Preparation of guidance documents – general approach

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**Description**
The action plan on environmental compliance and governance foresees several actions which aim at preparing guidance documents as a final deliverable. This document presents the approach for preparing these documents.

**Requested actions:**
The members of the Forum are invited to:

- take note of the document;
- discuss the proposed approach and provide feedback;
- send any written comments and suggestions by 27 April 2018 to env-e04@ec.europa.eu

The members of the Forum request the Chair of the meeting:

- to present a revised version of the document to the next meeting of the Forum for endorsement so that it can serve as a basis for finalising the guidance documents.
Preparation of guidance documents – general approach

1 Introduction

Several actions in the Commission’s Communication on “EU actions to improve environmental compliance and governance” (COM(2018)10) aim at preparing guidance documents, namely:

- Action 4: Good practice Guidance on strategies for combatting environmental crimes
- Action 5: Guidance document(s) on good practices in environmental compliance assurance in rural areas
- Action 7: Documentation of good practices in handling environmental complaints.

Details of the objective, content, timelines and preparatory process are set out in the Annex 1 to the Commission’s Staff Working Document (SWD(2018)10).

This document describes the envisaged general approach for preparation and finalisation of the above mentioned guidance documents. This approach should be agreed before the first guidance documents are finalised. This will bring clarity to the Forum members, the experts preparing the guidance documents and the intended audience and (future) users of these documents. It can then also be used in case any future guidance documents are prepared which are currently not listed amongst the actions for 2018 and 2019.

2 Nature of the documents

The Better Regulation Guidelines (SWD(2017)350 of 4 July 2017) introduce a clear framework for preparing “Guidance documents containing legal interpretation of EU law” under Tool #39. The guidance documents developed on compliance assurance and governance are not intended to interpret EU law. Instead, the documents intend to facilitate the implementation of EU environmental law and to provide information of factual nature illustrating good practices. They will only contain factual information on the existence of EU law provisions, or merely paraphrase their contents, or information on their application. This reference point will be the basis for the preparation of guidance documents on environmental compliance assurance. To clarify the nature of these documents, they will all contain a standard foreword and a standard disclaimer (see Annex).

3 General approach

The idea is to ensure a similar nature and style of the guidance documents developed in the context of the compliance and governance action plan. These documents will be prepared by experts that are identified by the Commission services and the Forum members. In addition, other experts, who do not participate in the meetings, will have the opportunity to review and comment on the documents during a consultation phase. The detailed preparatory process will be presented for each document and discussed in the Forum (see planning DOC3).

Once finalised at technical level, the final draft of each guidance document will be presented to the Forum in 2019. The Forum will have the opportunity to review the document, provide comments, if any, and endorse the document. The endorsement will take the form of an opinion in line with Point 5 of the Rules of Procedures which can include recommendations. The aim is to ensure that the outcome reflects the common endeavour. Should it not be possible to reach an agreement during a meeting, a written procedure (in line with Point 9 of the Rules of Procedures) can be initiated.

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1 Action 6 on “Technical Guidelines for inspections of extractive waste facilities” will follow a different preparation process with the help of the respective Committee established under Directive 2006/21/EC.
4 Target group and tiered approach

Ultimately, the guidance documents are aimed at Member States authorities organising environmental compliance assurance work and at practitioners working at the national, regional or local level on the implementation of and checking compliance with obligations deriving from EU environmental law. It is clear, however, that one common document developed at EU level cannot satisfy all users and answer many specific questions that may arise for a practitioner on a daily basis when checking compliance. Hence, the documents should be regarded primarily as navigation tool and as a high level reference point to establish a common understanding at EU level based on principles, good practices and key references of importance (e.g. Court rulings, specific guidance documents or training material as well as other documents developed by the networks). Each guidance document will include a glossary and may also list frequently asked questions and references or links to other material. Some of the guidance documents may be complemented by annexes which could include more technical background material.

The documents should also be designed in such a way, that it will be easy to adapt them and complement them with information and other elements of relevance for the national context (e.g. where reference to EU law is made, a “placeholder” should allow the introduction of the relevant national laws and administrative documents in this area). This tiered approach should be discussed in more detail when the preparation of the first documents is more advanced.

5 Style and format of the documents

The guidance document should be comprehensive but not exhaustive, reasonably concise, easy to understand, easy to navigate and visually attractive. It should also be possible to read parts of the document or use it as a reference material on where to find more information. The document should also allow for future more detailed coverage of sub-topics, e.g. at the initiative of the practitioner networks.

Suggestions for the style of the documents are currently under preparation. The Commission services are looking at good examples and are open to learn lessons from other processes where guidance documents have been developed. Currently, the Commission’s Better Regulation Guidelines\(^2\) or the Themis guidance\(^3\) illustrates some interesting ways of presenting complex issues in an accessible way\(^4\). Suggestions or good examples can be provided by the Forum members.

The documents will be prepared in English. In principle, the Commission services are open to explore the possibility for translation in some, or all, EU languages. However, this will depend on the availability of sufficient resources at the time of finalisation of the documents. Any support that Member States provide themselves for the purposes of translation will be appreciated and will reduce pressure on the EU budget.

\(^2\) https://ec.europa.eu/info/better-regulation-guidelines-and-toolbox_en
\(^3\) http://www.themisnetwork.eu/tools/action-toolkit.html
\(^4\) Other documents of interest include, for instance, the Best Practice Techniques in Market Surveillance, http://prosafe.org/images/Documents/EMARS/EMARS_Best_Practice.pdf
Annex

Draft Standard Foreword

The Action Plan to Improve Environmental Compliance and Governance aims to foster a coherent and harmonious implementation of EU environmental law and strengthen compliance assurance capacities and activities on the ground. It addresses some of the systemic and crosscutting root causes for poor implementation identified in the Environmental Implementation Review and the IMPEL implementation challenges report.

In the context of the Action Plan, guidance documents and other documents to support national authorities were developed jointly by experts from the EU Member States, professional environmental networks and the European Commission. These legally non-binding and practical documents are addressed at those experts directly or indirectly implementing the EU environmental legislation at all levels of governance. These documents take the form of guidance documents, recommendations, references to good practices or links to other technical documents useful for practitioners, and may need to be adapted or complemented to fit the national or regional context.

This document entitled “[title]” was prepared through a series of expert workshops. It was made available to the wider interested public for commenting during [consultation period]. Once finalised, the document has been reviewed and endorsed by the EU Compliance and Governance Forum (in accordance with Point 5 of its Rules of Procedures). The Forum has also recommended the publication of this document and encouraged its wide use by all national, regional and local authorities involved in ensuring compliance with EU environmental law. Furthermore, the Forum members have committed to, if necessary, complement the document with other elements of relevance in the national context. Having regard to legal, scientific and technical progress and experiences gained in the use of the guidance document, the Forum will assess the possible need for reviewing it.

Draft Standard Disclaimer

This document has been developed through a collaborative process of experts in the context of the Action Plan to Improve Environmental Compliance and Governance and has been reviewed and endorsed by the Environmental Compliance and Governance Forum. However, the document does not necessarily represent the position of any of the institutions or organisations that Forum members represent.

To the extent that the European Commission’s services provided input to this document, such input does not necessarily reflect the views of the European Commission. Neither the European Commission nor any other Forum members are responsible for the use that any third party might make of the information contained in this document.

The document is intended to facilitate the implementation of EU environmental law, to provide information of a factual nature illustrating good practices. It only contains factual information on the existence of EU law provisions and their application or merely paraphrases their contents. It is not legally binding nor does it provide any authoritative reading of the law mentioned in the document. Only the Court of Justice of the European Union is competent to authoritatively interpret EU legislation.

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6 COM(2017)63
7 Reference (once published)
8 Reference to networks [to be reviewed depending on the document]