

HANDBOOK ON THE IMPLEMENTATION OF EC ENVIRONMENTAL LEGISLATION

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on the Implementation of
EC Environmental Legislation



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Edited by
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Umweltbundesamt GmbH



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The content and views contained are those of the authors and do not necessarily represent those of the European Commission itself. The Regional Environmental Center for Central and Eastern Europe (REC) takes responsibility for the sections covering new legislation and amendments to existing legislation from 1 January 2003 to 31 December 2007. In several sections, the Handbook also contains reference to key legislation adopted after 31 December 2007. The REC does not take responsibility for ensuring the accuracy of the information covering EC environmental legislation for the period prior to 1 January 2003.

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About the REC

The Regional Environmental Center for Central and Eastern Europe (REC) is a non-partisan, non-advocacy, not-for-profit international organisation with a mission to assist in solving environmental problems in Central and Eastern Europe (CEE). The center fulfills this mission by promoting cooperation among non-governmental organisations, governments, businesses and other environmental stakeholders, and by supporting the free exchange of information and public participation in environmental decision making.

The REC was established in 1990 by the United States, the European Commission and Hungary. Today, the REC is legally based on a charter signed by the governments of 29 countries and the European Commission, and on an international agreement with the government of Hungary. The REC has its head office in Szentendre, Hungary, and country offices and field offices in 17 beneficiary countries: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, the former Yugoslav Republic of Macedonia, Montenegro, Poland, Romania, Serbia, Slovakia, Slovenia and Turkey.

Recent donors are the European Commission and the governments of Albania, Austria, Bosnia and Herzegovina, Canada, Croatia, the Czech Republic, Estonia, Finland, Germany, Hungary, Italy, Japan, Latvia, Lithuania, Luxembourg, the former Yugoslav Republic of Macedonia, Montenegro, the Netherlands, Norway, Poland, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States, as well as other intergovernmental and private institutions.

About the Umweltbundesamt

The Umweltbundesamt (UBA) is the expert authority of the federal government of Austria for environmental protection and environmental control, dealing with all areas of environmental protection. The UBA is the competent institution for the establishment of links between science, politics, the authorities and practical application.

The purpose of the work carried out by the UBA is primarily to support the environmental policy of the federal government, which is supplied by the UBA with a wide range of information on the sources of environmental pressures and on ways of preventing or reducing such pressures. The UBA also produces proposals for technical-ecological rules and guidelines.

The UBA currently employs more than 440 experts in environmentally relevant departments, as well as graduates in a wide range of disciplines from universities at home and abroad, who all make up a highly qualified as well as committed and creative team.

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Introduction

Introduction

1. Objective of the Handbook

The objective of the *Handbook on the Implementation of EC Environmental Legislation* is to provide a planning framework and step-by-step guidance on the approaches and specific activities required to ensure the effective and legally compliant implementation of EC environmental legislation. It targets candidate countries, potential candidate countries, as well as existing Member States. The Handbook provides:

- an introduction to each environmental sector setting out a framework for planning the implementation of the legislation contained within that particular environmental sector¹;
- separate fiches containing information and guidance about each legal act presented in the EC's *acquis* guidance document²;
- ample examples of implementation efforts in existing Member States, highlighting institutional, policy and legislative frameworks .

The Handbook, in its original format of 1999, was the result of a collaborative effort between the European Commission (Directorate General for Environment) and the Phare-funded DISAE programme (a Phare environmental approximation facility). The first revision of the Handbook was carried out in 2002 by Project Management Group (PM Group), under the Phare-funded project EUROPEAID/113417/D/SV/R20. In 2007, the Regional Environmental Center for Central and Eastern Europe (REC) was tasked to carry out a second update and revision covering all legislative developments in the area of EC environmental law for the period 1 January 2003 to 31 December 2007 under the project EUROPEAID/124644/D/SER/Multi.

Although DG Environment have undertaken a review of the material contained within this Handbook, the findings, conclusions and legal interpretations expressed in this document should not necessarily be taken to reflect the policies or opinions of the European Commission itself. The Handbook provides an overview of European Community environmental legislation and its implementation, but the actual legislative text (as interpreted and clarified by the European Court of Justice (ECJ) must always be taken as the definitive and legally binding reference.

¹ The term "environmental sector" refers to the grouping of EU legal instruments in the environmental *acquis*. In some sectors, such as the "waste management sector" and "water quality sector", this grouping is logically in line with the traditional (technical) understanding of the term "sector". However, for others like the "horizontal sector", the meaning of sector is misleading. This may also be considered to be the case as regards Section 10 (Nuclear) which is no longer handled by DG Environment.

² Guide to the Approximation of European Union Environmental Legislation. Commission Staff Working Paper SEC(97) 1608 of 25.08.97

2. Target Group

The Handbook is primarily aimed at officials (legislators, civil servants, planners, environmental advisers, etc.) in national, regional and local government agencies in candidate countries and potential candidate countries, who are responsible for the planning, management and implementation of environmental laws and programmes. However, it is hoped that the Handbook may also be of interest to other parties in candidate countries, such as people working in the industrial and commercial sectors who are affected by the legislation, and non-governmental organisations (NGOs) -- in fact, all relevant stakeholders in candidate countries. The Handbook is also of use to existing Member States, especially those sections dealing with new legislation with transposition dates after 2007. This is the case with the Water Framework Directive, for example, which enters into force progressively until full transposition in 2013.

3. Structure of the Handbook

The Handbook is divided into two main parts, as illustrated in the box below:

- the present introductory chapter on the Handbook itself and the accession process (Chapter 1);
- nine chapters with overview and fiches for the environmental sectors in question (Chapters 2 to 10). In Chapter 9, on noise, the sections include a general overview of the entire noise legislative framework while there is only one separate fiche -- on the Directive on Ambient Noise.

Structure of the Handbook

- Chapter 1: Introduction – Implementation and the Accession Process
- Chapter 2: Horizontal Legislation
- Chapter 3: Air Quality Legislation
- Chapter 4: Waste Management Legislation
- Chapter 5: Water Protection Legislation
- Chapter 6: Nature Protection Legislation
- Chapter 7: Industrial Pollution Control and Risk Management Legislation
- Chapter 8: Chemicals and Genetically Modified Organisms Legislation
- Chapter 9: Noise Legislation
- Chapter 10: Civil Protection Legislation

This Handbook is based on the environmental *acquis* up to December 2007. The content is based on a list of environmental and civil protection legislation, approved by the European Commission in February 2008. It was decided by the European Commission that the Handbook would not cover all noise and nuclear safety and radiation protection legislation.

Access to all the legal instruments considered in this Handbook is available through the website <http://eur-lex.europa.eu/>, which is a service provided free of charge in all the official EU languages. This website provides direct access to all legal instruments (decisions, regulations and directives) in pdf and html format. The Eur-lex search engine allows users to search for legislation either by entering the number of the legislative act or by entering key words. The Eur-lex website includes a bibliography with details of all amendments, corrections or repealing acts, the legal basis and references to consolidated versions of the legislation. The website also contains instruments that are no longer in force.

In addition, Eur-lex contains case law from the Court of First Instance (CFI) and European Court of Justice (ECJ). These cases often concern situations where a Member State has failed to implement an EU directive on time or has failed to implement it correctly and adequately (e.g. implementation did not satisfy the objectives and aims of the relevant EC legislation). These rulings provide important information on what action Member States are required to take to ensure full implementation and adequate application of Community environmental legal acts. More details about case law, including references to court opinions and opinions of the advocate-general of the ECJ can be obtained at: <http://curia.europa.eu/en/transitpage.htm>.

In addition to Eur-lex, the EU provides summaries of EC legislation, including the environmental *acquis* and legislation on civil protection, on the SCADPlus website: http://europa.eu/scadplus/scad_en.htm. The summaries, which are provided in 11 EU languages, are one or two pages long and include legislative proposals and policy documentation such as communications and guidelines. The summaries set out the main objectives of the acts, the key provisions and responsibilities of the Member States, as well as implementation deadlines. On the SCADPlus website, EC environmental instruments are organised sector by sector (e.g. air, chemicals, waste, horizontal legislation).

Another source of information is PreLex: <http://ec.europa.eu/prelex/apcnet.cfm?CL=en>. PreLex follows all Commission proposals (legislative and budgetary dossiers, conclusions of international agreements) and communications from their transmission to the Council or the European Parliament. PreLex also contains links allowing users direct access to the available electronic texts (COM³ documents, the Official Journal, the Bulletin of the European Union, documents of the European Parliament, press releases, etc.).

The Table below shows the approximate distribution of directives, regulations and decisions included in the Handbook as of December 2007.

Table - Summary of EC Environmental Legislation Considered in the Handbook by Sector

SECTOR	Directives	Regulations	Decisions	Total
Horizontal	7	3	0	10
Air Quality	16	6	7	29
Waste Management	19	1	8	28
Water Protection	13	0	1	14
Nature Protection	4	4	1	9
Industrial Pollution Control	3	2	1	6
Chemicals and Genetically Modified Organisms	7	3	5	15
Noise	1			1
Civil Protection		1	5	6
TOTAL	70	20	28	118

4. Contents of the Handbook

4.1 Part 1 – Introduction

³ Proposed legislation and other Commission communications to the Council and/or the other institutions, and their preparatory papers.

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The introductory sections of the Handbook cover firstly the nature of the Handbook itself and secondly the role of the implementation process and its relation to accession.

4.2 Part 2 – EC Environmental Legislation by Sector

For each environmental sector there is an overview of the sector, followed by a fiche for each legal instrument addressed.

Sector Overview

The objective of the sector overview is to provide a description of implementation issues for the legislation considered in the sector. The sector overview describes a framework for planning the effective implementation of the legislation.

Each sector overview has a common structure, which is illustrated in the box below.

European Community environmental legislation is increasingly interrelated, reflecting the Community's overriding objective of promoting sustainable development. This approach is in accordance with specific treaty obligations regarding the integration of environmental protection requirements into the definition and implementation of other Community policies, as well as with the inherent integrated nature of effective environmental legislation. The approach adopted in the Handbook thus also reflects the consideration that the environment be addressed as a whole in relevant legislation and action.

The concept of integration can be seen within each sector covered in the Handbook, as well as between sectors. Where appropriate, cross-references to different legal instruments in different sectors have been made. As a result, it is recommended that individual EC legal acts should not be implemented in isolation. In this way, an environmental legislative, administrative and enforcement system that mirrors that provided for by Community law may be attained within the candidate countries. Further benefits also follow from adopting this approach, such as economies of scale in setting up a single regulatory authority to deal with the implementation, application and enforcement of several directives.

This practical solution may, in addition, reduce costs in practice for stakeholders, who will have to deal with only one regulatory body within the particular areas of activity covered by any one group of directives. It may also promote better application and enforcement because a single regulatory body will be likely to have a better overview of the operations in question.

However, it should not be forgotten that, without adequate advance planning, the implementation of one directive in advance of another could lead to environmental problems elsewhere. For example, implementation of the Urban Waste Water Directive (91/271/EEC) (see Section 5 - Water Sector) might lead to increased volumes of sewage sludge, which then need to be disposed of in accordance with the Waste Framework Directive (2006/12/EC) (see Section 4 - Waste Sector).

Structure and Contents of the Sector Overviews

Introduction and Overview

Introduces EC policy in the environmental sector, describes the legal instruments under consideration, and refers to other relevant legislation in the Handbook.

Development of a Sectoral Strategy and Implementation Plan

Outlines the steps which need to be taken to prepare a plan to implement the legislation within that sector.

Institutions and Relevant Parties

Describes the key stakeholders affected by the legislation and their role in implementation, and discusses the role of competent authorities and government at national, regional and local level, public versus private involvement, communications and consultation.

Technical Issues

Addresses technical issues in the legislation. These issues may require expertise and specialised equipment, for example to set guideline emission standards, monitor emissions and prepare technical guidance notes.

Regulation and Enforcement

Describes some of the key issues arising from control of the implementation of the legislation. This covers licensing and permitting procedures, monitoring, inspection, enforcement, data collection and reporting. The role of enforcement in ensuring compliance in practice with Community environmental legislation should not be under-estimated, and has been highlighted where relevant to each fiche.

Priorities and Timing

Discusses ways of prioritising the implementation tasks based on legal, institutional, and economic and financial aspects. It also provides guidance on which tasks are most likely to affect the implementation programme, due, for example, to the need for planning, institutional strengthening, and the design and construction of new facilities. For complicated and involved legal instruments, where the process of implementation is likely to be complex and involve many actors, a timetable for action by Member States is set out (see, for example, under the Water Framework Directive [2000/60/EC], Section 5).

Economic and Financial Issues

Discusses the types of costs arising from the implementation of the legislation, who would bear them, and economic and financial tools for recovering costs. Estimates of the cost of implementing environmental legislation are provided where these were available from other studies. The most comprehensive cost analysis undertaken to date is by EDC⁴, while some of the projects funded under the DISAE programme provide up-to-date estimates for some environmental sectors and countries.

Summary of Key Issues

Each sector ends with a summary of key implementation issues.

Implementation Fiches

The purpose of each fiche is to provide information about implementation issues specific to the legal instrument addressed.

Some sectors include a framework directive, which sets out general rules and principles, and a series of specific "daughter" directives. The general information is not repeated in the fiche for the daughter directives, therefore readers should keep in mind both the framework and the daughter legislation.

The fiches are presented in a common format, as described in the box below.

Structure and Content of the Fiches

Short Title

Each fiche is given an abbreviated title. This is used in the footer on each page of the fiche to help the reader locate a fiche quickly. The short form of the title is also used in the text.

Official Title

The full title of the legal act is given with the Official Journal reference (volume, page number and date). Key and/or latest amendments to the original legal act are also referenced.

⁴ EDC, 1997. *Compliance Costing for Approximation of EU Environmental Legislation in the CEEC*

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Summary of the Main Aims and Provisions

An introductory paragraph describes the main aims of the legislation.

Principal Obligations of Member States

This section summarises the principal legal obligations on Member States (with the associated article from the legislation in brackets). These obligations are grouped under standard headings reflecting the key stages in the implementation process and, where possible, are listed in the order in which they should be considered for the practical purposes of implementation. This section omits legal obligations on other bodies, for example the Commission itself, and optional arrangements. Readers should refer to the full text of the legislation for further details.

This section also includes cross-references to other Community environmental legislation and, where specifically relevant, international conventions and agreements that should be considered in conjunction with the particular piece of Community legislation in question. Where a cross-reference to another section of the Handbook is appropriate, this is indicated by the section number in brackets following the mention of the associated Community legal act.

Implementation

This section sets out the main tasks to be undertaken to implement the legislation, and key constraints on phasing the implementation tasks.

The key tasks are summarised in the form of a checklist. Where possible, the structure of the table is based on the sub-divisions of the legal obligations. However, sometimes the structure is developed to take account of additional steps required to meet the obligation in question, and other issues raised in the legislation. The key tasks are arranged as far as possible in chronological order of implementation.

The phasing considerations identify factors affecting the implementation programme, such as whether the legislation is likely to be superseded and whether the legislation refers to a fixed programme of events, as well as the most time-consuming tasks.

Implementation Guidance

This section brings together the collective experience of Member States to provide general observations, examples of good practice, and lessons learnt in implementing the legislation. This information may be further illustrated with case studies from Member States.

Costs

This section provides a qualitative analysis of the costs likely to be incurred through implementation of the legislation, for example capital expenditure, operation and maintenance costs, staff, equipment, etc. Specific information on costs is given where possible, based on existing literature. This section also identifies the entities on which the costs may fall, e.g. public sector, private sector, state or municipalities.

Implementation Experience in Member States

The implementation issues discussed in the fiches are drawn from the collective experience of the Member States. For implementation issues covering the period until 31 December 2002, examples are primarily taken from four Member States: France, Portugal, Sweden and the United Kingdom.

In the present update covering the period from 1 January 2003 to 31 December 2007, practical examples of implementation, in terms of legislative and administrative frameworks, have been extended to additional countries including Malta, Hungary, Denmark and Austria.

Implementation and the Accession Process

1. Overview

1.1 Scope of This Section

This section discusses the need to take implementation issues into account when preparing for accession. It looks at a number of implementation issues that are common to many directives and goes on to consider how implementation planning can be incorporated into a government's broader planning for accession. It also briefly addresses issues common to all Community legislation and law in relation to the accession process, and contains particular information in relation to Community regulations. It concludes with an implementation management checklist that governments can use to track their progress in implementing the *acquis*.

1.2 Taking Account of Implementation

The process of approximating the legal and administrative systems in the candidate countries to the large and complex body of EC law is a huge task that requires careful planning and management on an ongoing basis. As deadlines for implementing certain directives or certain provisions within directives do not arise until after the anticipated date on which many of the candidate countries will become Member States it is important that measures proposed now are adequate to meet the future compliance demands that such countries will face as Member States.

Candidate countries should have in place a framework for co-ordinating legislative and administrative practice across different ministries with a view to achieving full implementation in law and practice. That framework will necessarily incorporate consideration of regulatory activities. As candidate countries adopt legislation with a view to giving effect to Community directives in their national law, they should consider which areas of existing national law will be affected by the new legislation and so require amendment or repeal. Candidate countries will also need to ask what nature of legal provisions is appropriate in their national constitutional and legal order so as to give effect to Community law in national binding legal provisions. For example, would a framework directive be better implemented in the national legislative set-up by way of primary legislation, and the daughter directives implemented by secondary legislation under the "umbrella" of the primary legislation; or is primary legislation appropriate for all such directives? Furthermore, bearing in mind the prospect of technical amendments to directives, candidate countries should consider what parliamentary mechanism should be provided in order to allow for the most effective adoption of implementing legislation to give effect to such technical amendments.

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Implementation of whole areas of Community environmental law may cause significant change in the law in candidate countries. It is important that the implementation process involves as many stakeholders as possible in the process of discussion regarding the pace at which change is introduced in candidate countries and the manner in which it is to be given legal effect, as well as to how changes in regulatory practice are to be managed. In addition, legislative change to give effect to Community law requirements may lead to additional expenditure across the country at central, regional and local government level, for the regulatory authorities, for industries and commercial operations, and for the public. Public information and discussion assists in easing this process, and consultation on legislative drafts may assist in identifying matters of national, regional or local or sectoral interest as regards the implementation process relating to given areas of activity. In this way, change may be managed more easily.

It may, as a result, be advisable for candidate countries to consider whether transitional periods should be sought from the Community to avoid significant disruption to particular areas of industrial, commercial or social activity. Transitional periods may enable a candidate country to avoid being in breach of Community obligations at an early stage of their existence as new Member States. It is undesirable to be in breach of Community obligations in any event, but the risk of fines being imposed by the European Court of Justice sets an added incentive, as does the avoidance of awards of damages for breach of Community obligations (described below).

It should be noted that there are a significant number of EC regulations in the environmental sector. These legal instruments present their own problems for the accession process, and their treatment must likewise be accorded the same level of care as directives. Specific comments concerning regulations are set out below.

As regards directives, the process of approximation is usually described as involving three elements: transposition (of legislation), implementation and enforcement. Although this sequential listing of the elements appears logical and straightforward, the elements are, in fact, dependent on one another. Effective transposition will require, firstly, an understanding of implementation and enforcement practices and capabilities (application in practice); and, secondly, that the actual legal text properly takes into account the obligations relevant to effective implementation and that it provides for real and effective enforcement.

- A new national law which simply repeats the text of a directive without ensuring that it is integrated into the national system of environmental, legislative and administrative law will probably be ineffective for this purpose. Such an approach may fail to implement in full the spirit and wording of the directive. It may also fail to communicate to relevant stakeholders their rights and responsibilities according to the objectives and terms of the directives. Community law requires Member States to implement directives in such a way that the national implementing law is accessible to those affected by it and that it is clear as to its legal effect. This means, for example, that legislative provisions amending national law in a particular area should not be adopted by way of amendment to legislation covering another area of activity. Likewise, implementation of a directive addressing a very specific area of activity should not be effected across a wide range of pieces of disparate national secondary legislation. Any such opaque system of implementation can result in difficulties in effective enforcement.
- Where governmental bodies already have competence and experience in areas covered by a directive, a national law transposing the directive that does not take into account any need to amend these institutions and procedures is likely to remain unimplemented in practice. However, if the new law attempts to change institutional structures without careful consultation and planning in advance, it risks becoming the subject of subsequent debate about competencies and procedures. The new law may therefore also be unimplemented and unimplementable because the responsible institutions lack the know-how, staff and budgets to carry out their new responsibilities.
- A new law setting out a system of governmental responsibilities, such as that on integrated environmental permitting, needs to contain a clear picture of how these responsibilities – including enforcement of the permits – will be carried out. The text of

the new law needs to express a clear understanding of the new system of institutions, procedures and responsibilities.

As indicated above, developments in Community law have resulted in an emerging and growing body of rules as to when Member States may be held judicially liable for failures to comply with their obligations under Community law. Lack of implementation and inadequate implementation are examples of such failure. These may not only lead to the imposition of sanctions by the European Court of Justice, including injunctions to take corrective action and fines, but may also result in Member States having to pay damages to stakeholders for such failures.

Assuming that the government has a well-planned and well-thought-out legal programme, effective implementation and enforcement will require:

- reliable data collection systems;
- effective systems and institutions for monitoring and reporting on emissions and environmental quality and inspection;
- procedures and tools for raising the environmental awareness of industry and the public in order to secure understanding, co-operation and support for environmental measures;
- institutions and procedures facilitating public participation in environmental management;
- administrative and judicial recourse in relation to (actual and threatened) violations of environmental laws, accompanied by appropriate systems of adequate and dissuasive fines and penalties and including provision for liability under criminal jurisdiction for serious violations;
- training of staff and affected sectors of society;
- adequate funding of implementing and enforcement institutions.

1.3 Planning for Accession

The accession planning process is driven by the national programme for the adoption of the *acquis* (NPAA). In its environmental chapter, and for each environmental sector and each individual legal instrument, this sets out:

- the current situation (transposition as well as implementation and enforcement);
- short-term priorities in line with the accession partnership;
- medium-term priorities in line with the accession partnership;
- institution-building needs;
- estimates of financial needs in the short and medium term.

The NPAA provides a focal point for the overall co-ordination of approximation activities and will be supported at the working level by a range of other activities to prepare implementation plans at the directive level. Implementation plans will set out the actions required, draw up the timetable according to which activities are to be completed, assign responsibilities and allocate resources. Questions concerning implementation deadlines arising after accession need to be considered in detail. In addition, candidate countries should bear in mind any transitional periods provided for in their accession treaties.

The European Commission has outlined a number of basic issues which need to be incorporated into approximation planning considerations⁵:

- environmental approximation activities need to be integrated into other policy areas; and

⁵ Commission Communication, *Accession Strategies for the Environment: Meeting the Challenge of Enlargement*.

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- all new investments should comply with the *acquis*.

The experience of the Nordic countries and Austria, which acceded to the EU in 1995, and that of the CEE countries, Malta and Cyprus, which joined the EU more recently, demonstrates that the following measures are valuable in preparing for accession:

- establishment of cross-ministerial working groups to develop co-ordinated approaches to certain environmental issues;
- development of long-term programmes to recruit and train staff for public sector organisations in each sector;
- use of the new "twinning" schemes whereby environmental administrative structures in the candidate countries are matched with corresponding administrations in Member States to facilitate the transfer of administrative know-how.

2. Implementation

2.1 General Considerations

Accession is likely to result in major alterations to the structure and operation of law for new Member States. It is important that acceding states are properly equipped for the resultant change. This process may be facilitated by following the guidance in this Handbook as regards the environmental sector. However, the environmental sector is just one area of policy of the Community, and some general observations may be useful in ensuring that acceding states are prepared as fully as possible for accession as regards the environmental sector.

Accession is likely to raise constitutional issues in all acceding states. It is important that a mechanism of constitutional status for giving effect to accession and obligations on accession guarantees the supremacy of Community law over conflicting national measures. This result must be guaranteed whether the relevant EU instruments were adopted prior to or after accession, and likewise as regards any national laws. Such a mechanism should also provide for the full effect of all Community acts able to have legal effect, and cover rulings of the courts of the European Community.

Community law, in furtherance of the principle of legal certainty, requires implementation to be carried out by way of legally binding provisions. Therefore, in general, attempted implementation of Community environmental legal acts by way of government circulars or guidance will not suffice. Steps will be required in acceding states ahead of accession to ensure that government circulars etc. are not the sole means relied upon for implementation. It is advisable to aim to have them revoked and replaced by binding legal provisions.

In addition, it is important to note the need to ensure that implementing measures in law and practice comply with the principles derived from the European Convention on Human Rights. There is a growing body of law in this area within the Community's legal system that is also applicable in the environmental sector.

Practical steps to increase the effectiveness of Community environmental law on accession include public awareness programmes for affected industries as well as for the general public, and legal training for persons within the administration, including environmental inspectors, and for lawyers and judges.

This Handbook is predominantly concerned with the implementation of directives. However, there are a number of regulations and decisions addressed within the Handbook. These instruments present their own challenges as regards implementation and effect after accession, and so some comments are presented in this section specifically dealing with regulations.

It is important to ensure that regulations have their full force as Community legal instruments in candidate countries' national legal systems. Regulations, in principle, take effect on adoption and

publication in the Community's Official Journal. They are of general application -- that is, every legal person can rely on their provisions whether against the state or against other individuals/companies. Member States are prohibited in principle from adopting national rules in place of the rights or obligations provided in regulations.

Candidate countries may have national rules relevant to the scope or operation of Community environmental regulations. On accession, as indicated above, it is the terms of the regulations that should, as a matter of Community law, apply in the acceding states. Conflicting national provisions lead to confusion at the national level, may make enforcement more difficult in practice, and may lead to sanctions at Community level from the European Court of Justice.

At the level of national law, the "immediate" direct legal effect⁶ of regulations may be given in the first instance by a measure of constitutional status providing for the supremacy of Community law. Legal certainty is a general principle of Community law. Hence, as indicated above, "parallel" or conflicting national provisions may cloud or seem to contradict the immediate legal effect to be derived from regulations. As a general rule, national provisions that apply to an area within the specific scope of a regulation should be repealed.

Repealing such national provisions may be a very time-consuming and intricate exercise. Acceding states should already have programmes in place to meet this challenge. If they do not, such programmes should be put in place in the very near future. Reference should also be made in this regard to individual accession treaties for applicable transitional periods.

To assist acceding states with their obligations concerning regulations, relevant regulations within the environmental *acquis* are addressed in the Handbook. However, when reading the fiches for regulations it is important to bear in mind the comments in this introduction as regards the legal nature and effect of regulations.

2.2 Legal Issues

The following measures can help reduce the risks associated with rapid transposition:

- Determine the implementation strategies and structures first. When the decisions have been taken about actually implementing and enforcing a law, then drafting is relatively simple.
- Involve the stakeholders. A successful law is one that can be implemented and applied in practice. Thus, it needs to take into account the situation and experience of all persons who will be involved in its implementation or affected by it in practice. This includes regional and local authorities, industry and the public, as well as the national ministries concerned.
- Adopt the framework before the details. Compliance with the law is undermined if many laws are introduced in a short time. It is important to adopt framework legislation establishing administrative systems and the appropriate fundamental rights and obligations prior to the introduction of more detailed legal requirements, particularly those that will impose a heavy administrative burden on the competent authorities. Such an approach also helps to give advance notice of new legal requirements, which itself allows operators to plan and make relevant economic provision for future compliance.

2.3 The Specific Position regarding Regulations

About 10% of EC environmental laws take the form of regulations. Regulations are directly binding in Member States and have legal effect over and in place of any conflicting national laws.

⁶ That is, regulations are applicable law in Member States without national implementing legislation needing to be adopted.

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Member States may not transpose the provisions of regulations into national law, even if the resultant national law is identical to the regulation.⁷

The constitutional arrangements for accession in each candidate country should provide that regulations have their full force as required under Community law in their country on and as from the date of accession.

Nevertheless, Community environmental regulations often do require further national measures for their implementation as regards certain matters and so cannot be wholly ignored as part of the "approximation" process before accession.

For example, the types of measures that states have to adopt in order to make regulations apply in practice include the appointment of competent authorities to inspect and control trade in severely restricted chemicals or in endangered species, the publication of guides and notification forms, and the designation of national sanctions for violations of the law.

With respect to regulations, countries should be aware that:

- Some regulations require the designation or establishment of authorities or bodies responsible for their implementation. This may be done by administrative order or decree.
- Some regulations expressly require countries to specify penalties in national law -- in civil or criminal codes, for example -- for non-compliance with EC regulations. Even if there is no such express provision, Community law may require effective national sanctions as part of the process for ensuring compliance with regulations. Applying effective sanctions is a general obligation on Member States to make Community law effective in their territories.

Hence, accession countries should ensure that the necessary administrative and institutional measures are in place by the date of accession and that any overlapping or conflicting national laws are repealed.

Where the EC legislation in an environmental sector comprises a mixture of directives and regulations, countries must take particular care to ensure that national measures, including those implementing directives, are fully integrated and do not conflict with EC regulations.

There are fewer steps required in general to implement regulations than directives. By way of assistance, these are set out below.

Steps to Implement Regulations

- 1) Identify a national competent authority or authorities to ensure practical implementation of the regulation.
- 2) Identify what legislation (if any) is necessary (e.g. to prescribe sanctions or designate competent authorities). In addition, identify possible national legislation conflicting with the provisions of the regulation, and adopt a strategy for eliminating these conflicts.
- 3) Establish a legislative timetable (as appropriate).
- 4) Prepare administrative instructions and procedures for the relevant authorities.
- 5) Consult with other government departments concerned and with groups affected by the regulation (e.g. importers and exporters; major industries; environmental organisations; consumer groups; local communities; and trade unions).
- 6) Provide adequate staff and technical resources.
- 7) Train staff.

⁷ This ban on transposition may also be justified on the basis that attempted transposition disguises the "immediate" legal effect of the regulation as a Community legal instrument.

- 8) Inform affected industrial sectors and companies as to what standards and targets will be required.
- 9) Provide the relevant documents, forms and certification to the groups concerned.
- 10) After accession, monitor implementation and report to other Member States and the European Commission as needed.
- 11) Take enforcement action as necessary.

2.4 Institutional Issues

2.4.1 Administration

Successful implementation of the environmental *acquis* depends to a large extent on the administration. Effective and efficient administrations may be regarded as those having a number of strengths, such as:

- clear competencies for the administration of environmental and related legislation;
- clear and efficient procedures for decision making and the implementation of decisions;
- skilled professionals ranging from environmental scientists, engineers and ecologists to environmental law experts;
- sufficient staff and funding to carry out tasks;
- strong enforcement rights and capabilities.

2.4.2 Public Participation

The European Union's recent Sixth Environmental Action Programme (6th EAP) is based on the principle of shared responsibility, that is, all concerned groups should work in partnership to develop and implement environmental policies and laws and ultimately to achieve sustainable development. As the 5th EAP had already made clear: "The ultimate objective ... is to strike a new balance between the short-term benefits of individual persons, companies and administrations and the longer-term benefits of society as a whole" (Chapter 3). This approach is carried over into, and continued in, the 6th EAP.

Governments and local authorities can create the conditions that allow the public to play a significant role in environmental protection. They can provide public access to information about the environment, conduct information campaigns to raise awareness, and provide services which facilitate environmentally responsible behaviour, such as separate waste collection and reliable public transport.

Non-governmental organisations (NGOs) concerned with the environment and consumer issues, trade unions, industry and professional associations can all play an important role in building public awareness, in representing the interests of their members, and in mobilising public opinion.

2.4.3 Enforcement

- Enforcing the law is sometimes more difficult than making it. Strong enforcement implies strong and committed environmental inspectorates with adequate resources, systems of fines and penalties, and criminal liability for serious violations. Underpinning the effectiveness of any such enforcement action are matters such as providing effective training for inspectors generally and in relation to the specific industrial sectors they regulate. Inspectors should have adequate and reliable monitoring equipment. There should be effective and transparent protocols and rules for the taking of evidence and its presentation in judicial proceedings. There should be provision, with respect for due process considerations, for the proper acceptance of such evidence in enforcement proceedings as proof of the matters presented.

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- It is therefore important to design regulatory systems that can monitor and control the implementation of the environmental *acquis* in a practical and cost-effective manner and to ensure that they operate as intended. Governments are increasingly turning to a range of policy instruments, including economic instruments and incentives, to promote legal compliance, as well as systems of administrative, civil and criminal sanctions.
- In this regard, national rules providing for third parties to challenge decisions of public authorities in the environmental sector or to participate in open and transparent decision-making processes are a vital part of assisting environmental compliance. The same applies to the existence of national legal aid rules providing for individuals and NGOs to bring actions in relation to actual or threatened adverse environmental effects concerning themselves or for violations of environmental rules. Such national legal aid provisions should allow for participation in relevant legal processes.
- The European Union continues to be active in its promotion and use of instruments such as public information access, shared files and resources between governments, and self-monitoring by industrial facilities to bring about voluntary compliance with environmental laws. The effectiveness of these instruments will be enhanced by the new Directive on Access to Environmental Information (2003/4/EC – see Section 2).

3. Managing the Implementation Process

Managing the approximation process generally, and the implementation of the environmental *acquis* in particular, has meant developing comprehensive and advanced approaches to environmental management. This Handbook is intended to assist this work by highlighting common approaches that will facilitate the monitoring of progress.

Strong environmental management, for example as outlined in ISO 14001, involves:

- listing tasks and identifying the key implications for implementation (e.g. the legal, administrative, technological, human resources and financial implications);
- prioritising tasks on the basis of agreed criteria;
- assigning responsibility for accomplishing tasks to various authorities;
- identifying cross-sectoral implications and facilitating inter-ministerial co-ordination, particularly in relation to implementation;
- identifying data needed to support decision makers;
- establishing work programmes and timetables that indicate any deadlines or external time constraints; and
- monitoring and measuring progress both for management purposes (e.g. to monitor aspects of environmental quality and the effectiveness of implementation) and to report to the European Commission.

Strengthening the administrative structures for environmental management is likely to involve:

- establishing new institutions or substantially restructuring existing institutions;
- improving inter-ministerial communication and co-ordination;
- developing regional and local environmental institutions;
- providing technical infrastructure and sufficiently trained staff;
- designating a number of officials to participate in formal and informal Community working groups; and

- building partnerships with municipal authorities, business enterprises and non-governmental organisations to implement environmental laws.

4. Implementation Management Checklist

An implementation management checklist has been prepared to provide an overview of the issues that need to be considered in preparing a plan to implement environmental legislation. Each candidate country should modify the checklist to suit its own institutional needs and structures. For example, the powers and roles of regional and local authorities vary considerably in the candidate countries, with different implications for the distribution of competencies and resources.

Planning implementation requires information and decision making at three levels:

- for each item of legislation (noting, as accession approaches, the legal position of regulations);
- for the environmental sector;
- for the whole environmental *acquis*.

Detailed information is built up from the basic building block represented by each piece of legislation. This information is required to provide accurate estimates of requirements such as staffing needs, technical equipment, capital investment and operational costs.

At the sectoral level, it becomes important to consider the inter-relationships between legislation within a sector and between sectors. This is necessary in order to prioritise the legislation required, rationalise competing resources, and identify economies of scale. For example, within a sector some pieces of legislation may be judged to have a higher priority for implementation based on legal, environmental or economic grounds.

The checklist is divided into ten major tasks, each of which is divided into a series of sub-tasks arranged in chronological order as far as possible. However, several of these tasks may be ongoing concurrently, particularly where the overall programme for implementation is relatively short.

Table - Generic Implementation Management Checklist for Directives (noting the points made above as regards regulations)

ACTIVITY	RESPONSIBILITY LEVEL		
	For each directive	For each environmental sector	For the overall environmental <i>acquis</i>
Ensure Objectives are Clear and Understood			
Objectives of the approximation process			
Objectives of the sector			
Objectives of the directive			n/a
Principal obligations arising from directives			n/a
Define Responsibilities and Identify Responsible Individuals			
Overall	n/a	n/a	
For each sector	n/a		
For each directive			n/a
Define clear lines of communication	n/a	n/a	
Follow agreed protocols on communications			
Prepare a Diagnostic Study of the Current Situation			
Understand the technical issues involved and prepare a comprehensive list of key issues and stakeholders			n/a

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ACTIVITY	RESPONSIBILITY LEVEL		
	For each directive	For each environmental sector	For the overall environmental <i>acquis</i>
Catalogue all facilities			n/a
Establish current levels of compliance for all facilities			n/a
Establish criteria for prioritisation			
Prioritise the issues to be addressed			
Prioritise the facilities for compliance			n/a
Evaluate the scope of effort required for compliance			n/a
Evaluate current practices and where changes/improvements are required			n/a
Establish Policy			
Identify what policy tools are necessary to effect implementation		n/a	n/a
List policy requirements within the sector	n/a		n/a
Develop policy			
Financial Implications			
Develop and agree methodologies for calculating the cost of compliance			
Estimate costs for compliance			
Identify and quantify existing sources of funds			
Estimate shortfall in funds available			
Identify other mechanisms for revenue generation			
Institutional Capacity			
Clarify current institutional arrangements and responsibilities			
Quantify current staff resources and future requirements			n/a
Compare current institutes with those required by legislation			n/a
Develop a proposal for institutional reform to reflect the requirements of the directive			n/a
Compare this directive-level proposal with others within the sector	n/a		n/a
Consult with other sectors and compare respective sector-level proposals for commonality	n/a		
Consult extensively to reach a consensus on institutional reform	n/a		
Estimate costs of any reforms	n/a		
Communicate the agreed way forward to all parties	n/a	n/a	
Prepare a Preliminary Programme for Implementation			
Define institutions and responsibilities			
Propose a programme and timescales			
Ensure integration between legislation and sectors			
Establish priorities			
Present cost estimates			
Identify potential sources of funds			
Quantify any shortfall in funds			

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ACTIVITY	RESPONSIBILITY LEVEL		
	For each directive	For each environmental sector	For the overall environmental <i>acquis</i>
Consult with the Ministry of Finance (MoF) or Equivalent			
Assess the self-sufficiency and sustainability of each sector for adequate revenue generation	n/a	n/a	
Estimate shortfalls in funds	n/a	n/a	
Compare funding requirements and sources for all sectors	n/a	n/a	
Identify multi-sector commonalities in terms of potential sources of funds or revenue-generation schemes	n/a	n/a	
Develop a proposal to raise revenue to support all sectors	n/a	n/a	
Estimate the true availability of funds per sector	n/a	n/a	
Develop criteria for prioritisation	n/a	n/a	
Make recommendations for priorities	n/a	n/a	
Establish a Timetable to Develop the Implementation Programme			
Establish provisional priorities	n/a	n/a	
Define a timetable for the development of the programme	n/a	n/a	
Consult with each sector on the programme and priorities			
Revise priorities in consultation			
Confirm and communicate agreed priorities and timetable	n/a	n/a	
Define the table of contents for the formal implementation programme to submit to DG Environment	n/a	n/a	
Prepare an Implementation Programme			
Summary of the existing situation and current areas of compliance			
Qualitative and quantitative analysis of areas of non compliance			
Explanation of criteria by which priorities were made and list of priorities			
Detailed cost analysis with identified sources of funds			
Detailed list of tasks to be undertaken			
Detailed programme showing targets/milestones			
Justification to support all elements of the programme			
Evidence to show that sectoral and cross-sector issues have been addressed within an overall framework			

List of Abbreviations (Member States)

AT	Austria
BE	Belgium
BG	Bulgaria
CY	Cyprus
CZ	Czech Republi
DK	Denmark
EE	Estonia
FI	Finland
FR	France
DE	Germany
EL	Greece
HU	Hungary
IE	Ireland
IT	Italy
LV	Latvia
LT	Lithuania
LU	Luxembourg
MT	Malta
NL	Netherlands
PL	Poland
PT	Portugal
RO	Romania
SK	Slovakia
SI	Slovenia
ES	Spain
SE	Sweden
UK	United Kingdom