COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMUNICATION FROM THE COMMISSION
TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

ON ENVIRONMENTAL AGREEMENTS

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Executive Summary

After more than twenty years of Community legislation in the field of environment, the basic regulatory framework is in place. Proper implementation of this "*acquis communautaire*" represents one of the main areas of environmental action in seeking to achieve sustainable development. Supplementing the regulatory measures by other policy instruments is also one of the key objectives set out in the Fifth Environmental Action Programme.

The promotion of agreements with industry is part of the efforts to broaden the range of policy instruments. The present initiative therefore falls within the strategy set out in the Fifth Action Programme. This was recently confirmed by the Commission in its Proposal for a Review of the Programme.

Agreements with industry represent a versatile instrument which can be used at regional, national, Community and international level. So far, they have been mainly non-binding and voluntary. Recently, however, some Member States have opted for a more formal and binding approach.

Environmental Agreements can bring about effective measures in advance of legislation and thus reduce the volume of regulatory and administrative actions. The present initiative is therefore related to the efforts of the Commission to simplify Community law and improve its quality. Agreements can be used as a supplement to legislation and may represent an particularly appropriate implementation tool. In a binding form, they are an effective and appropriate instrument for achieving general objectives set by Community Directives, in particular the implementation of reduction programmes. At Community level, such agreements enable the Commission to address environmental issues without resorting to the traditional regulatory instruments.

Environmental Agreements have three main advantages. They can promote a pro-active attitude on the part of industry, they can provide cost-effective, tailor-made solutions and allow for a quicker and smoother achievement of objectives. In order to encourage their use, the present Communication provides general guidelines for guaranteeing their transparency, which is crucial for their effectiveness. This Communication therefore suggests prior consultation with interested parties, a binding form, quantified and staged objectives, the monitoring of results as well as the publication of the agreement and of the results obtained. These criteria should make it possible to avoid the stipulation of merely vague goals, lack of transparency and possible distortion of competition caused by "free-riders".

A Recommendation is addressed to the Member States in order to provide a clear framework for the use of Environmental Agreements as an implementation tool of Community Directives.

I. Introduction

1. With the aim to render environmental policy ever more efficient, the Commission has advocated broadening the range of policy instruments since drawing up the Fifth Environmental Action programme in 1992[1]. The reason for this new strategy orientation is that after more than twenty years of Community action in the field of the environment, the basic regulatory framework is in place. However, legislative measures alone will not bring about the substantial changes in current trends and practices which are necessary to make development sustainable.

   The Fifth Action Programme therefore suggests a new line of cooperative efforts with industry:

   > *"Whereas previous environmental measures tended to be prescriptive in character with an emphasis on the 'thou shalt not' approach, the new strategy leans more towards a 'let's work together' approach. This reflects the growing realization in industry and in the business world that not only is industry a significant part of the (environmental) problem but it must also be part of the solution. The new approach implies, in particular, a reinforcement of the dialogue with industry and the encouragement, in appropriate circumstances, of voluntary agreements and other forms of self-regulation."*

2. The Council has explicitly recognised the need to broaden the range of instruments and to involve all levels of society in a spirit of shared responsibility[2]. However, broadening the range of instruments has proved to be more difficult than envisaged. When reviewing the 5th Action Programme, the Commission therefore suggested this issue as one of five key priorities[3]. To that end, special attention should be given to environmental charges, to the encouragement of fiscal reform, to the concept of environmental liability and to voluntary agreements. The Commission services are at present preparing a draft Communication on environmental levies in the Member States, which will seek to ease the introduction of such levies by the Member States by clarifying the possibilities and constraints for the use of these measures. The Commission also intends to stimulate public discussion on better implementation and enforcement of environmental legislation by way of a Communication to Parliament and Council.

3. A stronger reliance on market-based instruments and instruments better adapted to the workings of the market helps to give the right signal to economic agents and in doing so contributes to deregulation and reducing of bureaucratic interference[4]. Agreements with industry, in particular when concluded at Community level, can

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1 COM(92) 23 of 3.4.1992, point 31.

2 Resolution 93/C/138/0 of the Council and Representatives of the Governments of the Member States, meeting within the Council, 1.2.1993, OJ C 138 of 17.5.1993, p.1.

3 Proposal for a European Parliament and Council Decision on the review of the European Community Programme of policy and action in relation to the environment and sustainable development "Towards Sustainability", OJ C 140 of 11.5.96, p. 5.

4 Commission Communication on Economic Growth and the Environment, COM(94) 465 of 3.11.1994.

prevent the need for regulatory action by bringing about effective measures by industry in advance of legislation. They can also be a means for implementing - in a cost-effective manner - regulatory objectives established by Community Directives. Agreements can also contribute to limit the level of detail of legislation. The appropriateness of agreements in these different circumstances needs to be assessed on a case by case basis.

While agreements with industry have been used by practically all Member States, the extent to which that has happened and the form these agreements have taken vary widely.

II. Contents and Objectives of the Communication

4. This Communication focuses on the use of Environmental Agreements as an instrument to implement environmental policy in the Community. For the purpose of this Communication Environmental Agreements represent agreements between industry and public authorities on the achievement of environmental objectives. Such Environmental Agreements can be legally binding with obligations for the parties to the agreement. They can also take the form of unilateral commitments on the part of industry recognised by the public authorities.

   Based on the current situation in the Member States, this Communication

   - develops guidelines for the effective use of Environmental Agreements;
   - sets out the conditions under which such agreements can be used for the purpose of implementing certain provisions of Community Directives;
   - ascertains how Environmental Agreements can be used at Community level.

5. The general purpose of this Communication is to promote and facilitate the use of effective and acceptable Environmental Agreements. Clearly, this initiative should be seen as an element of a wider policy on voluntary approaches for which the principles, reasons and objectives are stated in the Fifth Action Programme. Environmental Agreements will be part of a policy mix of instruments contributing to sustainable development (see Chapter III).

   Moreover, agreements have to be carefully designed in order to ensure their environmental effectiveness as well as their cost-effectiveness, in one word, their success. To that end, criteria should be agreed upon to ensure the transparency, credibility and reliability of the agreements. The key elements in that respect are the setting of quantified objectives, a staged approach providing for intermediate objectives, the publication of the agreement, the monitoring and reporting of the results. A framework of criteria on the most significant issues related to effectiveness and credibility is set out in this Communication (see Chapter IV). Compliance with these criteria should prevent a patchwork of different forms and approaches which might hinder the smooth functioning of the internal market.

   The third objective of the Communication is to clarify the specific issues concerning Environmental Agreements related to the implementation of certain provisions of Community Directives (see Chapter V) and the use of agreements at European level (see Chapter VI).

6. Legislation will remain the necessary backbone of Community environmental policy, but it needs to be supplemented by market-based instruments and voluntary approaches. In that respect, Environmental Agreements are an implementation tool rather than a means of deregulation. The Commission strives to simplify and improve the quality of Community legislation. An effort to that effect is represented by the Report of the independent experts group on legislative and administrative simplification[5]. The Commission has presented its approach concerning simplification in its report to the Madrid European Council of 1995 "Better Law-making"[6] and in its interim report to the Florence European Council of June 1996 on the application of the subsidiarity and proportionality principles[7].

III. General considerations on Environmental Agreements as a policy tool

Benefits and critical issues

The growing interest in, and use of, agreements in environmental policy is based on the recognition that sustainable development needs action rather than reaction from the industry sectors concerned. The potential benefits of voluntary measures are outlined below.

The encouragement of a pro-active approach from industry, ...

7. In the legislative approach, industry is often involved at a late stage, in more or less formal consultations. This is likely to lead to a defensive rather than an open and pro-active response. The dialogue and negotiations on 'what to do' and 'how to do it' in order to achieve certain goals will help to overcome this defensive attitude. Moreover, the negotiation processes as such, regardless of the actual agreement, can lead to a common understanding of environmental problems and mutual responsibilities. Such a common understanding is in itself an advantage which helps to shape sensible environmental policy and which should not be underestimated. This also implies that agreements should be seen as the continuation of the partnership between authorities and industry rather than just the result of it.

... cost-effectiveness, ...

8. An important benefit of Environmental Agreements is that they leave greater freedom to industry at company or sectorial level to decide on *how* to reach the environmental targets than does legislation which prescribes or implies, for instance, the use of a certain technology. This allows industry the freedom to find cost-effective solutions adapted to its specific situation, taking into account, for instance, previous investments. Where companies participate in Environmental Agreements, licensing authorities may be able to issue less detailed and target based licences, leaving the company the scope to find the most efficient way of achieving the targets. Moreover, the company may not need to apply for a licence for every change in the process. Flexibility also encourages creative solutions and technological innovation which might not only reduce compliance costs but also

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5 COM (95)288 and SEC (95) 2121 final.
6 CSE (95) 580.
7 CSE (96) 2 final.

entail spin-off benefits due to innovative solutions involving competitive advantages. Where industry commits its responsibility, compliance with an agreement duly published and monitored is also likely to be higher. While authorities keep their responsibility, they dispose of better data and a better understanding of potential problems, which eventually lowers enforcement costs by making it more efficient.

... and faster achievement of objectives, ...

9. Neither legislation nor agreements are in place over night. However, particularly in situations where the targets to be reached concern a limited number of companies, the conclusion of agreements can be considerably quicker than the adoption of legislation, which means that the environmental obligations for industry are effective from a relatively early date. When it comes to setting targets at Community level, the intervention of legislators at Community and at national level takes a considerable time. For instance, the average time between the Proposal for an environmental Directive and its adoption is well over two years with usually another two-year period for transposition by the Member States. Once a Directive is transposed, which in quite a number of cases happens belatedly, it still has to be implemented and applied. For that reason, agreements might be a quicker and thus potentially more effective way of action, even if the negotiation and conclusion of an agreement takes more than a couple of months.

... but with due care for certain risks.

10. However, not all the agreements have in the past been successful. Certain issues appear to be crucial for the perception of Environmental Agreements as a credible policy tool.

    First, the negotiation of such agreements needs as a pre-condition a clear commitment and determination by the authorities to pursue well defined environmental objectives. Open ended negotiations or discussions about generic commitments cannot lead to substantial action and often are seen by the public as a postponement of effective measures. It is certainly helpful to set the general targets through legislation. This allows all stakeholders, in particular industry and the interested public, to participate in the target-setting by using the constitutionally or legally established procedures. Such participation will not only add to the justness of the targets, it will also ensure that the targets are not lowered during the negotiations. More generally, transparency and public information on the objectives is a guarantee against deals which reflect little more than "business as usual" and do not correspond to public expectations.

11. The possibility to enforce an agreement is a second crucial issue. The absence of enforcement mechanisms and sanctions is seen as making non compliance an attractive option. However, binding agreements can be legally enforced and may include sanctions such as fines or other penalties. In the light of certain disappointing experiences in the past, Member States have in fact shifted recently from an informal to a more formal approach. But also unilateral commitments construed according to the guidelines of this Communication would involve a number of additional credible mechanisms for discouraging non compliance, from

public pressure to the prospect of introducing regulatory measures. Agreements established and operated in a transparent way can offer to the public opportunities for scrutinizing the implementation of measures and exert effective pressure. These possibilities compensate for the fact that individuals may not in all cases enforce Environmental Agreements by way of administrative or judicial review.

12. Finally, since Environmental agreements only bind those who have committed themselves, they can offer unilateral advantages for those who do not participate. These "free-riders" avoid sharing the costs which their competitors are paying: the work of the good guys primarily benefits the bad guys. However, the risks of free-riding can generally be assessed by the concluding parties who know from the negotiations, who might profit from standing aside. In some cases, the mere threat of legislation will discourage free-riding. Practice in the Member States shows that their potential benefits do not hinder industry to conclude Environmental Agreements.

    It should be noted, however, that the risk of free-riding rises with the marginal abatement costs implied by an agreement. Therefore, regulatory measures are more appropriate when profits for free-riders would be so important that compliance with the agreement is at risk or competition distorted. The use of a mix of instruments including certain benefits for those entering into an agreement can also be considered in order to provide an incentive to participate in the agreement and to discourage free-riding.

Rationale and characteristics of Environmental Agreements

13. The policy maker disposes of a number of alternative policy instruments that can be categorised under the headings 'regulatory', 'market-based' (e.g. taxes or tradeable emission permits), 'voluntary approaches', 'financial support' (environmental subsidies) and 'market enhancing' (such as provision of information, training). All these instruments have different properties in terms of environmental effectiveness, economic efficiency and implementation feasibility, which should be taken into account when choosing a policy instrument to tackle an environmental problem in a cost-effective way.

14. The suitability of Environmental Agreements as an environmental policy instrument depends largely on their design and the policy context in which they are used. Most likely, cost-effective use of this instrument will be made as part of a policy-mix together with, for instance, regulatory or economic instruments. Agreements can, for instance, supplement legislation. They can also be used as a transitory complement to an environmental tax, lowering transition costs to the economy on its way to cleaner production modes (e.g. loss of employment in sectors with high pollution and strong international competition without an equivalent creation of new employment in cleaner sectors). In a sector where a tax would result in high macroeconomic transition costs due to a high pollution intensity and strong international competition, parties to an agreement could be exempted from that tax, provided that Community rules on competition and Internal Market are complied with.

15. A further field of application is the use of agreements to implement comprehensive, long term objectives, which most appropriately can be achieved by setting in place integrated environmental management and production programmes in one or several sectors of industry. In these cases, there is sufficient room for cost-efficient, creative solutions which could not easily be achieved by general and abstract legislation.

    Such objectives relate for instance to :

    - Emission targets (e.g. CO_2,, SO_2, NO_X, Volatile Organic Compounds);
    - Environmental quality objectives, e.g. in the field of noise, water and air quality;
    - Waste reduction or recovery or recycling targets;
    - Reduction or elimination of certain substances or materials;
    - Energy efficiency;
    - Collection of data (in view of emissions inventories etc.).

16. Certain obvious conditions apply to potentially successful agreements and help identify the circumstances, general form and characteristics of such agreements.

    Firstly, negotiations are likely to be successful, if the number of concluding parties is limited since transaction costs of agreeing on the allocation of abatement efforts are reduced.

    Secondly, agreements have to cover sufficiently the sector in question, because it is only then that it is possible to set ambitious overall objectives. This is another reason why agreements are particularly appropriate when a few players have control over most of the issues covered by the agreement. Where business associations are able to negotiate on behalf of a large number of companies with a view to a conclusion also by the companies themselves, the number of players is less important. In this case, however, the concerns of small and medium sized enterprises not being members of a business or trade association should be taken into account.

    Furthermore, public authorities must be able to clearly define their position as regards the objectives, so that they can make sure that the agreement provides an added value as opposed to "business as usual" under existing policy instruments. This will often imply a prior assessment of technical abatement potentials and costs and a prognosis of measures taken without public intervention ("baseline").

    Fourthly, public awareness of the problems to be solved motivates both sides to take action and provides a driving force for compliance.

    Finally, consumer behaviour needs to be taken into account. As Environmental Agreements do not have a direct lever to influence consumer behaviour, specifying commitments in a way that compliance depends to a large extent on demand development, should be avoided. At the same time, public authorities can undertake to encourage consumers, in a non-discriminatory manner, to base their choice on environmental considerations.

IV. General guidelines for the use of Environmental Agreements

17. The following requirements should be seen as guidelines to be taken into account when designing, concluding and implementing an Environmental Agreement at national or local level, whether in application of a Community Directive or independently from Community legislation.

They are aimed at ensuring effectiveness, credibility and transparency. However, guidelines in this area should not be too detailed and rigid, in order to leave room for manoeuvre for adaptation to specific circumstances and sufficient flexibility in order to exploit the efficiency potential of this tool.

Consultation

18. Before concluding an Environmental Agreement, interested circles should have the opportunity to comment on the draft. In addition to those actually negotiating the agreement, all relevant business associations or companies concerned, environmental protection groups, local or other public authorities concerned should therefore be appropriately informed and comments should be taken into consideration in the final negotiation of the agreement.

Contractual form

19. Although the use of agreements in contractual form is still limited, experience in Member States extensively using agreements as a policy instrument suggests that the legal status of agreements is an important element for their success. Contracts are a well known and generally accepted legal instrument. Contracts are binding for both parties and provide a clear framework, which may include sanctions in the case of non-compliance and are enforceable through Court decisions. Binding agreements provide in general better safeguards in terms of achieving environmental objectives. This form of agreement is the most appropriate for the implementation of specific provisions of Community Directives by Environmental Agreements (see Chapter V).

The substantive contractual obligations will usually lie with the industry, as the objective of the agreements is to guide the environmental performance of industry. However, there may be a number of important tasks for the public authorities too. For instance, it might often be appropriate to entrust public authorities with setting up a statistical data base, facilitating the exchange of information, coordinating research or reporting or to provide for prior consultation in case of doubts regarding the compliance with the agreement.

Implicit is often the understanding that no legislative action will be proposed if and as long as the agreement works satisfactorily. In fact, where industry can be certain about the targets to achieve and the measures to be taken, it can subscribe to ambitious environmental objectives. In order to provide such certainty, it might be explicitly acknowledged that administrative ordinances will not be adopted in the field of a valid agreement, if national constitutions so allow (e.g. the Flemish decree on Environmental Agreements). However, in most cases such a formal

commitment will not be needed, since a public authority entering into an Environmental Agreement would act in contradiction with itself if it took regulatory measures while the agreement proves to be effective.

Quantified objectives

20. The weakness and bad reputation of certain past agreements partly derive from the lack of quantified objectives, leaving room for the perception that agreements were used to avoid or delay effective action. The objectives have to be quantified in figures as opposed to best effort clauses, i.e. they have to be expressed either in absolute figures (for example, a maximum amount of emissions) or as a percentage (for example, a reduction of emissions expressed in a percentage of the emissions at a given time). The advantage of absolute figures is that there is certainty about the contribution of the sector to the overall environmental target, whereas relative targets avoid the risk that external factors, such as consumer behaviour, lead to an increase in the abatement costs.

Great care should be taken to make the quantification unequivocal. For instance, when describing the percentage of a reduction to achieve, not only the base year has to be indicated, but also how the reference value for the target is being calculated.

Staged approach

21. Intermediate objectives should be set. In order to do so, a timetable has to be defined and objectives have to be quantified accordingly ("milestones"). These milestones ensure that all parties get a clear picture of whether the agreement is effective or not. It is then possible to decide at an early stage how to react to arising difficulties. It also allows parties to prove that the agreement is effective and that the choice of the instrument was correct.

These intermediate objectives, which may also be indicative, will not create additional obligations. They just describe the different stages necessary to achieve the overall objective in due time. However, it should be considered to specify at what stages and under which circumstances the authorities intend to take legislative action, complementing or substituting the agreement.

Monitoring of results

22. The results have to be monitored. The agreement has to define how monitoring takes place. It is important to ensure sufficiently complete, comparable and objective data, i.e. monitoring must be organized in such a way as to give sufficient guarantees of reliability and accuracy. In many cases, appropriate monitoring mechanisms already exist, be it on the basis of Community Directives or national provisions. In addition, the Regulation on a voluntary, environmental management and auditing scheme (EMAS)[8] may provide a mechanism for companies to monitor

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[8] Regulation (EEC) 1836/93 allowing voluntary participation by companies in the industrial sector in a Community eco-management and audit scheme, OJ L 168 of 10.7.1993, p.1.

their own environmental performance. The European Environment Agency could be involved in assessing and verifying the results achieved at Community level.

Public information, transparency

23. Another reason for certain agreements being unsuccessful in the past is the lack of knowledge about the content and the commitments. The slogan 'don't trust us, track us' reflects a response to these concerns. The first step to achieve transparency is hence to publish the agreement in the Official Journal or a document equally accessible to the public. Public authorities, including the Commission, could also consider to set up a register of existing agreements in order to enable interested persons to become acquainted with the overall relevance of agreements. In this context, the use of information technology tools may prove to be useful in providing interested parties including consumers with complete information on the content and implementation of the agreements.

Periodic reporting by the participants to the competent authority about the results has to take place in order to give appropriate publicity to the agreement, the efforts undertaken and the results achieved. The reporting should follow the set milestones. It should include at least a description of the measures taken, the measures to take next, the results achieved so far and a non-technical explanation of how they have been achieved.

Given that transparency is crucial to assure third parties that non-regulatory obligations are kept, parties to the agreement could undertake to make relevant information available to individuals upon request. The easiest way to ensure this access to information is submit companies to the relevant articles of Directive 90/313/EEC[9] or the corresponding national provisions transposing the Directive in so that they grant access to information as if they were public authorities.

These obligations are not to be viewed as additional burdens. They also allow the establishment of a "green" reputation with all its importance for the employees and the customers of the companies that concluded an agreement.

Independent verification of results

24. In some cases, it might be appropriate to set up a committee or an independent body entrusted with collecting, evaluating or verifying the results. This is particularly important in cases where the measuring methods differ or where the disclosure of business secrets has to be avoided. To that end, the agreement has to define the mechanism and the procedure for assessing the results. These will very much depend on the circumstances of the different cases, in particular in view of existing standards and methods, which should be used in order to ease the verification and avoid unnecessary costs.

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[9] Council Directive 90/313/EEC on the freedom of access to information on the environment, OJ L 158, 23.6.1990, p. 56; Article 3 and 5.

Additional guarantees

25. As an additional guarantee for its fulfilment, parties to a binding agreement can agree on dissuasive sanctions such as fines and penalties in case of non-compliance.

Unilateral commitments can be translated into enforceable obligations where they can be linked to licensing procedures, for instance in relation to industrial processes. New or reviewed licenses can include the relevant elements of the commitment in the conditions for the permit.

The determination of public authorities to introduce regulatory measures or a tax, if agreements fail to reach the set target, is another important driving force for compliance.

General provisions

26. Environmental Agreements need to address a number of general questions.

There must be an express indication of the ***parties to the Environmental Agreement.*** Where business associations are involved, it should be indicated whether they act on behalf of their members or in their own right.

The ***subject of the agreement*** must be specified. This will help to better understand the implications of the agreement and to answer questions of interpretation which might arise at a later stage.

The objectives should be translated into ***obligations of the parties.*** In short, it has to be made clear who does what to achieve the objectives. For instance, where business associations are party to the agreement, it is necessary to clearly distinguish between their own obligations (e.g. collection of data) and the obligations of their members. For branch agreements it is also advisable to indicate, in more general terms, the contributions of individual firms. In case of unilateral commitments, which at present are used in several Member States, public authorities may commit themselves in the act of recognition to undertake certain actions, such as to enhance research or to participate in the monitoring or the verification of the results.

The agreement has to provide a ***definition of the most important terms***, in particular technical terms, taking into account existing definitions in relevant legislation.

Since Environmental Agreements are of public interest and part of environmental policy, third parties, including those who are not members of a business or trade association, should have ***the right to join.*** The conditions and procedure for adherence should therefore be defined. Where specific objectives have been set (environmental performance per unit), adherence does not affect the obligations of the parties. However, where objectives relate to the whole branch, it might be necessary to agree on a new burden sharing.

The ***duration*** of the Environmental Agreement must be indicated. Agreements should in principle end once all objectives have been achieved. If this is not the case within the set time period, the agreement may, for instance, allow for an extension or for unilateral termination by the party respecting its obligations.

A ***revision*** of the Environmental Agreement must be possible so that new findings, adaptations to technical progress or changed market conditions (e.g. consumer preference for environmentally sound products) can be taken into account.

Unilateral termination of a binding agreement must be allowed by either party in response to non-compliance. It might also be considered to allow industry to revoke its commitment if, contrary to the common understanding when the agreement was concluded, additional regulatory measures or taxes directly relating to the subject of the agreement are introduced.

In the case of an agreement in contractual form two additional aspects need to be considered. Given the fact that public authorities are parties to the agreement and depending on the legal system of the Member States it is necessary to define whether it is a contract under ***civil or public law***. The legal nature of the contract decides for instance on the applicable contract law, the liability scheme and the competent jurisdiction. It does not, however, affect the general content of the agreement nor its binding force. Therefore, the legal nature of the contract, which may also depend on national traditions in the Member States, may be defined by the national legal system or the contracting parties themselves. Moreover, the competent ***jurisdiction*** or, where appropriate, a court of arbitration entrusted with the settlement of disputes, should be designated. The agreement can also provide for a prior arbitration between the parties themselves before appeal is made to the competent court.

Compliance with EC Treaty

Needless to say, Environmental Agreements have to comply not only with provisions of the national law they fall under but also with the EC Treaty and its derived legislation. To describe the framework set by the Treaty, the provisions relevant for agreements in the field of the environment are briefly recalled below.

27. Environmental Agreements shall not create barriers to the smooth functioning of the internal market. Thus, agreements relating to products may only impose restrictions on the free movement of goods if these are justified on grounds of the protection of human health or the environment and if they are not a means of arbitrary discrimination or a disguised restriction on trade between Member States.

Because of their potential impact on the internal market, technical specifications for products, relating for instance to product quality or packaging, have to be forwarded to the Commission for a prior screening. Since July 1995, this procedure also applies to draft agreements to which a public authority is contracting party[10].

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[10] Council Directive 83/189/EEC laying down a procedure for the provision of information in the field of technical standards and regulation (OJ L 109 of 19.4.1983), as amended by Council Directive 88/182/EEC, OJ L 81 of 26.3.1988 and by European Parliament and Council Directive 94/10/EC,

Thus, Member States have to communicate such draft agreements to the Commission, which notifies in turn the other Member States. Both the Commission and the other Member States may make comments or deliver a detailed opinion if in their view the draft agreement may create obstacles to the free movement of goods within the Internal Market.

28. The freedom of undertakings to cooperate is limited by the requirement to maintain effective competition: in practice, undertakings' freedom of cooperation is limited by the application of Articles 85 and 86 of the Treaty.

Article 85(1) states that all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competition within the common market, shall be prohibited.

However, Article 85(3) makes an exemption for restrictions which contribute to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit. Such restrictions must, however, be indispensable to the attainment of these objectives and must not give the undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

In analysing individual cases under Article 85(3), the Commission, applying the proportionality principle, weighs the restrictions of competition resulting from the agreement against the environmental objectives to be attained by that agreement. In practice, this involves, on the one hand, establishing whether the restrictions are indispensable in order to achieve the environmental objectives and, on the other, ensuring that consumers receive a substantial share of the benefits of the agreement. In particular, the protection of the environment might be considered as an element which contributes to improving the production or distribution of goods and to promoting technical and economic progress.

In order to benefit from an exemption on the basis of Article 85(3), the parties must notify the agreement to the Directorate-General for Competition of the European Community[11]. The Commission has exclusive authority to apply Article 85(3). Thus, in the event of a complaint before a national court, the latter could not conduct an analysis based on paragraph 3 of Article 85.

Finally, in the event that national legislation delegates power in an economic sphere to private operators and the result is an appreciable restriction of competition, there would be twofold infringement of the rules of the Treaty (with the Member State infringing Articles 3(g) and 5, and the undertakings infringing Articles 85 and/or 86 of the EC Treaty). Article 86 prohibits any abuse of a dominant position.

OJ L 100 of 19.4.1994, p. 30.

[11] Article 4 of Regulation 17/62/EEC implementing Articles 85 and 86 of the Treaty, OJ 13, 21.2.1962, p. 204.

29. Where financial contributions from public authorities or other benefits such as tax exemptions or a redistribution of revenues from levies are part of an agreement, compliance with Article 92 of the Treaty has to be ensured. To take account of a broader range of financial measures, the Commission has issued new guideline on state aid for environmental protection, indicating where state aids are prohibited and where exemptions can be granted[12].

Compliance with WTO Rules

30. It is also essential to ensure that agreements comply with rules of the World Trade Organisation relating to free trade in goods, and technical barriers to trade. Most importantly, the principle of national treatment of GATT article III, which requires imported goods to be treated in the same way as domestically produced goods, has to be respected. It is thus important to ensure that foreign producers are allowed to enter into an agreement under no less favourable conditions than national industry, if that agreement has effect on international trade.

Furthermore, technical specifications for products, whether mandatory "technical regulations" or merely non-mandatory "standards", must comply with the rules governing consultation and non-discrimination in the WTO Agreement on Technical Barriers to Trade.

The provisions of the Agreement on Subsidies and Countervailing Measures, designed to discourage, *inter alia*, subsidies which favour the use of domestically produced goods or which subsidise exports, may also be relevant.

V. Environmental Agreements implementing certain provisions of Community Directives

31. The EC-Treaty does not specify how Directives, which are binding as to the results to be achieved, but leave to the national authorities the choice of form and methods, have to be implemented. Only the agreement on social policy explicitly refers to agreements between management and labour as a means of implementing Directives adopted in that field[13]. It also explicitly specifies that Member States have to be at any time in a position to guarantee the results imposed by those Directives.

It follows from the binding nature of Directives that Member States need to ensure their full and timely transposition and application. For that purpose, it is crucial that the domestic law provides a clear legal framework and thus legal certainty. This does not necessarily require that Directives be incorporated formally and verbatim in express, specific legislation; a general legal context may, depending on the content of the Directive, be adequate. In fact, Directives "shall leave to the national authorities the choice of form and methods". However, where Directives intend to create rights and obligations for individuals, for instance by setting limit values of general application aimed to protect human health, the transposing acts need

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[12] Community guidelines on State aid for environmental protection, OJ C 72 of 10.3.1994, p. 3.

[13] Agreement on a social policy, OJ C 224 of 31.8.1992, p. 127, article 2.

binding force and appropriate publicity. Only in this case can the persons concerned be able to ascertain the full extent of their rights, relying on them, where appropriate, before the national courts[14].

Moreover, the fact that a practice is consistent with the protection afforded under a Directive does not justify the failure to implement that Directive in the national legal order[15]. Member States are therefore required to take binding action and may not only rely on the recognition of unilateral commitments on the part of industry. For certain provisions of Community Directives, binding agreements may be a sufficient means of implementation. For instance, Directive 85/339/EEC on containers of liquids for human consumption required Member States to draw up programmes for reducing the tonnage and the volume of such containers[16]. The French authorities had concluded agreements with the relevant industry circles in order to establish such reduction programmes. The Court of Justice of the European Communities found that these agreements contained undertakings by the authorities and could therefore, in principle, be considered as programmes for the purpose of that Directive[17].

32. Thus, where Directives intend to create rights and obligations for individuals, it is generally not possible to implement the relevant provisions through agreements: Member States will not be in a position to ensure that these provisions are applicable to anyone ("free-riders", new-comers on the market)[18].

On the other hand, where a provision of a Directive provides for the setting up of general programmes or for the achievement of general targets, the full achievement of the set objectives or targets does not necessarily require regulatory action. In fact, a number of environmental Directives require Member States *inter alia* to set up reduction programmes and achieve general targets. For such provisions, binding Environmental Agreements would be an appropriate and adequate implementation tool. They contain undertakings given by the public authorities and may therefore constitute the appropriate implemention measure for Member States to fulfil such obligations under Community Directives.

33. In some cases, the Community legislator might provide that Member States may chose to reach the objectives either through Environmental Agreements or through national legislation. For instance, where a Directive provides for the setting of limit values in order to achieve a defined reduction in emissions of certain substances, Member States could be allowed to achieve these targets through agreements rather than through limit values. This is particularly appropriate in view of agreements put

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14 Consistent jurisprudence of the Court of Justice of the European Communities, first in case C 29/84, ECJR 1985, p. 1661.

15 Court of Justice of the European Communities, case C 339/87, ECJR 1990, p. 851.

16 Council Directive 85/339/EEC on containers for liquids for human consumption, OJ L 176 of 6.7.1985, p. 18, repealed by European Parliament and Council Directive 94/62/EC on packaging and packaging waste, OJ L 365 of 31.12.1994, p.10.

17 Judgement of 5.10.1994, C-225/93, ECJR 1994, p. 4949. The Court concluded, however, that the agreements failed to comply with the Directive in substance since no quantified objectives and no time-table for the completion of the programmes were included.

18 Only where agreements can be declared of general application (DK), transposition by way of such a generally applicable agreement seems acceptable.

in place by a Member State prior to the adoption of a Directive. The Community legislator should, however, restrict this possibility to clearly defined circumstances and make it subject to expressly stated and verifiable conditions in order to ensure legal certainty and efficient enforcement of Community Directives throughout the Community.

34. However, the requirement of legal certainty normally implies that, when used, Environmental Agreements are combined with the transposition of a Directive by national legislation. The transposing legislation could exempt parties to an agreement from the relevant provisions, as long as they comply with the terms of the agreement. Such a legislatory fall-back provides an effective basis to prevent 'free-rider' profits and also a guarantee for compliance with Community legislation. Also, since the implementation of all provisions of a Directive will require national legislation, the fall-back legislation can easily be adopted together with the transposition of the Directive.

35. In order to clarify the scope for the use of Environmental Agreements within the framework of a Directive, the Commission will explicitly list the eligible provisions in its proposals for relevant Directives. Such specific reference to the possible use of agreements provides legal certainty with respect to the form and methods of implementation. This will allow for scrutiny by the Community institutions of the suitability of Environmental Agreements, in particular with regard to the functioning of the Internal Market.

36. Where Member States might wish to use an Environmental Agreement, they would have to ensure that it could be in place within the time frame set by the Directive. Therefore, negotiations on an Environmental Agreement need to be concluded before the period for transposition has expired so that in case of failure to conclude an agreement, legislation could be adopted in time.

    Member States also have to ensure effective compliance with the Environmental Agreement in order to achieve the objectives set by the Directive. An effective tool in ensuring compliance could, for instance, consist in making individual permits subject to compliance with the agreement.

    Where it becomes clear that an agreement is not concluded in time, where compliance with an agreement cannot be ensured or where compliance with the Directive is at risk for example because of "free-riders", the adoption of legislation is in any event indispensable. While it is true that in these (exceptional) cases of failure, time delays may occur to introduce and implement binding measures, the knowledge gained during the negotiation or implementation of the agreement will allow the presenting of relevant legislation in a short period of time and the political context should be more favourable for establishing sufficient consensus on those measures. In such a case, however, the legal responsibility of Member States is at stake since they fail to comply with Community law.

37. As with all laws, regulations and administrative provisions enacted with the purpose of implementing a Directive, Member States are obliged to notify the Commission of Environmental Agreements concluded for that purpose and to provide all other relevant information for the evaluation of the agreement as a means of transposition. This will permit the Commission to scrutinize the agreement and

exercise its duties as guardian of the Treaty. It will also add to transparency of the implementing measures throughout the Community.

38. It should be noted, finally, that the use of Environmental Agreements as an implementation measure of a Directive is, when allowed by the Community legislator, an option and not an obligation for Member States. It is for the individual Member State to decide whether negotiations on an Environmental Agreement should be opened or not. This choice corresponds with the responsibility of the Member States to achieve the results prescribed by the Directive.

39. The guidelines given under Chapter IV apply to Environmental Agreements implementing Community Directives, being understood that to this purpose they have to take a binding form. In order to provide Member States with a clear framework for the use of Environmental Agreements, the Commission combines the present Communication to the Council and the European Parliament with a Recommendation addressed to the Member States. This Recommendation sets out the guidelines as explained in the previous chapters. On the basis of experience gathered with the use of Environmental Agreements, the Commission will, if necessary, revise the Recommendation.

VI. Environmental Agreements at Community level

40. To date, a rather limited number of non-binding agreements, taking the form of unilateral commitments promoted or recognized by the Commission, have been concluded at European level. Following a Council resolution, the Commission addressed several Recommendations to relevant branches of industry regarding the reduction of chlorofluorocarbons and halons[19]. The Commission, under Article 155 of the EC Treaty, also issued a Recommendation regarding the labelling of detergents and cleaning products[20].

41. Binding agreements, however, have not been concluded with the European Community as party to the agreement. Although the Community, represented by the Commission, enters regularly into contracts under the laws of the Member States, such contracts are not policy measures in the strict sense. Indeed, binding policy instruments explicitly named by the Treaty are Regulations, Directives and Decisions.

For the time being, the Commission has therefore to resort to non-binding agreements as the available instrument to encourage a pro-active approach from industry and as an incentive for effective environmental action. Such "agreements" can take the form already used in the past (industry commitment recognized by the Commission) or any other form of a non-binding understanding (e.g. exchange of notes, letters of intent, declarations signed in the presence of a Member of the Commission or non-binding agreements). The Commission will consider on a case

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[19] Council Resolution 88/C/285/01 (OJ C 285 of 09.11.1988) and Commission Recommendations regarding the aerosol industry, the foam plastics industry and the refrigeration industry (Recommendations 89/349/EEC, 90/437/EEC and 90/438, OJ L 144 of 27.05.1989, p. 5[illegible] OJ L 227 of 21.08.1990 p. 26 and p. 30).

[20] Recommendation 89/542/EEC, OJ L 291 of 10.10.1989, p. 55.

by case basis whether commitments of industry can be used as an effective environmental measure.

42. Four key aspects have to be considered: The appropriate conditions for a Environmental Agreement at Community level, the possible fields of application, the institutional framework and the requirements for their design and content.

Firstly, it is essential that the number of concluding parties is easy to survey or that the parties are able to negotiate through business associations. Only under these circumstances can the economic operators negotiate effectively and with low transaction costs. Furthermore, strong business associations can help in the burden-sharing between the participating companies, a task which is likely to be more difficult at Community level than at national level. Even more importantly, the potential risk of free-riders and thus the suitability of the instrument, can be quickly assessed.

43. The appropriateness of agreements at Community level furthermore depends on the ability to deal with the environmental issue in a satisfactory manner. This is because there is little or no advantage in agreeing on environmental measures in advance of legislation if, in addition, legislatory action becomes necessary at Community level. Moreover, such Community action would not prevent Member States from introducing national measures in the same field.

44. General considerations on the second aspect, the possible fields of application, have already been outlined in Chapter III. Agreements are particularly suited to implement comprehensive, long term objectives or as a transitory complement to an economic instrument. Possible issues to be dealt with at Community level therefore relate, for instance, to the reduction of CO_2 emissions from passenger cars, SO_2 and NO_X emissions from electricity suppliers and the reduction of energy losses in the stand-by phase of devices such as televisions and video-recorders.

45. As regards the institutional framework, it is necessary to base non-binding agreements on objectives already endorsed by the Community institutions, for instance through the Fifth Action Programme, Parliament and Council resolutions or international conventions. Keeping the institutional balance is not only a guarantee for equitable results, it also provides industry with an element of stability. Where Council and Parliament have confirmed clear policy objectives and the Commission has negotiated how to best implement these objectives, additional regulatory measures in the same field are unlikely to be necessary.

46. Finally, as regards the drawing-up of Environmental Agreements at Community level, the criteria and requirements mentioned in Chapter IV apply, the only exception being of course the contractual form. The Commission will ensure periodic reporting to the European Parliament and Council on the application and effectiveness of the action taken by industry, as it is the case for a good number of Directives. Such reporting will increase transparency and allow, should this be necessary, the non-binding agreement to be amended or replaced by binding actions.

VII. Conclusions

47. As it appears from the attached Annex, the use of agreements with industry in the area of environment policy has become more common in practically all Member States since the beginning of the 1990's.

Environmental Agreements with industry have an important role to play within the mix of policy instruments sought by the Commission since the adoption of its Fifth Environmental Action Programme. They can offer cost-effective solutions when implementing environmental objectives and can bring about effective measures in advance of and in supplement to legislation. In order to be effective, it is essential, however, to ensure their transparency and reliability. Binding agreements provide in general better safeguards in terms of achieving environmental objectives. Therefore, whenever possible and appropriate,an Environmental Agreement should take the binding form.

48. The Commission therefore draws the following conclusions.

- Taking into account the reactions to the present Communication, the Commission will consider on a case by case basis whether Environmental Agreements are an appropriate instrument for the purpose of achieving environmental objectives.

- The requirements for an effective use of Environmental Agreements are summarized in the attached checklist. This list serves as a guideline for any public authority intending to conclude an Environmental Agreement.

- With respect to Environmental Agreements concluded at Member State level, the Commission, as guardian of the Treaty, will ensure their compliance with the Treaty and in particular internal market requirements and competition rules.

- Whenever regulatory action becomes necessary for the Community, the Commission will carefully consider whether certain provisions of these legislative measures will allow for implementation by binding Environmental agreements and will include, if appropriate, such provisions in its proposals.

  The Commission addresses a Recommendation to the Member States which provides a clear framework for the use of Environmental Agreements as a means of implementing certain provisions of Community Directives.

- In recognizing Environmental Agreements at Community level, the Commission will ensure their transparency and credibility. It will therefore ask for quantified objectives, a staged approach, appropriate monitoring and reporting. The Commission will make such commitments public and report to the Council and the European Parliament on the results achieved.

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Checklist for Environmental Agreements

This checklist is valid for Environmental Agreements concluded at whatever level. Elements such as the legal nature and the competent jurisdiction are only relevant in case of agreements in the form of a contract.

I. Reasons for the choice of the instrument

1. Advantages compared to legislative and economic measures (environmental and cost-effectiveness, feasibility)
2. Sector coverage, strength of business associations
3. Public awareness of the issue
4. Previous involvement of legislator in setting objectives

II. Content

1. Parties to the agreement (associations and/or individual firms)
2. Subject
3. Definition of terms
4. Quantified objectives
5. Staged approach
6. Specification of obligations
7. Monitoring of results
8. Periodic reporting
9. Access to information
10. Arrangements for collection/evaluation/verification of results
11. Sanctions
12. Accession of third parties
13. Duration
14. Revision
15. Termination
16. Legal nature of the agreement
17. Jurisdiction

III. Compliance with EC Treaty

1. Notification to the Commission required ?
2. Free movement of goods affected ?
3. Competition affected (competitors excluded, prices fixed, etc.) ?
4. State aid rules applicable and respected ?
5. Distortion of competition justified on environmental grounds ?
6. Distortion a proportionate means to reach the objective ?

IV. Publication

Annex

Brief survey of experiences in Member States

The present survey is meant to give a factual description of where and how Member States have used Environmental Agreements. It is based on previous consultations between the Commission and representatives of the Member States as well as on a study launched by the Commission. The use of agreements in the Member States has provided an insight into how agreements can be adapted for the purpose of implementing environmental policy in the European Union.

The Belgian experience

In all, 14 agreements have been concluded in Belgium since the late 1980, concerning the reuse, recovery and recycling of waste (packaging and household), the phasing out of CFC (aerosol, refrigerators, plastics) and the substitution of polluting substances in products such as batteries. Two sectoral agreements ("accords de branche") have been concluded in order to reduce emissions from the electricity suppliers (SO_2 and NO_X, satisfactorily implementing directive 88/609/EEC on large combustion plants) and the furnaces for smelting glass.

Since the competence in this field is shared between the federal state and the regions, this sectoral agreement is signed by the federal state together with the three regions. The regions also entered into regional agreements: The Brussels region (Ministry of the Environment) has established with commercial offices agreements regarding the sorting, recycling and recovery of office waste. In the Walloon Region, agreements concern the preservation of natural resources and the reduction of solid waste. Flanders had made negative experience with agreements which lacked binding character. In 1994, the Flemish region therefore adopted a decree on Environmental Agreements, which exhaustively defines in a legally binding way the criteria for agreements. Environmental agreements take the form of a contract (contract sui generis), parties need to have legal status, to be representative for the sector and to have the explicit mandate to conclude agreements. The draft agreement has to be published in the Official Journal, public bodies have to be consulted ("Sociaal-Economische Raad", "Milieu en Natuurraad"). The maximum duration of an agreement is five years. As long as a valid agreement is in place, the Region may not set more stringent legislative rules.

No agreement has yet been concluded pursuant to this decree.

The Danish experience

In Denmark, sixteen voluntary environmental agreements have been concluded since 1987, relating to energy saving, waste management (e.g. controlled recycling or disposal of refrigerants containing chlorofluorocarbons (CFC) and hydrochlorofluorocarbons (HCFC), fire protection equipment, batteries, packaging, tires), the phasing out of specific substances (e.g. organic solvents used in paints and varnishes, volatile organic compounds, PVC, heavy carbon hydrates in diesel) and the clean-up of contaminated sites. Current initiatives also relate to waste management (electronics, vehicles,

demolition waste).

Parties to the agreements are usually the Minister for Environment and Energy or the Danish Environmental Protection Agency and the industry sectors concerned (companies or their organisations).

The agreements generally take the form of a declaration of intend or an action plan, which are not legally binding but which the parties perceive as being binding.

A main feature of agreements concluded in Denmark is their combination with economic incentives such as tax reductions or with deposit funds.

The Environmental Protection Act of 1991 introduced the possibility for the Minister of the Environment to make agreements with enterprises or associations thereof to meet national targets for pollution reduction. The Minister can also lay down rules on the basis of which agreements are made and on general agreements terms including penalties for delaying or otherwise violating the agreement. The Minister is also empowered to lay down requirements similar to those of the agreements for enterprises not covered by the agreement, i.e. he can react to "free-riders".

Before implementing such an agreement, it shall be negotiated with the most relevant national trade and environment organizations, with organizations of local authorities and with other state authorities involved.

The first agreement concluded on the basis of the Environmental Protection Act in April 1996 relates to the collection and recovery of lead accumulators. Another agreement on electric and electronic waste is in preparation.

The German Experience

In Germany, industry has issued about 80 self-commitments in the field of the environment since the late 1970's. They mainly cover waste management (e.g. batteries, paper, packaging, end of life vehicles), the phasing out of specific substances (asbestos, CFC in a number of appliances, certain substances in detergents), discharges of dangerous substances into the water (ammonium, safety concept for chemical installations) and CO_2 emissions (fuel consumption from cars and a variety of industry sectors). Bavaria has recently concluded a formal agreement with industry, trade and commerce associations, covering a range of general issues such as participation of companies in the eco-management and audit scheme, waste reduction, energy efficiency and an increased use of railways as a means of transport.

With the exception of the latter agreement, public authorities are not formally involved in these commitments which take the form of unilateral declarations. However, these declarations are often the outcome of intensive discussions with the competent ministries (environment, economic affairs) and recognized in an informal way, for instance a press release or a press conference of the ministry concerned. Virtually all of them contain reporting requirements of industry.

The use of such informal agreements has recently attracted more attention, the discretion

of the parties as to the design of the commitments being limited, however, by the Law against restraints of competition. A number of commitments have been issued in 1996 (end of life vehicles, chemical industry, paper industry and editors). The commitment of industry to reduce CO_2 emissions, undertaken in view of the 1995 Berlin Climate Conference, has recently been extended and clarified (more participants, unequivocal objective, independent evaluation of results). 80 % of the energy consumption by the German industry is covered by this revised commitment.

The latter commitment as well as the Bavarian agreement seem to indicate a shift to a more formal and public approach in Germany.

The Spanish experience

To date, a total of 6 agreement has been established in Spain. Numerous agreements are currently under discussion, and it appears as though they will gain importance in meeting environmental goals.

The agreements concluded by the Ministry of Public Works, Transportation and Environment (MOPTMA) relate to the phase-out of chlorofluorocarbons in aerosols (by the year 1989) and to waste management. The latter agreements aim at facilitating the implementation of the Ministry's National Master Plan for Waste Management and Disposal; industry and regional Governments at each Autonomous Community must implement the plan at a regional basis; Municipalities are the final responsible for waste collection, treatment and disposal. Financing at each administrative level is included.

Recent agreements relate to end-of-life vehicles and used tires. A waste management levy on new tire sales is to raise money for the collection, recycling and disposal of tires. Current initiatives concern electric and electronic equipment, 12 types of equipment where agreements could be used have been identified. Other areas (solvents, chlorine products, paints, construction wastes) are also being considered.

Direct reference to the use of agreements has also been made in the Royal Decree 484/1995 on waste water regulation and control. Recognizing the deficit in industrial waste water treatment and control, the new regulation empowers watershed authorities (Confederaciones Hidrográficas) to negotiate and conclude with industrial associations sectorial plans for waste water control. The Decree also includes a provision of financial aid to industries to facilitate reaching these goals.

In its Strategy for Energy and Environment, 1995-2000, the Ministry of Industry and Energy has identified agreements as one of the tools to meet environmental goals at short and medium terms. These agreements will aim at creating a framework to encourage environmental investments so as to promote environmental retrofitting of industries. Enforcement of existing regulations will not be restricted by these agreements. Several financing programmes for industry environmental retrofitting (PITMA, PAE) recognize agreements between Industry and Public Authorities as the preferred way to obtain financial contributions.

The French Experience

France appears to be the first Member State to have concluded an agreement in the field of environmental protection; an "accord de branche" was concluded between Ministry of Environment and the cement sector in August 1971. The agreement established a time-table for taking corrective actions through a sector-wide programme for existing facilities (programme de branche). New facilities were required to meet emissions standards.

About twenty agreements were issued for the major polluting industrial sectors in the ensuing decade. These agreements had different functions and names (eg. contrat de branche, programme de branche, contrat d'entreprise, programme d'entreprise, plans sectoriels anti-pollution). A limiting factor are legal requirements protecting the authority of the State and third party rights. For instance, the Administrative Court (Conseil d'Etat) ruled that a facility contract from 1975 between the Ministry for the environment and a paper manufacturer was illegal because it restricted the State's authority and the required protection of third parties. Ultimately, most of the early agreements served as a basis for developing national legislation and emission standards which replaced them.

Recent agreements relate to packaging waste and end-of-life vehicles. About ten agreements concerning CO_2 emissions from industrial sectors (smelting, chemical, paper, welding, glass, plaster, sugar, cement) are being prepared, a corresponding agreement with the aluminum sector has recently been signed.

The Greek experience

At present, there are no environmental agreements in Greece. The general assessment of public authorities and industry seems to be that regulatory measures are necessary and sufficient for the protection of the environment. However, because agreements may succeed in fostering partnership between industry and public authorities, some representatives of industry start appreciating the potentials of agreements.

The Irish Experience

In Ireland, agreements usually take the form of business "initiatives" welcomed but not signed by the Irish Government. An agreement on packaging waste, called REPAK, was signed in February 1996 by the department of the environment and business associations (Irish Business and Employers Confederation as well as the associations of retail grocers, soft drinks and beer bottlers, plastic industries, food drink and tobacco, and wine and sprits).

The latter agreement was initiated in 1994, when the Department of the Environment published a recycling strategy, including targets for the recycling of waste such as packaging, beverage containers, composting. The strategy document went on to invite industry to propose agreements.

The Irish Business and Employers Confederation (IBEC) set up an industry task force which reported back to the Minister in December 1995 and proposed REPAK, as one element in their response. The Society of the Irish Motor Industry is currently drafting

an agreement on car batteries. Other possible target sectors for future agreements include waste newspaper, detergents, pharmaceutical and chemical manufacturing.

The Waste Management Bill, which was adopted in mid-1996, gives the Minister wide powers to specify how packaging might be recycled, how it should be marked, how refund systems might work and what collection mechanisms might be required. By signing up to REPAK, industry avoids such prescriptive rules, because the Act allows the minister to approve an agreement which exempts participants from other requirements.

The Italian experience

Eleven agreements have so far been concluded in Italy, both at federal and at regional level. In the late 1980's, the Ministry of Environment and the Fiat group exchanged a letter of intend concerning air pollution and noise reduction in the metropolitan areas. Following this initiative, a protocol "Environment and Development" was concluded, covering not only the depollution of metropolitan areas but also waste reduction, the development of non-polluting vehicles and environmental research programmes.

In the waste sector, "REPLASTIC", which started as a voluntary consortium before becoming compulsory, deals with the separate collection, sorting out and reuse of plastic liquid containers. The recovery of discarded lead batteries is the subject of an agreement signed in 1995 between the Ministry of Environment, the municipalities (ANCI - Associazione Nazionale Comuni d'Italia) and Federambiente (Federation of Public Services of Environmental Hygiene) on the one hand and industry associations on the other hand. Examples of agreements concluded at regional level regard the recovery of toner cartridges (Lombardia) and the collection of paper and cardboard.

The experience in Luxembourg

Five agreements have been concluded in the field of the environment and energy. The first agreement, dealing with industrial waste, was introduced in 1989. An agreement on energy efficiency within the industrial sector has just been concluded (1996) and some more are to come up, involving banking, insurance, medical care and trade sectors.

Agreements in the waste management field were developed from the Directory Programme of the Ministry of Environment and relate to construction waste, hazardous waste, packaging waste from beverages and industrial waste.

The Dutch Experience

More than hundred agreements have been concluded in the Netherlands. They mainly cover waste management (e.g. packaging, recovery of asbestos, plastics), the reduction of emissions (e.g. volatile organic compounds, SO_2 and NO_X from electricity suppliers, ammoniac from livestock), clean-up of contaminated soil (petrol stations), energy saving or reduction strategies for industrial noise. Some of the agreements specify comprehensive programmes for the integrated pollution control in various sectors of industry (base metals, chemical, print, dairy). Current initiatives relate, for instance, to

the paper and cardboard industry.

Usually, such written and signed agreements, used as a policy instrument and with public authorities as one party are summarized under the title covenant, although they can actually be entitled declaration of intend or code of conduct.

The general background for the increased use of covenants is provided by the National Environmental Policy Plan (NEEP) and the NEPP Plus, published in 1989 and 1990. These plans set out a strategy for achieving sustainable development by the year 2010. The plans establish quality objectives across a number of environmental issues and translate these into over 200 quantified targets. In this context, covenants represent a commitment by industry sectors to play their part in meeting the established environmental objectives. To date, declarations of intent set environmental objectives for 16 industry sectors, involving some 12.000 companies responsible for over 90 % of industrial pollution in the Netherlands.

While most of the first generation of covenants are not enforceable by law, more recent covenants take the form of a contract enforceable under civil law and are part of an overall strategy of the Government.

Although the procedure is not defined by law, covenants are usually concluded according to the following procedure: The competent Minister informs both Houses of the States General of his intention to conclude a covenant. An integrated target plans is established for the sector in question pursuant to negotiations between public authorities (including provincial and municipal government) and the industry sector (sometimes including employer's and trade unions). On the basis of this plan a covenant is drawn up at branch level if the sector uses similar processes allowing for a standardised approach. In heterogeneous sectors, company environmental plans are prepared in close cooperation with the licensing authority.

Signed covenant are published in the Official Journal (Staatscourant).

The Ministry of Housing, Spatial Planning and the Environment has issued guidelines for the conclusion of covenants in the form of a code of conduct. An administrative direction, issued by the Prime Minister in December 1995, gives instructions on content and procedure of covenants in general.

The Austrian Experience

In Austria, some 25 agreements have been concluded since the early 1980's. Most of the agreements concern the recycling of waste (end of life vehicles, paper, tires, building material, car batteries, electronics, plastics, packaging), others aim at introducing vapour recovery units at petrol stations (to reduce hydrocarbons emissions) or at reducing the import of tropical timber. A particular voluntary agreement is the climate coalition founded in 1994. It primarily comprises municipalities and states commitments with respect to supply of public services and procurement, but is also open to industry.

Two types of agreements can be distinguished: Self-commitments by industry, where public authorities are not formally involved although the commitments are normally the outcome of intensive negotiation with the competent ministry, and agreements concluded

between industry and government. Self-commitments are predominant.

Parties to the agreements are usually the competent ministry and the national industry association (Federal Economic Chamber) or national branch associations (subdivisions of the Federal Economic Chamber), in some cases also individual firms.

Almost all voluntary self-commitments and agreements have been concluded at national level.

The Portuguese experience

Portugal's first experience with voluntary agreements dates from 1984 with the setting of targets on water discharges, air pollution and waste reduction from the pulp sector. In all, around 10 agreements have been reached, mainly relating to waste reduction and elimination of substances.

In 1994, the government has pursued the application of agreements through its publication of the Global Agreement Protocol on Environment and Sustainable Development. This document summarizes the Government's orientation towards environmental challenges faced, and outlines an approach towards achieving them.

Based on this protocol, the government has issued a framework for Sectorial Voluntary Agreements. This framework was derived through negotiations between the Ministries of Environment, Agriculture and Industry on the government side and several national and regional confederations of Portuguese agriculture and industry. The Sectoral Protocol requires Industry to develop an environmental plan for reaching compliance with environmental laws according to their particular situations. This plan must receive approval from the public authorities. The Government commits itself not to impose new environmental standards for the duration of the agreement. If new community regulations are issued, the government agrees to a phased imposition of these.

The Sectoral Protocol includes provisions for renegotiating the agreement in such a case, and for proposing specific measures if required after diagnosis studies. It also provides for the creation of a steering committee representing signatory parties in order to monitor whether objectives are met and, if necessary, to formulate new measures. It should also resolve problems as they are encountered - one anticipated problem is that some industrial facilities may lack an environmental permit. Agreements concluded in the framework of the Sectoral Protocol terminate by the end of 1999, provide for periodic governmental reporting and include free rider provisions.

The Finnish experience

Agreements concern the phasing out of chlorofluorocarbons and the energy saving. The latter agreements are based on the Council of State Programmes on Energy Conservation, which the government established in 1992 as part of its efforts to curb energy consumption. The main goal of these agreements is to diminish energy consumption 10-15% by 2005. A new programme on energy conservation was presented in December 1995. This programme promotes agreements which would support monitoring energy efficiency, the preparation of conservation plans, energy audits, investments in conservation, the introduction of new technologies, and mechanisms to

provide consumers with information and guidance on their energy consumption.

Agreements are usually concluded between the competent ministry and business associations; two of the agreements relating to energy conservation have been concluded between the Ministry of Trade and Industry and local municipalities (the City of Helsinki and the Association of Finnish Local Authorities).

The Ministry of the Environment has recently (1995) concluded an agreement with the packaging industry. Negotiations regarding certain product groups (cars, tires, car batteries, electronics, household appliances) have been started in an overall strategy to proceed with voluntary agreements in waste management.

The Swedish experience

The thirteen agreements concluded in Sweden relate to waste management (car tires, construction products and materials, magazine paper and packaging materials), energy conservation (cars and individual companies), the phasing out of certain substances (lead in petrol and in paints), research and development (alternative fuels for vehicles) and the heavy metal contents of sludge from sewage treatment plants.

In practice, most agreements could be characterized as gentlemen's agreements or letters of intent by industry. Individual industries can not be held responsible if the industry organisation which developed and administered the systems fails to achieve the targets. The failure of industry to meet a target would typically lead to the introduction of taxes, or to a sharing of the regulatory responsibilities with local municipalities instead.

Agreements in the energy sector have been made with individual companies and thus allow recourse to sanctions if industries fail to comply.

The UK experience

The United Kingdom has used a wide range of voluntary approaches rather successfully, for instance in the form of Best Practice Programmes relating to energy efficiency (e.g. Making a Corporate Commitment - "MACC"), environmental technology or producer responsibility initiatives or initiatives to encourage a dialogue between Government and business (e.g. advisory committee on business and the environment, local green business clubs).

Eight agreements have been concluded since the early seventies, relating to the storage and transport of pesticides ("BASIS", its standards and certification of staff selling pesticides being formally recognized by the Control of Pesticides Regulation of 1986), the banning of certain substances in domestic and industrial washing products (alkyl phenol ethoxylates and for domestic use nitrilo tri-acetic acid), the collection of plastic film from farms and the use and the emissions of hydrofluorocarbons (HFCs). In order to reduce HFCs, which present an important alternative to chlorofluorocarbons (CFCs) but still have a high global warming potential, the British Government concluded in January 1996 three separate agreements and one declaration of intend with associations of the aerosol, air conditioning and refrigeration, fire protection and foam industries.