



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 27.04.1999

SEC(1999)592

COMMISSION STAFF WORKING PAPER

FIRST
ANNUAL SURVEY
ON THE IMPLEMENTATION AND ENFORCEMENT
OF COMMUNITY ENVIRONMENTAL LAW

October 1996 to December 1997

EXECUTIVE SUMMARY

Improving the implementation and enforcement of Community environmental law is an important priority for the Commission. Ensuring that the main actors in the field are informed and aware of the state of implementation and enforcement of Community law in the Member States helps to contribute to its correct application. Whilst the Commission's Annual Report on Monitoring the Application of Community Law contains a certain amount of information in this regard, the Commission recognised in its Communication on Implementing Community Environmental Law¹ that more information, particularly on questions of policy and procedure, could be provided in the form of an Annual Survey.

The Council and the European Parliament in their respective resolutions on the Commission's Communication supported this idea and invited the Commission to produce such an Annual Survey also containing details of the work of IMPEL (the European Union Network for the Implementation and Enforcement of Environmental Law). The present Working Document is produced in response to those invitations. It aims to provide up to date information on the state of application of Community environmental law, the follow up actions to the Commission's Communication on Implementing Community Environmental Law, other specific horizontal actions, the work carried out by IMPEL during the period covered by the Survey, IMPEL's Work Programme for 1998 and details of Member States' transposing legislation communicated for Community Environmental Directives to be transposed during the period of the Survey. It also includes the chapter on the Environment from the Commission's 15th Annual Report on Monitoring the Application of Community Law.²

This first Annual Survey covers the period from October 1996 (the date of adoption of the Commission's Communication on Implementing Community Environmental Law) to the end of December 1997. Subsequent Annual Surveys will cover the calendar year.

The Annual Survey does not set out new policy and, accordingly, is in the form of a Commission Services' Working Document.

The Commission hopes that the Annual Survey will increase awareness and improve transparency of the application of Community Environmental Law in the Member States, enabling all the main actors involved to continue to participate fully in the debate as to how the situation may be even further improved and the achievements to date further built upon.

¹ COM (96) 500 final, 22.10.1996

² COM (1998) 317 final, 19.5.1998

CONTENTS

1. Introduction	p. 4
2. Follow up action from the Commission's Communication on Implementing Community Environmental Law and from the related Resolutions of the Council and European Parliament.	p. 6
2.1) Member States' Inspection Tasks – Minimum Criteria for Environmental Inspections	p. 6
2.2) Access to Justice in Member States' Courts and Tribunals and Complaints and Investigations Procedures in the Member States	p. 7
2.3) Promoting Knowledge of Community Environmental Law:	p. 8
a) Magistrates Training and	p. 8
b) Pilot project for teaching Community Environmental Law at universities	p. 9
2.4) Proposals for sanctions in new Community legislation	p. 10
3. Other specific horizontal actions	p. 11
3.1) White Paper on environmental liability	p. 11
3.2) Review of Directive 90/313/EEC on the freedom of access to information on the environment	p.11
3.3) Reporting requirements	p. 12
3.4) Commission Publications on Implementating Community and International Environmental Law	p. 13
3.5) IMPEL (European Network of the Implementation and Enforcement of Environmental Law)	p. 14
3.5.1) Background to and structure of IMPEL	p. 14
3.5.2) Activities and products from October 1996-December 1997	p. 18
3.5.3) Work programme for 1998	p. 21
4. Details of Member States' transposing legislation communicated for Community Directives which had to be transposed during the period covered by the Survey	p. 25
5. Extract from Fifteenth Annual Report on Monitoring the Application of Community Law (Environment chapter)	p. 26
6. Conclusion	p. 27
Annex 1 – Details of Member States' transposing measures for Community environmental directives.	p. 28
Annex 2 – Environment chapter from Fifteenth Annual Report on Monitoring the application of Community law	p. 38

1. INTRODUCTION

1.1 Background to and aim of the Annual Survey on the Implementation and Enforcement of Community Environmental Law

Concern about the state of implementation and enforcement of Community environmental legislation has grown in recent years as the *acquis communautaire* in this sector has developed. The Dublin European Council in June 1990 stressed that Community environmental legislation would only be effective if fully implemented and enforced by Member States. The European Parliament adopted a resolution in 1992 on the subject³. The Commission and European Parliament held a joint public hearing in May 1996 entitled "Challenges to Environmental Protection: making the Legislation Work". This activity and interest culminated in the adoption by the Commission of its Communication on Implementing Community Environmental Law on 22 October 1996⁴ ("the Communication"). It was sent to the Council and the European Parliament on 5 November 1996.

The Communication recognised the need to provide up to date and reliable information on the state of application of Community environmental law in the Member States and an annual summary and overview of the progress of infringement proceedings against Member States for failing to implement Community directives, both in transposition and in practical application. Paragraph 53 (page 18) of the Communication states the following:

"The Commission's Annual Report on Monitoring the Application of Community Law will (from its 14th edition concerning 1996) be expanded to contain details of the legislation notified by Member States as transposing Community environmental law and the actions taken by the Member States to apply those laws. The points covered in this Communication which do not concern the monitoring of Community law and infringement procedures, such as the points on questions of policy and procedure, could be the subject of a follow-up in an "Annual Survey".⁵

Consequently, the Environment chapter of the 15th edition of the Commission's Annual Report on the Monitoring of the Application of Community law concerning 1997⁶ has been considerably expanded and developed largely on the basis of information supplied by the Member States. Details of the most important judgements of the European Court of Justice are also included on a sector by sector basis.

After adoption of the Communication by the Commission, the Council adopted a resolution⁷ which contained the following:

[the Council]... *"INVITES the Commission in addition to its Annual Report on Monitoring the Application of Community Law, to submit to Council an annual survey of the environment⁸ containing, inter alia, detailed information on transposition and practical application by Member States of Community environmental law and furthermore on the principal activities and concrete*

³ OJ No C125, 18.5.1992, p.122

⁴ COM (96)500 final, 22.10.1996

⁵ Underlining added

⁶ COM(1998) 317 final, 19.5.1998

⁷ OJ no C321, 22.10.1997

⁸ Underlining added

results of the IMPEL network including its current and future work programme, on the basis of a report by IMPEL⁹".¹⁰

Similarly, the European Parliament, in its resolution on the Communication¹¹

*"...calls on the Commission to produce and publicize an Annual Report¹² on progress in adopting and implementing Community environmental law, containing detailed tables showing its implementation;"*¹³

It is, thus, in accordance with its Communication and in response to the invitations of the Council and the Parliament, that the Commission is now publishing this Annual Survey on the Implementation and Enforcement of Community Environmental Law. In order not to duplicate or overlap too much with other Community publications relating to the environment, the Annual Survey concentrates on follow-up actions from the Commission's Communication on Implementing Community Environmental Law, other specific, horizontal actions, the work carried out by IMPEL during the period of the Survey, IMPEL's Work Programme for 1998 and details of Member States' transposing legislation communicated for Community Environmental Directives coming into force during the period of the Survey. In order to provide a comprehensive reference work, it also includes the expanded chapter on the Environment from the Commission's Fifteenth Annual Report on Monitoring the Application of Community Law.¹⁴

The Annual Survey does not set out new policy and, accordingly, is in the form of a Commission Services Document.

1.2 Period covered by the Annual Survey

This first Annual Survey covers the period from October 1996 (the date of adoption of the Commission's Communication on Implementing Community Environmental Law) to December 1997. Subsequent Annual Surveys will cover the calendar year. Except where otherwise stated, developments which have taken place in 1998 have not been mentioned in this first survey but will be dealt with in the second Annual Survey which will cover the calendar year 1998. The reader is asked to read this first Annual Survey as if it had been published in January, 1998.

1.3 Contents of the Annual Survey

The Survey contains five main parts:

- Follow up action from the Commission's Communication on Implementing Community Environmental Law and the related resolutions of the Council and Parliament
- Other specific horizontal activities

⁹ IMPEL – European Union Network for the Implementation and Enforcement of Environmental Law

¹⁰ Para 26, p.7

¹¹ PE259.215/63,14.5.97

¹² Underlining added

¹³ Para 4

¹⁴ See footnote 6 above

- The background to and work of IMPEL during the period covered by the Survey and its Work Programme for 1998
- Details of Member States' transposing legislation communicated for Environmental Law Directives to be transposed during the period covered by the Survey
- The expanded Environment chapter from the Fifteenth Annual report on monitoring the application of Community Law.

2. FOLLOW UP ACTION FROM THE COMMISSION'S COMMUNICATION ON IMPLEMENTING COMMUNITY ENVIRONMENTAL LAW AND FROM THE RELATED RESOLUTIONS OF THE COUNCIL AND THE EUROPEAN PARLIAMENT

Background

In Part II of its Communication, the Commission identified the following specific new areas for action which might assist in the implementation of environmental law:

- Member States' inspection tasks and
- Access to Justice in the Member States' courts and tribunals and Environmental Complaints and Investigation Procedures in the Member States.

It also identified, in Part III of its Communication, two areas in which existing systems could be reinforced, namely

- Promoting Knowledge of Community Environmental Law and
- Sanctions at Member State level.

This part of the Annual Survey describes the action which has been taken in relation to these areas.

2.1 Member States' Inspection Tasks – Minimum Criteria for Environmental Inspections

In its Communication, the Commission acknowledged the wide disparity between Member States' environmental inspection activities, identified the *lacunae* and recognised the necessity of ensuring that minimum inspection tasks were performed, in particular as regards the monitoring of industrial point source emissions. The Communication therefore recommended the "*establishment of guidelines, thereby reducing the currently existing wide disparity among Member States' inspections*". The European Parliament and the Council endorsed this recommendation in their Resolutions¹⁵ adopted in response to the Communication.

The Commission's Communication and the Council's Resolution thereon envisaged a role for IMPEL in this context. (IMPEL was established in 1992 to promote the exchange of information and experience and the development of a greater consistency of approach in the implementation, application and enforcement of environmental legislation (see Chapter 3.5 below)). The Council's

¹⁵ See footnotes 11 and 7 above

Resolution asked the Commission to propose for further consideration in the Council, in particular on the basis of the work of IMPEL, minimum criteria for inspection tasks.

IMPEL thus set up a Working Group to carry out work on the topic of minimum criteria for environmental inspections. The group met several times from late 1996 to late 1997 and a paper containing minimum criteria on environmental inspections at Member State level was adopted by IMPEL by way of a written procedure in November 1997. A copy of the paper, as published, is available from the IMPEL Secretariat¹⁶.

The Commission will decide what further action to take on the basis of this paper. The involvement of IMPEL in this work has demonstrated the putting into practice by the Commission of the intention set out in its Communication to involve those with implementation and enforcement responsibilities in the Member States at an early stage of the legislative process.

2.2 Access to Justice in the Member States' Courts and Tribunals and Complaints and Investigations Procedures in the Member States.

Principle 10 of the 1992 Rio Declaration on Environment and Development emphasised the importance of access to information and to justice in matters concerning the environment. It recognized that environmental issues were best handled with the participation of all concerned citizens at the relevant level and stated that states should encourage public awareness by making information widely available and that effective access to justice should be provided.

In acknowledging this, the Commission's Communication stated that the Commission would examine the need for guidelines on access to national courts in the Member States taking into account their different legal systems.

This was echoed in the Council's and Parliament's Resolutions on the Communication.

Furthermore, in its Resolution on the Communication, the Parliament asked the Commission to introduce a legislative proposal on access to justice in order to give "*individuals and organisations extensive rights of legal standing before their national courts...*".¹⁷

Similar requests, particularly in relation to the establishment of minimum criteria, were made by the Economic and Social Committee and the Committee of the Regions in their respective opinions on the Commission's Communication.

To meet these requests, two studies were sub-contracted by the Commission in July 1997, one concerning non-judicial ways of solving conflicts and the other concerning access to justice. Both studies were carried out in conjunction with IMPEL (see Chapter 3.5. below).

In the light of the results of the studies, the Commission will consider the follow up action to be taken. Any action will take account of the work going on in the area of consumer protection and other Commission initiatives on improving access to justice.

2.3 Promoting Knowledge of Community Environmental Law

¹⁶ BU5 4/48, 200 rue de la Loi, B-1049 Brussels, Belgium (Fax +32.2.299.10.70)

¹⁷ Para 12

a) Magistrates Training

In the Commission's Communication, mention is made of the need to promote knowledge of Community environmental law to reinforce existing systems. It is stated that:

*"The Commission will consider initiatives for financial and technical assistance for increasing awareness in Community environmental law, in particular by judges, lawyers and officials of the Member States."*¹⁸

In its Resolutions on the Communication, the Council and the Parliament endorsed this.

The Economic and Social Committee, in its opinion of 15 April 1997¹⁹, recognised the important role played by the promotion of knowledge of Community environmental law and the Committee of the Regions, in its opinion of 11 and 12 June 1997²⁰, noted that one of the great weaknesses of the existing system lies in the insufficiency of information and training concerning Community environmental law. It welcomed the proposal that the Commission would consider initiatives for financial and technical assistance for judges, lawyers and officials of the Member States.

In the light of the various opinions expressed and as part of the follow-up to the Communication, various training courses have been organised, the first being in Strasbourg, France, from 4 to 8 November 1996 which was attended by 22 magistrates.

In 1997 four further courses were organised:

- a course in Strasbourg, France from 18 to 20 June 1997, which was attended by 23 magistrates,
- a course in Louvain-La-Neuve, Belgium from 1 to 11 July 1997, which was attended by 12 magistrates,²¹
- a course in Trier, Germany from 4 to 6 September 1997, which was attended by 22 magistrates,
- a course in Athens, Greece from 26 September to 10 October 1997, which was attended by 20 magistrates²².

The lecturers included well-known academics, officials of the Community institutions or representatives from professional circles.

The courses were given either in two languages (French/English), in three languages (English/French/Greek) or in one language (French or English).

It is planned to hold the following courses in 1998:

- a course in Louvain-La-Neuve, Belgium in September 1998,

¹⁸ Para60, p. 22.

¹⁹ ESC 128/97, p. 5, No 3.3.1.

²⁰ COR 437/96 fin., p. 19 and 26.

²¹ Course linked with the summer course on environmental law. The non-specific nature and time the course was held (July) explain why there were relatively few participants.

²² About 300 magistrates and barristers from Athens and Piraeus also received training.

- a course in Stockholm, Sweden from 3 to 5 September 1998,
- a course in Thessaloniki, Greece in November 1998.

This first group of some 100 magistrates (judges and members of the public prosecution service), who themselves will become instructors in their respective countries, represented the 15 Member States of the Union together with a number of applicant countries. Through this project, the Commission (DG XI) is the instructors' instructor.

There has been unanimous appreciation by the participants and the magistrates' associations of the way in which the courses are designed, organised and taught. The magistrates had the opportunity, in some cases for the first time, to become acquainted with Community environmental law or to gain a better understanding of it and to exchange their experiences. Moreover, most of the magistrates felt that it was important for them to remain in contact, with each other and also with the Commission. As a result of the experience acquired during the courses, the programmes are constantly being improved.

It is intended, subject to demand and budget availability, to continue the programme into the year 2000, so as to firmly establish "the network". This period is necessary to organise additional courses in Member States where infringements of Community law are most serious and in which there is the greatest need.

Training magistrates in Community law is an essential element of the subject of access to justice in the field of the environment and an essential component of the follow-up to the Commission's Communication.

b) Pilot project for teaching Community environmental law at universities

During 1997 a pilot project was launched to promote knowledge of and training in Community environmental law at universities.

The pilot scheme is intended to ensure that a course in Community environmental law and policy is given at various universities in the Member States through chairs which will be known as "Green Chairs".

"Green Chair" means:

- a full-time teaching post at every university participating in the pilot scheme, with the principal task of teaching Community environmental law and policy;
- a research unit in the form of a small logistical structure providing documentation and computer support to meet the needs of the lecturer and the students.

However, since this is an experimental project, it will initially be limited to three academic years (1998, 1999 and 2000) at five universities in different Member States to assess the capability of university circles to respond effectively to such an initiative.

At a meeting on 30 June 1997, university professors involved in the project met to lay down the basis for co-operation among themselves.

The universities selected are:

- University of Aarhus, Denmark
- University of Padova, Italy
- University of Nantes, France
- Fondation Universitaire Luxembourgeoise
- University of Athens, Greece

A first financial commitment was signed with the University of Aarhus at the end of 1997, to start a programme in January 1998.

The first year of lectures will be rounded off by a seminar at which the members of the network will be able to meet and evaluate the first results of the programmes established. A full annual progress report, setting out ideas for the following academic year, will be submitted at the end of each academic year by the universities concerned.

2.4 Proposals for sanctions in new Community legislation

In its Communication (para 48 et seq), the Commission recommended:

“The Commission may include in its proposals for environmental measures a provision requiring national implementing measures to include appropriately deterrent sanctions for non-compliance with the requirements of the relevant directives.”

The Council echoed this in its Resolution and invited the Commission to consider the inclusion in its future proposals for environmental measures, where appropriate, and on a case by case basis²³, of a provision requiring national measures to include appropriately dissuasive sanctions for non-compliance with the requirements of the relevant Community acts and having regard to the principle of subsidiarity.

The Commission has taken this into account in the past when formulating environmental legislation (see, for example, Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein²⁴, as amended) and has stressed the importance of deterrent sanctions on various occasions (see, for example, its Communication on the role of penalties in implementing Community internal market legislation²⁵ where it was said that *“the effectiveness, proportionality and dissuasiveness of penalties for breaching Community law depend, in the first place on the common rules being transposed and/or implemented correctly and efficiently, and on sound administrative co-operation which is based on transparency”*). Regulation 338/97 provides for a communication system between Member States to ensure uniformity, which is an example of this co-operation. Although distinctions can be drawn between internal market and environmental legislation, the Commission will essentially follow the internal market approach in this regard, enlisting the assistance of IMPEL, as necessary.

The Commission will probably call upon IMPEL to look into the problem of sanctions, whether administrative, civil or criminal, during 1999, with a view to guidelines eventually being drawn up

²³ See for example Article 16 of the CITES Regulation

²⁴ OJ NoL61, 3.3.1997, p.1

²⁵ COM(95)162 final

through which appropriately deterrent sanctions can be effectively used in national law in the future, whilst still respecting the principle of subsidiarity. Regulation 338/97 and experience in other areas of Community law, such as the internal market, will serve as useful examples in this respect. The Commission will also have regard to the Council Resolution of 29 June 1995 on the effective uniform application of Community law and on the penalties applicable for breaches of Community law in the internal market.²⁶ Furthermore, the report of the IMPEL Working Group on Environmental Prosecutions, which is due in July, 1998, will also be considered.

3. OTHER SPECIFIC HORIZONTAL ACTIONS

3.1 White Paper on Environmental Liability

On 29 January 1997 the Commission decided that a White Paper on Environmental Liability should be prepared. During 1997 numerous discussions on Strategy and Working papers took place with independent experts from the Member States, Member States' own national experts and other interested parties, such as industry, banks, insurance companies and non-governmental organisations. On the basis of these discussions, DG XI has started to prepare the White Paper.

3.2 Review of Directive 90/313/EEC on the freedom of access to information on the environment

Environmental issues are best handled with the participation of all concerned citizens at the relevant level. Public awareness and involvement depends first of all on the general public having access to information. A cornerstone in the Community legislation in public participation is Directive 90/313/EEC on the freedom of access to information on the environment²⁷. It is designed to ensure freedom of access to information and dissemination of information on the environment which is held by public authorities and to set out the basic terms and conditions on which such information should be available. It proceeds from the premise that a better public access to environmental information will contribute to improving the protection of the environment by increasing public awareness which in itself is a prerequisite for better access to justice.

Article 8 of Directive 90/313/EEC provides that by 31 December 1996, Member States shall report to the Commission on the experience gained in the light of which the Commission shall make a report to the Parliament and the Council together with any proposal for revision which it may consider appropriate.

To date the Commission has received 14 national reports; only Portugal, against which proceedings under Article 169 of the Treaty have been commenced, has not yet sent its report. Of the 14 national reports received, none were submitted within the deadline set out in the directive. The Commission is currently assessing these national reports in order to prepare its report, together with a proposal for a review of the directive, to be presented to the Parliament and the Council.

In preparing its report, the Commission will take into account the recommendation of a workshop organised as an IMPEL project (and accordingly co-financed) to be held in January 1998.

²⁶ OJ No C188, 22.7.1995, p.1

²⁷ OJ No L158, 7.6.1996, p.56

In addition to action at Community level, there have also been developments in relation to access to environmental information and public participation at the international level. Following the adoption of guidelines on access to environmental information and public participation in environmental decision-making in the 1995 Sofia Ministerial Conference, and the political commitments made on that occasion to turn the guidelines into a wholly binding instrument, negotiations for a Convention started in 1996. The Commission initially participated as an observer but, following the adoption of Council conclusions authorising the Community to participate in the negotiations, the Commission then negotiated on behalf of the Community on matters covered by Community competence. The negotiations are anticipated to end in March 1998.

3.3 Reporting requirements

Up to 1991, numerous sectoral Community Directives relating to the environment required the Member States to establish a report on the measures taken to implement the directives. On the basis of these national reports, the Commission then prepared a consolidated report. Provisions on the establishment of these reports stipulated different intervals between reports and set out different requirements for their contents. Other Community directives did not even call for such reports.

In order to harmonize and supplement these provisions, Directive 91/692/EEC, standardizing and rationalizing reports on certain directives relating to the environment²⁸, harmonized and supplemented already existing reporting provisions in order to improve them on a sectoral basis and to make them more consistent and complete. Under Directive 91/692/EEC, Member States must now submit reports on the different sectors at three-yearly intervals on the basis of a questionnaire produced by the Commission with the assistance of a management committee. The Commission is then required to produce a consolidated report on the sector concerned within nine months of the submission by Member States of their respective reports. The first reports for the various sectors cover the period 1993 to 1995 inclusive and should have been submitted to the Commission within nine months of the end of that period. Unfortunately, due to delay on the part of the Member States in submitting these reports in time, it has not been possible to adhere to the time limits set out in Directive 91/692/EEC. The Commission is currently working on the first consolidated report which will cover the water sector. It is hoped that the report, covering some thirteen directives, will be published in early 1999.

With regard to the waste sector, Member States are due to submit their national reports by September 1998 for the period 1995-1997. It is anticipated that the Commission's report will be finalised by June 1999. So far as the shipment of hazardous waste is concerned, the Commission will publish a report in the summer of 1998, in conformity with Article 41(2) of Regulation (EEC) 259/93 on the supervision and control of shipments of waste within, into and out of the European Community²⁹.

3.4 Commission Publications on Implementing Community and International Environmental Law

As part of its commitment to ensuring the transparency of its activities and to making available as much information on environmental matters as possible to the authorities in the Member States,

²⁸ OJ No L377, 31.12.1991, p.48

²⁹ OJ No L30, 6.2.1993, p.1

industry, NGOs and the general public, the Commission issues specific publications from time to time. The following publications (all of which are available from the DG XI Documentation Centre³⁰ or from the Office for Official Publications of the European Communities³¹) have either been issued in relation to activities carried out during (or, in some cases, before) the period covered by this Survey or issued during the period covered by this Survey or in early 1998:

- **General Policy and Overviews**

- Agenda 21. The first five years. – Implementation of Agenda 21 in the European Community* (see below)

- **Water**

- The implementation of Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources*
- The impact of Directive 76/464/EEC and its daughter directives on the most important surface waters in the Community
- Evaluation of Directive 76/464/EEC regarding List II substances on the quality of the most important surface waters in the Community
- Quality of Bathing Water (1997 season)*

- **Air**

- Clean Air for Europe's Cities – the ambient air quality framework directive*

- **Industry (includes biotechnology, chemical substances, industrial risks.)**

- Notification of new chemical substances in accordance with Directive 67/548/EEC on the classification, packaging and labelling of dangerous substances. No-longer polymers list
- Technical Guidance Document in support of Commission Directive 93/67/EEC on risk assessment for new notified substances and Commission Regulation (EC) No 1488/94 on risk assessment for existing substances
- Notification of new chemical substances in accordance with Directive 67/458/EEC on the classification, packaging and labelling of dangerous substances – Technical Guidance for the completion of a summary notification dossier for a new chemical substance utilising the structured notification interchange format (SNIF) - Base set and levels 1 and 2

- **Waste**

- Communication from the Commission to the Council and the European Parliament concerning the application of Directives 75/439/EEC, 75/442/EEC/ 78/319/EEC and 86/278/EEC on Waste Management

- **Community Environment Funding**

- Report pursuant to Article 7(3) of Regulation (EC) No 1404/96 – LIFE (COM 97) 633 final

- **Nature Protection and Biodiversity**

³⁰ TRMF 0/50, 200, Rue de la Loi, B-1049 Brussels, Belgium (Fax +32 2 2996198)

³¹ 2, Rue Mercier, L-2985, Luxembourg (Fax +352 488573)

- Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) EC Annual Report 1994
- Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES) EC Annual Report 1995
- First Report on the Implementation of the Convention on Biological Diversity by the European Community*
- **Nuclear Safety and Civil Protection**
 - Communication from the Commission concerning the implementation of Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of the workers and the general public against the dangers arising from ionising radiation (OJ No C 133, 30.4.1998, p.3).

In addition to the above, 7 volumes of all European Community Environment Legislation are available in 9 language versions. The volumes gather together official texts published in the Official Journal between 1 October 1991 and 30 June 1994. Legislation before 1 October 1991 is also available in 7 separate volumes.

All the above publications are described on the Commission's Internet site "Europa" at the following address: http://www.europa.eu.int/comm/dg11/index_en.htm.

(* Those documents marked with an asterisk are free and available from the DG XI Documentation Centre).

3.5. IMPEL (the European Union Network of the Implementation and Enforcement of Environmental Law)

3.5.1 Background to and structure of IMPEL

Environmental legislation has grown considerably in recent times. The introduction of new legislation was followed by concerns within the Member States about the comparability of standards of enforcement in the different countries. These concerns were confirmed by an investigation, conducted by the Netherlands Ministry of Housing, Spatial Planning and Environment, which found inconsistencies in a number of areas such as methods of permitting, application of technical standards, and public access to information. The results of this investigation were presented at an informal meeting of the Community Environment Ministers in 1991, where it was agreed that

"...it would be desirable as a first step to establish a Network of representatives of relevant national authorities and the Commission in the field of enforcement, primarily aimed at the exchange of information and experience in the field of compliance and enforcement, and at the development of common approaches at a practical level."

As a consequence the "Chester Network" was established, so called because it met for the first time in Chester during the United Kingdom's Presidency in 1992.

The Community's Fifth Environmental Action Programme³² called for a body similar to the Chester Network. Thus, during the IMPEL Plenary Meeting in December 1993, the Commission and Member States agreed to modify the terms of reference of the Network with a wider mandate for the application and control of environmental legislation. In addition, it was agreed that the Network should look at how to ensure better implementation and enforcement by regional and local bodies. The modified Network became known as the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL).

In the Commission's Communication³³ it was stated that:

*"The Commission will consider the existing position of the informal IMPEL network as a useful instrument of co-operation and capacity building, and will make proposals for improving, developing and reorganising its tasks."*³⁴

In the Resolution on the Commission's Communication, the Council recognised that IMPEL was a very useful informal instrument for the improvement of implementation, inspection and enforcement, inter alia through exchange of information and experiences on different administrative levels, as well as through training of inspectors and in-depth discussions on environmental issues and enforcement aspects. It considered that the IMPEL network should also play in the future an important role during the different stages of the regulatory chain and could in particular give advice - on request or on its own initiative - on general questions regarding implementation and enforcement as well as on new draft proposals for Community legislation, in particular where the input of practical experiences is necessary. It considered also that IMPEL could be further developed, inter alia by asking it to consider whether it should broaden the scope of its mandate and the focus of its current work. It also recognised that the IMPEL network would require appropriate financial means and a secretariat to carry out its functions.³⁵

A modified structure, role and scope for IMPEL

Until then IMPEL had focused on the regulatory cycle in connection with industrial installations and their impact on the environment. In 1997, in line with the considerations in the Commission's Communication and related Council Resolution, IMPEL took decisions on a modified structure and a wider role and scope.

IMPEL is now structured in such a way that it reflects its main tasks. These concern legal policy and implementation on the one hand and inspection, practical application and enforcement issues on the other. The latter include technical issues, and environmental management (which includes training and exchanges of inspectors within and outside the European Union). Despite these changes, it has still maintained its informal character.

a) Plenary Meeting

³² "Towards Sustainability", a European Community programme of policy and action in relation to the environment and sustainable development - COM (92)23 final, 27.3.1992

³³ See footnote 1 above

³⁴ Para 56, p.20

³⁵ Para 19, p.6

IMPEL is managed by a bi-annual Plenary Meeting which brings together representatives from all the Member States and is jointly chaired by the Commission and the Member State holding the EU Presidency at the time.

The Plenary Meeting is the main body for strategic discussions and final decisions as well as the forum which is formally responsible for IMPEL activities and products. It acts as an umbrella organisation for IMPEL. The representatives of Member States need to have appropriate seniority, knowledge and experience of the application and enforcement of environmental law both at national and regional level. Therefore, they are usually high level officials. They must be able to give the necessary feedback within their own country and also make sure they get sufficient support and information from the national and/or regional authorities, as the case may be, the idea being eventually to set up national networks, involving different levels of authority at national, regional and local levels, to be linked with IMPEL through the Member States' representatives.

The Plenary Meeting approves the work programmes of the Standing Committees (see below), approves reports and decides on their dissemination. It also agrees on how the budget allocated for IMPEL should be used and can make proposals on the budgetary needs of IMPEL.

b) Standing Committees

There are two Standing Committees (SCs), which deal with the contents of IMPEL's work. The participants are competent officials (from the Member States and the Commission). The SCs prepare annual programmes, reports and budget and project proposals for submission to the Plenary Meeting. They also monitor the work of the ad hoc Working Groups.

SC1 on legal policy and legal implementation issues comprises policy makers and officials with a legal background and experience mainly in enforcement. In view of the Commission's role in relation to policy and Community legislation, the Commission ensures co-ordination with other current activities in the Community context in the field of policy and legal implementation.

SC2 deals with technical issues, inspection, practical application and enforcement, environmental management instruments and training/exchange programmes. This committee primarily comprises enforcement officers (national and regional), including inspectors, together with the Commission.

Each SC is co-chaired by a Member State representative (usually from the Member State holding the EU Presidency at the time) and a senior official from the Commission.

c) Ad hoc Working Groups

The SCs can set up ad hoc Working Groups to consider specific issues, in which not all Member States necessarily have to participate. Such Working Groups have only a limited duration and are dissolved when the task has been completed. The SCs draw up terms of reference for these ad hoc Working Groups, containing tasks and products, participants, chairmanship and secretariat, meetings (number, duration, location, languages), and financial arrangements.

d) The IMPEL Secretariat

In accordance with the Council Resolution on the Commission's Communication, both the Commission and the Member States have made funding available to enable the IMPEL Secretariat to function properly. The Commission hosts the Secretariat in Brussels and was staffed during the

period of this Survey by two full-time national experts on detachment from Member States' administrations.

The Secretariat is the heart of the IMPEL Network. It maintains the contacts with the national coordinators and other members of the Network. It has a supportive role towards the Chairmen of the Plenary Meeting and the SCs. It provides the Network with information stemming from the Commission.

Participation of other countries and bodies

a) Central and Eastern European countries and Cyprus

Special training programmes on implementation and enforcement issues are being set up for the eleven countries which have applied to join the EU in the coming years in order to assist them in approximating their environmental legislation to that of the Community. A first exchange programme, in which IMPEL members will also participate, will take place in Hungary in February 1998. Officials from the acceding countries will be invited to participate in seminars and workshops, or on an ad hoc basis in Working Groups, if deemed appropriate.

b) Other European countries

These countries can be invited to participate in Working Groups, if their specific contribution is considered desirable. For Norway this has already happened in the case of the Working Group on transfrontier shipment of waste and the invitation to participate has also been extended to other Working Groups.

c) European Environment Agency

Although the European Environment Agency is not a member of IMPEL and does not, as yet, have any formal relationship with it, it is hoped to develop a closer relationship in the future. For the moment, an exchange of information takes place on an ad hoc basis. However, during the period of the Survey, the Agency did attend an IMPEL Plenary meeting to make presentations on environmental information and DOBRIS.

Work accomplished in the past (period up to October 1996)

The work carried out up to October 1996 included the following "products":

- A comparison of technical standards and pollution control technology for various types of facilities in each of the Member States, resulting in technical guidelines for regulatory bodies for a number of industries.
- Exchange of information and comparison of experience on the permitting of industrial installations in the Member States; examination of the application of Community legislation in Member States and the practical aspects of the regulatory process.
- Comparison of enforcement arrangements within Member States, dealing with compliance assessment and inspection (1995).
- Exchange programmes for inspectors, providing an in-depth understanding of the regulatory systems in each country and facilitating the future exchange of information

between inspectorates (the Netherlands, 1994; Denmark, 1994; Germany, 1995; France, 1995; United Kingdom, 1995; Austria, 1996; Ireland, 1996).

- Examination and publication of a report on the monitoring and enforcement mechanisms for the transfrontier shipment of hazardous waste within the EU (1996).

3.5.2 Activities and products from October 1996 - 31 December 1997

Meetings Held

Two plenary meetings were held, one in November 1996 and the other in May 1997, during which the modified structure, role and scope of IMPEL were discussed and agreed. In addition to discussions on, inter alia, exchange programmes in Ireland (July 1996) and Portugal (October 1996), the November Plenary Meeting adopted two reports (“Technical guidelines for board manufacturing” and “Making sense of NONS” (European inspection project on the Notification of New Substances)). The May Plenary Meeting approved, inter alia, a project on Environmental Enforcement Practices (PEEP), including a trial run in five countries and decided that a reference book for inspectors (IMPEL-INSPECT) could be developed (further information may be found in chapter 3.5.3 on the 1998 Work Programme below).

Belgium reported on the Exchange Programme, which had taken place in its country in March.

(The second Plenary Meeting for 1997 was postponed until January 1998).

Meetings of Standing Committees 1 and 2, October, 1997

A Task Force had met in July 1997 to consider the setting up of future projects under the new structure of IMPEL, and based on the outcome of this meeting, terms of reference for projects to be included in the 1998 Work Programme were drafted, and were subsequently discussed in the SC meetings. This resulted in a draft Work Programme to be adopted by the Plenary Meeting in January 1998 (see chapter 3.5.4 below).

Report of the IMPEL Budget 1997

Financing in 1997

In 1997, for the first time, it was agreed to make available €500,000 for IMPEL work from the DG XI budget. The following table summarises the financing by the Commission from this budget in 1997 and the purposes for which the financing was used.

TITLE	ALLOCATION FROM IMPEL 1997 BUDGET (€)	BENEFICIARY	COMMENTS
INTERRELATIONSHIP BETWEEN DIFFERENT INSTRUMENTS	29.087	ITALY (ARPA REGION)	SEMINAR ON RELATIONSHIP BETWEEN EIA, IPPC AND EMAS
INTEGRATED PERMITTING	40.096	UNIVERSITY	
PRACTICAL GUIDE ON IMPLEMENTATION OF EC ENVIRONMENTAL LAW	29.211	CONSULTANT	100% COMMISSION FINANCING. CANCELLED -CONSULTANCY BELIEVED BANKRUPT. HALF ONLY HAD BEEN PAID BUT MONEY LOST TO IMPEL.
WORKSHOP ON ACCESS TO ENVIRONMENTAL INFORMATION	27.448	NGO	
STUDY/SEMINAR ON ACCESS TO JUSTICE AND COMPLAINTS/ LEGAL STANDING IN COM LAW	36.566 39.598 23.658	CONSULTANT CONSULTANT UNIVERSITY	100% COMMISSION FINANCING
B1 IMPEL INSPECT	31.435	NETHERLANDS (VROM)	
B2 PEEP	40.520	NETHERLANDS (VROM)	
EXCHANGE PROGRAMME EU-MS	84.254	NETHERLANDS (VROM)	
GOOD PRACTICE GUIDE FOR ENFORCEMENT	13.602	EUROCITIES/ ROTTERDAM	
CRIMINAL ENFORCEMENT	12.991	DENMARK	
WORKSHOP ON LICENSING AND ENFORCEMENT PRACTICES IN A CEMENT PLANT USING ALTERNATIVE FUEL.	22.765	AUSTRIA (CARINTHIA REGION)	
SMEs AND THE ENVIRONMENT	6.115	LUXEMBOURG (ADMINISTRATION FOR THE ENVIRONMENT)	
TOTALS APPROVED AND COMMITTED	437.346		

In 1997 a total of €437,346 was paid by the Commission, which amounts to 87% of the amount initially earmarked (€500,000). The Commission studies in the above table were financed 100%. All the other projects were co-financed with the balance paid generally by the Member States.

Spending by Member States

The range of projects which are co-financed by the Commission and the Member States do not give a complete picture of the work of IMPEL. The Member States make additional contributions by paying their own costs in relation to such items as staff time, travel expenses and facilities. Many projects are funded entirely by the Member States and thus do not appear in the list of co-financing. Amongst work which was funded by the Member States in 1997 was the project on inspections which produced the paper on the Minimum Criteria for Inspections. A Plenary Meeting was hosted by the Netherlands, which involved considerable costs. Other important work funded by Member States included work on transfrontier shipments of waste. Other significant expenditure by the Member States not recorded above includes the payment of a salary for the Secretariat by the Netherlands during the year, and by the United Kingdom for an additional temporary (six months)

post from October 1997. However, it should not be forgotten that the Commission hosts the Secretariat, for which it pays an additional salary and costs for missions, and provides administrative support for it.

Priorities and strategy for IMPEL resources in 1997

IMPEL resources are spent on projects which further the aims of IMPEL. IMPEL recognises two main themes in its role. Firstly, legal policy and legal implementation issues and secondly technical issues related to the practical implementation and enforcement of environmental implementation. Each of these two themes now has a dedicated Standing Committee as described above.

Both these themes are reflected in the projects co-financed in 1997 which included the following:

“Legal” Projects

In 1997 IMPEL participated in three legal projects in partnership with the Commission:

“Access to Justice”. The subject is of strategic importance, as recognised by the Council and Parliament Resolutions, and IMPEL had the opportunity through this study to contribute to the development of thinking in this area which might lead ultimately to a Community instrument.³⁶

The second legal project was a workshop on “Access to Environmental Information”. This project considered the implementation issues across the Member States of Directive 90/313/EEC on the freedom of access to information on the environment³⁷.

The third partnership project on the “Practical Guide on the Implementation of Environmental Law” could not be pursued due to reasons linked to the consultants’s capacity to continue the project.

Environmental crime becomes increasingly an international problem and enforcement authorities are aware of the fact that the Member States have different rules on criminal enforcement of environmental law. A project has therefore been started to describe these differences and to clarify how every Member State handles these matters.

“Permitting” Projects

Two other projects were undertaken in relation to questions of “permitting” which is central to the role of the environmental regulator. The first project has a broad scope: to clarify the interrelationship between four different instruments: the Environmental Impact Assessment Directive³⁸, the so-called “Seveso” Directive³⁹, the Integrated Pollution Prevention and Control Directive⁴⁰ and the Eco-Management and Audit Scheme Regulation⁴¹. The goal of this project on integrated permitting is to allow Member States to share experiences and have sound information to formulate their own policies on the adoption of integrated permitting rules. It will continue during

³⁶ See chapter 2.2 above

³⁷ See chapter 3.2 above

³⁸ OJ No L175, 5.7.1985, p.40 and OJ No L73, 14.3.1997, p.5

³⁹ OJ No L10, 14.1.1997, p.13

⁴⁰ OJ No L257, 10.10.1996, p.26

⁴¹ OJ No L168, 10.7.1993, p.1

1998 (see below). In addition, a project by the University of Speyer examined in depth integrated permitting practices in a number of Member States.

Training and Exchange Projects

IMPEL places a great emphasis on training and professional exchanges of officials and this has been a very successful area of IMPEL's work for some time. 1997 saw the hosting of successful exchanges to Finland, Belgium and Luxembourg. Exchange visits are organised to give a picture of both industrial and regulatory practices in the host country, and to give the opportunity to make comparisons with existing practices in the other Member States. In order to achieve as wide an exchange of experience as possible, representatives from the Environmental Protection Agency in the United States have also been invited to participate in these exchanges. Since 1997, the applicant countries from central and eastern Europe have also participated on a regular basis.

Two important training initiatives, "IMPEL Inspect" and "PEEP" were awarded funding in 1997 to start early in 1998. This work will build on training initiatives and continue to make progress towards common training.

Evaluation of 1997 IMPEL projects - Review of strategy and priorities

As the projects funded by IMPEL in 1997 have not yet all been completed it is too early to make a full evaluation. However, it is apparent from the preceding paragraphs describing IMPEL's activities up to the end of 1997 that, of those projects which have been completed, tangible results are already evident (for example, in the Inspections Cluster, the IMPEL paper on Minimum Criteria for Environmental Inspections, which is just the first phase in an ongoing programme relating to inspections). The next Annual Survey will include a full evaluation of the concrete results of IMPEL during this period.

3.5.3 IMPEL work programme for 1998⁴²

IMPEL's work is usually organised in "clusters" which are groups of inter-related projects. Each project has a manager who reports to the "cluster" manager. In some cases a cluster does not contain a group of projects as such, because they have been amalgamated (see, for example, (a) below). This part of the Annual Survey sets out details of the clusters to be dealt with by SC1 and SC2 during 1998. Some of the projects are carried over from 1997 and where this is the case, it is indicated. The Commission has agreed to foresee, out of its budget, an amount of €400,000 to co-finance IMPEL projects during 1998.

Standing Committee 1 (legal policy and legal implementation issues)

a) Cluster: Interrelationship between different instruments (carried over from 1997)

The project (see above), which was set up in 1997 to study the relationship between four instruments (EIA, SEVESO, IPPC and EMAS), will continue its work.

⁴² Although the period covered by the Annual Survey is from October 1996 to December 1997, its 1998 Work Programme is included in response to the request of the Council in its resolution on the Commission's Communication.

Four meetings are being organised during 1998 with a view to it being finished by the end of the year.

b) Cluster: integrated permitting (carried over from 1997)

Research is carried out by a number of Member States and organisations with regard to practical aspects of establishing an integrated permit. It is considered beneficial to share the information and experience gained from these activities.

This cluster aims at the following outcome:

- individual "products" from projects which are undertaken on specific aspects of integrated permitting
- a forum for the exchange and dissemination of practical information on the establishment of integrated permits
- a mechanism for coordination of present and future projects on integrated permitting.

This cluster contains the following projects:

Study on The Evolution of Integrated Permitting and Inspections of Industrial Installations in the European Union

The study, which is being undertaken by a consultant, will, inter alia, describe the regulatory frameworks, organisational structures, formal procedures, and main characteristics of actual permitting and inspection practices and compare existing elements of integration approaches in the Environmental Impact Assessment Directive and the concepts in the Integrated Pollution and Prevention Control Directive. It will also identify particular problem areas. The final report will appear in the summer of 1999.

Workshop on licensing and enforcement practices in a cement plant using alternative fuels

A three day workshop was organised in May, 1997 in Austria with the purpose of acquiring an overview of the relevant Community legal requirements and the ways in which Member States had implemented them with particular reference to a cement plant using alternative fuels (e.g. used tyres or synthetics). It also compared licensing and enforcement practices in the Member States and proposed common approaches and solutions. The results of the workshop are to be published as a printed report.

c) Cluster: small and medium sized enterprises (SMEs)

This cluster contains the following project:

SMEs and the environment: information and education

SMEs represent approximately 89% of the companies and 65% of employment in the Community and can be a significant source of pollution. It is important, therefore, that SMEs find efficient and effective means of preventing, limiting and controlling their pollution. The ways in which training and information for SMEs can be organised will be discussed in a two day seminar to be organised by the UK in June, 1998. The results will be published.

d) Cluster: Access to justice and complaints mechanisms (carried over from 1997)

This cluster contains the following projects:

Access to justice and the environment and

Environmental complaints mechanisms in the Member States

See Chapters 2.2 and 3.5.2 above.

Environmental Liability in the European Union in relationship to Access to Justice

A two day expert seminar will be organised in January 1998 to consider the implications of the Commission's Communication, with particular regard to the proposed White Paper on Environmental Liability, and special consideration of the implications of the proposal to allow direct access to courts by NGOs and interested groups to pursue liability claims. The outcome will help the Commission and the Member States in the preparation of the Commission's eventual proposal relating to access to justice, with particular regard to the liability aspects. The proceedings will be published.

e) Cluster: criminal enforcement of European environmental law (carried over from 1997)

The Member States have different rules on the criminal enforcement of European environmental law. Also the systems and methods of criminal prosecution in practice are very different. A study undertaken in 1997 described the environmental legislation and the sanctions available in the Member States. As a logical follow-up to this study, it was decided to launch a project on criminal enforcement in practice. A report will be made by an independent consultant in July, 1998.

Standing Committee 2 (technical issues, inspection, practical application and enforcement, environmental management systems and training/exchange programmes)

f) Cluster: training and exchange (carried over from 1997)

The scope of this cluster focuses on promoting the dissemination of knowledge through the exchange and training of the inspectors of the Member States' Inspectorates and those of the 11 applicant countries with a view to eventually reaching comparable inspection systems. This cluster contains the following projects:

Reference book for environmental inspectors

It is highly desirable - and part of IMPEL's endeavours - to develop consistency of approach to environmental regulatory enforcement within the Member States. The aim of the project is to produce a reference book, which will provide environmental inspectors with guidance regarding the planning and operation of compliance and enforcement programmes. It is also to be used as a textbook in training courses for environmental inspectors. The reference book, to be drawn up by a consultant, is expected to be finalised at the end of 1998.

Project on environmental enforcement practices

This project on Environmental Enforcement Practices (PEEP) considers the latter half of the regulatory chain, i.e. the consideration of the limits and limit values set in permits, the monitoring of compliance with the conditions, and how non-compliance with the conditions is dealt with. It will involve a training exercise which is a natural progression from the current exchange programmes which end in 1998. The project will start with a pilot run in five countries. On completion of the five country reports the results will be presented to IMPEL (at the end of 1998), proposing future action.

Exchange programme for Member States' inspectors

The scope of the project is to exchange information and discuss, between the inspectors in all Member States, the ways and means of enforcing environmental laws. This is executed by means of exchange programmes in the Member States. Three of these exchange programmes take place every year, in which usually two representatives per Member State participate. Recently, officials from the 11 applicant countries have also participated. Exchange programmes will take place in 1998 in Spain, Sweden and Italy.

g) Cluster: Inspections (carried over from 1997)

Work to define minimum criteria for inspections was carried out in 1997 (see chapter 2.1 above) and forms the basis of the first project of the cluster. From this project further work has been identified on the key aspects of environmental inspections, namely:

- planning and prioritisation
- site visits
- analysis follow up and reporting at site level
- evaluation and reporting of inspection activities.

This cluster consists of the following individual projects:

Minimum criteria for inspections

See chapter 2.1 above. A seminar to disseminate the report findings, if appropriate, will be considered for 1998.

Planning, Monitoring and Reporting

The project is intended as a follow up to the minimum criteria project and addresses the planning, monitoring and reporting aspects of inspection. The objective of the project is to detail examples and guidelines for these activities in order to follow up and give guidance to the inspectorates and environmental authorities in relation to the draft minimum criteria.

Frequency of Inspection

The project focuses on the potential to set minimum frequency of inspections for certain types of industrial installations and will try to agree, if possible, a definition for industrial installations. The outcome will be a report proposing the minimum frequency of inspections, which will be disseminated through a seminar.

Guidelines for the Use of Operator Self Monitoring

Draft IMPEL papers already exist giving model conditions for the establishment and use of self monitoring conditions in permissions for discharges to water and air. It is intended to consolidate this work and to extend the scope and include similar guidance for releases of solid waste to land with a view to reports being published during 1999.

h) Cluster: transfrontier shipments of hazardous waste (an ongoing project)

Given the need for co-operation between Member States in order to make the enforcement of the Community legislation on the processing and trans-frontier shipment of waste (the SEVESO directive) more effective, the joint operational TFS enforcement project was set up under IMPEL. This resulted in the establishment of a network of competent authorities, working together structurally to improve cooperation and enforcement.

This project, which will continue for the foreseeable future, will contribute to joint enforcement activities between the Member States and draw up common procedures in a manual, that can be adopted when undertaking work on international enforcement projects. A database concerning specific waste streams and the companies involved will also be drawn up.

i) Cluster: Implementation of permitting practices

This cluster contains the following projects:

Diffuse emissions

This project considers an inventory of detection (measuring) methods and calculation methods of diffuse emissions from leakages. Several methods used in the Member States will be compared and an assessment will be made. On the basis of this assessment, advice will be formulated on how to approach problems with diffuse emissions. The resulting report will provide the permitting agencies and inspectors with guidance as to how to define and prescribe diffuse emission limits in permits. The project will continue during 1999.

Lessons learned from accidents

Member States will exchange experiences to inform inspectors of the main practical measures which are normally taken when accidents happen. The main goal is to promote actions (technical, administrative, legal, etc.) in each Member State in order to prevent other similar accidents. The "product" will be a periodic document summarising lessons learned from accidents. The duration of the project will depend on the interest shown by inspectors.

4. DETAILS OF MEMBER STATES' TRANSPOSING LEGISLATION COMMUNICATED FOR COMMUNITY DIRECTIVES WHICH HAD TO BE TRANSPOSED DURING THE PERIOD COVERED BY THE SURVEY

Community directives are usually applied in the Member States on the basis of transposing national legislation. Timely and correct transposition is crucial to the practical application of a directive. In order to achieve maximum transparency in the implementation of Community environmental law and thus assist the citizen in knowing exactly how a Community directive has been transposed into his own national legal system, it is intended that the Annual Survey will include details of Member

States' transposing legislation communicated for directives which have to be transposed during the period covered by the Survey. Thus, Annex 1 contains a table showing details of Member States' legislation communicated for the Community directives, or parts thereof, which had to be transposed between October 1996 and December 1997, namely:

- Council Directive 94/67/EC of 16 December 1994 on the incineration of hazardous waste (OJ No L365, 31.12.1994, p. 34) (Transposition date: 31 December 1996)
- Commission Directive 97/35/EC of 18 June 1997 adapting to technical progress, for the second time, Council Directive 90/220/EEC on the deliberate release into the environment of genetically modified organisms (OJ No L169, 27.6.1997, p.72) (Transposition date: 31 July 1997)
- Council Directive 97/62 of 27 October 1997 adapting to technical and scientific progress Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (OJ No L 305, 8.11.1997, p.42)
- Commission Directive 93/21/EEC of 27 April 1993 adapting to technical progress, for the 18th time, Council Directive 67/458/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous waste (OJ No L110, 4.5.1993, p.20) (part thereof)
- Commission Directive 96/54/EC of 30 July 1996 adapting to technical progress, for the 22nd time, Council Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous waste (OJ No L248, 3.9.1996, p.1) (part thereof).

It is apparent from the table in Annex 1 that not all Member States have communicated to the Commission transposing legislation of these directives or, where they have, have notified later than the deadline for transposition. If Community environmental law is to be properly implemented and enforced, it is essential that Member States comply with their obligations in this regard, not only by transposing by the due date but also by giving clear details of the transposing legislation when notifying the Commission. The Commission will continue its policy of bringing proceedings under Article 169 of the Treaty against those Member States who fail to transpose directives in time or transpose them incorrectly.

5. EXTRACT FROM FIFTEENTH ANNUAL REPORT ON MONITORING THE APPLICATION OF COMMUNITY LAW (ENVIRONMENT CHAPTER)

In order to provide a comprehensive reference work, this first Annual Survey and subsequent surveys will also include the Environment chapter from the Commission's Annual Report on Monitoring the Application of Community Law for the corresponding year. The relevant extract from the Fifteenth Annual Report, which covers 1997, is to be found at Annex 2.

The introduction to that part of the report is particularly useful in relation to the enforcement of Community environmental law in that it details the ways in which the Commission monitors the application of Community law in applying the procedure set out in Article 169 of the Treaty. In practical terms this entails the Commission checking that transposal measures are notified and that

they implement directives properly, and monitoring the application of regulations. In exercising these duties in 1997 in relation to environmental law, the Commission referred 37 cases to the European Court of Justice in Luxembourg and sent 69 reasoned opinions to the Member States. These figures demonstrate the vigilance with which the Commission monitors the implementation of Community environmental law. However, they do not give a complete picture of the situation as these procedures are only the closing stages in infringement proceedings. Before reaching that stage, many cases are terminated, usually after a warning letter is sent. Much time is spent in correspondence and contact with members of the public and national government departments in this regard.

In 1997 the Commission was able to make use for the first time of the new power granted by Article 171 of the Treaty. This provides that where a Member State fails to comply with a judgment delivered by the Court under Article 169 in which the Court has found that a Member State has failed to implement Community law, the Commission may bring the case before the Court again, requesting that financial penalties be imposed. Around fifteen cases reached the Article 171 letter or reasoned opinion stage but most Member States when threatened with this procedure and the request for penalties complied with the Court's judgment. However, in five cases the Member States persisted in their non-compliance and daily penalties were requested (fines ranging from €26,000-€246,000). The threat of such swingeing fines had a real effect in as much as, of these five cases, only one remains before the Court. Article 171 has, thus, proved to be a most effective deterrent in ensuring compliance with Community environmental law and the Commission will continue to make use of this most useful tool where appropriate in the future.

6. CONCLUSION

It is apparent from the foregoing that the Commission, with the assistance of the national and regional authorities in the Member States, IMPEL, NGOs and individuals, has started to put into effect many of the recommendations contained in its Communication on Implementing Community Environmental Law and in the related resolutions of the Council and the European Parliament. The achievements to date are considerable and have already resulted in tangible improvements at all stages of the regulatory chain. The Commission reaffirms its commitment to giving priority to measures to improve the implementation of Community law and to build upon the work already under way in cooperation with all those involved. It is to be hoped that this Annual Survey will increase awareness and improve transparency of the overall picture of implementation and enforcement of environmental law in the Member States for all actors concerned, thus enabling them to continue to contribute to the debate about how the situation may be even further ameliorated.

ANNEX 1

DETAILS OF MEMBER STATES' TRANSPOSING MEASURES COMMUNICATED FOR COMMUNITY DIRECTIVES TO BE TRANSPOSED DURING THE PERIOD COVERED BY THE SURVEY (NOTIFICATIONS RECEIVED BY 30 JUNE 1998)

MEMBER STATE	COUNCIL DIRECTIVE 94/67/ EC OF 16 DECEMBER 1994 ON THE INCINERATION OF HAZARDOUS WASTE OJ No L 365, 31.12.1994, p.34 Transposition Date: 31 December 1996	COMMISSION DIRECTIVE 97/35/EC OF 18 JUNE 1997 ADAPTING TO TECHNICAL PROGRESS FOR THE SECOND TIME COUNCIL DIRECTIVE 90/220/EEC ON THE DELIBERATE RELEASE INTO THE ENVIRONMENT OF GENETICALLY MODIFIED ORGANISMS OJ No L 169, 27.6.1997, p.72 Transposition Date: 31 July 1997	COUNCIL DIRECTIVE 97/62/EC OF 27 OCTOBER 1997 ADAPTING TO TECHNICAL AND SCIENTIFIC PROGRESS DIRECTIVE 92/43/EEC ON THE CONSERVATION OF NATURAL HABITATS AND OF WILD FAUNA AND FLORA OJ No L 305, 8.11.97 P. 42 Transposition Date: 31 December 1997	COMMISSION DIRECTIVE 93/21/EEC OF 27 APRIL 1993 ADAPTING TO TECHNICAL PROGRESS FOR THE 18 TH TIME COUNCIL DIRECTIVE 67/548/EEC ON THE APPROXIMATION OF THE LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS RELATING TO THE CLASSIFICATION, PACKAGING AND LABELLING OF DANGEROUS WASTE OJ No L 110, 4.5.1993 P. 20 (Part thereof) Transposition Date: Annex IV, Chapter 8.1 in relation to mobile gas cylinders containing butane, propane or liquid petroleum gas, 31 October 1997	COMMISSION DIRECTIVE 96/54/EC OF 30 JULY 1996 ADAPTING TO TECHNICAL PROGRESS FOR THE TWENTY-SECOND TIME COUNCIL DIRECTIVE 67/548/EEC ON THE APPROXIMATION OF THE LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS RELATING TO THE CLASSIFICATION, PACKAGING AND LABELLING OF DANGEROUS WASTE OJ L 248, 3.9.1996 P. 1 (Part thereof) Transposition date: Annex V, points F,I and J, 31 October 1997
Belgium	(1) Arrêté du Gouvernement de la Région de Bruxelles-Capitale du 15/05/1997 fixant des conditions d'exploitation pour les incinérateurs de déchets dangereux – Besluit van de Brusselse Hoofdstedelijke Regering van 15/05.1997 tot vaststelling van de uitbatingvoorwaarden voor de verbrandingsovens voor gevaarlijke afvalstoffen, Moniteur belge du 06/06/1997 Page 15237	(1) Arrêté royal du 15/12/1997 portant modification de l'arrêté royal du 10/09/1987 relatif au commerce et à l'utilisation des substances destinées à l'alimentation des animaux –Koninklijk besluit van 15/12/97 houdende wijziging van het koninklijk besluit van 10/09/1987 betreffende handel enhet gebruik van stoffen bestemd voor dierlijke voeding, Moniteur belge du	No notification to date	-(1) . Arrêté royal du 23/06/1995 modifiant l'arrêté royal du 11/01/1993 réglementant la classification, l'emballage et l'étiquetage des préparations dangereuses en vue de leur mise sur le marché ou de leur emploi - Koninklijk besluit van 23/06/1995 tot wijziging van het koninklijk besluit van 11/01/1993 tot regeling van de indeling, de verpakking en het kenmerken van gevaarlijke preparaten met het oog op het op de markt brengen of het gebruik ervan, Moniteur belge du 26/10/1995 Page 30078	No notification to date

		13/01/1998 p. 725		-(2) . Arrêté royal du 13/11/1997 modifiant l'arrêté royal du 24/05/1982 réglementant la mise sur le marché de substances pouvant être dangereuses pour l'homme ou son environnement - Koninklijk besluit van 13/11/1997 tot wijziging van het koninklijk besluit van 24/05/1982 houdende reglementering van het in de handel brengen van stoffen die gevaarlijk kunnen zijn voor de mens of voor zijn leefmilieu, Moniteur belge 26/03/1998	
Denmark	(1) Miljø-og Energiministeriets bekendtgørelse nr 660 af 11/08/1997 om godkendelse m.v. af anlæg, der forbrænder farligt affald, Miljø-og Energimin, j.nr. 4014-0013	(1) Bekendtgørelse nr. 1098 af 11/12/1992 om godkendelse af forsøgsudsætning og markedsføring af genetisk modificerede organismer. Miljømin.j.nr. D28001 - 0010 (2) Bekendtgørelse nr. 630 af 21/07/1997 om ændring af bekendtgørelse om godkendelse af forsøgsudsætning og markedsføring af genetisk modificerede organismer. Miljø-og Energimin.j.nr M6014-0001.	No notification to date	(1). Bekendtgørelse nr. 831 af 15/10/1993 om anmeldelse af nye kemiske stoffer. Miljømin., j.nr. D. 27001-0019. Lovtidende A hæfte 155 udgivet den 26/10/1993 s. 5029. MBEK. - (2) . Bekendtgørelse nr. 829 af 15/10/1993 om klassificering, emballering, mærkning, salg og opbevaring af kemiske stoffer og produkter. Miljømin.j.nr. D 27001-0017. Lovtidende A hæfte 153 udgivet den 26/10/1993 s. 4657. MBEK.	(1) . Bekendtgørelse nr. 800 af 23/10/1997 om ændring af bekendtgørelse om anmeldelse af nye kemiske stoffer. Miljø-og Energimin., j.nr. M 7014-0010 - (2) . Bekendtgørelse nr. 829 af 06/11/1997 af Listen over farlige stoffer - 03 . Bekendtgørelse nr. 801 af 23/10/1997 om klassificering, emballering, mærkning, salg og opbevaring af kemiske stoffer og produkter. Miljø- og Energimin., j.nr. M 7014-0004
Germany	(1). Gesetz zum Schutz vor schädlichen Umwelteinwirkungen durch Luftverunreinigungen, Geräusche, Erschütterungen und ähnliche Vorgänge (Bundes-Immissionsschutzgesetz- BImSchG) i.d.F der Bekanntmachung vom 14/05/1990 (BGBl. I S. 880), zuletzt geändert am 09/10/1996 (BGBl. I S. 1498) (2) . Siebzehnte Verordnung zur Durchführung des Bundes-	(1) Zweite Verordnung zur Änderung der Gentechnik - Verfajrensverordnung vom 10/12/1997, Bundesgesetzblatt Teil I vom 16/12/1997 Seite 2884	No notification to date	(1) . Verordnung zur Novellierung der Gefahrstoffverordnung, zur Aufhebung der Gefährlichkeitsmerkmaleverordnung und zur Änderung der Ersten Verordnung zum Sprengstoffgesetz vom 26/10/1993, Bundesgesetzblatt Teil I vom 30/10/1993 Seite 1782 - (2) . Zweites Gesetz zur Änderung des Chemikaliengesetzes vom 25/07/1994, Bundesgesetzblatt	(1) . Bekanntmachung einer Änderung der Liste der gefährlichen Stoffe und Zubereitung nach § 4a der Gefahrstoffverordnung vom 07/03/1997, Bundesanzeiger Nr. 110a vom 19/06/1997

	<p>Immissionsschutzgesetzes (Verordnung über Verbrennungsanlagen für Abfälle und ähnliche brennbare Stoffe - 17.BimSchV) vom 23/11/1990, Bundesgesetzblatt Teil I vom 30/11/1990 Seite 2545 (3) . Erste Allgemeine Verwaltungsvorschrift zum Bundes- Immissionsschutzgesetz (Technische Anleitung zur Reinhaltung der Luft-TA Luft) vom 27/02/1986, Gemeinsames Ministerialblatt des Bundes (Hrsg.: Bundesinnenministerium) S.95, 202 (4) . Verordnung zur Durchführung des BundesImmissions- schutzgesetzes (Verordnung über genehmigungsbedürftige Anlagen- 4. BImSchV) vom 24/07/1985, (BGBl. I S.1586), zuletzt geändert am 26/10/1996 (BGBl. I S. 1782) (5) . Verordnung zur Durchführung des Bundes Immissions- schutzgesetzes (Verordnung über die Genehmigungsverfahren- 9. BImSchV) vom 29/05/1992, (BGBl.I S. 1001), zuletzt geändert am 09/10/1996 (BGBl. I S. 1498) (6)Gesetz überdie Umweltverträglichkeitsprüfung (UVP) vom 12/02/1990, (BGBl.I S.205), zuletzt geändert am 23/11/1994 (BGBl. I S. 3486) (7) Gesetz zur Förderung der Kreislaufwirtschaft und Sicherung der umweltverträglichen Beseitigung von Abfällen (Kreislaufwirtschafts- und Abfallgesetz – KrW-/AbfG) vom 27/09/1994, Bundesgesetzblatt Teil I Seite 2705 (8) . Verordnung zur Bestimmung von besonders überwachungsbedürftigen Abfällen</p>			Teil I vom 29/07/1994 Seite 1689	
--	--	--	--	----------------------------------	--

	<p>(Bestimmungsverordnung besonders überwachungsbedürftige Abfälle – BestbÜAbfV) vom 10/09/1996, Bundesgesetzblatt Teil I Seite 1366 (9) . Gesetz über die Überwachung und Kontrolle der Grenzüberschreitenden Verbringung von Abfällen (Abfallverbringungsgesetz – AbfVerbrG) vom 30/09/1994, Bundesgesetzblatt Teil I vom 11/10/1994 Seite 2771</p> <p>(10) Verordnung über Verwertungs- und Beseitigungsnachweise (Nachweisverordnung- NachwV) vom 10/09/1996, Bundesgesetzblatt Teil I Seite 1382</p> <p>(11) . Gesetz zur Ordnung des Wasserhaushalts (Wasserhaushaltsgesetz – WHG) i.d.F der Bekanntmachung vom 23/09/1986 (BGBl. I S. 1529, 1654), zuletzt geändert am 12/02/1990 (BGBl. I S. 205)</p> <p>(12) . Gesetz zur Umsetzung der Richtlinie 90/313/EWG des Rates vom 07/06/1990 über den freien Zugang zu Informationen über die Umwelt vom 08/07/1995, Bundesgesetzblatt Teil I vom 15/07/1995 Seite 1490</p> <p>(13) . Gesetz über die Vermeidung und Entsorgung von Abfällen (Abfallgesetz-AbfG) vom 27/08/1986, Bundesgesetzblatt Teil I vom 30/08/1986 Seite 1410</p>				
Greece	No notification to date	No notification to date	No notification to date	No notification to date	No notification to date
Spain	(1). Real Decreto número 1217/97 de 18/07/1997, sobre incineración de residuos peligrosos y de modificación del Real Decreto 1088/92, de 11 de septiembre, relativo a las	(1) . Real Decreto número 951/97 de 20/06/1997, por el que se aprueba el Reglamento General para el Desarrollo y Ejecución	(1) Real Decreto número 1193/98 de 12/06/1998, por el que se modifica el Real Decreto	(1) . Real Decreto número 363/95 de 10/03/1995, por el que se aprueba el Reglamento sobre notificación de sustancias nuevas y clasificación, envasado y	(1) . Orden de 30 de junio de 1998 por la que se modifican los anexos I, III y IV del Reglamento sobre notificación de sustancias nuevas y

	instalaciones de incineración de residuos municipales, Boletín Oficial del Estado número 189 de 08/08/1997 Página 24183 (2) . Corrección de erratas del Real Decreto 1217/97, de 18 de julio, sobre incineración de residuos peligrosos y de modificación del Real Decreto 1088/92, de 11 de septiembre, relativo a las instalaciones de incineración de residuos municipales, Boletín Oficial del Estado número 15 de 17/01/1998 Página 1853 (Marginal 1004)	de la Ley 15/94, de 3 de junio, por la que se establece el régimen jurídico de la utilización confinada, liberación voluntaria y comercialización de organismos modificados genéticamente, a fin de prevenir los riesgos para la salud humana y el medio ambiente, Boletín Oficial del Estado número 150 de 24/06/1997 Página 19385 (Marginal 13741)	1997/1995, de 7 diciembre, por el que se establecen medidas para contribuir a garantizar la biodiversidad mediante la conservación de los hábitats naturales y de la fauna y flora silvestres, Boletín Oficial del Estado número 151 de 25/06/1998 Página 20966 (Marginal 15063)	etiquetado de sustancias peligrosas, Boletín Oficial del Estado número 133 de 05/06/1995 Página 16544 (Marginal 13535)	clasificación, envasado y etiquetado de sustancias peligrosas, aprobado por Real Decreto 363/1995, de 10 de marzo. Boletín Oficial del Estado número 160 de 6 de julio de 1998 Página 22374 (Marginal 16039)
France	(1) Arrêté ministériel du 10/10/96 relatif aux installations spécialisées d'incinération et aux installations de cofincinération de certains déchets industriels spéciaux, Journal Officiel du 16/10/1996 Page 15098	No notification to date	No notification to date	(1) . Décret Numéro 94-181 du 01/03/1994 relatif aux principes de classement et à la déclaration des substances et préparations dangereuses et modifiant le Code du travail (deuxième partie: Décrets en Conseil d'Etat), Journal Officiel du 02/03/1994 Page 3381 (2) . Arrêté ministériel du 20/04/1994 relatif à la déclaration, la classification, l'emballage et l'étiquetage des substances, Journal Officiel du 08/05/1994 Page 6753	No notification to date
Ireland	European Communities (Licensing of Incinerators of Hazardous Waste) Regulations, 1998, S.I.No. 64/1998.	(1) European Communities (Genetically Modified Organisms (Amendment) Regulations 1997, S. I. No. 332/1997	No notification to date	(1) . European Communities (Classification, Packaging, Labelling and Notification of Dangerous Substances) Regulations, 1994, Statutory Instruments number 77 of 1994 (2) . European Communities (Classification, Packaging and Labelling of Dangerous Preparations) Regulations, 1995, Statutory Instruments number 272 of 1995	(1) . European Communities (Classification, Packaging, Labelling and Notification of Dangerous Substances) (Amendment) (Amendment) Regulations, 1998, Statutory Instruments number 317 of 1998

Italy	No notification to date	(1) Decreto ministeriale del 28/7/1997, sostituzionee dell'allegato III al decreto legislativo 3 marzo 1993, no. 92, relativo all'attuazione della direttiva 90/220/CEE del Consiglio concernente l'emissione deliberata di microorganismi geneticamente modificati, Gazzetta Ufficiale – Serie generale – del 10/10/1997	No notification to date	(1) . Decreto ministeriale del 28/04/1997, attuazione dell'art.37, commi 1 e 2, del decreto legislativo 3 febbraio 1997, n. 52, concernente classificazione, imballaggio ed etichettatura delle sostanze pericolose, Supplemento ordinario n. 164 alla Gazzetta Ufficiale - Serie generale - del 19/08/1997 n. 192 pag. 3	(1) . Decreto ministeriale del 28/04/1997, attuazione dell'art.37, commi 1 e 2, del decreto legislativo 3 febbraio 1997, n. 52, concernente classificazione, imballaggio ed etichettatura delle sostanze pericolose, Supplemento ordinario n. 164 alla Gazzetta Ufficiale - Serie generale - del 19/08/1997 n. 192 page 3
Luxembourg	Règlement grand-ducal du 06/10/1996 concernant l'incinération des déchets dangereux, Mémorial Grand-Ducal A Numéro 76 du 06/11/1996 Page 2202	(1) Règlement grand-ducal du 17/04/1998 déterminant les informations que doivent contenir les demandes d'autorisation de projets de dissémination volontaire d'OGM et the projets de mise sur le marché d'OGM, Mémorial A du 28/04/1998 Page 458	No notification to date	(1) . Règlement grand-ducal du 21/04/1994 complétant le règlement grand-ducal modifié du 30/12/1985 portant adaptation au progrès technique des annexes faisant partie intégrante de la loi modifiée du 18/05/1984 concernant la classification, l'emballage et l'étiquetage des substances dangereuses, Mémorial Grand-Ducal A Numéro 32 du 26/04/1994 P. 610	(1) . Règlement grand-ducal du 19/06/1998 modifiant et complétant les annexes de la loi du 15/06/1994 relative à la classification, l'emballage et l'étiquetage des substances dangereuses; modifiant la loi du 11/03/1981 portant réglementation de la mise sur le marché et de l'emploi de certaines substances et préparations dangereuses, Mémorial A Page 730
Netherlands	No notification to date	No notification to date	No notification to date	(1) . Regeling van de Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer, de Minister van Sociale Zaken en Werkgelegenheid en Cultuur van 20/06/1994 (Bekendmaking tijdstip inwerkingtreding bijlagen bij richtlijn 67//548/EEG), Staatscourant 1994, nr. 119 (2) . Regeling van de Minister van Welzijn, Volksgezondheid en Cultuur, van de Minister van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer en van de Minister van Sociale Zaken en Werkgelegenheid van 25/02/1994 (Wijziging Nadere regels verpakking en aanduiding	No notification to date

				milieugevaarlijke stoffen en preparaten), Staatscourant van 16/06/1994, nr. 112	
Austria	No notification to date	(1) Verordnung der Bundesministerin für Frauenangelegenheiten und Verbraucherschutz über die Kennzeichnung von Erzeugnissen, die aus gentechnisch veränderten Organismen bestehen oder solche enthalten, und über weitere Angaben zu deren Inverkehrbringen (Gentechnik-Kennzeichnungsverordnung), Bundesgesetzblatt für die Republik Österreich, Nr. 59/1998 ausgegeben am 26/02/1998	No notification to date	No notification to date	No notification to date
Portugal	No notification to date	No notification to date	No notification to date	(1) . Decreto-Lei n.º 82/95 de 22/04/1995. Transpõe para a ordem jurídica interna várias directivas que alteram a Directiva n.º 67/548/CEE, do Conselho, de 27 de Junho, relativa à aproximação das disposições legislativas, regulamentares e administrativas respeitantes à classificação, embalagem e rotulagem de substâncias perigosas, Diário da República I Série A n.º 95 de 22/04/1995 Página 2318 (2) . Portaria n.º 732-A/96 de 11/12/1996. Aprova o Regulamento para a Notificação de Substâncias Químicas e para a Classificação, Embalagem e Rotulagem de Substâncias Perigosas, Diário da República I Série B n.º 286 de 11/12/1996 Página 4434-(2)	No notification to date

<p>Finland</p>	<p>- (1) . Valtioneuvoston päätös ongelmajätteiden poltosta (842/97) 28/08/1997, Suomen säädöskokoelma 04/09/1997</p> <p>- (2) . Landskapslag om tillämpning i landskapet Åland av vissa riksförfattningar rörande åtgärder mot förorening av luften (21/91) 02/04/1991, Ålands författningssamling</p> <p>- (3) . Vattenlag för landskapet Åland (61/96) 12/09/1996, Ålands författningssamling 08/10/1996</p> <p>- (4) . Landskapslag om renhållning (3/81)</p> <p>- (5) . Ålands landskapsstyrelses beslut om tillämpning i landskapet Åland av statsrådets beslutet om förbränning av problemavfall (22/98) 12/03/1998</p> <p>- (6) . Landskapslag om hälsovården (36/67) 25/07/1967</p> <p>- (7) . Landskapsförordningen om hälsovården (63/73) 23/11/1973</p>	<p>(1) Sosiaali- ja terveysministeriön päätös geenitekniikalla muunnettujen organismien tutkimus- ja kehittämiskoetta sekä tuotteen markkinoille luovuttamista koskevista ilmoituksista annetun sosiaalija terveysministeriön päätöksen liiteen muuttamista (716/97) 24/07/1997</p>	<p>No notification to date</p>	<p>(1) . Kemikaalilaki (744/89) 14/08/1989, muutokset (1412/92) 18/12/1992 ja (558/93) 28/06/1993</p> <p>(2) . Kemikaaliasetus (675/93) 12/07/1993, muutos (441/94) 03/06/1994</p> <p>(3) . Sosiaali- ja terveysministeriön päätös vaarallisten aineiden luettelosta (690/93) 08/07/1993</p> <p>(4) . Sosiaali- ja terveysministeriön päätös vaarallisten aineiden luettelosta (635/94) 07/07/1994</p> <p>(5) . Sosiaali- ja terveysministeriön päätös kemikaalien luokitusperusteista ja merkintöjen tekemisestä (739/93) 30/07/1993, muutos (636/94) 07/07/1994</p> <p>(6) . Sosiaali- ja terveysministeriön päätös vaarallisen kemikaalin päällyksen turvasulkimesta ja näkövammaisille tarkoitettusta vaaratunnuksesta (1172/92) 27/11/1992</p> <p>(7) . Sosiaali- ja terveysministeriön päätös uusien aineiden ilmoitusmenettelystä (1642/93) 12/07/1993</p> <p>(8) . Landskapslag om tillämpning i landskapet Åland av riksförfattningar om kemikalier (32/90) 09/04/1990, ändring (60/95) 27/07/1995</p> <p>(9) . Landskapslag om tillämpning i landskapet Åland av riksförfattningar om explosionsfarliga ämnen (12/71) 06/04/1971, ändring (61/95) 27/07/1995</p> <p>(10) Landskapsförordning om</p>	<p>- (1) . Sosiaali- ja terveysministeriön päätös kemikaalien luokitusperusteista ja merkintöjen tekemisestä / Social- och hälsovårdsministeriets beslut om grunderna för klassificering samt märkning av kemikalier (979/97)</p> <p>- (2) . Landskapsförordning om ändring av 3 § landskapsförordningen om tillämpning i landskapet Åland av riksförfattningar om explosionsfarliga ämnen och kemikalier (41/98) 23/04/1998, Ålands författningssamling</p> <p>- (3) . Sosiaali- ja terveysministeriön päätös vaarallisten aineiden luettelosta/Social- och hälsovårdsministeriets beslut om en förteckning över farliga ämnen (164/98) 24/02/1998, Suomen säädöskokoelma/Finlands författningssamling 10/03/1998</p>
----------------	---	---	--------------------------------	---	--

				tillämpning i landskapet Åland av riks­författningar om explosionsfarliga ämnen och kemilier (5/96) 23/01/1996	
Sweden	Förordning om förbanning av farligt avfall, Svensk författningssamling (SFS) 1997:692	(1) Statens jordbruksverks föreskrifter om ändring I Statens jordbruksverks föreskrifter (SJVFS 1995:45) om genetisk modifierade växter, Statens jordbruksverks författningssamling (SJVFS 1997:84)	No notification to date	(1) . Lag om kemiska produkter, Svensk författningssamling (SFS) 1985:426 (2) . Förordning om kemiska produkter, Svensk författningssamling (SFS) 1985:835 (3) . Kemikalieinspektionens föreskrifter om förpackningar och om förvaring av hälso- eller miljöfarliga kemiska produkter, Kemikalieinspektionens författningssamling (KIFS) 1987:4, ändrad genom KIFS 1992:4, 1992:5, 1994:14 (4) . Kemikalieinspektionens föreskrifter om förhandsanmälan av nya ämnen, Kemikalieinspektionens författningssamling (KIFS) 1994:5, ändrad genom KIFS 1994:8 (5) . Kemikalieinspektionens föreskrifter om klassificering och märkning av kemiska produkter, Kemikalieinspektionens författningssamling (KIFS) 1994:12 (6) . Kemikalieinspektionens föreskrifter om varuinformationsblad, Kemikalieinspektionens författningssamling (KIFS) 1994:13 (7) . Sprängämnesinspektionens föreskrifter om varuinformationsblad för brandfarliga och explosiva varor, Sprängämnesinspektionens författningssamling	No notification to date

				<p>(SÄIFS) 1994:4 (8). Sprängämnesinspektionens föreskrifter om förhandsanmälan av brandfarliga och explosiva varor som innehåller nya ämnen, Sprängämnesinspektionens författningssamling (SÄIFS) 1994:9 (9). Sprängämnesinspektionens föreskrifter om märkning av förpackningar m.m. med brandfarliga varor, Sprängämnesinspektionens författningssamling (SÄIFS) 1995:5 (10). Djurskyddslag, Svensk författningssamling (SFS) 1988:534 (11). Djurskyddsförordning, Svensk författningssamling (SFS) 1988:539 (12). Marknadsföringslag, Svensk författningssamling (SFS) 1995:450</p>	
United Kingdom	<p>Partly transposed by means of The Hazardous Waste Incineration Directive 1998 (The Environmental Protection Act 1990). The transposition of the whole text of the Directive has not been notified to date. No notification to date on the transposition of this Directive in Gibraltar, Northern Ireland and Scotland.</p>	<p>(1)The Genetically Modified Organisms (Deliberate Release and Risk Assessment-Amendment) Regulations of 1997, S.I. No. 1900/1997 (2) The Genetically Modified Organisms (Deliberate Release and Risk Assessment) (Amendment) Regulations (Northern Ireland) 1997, Statutory Rules of Northern Ireland number 534 of 1997 No notification to date of the transposition of this Directive in Gibraltar.</p>	No notification to date	<p>(1). The Chemical (Hazard Information and Packaging for Supply) Regulations 1994, Statutory Instruments number 3247 of 1994</p>	<p>(1). The Chemicals (Hazard Information and Packaging for Supply) (Amendment) Regulations (Northern Ireland) 1997, Statutory Rules of Northern Ireland number 398 of 1997 – (2). The Chemicals (Hazard Information and Packaging for Supply) (Amendment) Regulations 1997, Statutory Instruments number 1460 of 1997</p>

**ENVIRONMENT CHAPTER FROM THE 15TH ANNUAL REPORT
ON MONITORING THE APPLICATION OF COMMUNITY LAW (1997)**

ENVIRONMENT

1. INTRODUCTION

1.1. General situation

The Commission monitors the application of Community environmental law on the basis of Article 155 of the Treaty establishing the European Community, employing the procedure laid down in Article 169. In practical terms this entails checking that transposal measures are notified and that they implement directives properly, and monitoring the application of regulations. The Commission carries out these tasks either on its own initiative or in response to complaints, questions from Members of the European Parliament and petitions received by the European Parliament exposing possible infringements of Community law. In exercising these duties in 1997, the Commission referred 37 cases to the Court of Justice and sent 69 reasoned opinions to the Member States. These general figures will give the reader some idea of the Commission's activities and the vigilance it exercises in monitoring the implementation of Community environmental law.

However, the Commission's efforts are not confined to pursuing cases in the Court or taking the final steps in the pre-litigation procedure, i.e. sending reasoned opinions and eliciting replies from the Member States. These operations represent the closing stages in infringement proceedings, but in fact many cases relating to the environment are terminated before reaching that stage, usually after a warning letter is sent before proceedings begin. A large number of the environmental problems drawn to the Commission's attention by complaints and petitions turn out not to constitute infringements, either because there is no relevant legal base in Community law or because the complainants' or petitioners' allegations are unfounded in fact or in law.

When the Commission requests information in order to examine specific cases and sends Article 169 letters to Member States asking for their observations on particular situations which appear to breach Community law, the Member States generally supply the additional information, so that a proper analysis can be made. However, if they fail to fulfil their obligation to cooperate and are very late in replying to the Commission's letters or do not reply at all, the Commission may have to commence infringement proceedings pursuant to Article 5 of the Treaty. The Commission's tasks as guardian of Community environmental law thus involves extensive correspondence and regular contacts with national government departments (package meetings or *ad hoc* meetings).

On being alerted by the Commission to a possible infringement of Community law, the competent authorities of the Member State often rectify the situation without the need for any further pre-litigation proceedings or referral to the Court of Justice. That is why the above figures for reasoned opinions and referrals give only an

incomplete picture of the Commission's real activities in monitoring the application of Community environmental law.

In 1997 the Commission decided, for the first time, to refer environmental cases to the Court of Justice in accordance with Article 171 of the EC Treaty (as amended by the Treaty on European Union). Under the second subparagraph of Article 171(2), where a Member State fails to comply with a judgment delivered by the Court on the basis of Article 169, in which it finds that the State in question has failed to implement Community law, the Commission may bring the case before the Court again, this time requesting that financial penalties (fines or penalty payments) be imposed. After referring five Article 171 cases on the environment and radiation protection in December 1996, the Commission set out its first requests for financial penalties in January 1997 (fines ranging from ECU 26 000 to ECU 30 000 per day), in accordance with the principles laid down in its two communications.¹ Moreover, Article 171 has proved its effectiveness in this instance, since four of the five cases mentioned above were settled by the end of 1997. The Commission also decided to refer two new cases to the Court, one against Greece concerning the application of the Directive on waste and the other concerning Belgium's transposal of Directive 79/409/EEC on the conservation of wild birds. In 1997, around fifteen cases reached the Article 171 letter or reasoned opinion stage, for failure to notify national implementing measures, incorrect transposal or incorrect application. These cases are described in more detail in the section below dealing with individual sectors.

Another feature of 1997 was the follow-up to the communication adopted by the Commission in October 1996, "Implementing Community Environmental Law",² which proposed three new avenues to be explored: (1) guidelines on minimum criteria for environmental inspections in the Member States; (2) national procedures for receiving and examining public complaints on the application of relevant legislation; and (3) broader access to the national courts - in connection with the application of Community environmental law - for members of the public and representative organisations, with due regard for the principle of subsidiarity. Parliament and the Council adopted resolutions in May and June 1997 welcoming the guidelines laid down in the communication and even encouraging the Commission to take them further. Specific measures to follow up the communication will be announced early in 1998. As proposed in the communication, an Annual Survey will be introduced, which will provide additional information on Community environmental law over and above that contained in the annual report on the monitoring of the application of Community law.

There have been a number of developments in Community environmental law, which will be dealt with in more detail in the section dealing with individual sectors. The following Directives were finally adopted in 1997:

- Directive 97/11/EC amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment;
- Directive 97/35/EC amending Council Directive 90/220/EEC on the deliberate release into the environment of genetically modified organisms;

¹ Memorandum on applying Article 171 of the Treaty, OJ C 242, 21.8.1996, p.6;

Method of calculating the penalty payments provided for pursuant to Article 171, OJ C 63, 28.2.97, p.2.

² COM(96) 500, 22 October 1996.

- Directive 97/49/EC amending Directive 79/409/EEC on the conservation of wild birds;
- Directive 97/62/EC amending the annexes of Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora;
- Directive 97/69/EC adapting to technical progress for the 23rd time Council Directive 67/548/EEC on the classification, packaging and labelling of dangerous substances.

The Regulation on international trade in species of wild fauna and flora in danger of extinction ("CITES Regulation") was replaced in 1997 by Regulation (EC) No 338/97, amended and clarified by Regulations (EC) No 938/97, No 939/97 and No 2307/97.

Finally, it is worth pointing out that the "IPPC Directive",³ adopted on 24 September 1996, must be incorporated into national law by 30 October 1999. This Directive belongs to a new generation of Community initiatives on the environment which adopt a broad-based approach, making due allowance for the principle of subsidiarity and encouraging the participation of all interested parties and synergy between industry and the environment. Given the novel features of this Directive, the Commission feels justified in advising Member States to begin work on transposing it as soon as possible. Indeed it has set up an informal group of experts, which met in the course of 1997, to assist the Member States in the task of transposal.

1.2. Notification of national implementing measures

Directives are legal instruments which are binding on Member States as to the result to be achieved, but leaving them free to choose the form and methods to be used. They generally require national measures to be adopted to ensure that the obligations they lay down are actually met. Each new directive sets a time-limit (usually one to two years) for Member States to amend their own law in line with its provisions. Member States must notify transposal measures by this deadline.

Quite often Member States fail to notify implementing measures for every provision of a new Directive - or in some cases for any of its provisions - in time. Infringement proceedings then have to be commenced. Except in rare cases, the delay in notifying the Commission of transposal measures reflects a delay in actual transposal.

Moreover, every time a new Directive is adopted, the Commission takes pains to remind all the Member States that transposal must take place by the prescribed deadline; it does so once after the instrument is adopted and again before the transposal deadline.

As in every previous annual report on the monitoring of the application of Community law, the Commission must report that the Member States are finding it difficult to comply with the deadlines for the transposal of Community directives on the environment. In 1997 it had to commence infringement proceedings against all the Member States at least once (in the case of the Netherlands and Denmark, once only).

³ Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control, OJ L 257, 10.10.96, p.26.

This tendency for Member States to be late in transposing directives is probably due to a number of factors.

First, the delays can sometimes be attributed to the institutional and administrative structures of the Member States. For example there are still delays in the notification of texts implementing several directives in the autonomous Finnish province of the Åland Islands. While it is up to each Member State to determine exactly how to discharge its obligations under Community law, the measures it adopts must be effective by the transposal deadline. Implementation may also be held up by specific internal institutional problems in the Member States - for example the notification of measures transposing the water Directives in the new German Länder. As for the method adopted by the Italian authorities (a special "Community Act" with general scope), it has not yet yielded the expected results and many infringement proceedings are still in motion against Italy.

Second, in extremely technical fields, such as chemicals and biotechnology, some Member States clearly have problems keeping up the transposal rate for successive adaptations to technical progress. For example in 1997 the Court of Justice held that Belgium had failed to fulfil its obligations regarding Directive 67/548/EEC on dangerous substances on several occasions.

The new Member States have now transposed nearly the entire *acquis communautaire*, although there are still occasional delays in notifying implementing measures in full.

More than ever the Commission must insist on the need for coordination between the representatives of the Member States who negotiate directives and the national bodies responsible for transposing them, so that the latter are aware of the need to begin work on transposal and are also given the opportunity to assess the changes to national law which a new Community instrument will entail.

Given the average time generally required to adapt national legal systems in order to transpose directives, particularly where the national parliament must intervene to change the law, experience suggests that Member States should take full advantage of the time allowed to carry out this exercise and thus avoid any infringement proceedings being commenced by the Commission. As the Commission systematically checks whether transposal measures are in place, infringement proceedings for delays in notifying implementing measures can be avoided only by diligently embarking on the legal and administrative task of determining exactly what has to be transposed (since certain regulations already in force may suffice) immediately after the new Community rules are adopted, and then by promulgating instruments under national law to secure transposal.

Several directives were due to be implemented in 1997:

- Directive 97/35/EC adapting to technical progress for the second time Council Directive 90/220/EEC on the deliberate release into the environment of genetically modified organisms;
- Directive 97/62/EC adapting to technical and scientific progress Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora;

- certain provisions of Directives 93/21/EEC adapting to technical progress for the 18th time and Directive 96/54/EC adapting to technical progress for the 22nd time Council Directive 67/548/EEC on the classification, packaging and labelling of dangerous substances.

The Commission keeps constant watch to ensure that Member States fulfil their obligation to notify national implementing measures, for until measures are notified, it cannot carry out its task of checking that they comply with Community law and are effectively applied.

The table at point 2.8 lists the directives in force in the environmental field and outlines progress in implementing them.

1.3. Conformity of national implementing measures

Member States are required not only to adopt measures to implement directives, but also to ensure that these measures comply with Community law. Infringement proceedings for non-conformity are in motion against all the Member States and in all areas of environmental legislation.

Before infringement proceedings reach the litigation stage, the Commission and the Member States have an opportunity to discuss areas where national legislation needs to be brought into line with Community law. In its correspondence and "package meetings" with national government departments, the Commission is able to put questions to the Member States, which can in turn express their own points of view, so that any problems outstanding can be identified. Only rarely does the Commission have to call on the Court of Justice to determine whether a Member State has failed to fulfil its obligations.

Problems of non-conformity arise for a variety of reasons. First, the apportioning of responsibilities between different levels (national, regional or other) within a Member State may make it harder to bring its whole legal system into line. Second, difficulties may arise in amending national law because of the effect of environmental provisions on other areas of State activity (agriculture, transport, industry, etc.). Another problem may be that existing national legislation covers the subject-matter of a directive, but needs amending in line with new Community requirements.

Even allowing for these difficulties, some proceedings for incorrect transposal could easily be avoided if other Member States followed the example of Denmark, Germany, Finland and Sweden and took the trouble to attach detailed explanations and concordance tables matching national provisions with the corresponding Community provisions, whenever they notified the Commission of legislation and regulations designed to transpose directives. This would cut down on misunderstandings and make problems easier to spot. It would also make conformity checks at Community level easier, while the Member States would benefit directly from having fewer infringement proceedings brought against them.

The Commission's monitoring tasks are further complicated by the choice of certain legislative techniques for transposal (e.g. the use of several legal instruments), so that there is a special need to work more closely with Member States which choose such methods, in order to explain the details of transposal.

Finally, it is worth noting the progress made by the three newest Member States - Austria, Sweden and Finland - in incorporating Community environmental law since joining the Community on 1 January 1995. The *acquis communautaire* of environmental law (the Treaties and secondary legislation) is binding on these countries as it is on the other Member States. However, according to their Act of Accession to the Community,⁴ Austria, Finland and Sweden may maintain certain standards that differ from those laid down in particular environmental directives⁵ for a transitional period of four years after accession. During this transitional period, the existing Community provisions are being revised in accordance with Community procedures. Every six months or so the Commission holds a high-level meeting with representatives of the three States to review progress in this revision process.

1.4. Correct application of directives

The Commission is also responsible for checking that Community law (directives and regulations) is properly applied. This means ensuring that Member States fulfil certain general obligations (designation of areas, implementation of programmes, etc.) and examining specific cases where a particular administrative practice or decision is alleged to be contrary to Community law. But whether the problems at issue are general or specific, the Commission's task of monitoring application is an important one.

In its scrutiny of individual cases, the Commission must analyse, from a factual and legal standpoint, problems that are very tangible and are of direct concern to the public. This can give rise to certain practical difficulties, since proper scrutiny demands detailed knowledge of the case in point, but the Commission is both geographically remote and ill-equipped to conduct investigations, having no resources to carry out inspections in the environmental field. Yet scrutiny is a vital task, because what matters most to individual citizens is that the law is effectively applied to their own particular circumstances, and because there is a danger that Community law may be formally transposed without any changes in actual behaviour to the extent required by Community rules.

Complaints and petitions sent to the European Parliament play a vital role in keeping the Commission informed of how far the obligations arising from directives and regulations are actually complied with. The Commission lacks the wherewithal to conduct its own inspections, so its only formal sources of information are periodic reports on the application of directives, drawn up on the basis of information supplied by the Member States and the Member States' replies to its requests for information. Certain well-researched complaints from non-governmental organisations are particularly useful for the purposes of assessing the effective application of Community rules.

⁴ Articles 69, 84 and 112 of the Act of Accession of Austria, Finland and Sweden provide for transitional measures for certain environmental standards.

⁵ Classification and labelling of dangerous substances, preparations and pesticides (Directives 67/548/EEC (as amended), 88/379/EEC and 78/631/EEC) in Austria, Finland and Sweden; limit value for mercury in alkaline manganese batteries (Directive 91/157/EEC) in Austria and Sweden; classification, packaging and labelling for the release on the market of plant protection products (Directive 91/414/EEC) in Austria and Finland; different limit values for benzene in petrol (Directive 85/210/EEC) and sulphur in gasoil (Directive 93/12/EEC) in Austria; restrictions on the sale and use of cadmium, arsenic, organostanic compounds and pentachlorophenol (PCP) (Directive 76/769/EEC) in Austria, Finland and Sweden. Likewise, Austria was granted derogations in respect of certain provisions of the Directive on the quality of bathing water (76/160/EEC), which it was required to implement by 1 January 1997.

Except in rare cases, complaints are concerned with problems in the application of Community law rather than the conformity of implementing measures or compliance with transposal deadlines. After falling for two years in succession, the number of complaints has risen. The largest number concerned Spain, Germany and France, while Luxembourg, Finland and Sweden were the least affected; of course, one must be careful in drawing any conclusions from this fact, given the differences in population size. The detailed figures are set out in the Annex. If we analyse the complaints registered in 1997 by broad categories, bearing in mind that they sometimes raise more than one problem, we find that one in every two complaints was concerned with nature conservation and one in every four with environmental impact, while waste-related problems were raised in one in ten cases, as were air pollution and water pollution.

Complaints and petitions were mostly about specific and very practical problems directly affecting the complainants and petitioners. This was certainly true of most complaints on environmental impact assessment (Directive 85/337/EEC) and on the deterioration of areas designated or awaiting designation as special protection areas under Directive 79/409/EEC (wild birds). These problems sometimes typify an underlying situation in one or more Member States.

The Commission's first step is to request information from the Member State regarding the facts alleged by the complainant and to draw the attention of the competent authorities to the provisions of Community law which may have been infringed. This allows the Commission to check the veracity and seriousness of the facts put forward in the complaint and may also encourage the national authorities to rectify the situation. If the information available points to a serious suspicion that Community law has been breached, the Commission either pursues a specific proceeding on the basis of the facts at its disposal or tries to identify the general problem underlying the individual infringements with a view to resolving it.

A significant number of problems mentioned in complaints stem from the incomplete or incorrect transposal of directives. This is why, without neglecting the monitoring of incorrect application cases which reveal questions of principle or administrative practices that contravene the Directives or horizontal questions, the Commission concentrates its efforts on dealing with problems of conformity. In this respect, the application of Community law might improve if national civil servants in particular were better informed about Community law and received better training.

Some of the infringements detected through scrutiny of the complaints and petitions also pose questions regarding the lack of the requisite technical infrastructure. In such cases, while monitoring the application of Community law in matters of the environment as usual, the Commission endeavours to continue its activity of improving environmental infrastructure via projects financed by the Structural Funds and the Cohesion Fund.

1.5. Freedom of access to information

Directive 90/313/EEC on the freedom of access to information on the environment is a particularly important piece of general legislation: keeping the public informed ensures that all environmental problems are taken into account, encourages enlightened and effective participation in collective decision-making and strengthens democratic control. The Commission believes that, through this

instrument, ordinary citizens can make a valuable contribution to protecting the environment.

Although all the Member States have notified national measures transposing the Directive, there are many cases where national law still has to be brought into line with its requirements. The Commission must therefore press ahead with infringement proceedings, although to date the results have not been satisfactory.

In 1997 the Commission brought a case before the Court of Justice concerning the German legislation (Case C-217/97), sent reasoned opinions to Spain, the Netherlands and Portugal and pursued proceedings against a number of other Member States. Italy has finally notified its implementing legislation, but there are still some problems of conformity.

Although the Commission is well aware of the difficulties in amending national legislation where this is likely to cause major changes in administrative practice, it is duty bound to report cases of incorrect application raised in complaints. For the most part, the complaints it receives concern the non-conformity of transposal measures. Among the most common subjects of complaint are the refusal by national authorities to respond to requests for information, the time taken for replies, a tendency by national government departments to adopt an excessively broad interpretation when allowing exceptions to the principle of disclosure, and demands for payment of unreasonably high fees.

As required by Article 8 of Directive 90/313/EEC, all the Member States - except Portugal, against which infringement proceedings have been commenced as a result - have sent a report on the experience they have gained in applying the Directive. Using these reports as a basis, the Commission will present its own report to Parliament, probably before the end of 1998, together with any proposals it has for revising the Directive.

The Commission encourages complainants to make use of the procedures available under the Directive and national transposal legislation. Under Article 4 of the Directive, decisions to reject requests for access to environmental information must be subject to administrative or judicial review. Where complaints are filed at the same time as judicial or administrative remedies, the Commission asks complainants for information regarding the outcome.

Finally, the Court of Justice will be called on to interpret certain concepts contained in the Directive following references for preliminary rulings from the German courts. In Case C-321/96, which is still pending before the Court, it has been asked to interpret the terms "information relating to the environment" (Article 2(a)), "preliminary investigation proceedings" (third indent of Article 3(2)), and the concept of the position adopted by the authorities responsible for maintaining sites of special interest in an approval procedure for a road-construction project. In Case C-296/97 the Court has received a request for a preliminary ruling on the interpretation of the concept of "preliminary investigation proceedings" with regard to access to an expert opinion forming part of an administrative procedure for the closure of a mine.

• 1.6. Environmental impact assessment

Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment is still the most widely cited legal instrument relating to matters of the environment. The Directive requires environmental issues to be taken into account in many decisions which have collective effects.

The Commission has commenced a number of infringement proceedings for incorrect transposal of the Directive, the Member States in question having taken too long to amend their national legislation properly. For example, Belgium has still not fully implemented the judgment given by the Court of Justice on 2 May 1996 for incorrect and incomplete transposal of the Directive (Case C-133/94). Under Article 4 of the Directive, Member States must subject projects to an environmental impact assessment where they consider that their characteristics so require. Upholding the Commission's view, the Court found that this Article cannot be interpreted in such a way as to allow Flanders Region, in implementing the Directive, to exclude from assessment totally and definitively one or more classes of projects covered by Annex II. The Court also criticised the lack of a cross-border consultation procedure between Brussels and Flanders Regions. While the latter situation has since been rectified, the same cannot be said for the other point at issue and the Commission is pursuing Article 171 infringement proceedings accordingly.

Three actions concerning incorrect transposal are still before the Court - against Germany (Case C-301/95), Ireland (Case C-392/96) and Portugal (Case C-150/97). Infringement proceedings are also under way against other Member States, such as Italy, Spain and Greece.

Several Member States have said they will continue work on amending national transposal measures in the light of Directive 97/11/EC amending Directive 85/337/EEC.⁶ The deadline for implementing Directive 97/11/EC is 14 March 1999, but earlier transposal is always possible. However, the Commission cannot accept a legal vacuum pending transposal of the new Directive.

Directive 97/11/EC makes four major amendments to the original text of Directive 85/337/EEC. First, the scope of Annex I (compulsory impact assessment in all cases) is considerably broadened to cover 21 categories of projects instead of 9. Second, Article 4 of Directive 85/337/EEC is amended to introduce a procedure based on the selection criteria set out in Annex III ("screening procedure") for case-by-case examinations or the setting of thresholds above which impact assessment is compulsory; moreover, this amendment, which provides a framework of objective criteria for decisions by the Member States on whether to subject a category of projects to an impact assessment, is in line with recent judgments by the Court of Justice.⁷ Third, the amended version of Article 5 provides that, if the developer so requests, the authority responsible for authorising projects must give an opinion on the content and the exact scope of the information to be supplied in

⁶ Council Directive 97/11/EC of 3 March 1997 amending 85/337/EEC on the assessment of certain public and private projects on the environment, OJ L 73, 14.3.97, p.5.

⁷ In a judgment given on 24 October 1996 in Case C-72/95 (*Aannemerbedrijf P.K. Kraaijeveld BV et al. v Gedeputeerde Staten van Zuid-Holland*) following a reference for a preliminary ruling from the Dutch *Raad van State*, the Court of Justice held that a Member State is exceeding the limits of its discretion to determine which projects are unlikely to have significant effects on the environment, if it excludes in practice any assessment for a whole category of projects, unless this category, when viewed as a whole, can be regarded as not being likely to have significant effects on the environment.

connection with the environmental impact assessment, on the basis of the specifications in Annex IV ("scoping procedure"). Finally, the amended version of Article 7 incorporates in Community legislation, with regard to relations between Member States, the main provisions of the Espoo Convention, which entered into force in September 1997.⁸

Parliament is still examining the proposal for a Directive on the assessment of the effects of certain plans and programmes, adopted by the Commission in December 1996. The proposal seeks to take into account the problems of impact assessment not only in individual projects, but also at a more general level in infrastructure and town and country planning.

Many complaints received by the Commission and petitions presented to Parliament denounce, if only in passing, the incorrect application of Directive 85/337/EEC by national authorities.

Now that the Directive has helped make impact assessments more widespread in all the Member States, complaints and petitions are concerned primarily with the quality of impact assessments (especially the lack of adequate assessment of the indirect effects of the project) and the lack of weight given to recommendations arising from the evaluation of the impact assessment (particularly following public enquiries) in the final decision. This last objection partly covers cases where work is started before the impact assessment has been completed, one of the other most common complaints. And in the case of projects falling under Annex II, Member States quite often fail to give detailed grounds for their decision not to carry out an environmental impact assessment.

It is obviously difficult for Commission departments to investigate cases where the quality of impact assessments is questioned or it is contended that their findings are not properly acted upon. Although the Directive contains Articles regarding the content of impact assessments (Article 3 refers to direct and indirect effects of the project on several factors, including human beings, flora, fauna, the soil, water, air, landscape and cultural heritage), it is not always easy to contest the merits of a choice taken by the national authorities. In its judgment of 11 August 1995 concerning the construction of the Grosskrotzenburg thermal power station (Case C-431/92, *Commission v Germany*), the Court of Justice held that the Commission, when acting under the Article 169 procedure, must indicate on what specific points the requirements of a Directive have not been met, and provide appropriate evidence. Such evidence is not easy to produce, particularly if the complainants themselves are unable to supply it to the Commission.

Most of the cases brought to the Commission's attention concerning incorrect application of this Directive revolve around points of fact (existence and definition). There is therefore every chance that the most effective way to verify any infringements will be at a decentralised level, particularly through the national courts. Complainants should therefore consider making full use of internal means of redress, including judicial remedies, to enforce the rights conferred on them under the Directive. Where necessary, individuals can of course invoke the obligation of the competent national authorities (administrative or judicial authorities) to comply

⁸ Convention on Environmental Impact Assessment in a Transboundary Context, signed in Espoo, Finland on 25 February 1991, approved by the Community by Council Decision of 15 October 1996, not yet published in the Official Journal.

with Community law. However, there is little prospect in the short term of cases no longer being referred to the Commission, since at present complainants and petitioners are often denied access to the courts, being unable to prove an interest in the matter. In the Commission's view, this confirms the need for national procedures for receiving and examining public complaints and for wider access to the national courts for the public and representative organisations in matters relating to the application of Community environmental law.

The Court of Justice has still to give a preliminary ruling in Case C-81/96, in response to a request from the Dutch *Raad Van State*. The point at issue is whether the execution of a project without an environmental impact assessment and on the basis of an authorisation granted before the Directive entered into force (the initial authorisation not having been used immediately) is compatible with the Directive, given the fact that the project now comes under Annex I (compulsory environmental impact assessment in all cases).

Finally, the Commission held two informal meetings of experts from national government departments to help them with the transposal of Directive 97/11/EC. Particular attention was paid to the implementation of Article 4 in conjunction with Annexes II and III.

1.7. Action needed

The problems of implementing environmental law are the same as those highlighted in previous reports - delays in notifying national implementing measures, doubts regarding conformity and dubious, uneven or weak application of legislation, which in some cases fails to satisfy the public, as demonstrated by the usual high number of complaints and petitions.

The Commission's first response to this state of affairs is to press ahead with its reform of internal rules aimed at increasing the speed and effectiveness of infringement procedures. At the same time it will pursue the debate opened up by its communication on implementing Community environmental law (mentioned above) and will be on hand to assist the Member States in transposing and applying Community law.

Taking a more general view, the Commission is looking into possibilities regarding the implementation of Community environmental law arising from a whole series of Community initiatives in which it is actively participating: the use of environmental agreements, civil liability in environmental matters in the Member States, the extension of the activities of the informal network Impel (Implementation and Enforcement of EU Environmental Law) and the integration of environmental considerations in other Community policies.

2. SITUATION SECTOR BY SECTOR

2.1. Air

There has been a significant drop in the number of infringement proceedings in this sector, mainly because implementing measures were notified for a number of directives - albeit late and often after the Commission had commenced proceedings. Problems persist, however, in the application of directives dating from the 1980s

which are now being revised to step up the protection of the environment, and in respect of ozone and the incineration of waste.

In 1997 the Member States made up most of the delays in notifying national measures implementing Directives 93/12/EEC (sulphur content of certain liquid fuels), 94/63/EC (emissions of volatile organic compounds) and 94/66/EC (large combustion plants). As a result the Commission terminated proceedings against Ireland, Greece, Portugal, Belgium, Italy, Luxembourg, Sweden and Finland. However, delays still persist in Germany.

As a consequences of the efforts made by Austria and Finland to transpose the *acquis communautaire* in this area, the Commission terminated proceedings against them concerning Directives 80/779/EEC, 82/884/EEC and 85/203/EEC on air pollution from sulphur dioxide, lead and nitrogen dioxide.

The Commission ended the proceedings against the United Kingdom in respect of Directive 85/203/EEC (nitrogen dioxide) and against Portugal in respect of Directive 88/609/EEC (emissions from large combustion plants) after the two countries brought their legislation into line. However, Portugal has not yet correctly implemented Directive 84/360/EEC (air pollution from industrial plants), as the authorisation system does not cover all the plants referred to by the Directive.

As regards the application of these three Directives, the Commission is continuing to request information from Member States on the values measured every time it receives a complaint, and to shelve complaints or infringement proceedings whenever it finds that the values laid down in the directives are not being exceeded, a case in point being the application of Directive 80/779/EEC (sulphur dioxide and suspended particulates) at Bootle Docks in Merseyside (United Kingdom) and in Lisbon and Barreiro (Portugal).

The notification problems relating to Directive 92/72/EEC (air pollution by ozone) have now been resolved. The Commission abandoned actions before the Court against Greece and Italy (C-331/96 and C-286/96), after both countries notified implementing legislation, while Portugal and Sweden have also sent in transposal measures, albeit somewhat late. It is important that this Directive is transposed and implemented as it is concerned primarily with our knowledge of ozone pollution, public information on individual instances of pollution and the need for more effective protection. Also it is the first Community instrument to be adopted in this field and may be followed by other instruments designed to combat ozone pollution.

There have been a number of complaints about the application of the Directive in several Member States, particularly as regards the incorrect application of Article 5 in various European towns and cities. Where the ozone levels laid down in Annex I of the Directive as population information and warning thresholds (180 $\mu\text{g}/\text{m}^3$ and 360 $\mu\text{g}/\text{m}^3$) are exceeded, the authorities responsible are required to take the necessary steps to inform the public (e.g. by radio, television or the press) which values have been exceeded, which sections of the populations are affected and what precautions they should take. Proceedings have been commenced against France for failing to specify the locations of measuring stations and not informing the Commission properly of the outcome of the measures taken. Other Member States have failed to provide the requisite information on time or in full.

Directive 94/67/EC on the incineration of hazardous waste fell due for transposal on 31 December 1996. Eleven Member States have still not notified implementing measures and the Commission is pursuing infringement proceedings accordingly.

There are still certain problems with regard to the two Directives on the prevention of air pollution from municipal waste incineration plants - 89/369/EEC (new plants) and 89/429/EEC (old plants). The Commission terminated proceedings against Portugal for incorrect transposal of Directive 89/429/EEC, after having referred the matter to the Court of Justice. However, it is pursuing Article 171 infringement proceedings against Italy following the Court's judgment of 26 June 1996 censuring the Italian authorities for failing to notify measures implementing the two Directives. Proceedings have also been commenced against Belgium, as its legislation transposing the two Directives was found not to comply with requirements; the case is still at the pre-litigation stage.

In an attempt to improve air quality in Athens, the Commission launched a scheme to monitor air quality with the aid of the research centre at Ispra and the municipal corporation of Athens. The results are expected some time in 1998.

An Italian court has referred a case for a preliminary ruling - which is still pending before the Court of Justice (Case C-284/95) - concerning the interpretation and validity of Council Regulation (EC) No 3093/94 on substances that deplete the ozone layer. The main issue at stake is the question of restrictions on the production and use of halons and HCFCs, gases which are dangerous for the environment.

Finally, Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management was due to be transposed by 21 May 1998.⁹ This Directive will form the basis for a series of forthcoming Community instruments designed to set new limit values for atmospheric pollutants, starting with those already covered by existing Directives, lay down information and alert thresholds, harmonise air quality assessment methods and improve air quality management with a view to protecting human health and ecosystems.

2.2. Chemicals and biotechnology

Community legislation on chemicals and biotechnology covers various groups of directives relating to products or activities which have certain features in common: they are technically complex, require frequent changes to adapt them to new knowledge, apply to both the scientific and industrial spheres and deal with specific environmental risks. It is particularly important in this field to exercise precaution as a matter of principle.

It is because of these characteristics that most of the transitional exemptions allowing the three new Member States to maintain higher standards fall within this sector.

One of the features of Directive 67/548/EEC on the classification, packaging and labelling of dangerous substances is the frequency with which it has to be amended, in line with scientific and technical developments. Thus Council Directive 92/32/EEC amending Directive 67/548/EEC for the seventh time was due to be

⁹ OJ L 296, 21.11.1996, p.55.

transposed by 31 October 1993, while Directive 96/56/EC¹⁰ provides for the abbreviation "EEC" to be replaced by "EC", for the purpose of labelling dangerous substances, by 1 June 1998. The annexes to Directive 67/548/EEC, which contain lists of substances, are amended even more frequently, by means of Commission Directives. Certain provisions of Directives 93/21/EC¹¹ (18th adaptation to technical progress) and 96/54/EC¹² (22nd adaptation) fell due for transposal in 1997, while a second part of Directive 96/54/EC must be transposed by 1 June 1998 and Directive 97/69/EC¹³ (23rd adaptation) falls due for transposal by 16 December 1998.

With this rapid change in Community texts, delays in transposal are all too frequent. In this case the Commission automatically commences proceedings and has no hesitation in referring cases to the Court of Justice wherever necessary. Although Belgium recently began work on transposal, it still has difficulty keeping up with the implementation of successive adaptations to technical progress of Directive 67/548/EEC. On 29 May 1997 the Court of Justice found that Belgium had failed to meet its obligation to transpose on time Directives 93/21/EEC, 91/410/EEC and 93/90/EEC - all adaptations of Directive 67/548/EEC (Joined Cases C-313/96, C-356/96 and C-358/96). Meanwhile the Commission is pursuing proceedings under Article 171 of the Treaty concerning the implementation of a Court judgment censuring Belgium for its delay in transposing another four Directives in this sector.¹⁴ Finally, in another case the Court found that Belgium was late in transposing Directives 93/72/EC and 93/101/EC (Case C-190/97, judgment given on 11 December 1997).

By contrast, Italy and Portugal have rectified their shortcomings. In 1997 the Commission terminated a number of infringement proceedings against both States, including one against Italy for failing to transpose Directive 93/67/EC following the Court judgment of 14 March 1996 (Case C-238/95). The Commission also shelved proceedings against France, Greece, Denmark, Spain, United Kingdom, Austria and Finland regarding transposal of Directive 94/69/EC, while pressing ahead with the cases against Belgium, Portugal and Ireland.

The Commission has brought an action before the Court of Justice against Germany (Case C-192/97) because its legislation transposing the "Seveso" Directive (Directive 82/501/EEC on the major-accident hazards of certain industrial activities) is too restrictive with regard to the plants and substances covered. Another case has been referred to the Court against Italy (Case C-336/97) for failure to apply the Directive correctly in respect of emergency plans, inspections and control measures. In 1997 the Commission also sent a reasoned opinion to Spain for incorrect application of Directive 82/501/EEC, in particular for its unsatisfactory

¹⁰ Directive 96/56/EC of the European Parliament and the Council of 3 September 1996 amending Directive 67/548/EEC on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances, OJ L 236, 18.9.1996, p.35.

¹¹ Commission Directive 93/21/EEC of 27 April 1993 adapting to technical progress for the 18th time Council Directive 67/548/EEC, OJ L 110, 4.5.1993, p.20.

¹² Commission Directive 93/21/EEC of 30 July 1996 adapting to technical progress for the 22nd time Council Directive 67/548/EEC, OJ L 248, 30.9.1996, p.1.

¹³ Commission Directive 97/69/EC of 5 December 1997 adapting to technical progress for the 23rd time Directive 67/548/EEC, OJ L 343, 13.12.1997, p.19.

¹⁴ *Commission v Belgium*, Joined Cases C-218/96, C-220/96, C-221/96 and C-222/96 concerning Directives 93/105/EEC, 92/69/EEC, 93/67/EEC and 92/32/EEC, judgment given on 12 December 1996; the judgment also concerned failure to notify measures implementing Directive 93/86/EC (labelling of batteries) (Case C-219/96).

implementation of Article 8 (information on safety measures and on the correct behaviour to adopt in the event of an accident).

It is worth noting that, with effect from 3 February 2001, Directive 82/501/EEC will be replaced by Directive 96/82/EC, which must be transposed by 3 February 1999.¹⁵ The new Directive aims to extend the scope of its predecessor to cover more establishments which are a potential source of hazardous accidents and to develop the exchange of information between Member States.

The Commission terminated proceedings against Portugal and the United Kingdom for non-conformity of measures implementing Directive 87/217/EEC (prevention and reduction of environmental pollution by asbestos), but continued its case against Ireland. The relevant Belgian legislation is still being scrutinised for conformity.

As regards Directive 86/609/EEC (protection of animals used for experimental and other scientific purposes), the Commission commenced actions in the Court of Justice against Belgium (Case C-268/97) and Portugal (C-299/97) as their transposal legislation failed to meet the requirements of the Directive with regard to, respectively, the training of laboratory staff and the mutual recognition of the results of experiments carried out in other Member States, and inspections in establishments where animals are used. Infringement proceedings are still in motion against other States, in particular Luxembourg and Ireland, for incorrect transposal or incorrect application. Sweden has yet to notify measures implementing a number of the Directive's provisions.

The Commission still receives complaints concerning the application of the Directive, particularly as regards the use of stray dogs for experimental purposes and the welfare and accommodation afforded to animals used for experiments. As part of its investigation of these complaints - a matter of great public interest - the Commission makes use of its contacts with the national authorities to ensure that the Directive is properly observed.

The Directives on genetically modified organisms (GMOs) - 90/219/EEC (contained use) and 90/220/EEC (release) - were adapted to technical progress in 1994 by Directives 94/51/EC and 94/15/EC respectively. More recently Annex III to Directive 90/220/EEC has been amended by Directive 97/35/EC.¹⁶

Proposals have now been tabled for a more extensive revision of the two original Directives. In 1996 the Commission put forward a proposal to amend Directive 90/219/EEC, on which the Council adopted a common position in December 1997. The main aim of the proposal is to adapt administrative procedures to the real risks arising from activities involving GMOs, which will now be classified in four rather than two risk categories. The proposal defines minimum containment and control measures for each risk group and simplifies the procedure for adapting the Directive to technical progress. At the end of 1997 the Commission adopted a proposal to revise Directive 90/220/EEC, which it laid before the Community legislature. The proposal seeks to introduce a more transparent approval procedure for the marketing of GMOs, to establish a system for the labelling of

¹⁵ Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances, OJ L 10, 14.1.1997, p.13.

¹⁶ Commission Directive 97/35/EC of 18 June 1997 adapting to technical progress for the second time Council Directive 90/220/EEC on the deliberate release into the environment of genetically modified organisms, OJ L 169, 27.6.1997, p. 72.

products using such organisms, to set out common principles for risk assessment and to adapt administrative procedures to the risks involved, including indirect ones.

Luxembourg has complied with the Court's judgment of 17 October 1996 in Case C-312/95 and notified measures implementing Directives 90/219/EEC and 90/220/EEC. However, it has still not notified transposal measures in respect of Directives 94/15/EC and 94/51/EC, and the Commission has commenced proceedings in the Court because of these delays (Case C-339/97).

In a judgment given on 29 May 1997 (Case C-357/96), the Court found that Belgium had failed to fulfil its obligations by not notifying measures implementing Directive 94/15/EC. As the Belgian authorities have still not taken appropriate remedial action, the Commission is pursuing infringement proceedings under Article 171 of the Treaty. The Commission has also brought an action before the Court concerning Belgium's transposal of other Directives (Case C-343/97): Belgium has still not notified measures implementing Directive 94/51/EC and appears not to have fully transposed Directive 90/220/EEC.

The Commission brought an action before the Court against Portugal for failing to notify measures transposing Directive 94/51/EC (Case C-285/97). It also decided to refer a case against Germany for incorrect transposal of Directive 90/219/EEC, in particular Articles 14 (emergency plans), 15 (information supplied to the authorities by users in the event of accidents) and 16 (consultation between the Commission and the Member States on emergency plans and in the event of accidents).

Other proceedings in progress concern the non-conformity of transposal measures, for example in Portugal. However, the Commission has terminated a number of proceedings for failure to notify measures implementing Directive 94/51/EC (France, Ireland, Spain) and Directive 94/15/EC (United Kingdom, Germany, Spain).

2.3. Water

The Commission takes the task of monitoring implementation of Directives seriously. Around a quarter of all current environmental infringement proceedings concern water. In addition, the Commission must respond to complaints and petitions to Parliament. Consequently, it spends quite a considerable amount of time on Community legislation on water quality. This state of affairs is a result of the quantitative and qualitative significance of the responsibilities imposed on the Member States by Community law, and also the growing public concern about water quality.

A number of the proceedings currently under way relate to infringements of Directive 75/440/EEC concerning the quality required of surface water intended for the abstraction of drinking water.¹⁷ Some of the proceedings concern the drawing up of systematic organic action plans (Article 4(2)) as an essential part of the campaign to protect water quality (from excessive quantities of nitrates, pesticides, etc.) Others are concerned with the criteria for obtaining exemptions under Article 4(3). The Commission dropped Article 171 proceedings against Belgium following the

¹⁷ More precise rules were laid down in Council Directive 79/869/EEC of 9 October 1979 concerning sampling and analysis.

judgment of 11 June 1991 in Case C-290/89; legislation was passed in Wallonia on sampling and implementation of organic plans in the whole of Belgium.

However, the Commission took Germany to the Court of Justice on the basis of Article 171 (Case C-122/97), for failing to comply with the Court's judgment of 17 October 1991 in Case C-58/89. In this earlier case, the Court had found against Germany because it had no systematic plan for the country as a whole. The Commission brought two other actions against Portugal – one on organic plans (Case C-214/97) and another on sampling (Case C-229/97). Furthermore, the Commission sent France a reasoned opinion: in Brittany water polluted by nitrates had been used for the abstraction of drinking water, and no water-management plan had been drawn up to restore the quality of the water in the longer term. Proceedings continue against the Italy and the United Kingdom for failure to implement the Directive properly.

With regard to Directive 76/160/EEC concerning the quality of bathing water, monitoring of bathing areas is becoming increasingly common and water quality is improving. However, infringement proceedings are still open against roughly half the Member States in cases where implementation still falls a long way short of the requirements laid down by the Directive. Proceedings continue against the United Kingdom over Blackpool;¹⁸ it has still not fully complied with the Court's judgment. The Commission is still waiting for a judgment in Case C-92/96 against Spain. In the meantime it has brought an action against Germany (Case C-198/97). In October 1997, the Commission decided to take Belgium to the Court on the grounds that monitoring procedures were insufficient and a number of bathing areas did reach the required standards. Proceedings were started against the three new Member States for failing to notify the Commission of their national implementing measures. Proceedings against Sweden have since been terminated but those against Austria and Finland (Åland) continue.

Proceedings have been started against most Member States over their implementation of Directive 76/464/EEC on dangerous substances discharged into the aquatic environment and other Directives setting levels for individual substances. The Commission referred three cases to the Court in 1996 (Cases C-206/96, C-214/96 and C-285/96); Luxembourg, Spain and Italy had failed to notify the Commission of programmes aimed at reducing the water pollution by dangerous substances on list II in the Annex to Directive 76/464/EEC, or their programmes were unsatisfactory. The Court has not yet given judgment in these cases. In 1997 the Commission brought actions against Germany, Belgium and Portugal on similar grounds (Cases C-184/97, C-207/97 and C-213/97). The Commission has now started proceedings against other Member States. It has also brought an action against Portugal before the Court for incorrect transposal of Directive 84/156/EEC on mercury discharges (Case C-208/97).

The Commission notes that inadequate reduction programmes are at the root of many infringements of the Directive (pollution of watercourses through agricultural or industrial discharges) and that a comprehensive approach is the only way of tackling the numerous isolated problems. Furthermore, several Member States do not automatically require prior authorisation to be obtained for discharges. The cases involving Greece now before the Court provide a good example (Lake Vegoritis, C-232/95 and the Gulf of Pagasitikos, C-233/95).

¹⁸ Commission v United Kingdom, judgment given on 14 July 1993, Case C-56/90.

On 7 November 1996 the Court delivered its judgment in Case C-262/95. It found that Germany had failed to fulfil its obligations by using administrative circulars to implement Directives 82/176/EEC (mercury), 83/513/EEC (cadmium), 84/156/EEC (mercury), 84/491/EEC (HCH) and 86/280/EEC (various dangerous substances). Germany has now notified the Commission of a regulation which properly transposes the Directives, thus enabling the proceedings to be terminated.

The Court of Justice has also been asked for two preliminary rulings by the Dutch Raad Van State (Cases C-231/97 and C-232/97) concerning interpretation of Directive 76/464/EEC, and particularly the definition of the term "discharge" with regard to polluted vapours concentrating directly or indirectly in surface waters and leaching of creosoted wood (creosote is derived from tar and is used as an antiseptic) into surface waters. The second question also relates to the meaning of the term "pollution from significant sources", as it appears in Directive 86/280/EEC on limit values for discharges of certain dangerous substances included in List I of the Annex to Directive 76/464/EEC.

The Commission has dropped a number of proceedings started against Belgium, France and Spain on the grounds they had not properly implemented Directives 78/659/EEC on freshwaters supporting fish life and 79/923/EEC on shellfish waters. The three Member States have now adopted satisfactory measures. However, Article 171 pre-litigation procedures continue against Italy¹⁹ and Germany²⁰ in respect of Directive 78/659/EEC: in Italy's case, the problems centred on the designation of areas while Germany had problems with determining binding values and drawing up programmes. Article 169 proceedings continue against the United Kingdom because its implementing measures do not comply.

On 4 December 1997, the Court of Justice gave judgment in Case C-225/96 on Italy's failure to implement Directive 79/923/EEC. The Court found that Italy had not fulfilled its obligations: it had not drawn up programmes to reduce pollution, had not set values (binding or recommended) for certain dangerous substances, and had not designated all waters qualifying as shellfish waters (waters requiring protection or improvement in order to sustain the life and growth of shellfish).

Though the Commission receives many complaints concerning incorrect implementation of Directive 80/778/EEC on the quality of water intended for human consumption, not all of them result in infringement proceedings as the burden of proof is on the Commission and complainants often have problems obtaining evidence. However, in the case concerning undertakings given by the British authorities, the Commission felt that they were unsatisfactory both in substance and in form, and so the matter was referred to the Court, which has yet to deliver a judgment (Case C-340/96). Proceedings are also under way against Portugal for non-compliance. Following the submission of a petition to Parliament, the Commission has also initiated proceedings against France concerning the distribution of water in the *département* of Eure (nitrates present in water). Lastly, Austria appears to have implemented the Directive incorrectly, with the exception of the provisions relating to nitrates and pesticides.

After the Commission had commenced an action in the Court (Case C-49/97), France withdrew two administrative circulars authorising distribution of water

¹⁹ Judgment given on 9 March 1994, Case C-291/93.

²⁰ Judgment given on 12 December 1996, Case C-298/95.

containing nitrates and pesticides far in excess of the limits. Proceedings started against Belgium and Italy for exceeding pesticide limits were also dropped; both have now acted to ensure levels no longer exceed the limits..

A number of infringement proceedings have been initiated with regard to implementation of Directive 80/68/EEC on the protection of groundwater against pollution caused by certain dangerous substances. The Commission dropped the Article 171 proceedings started against Germany for failing to implement the Court's judgment of 28 February 1991 in Case C-131/88 (which found that German legislation did not comply with Community legislation) but it has referred another case, concerning non-compliance by Portugal, to the Court (Case C-183/97). The Commission is still checking whether Irish and French legislation complies. The Commission is also considering infringement proceedings against the United Kingdom. Proceedings against the region of Corinth in Greece have been dropped. In response to an Article 169 letter, Sweden has now notified the Commission of its implementing measures.

The Community has two legislative instruments aimed specifically at combating pollution from phosphates and nitrates, and the resulting eutrophication.

The first, Directive 91/271/EEC, concerns urban waste-water treatment. Member States are required to ensure that, from 1998, 2000 or 2005, depending on population size, all cities have collecting systems for urban waste water. Up to now, the Commission's task has been restricted to checking that implementing measures complied with the Directive. It initiated Article 171 pre-litigation proceedings following confirmation by the Court of Justice that Greece,²¹ Germany²² and Italy²³ had not adopted the necessary implementing measures and had thus failed to fulfil their obligations. Though Greece has since rectified the situation, the other two have not. The Commission is also continuing with proceedings against Portugal and Spain. Finland, however, has notified the Commission of its planned action programmes and proceedings have been terminated. This Directive plays a fundamental role in the campaign for clean water and against eutrophication; the Commission is particularly eager to ensure that it is implemented on time. Through the Cohesion Fund, the Community is also supporting the Member States' efforts to install the necessary facilities.

The second anti-eutrophication measure is Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources. A large number of infringement proceedings have been initiated to enforce this Directive. They have focused on a number of problems: adoption of implementing measures, designation of vulnerable areas, drawing up of codes of practice for agriculture, drawing up of action programmes and reporting on implementation of the Directive. Four cases have been referred to the Court of Justice. Case C-227/97 against Portugal has been dropped as the problems have now been resolved, but the cases against Spain, Greece and Italy continue (Cases C-71/97, C-173/97 and C-195/97 respectively). There are other proceedings under way against almost all Member States, for failure to comply with one or other of the Directive's provisions.

²¹ Judgment given on 2 March 1996, Case C-161/95

²² Judgment given on 12 December 1996, Case C-297/95

²³ Judgment given on 12 December 1996, Case C-302/95

The Court of Justice was asked for a preliminary ruling by a British court (Case C-293/97) on the definition of "waters affected by pollution". Under Article of Directive 91/676/EEC, areas draining into water known to be affected by pollution must be designated as vulnerable zones.

Lastly, it should be pointed out that Community legislation on water is currently being revised to reflect the changes which have taken place in the twenty years since the policy was first formulated. This involves introducing stricter standards and introducing the concept of river basin management. In February 1997, the Commission proposed a framework Directive aimed at harmonising water quality parameters and protecting all types of water. Once adopted and implemented, the Directive will replace a number of existing Directives on groundwater (Directive 80/68/EEC) and surface water to be used for drinking water (Directive 75/440/EEC) or for fish (Directive 78/659/EEC) or shellfish (Directive 79/923/EEC). The regulations set out in Directive 76/464/EEC (discharges into water) and related implementing Directives should also come within the scope of the framework Directive. Other subjects will continue to be dealt by specific Directives, though changes will be made to them too. The Council has already adopted a common position on a Commission proposal for amendments to Directive 80/778/EEC on drinking water. Directive 76/160/EEC on bathing water is still in the process of being revised; an amended proposal was adopted by the Commission in November 1997. Lastly, Directive 96/61/EC concerning integrated pollution prevention and control (IPPC), referred to above, contains rules on water pollution.

2.4. Noise

Implementation of Directives on noise poses fewer problems than those in other areas. The Directives in question set standards for new products. They do not apply to ambient noise from multiple sources (for example, noise in cities caused by traffic jams or industrial activity near residential areas). However, the complaints received by the Commission in fact concern ambient noise but since there is no overall Community policy regarding health and the quality of life, they cannot be addressed at Community level. Nevertheless, proceedings were initiated in respect of old and noisy aeroplanes using Brussels (Zaventem) and Ostend airports; this constituted an infringement of Directive 92/14/EEC on the limitation of the operation of certain categories of aeroplane.

The Commission took Italy and Belgium to the Court of Justice (Cases C-324/97 and C-326/97 respectively) over delays in notifying it of implementing measures for Directive 95/27/EC amending Directive 86/662/EEC on the limitation of noise emitted by hydraulic excavators, rope-operated excavators, dozers, loaders and excavator-loaders. But it dropped proceedings against Ireland, Greece, France and Luxembourg over delays in implementing Directive 95/27/EC, and against Austria over Directive 86/594/EEC on airborne noise emitted by household appliances.

The Court of Justice was asked for a preliminary ruling (Case C-389/96) concerning the relationship between Directive 80/51/EEC (aircraft noise) and Article 30 of the Treaty (free movement of goods), with regard to German regulations banning the registration of aircraft which exceeded certain noise limits but which were already registered in other Member States while allowing the continued use of craft registered in Germany before the regulations came into force. The Court has yet to deliver its ruling.

2.5. Waste

With regard to the Framework Directive on waste (Directive 75/442/EEC amended by Directive 91/156/EEC), Spain and France have still not notified the Commission of measures implementing the amended provisions and the Court of Justice duly acknowledged on 5 June 1997 that they had failed to fulfil their obligations (Cases C-107/96 and C-223/96 respectively). Since neither has complied with the judgments, the Commission is considering Article 171 proceedings.

Several Member States have yet to comply fully with the Directive, though the problems with Ireland have been solved. Most of the difficulties concern application. This is at the root of the large, though shrinking, number of complaints primarily concerned with dumping of waste (proliferation of uncontrolled dumps, controversial siting of planned controlled tips, mismanagement of lawful tips, water pollution caused by directly discharged waste). The Directive requires that prior authorisation be obtained for waste-disposal or reprocessing sites; in the case of waste-disposal, the authorisation must also lay down operating terms designed to limit the environmental impact.

However, the Commission's scope for action on waste disposal is particularly limited as there is as yet no detailed Community rules specifically addressing the issue. However, the situation is changing: in March 1997 the Commission adopted a proposal for Directive on waste disposal,²⁴ which is now being examined by the Community legislature.

As it is, the individual cases of illegal dumping which come to light suggest wider problems with implementation of the Directives governing waste; these problems may arise from a lack of satisfactory waste-management plans or, in some cases, any plan at all. The problem with environmentally unsound waste disposal in Kouroupitos in Crete, and the lack of any waste-management plan to deal with it, prompted the Commission to take Greece to the Court of Justice, which, in its judgment of 7 April 1992 in Case C-45/92 found that Greece had infringed Community law. Greece did not properly comply with this judgment, so the Commission decided to refer the matter back to the Court, in accordance with Article 171 of the Treaty. In a similar case in Campania in Italy, the Commission dropped Article 171 infringement proceedings started following the Court's judgment of 13 December 1991 (Case C-33/90). In another case, however, the Commission decided to take Italy to the Court of Justice over an illegal tip in the San Rocco valley.

Given that planning is such an important part of waste management – a point illustrated by the examples above – the Commission decided in October 1997 to start infringement proceedings against all Member States except Austria, the only one to have established a planning system for waste management. The focus of the procedures varies – from the lack of plans required under Article 7 of the framework Directive, to plans for management of dangerous waste, provided for by Article 6 of Directive 91/679/EEC, to packaging waste, for which special planning is required under Article 14 of Directive 94/62/EC. Furthermore, the Commission is continuing with Article 171 proceedings against Germany for failing to implement in full the Court's judgment of 10 May 1995 (Case C-422/92) regarding the lack of management plans for dangerous waste in a number of *Länder*.

²⁴

COM(97)105.

Under Community law, management plans must cover all waste falling within the scope of the Directive, must deal with the type, quantity and origin of the waste to be reprocessed or disposed of, and must contain general technical rules as well as special provisions on particular types of waste and specify what sites and what plant are suitable for waste disposal. Management plans must aim to limit production, reduce the amount of waste, switch to recycling, minimise the environmental risks involved in disposal and create an integrated network of waste-disposal plants with sufficient capacity. It is clear from these ambitious objectives that the Member States need to formulate plans covering their whole territory and to update them regularly.

On two occasions in 1997, the Court of Justice clarified the definition of the term "waste" as it appears in Article 1 of the Framework Directive, on which all subsequent Directives on waste are based. In its judgment of 25 June 1997 (Joined Cases C-304/94, C-330/94, C-342/94 and C-225/95, *Euro Tombesi et al*), given in response to a request for a preliminary ruling from an Italian court, the Court of Justice found that "waste" is not to be understood as excluding substances and objects which are capable of economic re-utilisation, even if the materials in question may be the subject of a transaction or quoted on public or private commercial lists. Following a request for a preliminary ruling from a Belgian court, the Court of Justice, in its judgment of 18 December 1997 (Case C-129/96, *asbl Inter-environnement Wallonie contre Région wallonne*) found that a substance is not excluded from the definition of waste in Community law by the mere fact that it directly or indirectly forms an integral part of an industrial production process.

Directive 75/442/EEC is supplemented by Directive 97/689/EEC on dangerous waste. The infringement proceedings initiated for failure to notify the Commission of implementing measures have had at least some of the desired effects. It dropped those against Ireland, Sweden, Greece, Italy, Denmark, France, Portugal, Luxembourg and Spain when it was notified of their implementing measures.²⁵

The Directives on batteries and accumulators containing certain dangerous substances (91/157/EEC and 93/86/EEC) are still a source of problems for some Member States.

Firstly, since they were not transposed on time, the Commission took several Member States to the Court of Justice for failure to notify it of implementing measures, and won. Belgium complied with the judgment on 12 December 1996 (Case C-219/96) and notified the Commission of the Belgian implementing measures for Directive 93/86/EEC. Italy took steps to rectify the situation after Article 171 proceedings were started for non-compliance with the judgment of 11 July 1996 (Case C-303/95), establishing that it had not transposed Directive 91/157/EEC. The Court has yet to deliver its judgment in Case C-286/96 concerning Directive 93/86/EEC. In its judgment of 29 May 1997 the Court found that France had not transposed the two Directives (Joined Cases C-282/96 and C-283/96). The Commission will initiate Article 171 proceedings in the hope of enforcing the judgment. Lastly, Germany was also found not to have transposed the two Directives in a judgment of 13 November 1997 (Case C-236/96).

²⁵ The Commission had brought an action before the Court of Justice (Case C-72/97) but withdrew when notified of the measures.

Secondly, the Commission has initiated infringement proceedings against Member States which have not yet set up programmes under Article 6 of Directive 91/157/EEC. Cases involving Spain (Case C-298/97) and Belgium (C-347/97) have been referred to the Court, and others involving Greece, France and Italy will be soon. Proceedings against Portugal continue but those against the United Kingdom have been dropped as the Commission has now been notified of a revised programme covering Northern Ireland and Gibraltar.

Directive 94/62/EC on packaging and packaging waste, due to be transposed by 30 June 1996, contains an innovatory Article regarding the transposal of Directives. Under Article 16 draft implementing measures must be sent to the Commission and the Member States for scrutiny prior to adoption, in accordance with the procedure laid down by Directive 83/189/EEC.²⁶ The procedure includes a three-month waiting period; only once this has expired can the Member State adopt the draft measure. This gives the Commission and the other Member States time to examine whether the draft is compatible with Community regulations on the free movement of goods and with the Directive itself, and to warn the Member State wishing to adopt it of any potential problems. By bringing together the Commission and the Member States to discuss transposition, Article 16 helps prevent problems with the measure itself or the way in which it is applied.

Member States have, on the whole, observed Article 16, though most of them were late in transposing the Directive and some have still not implemented all its provisions in full. The Commission has initiated infringement proceedings wherever it deemed necessary.

As well as seeing to official transposal of Directive 94/62/EC, the Commission has to ensure that the national implementing measures comply. A number of problems have been cleared up using the Article 16 notification procedure referred to above but, of course, that procedure does not apply to measures adopted before the Directive entered into force (on 31 December 1994). There is nothing to prevent a Member State from notifying the Commission of an old instrument, predating the Directive in question, if, in the Member State's view, it will implement that Directive in full and meet all the obligations arising from it. This is precisely what some Member States have done; others have notified the Commission of new drafts in conjunction with existing legislation and regulations. This approach enabled the Commission to identify problems with Denmark, which had banned metal drink cans and other types of non-reusable packaging. This was not permissible under the Directive, so the Commission initiated infringement proceedings.

The Commission has started proceedings against Germany and France for preventing the transportation of certain types of waste in contravention of Regulation (EEC) No 259/93 on the supervision and control of shipments of waste within, into and out of the European Community. This Regulation often causes problems in cases where the nature of the waste is at issue, as the rules to be applied differ according to the degree of toxicity of the waste. Similarly, determining the type of processing the waste will undergo once it has been shipped is also a problem: the procedures, and indeed the authorities' power to prohibit shipment differ according to whether the waste is to be disposed of or recycled.

²⁶ Council Directive of 28 March 1983 providing for a notification procedure for technical standards and regulations (OJ L 109, 26.04.1983 p. 8), last amended by Directive 94/10/EC of the European Parliament and the Council of 23 March 1994 (OJ L 100, 19.04.1994 p. 30).

Furthermore, certain courts in the Member States have asked the Court of Justice for preliminary rulings on the interpretation of Regulation 259/93. For example, in Case C-192/96,²⁷ the Dutch Raad van State asked the Court to rule on what effect sorting and similar measures would have on how the waste was categorised under the Directive and on the powers of the country of dispatch and the country of destination. On certain matters, where the Regulation refers to the Framework Directive, questions concerning the Regulation may also concern the Directive. For instance, in the same case, the Court was asked to rule whether the concept of storage of waste to be recycled by one of the processes referred to in Annex II.B to the Directive included storage pending shipment to a recycling company irrespective of its location, i.e. whether inside or outside the Community.

Lastly, in Case C-203/96,²⁸ the Court of Justice was asked for a preliminary ruling on whether the principles of self sufficiency and proximity applied only to the shipment of waste to be disposed of between Member States, or whether it also applied to waste to be recycled. The Court was also asked whether restrictions on the movement of waste to be reused in some way (recycled, composted or incinerated for energy) were any less tight than for waste to be disposed of (incinerated with no use of the energy thus produced, or tipped), or whether Member States could apply the same, more restrictive set of rules to both categories.

Proceedings are also under way against infringements of other, more specialised Directives. Directive 86/278/EEC on the protection of the soil, when sewage sludge is used in agriculture, rarely gives rise to disputes. Following notification of satisfactory measures, the Commission has dropped Article 171 proceedings against Belgium for failing to comply with the Court's judgment of 3 May 1994 (Case C-260/93), in which the Court found that Belgium had not implemented the Directive in full.

Proceedings continue against Portugal for non-compliance with Directive 75/439/EEC on the disposal of waste oils, the first Community Directive on waste. The Commission also referred a case involving Germany to the Court of Justice (Case C-102/97). The problem concerns regeneration of used oils. The Commission is asking the Court to find that Germany has infringed the Directive by failing to give preference to recycling of used oils over heat treatment even where recycling was technically and economically viable.

Lastly, with regard to the disposal of PCB and PCT, two particularly dangerous products, Directive 96/59/EC,²⁹ which supersedes Directive 76/403/EEC, must be transposed by the Member States by 16 March 1998.

2.6. Nature

There are two major Community Directives aimed at protecting nature: Directive 79/409/EEC on the conservation of wild birds and Directive 92/43/EEC, making increased demands on the Member States with regard to the conservation of natural habitats and of wild fauna and flora.

²⁷ Request for a preliminary ruling by the Raad van State of the Netherlands, in *Beside BV and I.M. Besselsen v VROM*.

²⁸ Request for a preliminary ruling by the Raad van State of the Netherlands, in *Chemische Afvalstoffen Dusseldorp BV et al v VROM*.

²⁹ Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT), OJ L 243, 24.09.1996 p. 31.

There has been some progress regarding the transposal of Directive 79/409/EEC, but there have also been some less encouraging developments. The Commission has terminated proceedings against Greece (Case C-330/96) for failing to notify it of national implementing measures for Directive 91/244/EEC amending Directive 79/409/EEC. It has also dropped the pre-litigation proceedings started against Finland for the same reason. But some issues, first and foremost the legal status of measures designed to protect certain species, have not been resolved: national laws still do not comply with Community law in a number of areas (hunting, regulation of species and trade). Article 171 proceedings are under way against Belgium³⁰ (Articles 5 and 9) and France³¹ (Article 5): sixteen years after the Directive entered into force and ten years after the judgments were given, they have still not implemented the Directive properly and in full. The Commission decided to refer the case involving Belgium to the Court of Justice in December 1997, but the situation is likely to have been rectified before the application is submitted, in which case the Commission will drop the case. Article 169 proceedings concerning implementation of the hunting provisions are still open against Spain, France, Italy and Finland. A case involving Germany was referred to the Court of Justice under Article 171 (Germany had failed to comply with the Court's finding that German legislation did not properly implement Article 5 or Article 8).³² However, when the *Saarland* adopted new provisions, the Commission was able to terminate the proceedings.

The long line of cases decided by the Court of Justice provides a clear interpretation of Directive 79/409/EEC. In its judgment of 12 December 1996 in Case C-10/96 (*Ligue royale belge pour la protection des oiseaux et AVES asbl v. Région Wallone*) the Court confirmed its consistently strict interpretation of Articles 5 and 9 of the Directive.³³ Case C-10/96 centred on the taking into captivity of protected birds for breeding.

When the transposal deadline for Directive 92/43/EEC expired in June 1994, a number of Member States had not notified the Commission of all, or in some cases, any of the measures required to implement the Directive. The main provisions still to be transposed are Article 6 on the protection of habitats in the special conservation sites which are to be set up, and Articles 12 to 16 on protection of species.

On 26 June 1997, the Court of Justice found in Case C-329/96 that Greece had not fulfilled its obligations by failing to notify the Commission of implementing measures. On 11 December 1997 a similar judgment was given against Germany in Case C-83/97. Cases involving Italy and Portugal were also referred to the Court (C-142/97 and C-88/97 respectively) but were dropped when both adopted satisfactory implementing measures. Infringement proceedings continue against France (Article 6) and Finland (problems with the Åland islands), while proceedings against Ireland were terminated when it adopted new legislation in February 1997. Proceedings are also open against Spain for its failure to implement Article 16 of the Directive.

³⁰ Regarding the Court's judgment of 8 July 1987, Case C-247/85.

³¹ Regarding the Court's judgment of 27 April 1988, Case C-252/85.

³² C-121/97, initial judgment delivered on 3 March 1990, Case C-288/88.

³³ E.g. its judgments of 8 July 1987 in Cases C-262, *Commission v Italy*, and C-247/85, *Commission v Belgium*.

One practical problem which sometimes arises with implementation of Directives 79/409/EEC and 92/43/EEC is the potential conflict between the need to protect sites and species on the one hand and economic and social considerations on the other. This accounts for the large number of complaints and infringement proceedings regarding unsatisfactory implementation as a result of very specific and localised problems. At the same time, it is to be welcomed that Directives 79/409/EEC and 92/43/EEC are two of the best known pieces of Community environment legislation and the practical ways in which they help protect nature are widely acknowledged. The number of complaints concerning implementation of the Directives must be seen both as a measure of their success and an indicator of the work still to be done by the Member States.

There is, however, a growing appreciation of the intentions behind Directive 92/43/EEC. The Directive takes a novel approach: gradual, step-by-step building up of the Natura 2000 network; extensive discussions between the Commission and the Member States; a legal set-up for special conservation sites which paves the way for management plans (possibly even contractually binding ones) and makes allowance for exemptions from the ban on deterioration and disturbance where this conflicts with overriding public interests.

The Commission's main goal in this area is to protect the various types of habitat and the sites containing them. The Community's Natura 2000 network linking all sites set up under Directive 92/43/EEC is an essential step towards achieving this.

In 1997 the Member States made progress in proposing conservation sites within the meaning of Directive 92/43/EEC. (None of them had provided the Commission with a full list of proposed sites by June 1995, the deadline laid down by the Directive.) In particular, Belgium and Greece notified the Commission of lists which the authorities in those countries deemed complete, while most of the other Member States (Portugal, Austria, the Netherlands, Italy, the United Kingdom and Sweden) sent in fairly comprehensive, though still incomplete lists. Lagging furthest behind at the end of 1997 were Luxembourg (no sites) and Germany (sites for two *Länder* only). France has abandoned its policy of refusing even to start the process of selecting sites and has sent in the names of over five hundred proposed sites, though the information provided is insufficient. In many cases, the details given on sites and the species they support are neither complete or appropriate. This makes it difficult to proceed to the subsequent stages of the plan laid down in Directive 92/43/EEC, but the Commission is pressing ahead and is trying to ensure that the delays do not jeopardise the setting up of the Natura 2000 network.

In an attempt to rectify the situation, the Commission has initiated infringement proceedings against most of the offending Member States. And it will maintain its stricter policy with regard to the grant of Community funding for conservation of sites under the LIFE Regulation on sites being integrated or already integrated into the Natura 2000 network. Furthermore, it scrutinises requests for cofinancing from the Structural Funds (particularly objectives 2 and 5b) very thoroughly for compliance with environmental regulations.

Problems also frequently arise with Article 4 of Directive 79/409/EEC, which requires that sites be designated special protection areas for wild birds wherever the objective ornithological criteria are met. These are sites which provide a habitat for the species referred to in Annex I to the Directive and migratory species. Particular importance is attached to the protection of wetlands, especially those of

international significance. There is no question as to the meaning of Article 4, as interpreted by the Court of Justice in its judgment of 11 July 1996 (Case C-44/95) concerning the Lappel Bank site in the Medway estuary near the port of Sheerness in Kent (United Kingdom): special protection sites must be selected and their borders drawn on the basis of ornithological and ecological criteria only; economic and social criteria may not be taken into consideration.

Though the special protection sites for wild birds are set to join the Natura 2000 network, the obligation imposed by Directive 79/409/EEC is legally quite distinct from the obligation under Directive 92/43/EEC concerning the creation, in stages, of the Natura 2000 network linking all sites of Community importance containing any of the species or habitats referred to by Directive 92/43/EEC. Areas should have been designated as special protection sites when the Directive entered into force in 1981. But existing sites in a number of Member States are still too few in number or cover too small an area. In 1998 the Court should deliver its first judgment in an infringement case against the Netherlands (Case C-3/96). The Commission is continuing with proceedings against other Member States.

The Commission is still receiving large numbers of complaints about infringements of Community legislation on nature. The two main problems are the failure to designate areas fulfilling the objective ornithological criteria as special protection areas and projects affecting sites. In the first case, the Commission continues to investigate individual complaints carefully, though it tends to deal with them through the general proceedings referred to above concerning the overall lack of special protection sites. In most cases, the problems complained of are settled while the matter is still being investigated, before Article 169 letters are sent.

Regarding projects with a potential effect on sites which have been or are likely to be designated as special protection sites, Article 6 of Directive 92/43/EEC prohibits significant deterioration or disturbance except under certain conditions. First an impact assessment must be carried out and alternative sites must be sought for the project. If there are no alternatives, the project may be carried out, but only then if there are imperative reasons of overriding public interest, including economic reasons, compensation is provided and the Commission is notified. Many complaints concern the fact that these conditions have not been met.

The Commission is also pressing ahead with infringement proceedings in certain key cases. Following the Court judgment on the Santofia marshes in Spain,³⁴ it is continuing with Article 171 proceedings. These have met with some success but the result is not yet entirely satisfactory. Another case the Commission has referred to the Court (Case C-166/97) involves the Seine estuary: the special protection site is unacceptably small, is not properly protected and is being developed in a way which is incompatible with Article 6. Other proceedings currently under way concern sites in the following locations: Fuerteventura in the Canary Islands (Spain), the Waddenzee area (Netherlands), Baixo Vouga Lagunar (Portugal) and the Marais Poitevin, the Baie de Canche, the Plaine des Maures, the Vallée de l'Aude and Vingrau (all France). The Commission welcomes France's decision to designate the Loire estuary as a special protection site.

³⁴ Judgment of 2 August 1993, Case C-355/90.

Finland has now notified the Commission of implementing measures for Directive 83/129/EEC concerning the importation of skins of seal pups. The infringement proceedings against it have been dropped.

Directive 79/409/EEC has been amended by Directive 97/49/EC.³⁵ The new Directive, which must be transposed into national law by 30 September 1998, removes the *Phalacrocorax carbo sinensis* sub-species from Annex I (the list of protected bird species).

The Council adopted Directive 97/62/EC³⁶ adapting Directive 92/43/EEC to technical and scientific progress by amending Annex I (list of habitat types requiring designation of special conservation areas) and Annex II (species requiring designation of special conservation areas).

Lastly, Regulation (EC) No 338/97³⁷ on the protection of species of wild fauna and flora by regulating trade therein has superseded Regulation (EC) No 3626/82 on the implementation in the Community of the 1973 Washington Convention on international trade in endangered species of wild fauna and flora (the "Cites" Convention"). The annexes to the new Regulation, which entered into force on 1 June 1997, have been amended by Regulation (EC) No 938/97³⁸ of 26 May 1997 and, following the meeting of the parties to the Cites Convention in Harare in June 1997, by Regulation (EC) No 2307/97³⁹ of 18 November 1997. In addition, Regulation (EC) No 939/97⁴⁰ of 26 May 1997 laid down detailed rules concerning implementation of Regulation (EC) No 338/97 with regard to import permits, export permits and re-export certificates.

2.7. Radiation protection

Infringement proceedings continue against Luxembourg and the Netherlands, whose national legislation does not comply with Council Directives 80/836/Euratom or 84/467/Euratom on basic safety standards for health protection against ionising radiation. Proceedings have also been started against the three new Member States, (Austria, Finland and Sweden) for failing to notify the Commission of implementing measures for the same two Directives during the transition period which ended on 1 January 1997. The proceedings against these five countries are somewhat problematic as the Directives are set to be repealed by the new Directive 96/29/Euratom on 13 May 2000.

In September 1997 Portugal finally completed transposal of Council Directive 84/466/Euratom on protection of persons undergoing medical examination or treatment. The Commission withdrew the action it had brought before the Court of

³⁵ Commission Directive 97/49/EC of 29 July 1997 amending Council Directive 79/409/EEC on the conservation of wild birds, OJ L 223, 13.08.1997, p.9.

³⁶ Council Directive 97/62/EC of 27 October 1997 adapting to technical and scientific progress Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, OJ L 305, 8.11.1997, p.42.

³⁷ Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, OJ L 61, 3.3.97, p.1.

³⁸ Commission Regulation (EC) No 938/97 of 26 May 1997 amending Council Regulation (EC) No 338/97, OJ L 140, 30.5.1997, p.1.

³⁹ Commission Regulation (EC) No 2307/97 of 18 November 1997 amending Council Regulation (EC) No 338/97, OJ L 325, 27.11.1997, p.1.

⁴⁰ Commission Regulation (EC) No 939/97 of 26 May 1997 laying down detailed rules concerning the implementation of Council Regulation (EC) No 338/97, OJ L 140, 30.5.1997, p.9.

Justice (Case C-96/276). In Case C-96/21, the Court found on 9 October 1997 that Spain had failed to implement certain Articles of the Directive. Italy adopted a number of implementing measures in February 1997 and presented draft laws that would complete the process of transposal and Belgium is set to publish a new instrument which will implement the Directive. Proceedings against these two countries are likely to be terminated. Proceedings against Ireland continue, however. The legislation sent to the Commission has not been passed and is undergoing technical revision.

In response to a reasoned opinion concerning Council Directive 89/618/Euratom on information for the general public in the event of a radiological emergency, Germany has passed measures implementing parts of the Directive which it had previously neglected. However, transposal is still not complete. France has produced several draft instruments aimed at implementing the Directive in full and the Commission has made recommendations on them. Proceedings against France will be dropped once these have been adopted. Spain, Finland and Sweden's response to the Article 169 letters addressed to them have yet to be examined.

Belgium, Greece, Spain and Portugal have now notified the Commission of measures implementing Council Directive 90/641/Euratom on protection of outside workers from radiation. Infringement proceedings will be duly terminated. France has issued a new decree but it does not implement the Directive in full, so the infringement proceedings will continue.

Lastly, Council Directive 92/3/Euratom on international shipments of radioactive waste has not yet been transposed by Belgium or Germany, though they have notified the Commission of draft implementing measures. Consequently, the Commission decided in 1997 to refer both cases to the Court of Justice. Austria, Greece and Sweden, on the other hand adopted their implementing measures in 1997. The proceedings against them have been dropped.

2.8. Progress in implementing Directives applicable to the environment

MEMBER STATE	Directives applicable on 31.12.1997	Directives for which measures have been notified	%
BELGIUM	139	121	87
DENMARK	139	139	100
GERMANY	141	133	94
GREECE	144	140	97
SPAIN	143	142	99
FRANCE	139	133	96
IRELAND	139	136	98
ITALY	139	135	97
LUXEMBOURG	139	136	98
NETHERLANDS	139	137	99
AUSTRIA	135	131	97
PORTUGAL	143	138	97
FINLAND	137	132	96
SWEDEN	137	133	97
UNITED KINGDOM	139	133	96

Note: this table concerns Directives
Background: 85/337, 90/313, 90/656, 90/660, 93/80

Waste: 75/439, 75/442, 76/403, 78/319, 84/631, 85/339, 85/469, 86/121, 86/278, 86/279, 87/101, 87/112, 91/156, 91/157, 91/689, 93/86, 94/62, 94/67
Water: 75/440, 76/160, 76/464, 78/176, 78/659, 79/869, 79/923, 80/68, 80/778, 81/855, 81/858, 82/176, 82/883, 83/29, 83/513, 84/156, 84/491, 86/280, 88/347, 90/415, 91/271, 91/676, 92/112.
Air: 75/716, 80/779, 81/857, 82/884, 84/360, 85/203, 85/210, 85/580, 85/581, 87/219, 87/416, 88/609, 89/369, 89/427, 89/429, 92/72, 93/12, 94/63, 94/66.
Noise: 79/113, 80/51, 81/1051, 83/206, 84/533, 84/534, 84/535, 84/536, 84/537, 84/538, 85/405, 85/406, 85/407, 85/408, 85/409, 86/594, 86/662, 87/252, 88/180, 88/181, 89/514, 89/629, 92/14, 95/27.
Nature: 79/409, 81/854, 83/129, 85/411, 85/444, 86/122, 89/370, 91/244, 92/43, 94/24, 97/62.
Chemicals: 67/548, 69/81, 70/189, 73/146, 75/409, 76/907, 79/370, 79/831, 80/1189, 81/957, 82/232, 82/501, 83/467, 84/449, 86/431, 86/609, 87/18, 87/216, 87/217, 87/432, 88/302, 88/490, 88/610, 90/219, 90/220, 90/517, 91/325, 91/326, 91/410, 91/632, 92/32, 92/37, 92/69, 93/21, 93/67, 93/72, 93/90, 93/101, 93/105, 94/15, 94/51, 94/69, 96/54, 97/35.
Radiation protection: 80/836, 84/466, 84/467, 89/618, 90/641, 92/3.