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**THE REVIEW CLAUSE**

**ENVIRONMENTAL AND HEALTH STANDARDS FOUR YEARS AFTER THE  
ACCESSION OF AUSTRIA, FINLAND AND SWEDEN TO THE EUROPEAN  
UNION**

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## 1. INTRODUCTION

On 1 January 1995 Austria, Finland and Sweden became members of the European Union (EU). In the accession negotiations, the environment and health were important and sensitive issues due to their high level of protection in these States. The Austrian, Finnish and Swedish public followed their governments' positions on these issues in the negotiations with particular interest. Environmental and health issues also proved to be decisive in the course of the respective national referenda on the accession to the EU.

To become a member of the EU, applicant countries have first to adopt the *acquis communautaire*, the secondary Community legislation. Austria, Finland and Sweden had already adopted the major part of the *acquis communautaire* in the framework of the Agreement on the European Economic Area (EEA)<sup>1</sup>. Consequently, at the time when the EU accession negotiations started in early 1993 major parts of the Community law concerning the environment and health had already been incorporated into the national legislation of the applicant countries. In the negotiations, differences or gaps between the environmental and health legislation of the European Community (EC) and the legislation of the applicant countries needed to be addressed. The objective thereby was to harmonise the national legislation with EC law without necessarily lowering the standards of environmental and health protection in the new Member States.

The negotiations resulted in the Accession Act<sup>2</sup> between the then twelve EU-Member States and the four applicant states<sup>3</sup> signed on 24 June 1994 in Corfu, Greece. The Accession Treaty contains special provisions in the field of the environment and health allowing the three new Member States to keep certain national provisions for a period of four years. The European Union committed itself to review the EU standards concerned during these four years.

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<sup>1</sup> Decision of the Council and the Commission of 13 December 1993 on the conclusion of the Agreement on the European Economic Area between the European Communities, their Member States and the Republic of Austria, the Republic of Finland, the Republic of Iceland, the Principality of Liechtenstein, the Kingdom of Norway, the Kingdom of Sweden and the Swiss Confederation (OJ N° L 1 of 3 January 1994, p. 1)

<sup>2</sup> Treaty between the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Portuguese Republic, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Union) and the Kingdom of Norway, the Republic of Austria, the Republic of Finland, the Kingdom of Sweden, concerning the accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland, the Kingdom of Sweden to the European Union (OJ N° C 241 of 29 August 1994, p. 9)

<sup>3</sup> Norway took part in the negotiations but did not become a Member State due to the results of a referendum

After ratification, that is approval by the European Parliament and the national parliaments, the Accession Act entered into force on 1 January 1995, the same day Austria, Finland and Sweden became members of the EU.

## 2. THE REVIEW

New Member States of the EU have to apply the *acquis communautaire* from day one of their membership. This was also the case for Austria, Finland and Sweden. According to Article 168 of the Act of Accession they shall put into effect the measures necessary to comply, from the date of accession, with EC law, unless a time limit is provided for in the Accession Treaty.

For some environmental and health provisions, the Accession Treaty actually provides such a time limit. Special provisions allow Austria, Finland and Sweden to keep certain different national health and environmental standards for a transitional period of four years, from 1 January 1995 to 31 December 1998.

These special provisions provide for a review of the standards concerned in accordance with EC procedures during the same period. At the end of the transitional period, the *acquis communautaire* would be applicable to Austria, Finland and Sweden under the same conditions as in the other Member States, without prejudice to the outcome of the review.

The Accession Act does not specify the results to be achieved during the review of the current EC legislation. It may rather be interpreted as a best endeavour clause which commits the European Union to launch the review but does not give any guarantees on the timing or on the substance of the outcome. Nevertheless, the Commission, when reviewing EC legislation, continued to harmonise the environmental and health legislation at a high level. The objective was to enhance the EC rules and to find solutions, where necessary, to enable the three new Member States to keep their standards.

The Review Process consisted of different approaches in order to tackle the different issues in the most effective way. In one case, namely the benzene content of petrol, the Commission tabled a new directive with new obligatory standards which will go beyond those of the new Member States. While Austria has a limit value of 3% of benzene content of petrol, the current EC legislation demands Member States not to exceed a limit value of 5%. A new directive in the framework of the Auto Oil Programme will allow only 1% of benzene in petrol on an EU wide base. (see point 3.2.7. below). Another example is the Austrian maximum content of 0,1% for sulphur in gasoil. This norm will become applicable throughout the EU by way of a new directive in the framework of the acidification strategy (see point 3.2.8 below). In other cases, directives have been adapted to technical progress. An example is the Batteries Directive whose adaptation to technical progress led to the EU wide ban of mercury in batteries (see point 3.2.6. below). In the case of dangerous preparations the Commission proposed to review all existing legislation. At the same time the scope of this legislation was expanded, providing for its modernisation and thereby meeting the aspirations of Austria, Finland and Sweden.

The issues and results of the Review Process are presented in the following chapter. The Commission succeeded in tackling all issues in the scheduled time. Proposals and solutions that will meet the new Member States' concerns were initiated. The Commission has adopted the measures falling within its powers under the different directives and has tabled the necessary proposals which now remain with the European Parliament and the Council for decision taking. In a limited number of cases time gaps between the end of the transitional period and the final adoption of the new acts might occur. Nevertheless no practical problems are expected, as there is awareness among those concerned of the legal changes to come. These legal changes will take the approach of the new Member States' existing laws and will enable them to keep their existing standards.

Throughout the Review Process the Commission worked closely with the Member States, both on expert and administrative level, as well as on political level. In order to enhance the dialogue with Austria, Finland and Sweden, the Commission initiated a series of High Level Co-ordination Meetings with representatives of the three new Member States. Seven meetings took place altogether<sup>4</sup> where progress, difficulties and ways to proceed were discussed with high-ranking officials and experts from Austria, Finland, Sweden and the Commission.

### **3. ISSUES AND RESULTS OF THE REVIEW**

#### **3.1. Issues**

In the following section, the situation in each of the three new Member States is presented. This overview is followed by a detailed description of the reviewing procedures and their individual results on a directive by directive basis.

#### **Austria**

During the transitional period Austria was allowed to apply the following environmental and health provisions which were different from those of the EC:

- Specific requirements for the classification and labelling of about 50 dangerous substances and of a number of dangerous preparations
- Specific requirements for the classification and labelling of pesticides and plant protection products
- Specific restrictions of the marketing and use of cadmium, pentachlorophenol (PCP) and organostannic (tin) compounds
- The cadmium content of fertilisers (restricted to 120 mg/kg P in Austria; no limit value in EC legislation to date)

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<sup>4</sup> The dates of the High Level Meetings were: 20 June 1996; 12 November 1996; 28 April 1997; 24 September 1997; 18 February 1998; 28 May 1998; 19 October 1998. The meetings took place in Brussels and were chaired by the Director-General of DG XI.

- The different composition of alkaline manganese batteries (mercury content of 0,001% in Austria; 0,05% in EC legislation)
- The limit value of 3% of benzene in petrol (5% in EC legislation)
- The sulphur content of 0,1% of gasoil (0,2% in EC legislation).

## Finland

During the transitional period Finland was allowed to apply the following environmental and health provisions which were different from those of the EC:

- Specific requirements for the classification and labelling of pesticides and plant protection products
- Certain restrictions on the marketing and use of PCP
- The limitation of the cadmium content of fertilisers to 50 mg/kg P<sup>5</sup>.

## Sweden

During the transitional period Sweden was allowed to apply the following environmental provisions which were different from those of the EC:

- Specific requirements for the classification of 67 dangerous substances and of a number of dangerous preparations
- Different criteria for the classification of carcinogens ("Risk phrase-40" (R-40))
- Different criteria for the classification and labelling of effects not covered by EC legislation (R-322; "moderately harmful effects")
- Specific requirements for the classification, packaging and labelling of pesticides
- Restrictions on the marketing and use of cadmium, arsenic, PCP and tin compounds
- The limitation of the cadmium content of fertilisers to 100 mg/kg P
- The different composition of alkaline manganese batteries with a mercury content of 0,025 %.

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<sup>5</sup> In the Accession Act Finland also had a derogation of Directive 93/12/EEC concerning the sulphur content in gasoil. This derogation was not been applied.

## 3.2. Results

### 3.2.1. *Council Directive 67/548/EEC on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances*<sup>6</sup>

(a) Different classification requirements in relation to Annex I of Directive 67/548/EEC for over 100 substances in Austria and Sweden

Over 100 substances were classified differently in Austria and Sweden, partly because these States have different criteria for the classification of substances as dangerous. These criteria and the classification of the dangerous substances in question were re-evaluated and re-discussed in working group meetings of experts from the Member States and the Commission at the European Chemicals Bureau (ECB) at the Joint Research Centre in Ispra. These discussions led to agreements on criteria that satisfied all parties involved. The new criteria and the revised classifications were incorporated into Directive 67/548/EEC by several adaptations to technical progress.

(b) Different labelling of carcinogens in Sweden ("R-40")

Risk-phrases, referred to as R-phrases, are warning sentences by which producers have to label products containing dangerous substances. R-phrases indicate the specific danger of the product to health or the environment. They are stated in EC as well as in national chemical legislation.

"R-40" is an example of such an R-phrase in Directive 67/548/EEC. The Swedish legislation contains a corresponding R-phrase. The only difference between them is that the Swedish R-phrase contains the word "cancer".

To enlarge "R-40" of the Directive the Member State and Commission experts need to continue its in-depth review since "R-40" is not only used to warn of possible cancer effects, but also of possible mutagenic effects. Once the experts have come to a conclusion the plan is to adapt Community legislation.

Until this is done the legislative gap between EC and Swedish legislation after the end of the transitional period needs to be bridged. This is being done by means of a Proposal for a Council and Parliament Directive that will amend Directive 67/548/EEC (prolongation directive). This 9<sup>th</sup> amendment of Directive 67/548/EEC will enable Sweden to keep its present R-phrase until 31 December 2000 and at the same time will give the Review Process on expert level time to be completed. The Commission adopted the proposal for

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<sup>6</sup> Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances, OJ N° L 196 of 16 August 1967, p. 1.; as amended by Directive 96/56/EEC of the European Parliament and the Council of 3 September 1996, OJ N° L 236 of 18 September 1996, p. 35; last adaptation to technical progress by Commission Directive 97/69/EEC of 5 December 1997 adapting to technical progress for the 23rd time Council Directive 67/548/EEC, OJ N° L 343 of 13 December 1997, p. 19.

the Council and Parliament Directive on 30 October 1998<sup>7</sup>. At present this proposal is being considered in the Parliament and in the Council. As every effort is undertaken to speed up the procedures it is expected that the European Parliament and the Council will adopt the proposal in spring 1999.

(c) Danger category “moderately harmful” (“R-322”)

Directive 67/548/EEC classifies dangerous substances in the following three categories: very toxic, toxic and harmful. Swedish chemical legislation knows an additional fourth category, “moderately harmful” (“R-322”)<sup>8</sup>. This additional category comprises a number of effects. Two of the effects, namely “defatting of skin” and “drowsiness after repeated inhalation” were successfully reviewed in the expert working group meetings at the ECB in Ispra. After the review had been completed two new R-phrases<sup>9</sup> were introduced into Directive 67/548/EEC by technical adaptation.

As for the outstanding effects of “R-322” the Member State experts agreed to wait for the outcome of the harmonisation process at an international level at the Organisation for Economic Co-operation and Development (OECD). But certain provisions in the 9<sup>th</sup> amendment of Directive 67/548/EEC allow Sweden to require the use of the additional “R-322” until 31 December 2000.

(d) Additional labelling requirements (Austria)

The additional Austrian labelling requirements are certain Safety-phrases and pictograms.

Safety-phrases, referred to as S-phrases, indicate what to do to avoid health- or environmental risks related to dangerous substances. Producers must label products that contain dangerous substances with S-phrases. Pictograms play a similar role. They are placed on products and indicate how to dispose of the used products.

The additional Austrian S-phrases concern immediate counter-measures in case of accidents, antidotes, and the telephone number of the Austrian Poison Information Centre.

The additional Austrian pictograms depict the following symbols: a dustbin (indicates that the product can be disposed of into the normal household waste bin after use), a crossed-out dustbin (stands for not throwing the used product into the household garbage) and a crossed-out toilet bowl (indicates that the product should not be flushed down the toilet).

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<sup>7</sup> Proposal for a Directive of the European Parliament and Council amending Council Directive 67/548/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of certain dangerous substances in Austria and Sweden (COM(98) 561 of 30 October 1998)

<sup>8</sup> R-322 reads, “May be harmful if swallowed” and concerns substances that present moderate acute oral toxic effects not covered by the criteria for classification in Directive 67/548/EEC

<sup>9</sup> These two R-phrases are the following: R-66, “Repeated exposure may cause skin dryness or cracking” and R-67, “Vapours may cause drowsiness and dizziness”



For the symbol of the crossed-out dustbin, solutions were found in the Dangerous Preparations Directive (see point 3.2.2. below) as well as in the 9<sup>th</sup> amendment of Directive 67/548/EEC. In the framework of both Directives a prolongation of the use of the symbol is foreseen. The symbol of the crossed-out toilet bowl was covered by an S-phrase. Due to progress and further developments of the EC and the Austrian waste legislation there was no longer a need to include the symbol of the positive dustbin in EC law.

In the framework of the expert discussions when the respective EC legislation was reviewed the majority of the Austrian proposals on S-phrases were taken on board in relation to Directive 67/548/EEC. These include new S-phrases on counter-measures after accidents. A combination of the S-phrases on antidotes and on the poison information centre was incorporated into the 9<sup>th</sup> amendment.

*3.2.2. Council Directive 88/379/EEC on the classification, packaging and labelling of dangerous preparations<sup>10</sup> and Council Directive 78/631/EEC on the approximation of the laws, regulations and administrative provisions relating to the classification, packaging and labelling of pesticides<sup>11</sup>*

Directive 88/379/EEC provides harmonised rules for the classification, packaging and labelling of dangerous preparations ("Dangerous Preparations Directive") which enable a free circulation of about one million chemical mixtures throughout the EU.

Directive 78/631/EEC provides harmonised rules for the classification, packaging and labelling especially for pesticidal preparations.

According to the Accession Treaty, Austria and Sweden have derogations from Directive 88/379/EEC, and all three new Member States have derogations from Directive 78/631/EEC.

In July 1996 the Commission, after a combined review of Directives 88/379/EEC and 78/631/EEC, proposed a new Directive that not only covers all dangerous preparations but also provides a high level of protection for man and the environment.<sup>12</sup> The Common Position was adopted on 24 September 1998 and sent to the European Parliament. (Second Reading in Parliament is planned for February 1999.) In view of the fact that the current EP ends in May 1999, all parties involved must make a strong effort to allow a final adoption in spring 1999.

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<sup>10</sup> Council Directive 88/379/EEC of 7 June 1988 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations, OJ N° L 187 of 16 July 1988, p. 14-30

<sup>11</sup> Council Directive 78/631/EEC of 26 June 1978 on the approximation of the laws of the Member States relating to the classification, packaging and labelling of dangerous preparations (pesticides), OJ N° L 206 of 29 July 1978, p. 13-25

<sup>12</sup> COM(96)0347 fin. published in OJ N° C 283 of 26 September 1996

The new Directive will not provide permanent solutions for the labelling and for acute toxicity but it will allow a prolongation of another two years before Austria and Sweden will have to apply the Community rules.

3.2.3. *Council Directive 91/414/EEC concerning the placing on the market of plant protection products*<sup>13</sup>

Directive 91/414/EEC contains provisions for the packaging and labelling of plant protection products. In this respect Directive 91/414/EEC refers to Directive 78/631/EEC (pesticidal preparations).

As the new Dangerous Preparations Directive will also cover the pesticidal preparations the references in Directive 91/414/EEC to Directive 78/631/EEC will become obsolete when the new Dangerous Preparations Directive enters into force.

The (then obsolete) references in Directive 91/414/EEC to Directive 78/631/EEC will be corrected in the next technical amendment of Directive 91/414/EEC.

3.2.4. *Council Directive 76/769/EEC on the approximation of laws, regulations and administrative provisions of the Member States relating to the restrictions on the marketing and use of certain dangerous substances and preparations, as amended*<sup>14</sup>

Directive 76/769/EEC sets down harmonised restrictions of the marketing and use of certain dangerous substances and preparations. In this way it enables their free circulation and provides a high level of protection for man and the environment at the same time.

The three new Member States restrict the use and marketing of PCP, arsenic, tin and cadmium and have therefore derogations from EC law.

The Commission reviewed the provisions of Directive 76/769/EEC concerning these four substances. The review was carried out interactively with Member State experts and stakeholders and included independent risk assessments for each substance and independent assessments of the advantages and drawbacks of eventual new measures. The risk assessment reports were referred to the Scientific Committee on Toxicology, Ecotoxicology and the Environment for peer review.

The Commission developed drafts for new measures taking into account the need of the single market and a high level of protection for man and the environment. At the same time it tried to find proportionate solutions for the new Member States.

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<sup>13</sup> Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market, OJ N° L 230 of 19 August 1991, p 1-32

<sup>14</sup> Council Directive 76/769/EEC of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations, OJ N° L 262 of 27 September 1976, p. 201 - 203

The plan is to adopt a Commission Directive that will provide new restrictions on the marketing and use of PCP, tin compounds and cadmium and thereby deal with the new Member States' issues. The Committee for the adaptation to technical progress is expected to favour the Commission proposal for this new directive. Only then can the Commission formally adopt the new directive.

Concerning arsenic preliminary discussions were held with industry concerning the possible use of a voluntary agreement in order to improve the control of the use of arsenic. In fact, no conflict could be found between the provisions of Directive 76/769/EEC on arsenic and the Swedish provisions. The voluntary agreement will be an additional step for industry.

*3.2.5. Council Directive 76/116/EEC on the approximation of the laws of the Member States relating to fertilisers<sup>15</sup>*

Council Directive 76/116/EEC sets down harmonised rules for the marketing of fertilisers. Fertilisers that are in conformity with the Directive and designated EU fertilisers circulate freely throughout the EU irrespective of their cadmium content. The three new Member States restrict cadmium in fertilisers on a national level and have therefore derogations from Directive 76/116/EEC.

The Commission reviewed Directive 76/116/EEC concerning cadmium. In accordance with Community policy this review was carried out interactively with Member State experts and stakeholders and took the particular situation of the new Member States into account. However, no definite conclusion about the risks of cadmium in fertilisers could be reached from the assessments and it was therefore decided that further work would be needed.

The Commission proposed a directive to the Council and to the Parliament that will enable the three new Member States to keep their standards by granting them derogations from Directive 76/116/EEC until 31 December 2001<sup>16</sup>.

The Common Position was adopted by the Council on 13 October 1998 and forwarded to the European Parliament. It is expected that the directive will be finally adopted at the end of 1998 or at the beginning of 1999 at the latest.

*3.2.6. Council Directive 91/157/EEC on batteries and accumulators containing certain dangerous substances<sup>17</sup>*

Austria and Sweden allow a lower mercury content in alkaline manganese batteries than the EU. Discussions with other Member States in the Commission working group led to

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<sup>15</sup> Council Directive 76/116/EEC of 18 December 1975 on the approximation of the laws of the Member States relating to fertilisers, OJ N° L 24 of 30 January 1976, p. 21-44

<sup>16</sup> OJ C 108 of 7 April 1998, p. 83

<sup>17</sup> Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances, OJ N° L 078 of 26 March 1991, p 38-41

the decision to ban mercury in all kind of batteries except button cells (no substitute products yet found). The ban will be introduced by an adaptation of Directive 91/157/EEC to technical progress. It was voted in the committee<sup>18</sup> on 20 October 1998 and will be adopted by the Commission in December 1998.

3.2.7. *Council Directive 85/210/EEC on the approximation of the laws of the Member States concerning the lead content of petrol*<sup>19</sup>

Austria is restricting the limit value of benzene in petrol to 3% while the Community is allowing 5%.

Directive 98/70/EC of 13 October 1998 of the European Parliament and of the Council relating to the quality of petrol and diesel fuels repeals Directive 85/210/EEC as from 1 January 2000.

From that date on the limit value of benzene in petrol will be 1% EU wide. Until then a special provision of the new Directive (Article 14) allows Austria to keep its limit value.

3.2.8. *Directive 93/12/EEC - Sulphur content of liquid fuels*<sup>20</sup>

At present Austria has a limit value of 0.1% of sulphur in gasoil whilst the Community limit is 0.2%.

In this context the Commission proposed a new directive in the framework of the acidification strategy<sup>21</sup>. On 6 October 1998 the Council agreed on a Common Position that reached the European Parliament on 22 October 1998. The final adoption by the Council and the Parliament is expected in spring 1999.

The new directive will allow Austria to maintain its stricter standards. From the entry into force of the new directive a limit value of 0.2 % will apply and from 1 January 2008 on a limit value of 0.1% will be obligatory for all Member States.

#### 4. CONCLUSIONS

The European Union met its obligations set out in the Accession Treaty of the three new Member States. The Commission launched the Review Process of certain environmental

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<sup>18</sup> Committee composed of the representatives of the Member States and chaired by the representative of the Commission according to Council Directive 75/442/EEC of 15 July 1975 on waste, OJ N° C 32 of 11 February 1975, p. 36

<sup>19</sup> Council Directive 85/210/EEC of 20 March 1985 on the approximation of the laws of the Member States concerning the lead content of petrol, OJ N° L 096 of 3 March 1985, p. 25-29

<sup>20</sup> Council Directive 93/12/EEC of 23 March 1993 relating to the sulphur content of certain liquid fuels, OJ N° L 074 of 27 March 1993, p. 81-83

<sup>21</sup> COM(97)88 of 12 March 1997

and health standards of the EU in due time and consequently all issues will have been dealt with before the expiry of the transitional period at the end of 1998.

In many cases the Review Process resulted in the adoption of higher standards on an EU wide basis, thereby raising the level of environmental protection. In other cases solutions were found that enable the new Member States to keep their standards. In this way the Review proved to be a success in protecting the environment and human health.

In some cases delays occurred due to the complexity of the Review Process. In some of these cases further work needs to be carried out (risk assessments or new evidence) before proposing new standards for the whole Community. In the meantime the three new Member States will be allowed to keep their national standards.

The European Parliament played an active part in the Review Process. In a resolution<sup>22</sup> it underlined its prime interest in the matter. It followed the Review Process closely and was kept informed about the progress by the Commission. The Member States and the Council supported the proceedings and allowed a speedy adoption of the Directives in this framework.

The environment-conscious public in Austria, Finland and Sweden followed the Review Process closely. By meeting the commitments given in the framework of the accession negotiations the European Union proved its capacity of adapting to new challenges and responding to the concerns of its citizens.

For all these reasons it can be concluded that the Review Process must be considered an important achievement in EC environment policy.

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<sup>22</sup> Resolution on the review of EU environment standards with a view to adjusting to the higher national standards of the three new Member States OJ N° C 211 of 22 July 1996, p.20