

International Conference on 'Enforcement in a Europe without Borders' Workshop 'Making European Law work for inspectorates and companies'

Reflections from a Commission perspective
Miroslav Angelov
European Commission, Directorate-General for the Environment

Already the title of this workshop indicates how important it is to design and draft legislation in such a way that it is clear, comprehensible, consistent and practical to implement without unnecessary administrative burden and costs. In its 2015 Better Regulation Communication, the Commission stressed its commitment to ensure that '*every single measure in the EU's rulebook is fit for purpose, modern, effective, proportionate, operational and as simple as possible*'¹. However, in the EU multilevel governance system, ensuring practicability of legislation is a shared responsibility between EU institutions and Member States since duty-holders' obligations derive both from EU and national law. Effective de-centralised oversight systems which take account of the cross-border dimension of compliance problems are also a pre-condition for the EU policies and legislation to achieve their objectives.

1. Inspections as part of the compliance assurance chain

Inspections are an indispensable means of ensuring compliance. Academic research, work by the OECD and practice on the ground indicate that inspections are likely to be most effective when addressed within a framework that includes other compliance assurance activities, i.e. compliance promotion and enforcement². This is because a broad approach better reflects that non-compliance can have different causes and can be linked to a spectrum of behaviours. Different types of non-compliant behaviour are to be addressed by different tools, and compliance and exceeding fulfilment of binding requirements are to be awarded.

An efficient and effective inspection system will take account of this because compliance promotion prevents behaviours that otherwise need to be addressed by compliance monitoring, and enforcement ensures that inspections are not "toothless".

Standard techniques for taking account of the relationship between compliance promotion, compliance monitoring and enforcement are risk assessment, evaluation and mitigation, reflecting the need to address:

- identification of the actual or likely extent of non-compliance based *inter alia* on analysis of behaviours amongst duty-holders;
- analysis of the challenges of detecting and characterising certain types of non-compliance and identifying those responsible (e.g. clandestine or trans-frontier illegal activities, organised crime);
- identification of the best mix of compliance promotion, compliance monitoring and enforcement to change non-compliant behaviours;
- targeting of inspections in terms of duty-holders and use of different inspection, surveillance and investigation methods.

2. Common features of oversight regimes

¹ Communication on 'Better regulation for better results – An EU agenda', COM(2015) 215final.

² These three inter-connected activities build up a 'compliance assurance chain' that links the work of professionals such as inspectors, police officers, prosecutors and judges.

When looking at existing legal frameworks aimed at establishing systems to secure compliance in different Union policy areas³, we can find common features across oversight regimes, i.e. regimes requiring inspections and other compliance assurance activities. These features reflect a similar rationale and relate to:

- Fit-for-purpose national oversight authorities who can identify compliance problems and act to prevent and respond to them: this covers provisions on designation of oversight authorities; legal powers to carry-out site visits, enter properties, seize items, examine material assets, documents, electronic records and require activities to cease; resources and professional qualification; conflict of interest; conditions for delegation of inspection functions.
- Coordination and cooperation mechanisms, including requirements aimed at ensuring consistency and avoiding duplication of work. This reflects also the fact that compliance problems often extend across borders or straddle administrative and functional boundaries.
- Clear duties to carry out inspections and other appropriate checks to monitor compliance with requirements on the types of checks to be performed, their organisation, modalities and factors to be considered for establishing inspection frequencies.
- Risk-based approach to checks as well as use of compliance promotion and enforcement: this includes provisions on use of risk-based approach as well on use of inspection plans as a tool to plan and target inspections.
- Governance aspects, such as complaint-handling, public participation, data collection and data sharing aimed at evidence-based approach and involving the citizens in compliance assurance work.
- Integrated follow-up/enforcement provisions, including remedial and restorative measures but also administrative and criminal sanctions.
- Mechanisms for ensuring coherence and consistence across the EU: these mechanisms include a variety of tools, such as peer reviews, involvement of networks of professionals, administrative assistance and also a defined role for the Commission or Agencies which may include powers to perform audit-type evaluation of national inspection systems, to request or carry-out checks on the ground, coordinate joint inspections and provide methodological guidance.

3. Relevant on-going initiatives

Much of those typical features are reflected in the Make it Work document '*Principles on Drafting Provisions on Compliance Assurance in EU Environmental Law*'. This is positive and has been welcomed and referred to in the 2015 Commission Better Regulation Communication. These principles are intended to be applicable both in respect of horizontal and sectorial approaches, and are thus of a general character. There is more which could be discussed on the details of each individual principle (e.g. in terms of cooperation and

³ For instance: food safety, fisheries, maritime safety, aviation safety, product safety, competition, etc.

coordination there is a range of instruments for inter-action, such as memoranda of understanding, use of action protocols, creation of national enforcement networks and, in particular as regards trans-boundary compliance issues, different forms of structured administrative assistance).

The Primary Authority concept introduced by the UK Better Regulation and Delivery Office seems also to be an interesting example of a compliance promotion approach that has clear relevance for inspections and enforcement as well, and it is worth exploring further its practical implications in terms of reducing administrative burden and increasing efficiency of compliance assurance work.

All measures and approaches which are efficient in achieving compliance without unnecessary administrative burden should be welcomed, and this efficiency should be demonstrable by using tangible criteria.

The most significant recent development at EU level is the Commission proposal on tightening the approval and market surveillance of motor vehicles. There are important initiatives in other policy areas too, for instance the ones aimed at enhanced general market surveillance of products and at strengthening the regime on food safety controls. In the environmental policy area, the Commission continues to reflect on the best way forward, taking into account Better Regulation principles, the 7th Environmental Action Programme⁴ as well as existing good practices, and closely cooperating with Member States and their networks.

⁴ 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'.