the state legislation corresponds to the state government;
- the prevention and control of the effects on the environment caused by the generation, transport, storage, handling, treatment and final disposal of solid and industrial waste that is not considered hazardous;
- the prevention and control of contamination by noise, vibrations, thermal energy, electromagnetic and light radiation and odours harmful to the ecological balance and the environment, from fixed sources that function as commercial or service establishments, as well as the monitoring of compliance with the provisions that apply to mobile sources except those that are considered to be of federal jurisdiction;
- the prevention and control of the pollution of the waters discharged into the drainage and sewage systems of the cities, as well as of the national waters under state's jurisdiction, with the participation that according to local legislation on the matter falls under the jurisdiction of the state governments.

Second, the federation, through the SEMARNAT, may sign coordination agreements or conventions, such that the governments of the states, with the participation of their municipalities, assume some of the powers granted to the federation within the scope of their territorial jurisdiction. These powers include: [160]

- The administration and surveillance of natural protected areas under the jurisdiction of the federation;
- The control of hazardous waste considered low hazard;

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159 E. Guevara Rodríguez, Procuradurías ambientales estatales, desde 1991 a la actualidad, Hechos y Derechos N° 23 (octubre 2014), https://revistas.juridicas.unam.mx/index.php/hechos-y-derechos/article/view/7126/9062 (09.09.2020).

160 Art. 11 LGEEPA.

- The evaluation of the environmental impact of certain works or activities and, if applicable, the issuance of the corresponding authorizations;[161]
- The protection and preservation of the soil, wild flora and fauna, land and forest resources;
- The control of actions for the protection, preservation and restoration of the ecological balance and the protection of the environment in the federal maritime-terrestrial zone, as well as in the federal zone of the national bodies of water;
- The prevention and control of pollution of the atmosphere, coming from fixed and mobile sources under federal jurisdiction and, if applicable, the issuance of the corresponding authorizations;
- The prevention and control of environmental pollution caused by noise, vibrations, thermal energy, light, electromagnetic radiation and odours harmful to the ecological balance and the environment, coming from fixed and mobile sources under federal jurisdiction and, if applicable, the issuance of the corresponding authorizations.

1.5. Does the country have a national environmental authority?

As mentioned above (see the answer to Question 1.4), SEMARNAP is Mexico's primary federal environmental agency. According to Arts. 5 and 6 LGEEPA, SEMARNAP's primary responsibilities include, among others:

- the formulation and conduct of national environmental policy;
- enforcing environmental laws,
- enacting and enforcing of environmental regulations and standards (including NOMs);
- supervising renewable and non-renewable natural resources;
- protecting, restoring, and conserving natural resources and ecological welfare;
- ensuring environmentally safe management of hazardous materials and non-hazardous waste, air pollution and noise;
- formulation and implementation of climate change mitigation and adaptation actions

1.6. Does the national environmental authority have territorial organisational units, which implement environmental law in a decentralised manner?

Both SEMARNAT[162] and PROFEPA[163] have several territorial organisational units across the country ("Federal Delegations"), established according to Arts. 38 and 45 N° XLVI of the SEMARNAT Internal Regulations.

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161 An important group of projects and activities are, however, excluded from these agreements or conventions: a) hydraulic works, as well as general communication routes, oil pipelines, gas pipelines, coal pipelines and polyducts; b) petroleum, petrochemical, cement, steel and electrical industries; c) exploration, exploitation and benefit of minerals and nuclear substances; d) facilities for the treatment, confinement or disposal of hazardous waste, as well as radioactive waste; e) forest exploitation in tropical forests and species of difficult regeneration; f) land use changes in forest areas, as well as in jungles and drylands; g) real estate developments affecting coastal ecosystems; h) projects and activities in wetlands, coastal ecosystems, lagoons, rivers, lakes and estuaries connected to the sea, as well as in their coasts or federal zones, and i) projects in natural protected areas under the jurisdiction of the Federation and activities that by their nature can cause serious ecological imbalances; as well as activities that put the ecosystem at risk.

162 SEMARNAT, Delegaciones y espacio de contacto ciudadano, available at: http://www.semarnat.gob.mx/gobmx/mapa.html (11.09.2020).

163 PROFEPA, Listado delegaciones, available at: https://www.profepa.gob.mx/profepa/listado_delegaciones.jsp (11.09.2020).

There are several decentralised administrative agencies – specialised agencies with separate legal capacity – associated with SEMARNAT that oversee specific areas of environmental policy:

- The National Institute of Ecology and Climate Change ("INECC," its acronym in Spanish), established as a decentralised agency by Art. 13 LGCC.[164]
- The National Agency of Industrial Security and Environmental Protection for the Hydrocarbon Sector, created as a decentralised agency by Art. 1 ASEA.
- The Mexican Institute of Water Technology ("IMTA," its acronym in Spanish), established as a decentralised agency by Art. 14 bis 3 LAN. [165]
- The National Forestry Commission ("CONAFOR," its acronym in Spanish), [166] established as a decentralised agency by Presidential Decree of 04.04.2001.[167]
- The National Institute of the Fishery ("INAPESCA," its acronym in Spanish),[168] established as a decentralised agency by Art. 4 N° XXI LGPAS.

Some of these decentralised agencies also have territorial units. CONAFOR has management units at the state level ("Gerencias Estatales").[169] INAPESCA has several regional fisheries research centres ("CRIPs," their acronym in Spanish).[170]

In addition to the abovementioned entities, there are other deconcentrated administrative agencies, sharing the same public capacity but with technical autonomy from SEMARNAT:

- The National Commission for Natural Protected Areas ("CONANP," its acronym in Spanish), established as a deconcentrated agency by Art. 2 N° XXXI(b) of the SEMARNAT Internal Regulations.[171]
- The National Water Commission ("can," its acronym in Spanish), established as a deconcentrated agency by Art. 9 LAN and Art. Art. 2 N° XXXI(c) of the SEMARNAT Internal Regulations.[172]
- The National Commission for the Knowledge and Use of Biodiversity ("CONABIO," its acronym in Spanish),[173] created as a permanent inter-secretarial committee under Presidential Decree of 16.03.1992.[174] In November 2019, SEMARNAT announced that CONABIO will become a decentralised agency, but that change has not yet been implemented.[175]

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164 Instituto Nacional de Ecología y Cambio Climático, available at: https://www.gob.mx/inecc (09.09.2020).

165 Instituto Mexicano de Tecnología del Agua, available at: https://www.gob.mx/imta (11.09.2020)

166 Comisión Nacional Forestal, available at: https://www.gob.mx/conafor (11.09.2020).

167 Decreto por el que se crea la Comisión Nacional Forestal, available at : http://dof.gob.mx/nota_detalle.php?codigo=766743&fecha=04/04/2001 (11.09.2020).

168 Instituto Nacional de Pesca, disponible sous: https://www.gob.mx/inapesca/ (11.09.2020).

169 CONAFOR, Directorio de Gerencias Estatales, available at: https://www.gob.mx/cms/uploads/attachment/file/253879/Directorio_de_Gerencias_Estatales_CONAFOR.pdf (14.09.2020).

170 Centros Regionales de Investigación Pesquera, available at: https://www.gob.mx/inapesca/acciones-y-programas/centros-regionales-de-investigacion-pesquera-crip-s (14.09.2020).

171 Comisión Nacional de Áreas Naturales Protegidas, available at : https://www.gob.mx/conanp (09.09.2020)

172 Comisión Nacional del Agua, available at: https://www.gob.mx/conagua (09.09.2020).

173 Comisión Nacional para el Conocimiento y Uso de la Biodiversidad, available at: https://www.gob.mx/conabio (11.09.2020).

174 Acuerdo por el que se crea la Comisión Nacional para el Conocimiento y Uso de la Biodiversidad, available at: http://dof.gob.mx/nota_detalle.php?codigo=4655751&fecha=16/03/1992 (11.09.2020).

175 SEMARNAT, La Conabio se transformará en organismo público descentralizado (12.11.2019), available at: https://www.gob.mx/semarnat/prensa/la-conabio-se-transformara-en-organismo-publico-descentralizado?idiom=es (11.09.2020).

Some states have replicated some of the functions of the decentralised and deconcentrated federal administrative agencies mentioned above. For example, the State of Hidalgo has its own State Commission on Biodiversity.[176]

1.7. Are tasks from environmental law delegated to subsidiary territorial authorities (e.g. federal states, regions, cities/municipalities)?

As explained in the answer to Question 1.4, federal, state and municipal authorities have different and complementary responsibilities for the supervision and enforcement of environmental law.

If we understand delegation as "the transfer of responsibility for decision-making and administration of public functions to semi-autonomous organizations not wholly controlled by the central government, but ultimately accountable to it",[177] the delegation to subsidiary territorial authorities does not take place.

However, SEMARNAT has several territorial organisational units, which implement environmental law in a decentralised manner. This is also the case of some specialised agencies with separate legal capacity that are associated with SEMARNAT, as explained in the answer to Question 1.6.

2. Specific questions on the regulation of information obligations regarding supervision and implementation of environmental law

2.1. Does the law oblige local authorities to provide the national environmental authority with information on the implementation of environmental law or the behaviour of polluters and affected parties?

Mexican law obliges local authorities to provide SEMARNAT – the national environmental authority – with information on the implementation of environmental law and of the behaviour of polluters and affected parties, as explained in the following answers to Question 2.2., 2.3 and 2.4.

2.2. In which legal decrees are these obligations laid down? Is there a general clause in national environmental law? If so, are there corresponding clauses in specific environmental legislation? An exhaustive list is not essential: give examples of the most important ones.

According to Art. 109 bis LGEEPA, the SEMARNAT must maintain a registry of emissions and pollutants of the air, water, soil and subsoil, and hazardous materials and waste, which is called the "Pollutant Release and Transfer Registry" ("RETC," its acronym in Spanish).[178] The information in the registry includes data on substances and sources, name and address of the establishments subject to registration. The registered information is public and has a declaratory effect.

The LGEEPA Regulations issued in June 2004 and modified in October 2014,[179] establish the conditions for the administration and operation of the RETC. These include:

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176 Decreto que crea la Comisión Estatal de Biodiversidad de Hidalgo, available at : http://periodico.hidalgo.gob.mx/?p=40814 (11.09.2020).

177 World Bank, *op. cit*.

178 Registro de Emisiones y Transferencia de Contaminantes, available at : http://sinat.semarnat.gob.mx/retc/index.html (14.09.2020).

179 Reglamento de la Ley General del Equilibrio Ecológico y la Protección al Ambiente en Materia de Registro de Emisiones y Transferencia de Contaminantes (updated 31.10.2014), available at:

- the description of the subjects obligated to report emissions and pollutants (explained in the answer to Question 2.4);
- the reporting period (between March 1st and June 30th to report activities of the preceding year);
- the means of presentation of the information (both physical and online);
- the role of inspection and surveillance (in charge of PROFEPA); and
- the rules for the disclosure of the environmental information (the registered information is public, except in the cases described in Art. 159 bis 4 LGEEPA),[180] among others.

Although not yet fully operational, a national inventory of contaminated sites ("INSC," its acronym in Spanish – Inventario Nacional de Sitios Contaminados) is contemplated by the LGPGIR and its Regulations,[181] and its implementation is progressing. The INSC will run parallel with the information kept at the public registries of property rights, to provide information on contaminated sites at the federal and local level, under the jurisdiction of each level of government.[182] If SEMARNAT determines that a site is contaminated it will be added to the national inventory and noted in the public registry of property rights as a form of an environmental lien. Once SEMARNAT declares a site "remedied", the site will be released from the national inventory and the note in the public registry will be deleted.[183]

According to provisions in the ASEA law and its regulations, in 2019 the Security, Energy and Environment Agency made public for the first time, an inventory[184] of sites contaminated by hazardous waste from the Hydrocarbons Sector, ordered by municipalities.[185]

According to Art. 159 bis LGEEPA, SEMARNAT has also created a National System of Environmental and Natural Resources Information ("SNIARN," its acronym in Spanish),[186] to register, organize, update and disseminate national environmental information. SNIARN integrates: i) general information of natural resources existing in the country; ii) results obtained from monitoring of the quality of air, water and soil; iii) ecological land management; iv) information included in the RETC, and other registers, programs and actions carried out for the preservation of the ecological balance and the protection of the environment.

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http://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LGEEPA_MRETC_311014.pdf (14.09.2020).

180 According to Art. 159 bis 4 LGEEPA authorities will deny the release of environmental information when: i) information is confidential under the law or if its dissemination by its nature affects national security; ii) information relates to matters that are the subject of judicial proceedings or inspection and surveillance, pending resolution; iii) information provided by third parties when they are not obliged by law to provide it; or iv) information is about inventories and inputs and process technologies, including the description of the same.

181 Art. 37 LGPIR; Art. 2 N° XI, Reglamento de la Ley General para la Prevención y Gestión Integral de los Residuos, available at: http://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LGPGIR_311014.pdf (14.09.2020).

182 De Icaza, *op. cit.*

183 Art. 151, Reglamento de la Ley General para la Prevención y Gestión Integral de los Residuos.

184 ASEA, Cantidad de sitios contaminados por tipo de contaminante, available at : https://datos.gob.mx/busca/dataset/cantidad-de-sitios-contaminados-por-tipo-de-contaminante (14.09.2020).

185 ASEA, Arts. 7 N° VI and 13 N° XIII; Reglamento Interior de la Agencia Nacional de Seguridad Industrial y de Protección al Medio Ambiente del Sector Hidrocarburos (31.10.2014), Art. 12 l), available at: http://dof.gob.mx/nota_detalle.php?codigo=5366654&fecha=31/10/2014 (14.09.2020).

186 Sistema Nacional de Información Ambiental y de Recursos Naturales, available at: https://www.gob.mx/semarnat/acciones-y-programas/sistema-nacional-de-informacion-ambiental-y-de-recursos-naturales (14.09.2020).

In practice, SNIARN includes three statistical, cartographic and documentary databases that collect, organize and disseminate information about the country's environment and natural resources, available at the SEMARNAT central offices (not available online):[187]

- **Statistical Database** (BADESNIARN): presents statistical information on topics related to the environment, the result of collaboration with the different areas of the SEMARNAT, its decentralized and deconcentrated bodies, as well as with other agencies that produce statistical information.

- **Geographic Digital Space** (ESDIG): contains maps about the environmental characteristics of the country in topics such as vegetation, land use, water bodies, climate, environmental and social programs, among others. The maps are displayed in an online map viewer that allows the user to display and consult the information; as well as integrating the Geographic Atlas of the Environment and Natural Resources, and various geographic tools that support the user in consulting geographic information of the sector.

- **National System of Environmental Indicators** (SNIA): offers, through different sets of indicators, a brief vision of the changes and current situation of the environment and natural resources of the country, as well as the pressures and institutional responses aimed at their conservation, recovery and sustainable use.

SEMARNAT has also created a public database with recent federal environmental impact statements that are available at their central offices. EIAs and other authorisations (or excerpts of them) issued by SEMARNAT are also publicly available on the internet on the SEMARNAT's webpage. [188]

2.3. Which local authorities or administrative bodies have such an obligation to provide information?

According to Art. 109 bis LGEEPA, federal agencies, the states and the municipalities must assist the SEMARNAT in the integration of the RETC. The information in the registry is integrated with the data and documents contained in the authorizations, certificates, reports, licenses, permits and concessions that, in environmental matters, are processed before the SEMARNAT, as well as the competent federal or state authorities or municipalities. Individuals and companies responsible for polluting sources are obliged to provide the information, data and documents necessary for the integration of the registry.

The states and the municipalities also participate with the SEMARNAT in the development of the SNIARN. The SEMARNAT also gathers reports and relevant documents resulting from scientific and academic activities, technical works or any other kind of environmental and natural resource preservation work carried out in the country by natural or legal persons, either national or foreign, which are sent to the SNIARN.[189]

Concerning the INSC, the federal, state and municipal authorities, integrate, within the scope of their respective competences, the information regarding the local situation, the inventories of generated waste, and the infrastructure available for its management, for which they base themselves on the data provided by the generators and waste management service companies. Moreover, they integrate inventories of waste dumps or sites where the waste of different types has been clandestinely

187 Sistema Nacional de Información Ambiental y de Recursos Naturales, *op. cit*.

188 De Icaza, *op. cit.*

189 Art. 159 bis LGEEPA.

abandoned, with data about their location, origin, characteristics and other elements of information that are useful to the authorities, to develop measures to avoid or reduce risks.[190]

Concerning the ASEA's inventory, there is no explicit provision in the law obliging local authorities or administrative bodies to provide information. Instead, the law states that ASEA shall coordinate with the agencies and entities of the Federal Public Administration for the exercise of their respective attributions related to the hydrocarbons sector.[191]

2.4. Which environmental issues are targeted by the duties to provide information on supervision and implementation?

As mentioned in the answer to Question 2.3., the RETC includes a registry of emissions and pollutants to the air, water, soil and subsoil, and hazardous materials and waste, and the duty to provide information on supervision and implementation only concerns specific substances. The Official Mexican Norm NOM-165-SEMARNAT-2013, establishes the substances subject to RETC reporting, which were selected for their capacity to cause damage to the environment and health, based on their characteristics of toxicity, persistence and bioaccumulation, risk of causing cancer and producing mutations. This norm considers 200 substances with two types of reporting thresholds: manufacturing, process and other uses (MPU), and emission or transfer, according to their potential to cause damage to the environment and health.[192]

According to Art. 111 bis LGEEPA and Art. 17 bis of the LGEEPA Regulations on matters of Prevention and Control of Air Pollution[193], a group of industries are considered « fixed sources » and are therefore subjects obliged to report emissions and pollutants under federal jurisdiction. These are the chemical, oil and petrochemical, paint and ink, automotive, pulp and paper, metallurgical, glass, electric power generation, asbestos, cement and lime and hazardous waste treatment industries. Art. 9 of the LGEEPA Regulation concerning the Registration of Emissions and Transfer of Pollutants,[194] adds as establishments subject to reporting under federal jurisdiction, generators of hazardous waste and those that discharge wastewater into national waters.

As mentioned in the answer to Question 2.3, concerning the INSC the duty to provide information on supervision and implementation only concerns the specific environmental issue of contaminated sites.

2.5. Do laws, ordinances and directives of subsidiary territorial authorities have to be submitted to the national environmental authority for approval (analogous to Art. 37 USG)?

As explained in the answer to Question 1.4, federal, state and municipal authorities have different and complementary responsibilities for the supervision and enforcement of environmental law. Therefore,

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190 Arts. 37 and 39 LGPGIR.

191 Art. 8 ASEA.

192 Norma Oficial MexicanaNOM-165-SEMARNAT-2013, Que establece la lista de sustancias sujetas a reporte para el registro de emisiones y transferencia de contaminantes, available at: http://biblioteca.semarnat.gob.mx/janium/Documentos/Ciga/agenda/DOFsr/DO3231.pdf (16.08.2020).

193 Reglamento de la Ley General del Equilibrio Ecológico y la Protección al Ambiente en Materia de Prevención y Control de la Contaminación de la Atmósfera (updated 31.10.2014), available at: http://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LGEEPA_MPCCA_311014.pdf (16.09.2020).

194 Reglamento de la Ley General del Equilibrio Ecológico y la Protección al Ambiente en Materia de Registro de Emisiones y Transferencia de Contaminantes, available at: http://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LGEEPA_MRETC_311014.pdf (21.10.2020).

in principle, subsidiary territorial authorities are not required to submit their laws, ordinances and directives to the national environmental authority (SEMARNAT) for approval.

According to Art. 10 LGEEPA, the Congress of each state, under their respective Constitutions, issues the legal provisions necessary to regulate the matters within its competence as outlined in the LGEEPA. Similarly, at the municipal level, the town councils dictate the corresponding police and good government decrees, regulations, ordinances and administrative provisions to comply with the provisions of the LGEEPA.

Only in certain cases must the subsidiary territorial authorities submit their regulations to the SEMARNAT for approval, or are obliged to coordinate with that agency for its preparation, for example:

- SEMARNAT has the authority to approve air-quality management programs prepared by local governments for compliance with the respective NOMs.[195]
- When a regional or local ecological management program includes a natural protected area, under the jurisdiction of the Federation, or part of it, the SEMARNAT and the governments of the concerned states and municipalities will prepare and approve the program jointly.[196]
- There must be congruence between the local ecological management programs and the general territorial or maritime ecological management programs.[197]

With respect to the topics covered by Art. 37 USG, concerning disaster prevention, the LGEEPA only provides for coordination between the SEMARNAT, and other federal entities, states and municipalities to avoid human settlements in areas where the populations are exposed to the risk of disasters due to the adverse impacts of climate change.[198] Regarding environmental impact assessment (EIA), Art. 28 LGEEPA grants exclusive powers to the SEMARNAT. However, in the case of certain projects or activities subject to EIA, the SEMARNAT must notify the state and municipal governments or the Federal District, so that they may make the statements they deem appropriate within the assessment procedure.[199] States and municipalities may have a larger role in the implementation of EIAs if they have concluded coordination agreements or conventions with the SEMARNAT and explained in the answer to Question 1.4. Finally, on the subject of construction improvements, noise and waste, the SEMARNAT is the agency in charge of issuing the NOMs, to prevent and control pollution by noise, vibrations, thermal energy, light, electromagnetic radiation and odours, and to set the respective emission limits.[200]

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195 Art. 111 N° XII LGEEPA.

196 Art. 20 bis 2 and Art. 29 bis 5 N° V LGEEPA.

197 Art, 29 bis 5 N° I LGEEPA.

198 Art. 23 N° X LGEEPA.

199 These projects and activities are: i) facilities for the treatment, confinement or disposal of hazardous waste, as well as radioactive waste; ii) industrial parks where highly risky activities are foreseen; iii) real estate developments that affect coastal ecosystems; and iv) projects and activities in natural protected areas under the jurisdiction of the Federation. Art. 25 Reglamento de La Ley General del Equilibrio Ecológico y la Protección al Ambiente en Materia de Evaluación del Impacto Ambiental (updated 31.10.2014), available at: http://www.diputados.gob.mx/LeyesBiblio/regley/Reg_LGEEPA_MEIA_311014.pdf (16.09.2020).

200 Art. 156 LGEEPA ; Art. 7 LGPGIR.

E. SWEDEN

1. General questions on environmental law and the organisation of the implementation of environmental law

1.1. Does the country have environmental protection legislation analogous to the Environmental Protection Act (USG) of Switzerland?

The main legal instrument in the environmental area is the Swedish **Environmental Code (*Miljöbalk (1998:808*)** which entered into force 1 January 1999. Similar to the Swiss USG, the Environmental Code is the **cornerstone of Swedish environmental law** and regulates key areas of environmental protection and contains general provisions that apply to all aspects of environmental protection. The Environmental Code replaced 16 previous environmental acts that were integrated into the new Code. The adoption of the Code was motivated by the need to coordinate a number of laws that had different aims and functions and by the overall need to develop and modernize the legislation.[201]

The Environmental Code is a major piece of legislation containing **33 Chapters and nearly 500 provisions**. It is also supplemented by Government Ordinances that lay down more detailed rules. Although the Code is a coordination of many previous environmental laws, there still exist a significant number of independent laws that include environmental matters, such as the Planning and Building Act (*Plan- och bygglagen (2010:900)*, the Forestry Act (*Skogsvårdslagen (1979:429)*) and the Act on Nuclear Activities (*lagen (1984:3) om kärnteknisk verksamhet*). Environmental assessments and the procedures for handling cases under those laws may differ from those laid down in the Environmental Code. Critics have therefore argued that the aim of the Environmental Code to coordinate existing laws dealing with environmental matters has not entirely been achieved.[202] It should be noted that the Environmental Code applies in parallel with the requirements under other environmental laws.[203] As a result, an activity may require approval under more than one statute.

The Environmental Code is organized in seven parts. Part one contains general provisions. These provisions contain environmental principles such as the precautionary principle, the polluter pays principle and the product choice principle. Moreover, they include general rules of consideration that apply to all sectors and activities regulated in the Code.[204] The second and third part contain rules regulating specific areas and activities such as protection of nature, industries and other environmentally hazardous activities, water operations (such as construction of dams and land drainage), agriculture, handling of chemical products and biotechnical organisms and waste and producer responsibility. The remaining four parts of the Act include primarily rules relating to approval procedures, permits, the right of appeal, supervision, sanctions, compensation and civil law claims.

1.2. Does the country have specific laws in the area of environmental protection (e.g. on water protection, forests, climate, hunting, fishing, nature and heritage protection, etc.)?

As mentioned above, alongside the Environmental Code (the main piece of legislation), certain aspects of environmental law are regulated in specific laws. Although those laws are often characterized by other than purely environmental matters such as spatial planning and infrastructure, they often include important environmental aspects. Among the rather large number of specific acts, the following are of particular interest given their scope and actual and potential environmental impacts:

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201 G. Michanek & C. Zetterberg, Den Svenska Miljörätten, 4th ed., Uppsala: Iustus Förlag 2017, p. 93.

202 Ibid, p. 93.

203 J. Ebbesson, Miljörätt, 4th ed., Uppsala: Iustus Förlag 2015, p. 55.

204 G. Michanek & C. Zetterberg, Den Svenska Miljörätten, 4th ed., Uppsala: Iustus Förlag 2017, p. 95.

Planning and Building Act (*Plan- och bygglagen (2010:900)*; the Forestry Act (*Skogsvårdslagen (1979:429)*); the Act on Nuclear Activities (*lagen (1984:3) om kärnteknisk verksamhet*); the Hunting Act (*jaktlag (1987:259))* and the Fisheries Act (*fiskelagen (1993:787))*.

1.3. How is the enforcement of environmental law organised in this country (e.g. centralised or decentralised)?

The enforcement of Swedish environmental law is carried out at all levels of government: local, regional and national level. Environmental decision-making is the responsibility of different kinds of public bodies: land- and environmental courts; political bodies (the government and municipal councils); and administrative authorities (including County Administrative Boards). It is also possible that several authorities and courts can be involved in the same decision-making process.[205] Given that the competent authority or authorities depend on the environmental issue in question, it is difficult to provide a general overview.

However, it should be noted that the **operational supervisory responsibility under the Environmental Code is largely assigned to regional and local authorities**: the 21 County Administrative Boards (*länstyrelserna)* and the 290 municipalities (*kommuner).*[206] These are therefore fundamental in Swedish environmental management.[207]

The key authorities tasked with the supervision and enforcement of environmental law will be discussed below, see question 1.4.

1.4. Which authorities are responsible for the supervision and enforcement of environmental law?

There is a considerable number of authorities responsible for the supervision and enforcement of environmental law. The key central and regional/local authorities will be discussed below.

Central authorities

Among the central administrative authorities, the **Swedish Environmental Protection Agency (*Naturvårdsverket) (*hereafter SEPA*)** is the main authority in the environmental area. It implements environmental policy by taking actions that ensure compliance with the Environmental Code and achievement of the national environmental objectives. Its responsibilities and tasks are detailed in a Government ordinance (*Förordning (2012:989) med instruktion för Naturvårdsverke*t). In particular, it is responsible for gathering and circulating information among the authorities enforcing environmental law, to evaluate the enforcement, and to further the effective enforcement, through guidance and recommendations, research, information, and statistics.[208] An important part of the enforcement guidance is done through General Guidance and Handbooks.[209] Although

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205 J. Ebbesson, Miljörätt, 4th ed., Uppsala: Iustus Förlag 2015, p. 64.

206 G. Michanek & C. Zetterberg, Den Svenska Miljörätten, 4th ed., Uppsala: Iustus Förlag 2017, p. 435. For information about the regional and local authorities see https://skr.se/tjanster/kommunerochregioner/faktakommunerochregioner.432.html (28.08.2020).

207 A. K. Nilsson, Styrning av miljötillsynen – reformbehov och förslag i ljuset av den förvaltningspolitiska utvecklingen, 2016:3, Nordic Environmental Law Journal, p. 23.

208 A. K. Nilsson, Enforcing Environmental Responsibilities - A Comparative Study of Environmental Administrative Law, 1st ed., Jure 2011, p. 141.

209 These are available in Swedish at https://www.naturvardsverket.se/Stod-i-miljoarbetet/Vagledningar/ (10.09.2020).

not legally binding, these have significant importance in practice as they serve as a source of administrative practice.[210]

The SEPA is also tasked with developing environmental policy by providing the Government with a sound basis for decision-making and by giving an impetus to EU and international efforts.[211]

Other key administrative authorities with responsibility for regulatory guidance within the framework of the Environmental Code are the **Swedish Chemical Agency** (*Kemikalieinspektionen)*, the **Swedish Agency for Marine and Water Management** (*Havs- och vattenmyndigheten)*, the **Swedish Board of Agriculture** (*Jordbruksverket*), **National Board of Housing, Building and Planning** (*Boverket)*, the **Swedish Work Environment Authority** (*Arbetsmiljöverket)*, the **National Food Agency** (*Livsmedelverket)*, the **Swedish Forest Agency** (*Skogsstyrelsen)* and the **Swedish Civil Contingencies Agency** (*Myndigheten för samhällsskydd och beredskap)*.[212]

Some of these authorities, such as the SEPA and the Agency for Marine and Water Management can be parties in application cases and have the right to appeal decisions/judgments concerning permits.[213] It should also be noted that although these are central authorities, many have regional offices. The Swedish Forest Agency, for example, have about 80 regional offices and the Swedish Board of Agriculture 10 regional offices.[214]

The **Government decides on the permissibility of certain new activities and installations** in accordance with the rules laid down in Chapter 17 in the Environmental Code. These include crude oil refineries or heavy petrochemical plants; cement plants; nuclear installations; pulp plants and paper mills; iron and steel works, metallurgical works and ferroalloy plants; facilities for the treatment of hazardous waste exceeding certain thresholds; major wind farms and hydroelectric power plants exceeding certain thresholds.

Regional and local authorities

While to a large extent the central authorities' supervision is characterized more generally by prevention, coordination and an advisory and supporting role, the operative supervision (*i.e*. actions in relation to companies and individuals) is mainly carried out by regional and local authorities. These are the County Administrative Boards (*länstyrelserna)* and the municipalities (*kommuner)*.

The **County Administrative Boards** are the central government's regional administration. They are, among other things, tasked with the promotion of environmental objectives and environmental monitoring, water management, and climate and energy issues. They examine and supervise hazardous activities in accordance with the Environmental Code and the Ordinance concerning Environmentally Hazardous Activities and The Protection of Public Health (*Förordning (1998:899) om miljöfarlig verksamhet och hälsoskydd)*. This include issuing rulings with regard to permits for such

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210 A. K. Nilsson, Enforcing Environmental Responsibilities - A Comparative Study of Environmental Administrative Law, 1st ed., Jure 2011, p. 141.

211 http://www.swedishepa.se/About-us/ (27.08.2020).

212 For a discussion of the different authorities involved in the environmental law and policy area see for example A. K. Nilsson, Enforcing Environmental Responsibilities - A Comparative Study of Environmental Administrative Law, 1st ed., Jure 2011, p. 136 ff.

213 J. Ebbesson, Miljörätt, 4th ed., Uppsala: Iustus Förlag 2015, p. 64.

214 Information available at https://www.skogsstyrelsen.se/om-oss/organisation/vara-distrikt/ and https://jordbruksverket.se/kontakta-oss#InnehallRegionalakontorUtsadesenheten (28.08.2020).

environmentally hazardous activities. Furthermore, the county administrative boards decide on the creation of national nature reserves.[215]

The **municipality's** main responsibility is to monitor whether the environmental laws are respected. This is carried out by the Communal Environmental Board, responsible for deciding on environmentally hazardous activities for which permits are not required and on activities requiring a permit for which the County Administrative Boards have delegated the supervision to the communes.[216] The municipalities supervise activities such as treatment of chemicals and waste. Moreover, the municipalities are competent to decide minor cases concerning for example wastewater facilities, heat pump facilities and livestock farming.[217] Finally, the municipalities can also decide on the creation of protected nature reserves (*naturreservat)*.[218]

A consequence of having many different authorities involved in the environmental law and policy area is that there are several public bodies with administrative enforcement competences. These **competences overlap with the result that a certain activity can be under supervision and control of several different authorities**.[219] For example, the Supreme Administrative Court (*Högsta förvaltningsdomstolen)* held in a case from 2003 that that a municipality had enforcement competence in relation to a forestry activity that entailed pollution problems, despite the overlapping competence of the Forestry Agency.[220]

The concept of "operative supervision" and "supervision guidance"

In addition to the distinction of central authorities as opposed to regional and local authorities, the authorities can also be categorized as either authorities tasked exclusively with the "operative supervision" (*operativ tillsyn*) or as authorities providing so-called "supervision guidance" (*tillsynsvägledning)*. Only the municipalities are tasked exclusively with "operative supervision" whereas all other authorities involved (*i.e.* the central government authorities such as the SEPA and the County Administrative Boards) are authorities providing supervision guidance. However, it should be noted that these authorities (in addition to the supervision guidance) also carry out operative supervision (in particular the County Administrative Boards).

The **concept of "supervision guidance" (*tillsynsvägledning)*** is laid down in Chapter 26 of the Environmental Code. The aim of the supervision guidance is to support the operative supervision (often carried out by municipalities) in different ways and to evaluate, follow-up and coordinate the operative supervision.[221] These tasks are not detailed any further in the Environmental Code, however, depending on the sector or issue in question, additional details of the supporting and evaluation can be laid down in government ordinances. Moreover, the central authorities adopt binding regulations and guidelines, which often are of importance for the operative supervision.[222]

The **operative supervision** is supervision in direct relation to companies and individuals, such as granting permits, inspections, impose conditions and prohibitions, *etc.*[223]

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215 J. Ebbesson, Miljörätt, 4th ed., Uppsala: Iustus Förlag 2015, p. 66.

216 J. Ebbesson, Miljörätt, 4th ed.,, Uppsala: Iustus Förlag 2015, p. 68.

217 J. Ebbesson, Miljörätt, 4th ed.,, Uppsala: Iustus Förlag 2015, p. 68.

218 Environmental Code (Miljöbalken (1998:808)) Chapter 7 section 4.

219 A. K. Nilsson, Enforcing Environmental Responsibilities - A Comparative Study of Environmental Administrative Law, 1st ed., Jure 2011, p. 125.

220 Case RÅ 2003 ref. 63.

221 Environmental Code (Miljöbalken (1998:808)) Chapter 26 section 1a.

222 G. Michanek & C. Zetterberg, Den Svenska Miljörätten, 4th ed., Uppsala: Iustus Förlag 2017, p. 54.

223 G. Michanek & C. Zetterberg, Den Svenska Miljörätten, 4th ed., Uppsala: Iustus Förlag 2017, p. 438 ff.

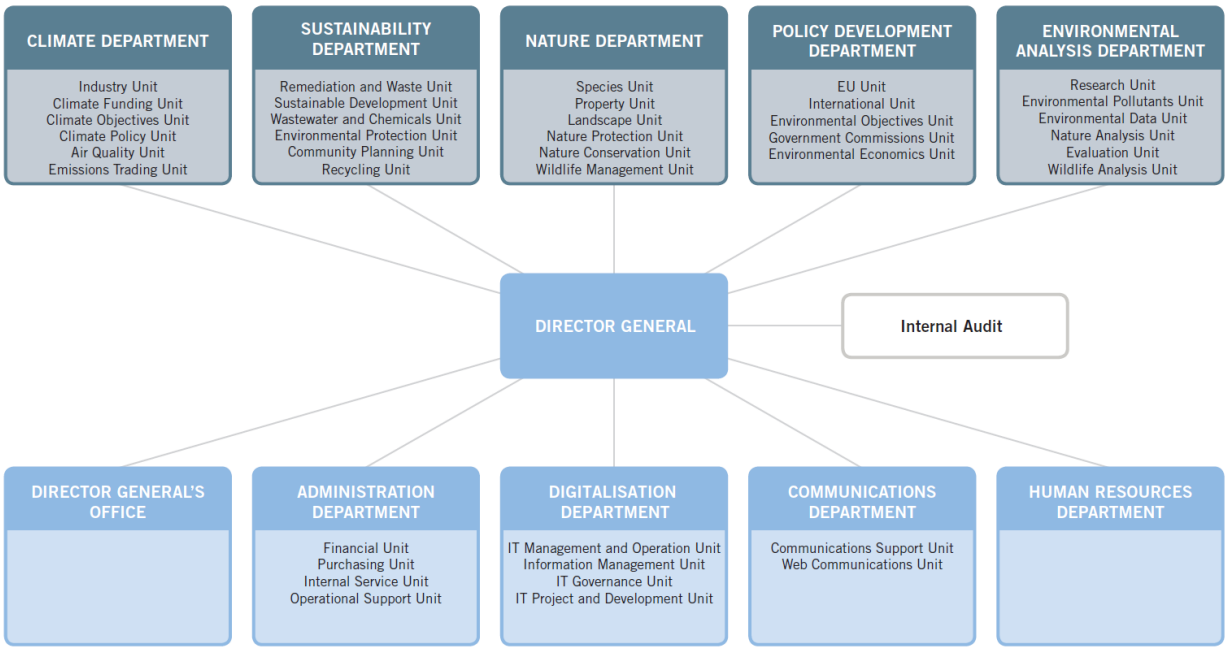
Recently, authorities tasked with operative supervision have raised certain criticism as regards the supervision guidance authorities, arguing that the guidance is not sufficiently detailed and adept.[224]

1.5. Does the country have a national environmental authority?

As mentioned above (see question 1.4), there are several authorities responsible for the supervision and enforcement of environmental law. A key authority in the environmental area is the **SEPA** (*Naturvårdsverket)*. It responsibilities and tasks have been briefly discussed above (see question 1.4).

1.6. Does the national environmental authority have territorial organisational units, which implement environmental law in a decentralised manner?

The SEPA (*Naturvårdsverket*) is a centralised organisation with its main offices in Stockholm and in Östersund. It does not have local organizational units. Instead, and as held above (question 1.4), enforcement of environmental law is primarily a matter for the municipalities and the County Administrative Boards. The SEPA's organisation reflects its various responsibilities and is structured as follows:[225]



1.7. Are tasks from environmental law delegated to subsidiary territorial authorities (e.g. federal states, regions, cities/municipalities)?

As discussed above (see question 1.4), the operative supervision *(i.e*. actions in relation to companies and individuals) is mainly carried out by regional and local authorities (the County Administrative Boards and the municipalities). In addition to the municipalities' tasks described in question 1.4, additional tasks can be delegated to the municipalities. Chapter 26 section 3 of the Environmental

224 Regeringens proposition 2019/20:137 Förbättrad tillsyn på miljöområdet (Government bill), p. 45.

225 http://www.swedishepa.se/About-us/Organisation/ (02.09.2020).

Code provides that the government can enact regulations enabling a municipality to carry out supervisory tasks that otherwise would be carried out by the County Administrative Boards or central authorities. The main regulation in this regard is the Environmental Supervision Ordinance (*Miljötillsynsförordning (2011:13))*, which details the different authorities' supervisory responsibilities and sets the limits for delegation of tasks to the municipalities.[226] Before any delegation, the authority wishing to delegate tasks must make an assessment of the feasibility of such actions, taking into account issues such as the municipality's ability to carry out the task and the effect on the environment of those subject to the supervision.[227]

2. Specific questions on the regulation of information obligations regarding supervision and implementation of environmental law

2.1 Does the law oblige local authorities to provide the national environmental authority with information on the enforcement of environmental law or on the behaviour of polluters and affected parties?

Under Swedish law, there is **no general obligation for regional or local authorities to report to central authorities on the enforcement of environmental law**. The reporting requirements that do exist are not harmonized and are generally linked to EU law instruments that impose reporting requirements on the Member States. However, these reporting requirements are rarely concerned with enforcement of environmental law; instead, they concern specific information in certain areas such as waste treatment.

The absence of a general reporting obligation of local authorities reflects the Swedish governance model (*förvaltningssystemet),* which is largely characterized by decentralization and independent authorities subject to limited government steering.[228]

In line with this governance model, there are **no legal instruments and/or system of supervision put in place permitting the SEPA to supervise the execution of environmental law by regional and local authorities**. In practice, however, central authorities such as the **SEPA often request information in the form of surveys from regional and local authorities**. Such information is central for the evaluation and analysis of the enforcement of environmental law and the achievement of the different national environmental goals and objectives.[229] Although the municipalities and other enforcers are not obliged to provide information, it seems as if the majority normally provide the information requested.[230]
Another reason for the absence of general reporting requirements to central authorities could be explained by the general open-access system of registration and reporting of all actors pursuing environmental hazardous activities. This system is an **environmental reporting portal called *Svenska miljörapporteringsportalen* (hereafter SMP)** and functions as follows: All actors (generally companies) pursuing activities that require environmental permits must submit environmental reports to the SMP,

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226 Environmental Supervision Ordinance (*Miljötillsynsförordning (2011:13))* Chapter 1 section 18 and Chapter 2.

227 Environmental Supervision Ordinance (*Miljötillsynsförordning (2011:13))* Chapter 1 section 20.

228 A. K. Nilsson, Enforcing Environmental Responsibilities - A Comparative Study of Environmental Administrative Law, 1st ed., Jure 2011, p. 125.

229 Förordning (2012:989) med instruktion för Naturvårdsverket, section 2.

230 See for example SEPA's report "Sveriges bästa naturvårdskommun 2018 - En granskning av kommunernas naturvårdsarbete, available in Swedish at https://www.naturskyddsforeningen.se/sites/default/files/dokument-media/rapport_sveriges_basta_naturvardskommun_2018.pdf (10.09.2020).

which is administered by the SEPA in collaboration with the County Administrative Boards.[231] The reporting must be carried out in accordance with the specific environmental reporting regulations and guidelines adopted by the Agency.[232] According to the general rule, an operator requiring an environmental permit must report annually on its operations.[233] The reports submitted to the SMP are then automatically forwarded to the authority tasked with the supervision. The SMP can therefore be described as a one-stop shop for the operators as regards their reporting obligations. Currently, about 6,000 operators are required to do annual environmental reporting.[234]

The supervisory authority uses the information submitted to the SMP for its supervisory tasks and for its work in following up/assessing regional and local environmental objectives and targets. The SEPA uses the information in the SMP for its international reporting, follow-up of national environmental objectives and targets and for its Pollutant Release and Transfer Register (*Utsläppsregistret)*.[235]

The SMP is thus concerned with reporting of the activities of already existing operators. The **request for an environmental permit for a new activity shall be submitted directly to the authority tasked with the approval of such activity**. Depending on the activity in question the competent authority is one of the following: County Administrative Boards, municipal councils, land- and environmental courts or the government.[236]

The fact that the information submitted to the SMP is publicly available facilitates the observance of Sweden's obligations on public access to environmental information under the Aarhus Convention[237] and the EU Directive 2003/4[238]. The reports submitted to the SMP are therefore an important source of information for all types of stakeholders such as decision-makers, scientists and the general public.[239]

2.2. In which legal decrees are these obligations laid down? Is there a general clause in a national environmental law? If so, are there corresponding clauses in specific environmental legislation?

As mentioned above (question 2.1), there is no general obligation for regional or local authorities to report to central authorities on the enforcement of environmental law.

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231 The general rules in the Environmental Code (Chapter 26 section 20) states that operations requiring environmental permit must submit an annual environmental report to the supervising authority.

232 Naturvårdsverkets föreskrifter om miljörapport NFS 2016:8 and Vägledning om Naturvårdsverkets föreskrifter om miljörapport NFS 2016:8. The regulation and supporting documents are available at the Agency's website https://www.naturvardsverket.se/miljorapportering (04.09.2020).

233 http://www.naturvardsverket.se/Stod-i-miljoarbetet/Vagledningar/Egenkontroll-miljorapportering/Miljorapportering/ (08.10.2020).

234 Naturvårdsverkets föreskrifter om miljörapport NFS 2016:8 (SEPA's regulation on environmental reporting), section 6. See also http://www.naturvardsverket.se/Stod-i-miljoarbetet/Vagledningar/Egenkontroll-miljorapportering/Miljorapportering/ (08.10.2020).

235 https://smp.lansstyrelsen.se/Information/About.aspx (04.09.2020).

236 Environmental Code (Miljöbalken (1998:808)) Chapter 9 section 8.

237 UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

238 Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC.

239 https://smp.lansstyrelsen.se/Information/About.aspx (04.09.2020).

There may be requirements linked to EU law instruments obliging local and regional authorities to report certain information in specific fields such as waste management and the protection of water.[240] For example, under the Ordinance on Waste Treatment (*Avfallsförordning (2020:614))*, a municipality must annually inform the SEPA of the total weight of the waste collected.[241]

As regards the protection of water, the **municipalities report annually to the Water Authorities (*Vattenmyndigheterna)*[242] on the implementation of the Water Authorities water protection plans (*åtgärdsprogram)***.[243] This, as well as other information in the area of water, is then reported by the Water Authorities to the Agency for Marine and Water Management (*Havs- och vattenmyndigheten*), which is tasked with reporting to the European Commission in accordance with the reporting requirements laid down in a number of EU directives.[244] All steps in the water protection plans are closely connected: for example, the County Administrative Boards need guidance from central authorities such as the Agency for Marine and Water Management and the municipalities need support and guidance from the County Administrative Boards. In practice, measures are often taken in collaboration between several authorities and municipalities.[245]

2.3. Which local authorities or administrative bodies have such an obligation to provide information?

When there is an obligation to provide information, it is generally the municipalities and/or the County Administrative Boards that must provide information to central authorities such as the SEPA. As mentioned above, there are no general reporting requirements. Moreover, the requirements generally do not concern implementation or enforcement of environmental law but rather specific data such as the total weight of waste collected in a municipality, air and water quality, etc.

2.4. On which environmental issues are there duties to provide information on supervision and enforcement?

As mentioned above (question 2.1), there is no general obligation for regional or local authorities to report to central authorities on the enforcement of environmental law.

Certain duties may however exist depending on the area in question. As mentioned above (question 2.2), the Water Authorities shall report to the Agency for Marine and Water Management (*Havs- och vattenmyndigheten*) all information needed for the Agency to fulfil reporting requirements laid down

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240 As regards waste, see for example Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste. In the area of water, see Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy.

241 Ordinance on Waste Treatment (*Avfallsförordning (2020:614))* Chapter 7 section 1.

242 Vattenmyndigheterna consist of five County Administrative Boards (designated by the government) each one responsible for one of Sweden's five water district.

243 https://www.vattenmyndigheterna.se/atgarder/distriktens-atgardsprogram.html (04.09.2020).

244 Water Management Ordinance (*Vattenförvaltningsförordning (2004:660)*) Chapter 9 section 1 and 2 referring to Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration and Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy, amending and subsequently repealing Council Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and amending Directive 2000/60/EC of the European Parliament and of the Council.

245 https://www.vattenmyndigheterna.se/atgarder/distriktens-atgardsprogram.html (04.09.2020).

in a number of EU directives.[246] For example, Directive 2000/60/EC (Article 15) lays down a requirement that Member States shall, among other things, submit summary reports of monitoring of surface water status, groundwater status and protected areas.

2.5 Do laws, ordinances and directives of subsidiary territorial authorities have to be submitted to the national environmental authority for approval (analogous to Art. 37 USG[247])?

There is no such requirement of approval under Swedish environmental law. It should be noted that laws and ordinances are only adopted at the national level, by the government. Regulations (*föreskrifter*) can be adopted by both local and central authorities, provided that this possibility is foreseen in either laws or ordinances. Generally, regulations are linked to a specific law or ordinance and lays down more detailed rules in order to facilitate enforcement.

246 Water Management Ordinance (*Vattenförvaltningsförordning (2004:660)*) Chapter 9 section 1 and 2 referring to Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration and Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy, amending and subsequently repealing Council Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and amending Directive 2000/60/EC of the European Parliament and of the Council.

247 Art. 37 Cantonal implementing provisions
Cantonal implementing provisions on disaster prevention (Art. 10), the environmental impact assessment (Art. 10a), improvement (Art. 16–18), soundproofing of buildings (Art. 20 and 21) and waste (Art. 30–32 and 32abis–32e) require the approval of the Confederation to be valid.

F. EUROPEAN UNION

As has been discussed in meetings during the preparation of this study, (i) EU environmental law extends over a broad range of domains, (ii) the rules are numerous and tend to be quite detailed, and (iii) there is no over-arching schema to give clarity, general trends or structure. The sources of EU environmental law are, generally speaking, the same as in other fields of EU law, however, the growth of regulation and initiatives concerning the protection of the environment in the EU seems to take its impetus more from Environmental Action Programmes ("EAPs") and environmental principles, rather than directly through legislation.[248] EAPs were the first means of shaping enviaronmental policy in the EU, even before specific competences were defined. These policies were only subsequently implemented through legislation.[249]

The difficulties in providing general information on reporting obligations and enforcement in EU law stem in large part from the lack of a uniform – or unified - structure in EU environmental law. Many current reporting obligations stem from international instruments to which the Member States and the EU are parties. Currently existing norms have developed rapidly, often in an *ad hoc* manner, with little or no coordination among them; reporting obligations may, or may not, be a part of any specific norm. Often they will only be part of any subsequent implementation instruments or guidelines without binding effect. This may explain, at least in part, why there is no single source of environmental reporting obligations or enforcement of those obligations. It should also explain why it was not possible for us to provide accurate generalizations concerning the issues examined. What must be reported, how and to whom varies with almost every instrument. As a result, the constraints of this mandate did not allow us to provide complete answers to all of the questions posed. We have therefore discussed specific examples and provided links to sources for more extensive and/or more detailed information where possible.

The following historical perspective may provide a useful context within which to view the development of reporting obligations.

A Brief History and Overview of EU Environmental Measures

Concerns about the environment began to stimulate action in the beginning of the 1970s following increasing pollution of air and water. This was also acknowledged on the Community level: the 1973 Declaration of the Council of the European Communities and of the representatives of the Governments of the Member States stressed that the promotion of a "harmonious development of economic activities and a continuous and balanced expansion" cannot be imagined "in the absence of

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248 A. Epiney *EU Environmental Law: Sources, Instruments and Enforcement: Reflections on Major Developments over the Last 20 Years,* 20 Maastricht Journal of European and Comparative Law 403, 404 (2013).

249 To put this into context, the 7th EAP (entitled "Living well within the limits of our planet") comes to its end in December 2020. The three thematic priorities of the 7th EAP are: To protect, conserve and enhance the Union's natural capital; to turn the Union into a resource-efficient, green, and competitive low-carbon economy; and to safeguard the Union's citizens from environment-related pressures and risks to health and wellbeing. See Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet' available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013D1386 (06.10.2020). On October 4, 2020, the Council adopted conclusions on the 8th EAP referred to as the "European Green Deal", https://www.consilium.europa.eu/en/press/press-releases/2019/10/04/8th-environmental-action-programme-council-adopts-conclusions/ (06.10.2020). however the associated work programme has been delayed by the COVID-19 pandemic.

an effective campaign to combat pollution and nuisance" or "the improvement in the quality and of life and the protection of the environment".[250] This statement marked the beginning of the EU environmental policy. Against that background, the Commission enacted the first Environmental **Action Programme[251] ("EAP")** and the Council adopted the first directives, which paved the way for the expansion of Community environmental policy.[252]

In the course of the 1980s, there was extensive secondary legislation covering water and air, noise, chemicals, waste and protection of nature. It was not until 1987, following the adoption of the Single European Act[253], however, that environmental policy was recognized in the Treaty as a Community competence. This was done under three heads:

- pursuant to its Article 3 EEC[254], as autonomous EEC action, the protection of the environment was recognized as a fully-fledged EU objective;
- pursuant to its Article 130 EEC, as a compulsory element of other policies pursued by the ECC; and
- pursuant to Article 100a(3) EEC, as a specific element in the completion of the internal market.

Subsequently, competences over environmental matters were increased in 1992 through the adoption of the Maastricht Treaty[255]. With that Treaty, environmental policy made headway through a clearer statement of objectives and, within the Council, qualified majority voting according to the cooperation procedure was introduced (replacing unanimity).[256] The cooperation procedure was then replaced by the co-decision procedure in the 1997 Amsterdam Treaty[257]. That said, although environmental regulation is now, generally speaking, a shared competence[258], (and an explicit shared competence of the European Union in the energy area[259]) the Treaty of Lisbon[260]

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250 Bulletin EC 1972, No 10.

251 See Article 192(3) Treaty on the Functioning of the European Union ("TFEU"). That Article provides that general action programmes setting out priority objectives to be attained shall be adopted by the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions. In practice, these programmes are adopted for a period of five to ten years and can be described as establishing key objectives, approaches and actions that shall be taken in tackling identified environmental concerns. The decision for adopting a programme is legally binding. However, the content of the action programme is sufficiently flexible to allow adaptations, changes or improvements.

252 N. De Sadeleer, *EU Environmental Law and the Internal Market, 1st ed.*, Oxford 2014, p. 8.

253 Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Axy0027 (02.11.2020).

254 Treaty of Rome, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Axy0023 (02.11.2020).

255 Treaty on European Union, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:11992M/TXT (02.11.2020).

256 N. De Sadeleer, EU Environmental Law and the Internal Market, *op.cit*, p. 11.

257 Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:11997D/TXT (02.11.2020).

258 Art 4(2)(e) TFEU.

259 Art 4(2)(i), 194(2) TFEU.

260 Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2007.306.01.0001.01.ENG&toc=OJ%3AC%3A2007%3A306%3ATOC (02.11.2020).

> confirms that the European Union has exclusive competence for the conservation of marine biological resources under the common fisheries policy[261]. [262]

Since the 1990's, EU environmental policy

> has been characterized by "integration" governance, that is, a focus on efficiency and effectiveness of EU environmental measures and increased attention to implementation rather than legislative production. This [has] resulted in a certain degree of flexibility and decentralization, to better allow accommodation of variations in national and regional conditions across the EU, such as ecological and economic conditions and administrative capacities and traditions. It was reflected in increasingly participatory decision-making through consultations with stakeholders and experts, and in the enactment of pragmatic, horizontal and procedural pieces of legislation that set broad objectives (framework directives) to be better defined through successive pieces of EU legislation (daughter directives) or planning at the national level on the basis of provision of information to, and involvement of, the public.[263]

In 1991, the EEC adopted the Standardised Reporting Directive[264], ("SRD") aimed at streamlining reporting and improving the ability of the Commission to monitor the application of EU environmental law.[265] The SRD covered more than 30 legal acts, on a sectoral basis, and introduced a 3-year reporting cycle for all covered legislation.[266]

In the following years, numerous reporting obligations were established involving a great variety of national, regional and international institutions. The related reporting procedures are usually complex, making it difficult for both countries and institutions to know exactly what the obligations are, when the deadlines fall and in which formats the data and information should be submitted. It became increasingly difficult to have an up-to-date overview of the requirements and the deliveries. In some cases duplicate work was being carried out to satisfy similar obligations.[267]

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261 Art 3(1)(d) TFEU, *cf*. joined cases 3, 4 and 6/76 *Kramer* [1976] ECR 1279.

262 H. Vedder, The Treaty of Lisbon and European Environmental Law and Policy, *Journal of Environmental Law*, Volume 22, Issue 2, 2010, Pages 285–299, available at: https://academic.oup.com/jel/article/22/2/285/546240

263 E. Morgera, *Introduction to European Environmental Law from an International Environmental Law Perspective*, University of Edinburgh School of Law Working Paper Series No 2010, p. 9, available at: https://www.researchgate.net/publication/228149234_Introduction_to_European_Environmental_Law_from_an_International_Environmental_Law_Perspective (29.09.2020), citing K. Inglis, "Enlargement and the Environment *Acquis*," *RECIEL* 13 (2004) pp. 148-149.

264 Council Directive of 23 December 1991 standardizing and rationalizing reports on the implementation of certain Directives relating to the environment (91/692/EEC). See also, Recommendation of the European Parliament and of the Council of 4 April 2001 providing for minimum criteria for environmental inspections in the Member States, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32001H0331 (06.10.2020).

265 Fitness Check of Reporting and Monitoring of EU Environment Policy Accompanying the document Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Actions to Streamline Environmental Reporting (COM(2017) 312 final) Annex, available at: https://ec.europa.eu/environment/legal/reporting/pdf/SWD_2017_230.pdf (24.11.2020) ("Fitness Check Annex") 8.3, p. 96. Council Directive 91/692/EEC of 23 December 1991 standardizing and rationalizing reports on the implementation of certain Directives relating to the environment (OJ L 377, 31/12/1991, p. 48–54).

266 Fitness Check Annex 8.3 p. 97.

267 https://www.eionet.europa.eu/reportnet/docs/reportnet-introduction-to-environmental-reporting-using-reportnet.pdf , 1.1 (31.08.2020)

In 1994, the European Environment Agency ("**EEA**"), based in Copenhagen, was established to support the development, implementation and evaluation of environmental policy and to provide information to the general public.[268] This EU agency is responsible for providing sound and independent information on the state of, and outlook for, the environment. The EEA now counts 32 member countries (including Switzerland) and 6 cooperating countries.[269]

The EEA coordinates the European Environment Information and Observation Network ("**Eionet"**)[270]. Eionet is a "partnership network of the EEA and the countries, which is responsible for developing the network and coordinating its activities, working closely with national networks.[271] The EEA also set up **Reportnet**, an infrastructure for supporting and improving data and information flows based on the Internet. The EEA is responsible, in particular, for transferring information required under reporting obligations, often provided for in an implementing regulation or directive, into concrete specifications that can be implemented in Reportnet in cooperation with the European Commission Directorate-General.[272] Since becoming operational in 2002, although initially used for reporting environmental data to EEA, Reportnet now hosts some of DG Environment's reporting tasks as well.

Although it collects, manages and analyses data and coordinates Eionet[273], the **EEA itself has no legislative competence**. It is the Directorate-General for Environment of the European Commission, which, today, has approximately 500 staff members[274], that is responsible for EU policy on the environment.

Monitoring and reporting of environment legislation:

A timeline of some significant steps

With the development of the successive EAPs, emphasis seems to have shifted from imposing binding obligations on the Member States to report to EU instances, to increased transparency by collecting data and providing public access to this information. A preliminary search through the EU data portal yielded 1318 datasets. Thus, an exhaustive listing of such databases is beyond the scope of this report, however, we provide below brief descriptions of some of the more important among them.

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268 Regulation (EC) No 401/2009 of the European Parliament and of the Council of 23 April 2009 on the European Environment Agency and the European Environment Information and Observation Network, available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32009R0401 (28.09.2020).

269 https://www.eionet.europa.eu/countries (27.10.20).

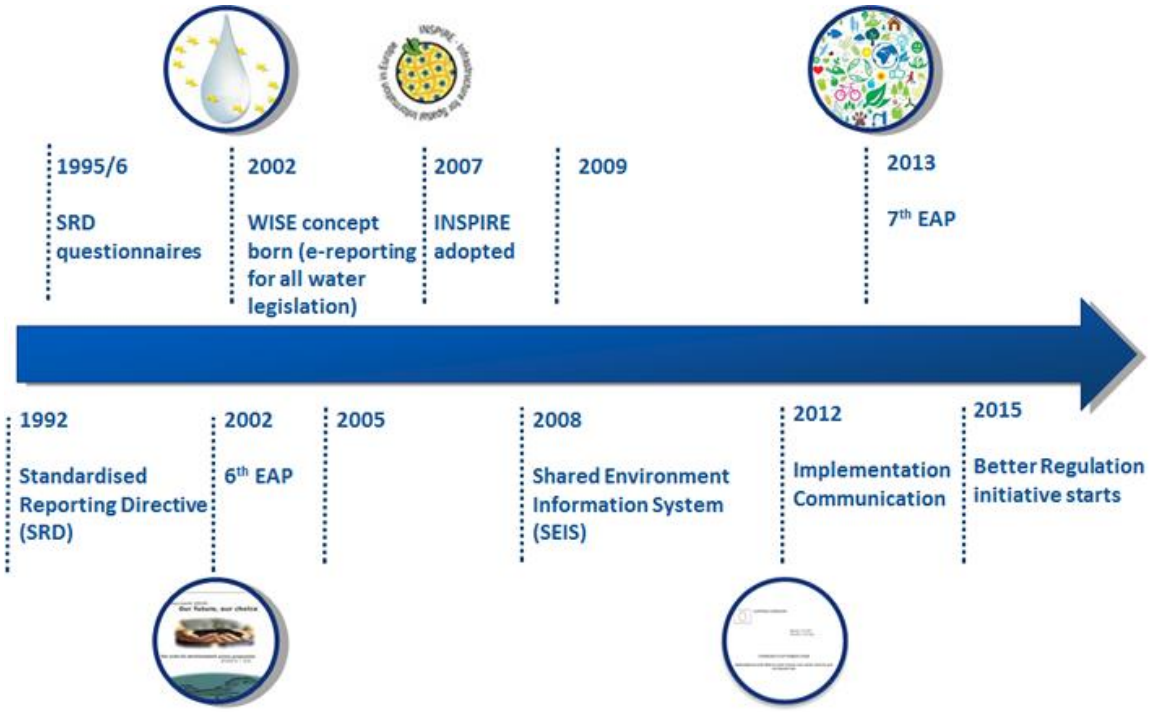
270 Many principles of the European Environment Agency (EEA) and the European Environment Information and Observation Network (Eionet) are defined in the Council Regulation (EEC) No 1210/90 / 07.05.1990, available at: https://op.europa.eu/en/publication-detail/-/publication/3e2b5c2b-2fa9-4ff9-ba35-8779c8920072/language-en (27.10.220), revised afterwards and consolidated in the Council Regulation (EC) No 401/2009 / 23.04.2009, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32009R0401&from=EN (27.10.2020).

271 Fitness Check Annex 8.3 p. 98.

272 https://www.eionet.europa.eu/reportnet/docs/reportnet-introduction-to-environmental-reporting-using-reportnet.pdf, p.5 (25.08.20).

273 See section entitled **Eionet/Reportnet/ ROD,** *infra*.

274 https://ec.europa.eu/dgs/environment/index_en.htm (28.09.2020).



275

WISE – Water Information System for Europe

Developed as a result of the Water Framework Directive, WISE represents a collaboration between the European Commission (DG Environment, Joint Research Centre and Eurostat) and the European Environment Agency.[276] Launched in 2007, the database provides a public web-portal entry to information on inland and marine water related policies, implementation and activities including projects and research. This includes the reporting obligations (Chapter IV) under the Marine Strategy Framework Directive[277]. Since 2007, WISE has

- led to a move to electronic reporting only, getting rid of paper reporting;
- harmonised electronic reporting to build comparable publicly accessible EU datasets;
- streamlined with State of the Environment reporting to avoid duplication and ensure complementarity – "provide once, use often";
- stimulated the development of national information systems (Sweden, France, Spain, Austria, Ireland…). [278]

275 https://ec.europa.eu/environment/legal/reporting/story_en.htm (24.11.2020).

276 https://water.europa.eu/about-us (11.10.2020).

277 Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive), available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0056 (13.10.2020).

278 Fitness Check Annex 8.3 p. 97

INSPIRE - Infrastructure for Spatial Information in the European Community

The I**NSPIRE** Directive[279] was adopted in 2007 "to create European Union spatial data infrastructure for the purposes of EU environmental policies and policies or activities which may have an impact on the environment. The INSPIRE Directive sets technical standards for the interoperability of spatial data and for the online availability of data discovery and access services, therefore promoting comparability and data sharing.[280] The INSPIRE Directive[281] gave rise to the INSPIRE database. That Directive and the Directive 2003/4/EC on Access to Environmental Information set the legal framework for the subject.[282]

To ensure that the spatial data infrastructures of the Member States are compatible and usable in a Community and transboundary context, the Directive requires that common **Implementing Rules ("IRs")** be adopted in a number of specific areas (Metadata, Data Specifications, Network Services, Data and Service Sharing and Monitoring and Reporting).[283] These IRs are adopted as Commission Decisions or Regulations and are binding in their entirety. The Commission is assisted in the process of adopting such rules by a regulatory committee composed of representatives of the Member States and chaired by a representative of the Commission (this is known as the Comitology procedure).[284]

According to the Commission Implementing Decision (EU) 2019/1372 of 19 August 2019[285] implementing the INSPIRE Directive, EU Member States must monitor the implementation and use of their infrastructures for spatial information and report to the Commission. Monitoring indicators are calculated using the metadata of the spatial data sets and the spatial data services that are published by Member States through the discovery services.

In addition to the Implementing Rules, non-binding **Technical Guidance**[286] documents describe detailed implementation aspects and relations with existing standards, technologies, and practices.[287]

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279 Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) (for more details, see http://inspire.ec.europa.eu/ (13.10.2020).

280 Fitness Check Annex. 8.3 p. 98.

281 Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) The original Directive is available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32007L0002 (27.10.2020). This act has been modified by the Regulation (EU) 2019/1010 of the European Parliament and of the Council of 5 June 2019 on the alignment of reporting obligations in the field of legislation related to the environment, and amending Regulations (EC) No 166/2006 and (EU) No 995/2010 of the European Parliament and of the Council, Directives 2002/49/EC, 2004/35/EC, 2007/2/EC, 2009/147/EC and 2010/63/EU of the European Parliament and of the Council, Council Regulations (EC) No 338/97 and (EC) No 2173/2005, and Council Directive 86/278/EEC (Text with EEA relevance). Current consolidated version dated 26.06.2019, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02007L0002-20190626 (13.10.2020).

282 https://www.eis-data.eu/ (15.09.20).

283 See: https://inspire.ec.europa.eu/inspire-implementing-rules/51763 (13.10.2020).

284 See: https://inspire.ec.europa.eu/inspire-directive/2 (15.09.2020).

285 Available at: https://eur-lex.europa.eu/eli/dec_impl/2019/1372/oj (13.10.2020).

286 For links to these Technical Guidelines, see: https://inspire.ec.europa.eu/Technical-guidelines3 (13.10-2020).

287 See https://inspire.ec.europa.eu/inspire-technical-guidance/57753 (24.11.2020) for a graphic representation of the INSPIRE IRs and Technical Guidance.

In the same year, the **Registration, Evaluation, Authorisation and Restriction of Chemicals ("REACH") Regulation**[288] became effective. Rather than imposing obligations on the Member States, REACH requires **companies** to identify and manage the risks linked to the substances they manufacture and market in the EU. ECHA also manages data reported under the Waste Framework Directive[289], the Classification, Labeling and Packaging ("CLP") Regulation[290], the Biocidal Products Regulation ("BPR")[291], the Prior Informed Consent ("PIC") Regulation[292], the Persistant Organic Polutants ("POPs") Regulation[293], the Chemical Agents Directive ("CAD")[294], and the Carcinogens and Mutagens Directive ("CMD")[295].

In 2008, the Commission suggested the creation of a **Shared Environment Information System ("SEIS")**[296] aimed at creating a "more modern and effective, horizontal approach on information management and reporting."[297] The SEIS was to be based on the following principles:

- information should be managed as close as possible to its source;
- information should be collected once, and shared with others for many purposes;
- information should be readily available to public authorities and enable them to easily fulfil their legal reporting obligations;

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288 Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC available at: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:02006R1907-20200824 (24.11.2020).

289 Consolidated text: Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02008L0098-20180705 (24.11.2020).

290 Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32008R1272 (24.11.2020).

291 Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012R0528 (24.11.2020).

292 Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012R0649 (24.11.2020).

293 Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants, available at: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32019R1021 (24.11.2020).

294 Council Directive 98/24/EC of 7 April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work (fourteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31998L0024 (24.11.2020).

295 Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work (Sixth individual Directive within the meaning of Article 16(1) of Council Directive 89/391/EEC), available at:

296 COM(2008) 46 of 1 February 2008, available at: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A02004L0037-20140325 (24.11.2020). https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0046:FIN:EN:PDF (13.10.2020).

297 https://ec.europa.eu/environment/legal/reporting/pdf/SWD_2017_230.pdf , p.98.

- information should be readily accessible to end-users, primarily public authorities at all levels from local to European, to enable them to assess in a timely fashion the state of the
- environment and the effectiveness of their policies, and to design new policy;
- information should also be accessible to enable end-users, both public authorities and citizens, to make comparisons at the appropriate geographical scale (*e.g*. countries, cities, catchment areas) and to participate meaningfully in the development and implementation of environmental policy;
- information should be fully available to the general public, after due consideration of the appropriate level of aggregation and subject to appropriate confidentiality constraints, and at the national level in the relevant national language(s); and
- information sharing and processing should be supported through common, free opensource software tools.[298]

The Commission initially intended to revise SRD as part of the implementation of SEIS but ultimately opted for "a non-legal approach […] combined with coordinated action in the different environmental policy areas (such as water, air, nature, etc.)".[299]

Eionet/Reportnet/ ROD

The European Environment Information and Observation Network **("Eionet")**[300] is a partnership network of the European Environment Agency (EEA) and its member and cooperating countries. It consists of the EEA itself, six European Topic Centres ("ETCs") and a network of approximately 1000 experts from 38 countries in up to 400 national bodies dealing with environmental information. These experts are the National Focal Points ("NFPs") and the National Reference Centres ("NRCs").[301] **Reportnet,** "is group of web applications and processes developed by the EEA to support international environmental reporting."[302] The infrastructure for Eionet, it was developed in order to support and improve the delivery of environmental data and information flows. It was initially developed for the Eionet reporting obligations, however, Reportnet increasingly hosts some of the reporting tasks of DG Environment and other regional and international organisations.[303]

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298 COM(2008) 46 final Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions: Towards a Shared Environmental Information System (SEIS). Available at : https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0046:FIN:EN:PDF (27.10.2020), p. 2.

299 *Id.*

300 The current draft of the EEA and Eionet joint strategy for 2021-2030 is available at: file:///C:/Users/Karen/Downloads/EEA-Eionet%20Strategy%202021-2030-rev5_October%202020.pdf (27.10.2020).

301 https://www.eionet.europa.eu/about/docs/eionet_abc_final-1.pdf , p.10 (27.10.2020). For a graphic demonstrating the role of DG-Environment and Eionet in the reporting process, see: S. Jensen, Actions on streamlining environmental reporting – the EEA/Eionet contribution, INSPIRE conference 2018, available at: https://inspire.ec.europa.eu/sites/default/files/presentations/0915_inspire-2018-sje.pdf (24.11.2020).

302 https://rod.eionet.europa.eu/.

303 https://www.eionet.europa.eu/reportnet/index (27.10.2020).

Reportnet's open system aims to improve the harmonisation and standardisation of the management of all Eionet dataflows by covering all of its activities.[304] The development of Reportnet began in 2000. It has been operational since 2002, and has been continually updated and improved. A graphic representation of the current configuration is available on the Eionet website.[305]

In 2018, the EEA initiated the **Reportnet 3.0** project to promote and modernise eReporting with the latest IT solutions. Reportnet 3.0 will act as a central hub through which all e-Reporting activities handled by the EEA with Eionet and other partners will be performed. This modern reporting infrastructure will integrate new needs, data sources and technologies related to reporting, taking into account national capabilities and producing a platform that can support the new challenges in reporting for the future. The finalisation of the Reportnet 3.0 project was planned for the end of 2020. The migration of the reported data was to have started at this time and continue together with further system development beyond the duration of this project. Reporting of new data will be available through both systems for a defined period to ensure the continuous and smooth operation of data reporting.[306]

The **Reporting Obligations Database ("ROD")**, a component of Reportnet, is the EEA's database that lists all environmental reporting obligations of EEA member countries towards a number of organisations including the EC, the OECD, the UN, the EEA and various international conventions. ROD provides an overview inventory of reporting obligations. The database makes information on the more than 400 reporting obligations available to the relevant stakeholders, providing them with easy access to information concerning who needs to report what, when and to whom.[307] The database can be used to:

1. assist countries in the analysis of the reporting obligations;
2. support countries in planning and fulfilling reporting obligations;
3. assist in streamlining the flow of data to the EEA and other international organisations.[308]

ROD targets three kinds of users: people involved in environmental policy development who are gathering information about environmental issues (what information is reported where?); country representatives who are involved in environmental reporting (when is reporting due and what do representatives need to do?); and people involved in environmental reporting from the perspective of the international organisations receiving and making use of the data.

1. In which decrees does the EU oblige its member states to report on environmental performance?

There is a proliferation of EU regulation in the environmental sector; reporting obligations exist in a wide variety of norms. Rather than attempting to compile a complete listing of these norms for this report (which would be impossible within a reasonable time period), in this section, we have indicated where information on specific reporting obligations can be accessed.

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304 Eionet ABC: A Short Guide to the Eionet, p. 26, available at: https://www.eionet.europa.eu/about/docs/eionet_abc_final-1.pdf (27.10.2020).

305 https://www.eionet.europa.eu/reportnet (27.10.2020).

306 Eionet ABC: A Short Guide to the Eionet, *op. cit.,* p. 26.

307 https://www.eionet.europa.eu/reportnet/docs/reportnet-introduction-to-environmental-reporting-using-reportnet.pdf, p.8 (25.08.20).

308 *Id.* at 28.

There has been relatively little harmonization of these obligations, despite several attempts to do so. One of these was the Standardised Reporting Directive ("SRD") adopted in 1991, that was intended to harmonize environmental reporting. The SRD covered more than 30 legal acts, on a sectoral basis, and introduced a 3-year reporting cycle for all covered legislation.[309]

Since then, however, a multitude of specific reporting obligations, tailored to individual pieces of legislation, have entered into effect.[310] That, coupled with difficulties in implementation, as well as the evolution of the *acquis* and of information and communications technology, has led to increased obsolescence.[311] So much so, that the Commission has considered repealing it.

> In general, the main drivers that eroded the SRD's relevance are: (i) the considerable development of the environmental *acquis*, including revisions of individual pieces of environmental legislation, which have frequently removed reporting obligations from the ambit of the SRD, (ii) radical progress in information and communications technologies (ICT), (iii) the European Environment Agency's assistance to the reporting obligations, and (iv) an unprecedented scale-up of the need for timely, cross-border, and interactive environmental information.[312]

In 2012, a **Regulatory Fitness and Performance programme ("REFIT")** was launched[313] to analyze and evaluate EU reporting obligations **("Fitness Check")**. In the context of that study, **181 environmental reporting obligations** found in more than 50 pieces of EU environmental legislation[314] were examined.[315] A **list** with brief descriptions of these obligations is **available in Annex 3** to the Report.[316]

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309 Fitness Check Annex 8.3 p. 97.

310 https://ec.europa.eu/environment/consultations/pdf/summary_reporting.pdf pp. 19-20 (28.09.2020). See Study on the Standardised Reporting Directive (91/692/EEC) repeal, available at: https://ec.europa.eu/environment/legal/reporting/pdf/Study_SRD_repeal_IEEP.pdf (28.09.2020).

311 Fitness Check Annex 8.3 p. 97. Council Directive 91/692/EEC of 23 December 1991 standardizing and rationalizing reports on the implementation of certain Directives relating to the environment. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31991L0692&from=EN (27.10.2020).

312 See Study on the Standardised Reporting Directive (91/692/EEC) repeal *op.cit.* p. 5 (28.09.2020).

313 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions Regulatory Fitness and Performance (REFIT): Results and Next Steps EC (2012), the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, EU Regulatory Fitness, COM(2012) 746 final available at: https://ec.europa.eu/archives/commission_2010-2014/president/news/archives/2013/10/pdf/20131002-refit_en.pdf (28.09.2020).

314 List of environmental reporting legislation taken into consideration for the Fitness Check of 2017, available at: https://ec.europa.eu/environment/legal/reporting/pdf/Environmental%20Legislation%20currently%20covered%20by%20the%20Fitness%20Check.pdf (28.09.2020).

315 Brussels, 9.6.2017 COM(2017) 312 final Report from the Commission to the European Parliament, The Council, the Ueropean Economic and Social Committee and the Committee of the Regions Actions to Streamline Environmental Reporting {SWD(2017) 230 final}, available at: https://ec.europa.eu/environment/legal/reporting/pdf/action_plan_env_issues.pdf (28.09.2020). This review does not include reporting in the field of climate change as the Commission had previously proposed a simplification of planning, reporting and monitoring obligations in the climate and energy policy areas: see "Proposal for a Regulation of the European Parliament and of the Council on the Governance of the Energy Union" COM(2016) 759.

316 See: https://ec.europa.eu/environment/legal/reporting/pdf/Reporting%20and%20monitoring/An

That report concluded that there is still progress to be made in streamlining and harmonizing reporting obligations[317] and identified five areas in which action is required:

1. getting the right information in the right form at the right time;
2. streamlining the reporting process;
3. promoting active dissemination of environmental information at the European and national levels;
4. exploiting other data sources and alternative approaches complementing environmental reporting; and
5. improving coherence and cooperation. [318]

The Fitness Check gave rise to a number of new initiatives.

- Based on a case-by-case review by the Reporting Focus Group, 80 reporting obligations (44% of total reporting obligations) in 46 pieces of legislation became the basis for the Rolling Work Programme 2018-2020.[319]
- In 2019, the "**Alignment Regulation**"[320] was adopted in another attempt to harmonize reporting obligations. The main thrust of the Alignment Regulation appears to be less an attempt to provide for uniform binding reporting obligations, than a centralization of information to be made publicly available through searchable public electronic database in order to provide a Union-wide overview.[321]
- A new set of guidelines for data harvesting was issued in the same year. [322]
- Reportnet was overhauled in order to establish it as the "central and streamlined EU tool for environment […] reporting" in accordance with the EU's Digital Single Market agenda.[323]
- An action plan listing 10 specific steps to be undertaken to streamline reporting obligations was adopted.[324]

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nex_3.pdf (06.10.2020). Results of the public consultation closed February 2016: see https://ec.europa.eu/environment/consultations/pdf/summary_reporting.pdf (06.10.2020).

317 Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Available at: https://ec.europa.eu/environment/legal/reporting/pdf/action_plan_env_issues.pdf (06.10.2020).

318 *Id.* at. 5.

319 Available at: https://ec.europa.eu/environment/legal/reporting/pdf/FC%20Reporting%20-%20rolling%20WP%20incl%20annex%20-%20version%2002.2018.pdf (15.09.20). The Annex includes a table of changes to be made for each reporting obligation.

320 Regulation 2019/1010 of the European Parliament and of the Council of 5 June 2019 on the alignment of reporting obligations in the field of legislation related to the environment, and amending Regulations (EC) No 166/2006 and (EU) No 995/2010 of the European Parliament and of the Council, Directives 2002/49/EC, 2004/35/EC, 2007/2/EC, 2009/147/EC and 2010/63/EU of the European Parliament and of the Council, Council Regulations (EC) No 338/97 and (EC) No 2173/2005, and Council Directive 86/278/EEC, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32019R1010 (15.09.2020).

321 See: Streamlining environmental reporting – action plan available at: https://ec.europa.eu/environment/legal/reporting/fc_actions_en.htm (13.10.2020).

322 Promotion of good practices for national environmental information systems and tools for data harvesting at EU level Guidance on good practice for national environmental information systems, July 2019. Available at: https://www.villa-arion.com/eis-data.eu/download/guidance-eis/ (15.10.2020).

323 *Id.* at. 8.

324 As described in Commission Report (COM(2017) 312), a table setting forth the steps of the plan is available at: https://ec.europa.eu/environment/legal/reporting/fc_actions_en.htm (28.10.2020).

2. Which environmental issues are covered by EU legislation?

A complete listing of all environmental issues covered by EU legislation is beyond the scope of this report, however the major issues covered include the following.

- Nature and biodiversity.
- Integrated pollution control.
- Waste management.
- Air pollution.
- Water pollution.
- Noise pollution.
- Environmental impact assessment.
- Genetically modified organisms.[325]

These legislative measures cover all environmental sectors, including water, air, nature, waste, noise, and chemicals, and others which deal with cross-cutting issues such as environmental impact assessment, access to environmental information, public participation in environmental decision-making and liability for environmental damage.[326]

3. What are the detailed regulations on information on supervision and implementation of environmental law (*e.g.* requirements for the collection and preparation/plausibility check of data, requirements on the quality of information, frequency of reporting, form of information transfer, objectivity and formal requirements)?

For a list of environmental legislation taken into consideration for the Fitness Check, see *Annex 1* to the Commission Staff Working Document for the Fitness Check of Reporting and Monitoring of EU Environment Policy, accompanying the document Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions/ Actions to Streamline Environmental Reporting SWD.[327]

The information in this list, however, is far from complete. As an example, the entry in this list for the Air Quality Directive[328] refers to "Two ROs covering information on ambient air quality and air quality plans in agglomerations exceeding limit or target values." If, however, one searches in ROD for reporting obligations on air pollution for France, a Member State, one finds 14 separate entries referring to 8 different articles under the implementing rules for that Directive. These include the

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325 See : https://www.citizensinformation.ie/en/environment/environmental_law/eu_environmental_law.html#la8327 (07.10.2020).

326 https://ec.europa.eu/environment/legal/law/index.htm (05.10.2020).

327 (2017) 230 final available at: https://ec.europa.eu/environment/legal/reporting/pdf/SWD_2017_230.pdf (07.09.2020).

328 Directive 2008/50/EC on ambient air quality and cleaner air for Europe (including Implementing Decision 2011/850/EU), available at: http://extwprlegs1.fao.org/docs/pdf/eur80016original.pdf (24.11.2020). An unofficial consolidated version as amended is available at: http://extwprlegs1.fao.org/docs/pdf/eur80016.pdf (24.11.2020).

obligation for Member States to make available the following information to the relevant EEA data repository and/or to the Commission[329]:

1. information on the delimitation and type of zones and agglomerations established in accordance with Article 3 of Directive 2004/107/EC and Article 4 of Directive 2008/50/EC and in which the assessment and management of air quality is to be carried out in the following calendar year;
2. any changes made to the delimitation and type of zones and agglomerations;
3. information on the assessment regime to be applied in the following calendar year for each pollutant within individual zones and agglomerations;
4. information on the methods used for the demonstration and subtraction of exceedances attributable to natural sources or to winter-sanding or -salting applied within individual zones and agglomerations;
5. information on the quality and traceability of the assessment methods applied;
6. information concerning the measurement configuration; the demonstration of equivalence where a non-reference method is used; the sampling point location, its description and classification; the measurement method applied; the sampling points and the coverage area; the validation method;
   the description of the modelling system and its inputs; the model validation through measurements; the description of the estimation method; and the documentation of data quality;
7. information on primary up-to-date assessment data, and the quality and traceability of the assessment methods applied, for the networks and stations selected by the Member States for the purpose of the reciprocal exchange of information for the pollutants listed;
8. information on primary validated assessment data for all sampling points where measurement data is collected;
9. the quantification of the contribution from natural sources or from the winter-sanding or -salting of roads, including the spatial extent of the subtraction; the quantity of the primary validated assessment data that can be attributed to natural sources or winter-sanding or -salting; the results of the application of the methods reported;
10. aggregated validated assessment data, including aggregated measured concentration levels for all sampling points for pollutants with mandatory monitoring requirements, and, for pollutants with defined environmental objectives, the concentration levels expressed in the metric associated with the defined environmental objective; annual averages and total hours/days in exceedance;
11. information on the attainment of environmental objectives; and
12. information on air quality plans.

4. Are sanctions provided for if member states do not comply with these obligations?

According to Article 192(4) of the Treaty on the Functioning of the European Union ("TFEU"), it is for the **Member States** to finance and **implement the environmental policy**. This means that when an act is adopted by the Union institutions, or a principle is developed by the EU courts, the Member States

329 *N.b*. the form and manner, the dates and frequency at in which the information is to be presented, the specific standards and measurements to be used, the specific pollutants concerned, as well as other particularities vary from one reporting obligation to another.

must ensure that it is applied in their respective national legal systems.[330] In order to guarantee the application and effectiveness of EU law, Member States must ensure that non-complying individuals are sanctioned.[331] If not specifically provided for in the EU legal act, Member States are free to choose the appropriate penalties with the requirement that they must be **effective, proportionate and dissuasive**.[332]

As a result, environmental Directives often include a requirement that the Member States comply by adopting national legislation to implement the provisions of the Directive by a specific date, sometimes including an obligation to adopt provisions imposing penalties for noncompliance.[333] Our research revealed 9 pieces of EU legislation that specifically provide for the obligation of Member States to report any penalties enacted and/or assessed for failure to comply with EU environmental legislation.

- Regulation (EU) No 1143/2014 of the European Parliament and of the Council on the prevention and management of the introduction and spread of invasive alien species requires Member States communicate to the Commission the provisions on penalties applicable to infringements of this Regulation.[334]
- Directive 2009/126/EC of the European Parliament and of the Council of 21 October 2009 on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations provides that Member States shall notify the Commission about penalties provided for infringement, as well as on any subsequent amendment affecting them.[335]
- Article 28 of the Directive 2012/18/EU (Seveso III) requires that Member States provide information on national penalties for infringement of Seveso III provisions, including any subsequent amendments.
- Article 17 of the Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Eco-label and individual decisions establishing criteria for the 26 product groups requires Member States to notify the Commission of provisions/rules on penalties applicable to infringements of the Regulation's provisions, and to notify the Commission of any subsequent amendment affecting them.
- Article 22 of the Directive 2012/19/EU by 14/2/2014 of the European Parliament and of the Council on waste electrical and electronic equipment (WEEE) requires Member States to provide information concerning the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive.
- Article 23 of the Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (recast) requires Member States to notify Commission on the national provisions on penalties applicable to infringements, and any subsequent amendment affecting them.
- Article 7 of the Regulation (EC) no 1102/2008 of the European Parliament and of the Council of 22 October 2008 on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury requires Member States to notify the Commission of provisions regarding rules on penalties applicable to infringements of the Regulation, and any subsequent amendment affecting them.

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330 See for example Case C-354/99 *Commission v. Ireland* ECLI:EU:C:2001:550, par. 46.

331 *Id.*

332 Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law, Art. 5, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008L0099 (26.11.2020).

333 See, *e.g.* Directive 2003/4/ *op.cit.* Art. 10.

334 The legal basis for this RO is Art. 30(4).

335 *See* Directive 2009/126/EC , Art. 6.

- Regulation (EC) No 850/2004 of 29 April 2004 on persistent organic pollutants[336] requires Member States to report on stockpiles; the existence of an action plan for release reduction; measures adopted to identify, characterise, and minimise sources of substances; the existence of an information plan and a monitoring programme; exchanges of information; and the application of penalties.
- Pursuant to Article 7 of the Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade in seal products (including Implementing Regulation No 2015/1850) Member States are required to report on penalties and enforcement.

Our research[337] did not, however, reveal any provisions concerning penalties to be assessed against Member States for failure to report. We therefore remind the reader of the general approach under EU law to a Member State's failure to comply with its legal obligations. If the Commission determines that a Member State has not met the objectives set by a Directive by the deadline imposed therein, the Commission may initiate an infringement procedure for non-communication.[338] Financial penalties may be assessed if the Member State fails to comply with a subsequent court decision.[339]

4. Is it specified for which purposes the information from the reporting is/will be used by the EU?

The Reporting Obligation Fiches in the Support to the Fitness Check of monitoring and reporting obligations arising from EU environmental legislation[340] contain a section entitled "Purpose and benefits of RO" for each reporting obligation, although the corresponding information is not always included in the fiches. These purposes include a number of goals, such as ensuring that the public has access to information, helping policymakers assess whether there is a need for European-wide regulation, and to check compliance.

Here are a few examples:

The **Directive 2008/50/EC on ambient air quality** and cleaner air for Europe requires that Member States report on air quality levels each year, including if and when maximum pollution levels were exceeded. Other information that the Member State must provide includes an assessment of pollution levels caused by natural sources and from activities such as sanding or salting winter roads.[341]. Noncompliance with target values or limit values will trigger additional reporting obligations.

The purpose of this reporting obligation is keep the public, the Member States and the EU informed about air quality, and to verify compliance. In particular, reporting on exceedances serves as the basis of any enforcement action for failure to meet air quality objectives and helps explain the reasons for such failure. The information forms the basis of the annual report on "Air Quality in Europe", a key publication in the field, and helps shape the political agenda.

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336 A simple reporting format is specified by Commission Decision 2007/639.

337 Such research would have required reading through every legal instrument imposing any reporting obligation on a Member State and thus was beyond the scope of our mandate.

338 See Infringement procedure on European Commission website, at: https://ec.europa.eu/info/law/law-making-process/applying-eu-law/infringement-procedure_en (13.10.2020).

339 *Id.*

340 Available at: https://ec.europa.eu/environment/legal/reporting/pdf/Reporting%20and%20monitoring/Annex_3.pdf (13.10.2020).

341 See Articles 20-21.

As stated in the Fitness Check:

> Harmonisation of data ensures comparability and hence provides better evidence. It
>
> - Ensures Member States are using appropriate data when determining whether action is required to improve air quality
> - Provides consistent data in order to determine progress against the Directive's objectives
> - Provides comparable data that provides better opportunities for learning re[.] what works and sharing best practice across Member States
> - Provides comparable and aggregate data[,] which has a use beyond the EEA/EC's needs. Air quality data is used widely by 3rd parties *e.g*. by researchers, NGOs, business etc.
>
>   Reporting approach provides geospatial data. This can be linked easily with other reporting streams *e.g*. potentially air pollution sources in the IEDs EPTR – AQ maps normally have locations of power plants in them. This allows better understanding of causes and problems. This was not so easy when data was reported in questionnaire formats. Linked geospatial analysis can now be more readily carried out *i.e.* on an *ad-hoc* basis[342].

The **Directive 2002/49/EC relating to the assessment and management of environmental noise** aims to define an EU-wide approach through which the issue of environmental noise can be addressed; avoiding, preventing and reducing environmental noise according to priorities based on the harmful effects of exposure. Local noise issues are addressed by requiring Member States to determine exposure to environmental noise, and by requiring CAs to draw up noise management action plans to reduce noise where necessary (particularly where it has effects on human health), and maintain environmental noise quality where it is good. Member States must ensure that information on environmental noise and its effects is available to the public, and that CAs consult the public concerned when developing noise management action plans. [343]

> The Directive seeks to provide a basis for the development of Community measures to reduce noise emitted by major sources. It requires Member States to determine noise limit values that apply within their territories (Article 5); to draw up 'strategic noise maps' every five years, for major roads, railways, airports and agglomerations, using harmonised noise indicators (Articles 7 & 10); to list major roads, railways, airports and agglomerations exceeding specific criteria of capacity (Articles 7(1)-(2) & 7(5)); to provide information on noise reduction measures which are already in place (Article 10(2)); and to draw up action plans on how to deal with environmental noise within their territory. (Articles 8(1)-(2), 8(5), 10(2) & 10(5)). Member States are also required to report to the Commission on these various factors and measures. The Member States shall submit their data electronically; using the Reportnet Central Data Repository
>
> (CDR) to report on major noise sources, strategic noise maps and management action plans. Six reporting obligations have been identified under this regulation in the Task 1 Reporting Obligation Inventory.

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342 Support to the Fitness Check of monitoring and reporting obligations arising from EU environmental legislation, Annex 3 - Reporting Obligation Fiches, *op.cit,* pp. 1, 3-4..

343 *Id.* at 12-31.

- Information on competent authorities (DF2). Purpose: To have a comprehensive list of the relevant competent authorities. Inform the Parliament and the Council on the implementation of the Directive.
- Information on limit values (DF3). Purpose: To provide an overview of the current situation on the limit values that apply within the Member States. Inform the Parliament and the Council on the implementation of the Directive.
- List of major roads, railways, airports and agglomerations (DF1_5). Purpose: This information is needed to fulfil the subsequent reporting obligations. It informs the Parliament and the Council on the implementation of the Directive.
- Noise reduction measures already in place (DF6_9). Purpose: To provide an overview of measures that are already in place. Inform the Parliament and the Council on the implementation of the Directive.
- Strategic noise maps (DF 4_8). Inform the Council and Parliament on the implementation of the Directive. The END evaluation suggests noise maps were seen as useful by different target audiences, such as:
  - Policy makers, especially at city / town and in larger municipalities (although the maps were seen as not very useful at all in small municipalities).
  - Local community groups and NGOs interested in information and data about local environmental noise issues, disaggregated by source.
  - Private sector actors such as investors, developers, planners and architects
- Summary of action plans (DF7_10). Purpose: Inform the Parliament and the Council on the implementation of the Directive. […]Policy makers are informed about progress in implementing the Directive. Facilitates global assessment by WHO and policy-makers. […][344]

Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (recast) provides that Member States must notify the Commission of provisions concerning rules on penalties applicable to infringements of the national provisions adopted pursuant to the Directive, and notify the Commission of any subsequent amendment affecting them. " Purpose: Provide information on the implementation of this Directive, with focus on the penalties provided by the national provisions until 2 January 2013 and the relevant subsequent amendments."[345]

344 *Id.*

345 *Id.* at 34-35.

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