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on implementing European Community Environmental Law

**PREVENTING BREACHES OF AND ADDRESSING SPECIFIC
CHALLENGES IN IMPLEMENTING EC ENVIRONMENTAL LAW**

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PREVENTING BREACHES OF AND ADDRESSING SPECIFIC CHALLENGES IN IMPLEMENTING EC ENVIRONMENTAL LAW

This document has two parts. The first describes some of the general means and methods whereby the Commission tries to avoid breaches of EC environmental law arising. The second looks at the different environmental sectors, describing specific challenges that need to be addressed.

1. PREVENTION OF BREACHES

The Commission seeks to prevent breaches of environmental law throughout the legislative life cycle — that is, through all the stages of legislation from conception and design to adoption, follow-up, review and revision.

1.1 Preparing EC legislation

The Commission designs its new environmental policy instruments to meet environmental goals in ways that aim to avoid unnecessary administrative burdens and costs. It also reviews existing policies to significantly improve their implementation in the light of experience; legislation on industrial emissions has recently been reviewed, and a review of legislation on waste electronic and electrical equipment and restrictions on hazardous substances will be finished before the end of 2008.

The drive for greater efficiency is reflected in the seven thematic strategies published in 2005 and 2006 in key environmental policy areas¹. It is also reflected in the use of in-depth internal impact assessments² of potential policy options. The Commission carries out wide, detailed consultation, including over the internet, and welcomes the views of Member State authorities, expert bodies and interested parties. For example, IMPEL³ has provided input from the perspective of enforcement authorities for proposals on environmental inspections and integrated pollution prevention and control (IPPC).

As regards the types of proposed future legal act, the Commission does not exclude greater reliance on regulations, the regulation known as REACH⁴ being an example. However, because of the need to take account of local and regional environmental conditions and administrative arrangements, the directive is likely to remain an important instrument. This

¹ See 2005 working paper “Better Regulation and the Thematic Strategies for the Environment”, COM(2005) 466 final.

² Impact assessment of Commission policy and legislative proposals is not to be confused with project and plan environmental impact assessments under Community environmental impact assessment legislation, i.e. Directive 85/337/EEC and Directive 2001/42/EC.

³ European Union network for the implementation and enforcement of environmental law. This network of national inspectors was formed in 1992. For more information see <http://ec.europa.eu/environment/impel/index.htm>.

⁴ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, OJ L 396, 30.12.2006.

means that, in many cases, choices made at Member State level will largely determine cost-effectiveness and ease of implementation. Use of impact assessment systems can help Member States make the best choices.

In general, the Commission will, through dialogue with interested parties, seek to reduce bureaucracy and complexity when revising existing or drafting new legislation.

1.2 Checking and ensuring the quality of national and regional implementing legislation

This is an important challenge because of the high number of environmental directives already in force, the likelihood that directives will continue to be used in the future, and the tendency for the required national legislation to be often a regional responsibility, leading to a high number of national implementing measures. It should also not be forgotten that, when regulations are used instead of directives, Member States will often still need to take certain measures, such as repealing existing incompatible national law.

Given the extensive patchwork of national legislation in the field of the environment, correlation tables⁵ are a crucial means for seeing whether and how EU-derived rules are put in place by Member States. Commission efforts are therefore devoted to ensuring that they are systematically supplied.

A major effort has been underway for some years to ensure good quality national and regional legislation. The effort involves systematically checking conformity, relying on outsourced studies in a first phase of examination where appropriate. Studies have already been obtained for most of the principal parts of the *acquis* and follow-up action has begun for key waste, nature conservation and water directives. A risk-based approach is being applied — i.e. the Commission identifies and puts particular emphasis on those non-conformity problems likely substantially to might harm or impede practical compliance, as where non-conformity significantly narrows a directive's intended scope of application.

1.3 Checking and supporting how tasks and obligations are met at national and regional level

The Commission recognises the value of using a range of tools to help ensure that tasks set by environmental directives are successfully completed. The environment directorate-general has set up internal task forces for nature conservation, water, air, climate change, waste and impact assessment to ensure the coherent and co-ordinated use of the tools available. This initiative has helped ensure that preventive and enforcement actions are more closely linked and take greater account of broader policy considerations. It has also helped the environment directorate-general to be more proactive.

1.3.1 *Obtaining good information on how required results are being pursued and achieved*

Reliable information and data are crucial to assessing whether implementation is satisfactory. The Commission does not currently have a formal inspectorate to assess implementation first-hand and is reliant on the information that Member States make available, often through periodic reports. The Commission is committed to ensuring better information flow and in February 2008 presented a communication “Towards a Shared Environmental Information

⁵ i.e. Tables showing the match between the provisions of directives and the corresponding national provisions.

System (SEIS)”⁶ which aims at improving the quality of environmental data and information, and its management, use and dissemination across the EU. Better data and easier access to it can help prevent infringements by allowing problems to be identified more quickly and remedial action taken sooner.

Member State reports are supplemented by information received from the European Environment Agency, interested parties and implementation networks such as IMPEL and GreenForce⁷. The Commission seeks to make the best use of these sources and, where appropriate, commissions technical studies to look into particularly important implementation topics. For example, it has obtained studies on the effectiveness of Member State controls on the landfilling of waste and on how certain Member States have fulfilled duties to designate sensitive water bodies suffering from urban waste-water and agricultural pollution.

1.3.2 Performance scoreboards

Performance scoreboards involve showing the relative levels of compliance or performance of Member States at a given point in time by reference to a common performance indicator.

The Commission has made use of such scoreboards for a number of pieces of environmental legislation, notably to present progress in implementing designation requirements under the Wild Birds and Habitats Directives and in fulfilling various requirements of the Water Framework Directive. The scoreboards assist Member States by allowing them to compare how well they are doing by reference to other Member States.

1.3.3 Community financial assistance

Community funds underpin the goals set by EC environmental law. Major environmental infrastructure such as urban waste-water collecting systems and treatment plants is supported by the Cohesion Fund, the Structural Funds and European Investment Bank loans. The coverage of these funds includes transport, environment, regional, economic and social development. The LIFE Fund, which is exclusively devoted to environmental projects, assists interventions that fall outside the scope of the main funding instruments, for example innovative approaches to conserving habitats and species. The European Agricultural Fund for Rural Development co-finances, amongst other things, measures targeted towards encouraging the provision of environmental services on a voluntary basis (agri-environmental measures) and towards compliance with compulsory environmental requirements (for example, under the Habitats Directive and the Water Framework Directive). The Regional Development and Cohesion Funds make explicit reference to clean transport

At the same time, Community funding is subject to rules requiring compliance with EC law, including environmental obligations. Plans, programmes and projects co-financed by the Community which are likely to have significant environmental effects should be assessed in accordance to the SEA Directive⁸ and the EIA Directive⁹. The SEA Directive has been applied to most of the draft Operational Programmes (OPs) (2007-2013) prior to their

⁶ COM(2008)46 final.

⁷ The European Union network of Member States’ practitioners in both nature conservation and forestry. For more information see http://ec.europa.eu/environment/greenforce/index_en.htm.

⁸ Directive 2001/42/EC of the European Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment, *OJ L 197, 21.7.2001, p. 30*.

⁹ Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, *OJ L 175, 5.7.1985, p. 40*.

adoption by the Commission. This helps secure compliance upstream and eases the process of Community co-financing.

Funding of non-compliant projects is suspended where there is an open infringement procedure, and any violation of cross-compliance rules linking direct payments to farmers under the Common Agricultural Policy to respect for certain key environmental directives results in a reduction or cancellation of direct payments. Waste management infrastructure may only be funded by the Cohesion Fund and Structural Funds if it is covered by a waste management plan under Community waste legislation.

The ENEA network¹⁰ provides ongoing input to the integration of the environment and sustainable development policies within the regional policy programmes of Member States and the candidate countries. The overall network activities ensure incorporation of good practice as regard compliance of the co-financed projects with the *acquis*.

1.3.4 Pre-accession support activities

As part of its enlargement policy, the Commission runs a broad range of practical measures supporting transposition and implementation of the *acquis* by candidate and potential candidate countries. Within accession negotiations, opening and closing benchmarks are set to guide the *acquis* alignment and implementation. In addition, the Commission holds explanatory meetings and workshops on new or more complex parts of the *acquis* (for example, REACH or the Water Framework Directive) and provides technical assistance for drafting legislation. Across the board, EU co-financed new investments in the candidate countries are conditional on compliance with relevant provisions of the *acquis*, including the Environmental Impact Assessment Directive, the Strategic Environmental Assessment Directive and the Wild Birds and Habitats Directives. The Commission encourages the countries concerned to ratify and implement international conventions at an early stage, in particular the Aarhus¹¹ and Espoo¹² Conventions, and the Kyoto Protocol. The inspection services of the candidate and potential candidate countries cooperate within IMPEL and ECENA¹³. The Commission regularly consults the representatives of non-governmental organisations (annual NGO forum) and follows up issues highlighted by civil society. The overall progress made, including in the field of the environment, is assessed in annual progress reports and priorities for action are identified in the accession and European partnerships.

1.3.5 Commission guidance documents and other support for Member States and interested parties

Member States and interested parties can be assisted by guidance documents explaining the implications of key environmental legislation or recommendations on advisable actions and

¹⁰ The European Network of Environmental Authorities (ENEA) for the Cohesion Policy was set up in September 2004, following the seminars on environment and Structural Funds held at Santander (Spanish Network, March 2003), Brussels (DG-Env, December 2003) and Szentendre (REC, May 2004).

¹¹ Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

¹² Convention on environmental impact assessment in a transboundary context.

¹³ The Environmental Compliance and Enforcement Network for Accession. This was established by high-level officials from the environment ministries of South Eastern Europe (SEE) in Sofia, Bulgaria in March 2005.

approaches¹⁴. The practical arrangements for preparing such documents can be refined to ensure that, where possible, preparatory work involves a broader base of expertise drawn from Member States, sectoral interest groups and interest groups with a cross-cutting interest such as those representing regional and local government. An environmental compliance assistance programme (ECAP)¹⁵ has been prepared to help improve the environmental performance of small and medium-sized enterprises (SMES), which account for a large share of industrial pollution.

1.3.6 Dialogue with authorities, institutions and interested parties with key roles in implementation, legal review and enforcement

Apart from being involved in guidance preparation, external experts can play a valuable role in the collaborative stages of implementation that follow the adoption of legislation. For example, the European Habitats Forum, made up of both nature conservation and landowner representative groups, has been constructively involved in the process of ensuring that there are satisfactory Member State contributions to the ambitious Natura 2000 network of key nature sites. An array of interested parties is helping to ensure the effective implementation of the Water Framework Directive.

By promoting a common understanding of problems and securing appropriate and timely solutions, regular dialogue with those having an official or professional involvement in the legal aspects of implementation and enforcement offers a means of avoiding or reducing infringements. “Package” meetings are held with officials in the national capitals with a view to achieving early resolution of compliance problems. Where appropriate, these meetings are supplemented with training or awareness-raising seminars focused on particular problem areas. Regular dialogue and exchanges of experiences take place with Member State environmental inspectors within IMPEL and Greenforce on such issues as waste shipments. The Commission is promoting effective inspection systems in the Member States in the context of a recommendation on inspections¹⁶. The Commission will also co-operate with bodies such as NEEL¹⁷ which can promote greater awareness of EC environmental law amongst legal practitioners working in Member State public administrations.

2. SPECIFIC CHALLENGES IN IMPLEMENTING EC ENVIRONMENTAL LAW

¹⁴ By way of example, the Commission has produced twenty-four guidance documents on key aspects of the Water Framework Directive, 2000/60/EC; six guidance documents on the Seveso II or Major-Accident Hazard Directive, 96/82/EC; several guidance documents on the Wild Birds and Habitats Directives, 79/409/EEC and 92/43/EEC, and a recommendation aimed at increasing co-operation and effective enforcement of EC wildlife trade regulations. There have also been several communications and decisions establishing guidance and guidelines on the emission trading scheme. In the field of waste, guidance documents have been prepared on the Waste Electronic and Electronic Equipment (WEEE) Directive, 2002/96/EC, the Batteries Directive, 2006/66/EC and the End of Life Vehicle (ELV) Directive, 2000/53/EC.

¹⁵ See Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, Small, clean and competitive, A programme to help small and medium-sized enterprises comply with environmental legislation, COM(2007) 379 final.

¹⁶ European Parliament and Council Recommendation 2001/331/EC providing for minimum criteria for environmental inspections in the Member States, OJL, 27/4/2001. See also Communication from the Commission on the review of Recommendation 2001/331/EC, COM(2007)707 final.

¹⁷ Network of European Environmental Lawyers.

This section of the document looks at implementation in the different sectors that make up EC environmental law. For each sector, the main pieces of legislation are set out, the current position on implementation is evaluated, further challenges are described and there is a presentation of the main priorities in terms of Commission enforcement action.

2.1 Nature Conservation

2.1.1 *Legislative Framework*

The most important pieces of nature conservation legislation are the Birds Directive, 79/409/EEC¹⁸ and Habitats Directive, 92/43/EEC¹⁹. The former sets out measures for the protection, management and control of all species of naturally occurring European wild birds, as well as introducing rules to protect their habitats. The latter protects natural habitats and wild flora and fauna throughout the European Union and establishes a European ecological network known as “Natura 2000”.

2.1.2 *State of Law*

Nature conservation legislation constitutes a fairly stable part of the EC environmental *acquis*. Developments in this sector mainly concern the annexes to the Birds and Habitats Directives that have been adapted on a number of occasions in response to scientific and technical progress and to the successive enlargements of the European Union. The most recent adaptation is in response to the accession of Bulgaria and Romania to the European Union on 1 January 2007.

2.1.3 *Evaluation of the current position in terms of implementation*

Despite the small number of legal instruments in this field, nature conservation legislation accounts for between a fifth and a quarter of environmental infringements, i.e. the highest number of open environmental cases. The high number of cases in the nature sector is due mainly to the extent of the network, which now includes around 25 000 sites: there are Natura 2000 sites in the vicinity of every EU citizen. This is positive in as much as it brings the EU close to its citizens but it also means that the Commission receives a lot of complaints about threats to these sites. Although the demand from citizens, specialised and active NGOs and the European Parliament is high, the complaint and legal enforcement mechanisms for nature conservation in the Member States are often weak or inappropriate. The effectiveness of the Commission’s infringement procedure and the active role played by the Commission in the implementation of the nature directives contribute to the high numbers of cases.

In order to rationalise the handling of this high number of cases and ensure the effective implementation of the nature directives, the Commission has taken several initiatives, which can be divided into three categories:

- *Focus on the main implementation priorities*: the core obligations of the directives have been addressed (i.e. correct and complete transposition and establishment of

¹⁸ Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds *OJ L 103, 25.4.1979, p. 1-18*.

¹⁹ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora *OJ L 206, 22.7.1992, p. 7-50*.

the Natura 2000 network), while systemic problems of bad implementation have been tackled (e.g. hunting derogations).

- *Proactive cooperation with Member States*: this includes the drafting of interpretative guidance documents for the main provisions of the nature directives; the development of targeted guidance for economic sectors such as the port sector and the non-energy extractive industry, which have particular challenges in relation to the legislation; training of the competent authorities; regular contacts with the national, regional and local authorities, and establishment of the “Greenforce Network”.
- *Improvements in the handling of complaints*: specific methods were developed with the purpose of helping the complainants (i.e. ad hoc nature supplementary information form, which guides the complainants as regards the information needed to evaluate a complaint) and making more effective use of complaints (i.e. grouping of complaints in order to focus on systemic breaches).

Those measures have had a significant effect, as they resulted in the reduction of the implementation deficit. This is also confirmed by the number of open cases, which has been significantly reduced, despite the accession of 10 new Member States. At the end of 2003, 589 open cases were related to the nature conservation directives while, at the end of 2007, the number of open nature cases was 235.

2.1.4 Further challenges in implementing nature conservation legislation

- *Completing the establishment stage of the Natura 2000 network*. The terrestrial part of the Natura 2000 network is either established or close to establishment in accordance with the Birds and Habitats Directives. Habitats and species coverage still needs to be extended in places, mainly in the EU-12 Member States, and legal action will be pursued against Member States when necessary. The exercise is expected to be finalised in the short term. In the medium term, the Commission will tackle the issue of marine sites. Since the scientific knowledge and information available on the existence and distribution of marine habitat and species remains incomplete, the Member States are expected to submit their proposals by end 2008, based on existing knowledge. In order to facilitate the process, a guidance document has already been prepared by the Commission services.
- *Ensuring a systematically correct approach to Natura 2000 site protection*. To enable the Natura 2000 network to achieve its goal of conserving key elements of Europe’s biodiversity, there needs to be proper scrutiny and minimisation of, the impacts of potentially damaging plans and projects in line with ECJ case-law. Ensuring application of best scientific knowledge, examination of alternatives and, where appropriate, provision of compensatory habitats are all major challenges. In this regard, the Commission services issued a guidance document on Article 6(4) of the Habitats Directive, a key provision for the implementation of the Nature Directives. In addition, the Commission intends to promote best practice within specific economic sectors, such as European ports, wind energy

and non-extractive industries. Mention may also be made of the value of broad-based analysis and follow-up of problematical implementation²⁰.

- *Ensuring overall positive management of Natura 2000 network.* Apart from vetting potentially damaging plans and projects, Member States need to set up effective management systems for Natura 2000, supporting human activities such as conservation-sensitive farming that are beneficial to conservation objectives while also meeting socio-economic needs.

2.1.5 Prioritisation of Commission's legal enforcement work

In the coming years, the Commission will continue to pursue its legal enforcement action to help meet the main objectives of the nature conservation legislation. To this effect, high priority will continue to be given to pursuing infringement cases concerning significant non-conformity of national implementing legislation with the Birds and the Habitats Directives, insufficient site designations (mainly in the EU-12 Member States) and the lack of adequate legal protection and management regimes for the Natura 2000 sites. Focus will also be on addressing breaches concerning big infrastructure projects or interventions involving EU funding that have significant adverse impacts on Natura 2000 sites. In this context, the Commission will take into account considerations such as irreversible ecological damage and, where appropriate, seek interim measures from the European Court of Justice²¹. Infringements concerning unsustainable hunting practices in some Member States will also be followed up closely. In order to better handle individual complaints pointing to widespread problems of bad implementation, the established practice of launching horizontal infringement cases will continue to be followed.

2.2 Waste Management

2.2.1 Legislative Framework

The basic requirements for Member States regarding the management of waste and a definition of the term 'waste' are set out in Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (the Waste Framework Directive²²): More specifically, this Directive requires Member States to create and maintain an adequate network of waste disposal installations to enable the Community as a whole and the Member States individually to become self-sufficient in waste disposal. In order to achieve this objective, waste management plans have to be drawn up. It also established the waste hierarchy. This means that, ideally, waste should be prevented and what cannot be prevented should be re-used, recycled and recovered as much as feasible, with landfill being used as little as possible. The general framework directive is complemented by specific legislation to address particular environmental threats associated with waste. These include:

²⁰ Case C-418/04, *Commission v Ireland*, the subject of decision of 13 December 2007, illustrates how, by examining and analysing site protection problems across a whole economic sector, in this case aquaculture, a non-governmental organisation can lay the basis for a more effective and significant Commission intervention than if it had limited its examination to isolated cases in that sector.

²¹ In the last two years the Commission has three times sought interim measures in nature protection cases. In cases C-503/06, *Commission v. Italy* and C-76/08, *Commission v. Malta*, the Court ordered the Member States to halt illegal hunting activities on 19 December 2007 and 24 April 2008 respectively. In case C-193/07, *Commission v. Poland*, the Commission sought interim measures from the ECJ to prevent a Polish motorway project causing serious habitat damage: the request was dropped when Poland agreed to halt the relevant works pending an ECJ judgment.

²² *OJ L 114, 27.4.2006, p. 9–21.*

- Harmonised rules on waste management practices, including strict emission limits and operating requirements for the incineration²³ and landfill of waste. Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (the Landfill Directive²⁴) establishes a set of detailed, technical rules landfills must comply with. The objective is to prevent or minimise the negative effects that landfills can have, such as pollution of water, soil and air, and also gas emissions, notably emissions of methane, which is a powerful greenhouse gas. The Landfill Directive also helps to promote the recovery and recycling of waste, in particular by banning whole used tyres from landfills and by requiring waste to be treated prior to landfilling. Best available techniques were chosen as the benchmark for the management of hazardous waste²⁵;
- Harmonised rules on the shipment of waste, both inside the EU and to third countries, set by the Waste Shipment Regulation. This Regulation sets out rules for the trans-frontier movement of waste to ensure that waste is handled in an environmentally sound manner throughout the shipment process, including recovery or disposal in the country of destination.

Product specific recycling legislation, setting targets for the collection and recycling and introducing producer responsibility principles for specific waste streams from consumer goods (including packaging waste²⁶, end of life vehicles²⁷ and waste electrical and electronic equipment²⁸) Examples of recently adopted legislative measures in the sector of waste management include Directive 2006/21/EC on the management of waste from extractive industries and amending Directive 2004/35/EC²⁹ (transposition deadline: 1 May 2008) and Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC³⁰ (transposition deadline: 26 September 2008).

2.2.2 State of Law

EU waste management legislation is characterised by several consolidated legal instruments as well as important new pieces of legislation. The waste management legislation is underpinned by the Thematic Strategy on the Waste Prevention and Recycling³¹. It sets as long term objective for the EU to become a recycling society, that seeks to avoid waste and

²³ Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste (*OJ L 332, 28.12.2000, p. 91–111*).

²⁴ *OJ L 182, 16.7.1999, p. 1–19*.

²⁵ Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (*OJ L 377, 31.12.1991, p. 20–27*).

²⁶ European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste (*OJ L 365, 31.12.1994, p. 10–23*).

²⁷ Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of-life vehicles (*OJ L 269, 21.10.2000, p. 34–43*).

²⁸ Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment ((*OJ L 37, 13.2.2003, p. 19–23*), and Directive 2002/96/EC of the European Parliament and of the Council of 27 January 2003 on waste electrical and electronic equipment (*OJ L 37, 13.2.2003, p. 24–39*).

²⁹ This Directive introduces measures to prevent or minimise any adverse effects on the environment and resultant risks to health resulting from the management of waste from the extractive industries, such as tailings and displaced material (*OJ L 102 of 11.04.2006*).

³⁰ This Directive prohibits the placing on the market of most batteries and accumulators with a certain mercury or cadmium content and establishes rules for the collection, recycling, treatment and disposal of batteries and accumulators. (*OJ L 266 of 26.9.2006*).

³¹ COM(2005)666.

uses waste as a resource. Following the Thematic Strategy, the Waste Framework Directive has been modernised, introducing a new approach to waste management that encourages the prevention of waste. The revised Directive clarifies that the waste hierarchy should not be seen as a hard-and-fast rule but that deviations from the hierarchy are possible based on a life-cycle analysis of environmental impacts. The revised Directive also sets energy-efficiency criteria on the basis of which waste incineration can be considered as a recovery operation to promote resource efficiency, thus reducing the consumption of fossil fuels. It also sets new recycling targets: By 2020, Member States must recycle 50% of their household and similar waste and 70% of their construction and demolition waste.

2.2.3 Evaluation of the current position in terms of implementation

The overall situation of waste management has to be seen as critical. By far the biggest challenge concerns the implementation of the Waste Framework Directive, the Landfill Directive and the Waste Shipment Regulation. The lack of adequate waste management infrastructure, the persistently high number of illegal landfills in a significant number of Member States and the significant number of illegal shipments of waste, notably electronic waste and end-of-life vehicles, threaten human health and the environment. The chronic waste crisis affecting Naples and the rest of the Campania region in Italy is a striking example. In Member States where this phenomenon exists, efforts, particularly in terms of investment in waste infrastructure, will have to be stepped up considerably. Implementation of separate waste collection, notably for packaging waste and biodegradable waste, as well as effective pre-treatment of waste before disposal are a prerequisite for boosting recycling and reducing the rate of landfilling, in particular in the EU-12 Member States, where this still oscillates around 90%. Specific aspects of landfilling have received higher attention under the present climate change discussion. Insufficient methane collection from landfills and alternative waste management options addressed under the label “waste to energy” will fuel the discussion about improving waste management in the near future.

2.2.4 Further challenges in implementing waste management legislation

- *Ensuring an adequate network of safe and legal waste disposal and recovery facilities.* Matching the capacity of waste infrastructure to the volume of waste generated is fundamental to good waste management. Waste management plans can help ensure the necessary capacity, but only if they are effectively implemented.
- *Reducing and managing certain waste streams.* The achievement of certain EC waste reduction and management goals such as the diversion of biodegradable waste from landfills and the collection and handling of end-of-life vehicles and waste electrical and electronic equipment (WEEE) also depends on adequate forward planning and development of organisational arrangements and recovery facilities.
- *Combating the illegal waste trade and illegal waste disposal.* Tackling the use of thousands of illegal landfills in several Member States requires strategic action on several fronts to comply with the Waste Framework Directive and the Landfill Directive: investments in legal facilities, better systems of national detection, enforcement and deterrence and adequate site clean-up. Adequate controls on transfrontier waste shipments are also essential. The Commission has taken

horizontal legal action for lack of controls on illegal landfills, and there have been several important ECJ rulings.

2.2.5 Prioritisation of Commission's legal enforcement work

In the coming years, the Commission will pursue its legal enforcement action to help meet the objectives of waste management legislation, i.e. to reduce the negative impact on the environment and human health that is caused by waste throughout its life-span, from production to disposal, via recycling.

To this end, high priority will continue to be given to “*horizontalising*” infringement action, i.e. tackling widespread problems of bad implementation at a more strategic level. This approach allows the Commission to address the lack of adequate waste management capacity and infrastructure and the presence of illegal landfills in a far higher number of places than would have been possible if it had only focused on individual failures and to ensure consistency and coherence in the actions taken..

In addition, since the completeness and correctness of implementing legislation within the Member States are important determinants of good implementation in practice, the Commission will continue to systematically pursue infringements concerning the non-compliant transposition of the most important pieces of waste management legislation (for example, the Landfill Directive, the WEEE Directive, and the End-of-life vehicles Directive) likely to affect the attainment of the legislative objectives..

As for other new proposals for directives, to ensure timely and correct transposition of new waste management directives, primarily the new Waste Framework Directive, the responsible units within DG Environment will prepare risk-based implementation action plans.

By way of preventive action, the Commission will continue to carry out awareness-raising campaigns and information exchange in most Member States. Particular emphasis will be placed on two implementation gaps, illegal and mismanaged landfills and illegal waste shipments, and waste management plans and prevention programmes. It is hoped that this will increase understanding of Community legal requirements, identify bottlenecks and promote best practice.

Furthermore, bilateral and multilateral meetings will take place with Member States and stakeholders.

2.3 Environmental Impact Assessment & Strategic Environmental Assessment

2.3.1 Legislative Framework

The most important pieces of legislation in this sector are the Environmental Impact Assessment Directive and the Strategic Environmental Assessment Directive. Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment as amended by Directives 97/11/EC and 2003/35/EC (the Environmental Impact Assessment or EIA Directive)³² obliges Member States to carry out environmental impact assessments before certain types of public and private projects which are likely to have a significant impact on the environment are authorised. Directive 2001/42/EC of the European

³² OJ L 175, 5.7.1985, p. 40.

Parliament and of the Council on the assessment of the effects of certain plans and programmes on the environment (the Strategic Environmental Assessment or SEA Directive)³³ seeks to ensure that the environmental consequences of certain public plans and programmes that are likely to have significant environmental effects are identified and assessed while they are being prepared and before they are approved.

2.3.2 State of Law

The application and effectiveness of environmental impact assessment legislation, in particular the EIA Directive, has been subject to regular reviews in the past. On the basis of such reviews, the EIA Directive was subsequently amended in 1997. Directive 97/11/EC³⁴ widened the scope of the EIA Directive by increasing the types of project covered, and the number of projects requiring mandatory environmental impact assessment (Annex I). It also strengthened the procedural basis of the EIA Directive by providing for new screening arrangements, including new screening criteria (at Annex III) for Annex II projects, and providing minimum information requirements. Following this first amendment, the Directive was later modified in 2003 by Directive 2003/35/EC³⁵, seeking to align the provisions on public participation with the Aarhus Convention on public participation in decision-making and access to justice in environmental matters. Depending on the results of future reports on their application, further amendments and changes to both the EIA and the SEA Directive cannot be excluded.

2.3.3 Evaluation of the current position in terms of implementation

The EIA Directive has been the subject of several cases brought before the European Court of Justice, and the case-law of the Court has contributed to a better understanding of certain provisions of the Directive. In the interests of better implementation of the EIA and the SEA Directive, the Commission services have developed in recent years a number of guidance documents on particularly important aspects of both directives³⁶.

Although the Environmental Impact Assessment sector continues to generate a high number of complaints, its contribution to the overall number of open cases has decreased, so that at the end of 2007 this sector ranked only fifth in terms of the number of infringements. Most open cases in the sector still relate to the EIA Directive, but cases relating to the SEA Directive are on the increase. The deadline for transposing the latter directive was 21 July 2004, but significant delays in transposition have occurred in many Member States, which means that experience of the actual application of the directive is still somewhat limited. In addition, the conformity of Member States' legislation cannot yet be considered to have been secured. Given the similar nature of the obligations in the two instruments, it is to be expected that problems in the correct application of the SEA Directive will be similar to those encountered in applying the EIA Directive. In terms of enforcement, early signs are that decisions as to whether smaller plans and programmes or modifications require an SEA (so-called "screening" decisions) could pose problems of bad application. However, forthcoming

³³ OJ L 197, 21.7.2001, p. 30.

³⁴ OJ L 73, 14.03.1997.

³⁵ OJ L 56, 25.06.2003.

³⁶ Examples for the EIA Directive include guidance documents on screening, scoping, assessment of indirect and cumulative impacts, or most recently, on the interpretation of the different project categories.

reports on the application of both the EIA and the SEA Directives will clarify this and form the basis for future Commission's action in the sector.

Article 2(3) of the EIA Directive allows Member States to exempt specific projects in exceptional circumstances (e.g. for unforeseen civil emergencies; threats to human health and the environment; security risks) from the provisions of the Directive in whole or in part, and to notify the Commission. This provision has been used by Italy three times in 2006 and twice so far in 2008.

In 2006, two notifications concerned the building of port infrastructure in Sicily: one in the Eolie islands after damage by a tsunami and the other in Lampedusa due to the lack of facilities to receive a high number of immigrants. The third 2006 notification was for the temporary use of an existing waste disposal facility for special waste in Lecce in Puglia due to the waste emergency in the region at the time. In 2008, both notifications concerned new landfills in Campania needed due to the waste emergency there.

2.3.4 Further challenges in implementing Environmental Impact Assessment legislation

- *Ensuring that citizens and NGOs can seek reviews at Member States level.* Every year, thousands of projects are proposed across the Community. A key challenge arises from the fact that, when citizens are aggrieved or concerned about proposed new infrastructure, industrial and other projects, they look to environmental impact assessment provisions contained in the EIA Directive when formulating their objections and concerns. The provisions are therefore frequently invoked in relation to controversies about proposed new development and in relation to complaints and petitions. In line with the Aarhus Convention, the last revision of the EIA Directive in 2003 seeks to give citizens and NGOs a right of review of decisions that concern rights of public participation. Making this effective is a way of better addressing nationally the many EIA concerns that are expressed by citizens about individual projects across the Community.
- *Developing capabilities in Member States to ensure effective implementation of the EIA and SEA Directives.* For the effective application of the EIA and SEA Directives, capacity building must be strongly encouraged within institutions having critical responsibilities in planning and environmental decision-making, notably through targeted campaigns for the recruitment and training of EIA and SEA experts. In this context, training programmes offered and guidance documents prepared by the Commission are contributing to the capacity building efforts of the Member States.
- *Taking into account the horizontal character of the EIA and SEA Directives, there are possible overlaps between these two Directives and certain other EC environmental legislation and policies.* This may require co-ordinated or joint procedures to avoid duplication of assessment. Overlaps may occur between the EIA and SEA Directives themselves, as well as with the Water Framework Directive (Directive 2000/60/EC), the Nitrates Directive (91/676/EC), the Waste Framework Directive (Directive 2006/12/EC), the Air Quality Directive (2008/50/EC) and the Habitats Directive (92/43/EC). Furthermore, the SEA Directive also applies to plans and programmes co-financed by the EC, and the environmental assessment is carried out in conformity with the specific provisions in relevant Community legislation.

2.3.5 Prioritisation of Commission's legal enforcement work

High priority will continue to be given to legal action addressing non-conformity of transposing measures for the EIA Directive likely to affect the attainment of the legislative objectives. These cases now mainly concern the EU-12 Member States. Similarly, the Commission will continue to pursue infringement procedures against Member States that have failed to correctly and/or completely transpose the SEA Directive. Since these directives contain mainly procedural requirements which figure in many complaints and petitions, the Commission will continue to seek improved national legislation to implement these requirements. By doing so, the Commission seeks to avoid at least some procedural problems at the level of individual plans and projects.

In addition to the emphasis on pursuing non-conformity cases and work aimed at improving national legislation which implements the procedural requirements of the environmental impact assessment legislation, the following types of bad implementation cases will be followed up more closely by the Commission:

- breaches concerning big infrastructure projects or interventions involving EU funding;
- breaches linked to bad transposition of certain provisions of the environmental impact assessment legislation likely to affect the attainment of the legislative objectives;
- breaches that reveal interpretation problems concerning certain provisions of the environmental impact assessment legislation which could have a significant influence on the impact of the legislation that would justify seeking clarification from the Court of Justice.

Apart from the above cases where the Commission legal enforcement action might be indispensable, individual breaches of certain provisions of the environmental impact assessment legislation should primarily be addressed through the existing review mechanisms at Member State level.

2.4 Protecting Water Resources

2.4.1 Legislative Framework

The most important piece of legislation in this area is the Water Framework Directive³⁷, which establishes a strategic framework for the protection of all water bodies, i.e. rivers, lakes, coastal waters and groundwater, in the European Union. The Urban Waste Water Treatment Directive³⁸ is another key instrument for reducing water pollution: it addresses the waste water discharges of cities and towns. Complementing it is the Nitrates Directive³⁹, designed to protect the Community's waters against nitrates from agricultural sources, one of the chief causes of diffuse pollution. Aimed at ensuring that drinking water is kept free of

³⁷ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (*OJ L 327, 22.12.2000, p. 1–73*).

³⁸ Council 91/271/EEC concerning urban waste water treatment (*OJ L 135, 30.5.1991, p. 40–52*).

³⁹ Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (*OJ L 375, 31.12.1991*).

contamination, the Drinking Water Directive⁴⁰ is important for public health. Besides the above-mentioned key directives, European water legislation also covers specific uses of water, including rules for the monitoring, assessment and management of the quality of bathing water⁴¹. Moreover, various pieces of legislation cover rules for preventing and reducing the discharges of substances into water bodies⁴².

2.4.2 State of Law

European water legislation consists of a number of fairly stable, consolidated legal instruments, but there are also important new developments in this domain. Examples of recently adopted measures include a new Bathing Water Directive⁴³, a new Groundwater Directive⁴⁴, which supports the Water Framework Directive, and a directive on flood risks⁴⁵. The new Marine Strategy Framework Directive⁴⁶, which extends the application of the principles of the Water Framework Directive to European seas, has recently been adopted. In addition, a proposal for a directive relating to priority hazardous substances⁴⁷ which also supports the Water Framework Directive is currently in the adoption pipeline.

2.4.3 Evaluation of the current position in terms of implementation

⁴⁰ Council 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (*OJ L 330, 05.12.1998, p. 32-54*).

⁴¹ Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water (*OJ L 31, 5.2.1976, p. 1-7*).

⁴² The following directives can be mentioned as examples of such legislation: Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community (*OJ L 129, 18.5.1976*); and Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances (*OJ L 20, 26.1.1980, p. 43-48*).

⁴³ Directive 2006/7/EC of 15 February 2006 concerning the management of bathing water quality and repealing Directive 76/160/EEC (transposition deadline 24 March 2008) (*OJ L 64 of 4.3.2006*). Directive 76/160/EEC is repealed by this new Directive with effect from 31 December 2014. It is designed to ensure consistency with the Water Framework Directive and is also intended to simplify procedures in the light of scientific developments and improve participatory processes for the actors concerned and the information given to the public.

⁴⁴ Directive 2006/118/EC of 12 December 2006 on the protection of groundwater against pollution and deterioration (transposition deadline 16 January 2009) (*OJ L 372, 27.12.2006*). This Directive is designed to prevent and combat groundwater pollution. Its provisions include: criteria for assessing the chemical status of groundwater; criteria for identifying significant and sustained upward trends in groundwater pollution levels, and for defining starting points for reversing these trends; and preventing and limiting indirect discharges (after percolation through soil or subsoil) of pollutants into groundwater.

⁴⁵ Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks (transposition deadline 26 November 2009) (*OJ L 288, 6.11.2007*). This Directive aims to establish a common framework for assessing and reducing the risk that floods within the European Union pose to human health, the environment, property and economic activity. The purpose of this Directive is to manage and reduce the risk of floods, particularly along rivers and in coastal areas. It provides for assessment of the risk of flooding in river basins, the mapping of flood risks in all regions where there is a serious risk of flooding and the drawing up of flood risk management plans based on close cooperation between and the broad participation of Member States.

⁴⁶ Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a Framework for Community Action in the field of Marine Environmental Policy (Marine Strategy Framework Directive) (*OJ L 164, 25.6.2008, p. 19-40*).

⁴⁷ Proposal for a Directive of the European Parliament and of the Council on environmental quality standards in the field of water policy and amending Directive 2000/60/EC (COM(2006)397).

The strong stakeholder processes that have been put in place, combined with Commission enforcement action, have helped to ensure a broad degree of compliance with the first implementation deadlines under the Water Framework Directive. These comprise the deadlines for transposing the directive into national law (December 2003), the setting up and notification of river basin districts (June 2004), the analysis and notification of pressures on river basin districts (March 2005) and the organisation and notification of monitoring (March 2007). However, studies have identified problems with the quality of national implementing legislation, and the Commission faces the challenge of securing from Member States clearer and more complete national implementing provisions.

In the EU-15, i.e. those Member States that joined the EU in the period before 2004-2007, the implementation of the Urban Waste Water Treatment Directive presents a mixed picture. On the one hand, key infrastructure is in place in several Member States and significant investments have been made elsewhere. This serves not only the immediate goals of the Urban Waste Water Treatment Directive but also supports the achievement of wider water policy objectives, including those of the Water Framework Directive. On the other hand, in the EU-15, there are infrastructure deficits in up to a quarter of the 8000 larger cities and settlements that were subject to 1998 and 2000 collection and treatment deadlines. The deficits are the subject of ongoing Commission infringement procedures that have already resulted in several important ECJ rulings. These in turn are helping to secure the necessary implementation work in the Member States concerned, and a steady narrowing of the deficits is to be expected. However, several factors — such as slippage of expected infrastructure completion dates — make it difficult to forecast when full compliance will be achieved.

2.4.4 Further challenges in implementing European water legislation

- *Making the Water Framework Directive fully operational.* Momentum must be maintained to ensure that critical upcoming deadlines are respected and that in the crucial period 2009-2015, effective action is taken at the level of each European river basin district to prevent and reduce water pollution and avoid the unsound use of water resources.
- *Implementing the Urban Waste Water Treatment Directive:* It is important to ensure effective implementation of the Urban Waste Water Treatment Directive in the EU-12 and continue to ensure effective implementation in the EU-15. For the EU-12, legal deadlines are later but it is clear that many cities and settlements require upgrades and the Commission will need to follow progress closely. The Commission will also need to monitor closely compliance in the EU-15, for example to ensure that collecting systems and treatment match urban growth.

2.4.5 Prioritisation of Commission's legal enforcement work

Horizontal legal actions addressing systemic breaches, such as widespread contraventions of obligations for the development of environmental infrastructure under the Urban Waste Water Directive, will continue to be pursued as priorities. This approach means that a single case can encompass significant numbers of non-compliant cities and towns, bringing much more pressure to bear than would be possible through a policy of pursuing individual failures.

An important focus of the Commission's enforcement work as regards water is to make sure that the various deadlines of the Water Framework Directive are respected. To this effect, the Commission will continue to take concerted legal action to address missed deadlines in the upcoming crucial period 2009-2015.

The Commission will continue to take infringement action against Member States that have not correctly or completely transposed into their national legislation the provisions of the Water Framework Directive in ways likely to affect the attainment of the legislative objectives.

Similar action will be taken to secure from Member States (mainly from EU-12 countries) clearer and more complete national implementing provisions for the Drinking Water Directive.

As regards important new legal instruments, DG Environment will prepare risk-based implementation action plans for the Marine Strategy Directive and the new Groundwater Directive. This will involve forward planning of work to encourage correct and timely transposition.

2.5 Air Quality

2.5.1 Legislative Framework

The new Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe is the key legal instrument in this sector⁴⁸. This merges four directives⁴⁹ and one Council decision⁵⁰ into a single air quality instrument. Other important legal instruments contributing to ensuring adequate air quality are the two fuel quality directives, i.e. Directive 98/70/EC relating to the quality of petrol and diesel fuels⁵¹ and Directive 1999/32/EC relating to a reduction in the sulphur content of certain liquid fuels⁵². Furthermore, mention must also be made of the Noise Directive⁵³ which lays down a common approach to avoiding, preventing or reducing on a prioritised basis the harmful effects of exposure to environmental noise.

2.5.2 State of Law

This domain of EC environmental law is characterised by important new developments. The most significant recent legal instrument is the new Air Quality Directive, 2008/50/EC, which entered into force on 11 June 2008. It introduces new objectives for fine particles PM_{2.5} but does not change existing air quality standards. It does, however, under certain conditions give

⁴⁸ *OJ L 152, 11.6.2008, p. 1-44.*

⁴⁹ The four directives merged into the new directive are: Council Directive 96/62/EC of 27 September 1996 on ambient air quality assessment and management; Council Directive 1999/30/EC of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air; Directive 2000/69/EC of the European Parliament and of the Council relating to limit values for benzene and carbon monoxide in ambient air; and Directive 2002/3/EC of the European Parliament and of the Council relating to ozone in ambient air. These acts will be repealed two years from the entry into force of the new Directive.

⁵⁰ Council Decision 97/101/EC establishing a reciprocal exchange of information and data from networks and individual stations measuring ambient air pollution within the Member States.

⁵¹ Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EEC (*OJ L 350, 28.12.1998, p. 58-68*).

⁵² Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC (*OJ L 121, 11.5.1999, p. 13-18*).

⁵³ Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise (*OJ L 189, 18.7.2002, p. 12-25*).

Member States greater flexibility in meeting some of these standards in areas where they have difficulty complying. Another important legal instrument that is currently in the legislative procedure is the revision of the Fuel Quality Directive⁵⁴. This will contribute to reducing air pollutant and greenhouse gas emissions from road and non-road fuel use and help to implement the Community strategies on air quality and on climate change. The main reasons for reviewing the Fuel Quality Directive stem from evolving fuel and engine technology and the growth in biofuel use.

2.5.3 Evaluation of the current position in terms of implementation

Available evidence points to serious problems in complying with air quality limit values in many European air quality zones. The Commission has been following closely the situation in all Member States and, so far, has taken the following action in this field:

- *Action on SO₂ levels:* The Commission has already launched infringement procedures against several Member States that have shown widespread exceedances of sulphur-dioxide (SO₂) limit values that have been in force since 1 January 2005.
- *Action on PM₁₀ levels:* The binding limit values for particulate matter (PM₁₀) have also been in force since 1 January 2005. It is clear from official reports that most of the Member States have experienced significant difficulties in achieving compliance with these limit values. For 2006, around 400 zones in 23 Member States were reported as being in non-compliance. It is expected that Bulgaria and Romania, which were not under an obligation to report for that year, are also facing serious compliance problems. In this context, it must be noted that PM₁₀ compliance problems were recognised well in advance by the Commission. Hence, it proposed a revision of the legislation aimed at maintaining standards but allowing extra time and greater flexibility to address the most serious difficulties under certain conditions. The dilemma was how to treat the breaches of existing Community law in the intervening period before the new directive was adopted. The Commission took the option of not initiating immediate legal action, and instead, required the Member States to implement the pollution-abatement measures necessary to improve the situation. It warned Member States that this would be a condition for any time extension for compliance under the new Air Quality Directive.
- *Action concerning non-communication of plans and programmes aimed at achieving compliance with other limit values:* The Commission has pursued legal enforcement action against a number of Member States which had failed to communicate their plans and programmes for complying by the end of the transitional periods with the other limit values set under EC air quality legislation⁵⁵.

⁵⁴ Proposal for a Directive of the European Parliament and of the Council amending Directive 98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and the introduction of a mechanism to monitor and reduce greenhouse gas emissions from the use of road transport fuels and amending Council Directive 1999/32/EC, as regards the specification of fuel used by inland waterway vessels and repealing Directive 93/12/EEC (COM (2007) 18).

⁵⁵ In addition to sulphur dioxide and particulate matter for which binding limit values have been in force since 1 January 2005, EC legislation sets limit values that are not yet in force for the following

Actions concerning noise Under the Noise Directive, Member States had to send to the Commission by 30 December 2007 information from the strategic noise maps which had to be drawn up by 30 June 2007. Strategic noise maps are required to be drawn up in order to monitor the extent of noise pollution, to inform and consult the public about noise exposure, its effects, and the measures considered necessary to address noise. The Commission prepared guidance and electronic templates (so-called 'electronic reporting mechanisms') designed to support and assist the Member States in fulfilling their reporting requirements. The Commission, together with the European Environmental Agency, is currently assessing the information received and carrying out a quality checking of the noise maps. It is to be noted that there are still some Member States who have not yet submitted their report. The Commission has requested all Member States to provide information on the current state of play concerning their noise maps.

2.5.4 Further challenges in implementing Air Quality legislation

- *Ensuring compliance with air quality limit values:* Air pollution has long been recognised as posing a significant risk to human health and the environment. On the basis of past experience, it is likely that ensuring compliance with binding limit values will remain a difficult issue in several Member States. In the coming period, it will be crucial to ensure that measures aimed at bringing about compliance with limit values are systematically put in place and implemented.
- *Implementing the mechanisms of the new Air Quality Directive — postponement of attainment deadlines:* The new Air Quality Directive provides Member States with the possibility to obtain, under certain conditions, time extensions for compliance with certain limit values. Most of the Member States are expected to apply for such time extensions. Before granting its final agreement to postponement, the Commission will have to assess thoroughly if a number of conditions are fulfilled, in particular if Member States have implemented appropriate pollution-abatement measures.
- *Effective implementation of the Environmental Noise Directive.* The Commission efforts need to continue to ensure that the Noise Directive is fully and correctly implemented.

2.5.5 Prioritisation of Commission's legal enforcement work

In the coming years, the Commission will continue to monitor closely the situation with regard to compliance with air quality limit values in all Member States. It will continue to follow its "horizontal" approach, which allows air pollution problems to be addressed in a far higher number of places than would be possible if it only focused on individual cities or regions.

As regards excessive SO₂, the Commission will continue to pursue the legal enforcement action it has already launched against several Member States. As for PM₁₀, the Commission will assess closely whether time extension requests expected to be submitted by most of the Member States meet the relevant criteria. Infringement procedures are to be envisaged against

pollutants: nitrogen dioxide, oxides of nitrogen, lead, benzene, carbon monoxide, ozone, arsenic, cadmium, mercury and nickel.

Member States in breach of the limit values which do not apply for a time extension or do not meet the conditions for obtaining such extension.

In addition, legal enforcement procedures will be pursued to ensure that Member States fulfil their reporting obligations under the air quality legislation. The Commission will continue its efforts to ensure that the Noise Directive is fully implemented. To this end, it will continue to carefully assess the information, i.e. the strategic noise maps and action plans, submitted by the Member States under the directive and will launch legal action should it identify breaches in the application of this legislation.

For newly adopted directives, implementation action plans will be drawn up. This will involve forward planning of work to encourage correct and timely transposition.

2.6 Climate Change

2.6.1 Legislative Framework

The most important cross-cutting measures in this domain are the Emissions Trading Directive⁵⁶ and Decisions 280/2004/EC⁵⁷ and 2005/166/EC⁵⁸. With the adoption of the Emissions Trading Directive, the EU has established a scheme for greenhouse gas emission allowance trading within the Community (EU ETS). This is a market-based instrument aimed at gradually reducing emissions in selected sectors. It should help the Community and the Member States to meet their Kyoto Protocol commitments to reduce greenhouse gas emissions in a cost-efficient way. With the adoption of Decisions 280/2004/EC and 2005/166/EC, the EU established a mechanism for monitoring and reporting greenhouse gas emissions. This makes it possible to evaluate more accurately and more regularly the progress made in reducing emissions under the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol.

2.6.2 State of Law

Climate change legislation is an evolving part of EC environmental law. The Commission has taken many climate-related initiatives since 1991, when it issued the first Community strategy to limit carbon dioxide (CO₂) emissions and improve energy efficiency. It became clear that action by both Member States and the European Community needed to be strengthened if the EU is to succeed in cutting its greenhouse gas emissions to 8% below 1990 levels by 2012, as required by the Kyoto Protocol. Decisions 280/2004/EC and 2005/166/EC make it easier to gauge the EU's progress towards meeting this target.

In June 2000 the Commission launched the European Climate Change Programme (ECCP) as the Commission's main instrument for discussing and preparing the further development of

⁵⁶ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (*OJ L 275, 25.10.2003, p. 32–46*).

⁵⁷ Decision 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol (*OJ L 49, 19.2.2004, p. 1–8*).

⁵⁸ Commission Decision 2005/166/EC of 10 February 2005 laying down rules implementing Decision No 280/2004/EC of the European Parliament and of the Council concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol (*OJ L 55, 1.3.2005, p. 57–91*).

the EU's climate policy. Under the first ECCP, an extensive range of policy sectors were examined and several instruments with potential for reducing greenhouse gas emissions were adopted. One of the most important and innovative initiatives is the EU Emissions Trading Scheme, under Directive 2003/87/EC, which covers carbon dioxide (CO₂) emissions from some 10 500 installations in the energy and some industrial sectors.

The second European Climate Change Programme (ECCP II) was launched in October 2005. It has several working groups preparing new legislative instruments in the following main fields: ECCP I review (transport, energy supply, energy demand, non-CO₂ gases, agriculture), aviation, CO₂ and cars, carbon capture and storage, adaptation and the EU ETS review.

Examples of legislative proposals that are currently under adoption are:

- *Revision of the Emissions Trading Directive*⁵⁹: The main objectives are (1) full exploitation of the potential of the EU ETS to contribute to the EU's overall greenhouse gas reduction commitments in an economically efficient manner; (2) refinement and improvement of the EU ETS in the light of experience; and (3) contribution to transforming Europe into a low greenhouse-gas-emitting economy and creating the right incentives for forward-looking low carbon investment decisions by giving a clear, undistorted and long-term carbon price signal.
- *Proposal to include aviation activities in the EU ETS*⁶⁰: This directive provides for aviation to be brought into the EU ETS so as to limit the rapid growth in emissions of the sector.
- *Proposal on the geographical storage of carbon dioxide*⁶¹: This directive establishes a legal framework for the geological storage of carbon dioxide, the purpose being permanent containment of CO₂ in such a way as to prevent or minimise negative effects on the environment and any resulting risk to human health.
- *Proposal to limit the CO₂ emissions from cars*⁶²: This regulation lays down harmonised rules to limit the average CO₂ emissions from new cars in the Community. It thus seeks to fight climate change, reduce fuel costs and boost European competitiveness.

⁵⁹ Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading system of the Community (COM (2008) 16).

⁶⁰ Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community (COM (2006) 818).

⁶¹ Proposal for a Directive of the European Parliament and of the Council on the geological storage of carbon dioxide and amending Council Directives 85/337/EEC, 96/61/EC, Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC and Regulation (EC) No 1013/2006 (COM (2008) 18).

⁶² Proposal for a Regulation of the European Parliament and of the Council setting emission performance standards for new passenger cars as part of the Community's integrated approach to reduce CO₂ emissions from light-duty vehicles (COM (2007) 856).

2.6.3 Evaluation of the current position in terms of implementation

Under Decisions 280/2004/EC and 2005/166/EC, Member States must provide the Commission with annual reports on their actual emissions of greenhouse gases and twice-yearly reports on domestic climate change policies and measures and emission projections. The Commission has been rigorously checking whether national reports were submitted on time and whether they were correct and complete. As a result of enforcement action, reporting has steadily and significantly improved in terms of timing and content. As far as the Emissions Trading Directive is concerned, following Commission enforcement action, all Member States have communicated their national implementing legislation.

2.6.4 Further challenges in implementing Climate Change legislation

- *Implementing the EU ETS.* Launched in January 2005, the EU ETS is the world's largest company-level 'cap-and-trade' system for trading in emissions of carbon dioxide (CO₂) and has quickly become the main driving force behind the expansion of the emerging global carbon market. Putting this system into effect should allow the EU to achieve its greenhouse gas emission reduction targets under the Kyoto Protocol in a particularly cost-effective way.
- *Ensuring provision of climate-relevant data.* Accurate, up-to-date information is an essential basis for fighting climate change. One of the challenges for the Commission will therefore be to ensure that the reporting of national greenhouse gas emissions improves still further, so that all Member States communicate complete reports to deadline to ensure an effective follow-up to the United Nations Framework Convention on Climate Change and the Kyoto Protocol.

2.6.5 Prioritisation of Commission's legal enforcement work

The Commission has assessed the national allocation plans (NAPs) of all the 27 Member States for the second trading period (2008-2012) of the EU ETS and has adopted decisions based on the Emissions Trading Directive. It is currently checking to see whether the way Member States implement their NAPs, i.e. how they allocate the accepted total quantity of allowances to individual installations, is in conformity with its decisions.

Having secured the transposition of the Emissions Trading Directive, the Commission will now focus on assessing the correctness and completeness of the national implementing legislation in the Member States. Priority will be attached to the pursuit, through infringement proceedings if necessary, of any shortcomings likely to affect the attainment of the legislative objectives

In the coming years, the Commission will continue to pursue legal enforcement action against Member States that fail to comply with their obligations under the climate change legislation, including in relation to reporting and monitoring the Community's greenhouse gas emissions and implementing the Kyoto Protocol.

For the new directives, the Commission will draw up implementation action plans. This will involve forward planning of work to encourage correct and timely transposition.

2.7 Industrial Installations

2.7.1 Legislative Framework

The most important piece of legislation relating to industrial emissions is Directive 96/61/EC concerning integrated pollution prevention and control (IPPC Directive), which was codified by Directive 2008/1/EC⁶³. It sets out common permit rules for industrial installations. Operators of installations covered by the IPPC Directive are required to obtain an authorisation (integrated permit) from the authorities of the Member States. The Large Combustion Plant (or LCP) Directive⁶⁴ aims to reduce emissions of sulphur dioxide, nitrogen oxides and dust from large combustion plants — i.e. plants whose rated thermal input is equal to or greater than 50 MW. The control of emissions from such plants plays an important role in the Community's efforts to combat acidification, eutrophication and ground-level ozone as part of the overall strategy to reduce air pollution. Further important legislation relating to industrial emissions includes the Waste Incineration Directive⁶⁵ and the Solvents Directive⁶⁶.

The Seveso II or Major Accident Hazard Directive⁶⁷ applies to establishments in which certain dangerous substances are present in sufficiently large quantities to create a major accident hazard. It contains obligations on both operators and Member State authorities to take measures aimed at preventing major accidents and limiting their consequences. One of the key requirements is that emergency plans must be drawn up for areas surrounding so-called “upper tier” establishments in order to properly protect the public should an emergency arise.

2.7.2 State of Law

Some EC environmental legislation in this domain has been subject to an important review recently. This development is marked by the proposal for a directive on industrial emissions⁶⁸ that the Commission adopted in December 2007. It aims at simplifying the existing legal framework in the field of industrial emissions. The proposal was adopted in the form of a recast of seven existing directives in the field (the IPPC Directive, the LCP Directive, the Waste Incineration Directive, Solvents Directive and three directives in relation to titanium dioxide 78/176/EEC⁶⁹, 82/883/EEC⁷⁰ and 92/112/EEC⁷¹). The result was a single text combining the substantive amendments to the directives and the original provisions which

⁶³ *OJ L 24, 29.01.2008, p. 8-29.*

⁶⁴ Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants *OJ L 309, 27.11.2001, p. 1-21.*

⁶⁵ Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste (*OJ L 332, 28.12.2000, p. 91-111.*)

⁶⁶ Council Directive 1999/13/EC of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations (*OJ L 85, 29.3.1999, p. 1.*)

⁶⁷ Council Directive 96/82/EC on the control of major-accident hazards involving dangerous substances *OJ L 10, 14.1.1997, p. 13-33.*

COM(2007) 844.

⁶⁹ Council Directive 78/176/EEC of 20 February 1978 on waste from the titanium dioxide industry (*OJ L 54, 25.2.1978, p. 19.*)

⁷⁰ Council Directive 82/883/EEC of 3 December 1982 on procedures for the surveillance and monitoring of environments concerned by waste from the titanium dioxide industry (*OJ L 378, 31.12.1982, p. 1.*)

⁷¹ Council Directive 92/112/EEC of 15 December 1992 on procedures for harmonising the programmes for the reduction and eventual elimination of pollution caused by waste from the titanium dioxide industry (*OJ L 409, 31.12.1992, p. 11.*)

remain unchanged. The recast technique enables existing provisions to be simplified and streamlined: redundant provisions and unnecessary obligations can be repealed, while reporting and monitoring requirements are simplified. This should help Member States to reduce unnecessary administrative burdens.

A review of the Seveso II Directive, the provisions of which have remained essentially unchanged for over 10 years, is underway.

2.7.3 Evaluation of the current position in terms of implementation

The IPPC Directive requires some 52 000 existing industrial installations to operate by 30 October 2007 at the latest according to a permit issued in accordance with the IPPC Directive. The Commission has drawn the attention of Member States to this deadline on several occasions. However, there are indications that, for about 10 000 installations, the deadline for issuing the permits was missed. The Commission has subsequently launched infringement procedures against the Member States with the highest number of missing permits.

The Commission has developed an action plan for the implementation of existing legislation on industrial emissions that formed part of the Commission's Communication '*Towards an improved policy on industrial emissions*'⁷². This set out key actions over the timeframe 2008-2010. The details of each action are set out within the Communication itself. The Commission will produce regular reports on the implementation of the action plan and will review the plan by the end of 2010, assessing how it fits in with the Commission's proposal on the new Directive on industrial emissions.

2.7.4 Further challenges in implementing industrial installations legislation

- *Lack of permits for existing industrial installations.* The Commission started to analyse how effectively Member States have implemented the requirements of the IPPC Directive by reference to installation-specific case studies, in particular those related to the permits; and to identify where problems in implementation may have arisen.
- *Achieving uniform interpretation and implementation of BAT and BREFs.* The IPPC Directive does not set standards or thresholds for the prevention and control of emissions, or for other environmental aspects, but leaves this responsibility to the Member States. Member States must ensure that IPPC permits include emission limit values or equivalent measures based on best available techniques (BAT). In determining what constitutes BAT, the competent authorities have to take into account the reference documents on BAT (BREFs). BREFs are adopted by the European Commission based on an exchange of technical information between experts from industry, Member State authorities, research institutes and NGOs⁷³. It is particularly challenging to ensure that BREFs are interpreted and implemented uniformly in all Member States.

⁷² COM(2007) 843 final.

⁷³ This exchange of information is coordinated by the IPPC Bureau in Seville (<http://eippcb.jrc.es/>), which sets up a technical working group for each BREF.

- *Controlling major specific sources of air pollutants.* Compliance with legislation aimed at limiting air pollutant emissions from specific sources, as for instance the Large Combustion Plants, the Waste Incineration and the National Emissions Ceiling Directives⁷⁴, will also be essential.
- *Lack of emergency plans for Seveso “upper tier” installations.* Plans are required for about 8 000 installations in all. They should have been in place since 2002 for the EU-15 Member States and 2004 for the EU-10, but a considerable number of installations in many Member States are still not covered. The Commission launched a "horizontal" legal action in 2007, that is a similar legal action against all Member States lacking emergency plans.

2.7.5 Prioritisation of Commission’s legal enforcement work

The Commission will continue to pursue the infringement procedures launched against Member States with the highest number of missing IPPC permits. Legal action are also envisaged against Member States with fewer missing permits if no progress is forthcoming.

The Commission will also take action against systematic breaches of the IPPC Directive, and will ensure that Member States fulfil their reporting obligations. Legal enforcement action over lack of provision of relevant data by certain Member States has already been launched recently under the LCP Directive.

With regard to guidance concerning the Commission’s proposal on industrial emissions, work is likely to be undertaken after 2010 in the context of the new Committee suggested within the proposal. The Commission has already begun preparations in this respect with a proposal to amend the remit of the existing IPPC Experts Group (IEG) to consider wider industrial emissions legislation in the future under the title of Industrial Emissions Experts Group (IEEG). Transposition of the resulting directive will be confirmed, and the Commission will offer support to Member States in such transposition. The exact form of such support has not been determined at this early stage in proceedings, although as indicated above, it is likely that the measures that presently exist in the Commission’s Action Plan for implementation of the legislation on industrial emissions will continue into the implementation of the proposal.

The Commission will continue to press for external emergency plans under the Seveso II Directive.

2.8 Chemicals, Pesticides, Biocides and Biotechnology

2.8.1 Legislative Framework

The REACH Regulation (1907/2006)⁷⁵, which entered into force on 1 June 2007, is the cornerstone of the EU’s new chemicals legislation. REACH, which is considerably more far-

⁷⁴ Directive 2001/81/EC of the European Parliament and of the Council on national emission ceilings for certain atmospheric pollutants, (OJ L 309, 27.11.2001, p. 22–30).

⁷⁵ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC.

reaching than previous legislation, deals with the registration, evaluation, authorisation and restriction of chemicals. Registration means the process by which information on the safety of chemicals will need to be submitted for registration in a central database, managed by ECHA. Evaluation includes a quality check of the registration dossiers and examination of testing proposals and is done by ECHA; it also includes a more thorough examination of specific substances, where Member States play an important role. Substances of very high concern will require authorisation for use and before being placed on the market. There is a procedure for the regulation of Community-wide conditions for the manufacture, placing on the market or use of certain substances where there is an unacceptable risk to health or the environment.

Separate legislation currently continues to govern the classification, packaging and labelling of dangerous substances and preparations. The main provisions in this regard are contained in Directive 67/548/EEC⁷⁶ (for substances) and Directive 1999/45/EC⁷⁷ (for preparations). Directive 76/769/EEC, which concerns restrictions on the marketing and use of certain dangerous substances, will remain in force until 1 June 2009, when it will be repealed by the REACH Regulation. Two other pieces of legislation should be mentioned here. First, persistent organic pollutants (“POPs”) are governed by Regulation 850/2004. Second, basic provisions concerning the protection of laboratory animals used in experiments are contained in Directive 86/609/EEC.

Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market⁷⁸ (the Biocides Directive) concerns the authorisation and placing on the market of biocidal products in the Member States and the establishment at Community level of a list of active substances which may be used in biocidal products. Council Directive 90/219/EEC⁷⁹ lays down common measures for the contained use of genetically modified micro-organisms for the purpose of protecting human health and the environment. Directive 2001/18/EC of the European Parliament and of the Council on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC⁸⁰ establishes a common methodology for risk assessment and a safety mechanism. It also introduces mandatory public consultation and GMO labelling.

2.8.2 *State of Law*

This sector of EC environmental law is characterised by substantial new developments, in particular in the chemicals and pesticides sectors.

- Firstly, REACH entered into force on 1 June 2007. This included the establishment of the European Chemicals Agency (ECHA) and the preparation of IT-systems to hold the new database. Registration of chemicals manufactured or imported in quantities of 1 tonne or more per year started on 1 June 2008. Between 1 June and 1 December 2008 manufacturers will have the possibility to pre-register their phase-in substances. Pre-registration, as its name suggests, precedes full registration and provides for extended deadlines. Depending on the volumes and the hazardous properties of substances, these extended deadlines are 2010, 2013 or 2018. If a company fails to pre-register, from 1

⁷⁶ OJ L 196, 16.08.1967, p. 1.

⁷⁷ OJ L 200, 30.07.1999, p. 1.

⁷⁸ OJ L 123, 24.4.1998, p. 1–63.

⁷⁹ OJ L 117, 8.5.1990, p. 1–14.

⁸⁰ OJ L 106, 17.4.2001, p. 1–39.

December 2008 it can no longer place its phase-in substances on the market until it has completed registration.

- Furthermore, the Commission's Proposal for a new Regulation dealing with the classification, labelling and packaging of substances and mixtures⁸¹ has almost completed the legislative procedure for adoption by the European Parliament and Council. This new proposal incorporates the UN GHS (United Nations Globally Harmonised System) into Community law and replaces, to a large extent, the existing legislation on classification, labelling and packaging.
- Secondly, as regards pesticides, the Commission adopted in June 2006 the *Thematic Strategy on the Sustainable Use of Pesticides* together with a proposal for a framework directive on the sustainable use of pesticides⁸² and a proposal for a regulation on the placing of plant protection products on the market, revising Directive 91/414/EEC. The aim of the Thematic Strategy is to fill the current legislative gap regarding the use-phase of pesticides⁸³ at EU level by setting minimum rules for the use of pesticides in the Community, so as to reduce risks to human health and the environment from the use of pesticides. For the time being, the Commission has proposed to restrict the scope of the framework directive to plant protection products. The intention is, however, to include biocides within the scope as soon as possible.

2.8.3 Evaluation of the current position in terms of implementation

As the REACH Regulation entered into force on 1 June 2007 and its main obligations started applying on 1 June 2008, there is not yet sufficient information concerning its implementation in Member States. In order to ensure compliance, Member States should put in place effective monitoring and control measures. Every five years Member States must submit a report to the Commission on the operation of the Regulation in their respective territories, including sections on evaluation and enforcement. Penalties for non-compliance must be notified to the Commission by 1 December 2008.

The Biocides Directive stipulates that Member States have to take the necessary steps to monitor their market and make sure it complies with the requirements of the directive. The first reporting covering the period of May 2000 to November 2003 provided a lot of useful information and revealed a few points of concern. The second composite report prepared by the Commission in April 2008, covering the period December 2003 to November 2006, has found that Member States have made significant progress in implementing and enforcing the directive's provisions by taking the appropriate measures. In this regard, mention must be made of a number of guidance documents prepared by the Commission to help ensure effective implementation of the Biocides Directive.

Concerning the biotechnology sector, studies obtained by the Commission revealed a number of shortcomings in the national implementing legislation for Directive 90/219/EEC as amended by Directive 98/81/EC (contained use of GMOs) in several Member States. Since the completeness and correctness of implementing legislation within the Member States are

⁸¹ COM (2007) 0611.

⁸² Proposal for a Directive of the European Parliament and of the Council establishing a framework for Community action to achieve a sustainable use of pesticides (COM (2006) 373).

⁸³ The current legislative framework mainly concentrates on the beginning and the end of life stages of pesticides.

important determinants of good implementation in practice, the Commission has launched legal enforcement action against several (mainly EU-15) Member States that have not properly transposed this directive.

2.8.4 Further challenges in implementing legislation relating to the Chemicals and Biocides sector

- *Effective implementation of REACH.* The Chemicals Agency will play a key role in the effective implementation of REACH. It will coordinate, over a period of 11 years, the registration of some 30 000 chemical substances in use today. To exchange information on enforcement, the Forum for Exchange of Information on Enforcement composed of members nominated by the Member States, was set up within ECHA. The Forum coordinates a network of Member State authorities responsible for enforcement of the Regulation. Its main tasks include: proposing, coordinating and evaluating harmonised enforcement projects and joint inspections; identifying enforcement strategies and best practice in enforcement; and examining proposals for restrictions with a view to advising on enforceability.
- *Delays in transposition of a large number of directives in the Biocides sector.* The Biocides Directive provides for the evaluation and inclusion in a Community positive list (its Annex I, IA or IB) of active substances used in biocidal products that are found acceptable for a specific use (product-type) from the point of view of health and the environment. Member States that did not make a dynamic reference to Annex I, IA or IB to the Biocides Directive have to transpose the directives amending its annexes by adding the newly approved active substances. This takes a lot of time, in particular considering that there are hundreds of active substances currently scheduled for evaluation. The planned change of the Biocides Directive into a Regulation should solve this problem as transposition will no longer be necessary – though it should not be forgotten that Member States may also need to take legislative action in this event, for example repeal existing incompatible national legislation.

2.8.5 Prioritisation of Commission's legal enforcement work

Legal enforcement action in these fields does not constitute a significant workload for the Commission. In the coming years, the main priorities in terms of enforcement work can be summarised as follows:

- The Commission will continue to work to enhance good cooperation, coordination and exchange of information with the Member States and the European Chemicals Agency regarding enforcement so that the system established by the REACH Regulation can operate effectively. The Commission will work closely with the Forum for Exchange of Information on Enforcement in this regard.
- The Commission will continue to pursue infringement procedures concerning the non-communication of the national implementing measures for recently adopted directives that update the relevant annexes to the Biocides Directive.
- Work will also be done on ensuring that the directive on contained use of GMOs is correctly transposed in all Member States. To this end, the Commission will

extend its legal action to cover all Member States that have failed to properly transpose this directive.

After the adoption of the new framework directive on the sustainable use of pesticides, the Commission will carefully monitor its transposition into the Member States' national legislation on the basis of a risk-based implementation action plan. This will involve forward planning of work to encourage correct and timely transposition.

2.9 Governance and Environmental Liability

2.9.1 Legislative framework

Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information and repealing Council Directive 90/313/EEC⁸⁴ (Access to Environmental Information Directive) aims to ensure that environmental information is available to the public upon request and actively disseminated through computer telecommunication or electronic technology. Directive 2004/35/EC of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage (Environmental Liability Directive)⁸⁵ establishes a framework for environmental liability based on the "polluter pays" principle, with a view to preventing and remedying environmental damage.

2.9.2 State of law

The Access to Environmental Information Directive and the Environmental Liability Directive are both recent instruments. The former was adopted in order to fully comply with the Aarhus Convention. While modifications cannot be excluded in the future, there are no current plans to change them.

2.9.3 Evaluation of the current position in terms of implementation

The Commission has pursued the failure to transpose the Access to Environmental Information Directive, obtaining two ECJ rulings in 2007 (Case C-391/06, *Commission v Ireland*, decision of 3 May 2007 and Case C-340/06, *Commission v Austria*, decision of 5 July 2007).

By the end of 2007, a total of eleven Member States had notified complete transposing measures for the Environmental Liability Directive: Italy, Lithuania, Latvia, Hungary, Germany, Romania, Slovakia, Sweden, Spain, Estonia and Cyprus.

2.9.4. Further challenges in implementing legislation

Commission efforts need to continue to ensure that the Environmental Liability Directive (ELD) is correctly transposed. Apart from the application of the significance criteria (Annex I) and the application of the appropriate measures to ensure the remedying of environmental damage ('primary', 'complementary' and 'compensatory' remediation according to Annex II), the proper functioning of financial security instruments will be significant for successful implementation of the ELD in the Member States. Based on various information sources

⁸⁴ OJ L 41, 14.2.2003, p. 26–32

⁸⁵ OJ L 143, 30.4.2004, p. 56–75

(studies commissioned by the Commission, information drawn from national experts as well as from stakeholders such as the financial sector, industry and NGOs etc.), the Commission will have to present a report before 30 April 2010 on the effectiveness of the ELD in terms of actual remediation of environmental damages and on the availability at reasonable costs and on conditions of insurance and other types of financial security for the activities covered by the scope of strict liability of the ELD.

2.9.5 Prioritisation of Commission's legal enforcement work

The Commission will continue its efforts to ensure that the Environmental Liability Directive is completely and correctly transposed in all Member States.