

## EXECUTIVE SUMMARY

Despite good progress in developing environmental laws and policies, there is growing evidence that OECD countries are generally not on track to achieve some of their key environmental goals. One of the main reasons is the implementation gap that exists between policy objectives and performance. Insufficient compliance with environmental requirements is an important part of this implementation gap.

Assuring compliance with environmental requirements is a difficult challenge for various reasons:

- Compliance with environmental requirements is seldom, if ever, complete;
- Defining an appropriate level of compliance can be challenging;
- Detecting and taking action against non-compliance is complex and resource-intensive; and
- The institutions assuring compliance with environmental requirements need to be sufficiently independent and equipped to resist undue political pressure or corruption.

Designing effective compliance assurance regimes has also been hampered by the relative lack of analysis of the factors that determine the environmental behaviour of firms in relation to environmental requirements, or of the efficiency and effectiveness of alternative compliance assurance instruments. Indeed, environmental compliance assurance has long been subject to relatively little attention compared with the design of environmental policies and their specific tools. This may be linked to the institutional separation that generally exists between policy “developers” and “implementers”.

Notwithstanding these difficulties, governments are increasingly challenged to set ambitious compliance assurance objectives, usually in the face of much uncertainty, and to deploy their scarce human and financial resources to achieve those objectives as efficiently as possible. Regulatory reform programmes have reinforced these demands and have emphasised the need to reduce regulatory burdens on industry. The shift away from policies targeting “end-of-pipe” solutions to reducing pollution at source have also affected the way in which environmental enforcement agencies conduct their activities. Internationally, concerns about the competitive advantage that may be conferred on domestic industries by inadequate or inconsistent enforcement have put the spotlight on compliance assurance programmes, as has the need to support developing countries to build their capacities in this area.

This report is the result of a systematic comparative study of environmental compliance assurance systems in eight countries representing different legal, institutional, and cultural settings: six OECD countries (Finland, France, Japan, the Netherlands, the United Kingdom, and the United States) and two non-OECD countries (China and Russia). The objective of the study (undertaken in 2007-2008) was to help governments face up to the challenge of improving environmental enforcement and compliance through cross-country exchange of experiences.

The study focuses on instruments to ensure compliance with pollution prevention and control regulations, particularly in the industrial sector. It covers the three main aspects of compliance assurance – *compliance promotion, compliance monitoring, and non-compliance response (enforcement)*. It also examines the main features of the institutional frameworks and environmental regulatory requirements that determine

how compliance assurance programmes are developed, as well as the ways in which compliance assurance programmes are managed.

The analysis shows that national approaches to environmental compliance assurance are shaped by administrative traditions and cultures, and that important differences exist in the approaches being followed in the countries reviewed (for example, the different emphasis that countries place on non-repressive response to violations as opposed to sanctions). Nevertheless, it is also clear that the examined countries face many common problems, and that they are making significant efforts to enhance the efficiency and effectiveness of their environmental compliance and enforcement regimes. The study highlights some well-established and emerging trends, innovative approaches, and good practices in order to facilitate policy dialogue and further analysis of selected issues.

In particular, the study identifies the following trends in efforts to enhance environmental compliance assurance:

- *Increased focus of strategic planning and performance assessment on environmental outcomes.* Environmental authorities in many countries (e.g., the Netherlands, the UK, and the US) have developed performance indicators to assess levels of compliance with regulatory requirements, and reductions of the negative impact on the environment. However, the different data and methodologies used to compile compliance and enforcement indicators make cross-country comparison and international benchmarking difficult.
- *Integration of environmental permitting and compliance monitoring regimes across media.* This trend is most pronounced in the EU countries which have integrated permitting and compliance monitoring for large industry and cross-media general binding rules for smaller facilities. On the other hand, the US and Japan maintain their long-established single-medium regulatory regimes and inspection programmes.
- *Growing importance of compliance promotion, particularly targeted at small and medium-sized enterprises.* This trend is clearly visible in all the countries studied. Compliance promotion can be an efficient approach to achieving compliance, both for businesses that receive information, assistance and incentives, and regulators that thereby save resources on enforcement. In recent years, the focus of compliance promotion has been moving from the traditional emphasis on specific regulations to one on incentives to introduce environmental management systems and pollution prevention, and generally to go beyond compliance.
- *Targeting of compliance monitoring on facilities where potential environmental risks are greatest and/or where operator performance suggests a higher risk of non-compliance.* The targeting approaches vary from defining risk-based categories of installations and respective minimum inspection frequencies (e.g., in the US, Finland and France) to formal scoring systems (in the UK and the Netherlands). There is evidence that risk-based targeting results in a higher rate of detection of non-compliance and, therefore, in more effective and efficient compliance assurance programmes.
- *Shifting responsibility for monitoring the environmental impacts of facilities from competent authorities to regulated entities, with appropriate oversight safeguards.* At the same time, the emphasis in the studied countries is increasingly on modernising and simplifying self-monitoring and reporting to reduce costs for businesses and regulators.

- *Making enforcement more proportionate to the extent of non-compliance.* Some countries are making more use of, or are planning to introduce, administrative, rather than criminal, response measures for less severe violations. They are also taking more account of the economic benefits resulting from non-compliance and ability to pay when calculating monetary penalties for firms (as in the US, the UK, and the Netherlands). However, in the more consensus-based compliance cultures of Finland and Japan, where a warning is often enough to restore compliance, sanctions in general (and criminal ones in particular) are extremely rare.
- *Enhancing stakeholder co-operation, transparency and public disclosure of information.* Most of the studied countries (particularly the Netherlands) have been improving interagency co-ordination. The dialogue with the regulated community is expanding through compliance promotion and increasing transparency of permitting and enforcement procedures. More and more countries publicly disclose compliance monitoring information and some, like the US, provide public access to enforcement data.
- *Mobilising opportunities provided by information technology.* Information technology is offering a variety of ways to improve regulatory efficiency and to reduce the administrative burden on the regulated community. Examples include electronic submissions of permit applications and self-monitoring reports, databases of various complexity, and interactive web-based tools.
- *Analysing non-compliance with environmental requirements in order to improve policy design.* Environmental enforcement authorities increasingly take part in the elaboration of new, or the improvement of existing, policies and regulations, to help close the gap between policy development and implementation. For example, in the Netherlands, causes of non-compliance and effectiveness of enforcement are thoroughly studied as part of the policy and legislative design process.

Improving the efficiency of compliance assurance is at the core of most of these trends. Enforcement agencies are responding to the challenge of achieving better environmental results with less financial resources by streamlining the key activities, adopting new and improving the existing instruments, and targeting their activities on higher-risk segments of the regulated community.

While significant progress has been made in recent years in some countries, there is much more that could be done to support the efforts of environmental enforcement agencies to enhance the efficiency and effectiveness of their activities. In particular, there could be merit in examining issues such as:

- The extent to which implementation gaps arise from the choice and design of policy instruments or ineffective compliance assurance;
- Ways in which the analysis of non-compliance could help improve policy design;
- The development of comparable indicators to assess the performance of compliance assurance programmes that could be used for international benchmarking; and
- Methods to assess the minimum human and financial requirements that need to be met in order to achieve given environmental compliance objectives (thereby establishing limits of doing more with less).