



Estonian Environmental Institutions – thoughts on the merger of Estonian Environmental Board and Environmental Inspection into one institution (& additionally the movement of inspection duties into a combined inspection and enforcement ‘agency’/police).

Simon Bingham

IMPEL Cross-Cutting Expert Team Leader & Board Member

Estonia IRI Team Leader

About the author

I am one of IMPEL’s IMPEL Review Initiative (IRI) Ambassadors responsible for the development and promotion of the IRI and the coordination and delivery of post-IRI support. I have taken part in 12 IRI’s, with the Estonian IRI in the Spring of 2019 being my 10th as Team Leader.

I have more than 25 years’ experience as an environmental regulator in the UK and have worked internationally for more than 15 years. I am currently the Scottish Environment Protection Agency’s (SEPA) International Development Manager.

I have worked historically both as a permit writer and as an inspector, however, I have spent the last 15 years working on the development of regulatory frameworks and building capacity in regulatory authorities. I sit on the Board of the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) and currently hold the position of Cross-Cutting Expert Team Leader.

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Q1. Is there any statistics done in member states saying whether the permitting functions and Inspection functions have been combined in one institution or are organised in separate institutions?

My basic rule of thumb is that almost everywhere is different and there is no European or international norm. I know of no statistics that identify who does what in different countries.

Through my IRI experience and international work I consider that I have a good knowledge of the situation on the ground in most European Countries. It is more common to find permitting and inspection in different institutions and often but not always at different structural levels (national-regional, regional-local, etc).

Countries where both permitting and inspection are in the same authority include but are not limited to Cyprus*, Malta, Iceland, the United Kingdom and the last time I checked your neighbours Latvia. There are some instances where high-risk permits and inspections are (or can be) carried out in the same authority (e.g. some German Lander, ISPRA in Italy). NB. Cyprus* are considering a demerger of responsibilities.

The question of independence of the permitting and inspection process is an important one. However, for the two activities to function well there should be very good cooperation between the two. Placing them in the same institution does not necessarily guarantee good cooperation and conversely placing them in different institutions does not mean that they cannot work very effectively together. The answer lies in having effective cooperation and high degrees of openness and trust between the authorities. In instances where two or more authorities do not work together this is usually for one of the following reasons:

1. Barriers are deliberately in place. In a few instances, authorities are expressly forbidden from communicating together at an operational level or have never thought to open communication channels.
2. Ego. This is probably the most common reason, occurring when there is a lack of trust & cooperation either at management or operational level between the organisations. Communication fails largely due to personal issues rather than procedural or structural.
3. The organisations (at least one) are too small to enable an effective working relationship.

Placing the two activities into the same institution is unlikely to yield savings (financial or time) unless a particular institution was over-resourced initially. Where savings can be manifest, it is in combining back office staff and ICT structures such as databases. It should be noted that databases can and are frequently shared across different authorities so this in itself need not be a barrier.

Permitting and inspection have traditionally been placed into different authorities in an attempt to avoid (or be seen to avoid) corruption or to be able to critically review permits especially in a national/regional to local context where local issues such as employment could override environmental concerns. It does offer another set of 'eyes' to help avoid regulatory blindness or regulatory capture. Process and procedure could be utilised in a single authority to negate this risk.

Q2. Regarding the functions of Environmental Inspectorate in Estonia, in how many European countries are the similar functions organised within the police force? Might this be good practice going forward?

There are no instances in Europe that I am aware of where the police provide the full role of the environmental inspectorate.

There are examples where some of the activities of the inspectorate are carried out by the police. In Italy for example the Carabinieri have responsibility for trans-frontier shipment of waste (TFS) and for illegal hunting (the latter being the same in the UK).

In a limited number of countries, the inspectorate does not possess the powers that would allow them to collect evidence for a prosecution and instead must rely on the police. In practice this tends to mean the inspectorate carries out few (if any) prosecution cases.

Because the inspection of environmental activities requires specialist knowledge this would be difficult to recruit to within the police unless you had a dedicated and fully resourced function (i.e. fully replace the inspectorate within the police). Given environmental crime is usually below any other kind of crime in terms of resourcing there would always be the risk of under-resourcing compared to actual requirements.

I see it beneficial to have a close working relationship with the police with the opportunity to share intelligence and cooperate on cases and where officer protection is needed.

Although inspectorates have an enforcing role and require some similar tools and skill sets to the police, their roles are significantly different making direct compatibility poor. Personally, I see little to recommend this approach.

Q3. What could be the reasoning between separation of permitting and inspection functions and is there a visible trend in environmental protection moving either in the way of having separate institutions or combining them?

In my opinion there are three principle reasons to join permitting and inspection together if they are already separate:

- There is a problem that needs fixed. Likely to be an issue on how the two activities are currently carried out resulting in poor performance of the authorities and the failure to protect the environment.
- Where the knowledge & skillsets of individual authorities are minimal and there is merit in combining forces. To be an effective environmental regulatory authority covering the

environmental acquis requires authorities to possess a wide range of technical knowledge and skills. In some countries (e.g. Iceland) the number of individual regulated activities is low; however, the range of activities is quite diverse. Having two authorities that possessed the necessary knowledge to effectively regulate (permit & inspect) these activities in Iceland would be overkill.

- Streamlining the public sector is an over-riding principle. In some instances, there can be a political imperative to reduce the number of government agencies or to reduce back-office functions to save money. There could also be the ability to reduce the number of offices by combining staff into one authority. In Scotland public sector agencies from a range of areas (tax, forestry, environment etc) often share building facilities and to a certain extent services. SEPA provides a call-centre 24/7 365 for a number of other agencies. If this is the over-riding reason it should be communicated as such to ensure there is no detrimental impact on moral of those who may in advertently think the reason is to improve performance (i.e. historically they didn't do a good job).

Any business case should balance savings against the cost of change and should seek to understand any potential lack of performance during the process of change.

There could be some benefit for operators/public by having only one authority that they need to contact. This is usually only an issue on first contact.

Conclusion

My overriding tendency is to follow the principle of "if it isn't broken why fix it". Basically, understand the problem you are trying to fix by bringing two authorities together and identify if the solution will achieve this.

As stated above there is no 'right answer' or international norm in terms of whether the functions should be delivered in a single or separate authorities. The primary success factor relates to good cooperation, good communication and positive working relationships and this is equally important whether it be between two departments in the same authority or two different authorities.

Simon Bingham

IMPEL Cross-Cutting Expert Team Leader & Board Member

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