

Section 2

HORIZONTAL LEGISLATION

List of Contents

Horizontal Legislation - Overview	31
The Environmental Impact Assessment Directive	57
The Strategic Environmental Assessment Directive	77
The Directive on Access to Environmental Information	91
The Public Participation Directive	103
The Environmental Liability Directive	111
Regulation on European Pollutant Release and Transfer Register	121
The LIFE+ Regulation	133
The INSPIRE Directive	141
The Reporting Directive	151
The European Environment Agency Regulation	155
Recommendation on Environmental Inspections in Member States	161

SECTION 2 – HORIZONTAL LEGISLATION

Horizontal Legislation - Overview

1. Introduction and Sector Overview

This section of the Handbook deals with horizontal EC legislation. It contains an introductory overview of the sector followed by individual fiches for selected pieces of legislation.

1.1 EU Policy

The horizontal sector is concerned with environmental legislation on various matters which cut across different environmental subject areas, as opposed to regulations which apply to a specific sector, e.g. water or air. Rather than to regulate a specific area, these items of legislation are more procedural. They provide for methods and mechanisms aimed at improving decision making and legislative development and implementation. The legislation in this sector covers:

- environmental impact assessment (EIA) of proposed development projects;
- strategic environmental assessment of proposed plans and programmes;
- public access to environmental information;
- reporting requirements;
- the European Pollutant Release and Transfer Register;
- infrastructure for spatial information (INSPIRE Directive);
- the establishment of a European Environment Agency (EEA) and participation therein;
- minimum requirements for environmental inspections;
- environmental liability; and
- the LIFE+ (L'Instrument Financier pour l'Environnement) programme to fund certain environmental improvement projects.

1.2 EC Legal Instruments

Eleven legal instruments are given particular consideration in the horizontal sector, comprising seven directives, three regulations and one recommendation, which are listed in the Box below.

Legislation Considered in the Horizontal Sector

- Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the

SECTION 2 – HORIZONTAL LEGISLATION

HORIZONTAL LEGISLATION - OVERVIEW

assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35/EC).

- Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment.
- Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC.
- Directive 2003/35/EC, providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending, with regard to public participation and access to justice, Council Directives 97/11/EC and 96/61/EC⁸.
- Council Directive 91/692/EEC of 23 December 1991 standardising and rationalising reports on the implementation of certain directives relating to the environment.
- Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage, as amended by Directive 2006/21/EC.
- Regulation (EC) No 166/2006 concerning the establishment of a European Pollutant Release and Transfer Register.
- Regulation (EC) No 614/2007 of the European Parliament and of the Council of 23 May 2007 concerning the LIFE+ financial instrument for the environment.
- Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an infrastructure for spatial information in the European Community (INSPIRE).
- The European Environment Agency Regulation (1210/90) as amended by Council Regulation (EC) 933/1999).
- Minimum criteria for environmental inspections (Recommendation 2001/331/EC).

The following text provides a brief synopsis of the main requirements of each instrument. More detailed information on specific obligations is given in the fiches following this chapter. There are differences between these instruments with regard to the actors responsible for their implementation.

In the case of the two regulations, the main actors are central bodies established and funded from the Commission budget and not the Member States directly. One is the European Environment Agency based in Copenhagen and the other is the LIFE+ programme, managed by a team operating within DG ENV of the European Commission. In the case of the directives, the major actors are the Member States themselves, although the Commission may play a significant role as central authority.

1.2.1 Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35/EC).

This directive sets out the requirements for undertaking environmental assessments of environmental impacts of public and private projects which are likely to have a significant impact on the environment, before development consent is granted. Detailed procedural guidance on

⁸ Directive 96/61/EC and other relevant legislation concerning IPPC have been codified through Directive 2008/1/EC. This act repealed public participation and access to justice in Directive 2003/35/EC. However, a text identical to this is now envisaged in the 2008 directive.

the main stages of EIA is set out in the following three European Commission publications (June, 2001) available on the DG Environment website: "Guidance on EIA - Screening"; "Guidance on EIA - Scoping"; and "Guidance on EIA - EIS Review" (available at <http://ec.europa.eu/environment/archives/eia/eia-support.htm>). The Commission published guidelines in 2006 on how to interpret Article 2(3) of the directive, which provides that Member States may, in exceptional cases, exempt specific projects in whole, or in part, from the provisions of the directive. This guidance can be accessed at http://ec.europa.eu/environment/archives/eia/pdf/eia_art2_3.pdf. Projects are classified in two groups: projects listed in Annex I are all subject to compulsory EIA; while for projects in Annex II, the assessment contains an element of discretion, noting that an EIA procedure will, in any event, be required for projects with potentially significant environmental impacts. For Annex II projects, Member States must adopt criteria for assessment on a case-by-case basis or by setting thresholds and criteria for specific types of projects or by a mixture of the two methods. The assessment covers direct and indirect effects of the project on humans, fauna and flora, soil, water, air, climate and the landscape, material assets and cultural heritage as well as the interactions between these factors.

In 2008, the Commission published guidance on the interpretation of definitions of certain project categories of Annexes I and II of the EIA Directive. This guideline is available on the website of Directorate General for the Environment at: http://ec.europa.eu/environment/eia/pdf/interpretation_eia.pdf.

Much emphasis is placed on consultation with, and access to information for, statutory consultees and the public as well as other Member States where projects are likely to have significant transboundary environmental impacts.

1.2.2 Strategic Environmental Assessment Directive (SEA) (2001/42/EC).

This directive sets out obligations for public authorities (or those "privatised" organisations that provide public services) to identify and assess the potential significant environmental effects of proposed plans and programmes (not policies), including those of a transboundary nature. This is done with a view to mitigating or avoiding potentially significant environmental impacts before the plan or programme is approved. Member States shall determine which plans and programmes will be subject to an SEA based on Article 3 of the directive.

Annex II of the directive offers assistance in evaluating significant effects while Annex I provides guidance as to information to be included in the assessment. The decision-making process at the planning level aims at a high level of transparency and procedural similarities exist between the SEA Directive and the EIA Directive. Consultation is emphasised in the directive and the public and environmental authorities are invited to participate in the SEA procedure and give their opinions. All consultation-based opinions and views should be integrated and taken into account in the course of the planning procedure. In the implementation phase, the significant effects of the approved plan or programme have to be monitored in accordance with Article 10.

The Commission has published several guidance documents to facilitate the interpretation and understanding of the SEA Directive and the requirements involved. This guidance includes the *Manual on Strategic Environmental Assessment of Transport Infrastructure Plans, 2005*, prepared by DG Energy and Transport (http://ec.europa.eu/environment/archives/eia/sea-studies-and-reports/beacon_manuel_en.pdf), *Guidance on the implementation of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment* (http://ec.europa.eu/environment/archives/eia/pdf/030923_sea_guidance.pdf) and the *Handbook on Environmental Assessment of Regional Development Plans and EU Structural Funds Programmes* from 1998 (<http://ec.europa.eu/environment/archives/eia/sea-guidelines/handbook.htm>). In addition, there are a number of published reports and studies dealing with various aspects of the SEA procedure (further information can be obtained at <http://ec.europa.eu/environment/archives/eia/sea-support.htm>).

1.2.3 Directive on Access to Environmental Information (2003/4/EC).

SECTION 2 – HORIZONTAL LEGISLATION

HORIZONTAL LEGISLATION - OVERVIEW

This directive, repealing the former Community legislation – Directive 90/313/EEC – was adopted to fully comply with the requirements of the Aarhus Convention. It guarantees the right of access to environmental information held by or for public authorities upon request (Article 3, so-called passive dissemination) and provides for the obligation for public authorities to progressively disseminate the environmental information they hold by means of computer telecommunication and/or electronic technology (Article 7, so-called active dissemination). Upon request, the information must be provided to any natural or legal person, without them having to prove an interest (thus including those residing outside the Member States), as soon as possible and, at the latest, within one month after the receipt of the request. Under certain circumstances (depending on the volume and complexity of the information), the deadline may be extended to up to two months from the date on which the request was made. The directive allows the authorities to charge reasonable costs for making the information available to the public. A request for information may be refused only on grounds provided for in Article 4, when it affects certain interests defined in an exhaustive way by the directive itself – e.g. public security, commercial and industrial confidentiality or international relations. The grounds for refusal have to be interpreted in a restrictive way, taking into account, for the particular case, the public interest served by disclosure. Where it is possible to separate out any information falling within a refusal from the rest of the information requested, partial access has to be guaranteed. A refusal to make available all or part of the requested information has to be notified in writing (if the request was in writing or if the applicant so requests), state the reasons for the refusal and include information on the review procedures. In fact, Member States have to provide access to judicial or administrative review where a person considers that a request for information was not adequately dealt with. In active dissemination of environmental information, Member States have to ensure that it is accurate, updated and comparable. A minimum content is provided for by directive in its Article 7, Paragraph 2.

- 1.2.4 Directive 2003/35/EC of the European Parliament and of the Council providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending, with regard to public participation and access to justice, Council Directives 97/11/EC/EEC and 96/61/EC⁹

The directive was adopted in order to fully comply with the requirements of the Aarhus Convention. It sets up common requirements for the participation of the public in the preparation by public authorities of a number of plans and programmes in the environmental field – under directives in the waste sector (Directives 91/156/EEC [amending Directive 75/442/EEC], 2006/66/EC on batteries, 91/689/EEC on hazardous waste, 94/62/EC on packaging), on air quality (Directive 96/62/EC) and on nitrate pollution from agricultural sources (Directive 91/676/EEC). Furthermore, it amends Council Directives 97/11/EC/EEC (EIA) and 96/61/EC (IPPC), as far as public participation and related access to justice are concerned. References to its provisions are made within the framework of those directives, where appropriate.

- 1.2.5 Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage

The directive establishes a framework for environmental liability, with a view to preventing and remedying environmental damage.

The directive applies to the following environmental damage:

⁹ Directive 96/61/EC and other relevant legislation concerning IPPC have been codified through Directive 2008/1/EC. This act repealed public participation and access to justice in Directive 2003/35/EC. However, a text identical to this is now envisaged in the 2008 directive.

- direct or indirect damage to the aquatic environment covered by Community water management legislation;
- direct or indirect damage to species and natural habitats protected at Community level by the 1979 Birds Directive or by the 1992 Habitats Directive;
- direct or indirect contamination of the land that creates a significant risk to human health.

It covers both actual environmental damage and the imminent threat of damage resulting from occupational activities, in cases where it is possible to establish a causal link between the damage and the activity in question.

The directive provides for two different liability schemes, that is, one for the occupational activities specifically mentioned in the directive (mainly agricultural and industrial activities requiring a permit), for which the liability is strict, and one for other occupational activities where there is damage or the imminent threat of damage to species and natural habitats.

1.2.6 Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register

This regulation sets up a pollutant release and transfer register (PRTR) at EU level in the form of a publicly accessible electronic database. This database will meet the requirements of the United Nations Economic Commission for Europe (UNECE) Protocol on Pollutant Release and Transfer Registers, signed by the Community in May 2003. The public will be able to access this register free of charge on the Internet and will be able to find information using various search criteria (e.g. type of pollutant, geographical location, affected environment, pollutant releasing facility). The register will contain information on releases of pollutants to air, water and land, as well as transfers of waste and pollutants, in cases where emissions exceed certain threshold values and result from specific activities. The register will cover pollutants not only from point sources but also from diffuse sources, including pollution from the transport sector.

1.2.7 LIFE+ Regulation (EC) 614/2007

This regulation establishes LIFE+, which co-funds environmental projects that contribute to the development and implementation of Community environmental policy and legislation. LIFE+ covers three thematic components: nature and biodiversity; environmental policy and governance; and information and communication. The multi-annual strategic programme set out in Annex II to this regulation details the priority areas of action for Community funding. The financial framework for LIFE+ is EUR 2,143,409,000 for the period from 1 January 2007 to 31 December 2013. The maximum rate of co-financing of action grants is 50% of eligible costs. However, for projects concerning the protection of priority habitats or priority species, LIFE+ may finance up to 75% of eligible costs.

LIFE+ is a continuation of earlier LIFE programmes:

- LIFE-Nature, which aimed to contribute to the implementation of the Community directive on the conservation of wild birds and the directive on the conservation of natural habitats, in particular the Natura 2000 network.
- LIFE-Environment, which aimed to contribute to the development of innovative methods and techniques and to the further development of Community environment policy.
- LIFE-Third countries, which aimed to contribute to the establishment of capacities and administrative structures needed in the environmental sector and to the development of environment policy and action programmes in third countries bordering on the Mediterranean and the Baltic Sea.

LIFE+ replaces existing financial programmes such as LIFE, the Urban Programme, the NGO Programme and Forest Focus, covering them under a single set of rules and decision-making

SECTION 2 – HORIZONTAL LEGISLATION

HORIZONTAL LEGISLATION - OVERVIEW

procedures. Hence the regulation repealed Decision 466/2002/EC on an action programme promoting environmental NGOs, which provided a funding mechanism to support projects on environmental protection undertaken by non-governmental organisations operating at a European level between 1998 and the end of 2006.

The management of the LIFE+ programmes is the responsibility of the Commission, which selects criteria for evaluating projects; sets the application requirements; leads the evaluation process assisted by experts; notifies successful applicants; and awards contracts. The regulation does not give rise directly to any obligations for implementation by the Member States, other than ensuring that the necessary administrative structures and mechanisms are in place to administer the LIFE+ programme at the national level. Member States are required to identify a competent authority for receiving and undertaking an initial evaluation of applications prepared by individuals and organisations.

1.2.8 Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an infrastructure for spatial information in the European Community (INSPIRE)

This directive lays down the rules for establishing, within the European Union (EU), an infrastructure for spatial information (INSPIRE), the main aim of which is to make it possible for interoperable spatial and environmental data and services related to these data to be exchanged, shared, accessed and used. INSPIRE will facilitate co-ordination between users and suppliers of information in order to combine and disseminate information originating from different sectors. INSPIRE deals with spatial information such as environmental observations, statistics, etc. that are held in electronic form normally by public authorities. It covers themes such as administrative borders, air, soil and water quality observations, biodiversity, land use, transport networks, hydrography, altitude, geology, population and species distribution, habitats, industrial facilities and natural risk zones (Annexes I, II and III to the directive contain the complete list of information subject to INSPIRE).

1.2.9 Reporting Directive (91/692/EEC).

This directive provides for the harmonisation of sector reports on the implementation of close to 30 directives in the air, water and waste sectors. Member States have to produce sector reports every three years on these directives, based on a questionnaire format provided by the Commission. One exception is the Bathing Water Directive (2006/7/EC), which has to be reported on to the Commission on an annual basis so as to provide the public with information at the earliest opportunity. A list of the relevant legislation is provided as part of the fiche on the Reporting Directive.

1.2.10 European Environment Agency Regulation (EEC) 1210/90 as amended by Council Regulation (EC) 933/1999 and Regulation (EC) No 1641/2003.

This regulation provides for the establishment of the European Environment Agency (EEA) and the European Environment Information and Observation Network (Eionet), with a view to better meeting the environmental protection goals of the EU. The EEA was inaugurated in 1993 in Copenhagen. It aims to provide the Member States and the European Community with objective, reliable and comparable information at European level. Member States are required to inform the EEA of the main elements of their national environment information networks, including institutions or organisations that could contribute to the work of the EEA, and are required to collect and analyse data at the national level for the EEA in the framework of Eionet. The EEA collates information through Eionet and uses it to assist the Community and the Member States in the preparation and implementation of environmental policies, in the monitoring of environmental measures and in the implementation of European environmental legislation. The EEA is also responsible for publishing a report on the state of the environment and advising Member States on an individual basis. Under the regulation, Member States appoint a national focal point to channel environmental information collected from Eionet. The EEA is open to non-

Member States. Under the Phare programme, countries in Central and Eastern Europe, including the candidate countries, have become increasingly involved in the activities of the EEA, including by way of membership adherence.

1.2.11 Recommendation 2001/331/EC of the European Parliament and of the Council of 4 April 2001 providing for minimum criteria for environmental inspections in the Member States

This recommendation sets out minimum criteria for organising, performing, following up and publishing environmental inspections, but it should be noted that these criteria are not binding on the Member States.

It covers environmental inspections of all industrial installations, companies and facilities subject to authorisation, permit or licensing requirements under current EC environmental legislation. Inspection covers:

- checking whether the installations comply with EC environmental requirements;
- monitoring the impact of installations on the environment.

The following actions should be planned: site visits, monitoring compliance with environmental quality standards, inspecting environmental audit reports and statements, checking premises and equipment, checking the suitability of environmental management and of the relevant records.

1.2.12 Inter-relationships with other environmental legislation

The legal acts described in this sector have close links with much of the legislation in other sectors of the environmental *acquis*.

The EIA Directive is one of several directives, including many of those on pollution control, which need to be taken into consideration when developing proposals for new installations. In particular, the EIA Directive is linked to the IPPC Directive (2008/1/EC), as most new installations require a development consent, following an EIA, as well as a permit under the IPPC regime. Furthermore, the new EIA amending directive (97/11/EC) allows Member States to combine the EIA and IPPC permitting procedures into a single procedure. See, too, Directive 2003/35/EC for public participation and access to justice in the EIA and IPPC Directives.

The SEA Directive overlaps with the EIA Directive in substantive terms and by virtue of certain implementing procedure characteristics (e.g., the focus on potentially significant environmental effects, active consultation and access to information dimensions, and the need to consider alternatives). EIA project approvals will depend, in part, on compatibility with plans and programmes approved under the SEA Directive.

The Seveso II Directive (96/82/EC) (see also Council Decision 2001/792/EC) aims to ensure high levels of protection against accidents involving dangerous substances. Operators of establishments where certain quantities of dangerous substances are present are requested to notify the competent authorities and to establish and implement a major accident prevention policy. Most Seveso installations fall within the scope of the EIA Directive. Therefore, when a new project is covered by both directives, it is advisable to co-ordinate the permitting procedures to comply with the requirements of both directives.

The Reporting Directive is linked to the directives listed in its annexes in the air, water and waste environmental sectors.

The general objective of LIFE+ is to contribute to the development and implementation of Community environmental policy and legislation. LIFE+ is a continuation of earlier LIFE programmes such as LIFE-Environment and LIFE-Nature (which co-funded nature conservation projects in respect of sites and species protected under EC nature protection directives), and it replaces existing financial programmes such as LIFE, the Urban Programme, the NGO Programme and Forest Focus, covering them by one set of rules and decision-making procedures, streamlining targeting and enhancing efficiency.

Note that the public participation and related access to justice requirements in relation to the respective procedures for development consent/permitting have been updated to meet the requirements of the UNECE Aarhus Convention, by Directive 2003/35/EC of the European Parliament and of the Council.

2. Development of a Sectoral Strategy and Implementation Plan

The implementation management checklist presented in Part 1, Section 2 of the Handbook, provides an overall framework for preparing a strategy to implement the legislation contained within this sector. The following text focuses on key issues pertinent to this sector, which are developed in the remainder of this section. Further guidance on implementation is provided in the relevant fiches on specific pieces of legislation.

The horizontal sector discussed in this Handbook comprises a relatively small but growing body of legislation. Three pieces of this legislation will require relatively less planning to implement – namely, the Reporting Directive, the EEA Regulation and the LIFE+ Regulation.

The implementation of the Reporting Directive will need to be planned as part of the programme for implementing the directives it covers. Most of the activities involved in planning the implementation of the legislation in this section will probably focus on the EIA, SEA, Access to Environmental Information and INSPIRE (spatial information) Directives. These directives are concerned with administrative procedures – the first one with permitting procedures, the second with approvals at the planning level, while the third and fourth mainly concern the collection, processing, sharing and provision of data held by public bodies. Consequently, the key activities to implement these directives are likely to focus upon institutional issues such as:

- a study of the existing arrangements for permitting procedures, plan and programme approvals, and the collection and storage of environmental data;
- an assessment of whether the existing arrangements are compatible with the requirements of the directives;
- restructuring administrative procedures, including public participation provisions in relation to development consent regarding development plans and programmes;
- restructuring internal environmental information flow processes;
- reviewing arrangements to allow public access to information;
- collating and organising data to put it into a format suitable for public consumption; and
- financing.

These directives also have implications for public participation – for example, developers need to be aware of any new requirements for seeking development consents and the public need to be aware of their rights to inspect and comment on environmental impact assessment reports and to access environmental data held by public authorities. Under the SEA Directive, the public should be afforded the opportunity to comment on the environmental report and for their comments to be taken into consideration. The public may also play an active role in plan and programme monitoring activities.

3. Institutions and Relevant Parties

3.1 Stakeholders

All authorities with environmental responsibilities, be they public bodies, privately or commercially funded enterprises, non-government organisations interested in environment

protection and the informed public, are likely at some stage to be affected by this legislation. A survey of these principal stakeholders and their roles is given below.

Principal Stakeholders and Their Roles in the Horizontal Sector

Stakeholders	Roles
<p>Central government (e.g. a ministry or department) →</p>	<p>Transposition of directives into national legislation. Provision of services for implementing the EIA and SEA Directives. Overseeing and possibly implementation of transboundary consultations related to EIA and SEA. Internal consultation among relevant ministries/departments related to EIA and SEA approval processes. Establishment of appropriate and cost-effective procedures for administering the instruments. Reporting to the Commission as required by the instruments. Where appropriate, requiring and enforcing alterations to development proposals and mitigation measures resulting from the EIA and SEA processes. Ensure public access to environmental information held by or for central government such as a ministry or central department. The new INSPIRE Directive on spatial planning will also require a number of tasks by central authorities to make it possible for interoperable spatial and environmental data and services related to these data to be exchanged, shared, accessed and used.</p> <p>Furthermore, central authorities as well as regional and local authorities will be involved in monitoring and enforcing the regulation on the pollution release and transfer register. Their role is mainly to ensure that industry is submitting accurate data on its operational and incidental releases to the environment. As the transport sector is covered by the regulation, authorities also have to take measures to ensure the monitoring and registration of pollution deriving from the transport sector. Competent authorities must be designated for the INSPIRE Directive and the Environmental Liability Directive.</p>
<p>Environmental agencies working on behalf of central government (e.g. nature conservation bodies and national research centres) →</p>	<p>Supporting the execution of central government's responsibilities in achieving compliance with EC policies and legislation. This includes delegated executive powers for permitting procedures, the provision of access to environmental information and liaison with the EEA and the organisation of the LIFE+ programme. Environmental agencies are also likely be closely involved in the implementation of the INSPIRE Directive on infrastructure for spatial data.</p> <p>These agencies often complement the relevant ministry in carrying out supervisory duties over industrial installations needing a permit. They should ensure that the environmental inspections are in line with the criteria and objectives set out in Recommendation 2001/331/EC on minimum criteria</p>

SECTION 2 – HORIZONTAL LEGISLATION
HORIZONTAL LEGISLATION - OVERVIEW

		for environmental inspections.
		Competent authorities according to the Environmental Liability Directive have a range of responsibilities. For instance, they will require the operator to take the necessary preventive measures or restorative measures (in case of actual environmental damage), or they will have to take such measures themselves and recover the costs incurred at a later date. The competent authority maps out and decides the order of remediation of multiple sites of environmental damage.
Selected national institutions e.g. for research activities funded wholly or partly by central government.	→	Acting as statutory consultees and providers of information within the EIA process. Providing access to environmental information. Providing a role as the national focal point, European topic centres or national reference centres for Eionet. Identifying projects to qualify for LIFE+ co-funding.
Regional and local government	→	Provision of permitting services according to delegated authority received from central government. Provision of administrative arrangements to meet public participation requirements. Ensure public access to environmental information held by or for them. Establishing and administering cost-effective arrangements for providing access to environmental information. Application of SEA to plans and programmes at regional and local levels, in accordance with national law. Where responsibility has been devolved, evaluating LIFE+ project proposals. Where appropriate, requiring and enforcing alterations to development proposals and mitigation measures resulting from EIA and SEA.
Developers of infrastructure and other projects, plans or programmes likely to have an environmental impact and private enterprises.	→	Undertaking EIA and SEA when applicable and implementing conditions under which the development consent has been granted. For private enterprises, preparing applications and, when successful, undertaking projects under the LIFE+ programme.
NGOs	→	Conveying public concerns with regard to projects, plans and programmes likely to have a significant environmental impact under the EIA and SEA Directives. Ensuring efficient participation in certain public procedures under Directives 2003/35 and 2003/4/EC. Identifying projects for funding under the LIFE+ programme, applying to the Commission and, if successful, undertaking the corresponding activities.
Public	→	Making requests to access environmental information held by or for public authorities. Participating in public consultation organised in the framework of the EIA and SEA procedures. Requesting from central and regional authorities

	<p>meta-data and other spatial information covering themes such as administrative borders, air, soil and water quality observations, biodiversity, land use, transport networks, hydrography, altitude, geology, population and species distribution, habitats, industrial facilities and natural risk zones. The public is also likely to make use of the pollution data collected and made available through the European Pollutant Release and Transfer Register, since the public will be able to access this register free of charge on the Internet and will be able to find information using various search criteria (type of pollutant, geographical location, affected environment, source facility).</p>
Industry	<p>→ Industry is concerned by most of the horizontal legislation, especially the EIA Directive, the Regulation on the European Pollutant Release and Transfer Register, and the Environmental Liability Directive. A considerable number of industrial sectors are affected by the Regulation on the European Pollutant Release and Transfer Register as they have to monitor, record and report to certain authorities about operational and incidental releases to various environmental media (air, water, soil, or during transport).</p> <p>Industry will also be affected by the Environmental Liability Directive, in particular facilities falling under the IPPC Directive and those located in the vicinity of nature reserves, biospheres or other sensitive areas. Industry should take all possible preventive measures to avoid operational or incidental releases that are not covered by the permit. Industry will have to consider insurance or other appropriate schemes to ensure financial coverage in case of environmental damage that will have to be remediated.</p>

3.2 National Government Institutions

National government will have responsibility for achieving and maintaining compliance with EC legislation and agreed programmes. Overall responsibility for implementing the legislation in this sector is usually assigned to the national government ministry or department responsible for the environment.

Other national government ministries or departments and their expert institutes are likely to be involved at various stages in the planning and implementation of horizontal legislation. This is especially necessary for SEA as it covers plans and programmes that, for the most part, are developed and implemented by government bodies, but it also applies to the establishment of infrastructure on spatial data (INSPIRE Directive) and the collection and reporting of industrial pollutant releases pursuant to the Regulation on the European Pollutant Release and Transfer Register. In the context of EIA, the lead ministry should consult with other ministries or government departments with responsibilities for local government, land use development, housing, urban development, transport, trade and industry, the national economy, environmental protection regulation and permitting, foreign affairs (due to potential trans-border implications for developments requiring EIA and SEA), transport and communications and public health. For

SECTION 2 – HORIZONTAL LEGISLATION

HORIZONTAL LEGISLATION - OVERVIEW

example, the development of a new motorway or expressway is likely to require specific inputs from:

- the ministry responsible for the environment (to ensure that an EIA or SEA is undertaken and evaluated prior to adjudicating the application for development consent, and to hear appeals);
- the ministry responsible for transport (as the national transport policy maker, the developer, or the body responsible for setting design and construction standards);
- ministries responsible for urban and rural development (to assess the implications of the new road on the regional economy, secondary development, and the quality of life for residents in the road corridor);
- local highway authorities (to consider the implications for traffic on the local road network); and
- authorities permitting land development (to adjudicate the application for development consent and enforce necessary amendments resulting from the EIA or SEA).

It is recommended that the lead ministry briefs other ministries with an interest in the subject on the requirements of the legislation e.g. the different types of development which will require an EIA or SEA of plans and programmes, or the type of data which has to be made available to the public and any exemptions to this. The lead ministry could ensure that a diagnostic study of existing arrangements (administrative, human resources, technical, financial) is undertaken and evaluate the need to alter existing arrangements and procedures. The lead ministry should also consult with interested parties so that they can contribute to the debate on, and formulation of, implementation proposals. For the EIA and SEA Directives this could include local and regional government authorities or regulatory bodies where they have responsibilities for adjudicating applications for development consent or formulating plans and programmes, as well as the private sector, representatives of environmental organisations and affected neighbouring states and their publics (for transboundary environmental matters).

The consultation period should be sufficient to allow time for other ministries to consider the implications of the new legislation in their sector and respond to the lead ministry with comments, suggestions or requests for additional information. These comments should be considered by the lead ministry in finalising the new procedures and drafting the legislation. The lead ministry should establish and maintain close links with other ministries to avoid any conflicts between environmental and other national policy.

With regard to the implementation of the Directive on Public Access to Environmental Information, the lead ministry or department should identify all the public authorities and institutions that hold or collect environmental information and consult with them on the proposals concerning the implementation of the directive at national level (noting the extended definition of “public authorities” for these purposes in Directive 2003/4/EC, for instance a private firm supplying water). The lead ministry should ensure that these bodies are aware of, and have facilities for, providing access to environmental information in a uniform manner. Where this does not exist, it is advisable to draw up a programme which would include an appropriate procurement or development budget to ensure compliance. Attention should be paid not only to access upon request, but also to the active dissemination of environmental information through computer telecommunications or electronic technology.

Once the legislation is in place, government ministries and departments may be involved either as main actors in implementing the legislation (for example, as competent authorities such as a regulatory body; as statutory consultees under EIA legislation; or as providers of environmental data) or could be affected by the proposals in their role as developers for publicly funded projects (for example a public authority with responsibility for highways, water supply or flood defence). With regards to the EEA Regulations, Member States have to nominate a representative to participate on the Management Board and identify which organisations within the country will collaborate in the Environment Information and Observation Network (Eionet), created as the

main vehicle of the European Environment Agency to collect data, information and knowledge for the process of reporting on the state of the environment. This is a co-operative activity between the EEA and Member States. Countries in Central and Eastern Europe already have national structures in place to participate in Eionet and have been invited to participate in some of the meetings of the management board, under the former Phare programme.

The lead ministry should identify the competent authority to undertake the activities required under the LIFE+ Regulation.

3.3 Competent Authorities

Competent authorities are those bodies, usually in the public sector, which are given the responsibility to implement and enforce the legislation. The competent authorities, especially where they have licensing or enforcement power, should normally be public bodies or agencies of some sort. Competencies may be divided among several institutions at the same level or at different levels. For example, a ministry of public works may have responsibilities for the implementation of the Directive on Environmental Impact Assessment. Local, regional and national authorities may all have competence for issuing environmental permits controlling emissions to air, water or land. Monitoring and enforcement may be partially or wholly delegated to regional or local authorities.

A list of the types of functions to be undertaken by competent authorities to implement the legislation in this sector is provided in the Box below. Some of the expertise required by competent authorities to undertake their duties in the area of horizontal legislation may already exist in one or more agencies or institutions. Similarly some of the tasks may already be implemented within the candidate countries such as the preparation of a state of the environment report. Where expertise or sufficient staff resources are lacking, the competent authorities will need to be strengthened to cope with either a different type of task or an additional workload. The staff may need to be trained in the new methods, techniques and skills required if the legislation is to be implemented effectively.

Examples of Activities That Are Specifically Required to Be Undertaken by a Competent Authority in Respect of EC Legislation in the Horizontal Sector

Planning and Implementation

- Surveying the available expertise, staff and office systems and resources.
- Designing, deciding, promulgating and commissioning new procedures.
- Co-operating with central government over the appointment of responsible persons and institutes for responding to the EEA.
- Training staff and augmenting or upgrading existing office systems and resources.
- Designing and developing databases.
- Creating efficient internal communication strategies related to the dissemination of environmental information and related decision-making processes.
- Providing comprehensive electronic communication, including Internet and intranet infrastructures.
- Consulting and maintaining continuous dialogue with relevant stakeholders including industrial sectors.
- Carrying out periodic and ad hoc environmental inspections at industrial installations, including designating competent authorities and minimum criteria and ensuring follow-up measures.
- Publicising new arrangements for the benefit of potential developers, users of environmental information or organisations with a potential interest in co-financing from

SECTION 2 – HORIZONTAL LEGISLATION

HORIZONTAL LEGISLATION - OVERVIEW

the LIFE+ programme.

- Evaluating candidate projects for possible funding by the LIFE+ programme.
- Monitoring compliance with Directive Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35/EC of the European Parliament and of the Council providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending, with regard to public participation and access to justice, Council Directives 97/11/EC/EEC and 2008/1/EC; 2003/4/EC/EEC as amended by 2003/4/EC; 91/692/EEC; 2001/42/EC).
- Deciding EIA and SEA exemptions.
- Dealing with and deciding administrative appeals for access to environmental information (in particular refusal, in full or in part, of access to information or requests not dealt with in accordance with the directive) (2003/4/EC).
- Considering whether to integrate SEA into existing environmental assessment procedures and whether to combine the SEA and other EIA-related methodologies.
- Designing the SEA approvals system robustly so that approval for the plan or programme is only given once the environment assessment has been conducted and the reporting and consultation requirements thoroughly fulfilled.
- Determining protocols for advising public authorities and bodies on the scope of SEA and ensuring that the staff of the competent authority are suitably qualified to provide such advice.
- Establishing the order of priority for requesting the remediation of multiple sites of environmental damage (in accordance with the Environmental Liability Directive).
- Establishing or planning the modification of existing infrastructure for spatial data to be kept up to date and made accessible to various authorities and agencies as well as the public.
- Deciding on the implementation and consequences of the Environmental Liability Directive (e.g. mandatory insurance against environmental damage).

Permitting Procedures (EIA)

- Providing advice to developers on the scope of EIA.
- Ensuring that other organisations with responsibilities for the environment and the public have an opportunity to view and comment upon the environmental information provided by the developer.
- Evaluating applications for development consent, taking into consideration the environmental information provided by developers and the public participation process.
- Publicising decisions on applications for development consent, the reasons behind the decisions including information on the public participation process, any conditions attached to the decisions, and measures to mitigate adverse impacts.

Technical Standards

- Co-operating with central government in drawing up technical guidance for implementing the directives.

Reporting

- To the Commission on exemptions from the EIA and SEA processes (provide the information needed to central government).
- To the Commission on the implementation of the directives (97/11/EC/EEC as amended

by Directive 2003/35/EC; and Directives 2003/4/EC; 91/692/EEC; 2001/42/EC).

- Provide information to the government for the national state of the environment report.
- To the Commission on data collected from industry and other sectors under Regulation No 166/2006 on the European Pollutant Release and Transfer Register.
- To the Commission on the implementation of and on certain requirements set out in the Environmental Liability Directive (2004/35/EC).
- To the Commission on an annual basis regarding data on operational and accidental pollution and other pollutant releases collected from installations pursuant to the Regulation on the European Pollutant Release and Transfer Register.
- Ensure that operators falling under the ambit of the Environmental Liability Directive promptly inform the competent authority about the situation, factors and consequences of environmental damage.

3.3.1 Environment Impact Assessment

Several institutional models exist for handling EIA procedures in Member States. These range from options in which the central government department or ministry is appointed the competent authority for all permitting procedures, to one in which the majority of the responsibility is delegated to regional and local authorities. This second approach would also make arrangements for public consultation more practical as it would bring the process closer to the main protagonists. Issues of national versus regional government involvement are discussed further in Section 3.4.

The EIA procedures are integrated with the process for granting development consent. Some Member States are revising their permitting procedures to combine them into a single permitting procedure for both EIA and IPPC.

3.3.2 Strategic Environmental Assessment

In general, a focal point for SEA implementation tends to be the land-use planning sector where close co-ordination is required. This focal point can be the ministry of the environment or the ministry of spatial planning. The co-ordinating role largely depends on the national system. With regard to sectoral plans and programmes, including the development of relevant guidance documentation, co-ordination with other lead ministries is vital (e.g. transport plans require close co-ordination with the transport ministry or department).

Sectoral action plans have been developed in Denmark so relevant guidance may be forthcoming from this jurisdiction. In Finland, the 1995 Action Plan for Sustainable Development and the UK Greening Government strategy may be of use for general approaches to SEA and sustainable development. In addition, the Land Use and Building Act provides a more interactive approach to environment and land-use planning. Finally, the Swedish Environmental Code reflects the integration of environmental protection into many aspects of government policy.

In addition, the implementation guidance in the SEA chapter should prove to be of additional assistance as it is intentionally detailed when compared to implementation guidance for more established directives.

3.3.3 Environmental Information

The main tasks of the competent authorities are to make available environmental information at the request of an applicant; to ensure that environmental information progressively becomes available in electronic databases that are easily accessible to the public; to report on the implementation of directives according to requirements suggested by the Commission in guidance documents; to disseminate information on the environment, in particular by producing

SECTION 2 – HORIZONTAL LEGISLATION

HORIZONTAL LEGISLATION - OVERVIEW

reports on the state of the environment¹⁰; and to co-ordinate environmental information for the EEA.

A large number of national public bodies may hold environmental information and be given responsibilities for reporting, or at least for forwarding information to a central data co-ordination unit. The types of organisations involved include national and local government, environmental protection agencies, statistical offices, meteorological offices, government research and development institutes, and agencies with a specific environmental remit such as water resources, forestry, nature conservation, or conservation of archaeological sites and built heritage.

These institutions could be required to make their own arrangements to allow public access to information, based upon guidelines prepared by central government. Alternatively, central government could provide one or more central co-ordinating units, depending on the type of data, to collate, process, and publish information for public use, to forward to the EEA or to send to the Commission.

3.3.4 European Environment Agency (EEA)

The Member States nominate representatives to participate on the Management Board of the EEA. The competent authority identifies the main elements of the national environment information network and transmits this information to the Commission. They co-operate, as appropriate, with the EEA. In the framework of Eionet, the Member State ensures that environmental information is collected and analysed at national level, in accordance with the work programme of the EEA.

3.3.5 LIFE+ Programme

The Member States nominate representatives to participate in the LIFE+ management committee. The competent authority collects the applications for co-financing under the LIFE+ programme and proceeds to a preliminary evaluation, in particular to check that the applications are valid under the rules for the LIFE+ programme. It is also responsible for submitting applications for co-financing to the Commission.

3.3.6 INSPIRE Directive

The competent authorities will be involved in making network services available to users, allowing them to search for, view and download spatial information. The competent authority may have to impose a reasonable fee for some services and may need to limit public access to spatial information on the grounds of international relations, public security, national defence, confidentiality related to the proceedings of public authorities and certain commercial or industrial information, intellectual property rights, personal data or environmental protection. The main ministry and the competent authority shall contribute to ensuring that representatives at national, regional and local level (local government) as well as other natural or legal persons with an interest in the spatial data concerned by virtue of their role in the infrastructure for spatial information, including users, producers, added value service providers or any co-ordinating body, shall be given an opportunity to participate in the development of implementing rules.

3.3.7 Regulation on the European Pollutant Release and Transfer Register

The competent authority is responsible for ensuring that the concerned industrial sectors, including certain waste management operators, submit accurate and timely information on the operational and incidental pollution and releases from their activities (including off-site transfers

¹⁰ These reports have to be elaborated at national level and, where appropriate, at regional or local level. They have to be published at regular intervals not exceeding four years (see Art. 7, Para. 3).

of hazardous waste or other dangerous pollutants through wastewater discharges). It shall ensure that the information conforms to agreed measurements, calculations or estimations.

The competent authority will be closely involved in setting up the register at national level and Member States must then report the information they have collected to the Commission by the stipulated deadline (within 15 months of the end of 2007 for data relating to 2007). The competent authorities shall assess the quality of the data provided by the operators of the facilities, as regards their completeness, consistency and credibility.

3.3.8 Environmental Liability Directive

The main responsibility of the competent authority is to supervise and enforce the provisions of the Environmental Liability Directive, especially relating to defining the necessary preventive measures to respond to an imminent threat of environmental damage, and to give instructions to the operator on how to take these measures. It is also responsible for determining the remedial measures for operators in case of actual environmental damage. The competent authority can also take such measures itself and require that the operator covers the associated costs at a later date. In addition, the competent authority is responsible for giving the operator instructions to control, contain, remove or manage relevant contaminants or other damage factors to avoid further damage and negative effects on human health.

3.4 Regional and Local Government

The role of regional and local government in permitting procedures as well as in the dissemination of environmental information is very important. Experience in Member States suggests that the permitting of land-use development and the dissemination of environmental information is best organised at the regional or local level.

It may be necessary to develop new administrative arrangements and procedures when the administrative structure of candidate countries does not allow the competent environmental authority to address EIA requirements. This will require careful planning at the beginning of the implementation process, to identify the institutions required, their roles and responsibilities, and how these arrangements can be developed.

The involvement of the candidate countries in the activities of the European Environment Agency and LIFE+ is not likely to lead to any major institutional changes in the way a country organises its environmental management, as long as existing institutions have the capacity to respond to EEA and LIFE+ programme activities.

In the case of EIA and SEA, decisions will have to be made on the degree of decentralisation that should be arranged for permitting and approval procedures. Development projects, plans and programmes are distributed throughout the country, and regional and local authorities will be most familiar with local issues. Thresholds of size, area and perceived impact may have a bearing on whether all or some categories of projects, plans or programmes are handled regionally compared with locally. The possibility of cross-border impact represents a special case.

3.5 Private Sector Involvement

The private sector has a major involvement in the EIA and Access to Environmental Information Directives and to a lesser extent in LIFE+, where private companies often manage projects co-financed under the programme.

The private sector is a significant player in development projects in Member States, and is becoming increasingly involved in development in candidate countries.

The private sector will have considerable interest in the procedures for environmental impact assessment. Developers will be responsible for undertaking EIAs and for ensuring that suitable mitigation measures are taken, as required. Implementation of the EIA Directive may provoke

SECTION 2 – HORIZONTAL LEGISLATION

HORIZONTAL LEGISLATION - OVERVIEW

considerable debate with the private sector, through its representative associations and spokespersons. It will be necessary to consult with the private sector during the implementation planning phase, and to provide guidance to developers once the EIA procedures have been established. Developers are likely to welcome guidance on the procedures and technical aspects involved. Competent authorities responsible for implementing the EIA Directive should develop good liaison with the private sector so that the administrative processes that are set up are effective.

There are options for the production of environmental information required under the EIA Directive. Developers may make their own arrangements for producing an environmental impact report using whatever approach appeals to them, or they may be encouraged or required by legislation to use preferred institutions to produce the report for them. The former approach is the most common solution, with developers either undertaking the work themselves or subcontracting it to specialised consultants. The latter approach introduces a basic quality standard and degree of uniformity to EIA and reporting. The preparation of guidelines or a code of practice should be a responsibility of the lead department or ministry consulting with stakeholders.

3.6 Communication and Consultation

Communication and consultation activities are common to the four directives at two levels. However, there is likely to be a greater degree of communication and consultation during implementation of the EIA and SEA Directives than for the Access to Environmental Information and Reporting Directives. First, during the process to transpose the directives into national law, the government should set out its views on the legal provisions and how they will be introduced into national legislation. This will generate discussion for and against the provisions and the government should consider the points made and amend their views as they think fit, bearing in mind the fact that candidate countries are under an obligation to transpose directives into national law. This process will continue until the proposals become national law.

The second level of consultation refers to the application of the law once it has been passed. The EIA and SEA Directives require consultation with statutory consultees and the public on development proposals and environmental impact assessments, and proposed plans and programmes and approvals, as well as consideration of the results of these consultations when making a decision as to whether or not to grant development consent or approval. This will generate exchanges of views during the period set for consultation, often in the media and possibly at public meetings. This will especially be the case if there are objections to the proposed development.

4. Technical Issues

There are no common technical standards, such as emission limits or quality standards, laid down in the legal acts in the horizontal sector.

Guidelines on undertaking environmental impact assessments and preparing environmental impact assessment reports are available from a number of sources.

The Commission has prepared a number of guidance reports on EIA issues, for example on screening, scoping, checklist for impacts, and the assessment of cumulative impacts (see the fiche on the EIA Directive). The European Environmental Agency supports the Commission in the process of exchange of information on the development of environmental assessment methodologies and best practices. The Commission also prepares the application documents for the LIFE+ programme and is preparing guidance on implementation of the SEA Directive.

Guidelines on EIA are also available, and those on SEA will soon be available, from a variety of sources within Member States such as:

- government departments with responsibility for implementing EIA and SEA legislation;
- government departments with responsibility for infrastructure development: these include guidelines on preferred methodologies to be followed by consultants undertaking EIAs or SEAs on behalf of government;
- environmental protection agencies;
- EIA/SEA institutes;
- bodies representing industry and professionals in various sectors of industry; and
- universities and research bodies.

Much of the legislation in this sector is connected to data collection and organisation. Consequently, the competent authority or authorities need to consider existing arrangements for handling potentially very large volumes of data. The last decade has seen a rapid growth in the use of computer software to store, manipulate and analyse data and present the results in a variety of forms such as maps, charts and diagrams. In the context of the INSPIRE Directive on spatial information, competent authorities should adopt one or more database management systems, e.g. based on a geographical information system (GIS), complete with facilities which allow data to be interrogated and reported. The entire database need not be at one location, but could be networked among the various authorities and institutions involved in data collection and reporting. Spatial data such as meta-data, geo-data, statistics and other similar information will most likely be increasingly standardised and subject to technical specifications to facilitate and streamline their collection, handling, dissemination and exchange.

5. Regulation and Enforcement

5.1 Overview

In the horizontal sector, regulation and enforcement is largely concerned with ensuring that the procedures set out in the legislation for EIA, SEA, providing information to the public, reporting etc. are adhered to. For example, under the EIA Directive, Member States have to ensure that permitting procedures are put in place so that applications for development consent for projects subject to EIA are evaluated following the submission of environmental information to the competent authority. With regard to the Directive on Access to Environmental Information, Member States have to define the practical arrangements under which information is to be made available, and those making requests for information must be able to appeal (by way of judicial or administrative review) if their request for information is refused or is not adequately answered. However, the last couple of years have seen new horizontal legislation being added, which is not directly linked with the EIA, SEA and environmental information requirements. This legislation includes, notably, the INSPIRE Directive on the establishment of spatial information infrastructure and Directive 2004/35/EC on environmental liability. Although the INSPIRE Directive again, to a certain extent, concerns the collection, maintenance and dissemination of environmental information, the Environmental Liability Directive has a different character.

5.2 Data Collection and Reporting

There are limited provisions for the collection of new data, but several requirements for the collection, management and reporting of existing environmental data in the legal instruments considered in the horizontal sector. Under the EIA Directive, developers are required to provide environmental information to the competent authorities, a proportion of which may be original data, specifically collected as part of the EIA. Under the SEA Directive, authorities are required to submit to the competent authority data contained in the environmental report outlining the significant environmental effects of proposed plans and programmes along with any steps to mitigate and monitor such effects. Public bodies are required to provide the public with

SECTION 2 – HORIZONTAL LEGISLATION
HORIZONTAL LEGISLATION - OVERVIEW

environmental data under the Directive to Access on Environmental Information. Countries that have become members of the EEA have to supply environmental information to the EEA. A summary of reporting requirements for the legislation in the horizontal sector is provided in the Table below.

In the case of the Reporting Directive, reports must be provided to the Commission in the manner set down in the questionnaires and within the specified time limits. It is very important to designate appropriate bodies and set up appropriate systems to ensure that these obligations can be met. A full list of the legislation affected by the Reporting Directive is provided in the fiche on this directive.

Table - Reporting Requirements for the Horizontal Sector Instruments

Institution Responsible	Receiver of Information	Type of Information Required
International		
European Commission	European Parliament	Report on the implementation of directives.
European Commission	Other Member States	Report on implementation of directives across Member States. Make available to competent authorities of Member State information from other Member States.
Member States	European Commission	Exemptions granted (various directives). Experience gained in implementation (various directives). Experience gained in implementation (Directive 91/692/EEC).
Within Member States		
Member States	Other Member States	Although the EIA Directive does not introduce a reporting obligation in the strict sense it includes several provisions relating to information to other Member States if a project is likely to have significant transboundary effects. Procedures for information exchange and consultation apply (Directives 97/11/EC/EEC, 2001/42/EC and 2003/35/EC).
	Public	Requests for development consent and information gathered must be made available, as well as information supplied at an early stage, in order that the public can give an opinion before consent is granted (Directives 97/11/EC/EEC and 2003/35/EC). Results of the public consultation must be taken into consideration in decision making. The competent authority must inform the public of a decision to grant or refuse development consent or approval of a plan or programme and provide certain information (Directives 97/11/EC, 2001/42/EC and 2003/35/EC). General information on the state of the environment in Member States must be provided at regular intervals (Directive 2003/4/EC).

6. Priorities and Timing

6.1 Prioritising the Implementation Tasks

In preparing their implementation plans, candidate countries will need to prioritise the various major tasks to be undertaken for each legal act. This aspect is discussed in the respective fiches. However, as candidate countries must transpose all of the directives into national legislation by the date of accession, consideration should be given to the order in which the various items of legislation are transposed.

The implementation of the EIA Directive (97/11/EC/EEC as amended by 2003/3/5/EC) should be considered as a priority within the horizontal sector, and implemented in conjunction with the

IPPC Directive (2008/1/EC, which now includes the part of 2003/35/EC devoted to public participation and access to justice in IPPC procedures) and the Seveso II Directive (96/82/EEC) (and see Council Decision 2001/792/EC), given the strong links between these directives. The Directive on Access to Environmental Information (2003/4/EC) should also be considered with this group of legislation, as they all require information to be made available to the public.

It is logical to implement the SEA Directive (2001/42/EC) as soon as possible, as resulting plans and programmes provide an environmental decision-making framework for individual projects and IPPC approved installation and activities.

The Reporting Directive should be implemented at the same time as the implementation of the 27 directives affected. The deadlines for submitting the sector reports are already determined under the directive, and candidate countries should ensure that procedures and resources are in place to comply with the reporting requirements in the first years following transposition.

Regulations are binding on candidate countries on the date of accession. With regard to the EEA Regulation, candidate countries can apply for membership of the European Environment Agency prior to accession, and most of them have already applied to do so. Consequently, it is likely that candidate countries would have adopted most of the measures required by the EEA Regulation prior to accession.

The current LIFE+ programme runs until 31 December 2013, so candidate countries and Western Baltic countries that are part of the Stabilisation and Association Process are eligible to apply for co-financing for their projects. LIFE+ comprises three thematic components: nature and biodiversity; environmental policy and governance; and information and communication. The multi-annual strategic programme set out in Annex II to this regulation details the priority areas of action for Community funding. The EU financing may be in the form of grant agreements or public procurement contracts (for the purchase of services and goods).

6.2 Timescale

It is not possible to give specific guidance on the length of time required by candidate countries to implement and comply with the legislation in this sector. Some indications of the duration of the implementation programme are provided in the directives, which stipulate transposition periods within which Member States must have implemented and complied with the legislation. These have ranged from six months to four years. However, other factors will affect the implementation programme as illustrated below.

- Institutional capacity building will be fundamental to the implementation of the horizontal sector directives.
- The environmental *acquis* has been developed over a period of some 30 years and existing Member States have been able to transpose the legislation over a long period. This compares with the candidate countries, which will be seeking to implement the instruments in a shorter timescale.
- The costs of implementing and complying with the provisions are likely to be more onerous in the candidate countries, for example in countries which are reorganising their administrative structures from a centralised to a decentralised system.

Implementation of the legislation in the horizontal sector has one advantage compared with the other environmental sectors in that virtually no capital investment is required. The legislation is concerned with implementing administrative procedures. However, the candidate countries should carry out a needs assessment based on the existing administrative arrangements so that there is a clear understanding of the areas to be addressed for the purposes of implementing the instruments.

7. Economic and Financial Issues

7.1 Introduction

This section discusses the economic and financial issues that candidate countries should understand and take into account in implementing the instruments.

7.2 Institutional Development

With the main thrust of the implementation of the instruments leading to the need for new administrative procedures, internal staffing requirements and training should be reviewed at the various institutions being given responsibility for the implementation of these items of legislation. Regardless of whether additional staff are required, training courses will be needed, tailored to the tasks of implementing and administering the new procedures. Consequently, it will be necessary to ensure that adequate budgets are available to finance the commitments to be made to enable the responsible institutions to operate effectively. Salaries will also need to be reviewed if it is considered that various tasks will command greater responsibility and if the necessary staff are to be recruited. It will be vital for the training to be phased according to the desired take-up of the new procedures so that management and skills may be improved over a period of time.

In summary, human resources are required for:

- preparing the consultation documents for transposing provisions of the directive into national legislation and dealing with the legislative process;
- establishing procedures as requested by the directives to ensure effective implementation;
- developing and implementing internal and external environmental communication frameworks;
- developing detailed environmental databases;
- creating and implementing information technology frameworks for communicating environmental information and decisions;
- producing guidelines and codes of practice on applying the legislation to development projects;
- making arrangements for providing access to environmental information;
- designing and commissioning systems for managing environmental information that will be made available to the public;
- producing reports as required by the directives; and
- responding to the requirements of the EEA and LIFE+ Regulations.

Costs for establishing the institutional structure will depend on various factors such as the size of the candidate country; the degree of decentralisation arranged to administer the legislation and the choice of organisational structure; the likely number of development projects; the size of the population; and the anticipated interest in environmental information. The aspects that are likely to require the greatest incremental costs are:

- staffing and accommodation;
- training;
- data and information management systems and office equipment; and
- preparation of reports and publicity.

7.3 Facilities

Studies prepared on behalf of DG ENV have shown that the cost of implementing the horizontal legislation in candidate countries will be relatively low compared with some of the other instruments for which major capital expenditure is required to update the performance of treatment installations to the standards set in the directives. For example, implementation costs for the horizontal sector have been estimated at EUR 10 million in Slovenia and EUR 18 million in Romania.

7.4 Cost Recovery

Limited cost recovery is provided for in the Access to Environmental Information Directive (2003/4/EC), where public authorities will be allowed to levy charges to cover administrative costs for supplying information to those making enquiries (as long as the costs are "reasonable"). Charges can also be imposed for EIA reports as well as meta-data, statistics, GIS data and other spatial information under the INSPIRE Directive. However, the costs should be reasonable and justifiable.

8. Summary of Key Issues

Most of the tasks associated with the implementation of horizontal legislation focus on reviewing and, if necessary, revising administrative arrangements for integrating EIA into development consent procedures and providing information to the public. The Reporting Directive and the Regulations on the European Environment Agency and LIFE+ programme should be less onerous to implement. Key issues to be addressed by government in planning the implementation of the legislation in this sector are summarised in the following checklist.

Checklist of Key Questions to Be Considered in Preparing the Implementation of Horizontal Legislation

1. Have methodologies been developed for implementing SEA?
2. Has SEA been sufficiently developed to provide for an environmental framework for plans and programmes?
 - Does it provide a comprehensive and clear framework for preventing and mitigating environmental effects in connection with projects and existing activities?
 - Is there sufficient knowledge on how the permitting system operates at present?
 - Are the existing institutional arrangements for assessing and permitting different types of projects to be affected by EIA legislation clearly understood?
 - Are there existing EIA procedures, and if so what are they?
3. Are there any problems with the existing arrangements that need to be considered in reorganising the administrative arrangements, e.g. lack of resources, national versus local conflicts, absence of appeals process or enforcement powers, public consultation?
4. Do the proposed arrangements for implementing the EIA Directive address any existing problems in the permitting process?
5. Have the requirements of the EIA Directive been addressed?
 - Does government wish to combine EIA and IPPC permitting procedures?
 - Does the revised permitting process ensure that development consents for projects requiring an EIA are only considered after prior evaluation of the EIA?
 - Are there adequate guidelines in place for the competent authorities to evaluate environmental information provided by developers?

SECTION 2 – HORIZONTAL LEGISLATION

HORIZONTAL LEGISLATION - OVERVIEW

- Are there appropriate arrangements for consultation with statutory consultees and the public?
6. Have adequate mechanisms been established for transboundary consultations and decision-making processes?
 7. Have adequate measures been provided for resourcing the new administrative arrangements, e.g. staffing, training and computing resources?
 8. Do the competent authorities have appropriate enforcement powers?
 9. Have all the public authorities in the large meaning of directive (e.g. firms supplying water) that hold environmental data been identified and consulted about the requirements of the legislation?
 10. Have adequate measures been designed and resourced to meet the new administrative arrangements (e.g. staff numbers and training, physical access to public buildings, computers, database systems)?
 11. Have guidelines been prepared to advise public authorities (e.g. on the type of information that has to be made public, the presentation of the material, charging for information, reasons to refuse requests for information)?
 12. Is there a system of appeals in cases of information being refused, in full or in part, or requests not dealt with in accordance with the directive?
 13. Have arrangements been made to inform the general public, NGOs and the private sector of the service?
 14. Have requirements for preparing state of the environment reports been addressed and linked in with the Reporting Directive and participation in Eionet?
 15. Has government identified one or more competent authorities to prepare sectoral reports under the Reporting Directive?
 16. Will government seek to become a member of the European Environment Agency prior to accession?
 17. Has government set up the institutional arrangements required for joining Eionet?
 - Identified institutions to make up the national Eionet?
 - Allocated financial budgets to institutions to enable them to participate in Eionet?
 18. Has government set up the administrative arrangements required to participate in the LIFE+ programme?
 - Identified a representative to attend the LIFE+ committee meetings?
 - Set up a competent authority to evaluate national proposals for the LIFE+ programme, disseminate information and provide assistance to participants?
 19. Has the government put into place a legislative framework and procedure to implement the INSPIRE Directive?
 - Reviewed the existing infrastructure for spatial data, including legislation, networks and information channels between ministries, agencies and other concerned authorities?
 - Mapped out gaps and shortcomings and addressed them to ensure efficient infrastructure for various spatial data, e.g. GIS, meta-data and statistics and ensured that this information has been made available to the concerned authorities as well as the public (at a reasonable charge)?
 20. Has the government put in place a reporting system and other appropriate monitoring mechanisms and procedures to collect and report to the Commission on pollution sources and amounts under the Regulation on the European Pollutant Release and Transfer

Register?

21. Has the government taken steps to implement the Environmental Liability Directive?
- Created procedures for the competent authority to carry out environmental assessments in order to determine the extent of environmental damage and the measures needed to remedy it?
 - Determined a procedure for determining when the measures should be taken by the relevant operator or by the competent authority on their behalf?
 - Identified, at an early stage of implementation, key actors and stakeholders who will be involved in or impacted by the implementation of the directive?
22. Is the government carrying out periodic and ad hoc inspections in industrial installations subject to an IPPC or other similar permit?

SECTION 2 - HORIZONTAL LEGISLATION
HORIZONTAL LEGISLATION - OVERVIEW

The Environmental Impact Assessment Directive

Official Title: Council Directive 97/11/EC of 3 March 1997 amending Directive 97/11/EC/EEC on the assessment of the effects of certain public and private projects on the environment (OJ L 73, 14.3.1997)

1. Summary of the Main Aims and Provisions

This directive sets out the general principles of the assessment of environmental effects of public and private projects that are likely to have significant effects on the environment. The assessment should be carried out before development consent is given.

The directive lays down rules for the environmental impact assessment (EIA) procedure, which includes a requirement for public participation, including the public of the affected countries. Projects listed in the directive are classified in two groups: projects listed in Annex I are always subject to an assessment; while for projects listed in Annex II, it is required to determine whether they should be made subject to an assessment. This determination should be made by competent authorities either through a case-by-case examination; or according to thresholds or criteria set by the Member States. Member States may also decide to apply both approaches. The selection criteria set out in Annex III should be taken into account if the case-by-case examination is applied, or if thresholds or criteria are applied.

These selection criteria were introduced by the 1997 directive, which also added several categories of projects to the annexes and extended the provisions on public participation and on consultation in EIA for projects having a transboundary effect. The main changes to the 1997 directive were:

- to supplement or modify the categories of projects requiring an EIA under the directive, in Annexes I and II;
- to increase the requirements on consultation with other Member States on projects that may have a transboundary impact;
- to lay down selection criteria to be used in the screening process for Annex II projects;
- to require competent authorities to make public their decisions on whether an EIA is required for an Annex II project;
- to require competent authorities to advise developers on the scope of the EIA if requested;

SECTION 2 – HORIZONTAL LEGISLATION
THE ENVIRONMENTAL IMPACT ASSESSMENT DIRECTIVE

- to require developers to provide information on alternatives they have considered and the main reasons for their choice;
- to require competent authorities to make available to the public (i) applications for development consent and other information within a reasonable time in order to give the public an opportunity to express an opinion before development consent is granted; (ii) the content of their decision on the development application and any conditions attached; (iii) the main reasons and considerations on which the decision was based; and (iv) a description, where necessary, of the main measures to limit the environmental impacts of the development; and
- to require competent authorities to take into consideration, in the development consent procedure, the results of consultations (as well as other information).

Member States were required to transpose the amended directive (97/11/EC) by 14 March 1999. At the time of writing, not all Member States have transposed the new EIA Directive in full, and while there is substantial information on how Member States intend to implement the revised directive, there is limited experience in evaluating EIAs under the new procedures.

Directive 97/11/EC/EEC was amended by Directive 2003/35/EC regarding public participation in respect of the drawing up of certain plans and programmes relating to the environment. The objective of the directive is to contribute to the implementation of Aarhus Convention obligations by improving public participation and providing for provisions on access to justice. It sets out more detailed requirements and procedures regarding the participation of the public in EIA procedures. (For more information, see the separate record on Directive 2003/35/EC that follows.)

The main changes introduced by Directive 2003/35/EC are the following:

- New definitions (of “the public” and “the public concerned”) appeared.
- The scope of the directive has changed slightly with respect to projects serving national defence purposes: while earlier these kinds of projects were categorically excluded from the scope, now the main rule is that national defence projects are subject to the EIA laws. However, Member States have the discretion not to apply their EIA laws to these projects if the application of the laws is deemed to have an adverse effect on national defence purposes.
- In relation to specific projects without transboundary elements, when these are exempted from the EIA procedure, the public participation element changed from being mandatory to being optional.
- The rules for public participation in the decision-making procedure have become more detailed, with the inclusion of rules of notification (timing, methodology and content); rules for information servicing during the procedure; and the requirement of early and effective participation, consultation methods and reasonable time-frames for all phases of public participation.
- Concerning transboundary procedures, the participation of the affected country is no longer limited to the EIA procedure but embraces the whole development consent procedure referred to in Article 2(2) of the directive – the bilateral or multilateral (Espoo) agreements, if any, between the Member States about the details of the transboundary EIA procedures shall cover the topic of public participation in the whole procedure.
- In the decision, due consideration shall be given to the public comments and the public shall be informed thereof. The public shall also be informed about the public participation process. In transboundary cases, the affected country shall inform its public about the decision in an appropriate manner.
- New provisions appeared on access to justice, including the determination of the legal forums to be ensured for legal remedies, the minimum circle of concerned persons to

have access to them, the options for making the exhaustion of a preliminary administrative review procedure a condition of access to court, the prerequisites of the procedure (fair, equitable, timely and not prohibitively expensive) and the necessary capacity-building efforts.

- A new point, 22, was added to Annex I, with reference to the significant change or extension of the projects listed in the previous 21 points of the annex.

2. Principal Obligations of Member States

2.1 Planning

- A policy shall be developed in connection with exceptional cases, especially in connection with projects serving national defence purposes (Arts. 1(4) and 2(3)).
- It shall be determined whether the decision on the Annex II project be based on a case-by-case examination, on a generally binding threshold or criteria, or on a combination of these two methods (Art. 4(2)).
- Ways and methodologies of public notification and consultation shall be designed (Art. 6).
- Legal remedies made available to members of the public and public organisations shall be determined in harmony with the national system and procedures of administrative and judicial remedies (Art. 10a).

2.2 Regulation

- Ensure that no projects likely to have significant effects on the environment are allowed to proceed unless the developer has carried out an EIA and obtained development consent (Art. 2).
- Determine, for projects listed in Annex II, which of them should be subject to EIA. This can be done through a case-by-case examination or by setting thresholds or criteria. In both cases, the Member States should take into account selection criteria defined in Annex III of the directive (Art. 4).
- Ensure that every EIA identifies, describes and assesses the direct and indirect effects of the project on the environmental factors listed in the directive (Art. 3).
- Ensure that developers provide the competent authority with information relevant to the EIA, including the information specified in Article 5 (Art. 5 and Annex IV).
- Ensure that the competent authority gives the developer an opinion on the information to be supplied, where such an opinion is requested (Art. 5).
- Ensure that, if necessary, any authorities holding relevant information make this information available to the developer (Art. 5 and Annex IV).
- Ensure the inclusion in the process of the relevant authorities and the concerned public both at national level and in transboundary relations (Arts. 6-10a).

2.3 Consultation

- Where a project is subject to an EIA, ensure that the public, as well as the authorities likely to be concerned by the project due to their specific environmental responsibilities, are consulted on the request for development consent and on the information gathered in the assessment process (Art. 6).

SECTION 2 – HORIZONTAL LEGISLATION
THE ENVIRONMENTAL IMPACT ASSESSMENT DIRECTIVE

- Member States shall define the detailed arrangements for information and consultation, including (Arts. 6 and 9):
 - the definition of the public concerned;
 - the ways of identifying the public concerned in case of specific projects;
 - the methods used to inform the public of the onset of the procedure (notification);
 - the content of the notification;
 - the content of the information to be made available during the procedure;
 - the way the consultation will be carried out, including public hearing if appropriate; and
 - the time limits for the different stages of the procedure.
- Where a project subject to an EIA is likely to have a significant effect on the environment of another Member State, ensure that specified procedures are followed concerning information exchange, participation in the assessment procedure, and consultation in connection with all the decision-making procedures referred to in Article 2(2) of the directive (Arts. 7 and 9).
- Ensure that the results of consultations, as well as the information gathered in the assessment process, are given due consideration in the development consent procedure (Art. 8).
- After a decision has been made as to whether or not to grant development consent, ensure that the competent authority informs the public of that decision, together with the reasons for the decision and other specified information (Art. 9).
- In cases where the country is the affected country and was consulted by another Member State, it shall ensure that the information on the final decision is made available to the public concerned in an appropriate manner (Art. 9).
- If it is decided to exempt a specific project from the provisions of the directive, consider whether another form of assessment would be appropriate. In this case, the public shall be informed about the exemption and the reasons for granting it. The information collected from the other form of assessment should be made available to the public (Art. 2).

2.4 Reporting/notification

- The EIA Directive does not require reporting, but exchange of information including:
 - exemptions from the directive, granted in exceptional cases (Art. 2);
 - experience gained in applying the directive (Art. 11);
 - any criteria and/or thresholds adopted for the selection of Annex II projects (Art. 11);
 - measures taken to comply with the directive (Art. 12); and
 - transposition, with texts of the main provisions of national law adopted in the field covered by the directive (Art. 12).

2.5 Additional Legal Instruments

The implementation of this directive should be considered in conjunction with a number of other legal acts from the environmental *acquis* and international agreements. Key examples are given below.

Legislation concerning the authorisation and operation of installations:

- Integrated Pollution Prevention and Control Directive (2008/1/EC) (see Section 7 of the Handbook).
- Waste Framework Directive (75/442/EEC) (see Section 4 of the Handbook).
- Hazardous Waste Directive (91/689/EEC) (see Section 4 of the Handbook).
- Urban Waste Water Treatment Directive (91/271/EEC) (see Section 5 of the Handbook).
- Seveso II Directive (96/82/EC) (see Section 7 of the Handbook).

Legislation concerning the protection of habitats and species:

- The Wild Birds Directive (79/409/EEC) (see Section 6 of the Handbook).
- The Habitats Directive (92/43/EEC) (see Section 6 of the Handbook).

Legislation concerning consultation and access to information:

- Directive on Access to Environmental Information (Directive 2003/4/EC).
- Reporting Directive (91/692/EEC) (see Section 2 of the Handbook).
- Directive on public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending, with regard to public participation and access to justice, Council Directives 97/11/EC/EEC and 2008/1/EC (2003/35/EC).

International conventions:

- Convention on Environmental Impact Assessment in a Transboundary Context (the Espoo Convention), 1991.
- Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar Convention), 1971.
- Convention on Biological Diversity, 1992.
- Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (Aarhus Convention), 1998.

In addition, the Commission has adopted the SEA Directive (2001/42/EC) on the assessment of the effects of certain plans and programmes on the environment. The purpose of the SEA Directive is to ensure that the environmental consequences of plans and programmes are identified and assessed before they are adopted. The public will be able to give its opinion on the plans and programmes, and all results are to be taken into account during the adoption procedure of the plans and programmes. SEA is intended to contribute to a more transparent decision-making system for planning and sustainable development, especially through the realisation of the principle of early participation when all options are still open.

3. Implementation

3.1 Key Tasks

The key tasks involved in implementing this directive are summarised in the checklist below. The tasks are arranged under subheadings and organised in chronological order of implementation wherever possible.

ENVIRONMENTAL IMPACT ASSESSMENT DIRECTIVE - KEY IMPLEMENTATION TASKS	
1	Planning

SECTION 2 – HORIZONTAL LEGISLATION
THE ENVIRONMENTAL IMPACT ASSESSMENT DIRECTIVE

1.1	Establish/designate the competent authorities of first and second instance to be consulted under this directive. Also, ensure adequate financial, human and technical resources for these authorities.
1.2	Consider whether to integrate EIA into existing consent procedures and whether to combine the EIA and IPPC consent procedures. In relation to this decision, determine the timing of the EIA procedure in the line of permitting procedures (siting, construction, usage etc.), taking into consideration that certain options (alternatives) shall still be open, while sufficient data shall be available for the decision making.
1.3	Design the development consent system robustly so that an application for development consent is only evaluated once the developer has provided the required information. Consider the establishing of a list of facts in the event that development consent is refused (e.g. due to lack of convincing evidence of being able to comply with the relevant emission standards, or in the case of contradiction with the national, regional or local environmental, spatial planning etc. plans and programmes).
1.4	Determine whether to define Annex II projects that require an EIA: <ul style="list-style-type: none"> • on a case-by-case basis; • by setting thresholds or criteria; • by developing the methodology for determining “significant environmental effects” in harmony with Annex III; • by relying on the screening methodology (“Guidance on EIA - Screening”, 2001) approved by the European Commission; or, • by combining the above procedures.
1.5	Develop a protocol for providing screening opinions to developers and informing the public and the concerned authorities.
1.6	Where relevant, define the thresholds or criteria for determining whether Annex II projects require an EIA, taking into account the selection criteria in Annex III of the directive. Provide for the determination made by competent authorities to be made available to the public and for public opinion to be made available to the concerned authorities.
1.7	Determine protocols for advising developers on the scope of the EIA if so requested, and ensure that staff are suitably qualified to provide such advice. These protocols could refer to the “Guidance on EIA - Scoping”, as approved by the European Commission.
1.8	Consider the development of a protocol for environmental impact statement (EIS) review, taking into account the European Commission “Guidance on EIA - EIS Review” (2001).
1.9	Consider the extent to which EIA implementation would benefit from external expertise (e.g. from research institutes, professional bodies, individual consultants) and then develop a certification procedure as appropriate.
1.10	Determine the method for the selection of experts designated to prepare the EIS, with a view to ensuring their independence as far as possible. Also determine the minimum professional conditions (training, experience etc.) and discipline rules for experts taking part in preparing the EIS or in the EIA procedure.
1.11	Member States have to ensure that any authorities holding relevant information shall make this information available to the developer (see Art. 5(4) of the EIA Directive).
1.12	Consider how environmental information provided by the developer will be reviewed and set up any special protocols for technical assistance from other authorities or independent organisations.

**SECTION 2 – HORIZONTAL LEGISLATION
THE ENVIRONMENTAL IMPACT ASSESSMENT DIRECTIVE**

1.13	If not already available, set up a system for collecting and assessing information on applications for development consent and environmental information received from developers.
1.14	Consider the implementation of a post-EIA approval-monitoring regime to ensure that potentially significant environmental effects are being mitigated or prevented. The participation of the environmental authority in the latter stages of the permitting procedure is one possible solution.
1.15	Consider the impact of, and consider giving effect now to, Directive 2003/35/EC of the European Parliament and of the Council providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending, with regard to public participation and access to justice, Council Directives 97/11/EC/EEC and 2008/1/EC. Give specific attention to the following topics: <ul style="list-style-type: none"> 1) new definitions; 2) public participation elements in exempted cases; 3) notification (timing, methods and content); 4) providing information during the procedure; 5) ensuring early and effective participation; 6) developing proper ways of consultation; 7) determining reasonable time-frames for public participation; 8) giving due consideration to public inputs; 9) ensuring effective access to justice for members of the public and public organisations; 10) ensuring that an EIA is carried out for significant changes to or the extension of at least Annex I projects.
2	Regulation
2.1	Implement procedures for the competent authority to review applications for development consent and environmental information to ensure that the EIA has been undertaken adequately and that the report includes all the information specified in the directive.
2.2	Member States must ensure that the other authorities likely to be concerned by the project by reason of their specific environmental responsibilities are given an opportunity to express their opinion on the application and information supplied by the developer. These authorities can be identified in general terms or on a case-by-case basis, or by a combination of the two methods (e.g. certain authorities, like public health, nature protection, catastrophe prevention etc. shall always be included, while others shall be included only when the subject of the case falls under their specific competences).
2.3	Ensure that, where relevant, consultations with Member States and their affected citizens/stakeholders are directly effective in implementing these parties' rights to participation under the directive.
2.4	Consider the need to amend relevant provisions of the EIA Directive as provided for in Directive 2003/35/EC of the European Parliament and of the Council providing for public participation with respect to the drawing up of certain plans and programmes relating to the environment and amending, with regard to public participation and access to justice, Council Directives 97/11/EC/EEC and 2008/1/EC.
3	Guidance and Training
3.1	Candidate countries should prepare and issue detailed guidance on the procedures to comply with the directive, the nature of EIA, and the preparation of the environmental

SECTION 2 – HORIZONTAL LEGISLATION
THE ENVIRONMENTAL IMPACT ASSESSMENT DIRECTIVE

	impact assessment reports.
3.2	Candidate countries should provide training to staff in the competent authorities on EIA preparation and review. This should include detailed instruction in screening and scoping and review procedural methodologies in accordance with best EU practice.
4	Consultation
4.1	Identify the relevant bodies (environmental and other) to act as statutory consultees and establish procedures for consulting with them.
4.2	Inform the public about any specific projects to be exempted from the EIA requirements.
4.3	Inform the public about applications for development consent requiring an EIA in their area, consultation during the EIA, and measures for reviewing and commenting on the environmental impact assessment.
4.4	Establish protocols with neighbouring Member States to exchange information and consult with them regarding projects with potential transboundary impacts.
4.5	Ensure that the competent authority (or authorities) takes into consideration the responses from the consultation process prior to making a decision on the application for development consent.
4.6	Notify the public of the outcome of decisions on applications for development consent.
4.7	Consider the provisions of Directive 2003/35/EC of the European Parliament and of the Council providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending, with regard to public participation and access to justice, Council Directives 97/11/EC/EEC and 2008/1/EC and the related consultation requirements set out therein.
5	Reporting
5.1	Although the EIA Directive does not require Member States to report information in the strict sense, it calls for exchange of information, mainly on the basis of Articles 2.3 and 11. This includes: <ul style="list-style-type: none"> • informing the Commission of the reasons justifying exemptions from the directive; • criteria and/or thresholds adopted for the selection of Annex II projects; • communicating the transposition of the directive; and experience gained in applying the directive.

3.2 Phasing Considerations

The most demanding and time-consuming tasks related to the implementation of this directive are likely to be:

- Strengthening the institutional structures. This work may include:
 - staff recruitment to improve capacity, should the implementation of the directive increase workloads, and the widening of specialist expertise to support the evaluation of environmental reports, together with the possibility to establish multidisciplinary groups of officials that enable them to give their expertise to the evaluation of the environmental reports;
 - staff training to improve capability and technical knowledge;
 - the extension of existing training curricula to include topics encouraging effective public participation;

- the development of databases tracking the progress of individual projects;
 - the development of information technology to support access to environmental information related to EIA documentation and consultation procedures;
 - internal communication approaches to integrating other environmental *acquis* environmental standard-based requirements into EIA approval processes;
 - the installation or modification of computer systems for handling applications and improving communications;
 - changing and improving existing permitting procedures, taking into account the key issue of cross-references and procedural guarantees (e.g. introducing additional rules into the laws and regulations on construction permitting, for example that attaching an EIA development consent with full legal force is a condition for submitting a request for a permit).
- Preparing and disseminating information on the procedural requirements for EIA internally and on an inter-ministerial basis.
 - Encouraging developers to make changes in the way they prepare applications for development consent. This will focus particularly on the preparation of EIA reports.
 - Preparing guidance notes to competent authorities, developers and the general public.
 - Ensuring public participation. Amongst other measures under this topic, regular trainings should be designed and offered to the leading environmental NGOs concerning the main substantial and procedural features of EIA in order to harness the role of these NGOs in mediating and supporting the concerned local communities and municipalities.
 - Fostering a market in EIA-related expertise so that it is available to the developer and other stakeholders, and perhaps to government authorities as well. Regular monitoring of the professional level and independence of these experts should be carried out in co-operation with the chambers of experts where appropriate.
 - Making the environmental information held by public authorities and institutions available to the public (see Directive 2003/4/EC).

4. Implementation Guidance

The EIA Directive (97/11/EC/EEC amending Directive 85/337/EEC) was adopted in 1985 and there is now considerable experience related to the implementation of this directive throughout Member States. The directive was amended in 1997 to improve the uniformity of its application across Member States and to improve the quality and scope of the information provided. In June 2001, the European Commission published three documents: "Guidance on EIA - Screening"; "Guidance on EIA - Scoping"; and "Guidance on EIA - EIS Review". These three guidance documents provide an excellent guide to the implementation of the comprehensive methodologies demanded by the EIA Directive.

The adoption of several major directives in recent years, in particular the EIA, IPPC and Seveso Directives and the EMAS Regulation, has led to considerable discussion on the inter-relationship between these directives¹¹. Further discussion on these issues is provided in the overview for horizontal legislation and the overview for the industrial pollution control and risk management sector. Specific comments regarding the EIA Directive are made below.

The following text provides guidelines based on the experience of Member States in relation to the implementation of the EIA Directive.

¹¹ IMPEL (1998) *Interrelationship between IPPC, EIA, Seveso Directives and EMAS Regulation*

4.1 Planning

- Candidate countries could undertake a detailed review to identify the current development consents as well as permitting procedures for development consents and industrial pollution control permitting for industrial sites and processes. The study could include an institutional assessment to examine the interrelationships between national, regional and local government, and other institutions or authorities involved in the control of land development and permitting procedures. It could also review staffing and office resources including office equipment, computers and software systems. The survey should record any weaknesses in the current arrangements.
- Candidate countries could develop databases tracking the progress of individual projects and keep them available on the Internet. This would allow all stakeholders to track the progress of projects that are subject to EIA procedures, thus facilitating their understanding of how to contribute strategically to the process while maintaining a check on competent authority efficiency in advancing project approval processes. This arrangement could prevent or mitigate criticism of the lengthy, complicated and expensive nature of the EIA procedures that is frequently raised by representatives of the developers who are not fully aware of the tasks and procedural steps of EIA, including procedural guarantees protecting the interests of the parties.
- Acquisition of information technology and strategic implementation should enhance access to environmental information related to EIA documentation and consultation procedures.
- An internal communication strategy should be devised for integrating other environmental *acquis* environmental standard-based requirements into EIA approval processes.
- Candidate countries need to decide whether to link the EIA and IPPC permitting procedures into a single procedure, or whether to have two separate systems, possibly involving different competent authorities for the control of land development and industrial pollution control. In deciding this complex issue, a starting point could be the basic legislative goal of these two legal institutions: the main goal of EIA is to reveal the best alternatives for siting and the basic features of technical solutions; while IPPC could be conceptualised as a more concrete examination of the application of best available techniques and of emissions and other use and burdening of the environment. In connection with IPPC, it should also be borne in mind that it aims to merge several concrete environmental permitting procedures relating to air, water, land and nature protection, waste management etc.
- Candidate countries could then draw up feasible alternatives for revising the permitting process, taking account of the existing situation, the permitting procedures set out in the EIA and IPPC Directives, and the estimated numbers of development consents and their geographical distribution. Candidate countries should also consider how the new arrangements would affect the institutions involved, and prepare a plan for institutional strengthening to cover staff numbers, training, computers, financial budgets etc. The preferred approach for modifying or changing existing permitting procedures, including any changes to administrative arrangements, in order to address the EIA requirements imposed by the directives should be developed and costed.
- Member States have followed two main alternatives for administrative arrangements – that is, centralised or decentralised land development control. Under centralised control, central government retains responsibility for the development and implementation of strategic land development policy and decides on development consents. Under decentralised control, central government usually retains responsibility for strategic land development, but the evaluation of development applications is undertaken by regional or local authorities. Some countries adopt a mixture of the two approaches, with central government deciding on development consents for major infrastructure projects such as transport infrastructure or power stations. The preferred approach in any one country will

depend mainly on the existing institutional arrangements for granting development consents.

- Candidate countries have to decide which approach to take to determine whether Annex II projects require an EIA. The options are (a) a case-by-case examination; (b) by the definition of thresholds and criteria; or (c) by a combination of (a) and (b). All these approaches have to take into account the selection criteria given in Annex III of the directive. In deciding whether to apply EIA to specific projects, competent authorities should also consider implementing the screening guidance methodology. The screening process addresses the specific task of determining whether an EIA is required for given projects. This could happen either upon notification by the developer of its intention to make a development consent application or upon the developer's request for a screening opinion from the competent authority. In some countries, after the screening decision there is an obligatory delay within which the developer cannot issue the request for development consent. This arrangement prevents the developer from rushing the process by preparing the EIS, or parts of it, before the screening procedure. The developer is obliged to prepare the whole EIS after the screening decision, once they are fully aware of the requirements thereof.
- To prepare for project screening, the developer should be made to describe the relevant characteristics of the project and its environment and then consider whether any potential effect is likely to be significant to the surroundings before, during and after the completion of the project.

Examples of Approaches in Implementing Requirements Relating to Annex II Projects

In a recent study of the implementation of the EIA Directive in 12 EU Member States, only three Member States had adopted a single approach to deciding whether Annex II projects require an EIA. Two Member States adopted the thresholds approach (AT and IE), and one adopted an approach based on general criteria (SE). The remainder adopted a combined approach. Five of the Member States also decided to assess the need for an EIA for Annex II projects on a case-by-case basis.

One Member State (UK) adopted a combined approach to identifying Annex II projects requiring an EIA. Certain projects will always require an EIA, namely Annex I projects and development applications in Sites of Special Scientific Interest (SSSIs), World Heritage sites, scheduled ancient monuments, national parks and areas of outstanding natural beauty that are designated as such under national legislation for nature conservation, landscape protection and cultural heritage reasons. EIAs will not be required for projects that do not meet the screening criteria. Those projects for which an EIA may be required will be examined on a case-by-case basis, by applying general criteria and indicative thresholds. The general criteria are whether a project is (i) of more than local importance; (ii) in a particularly sensitive location; or (iii) involves particularly complex environmental effects. Indicative thresholds are being prepared for specified types of projects. In exceptional cases, the competent ministry retains the power to require an EIA for a project that does not meet the screening criteria.

In another Member State (PT), it was decided to adopt the threshold approach to determine whether a project should be subject to an EIA. The competent authority for transposing and implementing the new EIA Directive, the Directorate General of the Environment (DGA), consulted with other government entities and interested parties from various sectors (e.g. industrial and agricultural associations) to determine the nature of the thresholds. In order to minimise the likelihood of unfair competition between projects in Member States, they then compared their threshold criteria with those adopted in two other Member States (ES and FR) before reaching a final decision.

In one new Member State (RO), the competent authority uses a combination of thresholds, a methodology for determining "significant environmental impacts" and the project screening process prescribed in the Commission's 2001 "Guidance on EIA - Screening". This selection process is based, in part, on a review of best practices among Member States and a conscious decision to apply the Commission's guidance, based on the understanding that this would

become the state of the art with respect to screening methodologies. The process also allows developers to seek screening opinions from the competent authority. The basis of the competent authority opinion on whether a project should be subject to EIA must be stated with reasons.

A Relevant ECJ Case in Connection with Determining Projects Subject to EIA

A widely quoted ruling of the European Court of Justice (Case C 392/96) established that Ireland had failed to apply correctly the EIA Directive. The court ruled that the Irish authorities had exceeded their discretion in implementing the EIA Directive by only laying down size thresholds for EIA in connection with deforestation, peat cutting and land reclamation projects, without taking into account the nature, location and cumulative effects of projects. The court ruled that even small projects might be deemed to have significant impacts if located in an environmentally significant area.

- Once the screening process is complete, guidance on the scoping process should be given to parties. It should be noted, however, that in several countries screening and scoping take place in one procedural step. Although, as a rule, scoping is not a mandatory procedure, it is wise to make it a key methodological step so as to avoid mistakes and the loss of time in environmental impact study submissions. A further step can be to introduce mandatory scoping in accordance with the last sentence of Article 5(2) of the directive. Subsequent implementation of the requirement of early participation (Art. 6(2)) might make it necessary to ensure public participation in the screening/scoping procedure(s).
- There are at least three stages for scoping, i.e. for identifying the potential impacts of a project. Firstly, the developer should identify all the activities or sources of impacts that could arise from the construction, operation or decommissioning of the project; secondly, the developer should identify the potentially affected characteristics of the project environment; and thirdly, the developer should consider where there could be interactions between the potential sources of impact from the project and the potentially affected project environment characteristics by identifying the activities likely to be significant and therefore likely to require the most attention in the assessment. These three stages should be addressed in any relevant guidance on EIA procedure.
- Developers can seek advice on the scope and content of the EIA from the competent authorities, who should ensure that their staff members are sufficiently trained in the EIA process to advise developers. Developers can usually also obtain guidance on the contents of the environmental impact report from the legislation, published literature and advisory institutions (see subsection Guidance and Access to Information below). Procedural principles such as transparency and accountability, and also the principle of fair procedure (an even-handed attitude towards all participants in the administrative procedure), make it necessary for all correspondence and discussions between the developer and the authorities to be accessible to the rest of the participants and to be duly documented.
- If the screening and scoping procedures have been adequately carried out, then the developer should be fully aware of the environmental information to be provided in the environmental impact study itself. This prevents the developer and other participants in the cases from wasting resources on unnecessary research and studies and enables them to focus on the most important environmental features of the planned activity. Thus the procedure should be designed to codify this objective.
- Further to the screening and scoping procedures is the imperative to prepare and disseminate the relevant information about the project to the competent authority in connection with the environmental impact study. This legal requirement should be

legislated and planned through the development of an electronic database that standardises the information and makes it publicly accessible.

- As the EIA review and consultation procedures are necessary legal requirements, transparent and accountable consultation with statutory environmental authorities, other interested parties and the public is vital. The points of view expressed in these procedures must be considered in determining whether or not to grant development consent. Once a decision is taken it must be published with reasons and a description of the measures required to mitigate adverse environmental impacts. This will require detailed logging of opinions expressed and a methodology for incorporating them into decision-making processes. Bearing in mind the large amount of paperwork required, it would be preferable to use electronic communication and reporting tools as often as possible, perhaps by encouraging, e-mail and web usage to the maximum extent appropriate to the level of technology access among stakeholders.

Due Consideration of Public Comments

According to the regulation of one Member State (HU), the reasoning part of both the screening/scoping and the final decision shall contain a detailed evaluation of the comments from members of the public and public organisations, including the municipality councils on the territory affected by the planned project. This evaluation shall comprise three parts: a *factual*, a *professional* and a *legal* analysis of the comments. This legal arrangement ensures the detailed consideration of the public input and a satisfactory explanation to members of the public and public organisations, even if the decision-making authority does not share their opinion. Finally, the formal structure of the evaluation of public comments makes the administrative and court remedies simpler and more focused.

- It is necessary to take account of the amended public participation and access to information procedures and related requirements set out in Directive 2003/35/EC of the European Parliament and of the Council providing for public participation with respect to the drawing up of certain plans and programmes relating to the environment and amending, with regard to public participation and access to justice, Council Directives 97/11/EC/EEC and 2008/1/EC. The new and more detailed notification, information servicing and consultation rules require, in particular, greater scrutiny and careful planning efforts in terms of ensuring the proper institutional (including the necessary training and supervision), procedural and budgetary arrangements. In addition to these, the transposition of the provisions on access to justice requires wide-scale discussions with representatives of the judiciary and, as a result, the need for legal or practical changes might arise. Such changes might concern the procedural rules of the administrative court supervision of EIA cases and also the issuance of guideline from those organisations (e.g. the Supreme Court or a chief administrative tribunal) that are entitled to form the court practice.

Effective Practical Measures in Order to Ensure Better Access to Justice for the Public in Environmental Cases

Following Communication ACCCC/C/2005/11, the Compliance Committee of the UNECE Aarhus Convention established that, if its practice was not altered in certain cases, Belgium would fail to comply with the access to justice provisions of the convention. The Compliance Committee called on the Belgian party to undertake practical and legislative measures to overcome the existing shortcomings in providing environmental organisations with access to justice in cases concerning town planning permits, and also to promote awareness of the convention and, in particular, the provisions concerning access to justice, among the Belgian judiciary. In its response to the call from the Compliance Committee the Belgian party informed the Committee of the following measures:

- a roundtable discussion on access to justice, with members of the Parliament, to address the matters raised in the review of the communication concerning access to justice in

SECTION 2 – HORIZONTAL LEGISLATION
THE ENVIRONMENTAL IMPACT ASSESSMENT DIRECTIVE

environmental cases in Belgium;

- a legislative initiative for a new bill aimed at modifying legislation of the Council of State with a view to granting NGOs the right to introduce a collective court action;
- the Federal Ministry of Environment, in collaboration with the Ministry of Justice, agreed on measures to promote awareness of the Convention among the judiciary, including a training programme for magistrates and legal trainees and providing the trainees with the relevant written materials. These programmes started in 2006 and continued in 2007 and 2008.

- The national legislation should set out the procedures for appeals against the decision by the competent authority to require an EIA (although the directive does not explicitly require this). The national legislation may also decide that only a negative decision (ceasing the procedure) can be subject to appeal procedures, while positive ones are not (since a legal remedy will be available at the end of the substantial procedure).

Member States may exempt specific projects from the provisions of the directive under exceptional circumstances. These are likely to be projects to which special security and strategic considerations apply. The new public participation rules introduced by Directive 2003/35/EC shall also be taken into consideration in this respect.

4.2 Regulation

- Responsibility for undertaking and/or paying for the EIA and the environmental impact report lies with the developer, who may decide to undertake the work in-house, or, as happens in many cases, to subcontract the EIA and the preparation of the report to specialist consultants. This arrangement, however, results in EISs that may, to a certain extent, be biased (non-objective). It is often difficult to trace back and amend this in material up to several thousands of pages long. Countries might try to prevent this situation either through an increased level of professional control over the experts contracted by the developer, or by designing systems where the preparation of the EIS is not the task of the developer, who remains responsible for providing information about the planned project and who pays for the work of the independent experts. Such experts can be either hired by the environmental authorities on a case-by-case basis or employed by them. Guarantees of transparency and accountability shall also be developed in such systems.
- Competent authorities required to review EIAs may need to seek technical expertise and assistance from other government bodies (such as the ministry with environmental protection responsibilities if it is not the main decision-making body). Co-ordination of technical expertise between the competent authority and other authorities with environmental responsibilities is important in order to ensure that EIAs are adequately reviewed (see also the subsection Consultation below).
- The competent authority may set up a review and advisory panel to evaluate EIAs. This would help to standardise the evaluation of environmental impact reports and provide technical expertise. Members of the panel may be drawn from within the competent authority with the participation of independent external experts. Alternatively, financial provision can be made to have EIAs reviewed externally, by accredited companies or institutions.
- The competent authority should ensure that, where relevant, consultations with Member States and their affected citizens/stakeholders are directly effective in implementing these parties' rights to participation under the directive. While it is the responsibility of the potentially affected neighbouring state to ensure that its affected people are given consultation opportunities, this should be checked by the state initiating the EIA procedures. Such a check can be performed by a simple exchange of letters or other

form of confirmation. These prescriptions should take account of public participation, access to information and related requirements – including those which apply in transboundary circumstances – as amended by Directive 2003/35/EC of the European Parliament and of the Council providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending, with regard to public participation and access to justice, Council Directives 97/11/EC/EEC and 2008/1/EC.

Example of EIA process

In one Member State (PT), the developer submits their proposal for the project, including the environmental impact report, to the appropriate government sector body, for example the Directorate General for Energy for power generation projects; or the Directorate General for Transport for road projects. This body retains responsibility for the evaluation and overall approval of the proposal, but sends the proposal and environmental impact report to the Ministry of Environment.

The competent authority for evaluating the environmental impact report is either the Directorate General for the Environment of the ministry (DGA) itself or one of the regional directorates for the environment (DRARNs), depending on whether the proposal is for a national (Annex I) or regional (Annex III) project (annex numbers refer to the national legislation and not the directive). For Annex I projects, the DGA nominates and co-ordinates an evaluation commission composed of its own representatives and also the Institute for Nature Conservation (ICN), the National Institute for Water (INAG) and the Institute for Environmental Promotion (IPAMB). Regarding Annex III projects, the DGA nominates the DRARN to be in charge of co-ordinating the respective evaluation commission. The DGA and the DRARNs are supported by the IPAMB, which makes arrangements for public consultation. The Evaluation Commission's decision, in both cases, is made available to the appropriate ministry but is not binding. However, a ministry's decision not to comply must be justified and impact mitigation measures, proposed by the evaluation commission, must be undertaken. Final approval of the proposal requires consent by the minister of environment (which is binding, contrary to the proposal of the Evaluation Commission) and the other relevant sector entity.

For major projects, such as large infrastructure or dams, a regulation commission may be nominated by the minister of environment, comprising representatives from the DGA, INAG and ICN, to control and supervise the implementation of the project. The requirement to nominate a regulation commission will be mandatory under the new legislation.

The DGA maintains a database with a standard entry form for Annex I and III projects that is used as a tool for monitoring the process of evaluation and approval of projects subject to an EIA. The DGA is currently revising the form and database to include an "Observations" field to summarise any impacts and the measures proposed to minimise them. At present, some 80 environmental impact reports are produced each year.

- The EIA Directive requires competent authorities to publicise the conditions attached to successful applications for development consents and the measures required to mitigate the environmental effects of the development. However the directive does not require any monitoring to ensure that developers comply with any commitments made in their environmental impact assessment reports (for example, in relation to mitigation or environmental monitoring) or conditions laid down in the development consent. Nonetheless, as part of the general permitting procedures, competent authorities should establish a system to ensure that the developer does comply with any such commitments together with any conditions attached to the development consent. Such a system could require periodic inspection of the development site during construction. Governments need to ensure that the competent authorities have the legal powers to enter sites, stop construction and possibly remove structures where developers have not complied with the permit conditions.

Environmental Supervision - A Legal Tool for the Systematic Analysis of Existing Facilities

In one Member State (HU) there is a legal institution that the environmental authorities can use when they experience that:

- a facility subject to EIA is being operated without an environmental permit (because of failure to request one, even though the law prescribed it, or because, due to changes in the legal situation or changes in the practical situation, the project has become subject to EIA);
- the validity of the environmental permit has expired;
- significant changes have occurred in the operation of a facility that otherwise possesses a valid environmental permit;
- a facility damages or seriously endangers the environment.

Environmental supervision is similar to EIA in many respects: preparation of a complex environmental study, evaluation of the study by the environmental authority and by the collaborating authorities, public participation rules etc., but the procedure takes into account that already existing facilities are evaluated.

4.3 Guidance and Training

- The range of technical skills required for preparing and reviewing EIAs is diverse and can include specialisation in visual and landscape assessment, noise and vibration, air quality, contaminated land remediation, waste disposal, water resources and hydrology, ecology, traffic impact assessment, archaeology and socio-economics. This potentially poses problems for developers in ensuring that the EIA is carried out to an appropriate standard, and for the competent authorities who have to evaluate the EIA presented by the developer. This is why steps should be taken to ensure that a viable market for professional EIA expertise exists in the relevant candidate country.
- There is a strong case for including in the programme for implementation the effective education and training of administrators in the competent authorities. This should include training in EIA screening, scoping and review procedures.

Example of Training on EIA

In one Member State (PT), the Directorate General for Environment (DGA) ran workshops on the requirements for bodies interested in preparing EIAs immediately after the transposition of the directive into national legislation. Today, the DGA issues guidance materials to the relevant government sectors for dissemination to developers interested in proposing projects and to bodies within that sector, and has published a booklet on the evaluation of impact assessments every three months since April 1999.

In another Member State (NL), a statutory EIA commission provides advice, for example on the treatment of alternatives to the proposal, scoping, the review of environmental reports and the monitoring of the impacts of the construction and operation of projects. In the UK, the Institute for Environmental Assessment accredits consultancies for undertaking EIAs, publishes guidelines on EIA methodologies, and reviews environmental impact reports. The Institute raises revenue from membership subscriptions and fees for services provided.

- Various organisations prepare guidance on the EIA permitting system and the preparation of EIA reports. The European Commission has published various guidance documents. Central governments often produce guidance on the requirements of the national legislation, advice on permitting procedures, best-practice guidelines for preparing an EIA, methodologies for assessing environmental impacts, advice on the preparation of environmental impact reports, and guidelines on public consultation

procedures. Professional bodies in the construction and environmental sectors often provide guidance to their members. Research institutes and universities also undertake studies, for example on developing impact assessment methodologies. A number of Member States have EIA centres, which are active in providing support on the carrying out of EIAs. They all offer training on various aspects of EIAs.

- Some Member States have adopted obligatory or voluntary schemes to control the quality of environmental impact reports.

4.4 Consultation

- Member States have to set up procedures to ensure that authorities that may have an interest in a project due to their environmental responsibilities are given an opportunity to express their opinion on the information supplied by the developer and on the request for development consent. Member States have to designate those authorities in general terms or on a case-by-case basis, and must set out detailed arrangements for access to information and consultation. The same applies to states affected by potentially significant transboundary environmental impacts.
- The EIA Directive does not specify the duration of consultation periods with statutory consultees and the public, or the maximum period allowed to competent authorities to reach a decision on the application for development consent. Member States may set deadlines and time limits for these activities within their national legislation, or may make such recommendations in government guidance, in order to avoid extensive delays in reaching a decision on development consent. In designing the EIA procedure, consideration should be given to parallel rather than consecutive procedural steps (e.g. the decision-making body, the co-operating authorities and members of the public and public organisations can study the EIS at the same time).
- Information on the development consent, the decision to require an EIA, and environmental impact assessment reports has to be made available to the public. This may be done through announcements in the press and through the Internet, as well as by placing the relevant information on a register of applications for development consents. In addition to these methodological solutions, municipalities can play an important mediatory role in forwarding information to and from the concerned local communities.
- Public access to information is more easily achieved where the development consent is processed in the region or the locality where the development is planned to take place. In this case, consideration should be given to the de-centralisation of EIA-related information sources (i.e., they should be provided both in hard copy and by electronic [potentially Internet] means). Sub-national government offices may wish to have their own Internet sites for distributing EIA-project information.

Example of Arrangements for Consultation as Part of the EIA Process

In one Member State (UK), the legislation implementing the directive identifies the statutory consultees who have to be consulted by the competent authority responsible for the permitting procedures prior to reaching a decision on the development application. The statutory consultees reflect the range of potential environmental concerns and include government departments responsible for the environment and transport; the national body responsible for health and safety; the national environment agency; and organisations concerned with the conservation of the countryside, nature, and cultural heritage.

One Member State (PT) has appointed a competent authority, the Institute for Environmental Promotion (IPAMB), to organise public consultations during the evaluation of the proposal. The developer has to bear the costs of the public consultation and notification, which are specifically regulated by the law. Public meetings are mandatory for national projects and meetings at several locations may be required for projects that cover a large geographical area, for example motorways and pipelines. For regional projects, the requirement to hold public meetings depends

SECTION 2 – HORIZONTAL LEGISLATION
THE ENVIRONMENTAL IMPACT ASSESSMENT DIRECTIVE

on the level of public interest. The IPAMB also disseminates information about the proposed project through the local, regional and national press, letters to municipalities, non-governmental organisations (NGOs) and the Internet. The IPAMB also informs the public of the decision on the application for development consent through these media. Records taken at public meetings and correspondence from interested parties are used to identify any individuals or organisations to which specific information should be sent directly. The effective dissemination of information about proposed projects is essential in order to ensure the adequate participation of the public and other interested parties. Experience in this Member State has shown that the consultation process also benefits the competent body by providing local information that it might not otherwise obtain.

In the UK, notices of applications for development consent are published weekly in local newspapers. Applications can be viewed at the office of the local planning authority, and fluorescent posters are displayed either at, or in the vicinity of, the proposed development site to attract people's attention. During the course of the EIA, the developer may make arrangements for the dissemination of information about the project through leaflets distributed to the local community, meetings with individuals and local groups, and public meetings. Once the EIA has been completed, the planning authority publishes a notice in the local newspapers (at the developer's expense) explaining where the environmental report can be reviewed. Members of the public can submit an objection to the planning authority which is then responsible for deciding whether to approve the application for development consent. Alternatively, the secretary of state may call for an application to be subject to a public inquiry.

- Developers have different approaches to making information available to the public. The most common approach is to deposit the EIA report at one or more key sites accessible to the public in the affected area (for example at the office of the competent authority, or at a local library or school) and to inform the public about the opportunity to view the EIA via announcements in the press. Where the developer decides to put on a public exhibition, or consult with local groups, they may make one or more copies of the EIA report available for inspection for a limited period.
- It is usually too expensive to reproduce EIA reports in large numbers, which precludes their wide circulation to the general public. Developers can disseminate information about the project more widely to the general public by preparing a separate leaflet containing a non-technical summary for distribution at public exhibitions, for delivery to properties in the area affected by the proposals etc.
- Certain types of projects, for example projects affecting downstream river flow or quality, port developments, or industrial and power developments, may impact upon neighbouring countries. The impact is not determined exclusively by physical distance from the border, although the general practice among countries shows that planned installations within a 10 to 50 km zone from the border usually trigger at least the first phases of transboundary EIA procedures. Candidate countries need to set up protocols to facilitate the exchange of information and the involvement of the neighbouring state in the consultation process. Candidate countries may need to involve their ministries with responsibilities for foreign affairs in this aspect of implementing the directive.
- Recommendations related to consultation should take account of the amended EIA Directive provisions dealing with consultation as set out in Directive 2003/35/EC of the European Parliament and of the Council providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending, with regard to public participation and access to justice, Council Directives 97/11/EC/EEC and 2008/1/EC. Since Directive 2003/35/EC ensues from the fact that the EU is itself a party to the Aarhus Convention, experiences of Article 6 (public participation) can be directly applied as sources of best practice.

Experiences from 2008 National Reports on the Implementation of Article 6 of the Aarhus

Convention

Methodologies for notification

There are several examples of good practice in effectively informing members of the public about the commencement of the Article 6 procedures. Provisions requiring notification in newspapers, with certain features, are the most frequent methodological solutions, for example two national daily newspapers (IT) or one national and one local newspaper (BG). Using the local authorities or municipalities as mediators can also be effective: one country reported that notification has to be sent to the clerks of the concerned municipalities with the goal of further dissemination (HU). Environmental NGOs participating in the procedure or otherwise active in the region are, in many countries, individually invited to make comments or to take part in the public hearings, sometimes based on a standing mailing list of relevant NGOs.

The positioning of the notification is also subject to certain requirements: in one reporting country (PL), the notification must be positioned in the vicinity of the planned activity, which typically involves placing an announcement on a fence, gate or other surface at the entrance to a given property and also in locations frequented by local people (near shops, churches or bus stops).

Legal guarantees for effective notification

Finally, the legal consequences of failure to provide adequate notification must be clear and strong. In one country (PL), the court practice is very strict on this matter and the courts usually quash decisions where, in the earlier procedure, the authority has violated even one requirement regarding the place or method of public notification. This is a logical development also from a general administrative legal viewpoint: these authorities are actually failing to involve one or more important stakeholders in the procedure or are infringing the rights of stakeholders by seriously hindering their full participation capacity. These are major procedural faults.

5. Costs

Checklist of the Types of Cost Incurred to Implement the Directive

Initial set-up costs:

- establishment of complex professional teams within the competent authorities for the evaluation of EIS and comments thereto;
- establishment of contact points within the authorities included in the EIA procedure according to Article 6 of the directive;
- devising systems and procedures;
- provisions for initial training;
- preparation of technical and legal guidance material;
- costs of public participation (e.g. costs of newspaper advertisements or posters, costs of public hearings).

Capital expenditure

- information technology for the EIA databases within the relevant authorities.

Ongoing running costs

- continuous (annual or biannual) training of the relevant officials;
- capacity building of relevant NGOs.

SECTION 2 – HORIZONTAL LEGISLATION
THE ENVIRONMENTAL IMPACT ASSESSMENT DIRECTIVE

The Strategic Environmental Assessment Directive

Official Title: Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, OJ L 197, 21.7. 2001.

1. Summary of the Main Aims and Provisions

Directive 2001/42/EC sets a minimum environmental assessment framework for the assessment of the effects of certain plans and programmes on the environment. This directive extends the process for the assessment of environmental impacts developed in the EIA Directive and the Habitats Directive, and the close co-ordination and correlation of efforts under Directive 2001/42/EC with the work required under these other directives is desirable.

Directive 2001/42/EC is commonly referred to as the SEA Directive. To assist with conceptualising the goals of the directive, reference may be made to a common definition of Strategic Environmental Assessment (SEA)¹²: “The formalised, systematic and comprehensive process of evaluating the environmental impacts of a [...] plan or programme and its alternatives, including the preparation of a written report on the findings of that evaluation, and using the findings in publicly accountable decision making.”¹³

The SEA Directive aims for a “high level of protection of the environment” and promotes the integration of environmental considerations into planning and programming by requiring that the environmental consequences of certain plans and programmes that are “likely” to have *significant environmental effects* are identified and assessed *during* the preparation and *before* the adoption of plans and programmes (but not policies) covered by the directive (Art. 4 (1)). All this is with a view to achieving the goals of sustainable development and improving the plan or programme from this perspective¹⁴.

¹² Although the word “strategic” does not appear in either the title or the text of the directive, it is often referred to as the “strategic environmental assessment” directive (or SEA Directive) because it deals with environmental assessment at a higher, more strategic level than that of projects (which are dealt with in the Environmental Impact Assessment [or EIA] Directive [Directive 85/337/EEC, as amended by Directive 97/11/EC]). Source: Commission guidance on the implementation of Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (http://ec.europa.eu/environment/archives/eia/pdf/030923_sea_guidance.pdf).

¹³ R. Théritel, E. Wilson, S. Thompson, D. Heaney & D Pritchard, *Strategic Environmental Assessment*, Earthscan Publications Ltd, London, UK, 1992.

¹⁴ See Article 1 – Objectives.

SECTION 2 – HORIZONTAL LEGISLATION

THE STRATEGIC ENVIRONMENTAL ASSESSMENT DIRECTIVE

Thus, the SEA Directive lays down the procedure for undertaking an “environmental assessment” of plans and programmes that fall within its scope (see Recitals, Para. 9). This is the key element of the directive.

An “SEA assessment” should aim to identify strategic options that make a plan or programme more sustainable. Environmental objectives must include the topics listed in the directive. It takes place much earlier in the decision-making process than EIA and allows for the identification and possible prevention of adverse environmental impacts before the beginning of the formal decision-making process.

The information contained within the environmental assessment and the information received during mandatory consultations with relevant environmental authorities and the public must be taken into consideration *before* the plan or programme is allowed to proceed (Art. 8). Hence, the public must be endowed with the right to know about plans and programmes and the right to comment; their comments must be taken into account; and, *after* the adoption of the plan or programme, they must be informed about the decision and the way in which it was made.

Any likely significant transboundary effects of potential plans and programmes must also be taken into account by competent authorities. The potentially affected Member State and its public are likewise to be informed *before* a decision is made. Their comments are also to be integrated into the relevant national decision-making process, and they should also be notified of the ultimate decision.

An SEA is required in order for a plan or programme to be given approval and is part of the national planning process. The decision-making process at the planning level aims at a high level of transparency.

In summary, the key stages of the SEA procedure are:

- 1) Screening: assess whether a plan or programme is likely to have significant environmental impacts to determine whether an SEA is required.
- 2) Scoping: determine the character and dimension of the environmental issues, objectives and indicators that should be considered during the SEA process. This stage also requires compulsory consultations with environmental authorities.
- 3) Undertake an environmental assessment (a study) as to the potential significant environmental effects of implementing the plan or programme and identify reasonable alternatives.
- 4) Prepare an environmental report and the integral non-technical summary and make this available to the public.
- 5) Consult the relevant bodies and the public.
- 6) Take into account the results of the study and the consultation prior to any decision formally to approve/adopt the plan or programme.
- 7) Make the information on the decision publicly available.

A significant difference between the SEA Directive and the EIA Directive is that the SEA Directive is wider in scope and focuses on decision making in the context of plans and programmes developed or adopted by public authorities. The EIA Directive, on the other hand, is concerned with a *particular* type of development or project *per se*, whether it is by a private or public developer, and is applied to focus more narrowly on the type of development or project in question.

Member States were required to implement the SEA Directive by 21 July 2004.

2. Principle Obligations of Member States

Member States should ensure that the implementing legislation adopted to give effect to the directive provides for at least those matters set out in Sections 2.1 to 2.5.

2.1 Planning

- Member States must determine the plans and programmes to which SEA shall apply. Article 2 contains a broad definition as to plans and programmes; and Article 3, on the scope of the directive, provides Member States with guidance in determining which of such plans and programmes are to be made subject to the requirements of the directive.
- The plans and programmes (and modifications to them) covered by the directive are (Art. 3(2)):
 - those that are required by legislative, regulatory or administrative provisions;and which
 - are subject to preparation and/or adoption by an authority at national, regional or local level;or which
 - are prepared by an authority for adoption, through a formal procedure, by a legislative procedure by parliament or government.
- Plans and programmes may include those that set the framework for future development consents for projects listed in Annexes I and II of the EIA Directive and those that have been determined as subject to environmental assessment under the Habitats Directive.
- Member States have the discretion to determine whether plans and programmes for small areas at local level and minor modifications to plans and programmes identified in Article 3(2) shall require an environmental assessment based on the likelihood of significant environmental effects (Art. 3(3)). An inclusive approach to the definition of “significant environmental effects” should be applied.
- Member States must determine whether plans and programmes – setting the framework for the future development consent of projects other than those set out under Article 3(2) - require an environmental assessment (Art. 3 (4)). Again, an inclusive approach to the definition of “significant environmental effects” should be applied.
- Special planning measures may be required for plans and programmes that are co-financed by the European Community (Art. 2(a)), i.e. through structural funds.
- It might be useful for the competent authority to create an electronic database to be uploaded and maintained on the competent authority website for the purposes of identifying and reporting on the specific plans and programmes that are undergoing strategic environmental assessment, including the relevant SEA procedural stage for each plan or programme.

2.2 Regulation

- Set out the definition and scope of plans and programmes to be covered by the national legislation in accordance with the directive (Arts. 2 and 3).
- Determine whether environmental assessments required under Article 3(3) and (4) are to be made subject to the requirements of the directive through a case-by-case examination (screening); by specifying types of plans or programmes; or by combining both of these approaches (Art. 3(5)), and in either case provide for the relevant threshold determining factors to be set out clearly in the implementing national law. Annex II of the directive provides relevant criteria to be taken into consideration by the Member States in order to

SECTION 2 – HORIZONTAL LEGISLATION
THE STRATEGIC ENVIRONMENTAL ASSESSMENT DIRECTIVE

determine the likely significant environmental effects and the need for an environmental assessment (Art. 3(5)).

- Ensure that all plans and programmes likely to have significant environmental effects are not allowed to proceed unless an environmental assessment has been carried out (Art. 4(1)).
- Determine the extent to which certain matters are more appropriately assessed at different levels in the above process in order to avoid duplication of the assessment where plans and programmes form part of a hierarchy (Arts. 4(3), 5(2) and (3)), where the plan/programme being assessed forms only one level in a planning hierarchy.
- Provide, in addition, for co-ordinated joint procedures of assessment when the obligation to carry out an environmental assessment of a plan or programme under this directive and other Community legislation arises simultaneously so as to, *inter alia*, avoid duplication of assessment (Art. 11(2)) as long as the assessment requirements of the legislation in question are fully met.
- Article 3(8) sets out the plans and programmes that are not subject to the directive:
 - 1) plans and programmes the sole purpose of which is in relation to national defence or civil emergency;
 - 2) financial or budget plans and programmes.
- Ensure that the environmental assessment includes the production of a report (Art. 5), consultation and public participation (Art. 6), including in a transboundary context (Art. 7), ensure the provision of information on the decision (Art. 9), and also for monitoring implementation of the plan or programme with provision for remediation efforts in the event of significant adverse environmental impacts (Art. 10).

2.3 Reporting

- Where a plan or programme requires an environmental assessment, as determined by Article 3(1), an environmental report shall be prepared (Art. 5(1)). The report shall contain information referred to in Annex I of the directive.
- The environmental report must identify, describe and evaluate the likely significant effects on the environment of implementing the plan or programme (Art. 5(1) and Annex I).
- The environmental report must also identify, describe and evaluate reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme (Art. 5(1) and Annex I).
- The environmental report must include information that may reasonably be required taking into account current knowledge and methods of assessment, the content and level of detail in the plan or programme and its stage in the decision-making process (Art. 5(2)).
- Available relevant information on the effects of plans and programmes obtained at other levels of decision making or through other Community legislation may be used for providing information in the report (Art. 5(3) and Annex I).
- The relevant authorities (Art. 6(3)) must be consulted when deciding the scope and level of detail of the information that must be included in the environmental report (Art. 5(4)).
- The environmental report, along with the draft plan or programme, shall be made available to the designated authorities and the public (Art. 6), including in other Member States where there are likely effects of the plan or programme in another Member State, for consultation.

2.4 Consultation

SECTION 2 – HORIZONTAL LEGISLATION
THE STRATEGIC ENVIRONMENTAL ASSESSMENT DIRECTIVE

- Member States shall designate the authorities that are to be consulted as a result of their specific environmental responsibilities and likelihood of being concerned by the environmental effects of implementing plans and programmes (Art. 6(3)).
- When determining whether a plan or programme requires an SEA, the authorities referred to in Article 6(3) shall be consulted (Art. 3(6)).
- Information shall be made available to the public (Art. 3(7)). For the purposes of such consultation referred to in Article 6, Member States shall identify the public concerned. The public can include the public affected or likely to be affected by, or having an interest in, the decision-making process under this directive, including relevant non-governmental organisations, i.e. those promoting environmental protection (Art. 6 (4)).
- Member States shall ensure that the authorities and the public are given an early and effective opportunity within appropriate time-frames and in accordance with detailed arrangements (to be determined by the Member State) to express their opinion on the draft plan or programme and the accompanying environmental report before the plan or programme is to be adopted or is submitted to the legislative procedure (Art. 6(1) and (2)).
- Member States likely to be affected by the significant effects of a plan or programme in another Member State are to be consulted (Art. 7(1)).
- The Member State preparing the plan or programme shall forward a copy of the draft plan or programme and the environmental report, and measures envisaged to reduce or eliminate such effects, to such Member State before the plan or programme is to be submitted for adoption (Art. 7(2)). Such information has to be supplied to the Member State likely to be affected if so requested.
- If consultation takes place between the Member States concerned, at the request of the Member State likely to be affected by the plan or programme detailed arrangements shall be made to ensure that the authorities and the public in the affected Member State are informed and provided with the opportunity to submit their opinions within a reasonable time-frame (Art. 7(2)). Member States shall agree in advance a reasonable time-frame for the duration of the consultations (Art. 7(3)).
- After a decision has been made as to whether or not to adopt a plan or programme, the authorities and public (and the consulted Member State) should be informed and information on the plan or programme shall be made available, along with an environmental statement and information on the monitoring of the plan or programme (Art. 9(1)).

2.5 Monitoring

- Monitor the significant effects of the implementation of the plan or programme so as to identify at an early stage any unforeseen adverse effects, and so as to be able to take appropriate remedial action (Art. 10).

2.6 Information, Reporting and Review

Report to the Commission on:

- measures taken to ensure the environmental assessment reports produced are of a sufficient quality (Art. 12(2));
- plans and programmes identified as being subject to an environmental assessment under the directive (Art. 13(4));
- transposition and implementation of the directive including texts (Art. 13(1));
- experience gained under this directive (Art. 12(1));

SECTION 2 – HORIZONTAL LEGISLATION
THE STRATEGIC ENVIRONMENTAL ASSESSMENT DIRECTIVE

- proposals for amendment of the directive (Art. 12(3)).

2.7 Additional Legal Instruments

The implementation of this directive should be considered in conjunction with a number of other legal acts from the environmental *acquis* (Art. 11(1)) and international agreements. The key examples highlighted in the Commission's guidance on the SEA Directive (refer to http://ec.europa.eu/environment/archives/eia/pdf/030923_sea_guidance.pdf) include the following.

Legislation concerning the authorisation and operation of installations:

- Environmental Impact Assessment Directive (97/11/EC/EEC amending Directive 85/337/EC as amended by 2003/35/EC) (see Section 2 of the Handbook).
- Water Framework Directive (2000/60/EEC) (Arts. 11 and 13).
- Waste Framework Directive (2006/12/EC, as amended by Council Directive 91/156/EEC). This directive requires waste management plans to be established by Member States (Art. 7). Additional requirements regarding the content of waste management plans are contained in Directive 91/689/EEC on hazardous waste and Directive 94/62/EC on packaging and packaging waste.
- Nitrates Directive (91/676/EEC). This directive requires action programmes for areas affected or threatened by nitrate pollution. The targets of these action programmes are mainly certain agricultural practices rather than projects. These action programmes may, in certain situations, set the framework for future development consent of projects such as intensive livestock units.
- The Air Quality Framework Directive 96/62/EC. This directive requires Member States to prepare and implement a plan for attaining the limit value within the specific time limit in zones and agglomerations in which levels of one or more pollutants exceed certain limit values (Art. 8(3)). If the level of more than one pollutant is higher than the limit values, Member States must provide an integrated plan covering all the pollutants concerned (Art. 8(4)).
- The Habitats Directive (92/43/EEC). This directive aims to set up a coherent European ecological network of special areas of conservation. It requires Member States to propose sites as special areas of conservation and transmit a list of such sites to the Commission. The purpose is to recognise that the site hosts nature values worth protecting. Thus, the essence of such a proposal is to recognise the environmental value of the site.

International conventions:

- Convention on Environmental Impact Assessment in a Transboundary Context (the Espoo Convention), 1991.
- Draft UNECE Protocol on Strategic Environmental Assessment, 2003.
- Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar Convention), 1971.
- Convention on Biological Diversity, 1992.
- Convention on Access to Environmental Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), 1998.

3. Implementation

3.1 Key Tasks

The key tasks involved in implementing this directive are summarised in the following checklist. The tasks are arranged under subheadings and organised in chronological order of implementation wherever possible.

STRATEGIC ENVIRONMENTAL ASSESSMENT DIRECTIVE - KEY IMPLEMENTATION TASKS
1. Planning
<p>1.1 Identify the competent authorities that will have responsibility for implementing the directive and ensure that adequate financial, human and equipment resources are provided.</p> <p>1.2 Design inclusive, participatory and transparent consultation procedures with well-conceived information/advertising.</p> <p>1.3 Develop a co-ordinated communication and decision-making framework, one that accounts for non-environment ministry/agency authority participation as well.</p> <p>1.4 Consider the extent to which SEA can be integrated into existing environmental assessment procedures and where one can combine the SEA and other EIA-related methodologies.</p> <p>1.5 Develop EIA and SEA-related transboundary consultation procedures.</p> <p>1.6 Design the approvals system robustly so that approval for the plan or programme is only given once the environment assessment has been conducted and the reporting and consultation requirements thoroughly fulfilled.</p> <p>1.7 Determine how to identify those plans and programmes that may have significant effects on the environment and thus require an environmental assessment:</p> <ul style="list-style-type: none"> • on a case-by-case basis; • by specifying types of plans or programmes; or • using both procedures. <p>1.8 Determine protocols for advising public authorities and bodies on the scope of SEA and ensure that staff are suitably qualified to provide such advice.</p> <p>1.9 Integrate monitoring protocols with EIA and environmental permitting requirements.</p>
2. Regulation
<p>2.1 Determine the competent authority responsible for overseeing the SEA process.</p> <p>2.2 Develop thorough definitions for “plans” and “programmes”.</p> <p>2.3 Provide a mechanism for blocking approval of plans and programmes that have not had SEA-related approvals.</p> <p>2.4 Codify the environmental report production, review and approval procedure.</p> <p>2.5 Take measures to legally codify transboundary consultation processes.</p> <p>2.6 Implement procedures for the competent authority to review the plan/programme in order to ensure that the SEA has been carried out in an appropriate manner and that the report is of a high enough standard and includes all the information required under the directive.</p>
3. Guidance and Training
<p>3.1 Prepare and issue detailed guidance on the procedures required to comply with the directive, the nature of SEA and the preparation of an environmental assessment report.</p> <p>3.2 Develop regulatory guidance on the “significance of environmental effects”.</p> <p>3.3 Provide training to staff in the competent authorities on SEA preparation, consultation and related review procedures.</p>

SECTION 2 – HORIZONTAL LEGISLATION
THE STRATEGIC ENVIRONMENTAL ASSESSMENT DIRECTIVE

3.4 Consider creating sectoral SEA guidance documents (e.g. transport, land-use planning, waste management etc.).

4. Consultation

4.1 Identify the relevant bodies (environmental and others) to act as statutory consultees and establish procedures for consulting with them.

4.2 Ensure that the other authorities likely to be concerned by the project by reason of their specific environmental responsibilities (i.e. authorities responsible for transport) are given an opportunity to express their opinion on the SEA. These authorities can be identified either in general terms or on a case-by-case basis.

4.3 Ensure that the public is consulted at all appropriate stages: screening, scoping, review, decision.

4.4 Ensure that other countries are consulted in the case of potential transboundary impacts.

4.5 While the public only has to be consulted when the report has been completed, the environmental authorities have to be consulted in two instances: firstly, at the scoping stage; and then when the environmental report has been completed at the decision-making stage.

4.6 Follow, or if need be establish, protocols with neighbouring Member States to provide for the exchange of information and to integrate respective national consultation processes regarding plans and programmes with potentially significant environmental effects.

4.7 Implement measures to ensure that the competent authority (or authorities) take into consideration the responses from the consultation process prior to approving a plan or programme.

4.8 Implement measures to notify the public of the outcome of approving plans or programmes.

5. Reporting

5.1 Pursuant to Articles 12 and 13, candidate countries will have to provide information to the Commission on:

- measures taken to ensure the environmental assessment reports produced are of a sufficient quality;
- experience gained under this directive; and
- transpositional legal measures.

3.2 Phasing Considerations

The most demanding and time-consuming tasks to implement this directive are likely to be:

- Strengthening the institutional structures. This work may include:
 - staff recruitment to improve capacity, should implementation of the directive increase workloads, and to widen specialist expertise to support the evaluation of environmental reports;
 - staff training to improve capability and technical knowledge.
- Preparing and disseminating information on the procedural requirements of SEA.
- Encouraging public authorities to make changes in the way they prepare plans and programmes, particularly the preparation of the environmental assessment report.
- Preparing detailed sectoral guidance notes to those bodies that are responsible for drawing up plans and programmes.
- Ensuring public participation.

- Making environmental information held by public authorities and institutions available to the public (see Directive 2003/4/EC).

4. Implementation Guidance

The SEA Directive was adopted and entered into force on 21 July 2001. It had to be implemented by Member States by 21 July 2004. SEA implementation is still not completed in all Member states and SEA methodology is still a relatively new phenomenon.

The most important source of guidance in implementing the SEA Directive is the Commission guidance document “Implementation of Directive 2001/42 on the Assessment of the Effects of Certain Plans and Programmes on the Environment”, available at: http://ec.europa.eu/environment/archives/eia/pdf/030923_sea_guidance.pdf. It offers guidance relating to consultations, monitoring, information exchange etc.

Other useful guidance materials include:

- *Manual on Strategic Environmental Assessment of Transport Infrastructure Plans*, 2005 (prepared by DG Energy and Transport), available at: http://ec.europa.eu/environment/archives/eia/sea-studies-and-reports/beacon_manuel_en.pdf
- *Handbook on Environmental Assessment of Regional Development Plans and EU Structural Funds Programmes*, 1998, available at: <http://ec.europa.eu/environment/archives/eia/sea-guidelines/handbook.htm>

There are also a number of studies and reports compiled at EU level and Member State level. These reports include:

- “SEA and Integration of the Environment into Strategic Decision Making” (2001), including a main report, country reports and case studies, available at: http://ec.europa.eu/environment/archives/eia/sea-studies-and-reports/sea_integration_main.pdf, http://ec.europa.eu/environment/archives/eia/sea-studies-and-reports/sea_integration_country.pdf and http://ec.europa.eu/environment/archives/eia/sea-studies-and-reports/sea_integration_case.pdf
- IMPEL report: “Implementing Article 10 of the SEA Directive” (2002), available at: http://ec.europa.eu/environment/archives/eia/pdf/impel_final_report.pdf
- “Strategic Environmental Assessment of Transport Corridors: Lessons learned comparing the methods of five Member States”, available at: http://ec.europa.eu/environment/archives/eia/sea-studies-and-reports/sea_transport2.pdf

In addition, a number of conferences and workshops have been organised on the implementation of the SEA Directive, and these can assist implementation. Member States are also producing their own guidance and reports along with academic papers which can all provide insight into the implementation process. Some of the results and lessons learned can be obtained at: <http://ec.europa.eu/environment/archives/eia/sea-support.htm>.

The candidate countries can benefit from the experience gained through the implementation of the EIA Directive, given the similarities in scope and procedure. The candidate countries may find that some of the administrative implementation requirements that are already in place due to the EIA Directive can be adapted to incorporate the provisions of the SEA Directive. They will also benefit from the best practice of Member States in implementing the related EIA Directive. Finally, the jurisprudence of the ECJ on the implementation of the EIA Directive and the SEA Directive will offer insight into the implementation of the two directives.

Member States had to prepare national EIA-related legislation that considered transboundary impacts and access to information and consultation requirements. The existing frameworks

SECTION 2 – HORIZONTAL LEGISLATION

THE STRATEGIC ENVIRONMENTAL ASSESSMENT DIRECTIVE

might be adapted to meet the requirements of the SEA Directive. If, in the case of candidate countries, there are no existing frameworks of this nature, the best practice of Member States, relevant EC directives and relevant international laws can offer guidance. One such international law source is the Espoo Convention Draft Protocol on Strategic Environmental Assessment.

Some Member States will already have legislative frameworks that require environmental assessments to be carried out in a similar vein to the SEA Directive – for example, the UK requirements for sustainability appraisals. Such existing frameworks will provide implementation guidance and could be adapted to meet the requirements of the directive.

The European Commission IMPEL project “Monitoring of the significant effects of the implementation of plans and programmes under the SEA Directive 2001/42/EC” was completed in 2002, with a final report in 2003¹⁵. The project will provide an insight into the different monitoring methods established in Member States and will enable information to be exchanged about current practice on strategic environmental assessment and related monitoring systems.

One of the most difficult practical aspects of the new SEA Directive is the monitoring of significant environmental effects of the implementation of plans and programmes. The directive requires Member States: “...to monitor the significant environmental effects of the implementation of plans and programmes in order, *inter alia*, to identify at an early stage unforeseen adverse effects, and to enable Member States to undertake appropriate remedial action.” In many Member States, specific monitoring systems for evaluating the environmental effects of plans and programmes do not exist at present. The directive allows Member States to use existing monitoring arrangements, but it is not yet clear what types of monitoring systems exist in different Member States that could be used or developed for that purpose.

4.1 Planning

- The procedural implementation methodology, in line with the main aims and requirements of the SEA Directive, could include:
 - 1) identify other relevant plans and programmes and environmental protection objectives and how they relate to the plan;
 - 2) identify relevant environmental and sustainability visions and problems and how they relate to the plan;
 - 3) devise draft SEA objectives, indicators and targets;
 - 4) collect baseline information including data on likely future trends;
 - 5) identify environmental options for dealing with issues raised;
 - 6) prepare a scoping report;
 - 7) consult on the scoping report;
 - 8) assess the effects of the plan or programme options on the SEA objectives and targets;
 - 9) choose draft prepared options;
 - 10) test the compatibility of the draft preferred options against other relevant plans and programmes;
 - 11) assess the cumulative and synergistic effect of the draft preferred options;
 - 12) finalise the preferred options;
 - 13) screen plan/programme proposals for significance;

¹⁵ See IMPEL website accessed 26/ii/03, <http://europa.eu.int/comm/environment/impel/projects.htm#4>

SECTION 2 – HORIZONTAL LEGISLATION
THE STRATEGIC ENVIRONMENTAL ASSESSMENT DIRECTIVE

- 14) assess the effects of plan/programme proposals on the SEA objectives and targets;
 - 15) tier assessments and link them to EIA (if relevant);
 - 16) propose SEA monitoring measures;
 - 17) prepare an environmental report;
 - 18) consult environmental and other authorities and the public on the environmental report;
 - 19) take the consultation results into account;
 - 20) integrate environmental considerations into changes, amendments and modifications to the plan/programme.
- Details of the tasks required to implement the SEA Directive and associated legislation will be influenced to a great extent by the nature of existing procedures for approving plans and programmes, and for granting development consent under the EIA Directive, in particular to the extent in which the SEA requirements can be integrated into these existing procedures.
 - Candidate countries should undertake a detailed review of existing plans and programme approvals. The study could include an institutional assessment to examine the interrelationships between national, regional and local government and those bodies that undertake responsibilities on behalf of public authorities, such as utility companies. The study could also review staffing and office resources including office equipment, computers and related software systems. The study should identify any weaknesses in current arrangements and propose mitigating measures.
 - Member States and candidate countries could consider nominating a central competent authority staff member(s) that will have responsibility for advising other authorities (i.e. regional, local and other centralised bodies) on the methods and procedures for implementing the directive. This can include providing advice as to the extent of the environmental assessment, the content of the report, the means of consulting the public and how to undertake monitoring of the significant effects of the implementation of the plan or programme.
 - In some jurisdictions there may be a need for a centralised competent authority with legislative powers or some form of legal enactment by the central legislature relating to SEA as concerns the defined roles of respective competent authorities. Otherwise, there may be conflict between responsible bodies/ministries as to whether an SEA needs to be conducted and by whom. This will allow for clear lines of communication and implementation responsibilities where they may be dealt with on an inter-ministerial basis (i.e. ministry of environment/agency and ministry of transport for transport plans).
 - Member States should consider that the scope of plans and programmes could include those plans and programmes that are not explicitly so called but that fit within the scope of the directive. They may be strategies, schemes, guidelines and so forth.
 - In some Member States a plan is thought of as a document that identifies how it is proposed to carry out or implement a scheme – for example, land-use plans identifying how land should be developed. Other examples include transport plans, waste management plans and energy plans. In some Member States a programme is thought of as a plan covering a set of projects for a given area (i.e. a regional development plan or a road project). Whatever difference in definition is ultimately decided, the difference should be codified in legal terms.

Example of How SEA and the Environment are Integrated in a Member State

In one Member State (IE), planning and development legislation provides for greater

environmental integration through a number of new requirements. They include, but are not limited to: sustainable development and planning in sub-national development plans; and data on likely environmental impacts of a plan to be included in a draft development plan, all of which provides a basis for strategic environmental assessment that attends the implementation of EIA in the main environmental legislation.

4.2 Regulation

- Member States and candidate countries will have to determine, on a case-by-case basis or through specifying types of plans or programmes, based on the criteria provided in Article 3(5) and Annex II of the directive, the types of plans and programmes that will be subject to the directive.
- Member States and candidate countries may need to devise systems for monitoring the environmental effects of plans and programmes, where these do not presently exist. Existing systems may need to be amended.
- Public authorities that have to undertake SEA may wish to consider seeking technical expertise from, among others, consultants, academics, policy experts and so forth.
- The competent authority could set up a review and advisory panel to evaluate SEAs. This would help to standardise the evaluation of the environmental reports and provide technical expertise. Members of such a review panel could potentially be drawn from within the competent authority and/or include other relevant public authorities, independent external experts and typical stakeholder representatives. Alternatively, SEAs could be reviewed with external assistance by accredited companies or institutions. SEA accreditation procedures and standards could be legislated along with other distinctly environmental technical expertise.
- Conflict resolution between different commercial and environmental aspects of plans/programmes could have regard to the application of the proportionality principle as well as traditional principles of EC environmental law, which generally favour environmental protection goals.

4.3 Guidance and Training

- Successfully undertaking an SEA would potentially require input from a variety of skilled technical specialists (i.e. SEA in the water sector would require skilled biologists, ecologists, hydrologists, engineers etc.). For competent authorities that have responsibility for evaluating SEAs, the level of technical expertise required on their behalf may pose a problem.
- There would be a strong case for including effective education and training of those government officials and experts that are involved in undertaking and/or evaluating SEAs. The resulting expertise could be supported and enhanced with the use of external accredited SEA/EIA specialists.
- Various Member States are in the process of producing guidance, consultation papers and other documentation. Candidate countries may benefit from this and from producing their own guidance. Research institutions, universities and consultants may also produce useful guidance, for example based on a study into developing methodologies for carrying out an SEA, while external experts can provide training on various aspects of SEA. A number of Member States have EIA/SEA centres that may be of use in providing assistance on SEA.
- Some Member States adopted obligatory or voluntary schemes to control the quality of EIA reports. Member States and candidate countries may wish to do the same for SEA reports.

4.4 Reporting

- The directive does not specify what “sufficient quality” (Art. 12) is as regards the environmental report. Nevertheless, Article 5 and Annex I will provide guidance, as will past practical experience of reporting under the EIA Directive. This practical experience has shown that in some instances the information provided in the impact assessment has been inadequate.
- Member States should consider whether and how the environmental report would provide information on the relationship of the proposed plan/programme with other existing plans/programmes and any environmental objectives relevant to those plans and programmes.
- Report to the Commission on matters concerning the quality of the environmental reports.

4.5 Consultation

- Directive 2003/35/EC on public participation in respect of the drawing up of certain plans and programmes relating to the environment may offer guidance as to the level of public consultation to be undertaken and on the implementation of public consultation provisions at the national level. The provisions of this directive do not directly concern the SEA Directive but are nevertheless useful in highlighting key elements of public participation.
- In contrast to the EIA Directive, the SEA Directive does not specify any details about how the public should be informed (i.e. methods for disseminating information, venues for consultation and so forth). It is at the discretion of Member States to determine the methods of consultation, although to some extent they could follow those based on the EIA Directive.
- The SEA Directive does not specify the duration of the consultation periods with authorities and the public, nor the maximum period allowed for competent authorities to reach their decision on approving the plan or programme, as is also the case under the EIA Directive. Member States and candidate countries may set deadlines and time limits for these activities within their national legislation, or make such recommendations in government guidance. They may wish to adopt the same time limits that have been agreed for the EIA Directive. In any event, these time-lines must be of reasonable duration and represent sound administrative practice.

4.6 Monitoring

- Article 10 gives Member States flexibility as to monitoring the significant environmental effects of plans and programmes that are implemented. Member States have the discretion to decide whether monitoring should be for each programme or plan individually or not. Significant effects are also not defined but should be taken to include effects that can be negative, positive, foreseen, unforeseen, adverse, minor, major and so on.
- Monitoring requirements could be implemented into existing planning procedures.
- Issues to consider could include identifying what types of environmental effects should be monitored. The environmental report, and thus the criteria in Article 5 and Annex I, should assist in identifying such effects (which are likely to be the same as those considered in the environmental assessment – except for unforeseen effects etc.) and the type of remedial action required.
- Staff should be trained to specifically carry out SEA monitoring compliance activities at their respective jurisdictional (i.e. transnational, national, regional, local) levels.

SECTION 2 – HORIZONTAL LEGISLATION
THE STRATEGIC ENVIRONMENTAL ASSESSMENT DIRECTIVE

The Directive on Access to Environmental Information

Official Title: Council Directive 2003/4/EC on public access to environmental information and repealing Council Directive 90/313/EEC (OJ L41, 14.2.2003)

1. Summary of the Main Aims and Provisions

The three primary aims of this directive are:

- to guarantee the right to access to environmental information held by or for public authorities and to set out the basic terms and conditions of, and practical arrangements for, the exercise of this right;
- to ensure that environmental information is progressively made available and disseminated to the public in order to achieve the widest possible systematic availability and dissemination to the public of environmental information;
- to further the goals of contributing to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision making and, ultimately, to a better environment.

This directive effectively amends and repeals Directive 90/313/EEC, to give effect to the Aarhus Convention of 1998, to which the EU is a party. Directive 2003/34/EC superseded and repealed Directive 90/313/EEC in order to provide a single, clear and coherent legal text. The directive had to be implemented by 14 February 2005, on which date Directive 90/313/EEC was repealed. It should be noted that the European legislator makes it unambiguous that the new directive aimed to expand the previously existing access to information and that Member States have the right to go further down this path by providing for even broader access to information than that required by the new directive (Recitals 2 and 24). This should be borne in mind in all cases when the need to interpret the text of the directive arises.

There are strong links with Directive 2003/35/EC (see previous record) on providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment, since it extends the practical reach of the Access to Environmental Information Directive.

2. Principal Obligations of Member States

2.1 Planning

SECTION 2 – HORIZONTAL LEGISLATION
THE DIRECTIVE ON ACCESS TO ENVIRONMENTAL INFORMATION

- Where it is currently lacking, a procedure and related institutional responsibilities must be designed and implemented in order to address requests for environmental information (requests must be processed in a timely manner, which demands administrative efficiency), including an additional procedure for reviewing requests for environmental information that are not satisfied (Arts. 3 and 6).
- The practical arrangements necessary for the organisation and dissemination of environmental information must be set out, including methods for compiling and analysing information, of the kind described in Articles 7 and 8. Environmental databases and the related dissemination of information derived from monitoring responsibilities in relation to environmental effects must be designed and implemented (Art. 7).
- In relation to both key tasks set out above, those bodies added to the scope of the directive by the extended definition of “public authorities” (Art. 2(2)) must be informed and must have sufficient resources to meet the obligations created under the directive.
- Capacity-building measures shall be planned both for officials regularly working with information request cases and for members of the public and public organisations covering, *inter alia*, the range of available environmental information, the authorities that provide the information, the best procedures for requesting and providing information, the time needed to supply the information, the form in which it is supplied and the cost of providing it, and an accurate definition of the exemptions (types of confidential information) (Arts. 3(3), 3(5), 7 and 8(2)).

2.2 Regulation

- Member States must require public authorities to make information relating to the environment available:
 - to any natural or legal person (including persons residing outside the Member States);
 - on request;
 - in the form requested, if available, unless it is already publicly available in another form or it is reasonable for the authority to make it available in another form;
 - for a reasonable cost;
 - within a reasonable time (as soon as possible and not exceeding one month. This deadline may be extended to up to two months, depending on the volume or complexity of the information); and
 - without the person having to state an interest (Arts. 3 and 5).
- Provide access to expeditious and either free or inexpensive administrative and judicial review for any person who considers that their request for information has been unreasonably refused, in full or in part, ignored, inadequately answered or otherwise not dealt with (Art. 6).
- Allow requests for information to be refused on grounds not broader than those set out in the directive, and require the authority to state reasons for refusal and to indicate the review procedure (Recitals, Para. 4 and Art. 4). In assessing refusals of access, consider publishing the relevant criteria: the grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure against the interest served by refusal and also, in certain cases, if the request relates to information on emissions into the environment (Art. 4(2,3)).
- Where information relating to the environment is held by bodies that have public responsibilities for the environment and that are under the control of public authorities, ensure that lists of public authorities are publicly accessible and that the information held

is made available on the same terms and conditions as those set out above, either via the competent public authority or directly by the body itself, with clear indications of where such information can be found (Arts. 3 and 7).

- Ensure that the practical arrangements for guaranteeing the effective exercise of the right to access to environmental information are defined, including designating information officers, and that facilities for the examination of information are established and maintained (Art. 3).
- Provide for the active dissemination of environmental information related to applicable environmental laws, policies, plans, programmes, progress reports, state of the environment reports and monitoring data. Ensure that environmental information progressively becomes available in electronic databases that are easily accessible to the public through public telecommunication networks (Art. 7).
- Inform applicants as to where information, if available, can be found on the measurement procedures, including the methods of analysis, sampling and pre-treatment of samples used, or those standardised procedures used in compiling certain relevant elements of environmental information (Art. 8).

2.3 Reporting

Report to the Commission on:

- experience gained in implementing the directive (Art. 9(1));
- adopted laws, regulations and administrative provisions necessary to the implementation of the directive (Art. 10).

2.4 Additional Legal Instruments

- Council Directive 97/11/EC/EEC on Environmental Impact Assessment (amending Directive 85/337/EEC and amended by Council Directive 2003/35/EC).
- Council Regulation (EEC) No. 1210/90 on the European Environment Agency.
- The Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (the Aarhus Convention), 1998.
- Council 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 (the SEA Directive), 2001.
- Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control.
- Directive 2000/60/EC of the European Parliament and of the Council establishing a framework for Community action in the field of water policy.

3. Implementation

3.1 Key Tasks

The key tasks involved in implementing this directive are summarised in the following checklist. The tasks are arranged under subheadings and organised in chronological order of implementation wherever possible.

SECTION 2 – HORIZONTAL LEGISLATION
THE DIRECTIVE ON ACCESS TO ENVIRONMENTAL INFORMATION

ACCESS TO ENVIRONMENTAL INFORMATION - KEY IMPLEMENTATION TASKS	
1	Planning
1.1	Define the practical arrangements under which public authorities are required to make information relating to the environment available to the public. Provide an overview of the technical possibilities for determining the maximum delay for providing information and the format of the information disclosed.
1.2	Consult all the relevant stakeholders (state authorities relevant to the topics, economic chambers, experts and relevant non-governmental, not-for-profit organisations) in order to collect viewpoints regarding the concrete definitions of the extent of and limitations to the confidential information categories in Article 4 of the directive.
1.3	Determine whether active relevant environmental information, particularly monitoring-related data, is available through databases. Then consider constructing web links to a web home page for environmental information.
1.4	Consider developing Internet and intranet pages for passive and active information dissemination respectively.
1.5	Consider the development of environmental information web links and electronic databases that explain the status of applications vis-à-vis development approval and environmental consent/permit/licence procedures. Where databases provide data derived from measuring or other scientific methodologies, explain how these methodologies work.
1.6	In the interests of economic efficiency, consider the planning measures that are necessary to implement and publish a uniform system of charges for the dissemination of environmental information. Countries might consider introducing different charging policies for information that is legally required to be made available and for information the compilation of which requires additional person-days on the part of the authority in order to serve certain economic interests of the requester.
2	Regulation
2.1	Ensure that public authorities make environmental information available to the public in accordance with the conditions laid down in the directive and that environmental information progressively becomes available in electronic databases that are easily accessible.
2.2	Ensure that the practical arrangements for guaranteeing the effective exercise of the right to access to environmental information are defined, including designating information officers, and ensure that facilities for the examination of information, such as green-point offices, are established and maintained.
2.3	Establish procedures for dealing with appeals from the public following refusals of requests for information. Member States may refuse a request <i>inter alia</i> when the request is incorrectly addressed, unreasonable, or if the material is incomplete or private and the public interest would not be served by disclosure. Ensure that, in the appeal process, as in the basic procedure, the grounds for refusal are interpreted in a restrictive manner bearing in mind for the particular case the public interest in disclosure. Also ensure that where, after reference to an independent and impartial body established by law, a request for information is refused, reasons for the refusal are given.
2.4	Ensure that there is a legal basis for the system of charges to be applied by competent authorities in connection with the dissemination of information.
2.5	As the codification of access to environmental information legislation may overlap with access to information legislation in general, ensure that uniformity exists as far as possible regarding the proper implementation of the directive, while also taking account of the need to make clear that in environmental cases the specific access to

**SECTION 2 – HORIZONTAL LEGISLATION
THE DIRECTIVE ON ACCESS TO ENVIRONMENTAL INFORMATION**

environmental information laws prevail.	
2.6	Ensure co-ordination between the relevant environmental competent authority and other public authorities that hold environmental information so that dissemination takes place smoothly within the specified strict timelines. Amendment of the relevant laws regulating the activities of these other authorities might be necessary in order to ensure compliance, in their practical implementation, with the rules for implementing the directive.
2.7	Ensure that information is up to date, accurate, well organised, easy to access and comparable.
3	Guidance and Training
3.1	Prepare and publish guidance on the duties of public authorities to provide proactive access to environmental information, including transferring incorrectly addressed requests to the correct public authority and detaching parts containing confidential information in order to be able to disclose non-confidential information.
3.2	Provide communication skills training to enable environmental information officers to use the best means of providing information to stakeholders and of representing the relevant competent authorities. Such training should also assist trainees in internal information management processes. Some of the training events might be organised jointly with relevant organisations that are interested and experienced in access to environmental information matters (“cross training”).
4	Reporting
4.1	Report to the Commission on: <ul style="list-style-type: none"> • the experience gained in implementing the directive; • measures taken to comply with the directive; and • transposition.

3.2 Phasing Considerations

Candidate countries are likely already to possess a large body of environmental data in numerous public organisations. These organisations may need a substantial amount of time to put their information into a format suitable for public access and dissemination. This may necessitate the setting up of an additional unit specifically responsible for public information. The relevant competent authorities (i.e. the national environment ministry or agency and their regional or local counterparts, as well as providers of public services relating to the environment under the control of a public administrative body) should ensure that the competent authority personnel dealing with environmental information are familiar with procedures and best practices when communicating with stakeholders as regards the provision of environmental information, noting that such information can, at times, be sensitive in nature.

The most time-consuming tasks related to the implementation of this directive are likely to be:

- organising the information services in public bodies and other organisations so as to provide an acceptable level of service to those wishing to access information (e.g. in terms of staffing, databases and reporting facilities), and publicising the services provided;
- organising the production of state of the environment reports and other publications; and
- organising, and where appropriate formatting, the data (particularly monitoring-related data) for public access.

4. Implementation Guidance

Public authorities hold data on a wide range of environmental matters that have often been collected over long periods. Data are collected on, for example, rainfall and other climate events, water quality, flora and fauna, development approval, licensing, permitting and related consents, air and water pollution from emissions and discharges of dangerous substances and land contamination. Public authorities collect information in order to carry out their various legal responsibilities.

The public does not usually have the means to collect and process environmental data. However, access to environmental information will provide them with knowledge of the quality of the environment in which they live and the effectiveness of competent authorities in delivering environmental protection and related human health requirements. On the basis of this information they can (i) make decisions about their way of life, (ii) contribute to informed debate about environmental protection activities, and (iii) support measures to improve the environment. Indeed, such informed participation is a primary goal of the directive. This conclusion can be reached especially taking into account that the Information Directive is part of the systematic implementation of the pillars of the Aarhus Convention within EC law. However, access to information, including access to environmental information, also has a more general legislative role: ensuring transparency and accountability on the part of authorities dealing with environmental cases, therefore enhancing good governance within a basic cross-cutting legal branch of the public administration.

The following sections draw upon the experience of Member States and present a number of general observations and comments relevant to the implementation of this directive.

4.1 Planning

- During the transposition phase, careful consideration has to be given to a number of legal issues, for example instances of confidentiality, conditions under which to allow a request for information to be refused, and procedures for appeal against refusals for environmental information. Confidentiality provisions form three groups: i) administrative reasons (Art. 4(1) a-e)); ii) state interests (Art. 4(2) a-c); and iii) third-party interest (Art. 4(2) d-h)).
- Article 4(1) d) and e) state that a request for information may be refused where it would involve the supply of unfinished documents or data, or internal communications. (Requests may also be refused, pursuant to Article 4(1) b) and c), if they are manifestly unreasonable or formulated in too general a manner.) Member States may introduce restrictions to free access to information based on the instances of confidentiality or for public security reasons as per Article 4(2). It is necessary to underline that this group of exemptions from the disclosure of public interest environmental data shall not be interpreted in practice in a way that would hinder the right to legal remedies. In other words, persons entitled to challenge an administrative procedure shall usually have access to all the data of the administrative procedure that might be relevant to their case, in particular the data on which the final decision of the case was based or data that were taken into consideration in the final decision.

Examples of Legal Provisions That Have Been Used with the Aim of Implementing Directive 2003/4/EC

In one Member State (SE), the implementation of Directive 2003/4/EC did not require changes in national legislation. According to the Freedom of the Press Act, which is part of the national constitution, everyone has the right to access documents kept by the public authorities. This right is limited only in specified cases according to the Secrecy Act. Anybody who is refused access to a document can appeal against the refusal.

In another Member State (PT), the Directive on Access to Environmental Information was

SECTION 2 – HORIZONTAL LEGISLATION
THE DIRECTIVE ON ACCESS TO ENVIRONMENTAL INFORMATION

transposed using a law on access to administrative information. The national law contained a general reference to access to environmental information and stated that the directive should be applied. This raised the issue that simply legislating that that directive should apply without specifying any further regulation was not considered to be sufficient for its transposition.

Another problem was that access to personal information was only allowed under the national legal system when the natural or legal person could demonstrate an interest. This is contrary to Directive 2003/4/EC, which does not contain such restrictions. Also, the lack of response by the public authorities within a given time period was regarded as a refusal under national law, when under Article 3(4) of Directive 90/313/EEC (as with this directive), an answer should be given to the applicant and, in the event of a refusal to provide the information, the grounds for the decision must be given.

In connection with the major amendments to the scope of Directive 90/313/EEC occasioned by the desire to give effect to the Aarhus Convention, Member States and candidate countries will need carefully to review the following legislative matters: changes to the definition of “public authorities” (Art. 2); changes in the access to information procedure and timelines mandated in Article 3 of this directive; the expansion of the access to justice provisions in connection with unfulfilled requests for environmental information (Art 6); and the broadening of the scope of the environmental information to be made available on an active basis (Art. 7).

- The primary competent authority for implementing this directive is usually the ministry with responsibility for the environment, although sub-national competent authority participation will often be vital as accountability and everyday communications with stakeholders will also almost inevitably exist at the sub-national level. However, central, regional or local levels of other types of authorities shall also play an important role in the implementation of the directive. These include authorities responsible for water management, forestry, fishery, game management, soil and arable land protection, catastrophe prevention, public health and chemical safety, mining, traffic etc.
- Environmental information may be held by a large number of public bodies within a country. At the level of central government, these may include government ministries with responsibility for agriculture, the environment, planning, transportation etc. Other types of national bodies that may hold relevant information include environmental protection agencies, meteorological offices, central statistics offices, research institutions etc. At the regional and local level, environmental information may be held by sub-national or local environmental inspectorates or environment agency offices, local government offices, local planning authorities, municipalities etc. Consideration may have to be given to the recruitment of trained environmental information officers at these levels, at least on a part-time basis. Given the expanded definition of “public authorities” in Article 2, the providers of public services relating to the environment under the control of public administrative bodies are also to be placed under the access provision obligations, at least to forward requests for information on to any relevant public administrative body.
- Where information relating to the environment is held by bodies that have responsibilities for the environment and that are under the control of public authorities, ensure that lists of public authorities are publicly accessible. Meta-databases listing the type of information they hold might be a useful tool for supporting effective access to environmental information.
- Countries need to define the practical arrangements under which environmental information is made available to the public. In practical terms, given the potentially large number of public bodies involved, different organisations are likely to make their own arrangements to comply with the directive, but guidance from central government will be required to ensure that the directive is implemented consistently.
- Practical arrangements for guaranteeing the effective exercise of access to environmental information can include the designation of information officers and the

SECTION 2 – HORIZONTAL LEGISLATION

THE DIRECTIVE ON ACCESS TO ENVIRONMENTAL INFORMATION

creation and maintenance of facilities specifically to provide and hold environmental information.

- In the case of a national public body with a number of regional offices, the organisation will need to decide whether to supply information centrally through a publications office or through its network of regional offices. In the latter case, the organisation needs to consider which offices can conveniently provide a service to the public based on a network for handling enquiries and meeting requests for information.

Examples from Member States

In several Member States, large institutionalised (mainstream) NGOs offer effective help to the environmental authorities in the continuous, systematic disclosure of environmental information. Examples are Friends of the Earth (UK), the Environmental Information Network (HU) and the Environmental Law Service (CZ). They are active both on the input side (obtaining, collecting and processing environmental data) and on the output side (receiving information requests and offering active dissemination of environmental information, increasingly through electronic information technology tools and by using GIS systems).

- Where environmental information is held centrally, consideration might be given to the establishment of an electronic network comprising all authorities holding environmental information. In conjunction with creating this network, Member States could develop and implement a protocol for the regular supply of appropriately formatted information to the relevant central Internet or intranet site. Alternatively, where sub-regional authorities have a key stakeholder interface role with regard to the provision of electronically held environmental information, this could be accomplished through sub-nationally controlled websites.
- In some circumstances a single organisation will have responsibility for data collection and assessment, for example a meteorological office, a research institute or a statistical office. This type of institute may be directly under the responsibility of a government ministry or have a quasi-independent status. The institute may either (a) arrange to make the data available through the relevant ministry, or (b) provide its own service.
- Some research institutes hold databases on environmental quality, for example on observations of flora and fauna, which are available to the public on request.
- Where various agencies are collecting data in a particular environmental sector, it may be necessary to establish a framework to co-ordinate data collection and management. Such a framework may be provided by a single environment agency. In other cases, a single organisation may need to be appointed as the appropriate authority for collecting data in a particular area.
- Public bodies should periodically review the staffing arrangements for the service responsible for providing information in order to ensure that staff can deal with requests for information and that the response times are acceptable. The organisation may wish to publicise performance criteria for dealing with requests, that is, response times for providing information.
- Public bodies may need to consider how the data collection, storage and reporting can be harmonised to facilitate data collection from different sources. They may also need to set up standardised data collection and reporting formats, although these are lacking in many countries.

Example from a Member State

In one new Member State (HU), the Ministry of Environment has initiated the issuance of governmental decrees about using uniform codes for operators (Environmental Operators Code) and for activities (Environmental Activity Code) for the relevant branches of administrative

bodies. With the help of these codes, several dozens of databases of significant environmental relevance can be interconnected and searched, in order to obtain a complex picture of certain environmental problems and situations.

- Quality control is vital in order to ensure the reliability and accuracy of data. This is particularly important where data are to be used in environmental analysis or for assessing compliance with environmental quality standards, or are to be made available to the public. Quality control procedures need to be developed for all stages of data collection, database preparation, analysis and reporting.
- Where the information service is to be supported by a database facility, it may be necessary to decide whether the existing system needs to be updated or modified to enable the service to be as efficient as possible. Particular consideration should be given to cost effectiveness and flexibility for future modification. Consideration could also be given to providing data to the public electronically, for example on the Internet. The directive encourages the use of technology to make information available to the public.
- Public authorities should have a procedure, database and internal communications strategy for processing requests for information in situ or via websites that explain how measurement procedures are applied in compiling environmental information.
- Certain directives require information to be made available for public inspection – for example the outcome of applications for development consent under the EIA Directive, IPPC applications, or data concerning the application of sewage sludge to agricultural land (Sewage Sludge Directive, 86/278/EEC). The relevant competent authorities need to consider how this information is to be made available to the public, for example in registers to be held by the competent authorities themselves, or by local government offices.
- Under the directive, public bodies are required to supply information to any person, on request, for a reasonable cost and within a reasonable time (Art. 3). A “reasonable time” takes into account any timeline specified by the applicant, and also the circumstances of the case that the information concerns (e.g. information shall be given before an imminent decision-making procedure starts or certain procedural or substantial deadlines expire). Further, if the volume and complexity of the information requested makes it impossible to comply with the request within the usual one-month deadline, the turnaround time may not exceed two months. Therefore, arrangements for supplying information should be practical and efficient and, as far as possible, should not present a significant ongoing financial burden to the organisation concerned.
- Charges to the public for information must not exceed the reasonable costs for supplying the information (Art. 5). Public authorities need to avoid any suggestion that they are imposing a barrier to the availability of the information through pricing. Charges should be consistent within organisations and must be publicised (Art. 5(2)). They should be levied when actually supplying information, and not when advising on the availability of information or on grounds for withholding information, or when handling requests to reconsider decisions to refuse to supply information.

Examples of Arrangements for Charging the Public for Information Provided

In one Member State (UK), existing charges for information vary between organisations and depend on the nature of the information requested. Data and other information are often charged at a nominal fee reflecting the administrative time and photocopying costs involved in putting the information together. Documents can be purchased through the state publications office.

In another Member State (SE), public authorities may charge an amount equivalent to the actual cost of providing a copy. Charges for documents are regulated in the Service Charge Ordinance.

Finally, in a third Member State (NL), a system of charges is prescribed through a published

SECTION 2 – HORIZONTAL LEGISLATION
THE DIRECTIVE ON ACCESS TO ENVIRONMENTAL INFORMATION

schedule applicable to ministries of the national government. Local authorities are free to create their own charging systems.

- Information should always be made available except under the conditions set out in the directive. Information shall be disclosed in part when it can be detached from a confidential part of the information without damaging the interests connected to confidentiality.
- The national legislation should set up an appeals procedure (if not already established) to deal with cases in which requests for information are refused (Art. 6). Such a procedure shall be expeditious and either free of charge or inexpensive (Art. 6).

4.2 Guidance

- Governments may prepare guidance notes for public authorities to explain their duties under the legislation. Such guidance notes could cover:
 - an introduction to the issues raised, including a clarification of the specific laws on access to environmental information and the laws, if any, on general access to public interest administrative information;
 - a list of the types of organisations affected (that is, public authorities such as government departments, all statutory bodies, or any body with public responsibilities for the environment that is under the control of public authorities, such as an environmental protection agency or public services provider);
 - the scope of the environmental information available to the public (e.g. the state of water, air, soil, flora, fauna, land and natural sites), and activities or measures that have an environmental impact, as well as environmental protection activities or measures;
 - the difference between actively and passively held information;
 - environmental information for dissemination on the Internet and the intranets of competent authorities;
 - publicising the type of information held;
 - the release of reports;
 - the availability of registers of relevant information;
 - how to deal with personal requests;
 - response times;
 - charges;
 - monitoring;
 - refusals of requests, judicial or administrative reviews, and appeals;
 - how to handle confidential information (e.g. information related to national defence or public security, commercially sensitive data and data on individuals);
 - protocols for stakeholder interaction.
- Candidate countries should also consider how to inform the public about their rights to access to environmental information. This could be done through the Internet and through information packs prepared by local government offices or the relevant competent authorities. NGOs also play an important role in obtaining, checking and analysing information held by public bodies. NGOs disseminate their interpretation of the

data in a wide variety of ways, including newsletters to members, publications, articles in the press, and via the Internet.

4.3 Reporting

- Candidate countries are required to publish general information on the state of the environment, for example through the periodic publication of descriptive reports. The directive gives certain guidance on the frequency (at regular intervals not exceeding four years), scope (national and, where appropriate, regional and local) and depth of information (information on the quality of, and pressures on, the environment) to be contained within these reports (Art. 7, Para. 3). In addition, Article 5(4) of the Aarhus Convention gives guidance: "Each Party shall, at regular intervals not exceeding three or four years, publish and disseminate a national report on the state of the environment (...)."
- Many countries do routinely publish reports on the state of the environment within their country. The value of the information disclosed in this way might depend on the variety of the information suppliers and the formats used by the publishers. In some countries, the ministry of environment develops a series of products connected to the annual environmental reports, ranging from lengthy and detailed reports to simple leaflets drawing the attention of the public to the most important facts and trends.
- The ministry with responsibility for the environment or another national organisation such as a statistical office or environment agency may publish the state of the environment report. Governments will often wish to have overall responsibility for the production of the state of the environment report. However, organisations such as environment agencies often have the easiest access to the type of information required for a state of the environment report. Such organisations may also be identified as national focal points under the European Environment Agency Regulation (No. 1210/90) and may receive environmental information from the national Eionet for forwarding to the European Environment Agency. Such organisations are likely to have at their disposal a complement of trained staff collecting, analysing and assessing environmental data on a regular basis, together with other staff, involved with planning programmes to improve the environment, that require up-to-date information to assist them. Consequently, an environmental protection agency is often best placed to prepare a state of the environment report, albeit under the auspices of the ministry with responsibility for the environment.

5. Costs

The implementation of this directive may involve additional costs to public organisations, related to the provision of information services and reporting requirements. The main cost areas are listed in the checklist below, although some may already be covered if a state has taken active practical steps to give effect to Directive 2003/4/EC.

Checklist of the Types of Cost Incurred to Implement the Directive

Initial set-up costs:

- improvements to procedures for data collection, storage and retrieval;
- provision of, or improvements to, databases, including computer systems and PCs;
- improvements to, or new, office facilities;
- training of information officers in communications and information dissemination methods;
- information technology for running relevant databases, information networks and

SECTION 2 – HORIZONTAL LEGISLATION
THE DIRECTIVE ON ACCESS TO ENVIRONMENTAL INFORMATION

websites.

Ongoing costs:

- provision of information service (staffing, consumables, etc);
- reporting to the public and the Commission;
- information technology maintenance and updating, as necessary.

The charges levied for supplying the information may cover only a limited proportion of the costs involved in obtaining the information, particularly if charges are based on photocopying rates and exclude the costs of improved data collection and handling.

The authority with responsibility for producing the state of the environment report will incur additional costs, unless they already prepare reports that meet the reporting requirements. A charge is normally made for the reports. However, the decision as to whether the charge should cover the costs involved is a matter of government policy. There is a strong case for limiting the cost so that as many members of the public as possible can have access to the reports.

The Public Participation Directive

Official Title: Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending, with regard to public participation and access to justice, Council Directives 97/11/EC/EEC and 96/61/EC (OJ L 156, 25.6.2003)

1. Summary of the Main Aims and Provisions

Reflecting the general aim of properly aligning Community law with the Aarhus Convention, the primary aims of this directive are:

- to provide for public participation in respect of the drawing up of certain plans and programmes relating to the environment;
- to improve public participation and provide for provisions on access to justice within Council Directives 97/11/EC/EEC and 96/61/EC. This second aim is analysed in the relevant chapters on these two directives.

2. Principal Obligations of Member States

2.1 Planning

- A list of plans and programmes shall be put together taking into consideration Annex I of the directive:
 - all levels of waste management plans, including plans in international co-operation;
 - four-year programmes in connection with batteries and accumulators, including a reduction in quantity, in the dangerous materials they contain, and in their proportion in household waste etc.;
 - action programmes in relation to water protection in zones vulnerable to nitrate pollution;
 - hazardous waste management plans, if separate from general waste management plans;

SECTION 2 – HORIZONTAL LEGISLATION
THE PUBLIC PARTICIPATION DIRECTIVE

- management plans for waste from packaging materials (as part of the general waste management plan);
 - plans or programmes related to air pollution in zones and agglomerations where pollution levels are higher than the limit values plus the margin of tolerance.
- There shall be a systematic examination of whether there are other plans or programmes according to national law that shall be subject to public participation in harmony with the directive.
- During the planning phase it should also be ensured that parallel or contradictory rules are avoided in relation to the SEA Directive (Directive 2001/42/EC) and the Water Framework Directive (Directive 2000/60/EC). In fact, this directive (Art. 2) does not apply to plans and programmes for which a public participation procedure is carried out under Directives 2001/42/EC and 2000/60/EC.
- A decision shall be made as to whether the new provisions on public participation concerning certain plans and programmes are better suited:
 - to a separate piece of legislation;
 - to an already existing piece of legislation (and, if yes, to general environmental law: the environmental code, the law on general rules for environmental protection etc.); or
 - to a specific environmental law (e.g. to a decree on public participation or to the Strategic Environmental Assessment Decree).

2.2 Regulation

- The rules on scope shall encompass all the kinds of plans and programmes in Annex I and, if any, other specific plans and programmes or a general description of environmental plans and programmes that are covered by the regulation. The list in Annex I may be incorporated into the main text or may be attached as an annex to the text.
- Exemptions shall be determined as concerns plans and programmes designed for the sole purpose of serving national defence (it should be noted that this is not mandatory) and plans or programmes that have already undergone an SEA or WFD procedure.
- The definitions shall include “the public” in harmony (word by word is the best solution) with Article 2(2) of the directive. Other definitions are also possible, such as definitions of “the designer”, “environmental plan or programme” (this is necessary only if the scope of regulation is wider than that of the directive), or “relevant non-governmental organisations”.
- Notification rules shall contain the following provisions (usually in separate paragraphs):
 - the exact timing of the notification, with guarantees of the earliest possible notification;
 - the identification of the persons and organisations to be notified;
 - the methodology(ies) of minimum use in all cases;
 - suggested further methodologies of notification;
 - the minimum content of the notification.
- The rules of participation shall contain the following procedural steps:
 - issuance and reception of comments from members of the public and public organisations;

- provision of information to the public during the planning procedure;
 - public discussions (trial, hearing etc.) as a binding rule;
 - time-frames for each participation step.
- Rules regarding due consideration of public comments shall cover the procedural rules of evaluation and the inclusion of the results of the evaluation into a written document that accompanies the plan or programme, or other method of informing the public about the consideration given to their inputs.
 - Rules regarding the participation of relevant non-governmental organisations shall contain a clear description of the conditions for participation in the planning and programming procedures, such as the scope of activity or the territorial scope of the activity of the NGOs.
 - All the relevant laws concerning general waste management planning, programmes for batteries and accumulators, action programmes for the protection of water against nitrate pollution, hazardous waste management plans, management plans for packaging waste, plans and programmes for tackling air pollution in certain zones and agglomerations, and others, if any, shall be supplemented with an additional paragraph with a reference to the new legislation on public participation concerning plans and programmes.

2.3 Reporting

- Reporting to the Commission within the framework of Article 5 of the directive (more detailed rules for reporting by Member States may be developed by the Commission according to the needs of the Commission report to the European Parliament and to the Council).
- Member States shall inform the Commission on the laws, regulations and administrative provisions drawn up in order to comply with the directive in harmony with Article 6(1) of the directive.

2.4 Additional Legal Instruments

- Council Directive 97/11/EC/EEC on Environmental Impact Assessment (amending Directive 85/337/EEC and amended by Council Directive 2003/35/EC).
- Council Regulation (EEC) No. 1210/90 on the European Environment Agency.
- The Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (the Aarhus Convention), 1998.
- Council 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 (the SEA Directive), 2001
- The IPPC Directive (2008/1/EC).

3. Implementation

3.1 Key Tasks

The key tasks involved in implementing this directive are summarised in the following checklist. The tasks are arranged under subheadings and organised in chronological order of implementation wherever possible.

SECTION 2 – HORIZONTAL LEGISLATION
THE PUBLIC PARTICIPATION DIRECTIVE

ACCESS TO ENVIRONMENTAL INFORMATION - KEY IMPLEMENTATION TASKS	
1	Planning
1.1	Putting together the list of plans and programmes that must be included in the new regulation (Annex I of the directive).
1.2	Collecting the relevant laws and regulations on these plans and programmes.
1.3	Deciding if other plans and programmes shall be subject to regulation either by adding to the list or by determining the basic features that establish the necessity for inclusion under the scope of the new regulation.
1.4	Determining steps to eliminate parallel procedures with SEA and WFD (Art. 2(5)).
1.5	Deciding on the legal technique for the codification of the new regulation (separate or incorporated, incorporated into general environmental law or into a specific law).
2	Regulation
2.1	Creating a preamble containing the goal of the regulation and the basic principles of the regulation, such as the protection of personal health and well being, accountability and the transparency of the planning and programming procedures, public awareness and support, the promotion of environmental education among the public and effective and early participation (Preamble of the directive, Recitals 3, 4 and 6, Art. 2(2)).
2.2	Determining the scope of regulation (with a list in the text or in an annex) (Art. 2(2) and Annex I).
2.3	Determining the exemptions (national defence and SEA or WFD) (Art. 2(4) and (5)).
2.4	Providing definitions (mandatory: "the public"; optional: "non-governmental organisations", "designer", "environmental plan", "environmental programme" etc.) (Art. 2(1)).
2.5	Establishing the details of the notification rules (including the identification of the persons and organisations notified) (Art. 2(2) and (3)).
2.6	Determining the detailed procedure for participation, including the rules for disclosing relevant information during the planning and programming procedure, and for due consideration of the comments (Art. 2(2) and (3)).
2.7	Establishing specific rules for the participation of NGOs (Art. 2(3)).
2.8	Developing a section on separate rules for the modification or review of the plans and programmes subject to the new regulation on public participation (Art. 2. (3)).
2.9	Inserting reference rules into all of the relevant laws and regulations on planning and programming (see 2.2. above).
3	Guidance and Training
3.1	Generating guidance and training materials for officials dealing with waste management planning (including hazardous waste and packaging waste management planning), air protection and hazardous materials (only batteries and accumulators if they belong to a separate unit).
3.2	Designing guidance and training materials for members of the public and public organisations. Considering the production of a range of materials from detailed procedural descriptions to simple leaflets, and the use of electronic information tools. Considering the organisation of cross trainings (joint trainings for relevant officials and NGO representatives with opportunities for mutual exchange on the schedule). (In harmony with the Preamble, Recital 4 of the directive.)
4	Reporting
4.1	Reporting to the Commission upon request (Art. 5 of the directive).

- 4.2 Reporting to the Commission on the laws, regulations and administrative provisions drawn up in order to comply with the directive (Art. 6).

3.2 Phasing Considerations

The planning phase might be time-consuming, bearing in mind the need to contact several branches of the administration that are concerned with the new regulation on public participation in designing certain plans and programmes. The actual legislative work might be made more complicated by the possible (suggested) decision on public participation in the legislative procedure of the new regulation itself.

Since Article 6 of the directive determined 25 June 2005 as the latest deadline for full compliance with the directive, the new Member States have no specific deadline in respect to this directive.

4. Implementation Guidance

4.1 Planning

- When determining the extent of the list subject to the new regulation on public participation in planning and programming, the countries should take into consideration that this list shall be broader than that of the SEA regulations, since the new regulation is much less demanding (e.g. it does not require an environmental evaluation or report), while the possible direct or indirect environmental effects might make public participation necessary in connection with a wide range of plans and programmes.
- The definition of environmental information in Article 2(3) of the Aarhus Convention and the identical definition in the Information Directive might be relevant when determining the list. Definition elements such as certain factors (substances, energy, and radiation), measures and economic analyses, as well as the state of human health and safety, conditions of human life, cultural sites and built structures might be used to design the scope of the regulation.

Examples of Legal Provisions That Have Been Used with the Goal of Implementing Directive 2003/35/EC

One Member State (HU) determines the scope of the so-called environmental analysis in a very broad way. All strategic-level decisions, draft laws and regulations, national or regional concepts that include all plans, programmes or policies shall be examined by the National Environmental Council (which includes seven environmental NGO representatives) if they have any impact on the quality of the environment or on human health. Economic instruments such as customs, tax, or court or administrative fee regulations shall always be subject to this legal institution.

4.2 Regulation

- When designing the definition part of the national legislation the countries should ensure that the definitions do not contain substantial provisions (e.g. the definition of “non-governmental organisations” should not in itself determine which organisations are entitled to participate and which not in the design procedure of the plans or programmes).
- The circle of persons and organisations to be notified can be determined according to a particular geographical area (the whole country, regions, counties, neighbouring municipalities or the territorial scope of the effects) or by other types of connection to the subject of the planning and programming procedure.

SECTION 2 – HORIZONTAL LEGISLATION THE PUBLIC PARTICIPATION DIRECTIVE

- The earliest time for notification can be the onset of the conceptual phase of the planning or programming in cases when the procedure is divided into conceptual and substantial (detailed) planning/programming phases. The legislator should also take into consideration that the notification might reasonably take place when sufficient information is available about the substance of the planning/programming procedure. Such information, however, can also be disclosed at later stages of the procedure and might not be a reason for delaying the notification.
- The methodologies for notification may include: the Internet home page of the designer; a local or national daily newspaper; public notices at regularly visited places; circular letters to NGOs with a potential interest in the subject of the planning/programming procedure etc.
- The minimum content of the notification is prescribed by Article 2(2), Point a) of the directive:
 - information that the notified persons and organisations have the right to participate in the decision-making procedure (this should be accompanied by information about the technical details and deadlines for participation); and
 - information on the competent authority to which comments or questions may be submitted (this should include the name and address of the authority, the possibility to use electronic communication tools, the contact person or the person charged with the planning/programming itself etc.).
- Reasonable time-frames shall be provided allowing sufficient time for each of the stages of public participation required by the directive (Art. 2(3)). When determining the time-frames or deadlines, the legislator (or the designer if the legislator gives general instructions rather than exact times) should take into consideration the content and level of complexity of the information necessary for effective participation. In the case of participation of organisations or local communities, the time-consuming nature of internal discussions and decisions, and also the necessity to require the help of external experts, shall also be taken into consideration.

Example of Public Participation Processes Concerning Plans and Programmes

National reports submitted by the parties to the Aarhus Convention to the Third Meeting of the Parties (Riga, 2008) in connection with Article 7 of the convention, concerning public participation in plans, programmes and policies relating to the environment, contain several good examples:

- In defining the scope of application of Article 7 (plans and programmes relating to the environment), the definition of environmental information in Article 2(3) is applied (DK).
- In establishing policies and strategies, preliminary idea meetings and workshops are extensively utilised, during which the public has an opportunity to have a say in the decision-making process (DK).
- Principles and examples of good practice with respect to the involvement of the public have been elaborated by the State Chancellery to be followed by all public authorities (ES).
- Within the framework of Local Agenda 21, sustainable development programmes are discussed in a consultative forum where the public and the stakeholders are represented (IT).
- In order to identify NGOs having an interest, the Ministry of the Environment maintains a list of organisations willing to participate in consultations on certain issues (PL).

5. Costs

Checklist of the Types of Cost Incurred to Implement the Directive

Initial set-up costs:

- studies and analyses on the possible extent of the scope of the new regulations;
- consultations with the relevant branches of environmental and other administration;
- initial training of the relevant personnel involved in air protection and of waste management and water protection officials within the environmental protection authorities;
- editing and printing training manuals (both for officials and for the general public) and leaflets (for the public).

Ongoing costs:

- provision of office time and resources on the part of the designer (staffing, consumables, etc);
- reporting to the public and to the Commission;
- information technology maintenance and updating, as necessary.

SECTION 2 - HORIZONTAL LEGISLATION

The Environmental Liability Directive

Official Title: Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143, 30.4.2004), as amended by Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC (OJ L 102, 11.4.2006).

1. Summary of the Main Aims and Provisions

The Environmental Liability Directive:

- Has the express purpose of establishing a legal framework for the prevention or remedying of environmental damage.
- Was preceded by the *White Paper on Environmental Liability* of 9 February 2000¹⁶.
- Aims to legislate for the implementation of the “polluter pays” principle (Art. 74(2) of the EC Treaty).
- Aspires to meet the commitment in the Commission’s Sustainable Development Strategy, which aimed to have “EC legislation on strict liability in place by 2003”.
- Covers environmental damage – or any imminent threats of damage – under three categories:
 - 1) damage to protected species and natural habitats as defined by the directive;
 - 2) water damage, that is, damage that has a significant adverse effect on ecological, chemical and/or quantitative status and/or ecological potential, as defined in Directive 2000/60/EC;
 - 3) land damage, that is, any land contamination that creates the significant risk of an adverse effect on human health as a result of the direct or indirect introduction in, on or under the land, of substances, preparations, organisms or micro-organisms.
- Imposes strict liability on operators who undertake an activity covered by the EC legislation listed in Annex III of the directive for the above three types of environmental damage.
- Imposes fault-based liability on operators of non-listed occupational activities. These operators can be held liable for damage to protected species and natural habitats (see “a” above) and not for other types of damage (namely “b” and “c” above).

¹⁶ COM(2000) 66 final

SECTION 2 – HORIZONTAL LEGISLATION
THE ENVIRONMENTAL LIABILITY DIRECTIVE

- Shall apply to environmental damage and any threat of such damage (see above) occurring by reason of occupational activities that are listed in Annex I.
- Shall also apply to damage that adversely affects biodiversity and that results from occupational activities not listed in Annex I.
- Does not cover environmental damage resulting from armed conflict, national defence, a natural disaster, an authorised event, activities that were not considered harmful according to the state of scientific knowledge at the time, or pollution that is of a widespread or diffuse character where a causal link to an individual operator cannot be established.
- Does not apply to environmental damage covered by five named international treaties (on damage from petroleum and certain transport of hazardous or dangerous goods liabilities) if enforced in the Member State concerned, or nuclear risks/environmental damage addressed in the Euratom Treaty or four other international treaties.
- Shall require the operator (the potential polluter) to take necessary preventive and restorative measures (the latter based on rules and principles contained in Annex II) for environmental damage.
- Shall require that, in cases where the operator is not in a position to take preventive or restorative measures, these should be undertaken by the competent authority and the costs recovered at a later date, within five years at the latest.
- Leaves it open to Member States to provide for the so-called permit defence. The permit defence would allow operators under certain circumstances to escape from bearing the costs of measures if they demonstrate that they were not at fault or negligent and that the damage was caused by an emission or event expressly authorised under applicable national laws.
- Leaves it open to Member States to provide for the so-called state of the art defence. The state of the art defence would allow operators to escape from bearing the costs of measures if they demonstrate that they were not at fault or negligent and that the damage was caused by an emission or activity or any manner of use of a product in the course of an activity that the operator demonstrates was not considered likely to cause environmental damage according to the state of scientific and technical knowledge at the time the emission was released or the activity took place.
- Does not provide for specific cost allocation mechanisms in case of multi-party causation, but leaves the issue to the Member States to decide.
- Provides investigative and related powers for competent authorities.
- Establishes a “request for action” procedure for addressing third-party requests and provides related access to courts or comparable decision-making bodies as a means of redress where requests for action are not satisfactorily addressed.
- Third parties are defined as natural or legal persons affected or likely to be affected by environmental damage; or having a sufficient interest in environmental decision making relating to damage; or alleging the impairment of a right where this is required under national law. Any non-governmental organisation promoting environmental protection and meeting any national law requirements is deemed to have sufficient interest/impairment of a right.
- Sets out the rules and procedures for remedying environmental damage (Annex II).
- Requests Member States to encourage the development of financial security/insurance mechanisms.
- Requires co-operation between mutually affected states in matters of environmental or biodiversity damage prevention or remediation.

- Being prospective as of its effective implementation date (30 April 2007) and not retroactive.
- Provides detailed reporting requirements to be met by Member States and the Commission.

2. Principal Obligations of Member States

2.1 Planning

- Designate competent authorities and other bodies to implement the requirements of the directive.
- Create the procedures required for the competent authority to carry out environmental assessments in order to determine the extent of environmental damage and the measures needed to remedy it.
- Determine a procedure for determining when the measures should be taken by the relevant operator or by the competent authority on their behalf.
- At the earliest stage of implementation, identify key actors and stakeholders who will be involved in or impacted by the implementation of the directive.
- Generate discussion and consultation with stakeholders that should focus on prevention, mitigation and remediation/restoration issues, and identify areas where environmental damage may occur or has occurred.
- Identify, and hold initial discussions with, all potential polluter sectoral representatives in order to help achieve the most efficient path to approximation, to avoid costly errors (for example, in drafting legislation and regulations and in setting up institutions), and to encourage the co-operation of operators in complying with the national legal instruments.
- Discuss approaches to cost allocation, noting the range of mechanisms that would appear to be permitted by the directive and national law. This is particularly important in multiple party causation circumstances.
- The lead competent authority could be the ministry with responsibility for environmental protection or the national environmental protection agency, but designation as competent authority actually varies from Member State to Member State. The authority should be able to take a nationwide view of the issues, co-ordinate nationwide actions and report on a nationwide basis, but this is not actually the case in all Member States, since in several Member States regional authorities or even local municipalities have been designated as competent authorities.
- It is important to have effective co-ordination between the competent authority with primary responsibility for the implementation of this directive, and those local and regional bodies that may play a monitoring, enforcement and overseeing role.
- The competent authorities of bordering/neighbouring Member States may wish to collaborate and co-operate on procedures to ensure the proper and effective prevention of cross-border environmental damage and to implement procedures for restoring the environment in cases where environmental damage is of a cross-border nature.

2.2 Regulation

- Establish the legal basis for addressing environmental damage and biodiversity damage as prescribed by the directive.

SECTION 2 – HORIZONTAL LEGISLATION

THE ENVIRONMENTAL LIABILITY DIRECTIVE

- Provide a clear understanding of the breadth and scope of the exception provisions of the directive, including as to persons and circumstances within the prescribed exemptions from liability.
- Determine the definitions and procedures that apply with respect to prevention, mitigation, remediation and restoration activities.
- Set up procedures for cost recovery where the competent authority has had to implement preventive or restorative measures on behalf of the operator or undertake an environmental assessment related to the damage.
- Decide upon the introduction of exceptions from cost recovery, particularly permit defence and state of the art defence.
- Create procedures for encouraging operators to maintain financial security, such as insurance, and for assessing the adequacy of such insurance provision.
- Provide procedures for legal and natural persons and qualified entities likely to be adversely affected by environmental damage to make requests for and to take legal action as appropriate.
- Establish procedures for cross-border co-operation with other Member States in cases where preventive or restorative measures are required.
- Establish procedures for judicial review and challenges to action or inaction taken for legal and natural persons and qualified entities.
- Ensure that the legal position on non-retrospectivity is codified in law.

2.3 Monitoring

- Designate competent authorities to carry out monitoring and enforcement and to bring non-compliance actions as necessary.
- Devise a system for identifying potential and actual environmental damage.
- Ensure that monitoring activities address prevention, mitigation and remediation activities.

2.4 Information and Reporting

- Report to the Commission on:
 - The main provisions of national law that Member States adopt in the field covered by this directive, together with a table showing how the provisions of the directive correspond to the national provisions adopted.
 - The experience gained on the application of this directive by 30 April 2013 at the latest. The reports shall include the information and data set out in Annex VI.

2.5 Additional Legal Instruments

A number of other legal instruments are relevant to the Proposed Environmental Liability Directive and should be borne in mind when implementing it. These are:

- Directive 2008/1/EC concerning integrated pollution prevention and control (IPPC Directive, as amended by 2003/35/EC) (see Section 7 of the Handbook).
- Directive 2006/11/EC on the discharge of dangerous substances into the aquatic environment (see Section 5 of the Handbook).
- Directive 2006/118/EC on the protection of groundwater from dangerous substances (see Section 5 of the Handbook).

- Directive 2006/12/EC on waste (see Section 4 of the Handbook).
- Directive 2000/76/EC on the incineration of waste.
- Directive 91/689/EC on hazardous waste (see Section 4 of the Handbook).
- Directive 1999/31/EC on the landfill of waste (see Section 4 of the Handbook).
- Regulation (EC) 1013/2006 on the shipment of waste (see Section 4 of the Handbook).
- Directive 67/548/EC relating to the classification, packaging and labelling of dangerous substances (see Section 8 of the Handbook).
- Regulation (EC) No 1907/2006 concerning the registration, evaluation, authorisation and restriction of chemicals (REACH) (see Section 8 of the Handbook).
- Directive 91/414/EEC on the placing of plant protection products on the market.
- Directive 98/8/EC concerning the placing of biocidal products on the market.
- Directive 94/55/EC with regard to the transport of dangerous goods by road.
- Directive 96/49/EC with regard to the transport of dangerous goods by rail.
- Directive 93/75/EEC concerning vessels carrying dangerous or polluting goods.
- Directive 90/219/EEC as amended by Directive 98/81/EC on the contained use of GMOs (see Section 8 of the Handbook).
- Directive 2001/18/EC on the deliberate release and transport of GMOs (see Section 8 of the Handbook).
- Directive 96/82/EC on the control of major-accident hazards involving dangerous substances (Seveso II Directive), as amended by Directive 2003/105/EC (see Section 7 of the Handbook).
- The Habitats Directive (92/43/EEC) (see Section 6 of the Handbook).
- The Wild Birds Directive (79/409/EEC) (see Section 6 of the Handbook).
- The Water Framework Directive (2000/60/EC) (see Section 5 of the Handbook).
- The Lugano Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment.
- The Basel Protocol on Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal.
- The Helsinki Convention on the Transboundary Effects of Industrial Accidents.
- The Helsinki Convention on the Protection and Use of Transboundary Watercourses and International Lakes.
- The Cartagena Biosafety Protocol to the Convention on Biological Diversity.
- The Convention on Access to Environmental Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention).

3. Implementation

The 1993 Commission Green Paper¹⁷, the resultant 1993 Joint Hearing with the European Parliament, a Parliament resolution asking for a Community directive, an opinion of the

¹⁷ COM(93) 47 final

SECTION 2 – HORIZONTAL LEGISLATION
THE ENVIRONMENTAL LIABILITY DIRECTIVE

Economic and Social Committee, both in 1994, and the *White Paper on Environmental Liability* of 9 February 2000¹⁸ can provide useful insights into the aims, and the way to achieve the aims, of the Environmental Liability Directive (though it should be noted that these prior documents conflict to some extent with the directive as it was finally passed).

Equally useful are the consultation documents and opinions that followed the white paper and the views of interested parties¹⁹.

In general, the reliance on public law mechanisms has been welcomed. Member States and candidate countries are likely to have at least some elements of such systems in place and this will assist in the implementation of the directive.

ENVIRONMENTAL LIABILITY DIRECTIVE - KEY IMPLEMENTATION TASKS
1. Planning
Identify the competent authority (or authorities) that shall have responsibility for implementing the directive and ensure that adequate financial, human and technical resources are provided.
In determining the allocation of competent authority responsibilities, determine the balance between harmonised rules, procedures and standards and sub-national implementation responsibilities.
Consider whether to integrate the directive into existing environmental liability procedures, whether to combine procedures, or whether to have separate procedures.
Design the assessment procedure by which the competent authority can evaluate whether environmental damage has taken place and an operator is liable.
Develop a procedure for determining when the competent authority should take remedial action.
Identify, within the competent authority, those persons that shall be responsible for overseeing clean-up operations.
Design the procedure by which a competent authority can determine which preventative or restorative measures should be taken and how.
Develop detailed consultation procedures with stakeholders on prevention, mitigation and remediation strategies as well as cost recovery measures, etc.
Determine the protocols and institutional responses to transboundary co-operation and consultation requirements.
2. Regulation
2.1 Provide clear legal rules and guidance on the scope of the directive with respect to environmental and biodiversity damage as well as the permissible exceptions.
2.2 Create a procedure and guidelines for dealing with prevention and mitigation activities while ensuring that the restoration/remediation of the environment take place in an effective manner ensuring that the relevant restoration objectives are achieved.
2.3 Implement procedures for the competent authority to assess the environmental damage and determine what remediation/restoration measures are required.
2.4 Create a procedure by which the competent authority can recover costs from the operator for assessing environmental damage or the threat of damage. In the implementing national legislation it will have to be decided whether the permit defence and the state of the art defence (Art. 8, Para. 4) should be allowed, as the directive leaves open both options.
2.5 Create a procedure for ensuring that the liable operator restores the damaged

¹⁸ COM(2000) 66 final

¹⁹ <http://europa.eu.int/comm/environment/liability/followup.htm>

environment.

2.6 Create a procedure for the competent authority to restore the damaged environment, in cases where a liable operator cannot be found and the polluter pays principle cannot be applied.

2.7 Where the competent authority has had to take on the responsibility of restoring the environment on behalf of a liable operator, create a procedure for the competent authority to recover the costs from the operator.

2.8 In cases where there are several instances of environmental damage that cannot all be remediated at the same time, create procedures by which the competent authority can prioritise remediation and clean-up.

2.9 Create a procedure for channelling funds received back into clean-up and remediation operations in cases where funds have been set up.

2.10 Create a procedure for apportioning clean-up costs between operators in cases where there is joint and several liability.

2.11 Create a procedure for informing person(s) or qualified entities adversely affected or likely to be adversely affected by environmental damage of the process for asking the competent authority to take action.

2.12 Create a procedure by which the competent authority should inform the interested party when it is not possible to take a decision within a reasonable period of time.

2.13 Create a procedure for review of the competent authority's decision, acts or failures to act.

2.14 Create a procedure by which the competent authority can require an operator to take preventative measures to prevent imminent danger to the environment.

2.15 Determine the procedure for transboundary co-operation and consultation as regards the potential or actual transboundary threats of environmental damage.

2.16 Create a procedure by which the operator under investigation has to supply information and data for the purpose of the investigation

3. Guidance and Training

3.1 Train staff to advise on suitable forms of insurance for operators.

3.2 Train staff to assess whether environmental damage has taken place.

3.3 Train staff to bring liability actions against offending operators.

3.4 Train staff to oversee clean-up operations.

3.5 Train non-legal staff responsible for implementation in the legal concepts and obligations set by the directive as transposed into national law.

4. Consultation

4.1 Consult with potential operators so that they can take preventive environmental protection measures and/or financial and insurance-related measures in light of this proposed directive.

4.2 Consult with liable operators about required remediation measures and method of approach.

4.3 Consult with stakeholders as per sub-point 1.8 (above).

5. Reporting

5.1 Report to the Commission on:

- The main provisions of national law which Member States adopt in the field covered by this directive, together with a table showing how the provisions of the directive correspond to the national provisions adopted.

- The experience gained on the application of this directive by 30 April 2013 at the latest. The reports shall include the information and data set out in Annex VI.

4. Implementation Guidance

4.1 Planning

Experience from Member States

One of the major issues when planning the national system for the implementation of the directive is the question of whether or not to allow permit defence and state of the art defence. Member States have chosen different approaches. Another issue is whether insurance or other means of financial guarantee should be obligatory.

In Germany, the directive was transposed by the so-called Law on Environmental Damage at federal level. The name was chosen because there is already a law on (civil law) environmental liability from 1990. According to the federal system in Germany, the provinces will have to decide in their implementing legislation whether or not to apply permit defence and state of the art defence. German federal law does not contain provisions on insurance and financial guarantees.

Spain goes beyond the minimum requirements of the Environmental Liability Directive and has proposed a compulsory insurance system, targeting the largest potential polluters, in order to protect the nation's natural resources.

4.2 Regulation

Experience from a Member State

The current situation with respect to the transposition of the Directive on Environmental Liability in Austria can be described as work in progress. Austria has a long tradition of administrative law instruments obliging polluters to pay for the cleaning up of environmental damage. Nevertheless, a new legal act will be necessary to bring Austrian legislation fully into line with the requirements of the directive. Although a draft law was prepared by the ministry in charge in 2007, the Parliament has not yet adopted it due to differing views on how to handle the options given by the directive with respect to permit defence.

As Austria is a federal state, some responsibilities lie with the provinces. The federation is responsible in cases of damage to water and of land contamination, and the provinces are responsible in cases of damage to biodiversity (damage to protected species and natural habitats).

An example of current legislation in force is Article 31, Paragraph 3 of the Water Act: If there is a significant threat to the environment, the water protection authority must ask the responsible person to take the necessary measures or, if urgent action is required, to issue an order as to which measures to take. If the responsible person fails to act within the given time, the authority asks a suitable professional (company) to put these measures in place and obliges the responsible person to pay the costs incurred. These provisions have been in existence since 1969 and have helped to prevent or clean up numerous cases of (potential) damage to ground and/or surface waters.

4.3 Guidance and Training

4.3.1 Guidance and Training at EU level

The EU-funded REMEDE project is designed to support Annex 2 of the directive, which lists different methodologies that can be used for this common framework.

The goal of the REMEDE project is to develop, test and disseminate methods for determining the scale of the remedial measures necessary to adequately offset environmental damage. The project draws from both US experience, in terms of methodological developments and implementation issues encountered, and the experiences of EU Member States. It aims to apply and develop these in accordance with the requirements of the Environmental Liability Directive and the Environmental Impact Assessment, Habitats and Wild Birds Directives, in order that a standard toolkit can be applied in all cases of damage in the EU. The project brings together ecologists, economists and legal experts from the USA and Europe to review experience in the application of resource equivalency methods, to draft a toolkit document for the EU, to test the toolkit through application in case studies in different Member States, and to disseminate the toolkit to relevant stakeholders. For further information see www.envliability.eu

Guidance and Training at the Level of Member States (Austria)

1. Twinning projects of the Austrian Environment Protection Agency (UBA) in Romania. Austria has been active in 60 twinning projects since the establishment of this project type in 1998. In Romania, where UBA has been active in five different twinning projects so far, UBA delivered trainings on the directive for environmental inspectors and other civil servants involved in Sibiu in summer 2007. Further training activities on the directive are envisaged.

2. NGO activities related to the Environmental Liability Directive. In accordance with the Aarhus Convention, NGOs are given procedural rights under the directive. They can launch a request for action and submit a complaint to a court or impartial body if they are not satisfied (see above). The Austrian NGO ÖKOBÜRO and the Brussels-based European Environmental Bureau (EEB) both actively monitor the implementation of the directive. In December 2007, the handbook *NGO Guidelines for the Implementation of the Environmental Liability Directive* was published by the EEB, see http://www.eeb.org/activities/env_liability/ELDHandbook-final-2-RS.pdf

3. The Austrian Chamber of Commerce informs its members on issues related to the forthcoming implementation of the directive in Austria: http://portal.wko.at/wk/format_detail.wk?AngID=1&StID=303280&DstID=31&BrID=507

In another Member State (UK), the Department for Environment, Food and Rural Affairs released guidance for public consultation in February 2008: “The Environmental Damage (Prevention and Remediation) Regulations 2008 Draft Guidance”. This guidance document will give stakeholders affected by the Environmental Liability Directive a better understanding of the requirements and practical application of the Environmental Damage (Prevention and Remediation) (England) Regulations 2008 and the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2008. The guidance is mainly aimed at those carrying out activities that may cause imminent threats of environmental damage or actual environmental damage, and the relevant authorities. The guidance document can be found at: <http://www.defra.gov.uk/corporate/consult/env-liability-regs/guidance.pdf>

5. Costs

Costs incurred largely depend on the size of the country, the constitutional and administrative system (e.g. centrally organised administration or decentralised/federal administration) and on the existing structure. Most Member States already have in place a system for the cleaning up of environmental damage by the polluter.

Checklist of the Types of Cost Incurred to Implement the Directive

SECTION 2 – HORIZONTAL LEGISLATION
THE ENVIRONMENTAL LIABILITY DIRECTIVE

Initial set-up costs:

- costs of organisational changes, set-up costs of inspection units;
- improvements to procedures for data collection, storage and retrieval;
- provision of, or improvements to, databases, including computer systems and PCs;
- training of inspectors in communications and information dissemination methods;
- information technology for running relevant databases, information networks and websites.

Ongoing costs:

- provision of the inspections unit (staffing, office space, etc);
- reporting to the public and to the Commission;
- information technology maintenance and updating, as necessary.

Examples from Member States (Austria)

For Austria, the following cost estimations were made:

- As to administrative costs, estimations are difficult due to the different definitions of costs in the directive compared to the Austrian system.
- As to clean-up costs, no substantial change was expected in the case of water damage, as a similar system as proposed by the directive is already in place in Austria.
- Concerning land damage, Austria has a comprehensive scheme for the clean-up of past environmental damage. This system entails huge costs but will remain untouched, as the directive is not applicable for past damage.
- The most difficult to estimate are costs that might occur as a result of damage to biodiversity, as no similar system yet exists in Austria. Biodiversity damage clean-up falls under the competences of the provinces, which have not yet decided what approach to take.

Regulation on European Pollutant Release and Transfer Register

Official Title: Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC (OJL33, 4.2.2006)

1. Summary of the Main Aims and Provisions

The Sixth Community Environmental Action Programme (adopted by Decision No 1600/2002/EC) requires support to the provision of accessible information to citizens on the state and trends of the environment. Pollutant release and transfer registers (PRTRs) are one of the basic elements for supplying significant, systematic environmental information connected to definite geographical sites, therefore this is a basic starting point for ensuring the right to access to environmental data. Apart from this basic function, experience has shown the PRTR to be an important decision-making tool for environmental administrations and also a legal institution that is successful in pollution prevention without any direct administrative measures. The secret of this last function of PRTRs lies in the fact that a PRTR creates a connection between the facilities dealing with dangerous materials and the communities living around them. This connection represents a huge incentive for the management to reduce the use and emission of such dangerous materials about which they are obliged to report regularly, since they are aware that their neighbours are closely following these data.

The European Community signed the UNECE Protocol on PRTR in May 2003 and approved it (a step having the force of ratification) in February 2006. Although the protocol has yet to enter into force, it seems reasonable for Member States and candidate countries to take it into consideration when establishing or reforming their national PRTR systems. The main difference between the regulation and the protocol is that, while the regulation concerns a European-level database with natural ramifications to the national level, the rules of the protocol clearly only apply on the national level.

2. Principal Obligations of Member States

2.1 Planning

SECTION 2 – HORIZONTAL LEGISLATION
REGULATION ON EUROPEAN POLLUTANT RELEASE AND TRANSFER REGISTER

- A survey shall be carried out into the responsibilities ensuing from the regulation and from the protocol (in particular if the country is to be a party to the Kiev Protocol). This list of responsibilities shall be compared with the relevant existing data collection systems, first of all under IPPC laws and other relevant environmental laws, in particular hazardous waste laws, and also laws and regulations in connection with chemical safety and catastrophe prevention databases.
- After consultations with the relevant branches of administration, a decision shall be made about:
 - which similar databases shall be integrated into the new PRTR system (Recitals 19 and 21 of the Preamble to the regulation); or
 - the links that need to be established to the whole or part of such databases and the possible need for harmonisation measures to make such databases a comparable source of environmental information (Recital 8 of the Preamble and Art. 4(3)).
- Public participation should be a part of all planning and regulation steps if possible (Recital 15 of the Preamble and Art. 12 of the regulation). In designing effective public participation, the country should identify the concerned professional NGOs to be directly notified and the way in which the broader public will be notified (via Internet, if appropriate). The notification time shall properly respond to the requirement of early participation at a stage when all options are still open. Further information about the planning procedure shall be disclosed during the planning procedure if necessary.
- Central and, if appropriate, regional data collection, processing, reporting and disseminating organisations or departments within existing organisations shall be designated, together with the proper budgetary, staffing and training conditions. The IT aspects of these plans is significant, and the capacity and operation of the hardware element of the PRTR system must also be carefully designed.
- Integrated software shall be selected for collecting (defining how operators, facilities, owners, activities, chemicals, sites and other relevant locations etc. are identified), processing, reporting and disseminating the relevant environmental information. International requirements in terms of comparability, completeness, consistency and credibility and maximum ease of public access through the Internet shall be taken into consideration (Recitals 7 and 12 of the Preamble).
- The extent to which diffuse pollution sources can be taken into consideration in the PRTR system shall be decided, if viable with a time schedule allowing for gradual introduction (Recitals 6 and 11 of the Preamble and Art. 8).
- The handling of the categories of confidential information in relation to the Information Directive, and under which conditions and what manner the public may have access to aggregated, partly aggregated and non-aggregated information, shall be determined (Recitals 7 and 14 of the Preamble and Art. 11).
- Reasonable time-frames shall be designed for all steps of information collection, processing, reporting and disclosure, taking into consideration the deadlines given by the regulation (Recital 10 of the Preamble and Art. 5 and 7 of the regulation).
- Specific data needs and the interests of future users other than members of the public and public organisations, such as scientists, journalists, local authorities, insurance companies and economic organisations, shall be noted and taken into consideration in designing the national-level PRTR systems (Recital 4).

2.2 Regulation

SECTION 2 – HORIZONTAL LEGISLATION
REGULATION ON EUROPEAN POLLUTANT RELEASE AND TRANSFER REGISTER

Although the rules of the regulation are directly binding on the Member States, these rules primarily target the creation of the European-level PRTR system, therefore the Member States and candidate countries shall create their own detailed rules in order to be able to respond to the needs of the European system on the one hand, and, on the other hand, to create their own national-level PRTR systems in harmony with the protocol that has become a part of Community law as a result of its ratification by the EC (Recital 5 of the Preamble and Art. 1).

Definitions of Article 2 shall be inserted into the national law first of all by transposing them into the national PRTR law and also by harmonising the text of the relevant laws with the definitions of:

- the public;
- competent authority;
- installation;
- facility;
- site;
- operator;
- reporting year;
- substance;
- pollutant;
- release;
- off-site transfer; and
- diffuse sources.

Definitions of “waste”, “hazardous waste”, “wastewater”, “disposal” and “recovery” will already exist in the national laws if the relevant directives have already been harmonised.

General provisions should form an important chapter in the national PRTR law, including the relevant general principles of environmental law, primarily:

- the precautionary principle;
- whistleblower protection; and
- the requirements to eliminate parallel environmental information collection and dissemination rules in the national law (Art. 3 of the protocol).

A list of the main elements of the PRTR system as a summary of the essence of this legal institution (serving the best interpretation of the detailed rules, *inter alia*) can also be part of the general provisions:

- facility-specific reporting;
- reporting on diffuse sources;
- pollution or waste specific as appropriate;
- concerning multiple dimensions such as releases to soil, air and water;
- contains transfer data;
- is based on regular reporting;
- has a limited number of confidentiality rules, if any;
- is coherent and timely;

SECTION 2 – HORIZONTAL LEGISLATION
REGULATION ON EUROPEAN POLLUTANT RELEASE AND TRANSFER REGISTER

- is user friendly and accessible in electronic format, among other ways;
- has public participation in its formulation and modification; and
- the result of these efforts is a structured, computerised database or several interconnected databases operated by the competent authority (Art. 4 of the protocol).

The first substantial chapter of the national PRTR law may cover the design and structure of the PRTR system. It shall contain data about:

- all the relevant facilities (including parent company);
- facility owners or operators;
- activities;
- occurrences at national level;
- amount of pollutant or waste;
- the concerned environmental medium;
- off-site transfers of waste and wastewater;
- technical (methodological) solutions for achieving maximum ease of public access;
- up to at least the last ten previous reporting years; and
- links to facilities' websites if they are volunteered for this (Art. 4 of the regulation).

The chapter on the reporting responsibility of the operators shall encompass the following issues:

- determination of the reporting responsibility by activity and thresholds;
- determination of the frequency of reporting (annual as a minimum);
- determination of the exact timing of the reporting responsibility in harmony with Article 7(1) of the regulation;
- prescriptions about reporting on the methods of obtaining information (measuring, calculation or estimation) (Art. 5(1), (3) and Annex I);
- the authority to which the reports shall be sent;
- the way in which information identifying the facility is communicated (Art. 5(1) and Annex III);
- the use of best available information (Art. 5(4));
- the responsibility to keep available records of the data from which the reported information was derived for a minimum period of five years (Art. 5(5));
- the way the competent authorities shall monitor whether all the responsible operators have duly performed their reporting obligations (UNECE guidance).

Types of data to be reported shall be at least:

- releases to air, water and land of any pollutant specified in Annex II of the regulation, for which the applicable thresholds were exceeded (Arts. 5(1) and 6);
- off-site transfers of hazardous waste and non-hazardous waste, if the amounts exceeded the minimum amounts in Article 5(1), Point b);
- off-site transfers in wastewater for which the threshold value of Annex II of the regulation is exceeded (Art. 5(1) and Annex II);
- releases from deliberate, accidental, routine and non-routine activities (Art. 5(2));

SECTION 2 – HORIZONTAL LEGISLATION
REGULATION ON EUROPEAN POLLUTANT RELEASE AND TRANSFER REGISTER

- releases from diffuse sources with an appropriate geographical disaggregation (Art. 8 and Art. 7(4)) of the protocol).

Quality assurance (validation) and control rules shall, as a minimum, contain details of checks by the competent authorities on the completeness, consistency and credibility of the data reported by the operators (Art. 9 and EC guidance).

Public participation rules shall contain rules for all pillars of public participation: access to information, participation and access to justice. Capacity building is an important additional part of the effective public participation regulations. The detailed rules on public participation shall encompass:

- access to information in the European PRTR system – where information is not easily accessible to the public by direct electronic means, the national authorities shall facilitate electronic access to it at publicly accessible locations (Art. 10(2));
- access to information in the national PRTR systems in national language(s), including legal and procedural guarantees of easy accessibility, good search functions, proper grouping of data and the non-technical display of data (UNECE guidance);
- rules for handling confidential information (parts) in harmony with Directive 2003/4/EC (Art. 11);
- rules for public participation in forming and revising the national-level PRTR systems, possibly, *inter alia*, by creating a committee comprising the concerned stakeholders (UNECE guidance);
- specific public participation provisions might ensure participation in the quality assurance and control activities;
- rules on access to justice in cases of the infringement of the above access to information or participation rights, including a clear entitlement on the part of the courts to substantially remedy the infringement by directly ordering the proper administrative measures (UNECE guidance);
- capacity-building measures, including the promotion of public awareness of the national and European PRTR systems and providing assistance in accessing them and in understanding and using the information contained in them (Art. 15).

The provisions of the national PRTR law or regulation shall include, in general, sanctions against infringement of the provisions of the regulation and the accompanying national laws and regulation; and, specifically, against the most prominent types of infringements such as the refusal of reports, the sending of false information or the abuse of confidentiality rules (Art. 20 and EC guidance).

2.3 Reporting

- All data referred to in Article 5(1) and (2) shall be reported to the Commission by electronic transfer in the format set out in Annex III (Art. 7(2)).
- Together with the report in the previous bullet point, but as a separate section, a report shall be made on each of the occasions when a facility successfully claimed confidentiality, including the type of information that was withheld and the reason for withholding it (Art. 11).
- Together with the report in the first bullet point, but as a separate section, Member States shall report every three years, based on the previous three years' data, on the practices and measures taken regarding the following:
 - reporting requirements for operators according to Article 5;
 - quality assurance and assessment measures according to Article 9;

SECTION 2 – HORIZONTAL LEGISLATION
REGULATION ON EUROPEAN POLLUTANT RELEASE AND TRANSFER REGISTER

- public participation measures in accordance with Articles 10(2), 11 and 15;
- penalties provided for according to Article 20 (Art. 16(1)).
- A different report shall be sent to the Commission one year after the entry into force of the regulation in the country regarding the provision of sanctions. A report is also due without delay regarding any amendments to these provisions (Art. 20(2)).

2.4 Additional Legal Instruments

- Council Regulation (EEC) No. 1210/90 on the European Environment Agency.
- The Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters (the Aarhus Convention), 1998.
- The IPPC Directive (2008/1/EC).
- The Directive on Access to Environmental Information (2003/4/EC).
- The Reporting Directive (91/692/EEC).

3. Implementation

3.1 Key Tasks

ACCESS TO ENVIRONMENTAL INFORMATION - KEY IMPLEMENTATION TASKS	
1	Planning
1.1	Carrying out a survey of responsibilities arising from the regulation and from the protocol.
1.2	Putting together a list of relevant data collection activities in the country and the possible level of interconnection with the new PRTR system (ranging from full integration to simply creating links between the databases).
1.3	Establishing the conditions for early and effective public participation in designing the PRTR system.
1.4	Designating the data collection, processing, reporting and information disseminating organisation(s).
1.5	Estimating the hardware needs for the new PRTR system and designing its set-up and operation conditions.
1.6	Designing the software for the PRTR system, taking into consideration the international requirements of comparability, completeness, consistency, credibility and maximum ease of public access through the Internet.
1.7	Evaluating the situation from the point of view of the quantity of data available or the amount of data that can reasonably be made available regarding diffuse pollution sources (e.g. transport or certain branches of agriculture). In this respect, the rate of the contribution of such diffuse pollution sources to the overall pollution of certain environmental media shall also be taken into consideration. Gradual introduction as a compromise solution should also be considered.
1.8	Assessing the arguments for and against the confidential handling of certain types of information, in harmony with Directive 2003/4/EC.

SECTION 2 – HORIZONTAL LEGISLATION
REGULATION ON EUROPEAN POLLUTANT RELEASE AND TRANSFER REGISTER

1.9	Designing time-frames for all steps of information collection, processing, reporting and disclosure, taking into consideration the deadlines given in the regulation.
1.10	Contacting other stakeholders, such as scientists, journalists, local authorities, insurance companies and concerned professional and economic organisations, in order to allow them to express their views on the planning of the new PRTR system.
2	Regulation
2.1	Key definitions of the regulation shall be inserted into the national PRTR law, or the existing definitions in relevant laws shall be referred to.
2.2	General provisions of the regulation shall be inserted into the national PRTR law or be referred to, including general principles and the summary of the main elements of the effective PRTR system.
2.3	The design and structure of the national-level PRTR system shall be regulated, including the reporting units, the types of data included in the system, and its links to relevant websites.
2.4	The reporting obligations of the operators shall be regulated, including the thresholds that trigger reporting obligations, the frequency and timing of reporting, and also the monitoring responsibilities of the competent authorities.
2.5	The types of data to be reported shall be regulated, including releases to the environmental media, off-site transfers and releases from diffuse sources.
2.6	Quality assurance and assessment shall be regulated, including the validation effects of the opinion of the competent authorities on the data servicing of the operators.
2.7	Public participation in the design and operation of the national PRTR systems shall be regulated, including effective access to the data of the European and the national PRTR systems, clarification of the establishing and handling of confidential information parts, public participation in the design and modification of the national PRTR system and in the quality assurance and control activities of the competent authorities, access to justice in all relevant access to information and access to participation matters, and capacity building in all the previously mentioned topics.
2.8	Effective, proportionate and dissuasive sanctions shall also be regulated for infringement both of the provisions of the regulation and of the relevant national PRTR laws.
3	Guidance and Training
3.1	Guidance and regular training for officials dealing with the collection, processing, reporting and dissemination of PRTR information shall encompass, in particular, the determination of reporting obligations on operators, activities within quality assurance and quality control, responsibilities in the field of ensuring early and effective public participation, and the implementation of effective, proportionate and dissuasive sanctions.
3.2	Guidance and regular training for operators with reporting responsibility shall be ensured, with a special emphasis on the details of reporting responsibility, the types of data to be reported, quality assurance and control, and public participation.
3.3	Guidance and regular training for interested members of the public and public organisations, and also for other interested stakeholders, shall be produced, encompassing, in particular, reporting responsibility, the data to be reported, quality assurance and control, public participation and sanctions.
4	Reporting
4.1	Data reported by the operators shall be reported to the Commission in the format given in Annex III of the regulation.

SECTION 2 – HORIZONTAL LEGISLATION
REGULATION ON EUROPEAN POLLUTANT RELEASE AND TRANSFER REGISTER

4.2	Acknowledged confidentiality claims and the reasons for them shall be reported.
4.3	Legislative measures and practice on reporting requirements, quality assurance and assessment, public participation and sanctions shall be reported every three years.
4.4	A separate report shall be sent to the Commission on the creation of provisions on sanctions within one year of the entry into force of the European PRTR rules in the country, and on subsequent amendments immediately.

3.2 Phasing Considerations

- The first reporting year for the Member States was 2007. Subsequent reports are due annually.
- In all reporting years after the first reporting year the national reports shall be sent to the Commission within 15 months of the end of the reporting year.
- All activities related to reporting from the operators and processing the data into a national-level report shall be phased within this 15 months. In dividing up this time, the countries shall take into consideration that there is usually a need from the side of the operators to control the correct transposition of their respective data into the national report, thus time should be allocated for this last phase of feedback from the operators.
- When deciding the specific amount of time to be allocated for public participation in planning activities, the time required for internal communication processes within the non-governmental organisations and for their communications with their experts should be taken into consideration.
- The phasing of regular reporting activities ranges from every year to every three years.

4. Implementation Guidance

4.1 Planning

- The guidelines issued by the Commission and by the UNECE on the implementation of the regulation and the protocol shall be taken into consideration as primary sources of information for planning activities.
- Fields of administrative law, of which the rules for information collection, processing etc. may be taken into consideration during the planning phase of the national PRTR systems, include:
 - chemical safety laws;
 - catastrophe prevention laws;
 - hazardous waste;
 - sewage treatment;
 - packaging waste;
 - electric and electronic waste;
 - waste from cars and car batteries;
 - transportation of waste;
 - surface and underground water protection, including protection against nitrates etc.;

- air quality protection, including ozone, PCBs, greenhouse gases and VOC protection etc.
- When designing the methods and procedures for handling requests from operators concerning confidential data, Article 4(2) of the Information Directive shall be taken into consideration. According to this provision, the grounds for refusal shall be interpreted in a restrictive way, taking into account, with respect to the particular case, the public interest served by disclosure. It is also relevant, based on the same provision, that, in the majority of cases, a request shall not be refused where it relates to information on emissions into the environment. Since the major focus of the PRTR system is on emissions, the scope of possible admissions of requests for confidentiality is very narrow.
- When designing the database of the PRTR system, the following practical issues shall be taken into consideration:
 - The requirement of specificity. In harmony with this requirement, the data in the PRTR system shall allow for easy identification of the emitted and transferred materials and the locations and data of the operators. However, in certain cases, broader categories of materials (such as volatile organic substances, heavy metals or greenhouse gases) may also convey substantial information.
 - An unambiguous determination of the materials and threshold values that trigger the reporting obligation, with the presumption of responsibility in questionable instances. Persistency, bioaccumulation and toxicity are the leading criteria for the selection of possible additional materials to the list given in the regulation. While existing financial and technical conditions might preclude the compilation of the most ambitious list of materials and thresholds, the system shall make possible its gradual extension in the future,
 - The problem of SMEs (small and medium-sized enterprises) must also be handled. Even where required by the relevant laws, SMEs frequently fail to fulfil their reporting obligations due to a lack of resources and expertise. Within the framework of the provisions of the regulation and the protocol, rules relating to SMEs should ensure the highest level of flexibility. Procedural and institutional solutions, such as support, specific training and free consultations provided by the competent authorities, would be good examples.
- A basic planning consideration is the goal of creating a consumer-driven system within the framework of the internal legal requirements. In order to make the dissemination and explanation of PRTR data effective, the most interested stakeholders should actively be approached with proper packages of information products, including a geographical information system (GIS) exhibition, publications, press conferences, information hotlines etc.

4.2 Regulation

- The guidelines issued by the Commission and the UNECE on the implementation of the regulation and the protocol shall also be taken into consideration as primary sources of information.
- The definitions of the PRTR system can be complex and difficult to implement in practice. The definitions of “installation”, “facility”, “site” and “operator” form a complex system that might determine the whole scope of the regulation in several ways, depending on where the legislator places the emphasis in their interrelationships. It should be noted that the protocol handles the definition problem by providing one single definition of “facility” that gives adequate consideration to the problem of neighbouring sites and to the problem of several facilities being under the control of the same natural or legal person.

SECTION 2 – HORIZONTAL LEGISLATION
REGULATION ON EUROPEAN POLLUTANT RELEASE AND TRANSFER REGISTER

- The destination of off-site transfers of waste is a dispositive rule in the regulation (Art. 8(1), Point f)), while it is *ius cogens* in the protocol. In the case of countries that are both part of the EU and becoming party to the protocol, the more stringent rule should be applicable.
- The UNECE guidance provides useful tools for addressing the important issue of revealing those operators that have not entered into the PRTR system voluntarily, contrary to the relevant PRTR rules. It is advised to use the registers of several chambers of commerce and industry, national statistical records and even international organisations of which the operators in question might be part. To facilitate the search, the competent authorities can use standardised codes such as ISIC (International Standard Industrial Classification) or NACE (Nomenclature générale des activités économiques dans les Communautés Européennes). Naturally, the lists of already existing reporting responsibilities should also be used within the country.
- Countries should note that, in terms of the conditions following the onset of reporting obligations, the two conditions (i.e. running an activity under Annex I and dealing with materials listed in Annex II above the given thresholds) are conjunctive in the protocol but alternative in the regulation, therefore an operator is subject to the reporting responsibility either because the activity is listed in Annex I or because it is listed in Annex II. In the event that an operator has not dealt with any of the materials in Annex II, the operator shall submit a zero report.
- If certain materials or pollutants fall into several categories of Annex II, they shall be reported under all the relevant categories.
- The mother company is a company that exerts control over the facility with the responsibility to report to the PRTR system either as an owner or in another capacity. This category is similar to that of operator, although the operator exerts direct control over the operation of the facility on an everyday basis. However, in certain cases these two definitions might overlap.
- The EC guidance prescribes that the site shall be entered into the format prescribed in Annex III with the co-ordinates of the centre of the facility with a 500 meters tolerance. Naturally, if there are several significant point sources further than that from the centre given in the format, these co-ordinates shall also be given.
- The EC guidance also prescribes that Member States shall add further lines to the form provided in Annex III in order to offer to the operator an opportunity to submit additional voluntary information, *inter alia* about production capacities, number of installations, operation hours or number of employees. Under certain circumstances, the operator might consider including such additional data that are necessary to put the mandatory reported data into a better context for the authorities, the public and other stakeholders. A further line may be attached to the format in which the operator can provide links to their environmental reports or EMAS certificates; describe the history, in particular the environmental history, of the facility and current trends; provide explanatory drawings; and show materials and contact information enabling members of the public to obtain further data. Such additional information shall not be used for the sole purpose of advertisement or be otherwise abused but shall be restricted strictly to environmental data. Furthermore, environmental information shall be even-handed and fair, balanced and trustworthy.
- When reporting on methodology and measurements, operators are entitled to report on measurements made not by them but by other authorities. While any further data attached by the operators may not be in contradiction with these official data, they might be more accurate, more frequent, use more sensitive devices etc. Such measurements may not be made by environmental authorities but, for example, by labour protection authorities, although on this point operators shall take into account the fact that

measuring methodologies in respect to indoor and outdoor environments differ significantly.

- Apart from the various forms of active disclosure of PRTR information, the competent authorities shall remain open to the passive disclosure of environmental information, that is, they shall receive requests for information and, where necessary, they shall provide the proper additional information and explanation in order to enable members of the public effectively to use and understand the PRTR information.
- Continuous (annual or biannual) training of the concerned officials.

5. Costs

Checklist of the Types of Cost Incurred to Implement the Regulation

Initial set-up costs:

- establishment of complex professional teams within the competent authorities for the collection, processing, reporting and dissemination of PRTR information;
- establishment of contact points within the authorities that handle relevant information for the PRTR system;
- provision for initial training;
- preparation of technical and legal guidance materials.

Capital expenditure:

- information technology for the PRTR databases within the relevant authorities;
- purchase and development of the necessary software.

Ongoing running costs:

- continuous (annual or biannual) training of the concerned officials;
- continuous (annual or biannual) training of the concerned operators;
- capacity-building efforts for the concerned NGOs;
- costs related to public participation.

SECTION 2 - HORIZONTAL LEGISLATION
REGULATION ON EUROPEAN POLLUTANT RELEASE AND TRANSFER REGISTER

The LIFE+ Regulation

Official Title: Regulation (EC) No. 614/2007 of the European Parliament and of the Council of 23 May 2007 concerning the Financial Instrument for the Environment (LIFE+) (OJ L 149, 9.6.2007)

1. Summary of the Main Aims and Provisions

Regulation No. 614/2007 entered into force on 1 January 2007, on which date it replaced former Regulation No. 1655/2000 on LIFE.

The LIFE+ Regulation maintains and prolongs the financial instrument known as LIFE (L'Instrument Financier pour l'Environnement), initiated in a Council regulation from 1973, as amended by a further Council regulation in 1996, and Regulation No. 1655/2000. LIFE+ also replaces Regulations (EC) No. 1655/2000 and 2152/2003 and Decisions No. 1411/2001/EC and 466/2002/EC, that is, financial programmes such as the Urban Programme, the NGO Programme and Forest Focus, grouping them under a single set of rules and decision-making procedures and allowing for more consistent targeting.

The general objective of LIFE+ is to contribute to the development and implementation of Community environmental policy and legislation, particularly as regards the integration of the environment into other policies and to sustainable development. LIFE+ comprises three thematic components:

- nature and biodiversity;
- environmental policy and governance;
- information and communication.

The previous LIFE programme, which included LIFE Nature, LIFE Environment and LIFE Third Countries, was the most prominent funding programme focusing on environmental issues. The budget for this programme was around EUR 240 million per year. The financial framework for LIFE+ is EUR 2,143,409,000 for the period 1 January 2007 to 31 December 2013, that is, roughly EUR 300 million per year.

The multi-annual strategic programme set out in Annex II to the LIFE+ Regulation details the priority areas of action for Community funding.

At least 78% of LIFE+ resources are used to fund action grants for projects. The maximum rate of co-financing of action grants is 50% of eligible costs. However, in the case of projects related to the protection of priority habitats or priority species, LIFE+ may finance up to 75% of eligible costs. At least 50% of the funds allocated to action grants for projects are reserved for nature conservation and biodiversity. In addition, at least 15% of the funds allocated to action grants for projects are reserved for cross-border projects.

Co-financed projects must be distributed proportionately by the Commission. The Commission establishes indicative annual allocations for the periods 2007-2010 and 2010-2013 based on the

SECTION 2 – HORIZONTAL LEGISLATION

THE LIFE+ REGULATION

total population and population density of each Member State, as well as the area of sites of Community importance in each Member State and the proportion of a Member State's territory covered by sites of Community importance. Additional funding may be allocated to landlocked Member States.

LIFE+ co-finances environmental schemes in the EU and, under certain conditions, possibly in certain third countries: EU candidate countries, EFTA countries that are members of the European Environment Agency, as well as South Eastern European (SEE) countries that are part of the Stabilisation and Association Process.

LIFE+ is complementary to other EU funding programmes that target investment in the environment, such as the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development, the Competitiveness and Innovation Framework Programme, the European Fisheries Fund and the Seventh Framework Programme for Research, Technological Development and Demonstration Activities. Proposals that fall within the eligibility or scope of these programmes will not be funded through LIFE+.

The Commission carries out audits of funding, monitors the implementation of activities, and recovers any sums improperly received.

The Commission will carry out a mid-term review of LIFE+ by 30 September 2010 at the latest.

Funding committed under previously existing programmes before the entry into force of LIFE+ will remain subject to the same rules until completion.

2. Principal Obligations of Member States

2.1 General

Applications for financial support from LIFE+ must be submitted to the Commission by the Member State. To this end, it is necessary for the relevant national authorities in Member States to set up sufficient administrative structures and mechanisms to enable them to take a co-ordinating role for LIFE+ applicants within their own country. This includes receiving applications for LIFE+ funding each year, undertaking an initial evaluation, and submitting acceptable applications to the Commission. National authorities have the possibility to publish national annual priorities chosen from Annex II of the LIFE+ Regulation. The national annual priorities are taken into account in the evaluation process, which is under the full responsibility of the Commission as specified in the evaluation guide published with the calls for proposals. The national authorities may also provide written comments on individual project proposals, in particular on whether they correspond to the national annual priorities.

Member States are also required to provide a representative to participate in a committee to assist the Commission in decisions regarding the implementation of LIFE+. This committee meets on a periodic basis.

EFTA countries, candidate countries and those SEE countries that have an association agreement with the European Community and the Member States may participate in LIFE+, provided that they contribute to the global budget of the programme. In practice, these countries can participate depending on supplementary funds but there is no guarantee that projects from these countries will be funded in any given year. So far, no third country has expressed interest in participating in LIFE+.

3. Implementation

3.1 Key Tasks

The key tasks to be fulfilled by Member States in implementing this regulation are given in the following checklist.

THE LIFE+ REGULATION - KEY IMPLEMENTATION TASKS	
1	Planning
1.1	Appoint a competent authority to act as a national focal point for evaluating and forwarding applications to the Commission.
1.2	Ensure that the competent authority has the resources to undertake the duties required under the regulation.
1.3	Appoint representatives to attend meetings of the LIFE+ committee to take implementing decisions to assist the Commission and to evaluate applications for funding.
1.4	Implement a monitoring mechanism for tracking the technical and financial aspects of all projects funded under LIFE+.

3.2 Phasing Considerations

The LIFE programme has been implemented in phases. The first phase (LIFE I) was established by Regulation 1973/92 and lasted until 31 December 1995. Regulation 1404/96 established the second phase (LIFE II), which ran from 1 January 1996 to 31 December 1999. Regulation 1655/2000 (the LIFE III Regulation) applied from January 2000 to December 2004 inclusively. LIFE III was subsequently extended from 2005 to 2006 by Regulation (EC) No. 1682/2004. LIFE+, laid down by Regulation (EC) No. 614/2007, entered into force on 12 June 2007 and follows on from the LIFE III programme. It covers the period 2007 to 2013.

4. Implementation Guidance

LIFE+ is a financial instrument to co-fund actions (projects) in the environmental sector. It comprises three components with specific objectives:

- LIFE+ Nature and Biodiversity
 - to contribute to the implementation of Community policy and legislation on nature and biodiversity, in particular Directives 79/409/EEC and 92/43/EEC, at both local and regional level, and to support the further development and implementation of the Natura 2000 network, including coastal and marine habitats and species;
 - to contribute to the consolidation of the knowledge base for the development, assessment, monitoring and evaluation of Community nature and biodiversity policy and legislation;
 - to support the design and implementation of policy approaches and instruments for the monitoring and assessment of nature and biodiversity and the factors, pressures and responses that impact on them, in particular in relation to the achievement of the target of halting biodiversity loss within the Community by 2010 and the threat to nature and biodiversity posed by climate change;
 - to provide support for better environmental governance by broadening stakeholder involvement, including that of NGOs, in consultations on, and the implementation of, nature and biodiversity policy and legislation.
- LIFE+ Environmental Policy and Governance
 - to contribute to the development and demonstration of innovative policy approaches, technologies, methods and instruments;
 - to contribute to consolidating the knowledge base for the development, assessment, monitoring and evaluation of environmental policy and legislation;

SECTION 2 – HORIZONTAL LEGISLATION
THE LIFE+ REGULATION

- to support the design and implementation of approaches to the monitoring and assessment of the state of the environment and the factors, pressures and responses that impact on it;
 - to facilitate the implementation of Community environmental policy, with particular emphasis on implementation at local and regional level;
 - to provide support for better environmental governance by broadening stakeholder involvement, including that of NGOs, in policy consultation and implementation.
- LIFE+ Information and Communication
 - to disseminate information on and raise awareness of environmental issues, including forest-fire prevention;
 - to provide support for accompanying measures, such as information, communication actions and campaigns, conferences and training, including training on forest-fire prevention.

To qualify for funding, projects must contribute to the development, implementation and updating of Community environmental policy and environmental legislation; be technically and financially coherent and feasible and provide added value; and satisfy at least one of the following criteria:

- either be best-practice or demonstration projects concerning the protection of wild birds or habitats;
- be innovative or demonstration projects relating to Community environmental objectives;
- be awareness-raising campaigns; or
- be special training for agents involved in forest-fire prevention or be projects for the development and implementation of Community objectives relating to the broad-based, harmonised, comprehensive and long-term monitoring of forests and environmental interactions.

The Commission issues an annual call for proposals, in line with the multi-annual strategic programme set out in Annex II. The Commission decides which out of the submitted projects qualify for financial support under LIFE+ and regularly publishes the list of these projects.

Community financing may take a number of forms: either grant agreements (framework partnership agreements, participation in financial mechanisms and funds, or co-funding of operating or action grants) or public procurement contracts (for the purchase of services and goods).

Calendar for 2007:

2007 Project Selection	Period
Application guidelines and forms published	28 September 2007
Submission of proposals to national authority	30 November 2007
Member States' submissions to the Commission	15 January 2008
Evaluation of eligibility criteria	16 January 2008 until 15 February 2008
Evaluation of selection and award criteria	16 February 2008 until 30 April 2008
Provisional long list of projects	1 May 2008
Revision of project proposals	1 May 2008 until 15 July 2008
Project long list submitted to the LIFE+ committee	15 July 2008

LIFE+ committee meeting	31 July 2008
Signature of grant agreements	16 October 2008 until 30 November 2008
Earliest possible starting date for projects	1 January 2009

As no project has yet been awarded LIFE+ funding, all the examples of projects are taken from LIFE programmes, which included, notably, LIFE Nature and LIFE Environment.

Examples of LIFE Nature Projects

In 1999, 94 new projects were co-funded under the LIFE Nature scheme, with the Commission providing EUR 64.8 million out of the total investment of EUR 135.6 million. The main beneficiaries were non-governmental organisations (NGOs) and public authorities, such as municipalities, regional authorities and park administrations. The main areas of expense were non-recurring, one-off actions and recurring biotope management costs.

Examples of LIFE Nature projects chosen in 2002, of which 77 out of 188 projects were eligible under the LIFE III phase (total budget of EUR 640 million), include three projects in Belgium to target rare and threatened vegetation, one in Austria to conserve the small brown bear population, and three in Greece to protect wetlands.

Other significant projects include the conservation of the Iberian lynx, the bottlenose dolphin, the harbour porpoise, the loggerhead turtle and the giant lizard of La Gomera in Spain, where there are a total of 11 projects.

Examples of LIFE Environment Projects

Since 1999, LIFE Environment has financed more than 130 projects focusing on energy and more than 290 on waste. These have been complemented by a number of waste-related LIFE Third Countries and some LIFE Nature projects.

9% of all LIFE Environment projects have specifically addressed energy-related issues, with the number of energy projects increasing over the years to reach 24% of projects accepted in 2006. Project themes include energy production and distribution, renewable energy technologies, energy efficiency in different sectors, as well as the reduction of greenhouse gases. Slovenia, Slovakia, Estonia and Latvia have the highest share of country projects focusing on energy.

In total, 19% of all LIFE Environment projects have specifically addressed issues in the waste sector. Old Member States implemented most waste-related projects, with the most active countries being Spain (51 projects), France (44 projects) and Italy (35 projects). However, two new Member States, Hungary and Slovakia, had the highest proportion (33%) each of projects focusing on waste.

Information source:

<http://ec.europa.eu/environment/life/publications/lifepublications/lifefocus/env.htm>

4.1 Application Process

The LIFE+ programme is open to legal entities, whether public or private, commercial or non-commercial, that are registered in the Member States of the European Union. This includes industry, local authorities and NGOs.

Project proposals may either be submitted by a single entity or by a partnership from one or more of the 27 Member States of the EU.

Eligible persons or organisations must prepare their application using the specific application forms available from the Commission. Applicants should be aware of the current application

SECTION 2 – HORIZONTAL LEGISLATION

THE LIFE+ REGULATION

procedures, including submission dates to the national competent authorities, since these may vary from one year to the next. The LIFE+ unit of the Commission's Environment Directorate General produces a full set of explanatory notes on the application procedures, including a description of the evaluation process. Application forms and guidance can be downloaded directly from the Internet from the following website: <http://ec.europa.eu/environment/life/funding/lifeplus.htm>

The competent authority receives applications and undertakes an initial evaluation to check that the applications are valid under the rules of the LIFE+ programme. Eligible projects are forwarded to the Commission.

Funds are allocated within the limits allowed by the thematic and national allocation rules of the LIFE+ Regulation. Support will be allocated to the best proposals, which must be technically and financially sound and offer value for money.

4.2 The Evaluation Process

LIFE+ project proposals must be submitted to the competent national authority of the Member State, which then forwards the proposals to the Commission. All proposals received by the Commission via the competent national authorities are registered in the ESAP (Evaluation and Selection Award Procedure) database.

The LIFE+ unit of the Environment Directorate General is responsible for the evaluation procedure. It verifies eligibility and the selection and award criteria with the assistance of independent expert evaluators, and proposes to the LIFE+ committee, made up of representatives of the 27 Member States and chaired by the Commission, a list of project proposals for co-financing.

During the eligibility phase, the European Commission checks whether the proposals submitted are complete and have been submitted in the required format. In the event that a proposal is found to be incomplete, co-ordinating beneficiaries may be contacted and asked to submit the missing information within a specific deadline. Only those proposals that are deemed complete and that are submitted according to the requested format will be admitted to the following phase.

During the selection phase, the European Commission checks whether the proposals submitted comply with the general technical and financial selection criteria that are outlined in the evaluation guide.

All proposals that have not been rejected by the end of the previous selection phase are admitted to a more in-depth evaluation in the award phase. A score is given to each proposal on the basis of the following seven award criteria applicable to all three branches of LIFE+ project funding:

- technical coherence and quality;
- financial coherence and quality;
- contribution to the general objectives of LIFE+;
- European added value;
- complementarity and optimal use of EU funding;
- transnational character;
- national added value according to the LIFE+ national authority.

A short list of proposals is drawn up, which is then evaluated by the LIFE+ committee.

The Commission makes a final decision on the projects to be co-funded, based on the opinion of the committee. The Commission notifies the successful applicants and awards the contracts.

During the period 2007-2013, the European Commission will launch one call for LIFE+ projects per year. It should be noted that the criteria may change within each call period.

The Commission is responsible for monitoring projects that have been funded and for undertaking any corrective action in the case of irregularities. The beneficiaries of funds must submit to the Commission technical and financial reports on the progress of work as well as a final report within three months of the completion of each project. The Commission must also report to the European Parliament and to the LIFE+ committee in the context of the mid-term review of the LIFE+ Regulation.

The Commission promotes the LIFE+ programme through a variety of channels, e.g. publications, seminars, conferences and the provision of information on the Commission's website. Dissemination is one of the key objectives of LIFE+.

Guidelines for the latest funding call are of use and can be found at:

http://ec.europa.eu/environment/life/funding/lifeplus/components/documents/lifeplus_evaguide.pdf

4.3 Planning

- The competent authority for administering LIFE+ within Member States is generally the ministry with responsibility for the environment. In some federal states, applications are sent to the regional authorities with responsibility for the environment.
- The competent authorities may also undertake other activities to promote LIFE+, including providing information on their websites relating to calls for proposals, application procedures, background, eligibility criteria, past projects and contacts at the national level and also in the European Commission. Competent authorities should also assist applicants in preparing applications for funding.

Example of Practice in a Member State

The UK's national authority for LIFE+ is the Department for Environment, Food and Rural Affairs (Defra). Defra has contracted Beta Technology Limited to be the contact point for all LIFE+ applications and to assist organisations and individuals to access LIFE+ funding. This free service is available to all organisations that would like to find out more information or participate in LIFE+.

Beta Technology Limited provides guidance to applicants on the most suitable components of the programme and provides technical support from the beginning of the application process (preparation of proposals, etc). Beta Technology Limited's role is to collect all the proposals and perform a pre-screening of all proposals for eligibility and content before they are sent to Defra and then to the Commission. The applications are then sent to Brussels to be evaluated by the Commission assisted by external experts.

It is also involved in awareness raising and the dissemination of information regarding LIFE+.

- The dissemination of information on successful projects within the Member States helps to encourage future participation in the programme.
- Applications must be made in strict accordance with the application rules or they will be rejected at the first stage of evaluation.
- Applicants are advised to adopt a logical framework approach to preparing their applications.
- Although there is no pre-determined project duration for a LIFE+ project, it must be long enough for the completion of all actions and objectives set out in the project plan. Most projects therefore last between two and five years.

SECTION 2 – HORIZONTAL LEGISLATION
THE LIFE+ REGULATION

- There is no fixed minimum project budget. However, in the past the EC does seem to have favoured the co-financing of large, ambitious LIFE proposals that have had a substantial budget, for which the grant has been more than EUR 1 million.
- All applicants will be asked to explain how they intend to ensure that the carbon footprint of their project is kept as low as possible.
- Proposals may be submitted in any of the official EU languages, except Irish or Maltese, although it is recommended that the technical part of the proposal be completed in English. There are also requirements for applications, or summaries, to be prepared in English. Applicants need to check the details contained in the application guidelines and must allow sufficient time and resources for dealing with constraints imposed by language requirements.
- Applicants must ensure that they have the support of the relevant competent authority, local authorities and administrators, landowners and other relevant associations, in the preparation of the proposal and the execution of the project.

5. Costs

The main types of costs to Member States arising during the implementation of this regulation are indicated in the checklist below.

Checklist of the Types of Cost Incurred to Implement the Regulation

Initial set-up costs (to the competent authority):

- staff and training;
- office accommodation;
- communications;
- computer systems.

Ongoing costs (to the competent authority):

- staff;
- consumables.

The major single cost to Member States of implementing the regulation is likely to be the costs incurred by the competent authority. Applicants must bear the cost of preparing the application and of providing the co-funding to undertake the project.

The INSPIRE Directive

Official Title: Directive 2007/2/EC of the European Parliament and of the Council of 14 March 2007 establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) (OJ L 108, 25.04.2007)

1. Summary of the Main Aims and Provisions

The INSPIRE Directive serves to establish the necessary infrastructure for spatial information within the EU to ensure the better integration of environmental policy making into other policies as specified in the Sixth Environmental Action Programme adopted by Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 (OJ L242 10.09.2002 p1).

The INSPIRE Directive responds to the need for quality geo-referenced information to support understanding of the complexity of, and interactions between, human activities and environmental pressures and impacts. It addresses the current general situation with respect to spatial information in Europe, where there is an urgent need to fill in gaps in availability and to eliminate the duplication of information collection, as well as to compensate for the fragmentation of existing datasets and sources. All these problems make it difficult to identify, access and use the data that are available, to the detriment of environmental integration, given the importance of data to a large number of policy and information themes across various levels of public authority. The INSPIRE Directive is complementary to related policy initiatives, such as the Commission proposal for a directive on the re-use and commercial exploitation of public sector information (2003/98/EC) and to the Directive on Public Access to Environmental Information (2003/4/EC).

The implementation of the directive is challenging because of the current problems outlined above and also because there are many stakeholder interests to be addressed. The target users of INSPIRE include policy makers, planners and managers at European, national and local level, as well as citizens themselves and their organisations.

In order to reach its objective, the directive provides a legal framework that involves: removing obstacles that stall the exchange of data; harmonising structures to promote the standardisation of data interfaces; and increasing the interoperability of data acquisition systems. The directive also provides for the pooling of spatial information from a variety of sources in order to disseminate it in a user-friendly format, and for the creation of a single network that will integrate all available data providers that are currently not interconnected within a single system. The directive also ensures that the infrastructure established provides spatial data services across various levels of public authority and across different sectors.

2. Principal Obligations of Member States

2.1 Planning

Member States should:

- Identify spatial datasets that meet the conditions established under Article 4 (1) of the directive.
- Identify the national authorities that hold such data.
- Identify international standards, especially with respect to the validation of meta-data and any existing initiatives.
- Identify stakeholders for the purposes of Article 22(1) of the directive and assess user requirements.

2.2 Regulation

2.2.1 The formulation of legal instruments that:

- Regulate the collection and dissemination of all spatial data that fulfils the conditions stipulated under Article 4 of the directive and provide for legal obligations with respect to the spatial data's:
 - availability;
 - updating;
 - quality;
 - organisation;
 - accessibility;
 - sharing; and
 - compatibility when used at EU level.

There is no obligation under the directive to collect new spatial data or to regulate spatial data in accordance with the INSPIRE Directive if it lacks any of the conditions stipulated under Article 4.

- Establish meta-data for spatial datasets and services. This entails the obligation to include information describing spatial datasets and spatial data services as well as making possible their:
 - discovery;
 - inventory; and
 - use.

2.2.2 Establish by law a competent authority or authorities that have regulatory powers to:

- Co-ordinate the provision of spatial datasets and services at the intergovernmental level, specifying:
 - the type of contributions to be considered;
 - the designated authority responsible for co-ordination; and
 - the distribution of powers between various co-ordinating entities.
- Provide for the continuous updating of meta-data, spatial datasets and services.
- Facilitate the exchange of spatial data and related services between national authorities and with other Member State institutions.

- Monitor compliance with the obligations of the directive, as well as quality control and reporting requirements.

2.2.3 Formulate legal instruments with implementation rules for the interoperability and harmonisation of spatial data.

These implementation rules must provide for:

- the identification of spatial objects through a common framework where identifiers can be mapped to ensure interoperability;
- the relationship between the spatial objects;
- key attributes and multilingual thesauri used in policies having an environmental impact;
- information on the temporal dimension of the data; and
- data updates.

2.2.4 Establish under national legislation a network of services for spatial datasets and services for which meta-data have been created and provide for its operation.

- The network must provide all of the services referred to in Article 11(1) of the directive and take into account:
 - relevant user requirements;
 - user friendliness; and
 - public availability and accessibility via Internet or other means of telecommunication.
- The network must provide the discovery, view, download and transformation services referred to in Article 11(1)(a), which implement all of the search criteria in Article 11(2).
- The network must combine the transformation services referred to in Article 11(1)(d) with other services to ensure that all services are operated in compliance with the implementation rules referred to Article 7(1).
- Legislation must remove all obstacles, legal or otherwise, in order to ensure unrestricted access to the network for public authorities and third parties whose spatial datasets and services comply with the implementing rules, whenever they request it. The only exceptions to obstacles to access may be those listed in Article 13. Compliance with Directive 95/46/EC must also be ensured.
- Legislation must ensure that network services relating to the discovery services and view services referred to in Article 11(1) (a) and (b) must be available to the public free of charge. Proportionate charges or licenses to gain access to, exchange and use spatial data and services may be levied or imposed in accordance with Article 14.

2.2.5 National legislation must set obligations to facilitate data sharing:

- National legislation must set up measures to render it legally obligatory for public authorities to be able to gain access to, and also to share, spatial datasets and services in accordance with the directive.
- National legislation must provide for obligations that prohibit restrictions at point of use and the sharing of such datasets and services.
- National legislation should provide for obligations setting parameters for a licensing mechanism to which public authorities that are obliged to provide and exchange spatial data must adhere.

SECTION 2 – HORIZONTAL LEGISLATION

THE INSPIRE DIRECTIVE

- National legislation must allow the sharing and exchange of data with other EU institutions and Member States.

2.3 Monitoring

Competent authorities established by law shall be legally responsible for monitoring:

- various sources of spatial data holders according to the themes listed in Annex I, II and III, and their role in distributing spatial data and services;
- meta-data according to Article 5, ensuring its updating and quality control;
- stakeholders' involvement;
- accessibility, or limitations thereto, in accordance with Article 13;
- the implementation and use of spatial data and services.

2.4 Reporting

- Candidate countries must ensure that their competent authorities have the necessary capacity to fulfil, within the appropriate time-frames and on a permanent basis, their reporting requirements to the Commission. This is a legal obligation, which is binding upon competent authorities of candidate countries.
- Candidate countries must, however, provide for legal instruments that make it obligatory to report/provide information to the public both upon request and also at regular intervals such as, for example, in state of the environment reports.
- The competent authority must be in a position to provide, upon request, information to the public and to the Commission about the implementation rules adopted.

2.5 Additional Legal Requirements.

- This directive was concluded on the basis of Decision No. 1600/2002/EC adopting the Sixth Environmental Action Programme and further to Council Regulation EEC No 1210/90 establishing a European Environmental Agency and the European Environment Information and Observation Network.
- The directive is without prejudice (supplementing) to Directive 2003/4/EC on public access to environmental information and Directive 2003/98/EC on the re-use of public sector information.
- The directive provides significant added value to Council Regulation EC No. 876/2002 setting up the Galileo Joint Undertaking; and to the Communication from the Commission on global monitoring for environment and security (GMES).
- The directive must be read in conjunction with other initiatives under Community legislation, namely Commission Decision 2000/479/EC on the implementation of the European Pollutant Emission Register (EPER), Council Directive 2008/1/EC concerning integrated pollution prevention and control, and Regulation EC 2152/2003 concerning the monitoring of forests and environmental interactions in the Community.
- The provision of network services under the directive must be in full compliance with Directive 95/46/EC on the protection of individuals with regard to the processing of personal data.
- In implementing the directive, international and European standards must be taken into consideration in accordance with the procedure laid down in Directive 98/34/EC laying

down a procedure for the provision of information in the field of technical standards and regulations.

- The implementation measures referred to in the directive should be adopted in accordance with Council Decision 1999/468/EC, laying down procedures for the exercise of implementing powers conferred on the Commission.

3. Implementation.

3.1 Key Tasks

The key tasks involved in implementing this directive are summarised in the checklist below. The tasks are arranged under subheadings and organised in chronological order of implementation wherever possible.

1. Planning
<p>1.1 Locate spatial data covered by the directive and the holders of such data (Art. 4).</p> <p>1.2 Assign duties to the competent authority or authorities that will carry out regulatory, co-ordination and co-operation measures (various articles and Art. 18).</p> <p>1.3 Devise memoranda of understanding for various competent authorities that will work together to set up and co-ordinate networks.</p> <p>1.4 Conduct a feasibility analysis for implementing rules with respect to the interoperability of spatial datasets and estimate their cost effectiveness.</p> <p>1.5 Organise stakeholder meetings to facilitate the exchange of information, to ensure the participation of stakeholders in preparatory work and to identify user needs.</p>
2. Regulation
<p>2.1 Publish legal instruments for the collection and dissemination of spatial data and meta-data (Arts. 4, 5 and 6). Compile meta-data corresponding to the themes listed in Annexes I, II and III. Devise quality control for meta-data.</p> <p>2.2 Establish implementation rules for the harmonisation and interoperability of spatial datasets and services (Art. 7) corresponding to the themes in Annexes I and II (Arts. 8, 9 and 10). The regulatory procedure must be in accordance with Article 5a(1) - (4) and Article 7 of Decision 1999/468/EC.</p> <p>2.3 Establish network services (Arts. 11-16) that provide for discovery, view, download and transformation services and for services allowing spatial data services to be invoked. The services must operate using search criteria in accordance with Article 11(2). Quality control assessment shall include accessibility, user friendliness and compatibility with the implementation rules in Article 2.2.</p> <p>2.4 Provide access to the network services to public authorities and third parties whose spatial datasets and services comply with the implementing rules. The only exceptions to obstacles to access may be those listed in Article 13. Compliance with Directive 95/46/EC must also be ensured.</p> <p>2.5 Conclude memoranda of understanding identifying which public authorities are involved, and for which tasks, in order to ensure that the network facilitates the exchange of spatial data and related services.</p> <p>2.6 Ensure that national infrastructure will enable access to the services referred to in Article 1(1) through the INSPIRE geo-portal that will be established and operated by the Community.</p> <p>2.7 Set up e-commerce services if the view and download services and access to spatial data services are available against payment.</p> <p>2.8 Devise national measures to ensure access to data sharing and to facilitate the exchange of</p>

SECTION 2 – HORIZONTAL LEGISLATION
THE INSPIRE DIRECTIVE

data (Art. 17) for all public tasks that may have an impact on the environment. Measures must include the issuing of guidelines for setting up licensing systems or the stipulation of fees for the provision of spatial datasets and services to ensure that they do not create obstacles to data sharing.

3. Training and Capacity Building

3.1 Prepare and publish guidance on the duties and the roles of the various public authorities that are obligated under the directive to provide access to spatial datasets and services.

3.2 Provide user guides and a list of user rights with respect to access to spatial datasets and services, including transferring incorrectly addressed requests to the correct public authority.

3.3 Provide technical training to officers in public authorities involved in the provision of spatial data services in order to optimise their services. Train a selected group to ensure quality control. Provide training in communication skills for officers who handle user claims and queries.

3.4 Provide information to stakeholders, including those representing the relevant competent authorities. The said training should also assist trainees in internal management processes.

4. Reporting

4.1 Provide information at regular intervals on a national level and set up an infrastructure to handle demands upon request by the public or public authorities, whether national or from other Member States.

4.2 Set up the necessary infrastructure to report to the Commission any information in accordance with the directive, including:

- experience gained in implementing the directive;
- measures taken to comply with the directive;
- transposition;
- obstacles met with in implementing the directive.

4.3 Given the importance of good co-ordination amongst public authorities to implement this directive, consider the appointment of one contact point responsible for co-ordination supported by a co-ordination structure.

3.2 Phasing Considerations

INSPIRE is not expected to directly affect Member States until 2007-2008 at the earliest. However, key organisations are advised to start their preparations as early as possible, given the potentially far reaching nature of some of its proposals.

Candidate countries are likely already to possess a large body of spatial data in numerous public organisations that fulfil the conditions under Article 4 and are therefore subject to regulation in accordance with the directive. These organisations may need a substantial amount of time not only to transpose the directive but also to ensure the necessary capacity building both logistically and in terms of human resources. The major tasks involved that are likely to be time-consuming are: to create meta-data, to ensure the interoperability of spatial datasets and services, to set up network services and facilitate data sharing, and to ensure better co-ordination at the national and EU level.

The national competent authorities, (i.e. the national environment ministry or agency and their regional or local counterparts, providers of public services related to the themes listed in the three annexes to the directive, as well as all public authorities whose activities have an environmental impact must ensure appropriate and efficient co-ordination). Whilst the nature of the directive itself involves many stakeholders even amongst public authorities, the creation of

one authority to regulate and monitor compliance and to be responsible for co-ordination and reporting to the Commission should be considered.

All competent authorities must train personnel in procedures and best practices for interfacing with stakeholders as regards the provision of spatial datasets and services, bearing in mind that such information can, at times, be sensitive.

The directive provides specific time-frames for compliance by Member States, such as those in Article 7. Preparations must also be made to provide national links with the EU's geo-portal referred to in the directive.

4. Implementation Guidance

4.1 General

During the transposition phase, careful consideration must be given to a number of legal and organisational issues to ensure compliance and better co-ordination. Legal issues that need to be addressed, given the nature of the obligations of the directive, include: principles of confidentiality, conditions under which to allow a request for spatial data information to be refused, co-ordination between public authorities involved in the network set up when providing access to spatial datasets and services as well as meta-data or in exchanging such data and services. It is essential to give consideration to training officers in all public authorities regarding compliance with the INSPIRE Directive. Training officers in all public authorities that will be involved in the implementation of the INSPIRE Directive is essential, both for compliance purposes and good governance.

Another issue that has been highlighted by research institutes and consultancies is that there is a need for clearer guidelines regarding the separation of public duties and commercial activities. Furthermore, the following aspects need to be dealt with in order to mitigate the negative consequences for private sector providers of meta-data:

- inconsistent legislation and policies;
- the fact that public sector bodies often have a monopoly on collecting and disseminating certain meta-data;
- inconsistent fees and conditions;
- lack of transparency regarding costs.

Examples of Implementation in Member States (UK)

The Department of Environment, in its assessment of the INSPIRE Directive and its consequences at national level, estimated that the regional development agencies (RDAs) could have enhanced responsibility for co-ordinating public sector business support and advice in certain flood data management and dissemination activities. This would include post-flood event recovery initiatives. RDAs could take direct responsibility for capturing, or for being the repository of, certain datasets from business. They should also take steps to improve the quality and consistency of data on flood issues in order to support and advise business and support services.

4.2 Regulation

The definitions of the directive must be carefully transposed and abided by in order to ensure compliance. Special attention must be given to Article 4(1), as this establishes the type of spatial data to which the obligations of the directive apply. Candidate countries must also draw up parameters in order to determine the criteria to regulate licensing by public authorities with respect to access to data, the kind of charges that may be levied, and the circumstances under

SECTION 2 – HORIZONTAL LEGISLATION

THE INSPIRE DIRECTIVE

which the derogations referred to in the directive regarding access to spatial data should be applied.

National legislation should leave as little discretion as possible to the public authorities in order to ensure smooth implementation and uniform application. Provision should also be made in legal instruments to establish when requests may be refused – for example when they are manifestly unreasonable or likely to be used and availed of for commercial purposes. In the event that it is considered inappropriate to include certain measures in a legal instrument because of their predominantly administrative nature, it is recommended that memoranda of understanding be drawn up to ensure smooth and uniform implementation given the large number of public authorities that may be involved. Transparency is of vital importance and the competent authority, as the regulator, must provide lists of public authorities and the type of spatial data and services falling within the scope of Article 4(1) of the directive, as well as the type of data and services that they hold and that they are legally bound to provide and exchange.

National legislation must provide the necessary steps to ensure that existing spatial datasets and corresponding spatial services falling under the themes listed in Annexes I, II and III of the directive are compiled into meta-data and are in conformity with the implementation rules specified in the directive. It must be decided whether this is to be done via adaptation or through transformation in accordance with Article 11(1)(d). Where spatial datasets correspond to one or more of the themes listed in Annex I or II, the implementing rules provided for in Article 7 must address the aspects of spatial data listed in Article 8(2), ensure information consistency in accordance with Article 8(3), and ensure comparability in accordance with Article 8(4).

National legislation must provide for links between the spatial datasets and services to the network, identify who is responsible for ensuring that this happens, and provide this information to the public. Any limitations to access and any derogations on any grounds must be interpreted in a very strict manner. Any charges for access to services referred to in Article 11 1(a) and (b) may only be levied where permitted by the directive. The provision of e-commerce services is obligatory when charges are made, in accordance with Article 11 (1) (b) (c) (e).

Examples from Practical Implementation in Member States (SE)

The National Land Survey of Sweden published a report in October 2007 analysing the need for legal and administrative adaptation in order to comply with the INSPIRE Directive. This report found that the Swedish legal system needs further adaptation as well as further division of responsibilities among competent authorities to deal with the tasks under the directive, mainly to create meta-data, disseminate information in electronic format through network services, and to share data with other authorities. Among other things it recommends:

- strengthening the legal framework with respect to the public's right to access meta-data;
- adapting existing legal and administrative frameworks, especially on the use of geo-data;
- adopting an additional law on infrastructure for geo-data;
- giving attention to important aspects of the exchange of geo-data and services, such as security, vulnerability and personal integrity.

Sweden is currently working on adapting national laws and regulations to the provisions of the INSPIRE Directive. The Environmental Ministry also tabled a legislative proposal in June 2008, which is expected to be adopted by 15 May 2009. The Environmental Ministry will also designate the competent authorities responsible for the various themes set out in the annexes to the directive.

(Information source:

http://www.naturvardsverket.se/upload/02_tillstandet_i_miljon/Miljoovervakning/samordning/inspire_2008.pdf)

4.3 Monitoring

The primary competent authority for implementing this directive is usually the ministry for the environment, or an agency for environment protection, which shall be the regulator responsible for monitoring compliance and enforcement. Sub-national competent authority participation, however, will often be vital since accountability and everyday communications with stakeholders will also almost inevitably occur at the sub-national level. However, spatial data may be held by a large number of public bodies within a state. At the central government level, these may include government ministries for agriculture, spatial planning, transportation, statistics, forestry, water resources, post, telecommunications etc. Other types of national bodies that may hold relevant spatial data and provide related services include environmental protection agencies, meteorological offices, research institutions, universities etc. At the regional and local level, spatial data may be held by sub-national or local environmental inspectorates or environment agency offices, local government offices, local planning authorities and municipalities etc.

Although the lead ministry or the focal point for the purposes of the directive may be the environment ministry or the environment agency that would have the necessary regulatory and monitoring powers, implementation is likely to be exercised by all other public authorities. Given the expanded definition of “public authorities” in Article 2, the providers of spatial data relating to the themes referred to in Annexes I, II and III of the directive that are under the control of the public administration are also to be placed under the obligations imposed by the directive, at least to forward requests for information on spatial datasets and services as well as the compilation of meta-data to the relevant public administrative body.

The principal competent authority should be responsible for monitoring:

- the identification of spatial data that falls under the scope of the directive and its updating;
- the public authorities responsible for compliance;
- the compilation of meta-data;
- quality assurance for the interoperability of spatial datasets and services;
- the setting up and operation of the network service;
- quality control and the general operation of data sharing, even in transboundary situations;
- general co-ordination;
- reporting to the public and to the Commission; and
- preparatory work to provide access to services referred to in Article 11(1) through the EU-wide INSPIRE geo-portal.

Experience of Practical Implementation in Member States (SE)

The Swedish Environmental Protection Agency (Naturvårdsverket) is one of the main authorities in Sweden concerned with planning the implementation and application of the INSPIRE Directive. The EPA participates, together with nine other authorities, in a working group for INSPIRE. The working group has, amongst its tasks, the preparation of input to the Commission implementation committee for INSPIRE.

The EPA also participates in the Geo-data Council at the National Land Survey of Sweden (Lantmäteriet) and has been involved in preparing a national strategy for geo-data (the strategy can be obtained at: www.lantmateriet.se/geodata).

The EPA is mainly affected by the INSPIRE Directive as a collector and owner of data, obtained through its supervisory and monitoring responsibilities. The EPA is currently preparing a working plan to meet the commitments arising from the directive and the Swedish implementing legislation. The EPA is likely to be the main authority responsible for collecting and disseminating information for a number of different themes involving the set-up of meta-data and establishing

network services to upload and make these data available on the Swedish geo-portal.

The following link provides regularly updated information on the work towards implementing the directive:

<http://www.geoforum.se/page/158/305>

4.4 Enforcement

Enforcement is a complex issue in the INSPIRE Directive, since it does not contain provisions stipulating sanctions. It is unlikely that states will provide for penalties since it is the public authorities, in this case, that would be non-compliant. Despite the lack of obligation to provide sanctions, the Member States are still subject to infringement procedures if they do not comply with the directive's provisions, therefore some form of deterrent, such as reporting, is recommended in order to name and shame non-compliant authorities. However, this is an optional measure.

5. Costs

The INSPIRE Directive itself states that implementing rules should be based, where possible, on international standards and should not result in excessive costs for Member States.

Costs will depend largely on the size of the country, the constitutional and administrative system (e.g. centrally organised administration or decentralised/federal administration), and on the already existing structure for the collection, dissemination and exchange of geo-data and meta-data. Candidate countries that already have in place a functioning system for this data will incur substantially lower costs than those for which this is a new area.

Some of the costs of setting up and maintaining geo-data portals can be offset by charging a proportionate and reasonable fee. Charges for using datasets are often higher in the initial stages and become lower over time.

One consequence of providing access to geo-data free of charge is that it is likely to have a negative financial impact on companies in the private sector that are selling similar datasets. The private sector could therefore view the dominant position of agencies in terms of collecting and disseminating geo-data at low prices as being unfair competition.

The Reporting Directive

Official Title: Council Directive 91/692/EEC standardising and rationalising reports on the implementation of certain directives relating to the environment (OJ L 377, 31.12.91)²⁰

1. Summary of the Main Aims and Provisions

The aim of the directive is to rationalise and improve the way in which information is transmitted to the Commission by Member States on the implementation of certain directives relating to the environment. Member States are required to report to the Commission on the implementation of most directives every three years, but an annual report is required for the Bathing Water Directive (2006/7/EC). The directive does not require the adoption of legislation, as it only places obligations on Member States to report to the Commission.

2. Principal Obligations of Member States

2.1 Reporting

- In respect of each of the directives listed in Annexes I to VI, send information to the Commission on the implementation of the directive, in the form of a sectoral report, within specified time limits (Arts. 2, 4 and 5).
- Ensure that sectoral reports are drawn up on the basis of the relevant questionnaire or outline provided by the Commission in respect of that sector (Arts. 2, 4 and 5, and Commission Decisions 94/741/EC [as amended by Commission Decision 2007/151/EC²¹], 97/622/EC and 96/511/EC).
- In respect of the Bathing Water Directive (Council Directive 2006/7/EC), send a report on implementation to the Commission every year, drawn up on the basis of the questionnaire or outline provided by the Commission (Art. 3).
- Report to the Commission on implementation of the directive (Art. 7).

2.2 Additional Legal Instruments

²⁰ As amended by Regulation (EC) 1882/2003 as regard Article 6 and the requirements on committees for the Commission.

²¹ This Decision amends Decision 94/741/EC and 97/622/EC as regards questionnaires for the report on the implementation of the Waste Directive (96/12/EC) and the Hazardous Waste Directive (91/689/EEC). Decision 94/741/EC is amended in terms of the content of the questionnaires (Art. 7(1))

SECTION 2 - HORIZONTAL LEGISLATION THE REPORTING DIRECTIVE

The Reporting Directive affects the implementation of the 27 directives listed in the annexes to the directive.

3. Implementation

3.1 Key Tasks

The key tasks required to implement this directive are summarised in the following checklist. Tasks are arranged under subheadings in chronological order wherever possible.

THE REPORTING DIRECTIVE - KEY IMPLEMENTATION TASKS	
1	Planning
1.1	Identify the competent authority (or authorities) to be appointed to implement this directive.
1.2	Consider whether responsibility for preparing the reports required under this directive should be prepared by the competent authority appointed to implement this directive, or the competent authorities identified to implement the separate 27 directives to which the Reporting Directive applies.
1.3	Ensure that the competent authority with responsibility for reporting under the Bathing Waters Directive (2006/7/EC) is aware of, and complies with, its reporting requirements under this directive.
2	Reporting
2.1	Report to the Commission with sectoral reports on the directives listed in the annexes, and the Bathing Water Directive, in accordance with the reporting requirements laid down.
2.2	Report to the Commission on measures to be taken to implement the directive.

3.2 Phasing Considerations

Implementation of this directive should be co-ordinated with the implementation of the 27 directives referred to in the annexes of the directive.

4. Implementation Guidance

The following section draws upon the experience of Member States and presents a number of general observations, comments and illustrations on how to implement this directive.

4.1 Planning

- Candidate countries need to consider which competent authorities should be responsible for co-ordinating the reports required under this directive.
- The 27 directives listed in the annexes fall under the general environmental sectors of air, water and waste. Where countries have adopted an integrated approach to pollution control, a single competent authority such as an environmental protection agency may have been established, in which case the agency could take responsibility for the preparation of all the reports required under the Reporting Directive. However, some countries may have set up separate competent authorities dealing with different environmental media or specific directives. In this case, consideration needs to be given

to selecting one authority with responsibility for preparing the report for a given group of directives presented in the annexes to the Reporting Directive.

- The first option, of appointing a single authority with responsibility for preparing all the reports, should result in a high level of consistency in reporting for the different groups of directives. The second option, of appointing several authorities to report on different groups of directives, would require a greater degree of co-ordination between the different authorities to obtain consistency in the report. In either case, the reporting has to comply with the requirements set out in the Reporting Directive.

4.2 Reporting

- The reports have to be drawn up on the basis of questionnaires or outlines produced by the Commission, with the assistance of a committee, and sent to the Member States. The Commission has adopted two decisions on questionnaires for reports in the waste sector: Decision 94/741/EC²² and Decision 97/622²³.
- On the basis of the information received, the Commission will produce a consolidated report on the environmental sector concerned.
- The report on the Bathing Waters Directive (2006/7/EC) is to be produced annually, so that the information is available to the public as soon as possible after the end of the bathing season.

5. Costs

The cost of implementing this directive would be relatively low as it is mainly concerned with administrative tasks, e.g. staffing, office accommodation, communications and computing systems, printing and publishing services, consumables and stationery. These costs would be borne as part of the implementation of the 27 directives affected by the reporting requirements set out in this directive.

²² 94/741/EC: Commission Decision of 24 October 1994 concerning questionnaires for Member States reports on the implementation of certain Directives in the waste sector (implementation of Council Directive 91/692/EEC) (OJ L 296, 17/11/94)

²³ 97/622/EC: Commission Decision of 27 May 1997 concerning questionnaires for Member States reports on the implementation of certain Directives in the waste sector (OJ L 256, 19/09/97).

SECTION 2 - HORIZONTAL LEGISLATION
THE REPORTING DIRECTIVE

The European Environment Agency Regulation

Official Title: Council Regulation (EEC) No. 1210/90 on the establishment of the European Environment Agency and the European Environment Information and Observation Network (OJ L 120, 11.5.90), as amended by Council Regulation (EC) No. 933/1999 (OJ L 117, 05/05/1999) and Council Regulation 1641/2003 (OJ L 245, 29.9.2003, p. 1-3)

1. Summary of the Main Aims and Provisions

The regulation establishes the European Environment Agency (EEA) and aims to set up a European Environment Information and Observation Network (Eionet). The purpose of the EEA is to provide the Community and the Member States with objective, reliable and comparable information on the environment at the European level, with a view to betterment of the environmental protection goals of the EU. This regulation extends the scope of Regulation (EC) No. 1049/2001 regarding public access to European Parliament, Council and Commission documents.

The regulation sets out the role and functions of the EEA and places few specific obligations on Member States.

Amending Regulation (EC) No 1641/2003 sets out a deadline for the EEA to ensure full compliance with Regulation (EC) No 1049/2001, and decisions by the EEA not to grant access to EEA documents may be subject to a complaint to the ombudsman or to an action before the ECJ. Regulation (EC) No 1641/2003 also contains provisions regarding the tasks of the EEA Management Board regarding the annual report on the EEA's activities, the statement of estimated revenues and expenditure, and the report on the implementation of the budget of the EEA.

2. Principal Obligations of Member States

2.1 General

Member States are required to inform the European Environment Agency (EEA) of the main elements of their national environment information networks. This would include institutions or organisations that could contribute to the work of the EEA (including those that could co-operate with the EEA regarding certain topics of particular interest) and a national focal point (Art. 4). Member States are also required to co-operate, when required, with the EEA and to participate in the activities of Eionet by collecting and analysing data at the national level.

3. Implementation

3.1 Key Tasks

The key tasks required to implement this regulation are summarised in the checklist below. Under the Phare programme, countries in Eastern Europe, including the candidate countries, have become increasingly involved in the activities of the EEA. These countries have national structures in place to participate in Eionet and all Phare countries have been involved in co-operating with the EEA. Consequently, some of the steps required to implement this regulation have already been taken, or are currently being taken.

EUROPEAN ENVIRONMENT AGENCY REGULATION - KEY IMPLEMENTATION TASKS	
1	Planning
1.1	Identify appropriate institutions and organisations to collaborate in Eionet.
1.2	Inform the EEA of the main component elements at the national level for Eionet.
1.3	Ensure that publicly funded organisations involved in Eionet have sufficient budgets to perform their tasks under the programmes.
1.4	Appoint one representative as a member of the Management Board of the EEA.
1.5	Appoint a national focal point and assure resourcing of its activities.

3.2 Phasing Considerations

The regulation allows non-EU countries to apply for membership to the EEA. During the years 2001-2002, Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, the Slovak Republic, Slovenia and Turkey agreed to participate fully in the EEA and Eionet.

As such, they signed individual agreements²⁴ with the European Community in which they will seek to fulfil certain key obligations, which include:

- contributing financially to the activities of the EEA and Eionet (Art. 2 of the individual agreement);
- participating in the EEA Management Board (no voting rights) and being associated with the work of the Scientific Committee of the EEA (Art. 3 of the individual agreement);
- informing the EEA of the main component elements of their respective national information network as re Article 4(2) of the European Environment Agency Regulation (Art. 4 of the individual agreement);
- designating a national focal point for co-ordinating and/or transmitting the information to be supplied at national level to the EEA and Eionet (Art. 4) (Art. 5 of the individual agreement);
- identifying institutions or other organisations to co-operate with the EEA on specific topics and co-operate with other institutions in the network (Art. 4) (Art. 6 of the individual agreement); and

²⁴ See the Eur-Lex register on the Europa website: http://www.europa.eu.int/eur-lex/en/lif/reg/en_register_151010.html accessed 25.03.03, or OJ L 213 07.08.2001 p.112, OJ L 213 07.08.2001 p.103, OJ L 213 07.08.2001 p.84, OJ L 213 07.08.2001 p.75, OJ L 213 07.08.2001 p.66, OJ L 213 07.08.2001 p.57, OJ L 213 07.08.2001 p.48, OJ L 213 07.08.2001 p.39, OJ L 213 07.08.2001 p.30, OJ L 213 07.08.2001 p.21, OJ L 213 07.08.2001 p.12, OJ L 213 07.08.2001 p.3

- providing data according to the obligations and practice of the EEA (Art. 8 of the individual agreement).

The financial contributions referred to under Article 2 of the individual agreements vary for each country and shall progressively increase over a three-year period during which the activities will be phased in by the country in question. In the fourth year, full costs have to be borne by the relevant signatory.

4. Implementation Guidance

The EEA and the Regulation

The main purpose of the regulation is to set up a special single body within the Community with specific tasks to provide a continuing review of the state of the environment in the EU for the benefit of the Community and Member States. The European Environment Agency (EEA) is that body and was founded in Copenhagen in 1993.

The principal areas of activity of the EEA are to collate environmental information and to analyse it in order to describe the present and foreseeable state of the environment based on:

- the driving forces;
- the pressures and impacts on the environment;
- the state of the environment; and
- responses.

Priority areas of work for the EEA shall concern air quality and atmospheric emissions; water quality and resources; the state of the soil, of flora and fauna and biotopes; land use and natural resources; waste management; noise emissions; chemical substances that are environmentally hazardous; and coastal protection.

The EEA publishes a report on the state of the environment in the EU to the Commission every five years.

The EEA operates as an independent legal entity funded from the Community budget together with contributions from its EFTA members. It is governed by a management board, which consists of one representative from each Member State, one representative from each of the three non-EU members, two representatives from the Commission and two scientists appointed by the European Parliament. The EEA is headed by an executive director appointed by the Management Board on a proposal from the EC. The Management Board and executive director are assisted by the Scientific Committee, whose members are designated by the Management Board for a term of four years and whose membership is renewable once.

The EEA's work programme is defined within a strategic framework provided by five-yearly multi-annual programmes and detailed annual work programmes. Similar procedures are followed for adopting both the multi-annual and annual work programmes. The work programmes are drafted by the EEA and are submitted to the Management Board for adoption following discussion, consultation with the Scientific Committee, and the receipt of comments and a formal opinion from the Commission. The Management Board reaches its decision by two-thirds majority voting, excluding the non-EU members who do not have voting rights.

The European Environment Information and Observation Network

EIONET comprises the main national institutions or organisations which regularly collect and supply environmental data and information, or undertake environmental monitoring and modelling. The main components of Eionet are described below.

- National focal points (NFP) are responsible for co-ordinating with the EEA, and for transmitting information to be supplied at the national level to the EEA and to the national

SECTION 2 – HORIZONTAL LEGISLATION

THE EUROPEAN ENVIRONMENT AGENCY REGULATION

institutions, including the European Topic Centres (see below) that form part of the information network. There is one NFP per country.

- European Topic Centres (ETC) consist of consortia of environmental institutions or organisations which are contracted by the EEA to execute specific tasks in their topic area identified in the EEA's work programme. A list of the current ETCs is provided in this document (see below).
- National reference centres (NRCs) are institutions or organisations identified as centres of excellence by Member States. These organisations may be contracted by the NFPs or ETCs to undertake tasks related to the EEA's work programme.
- Main component elements consisting of institutions that collect and hold environmental data at the national level.

4.1 Planning

- Candidate countries are already involved in activities of the EEA through the Phare programme. Phare countries have identified focal points, the EEA has invited representatives of the Phare countries to attend some meetings with the Management Board, and the Phare programme is funding collaborative projects between institutions in Phare countries and partner organisations in Member States. As a result, some of the structures for Eionet are already in place in these countries.
- The main problem facing candidate countries is the sustainability of Eionet within each country, due to lack of funding (see Section 5 below). A lot of the work undertaken by institutions in these countries is done on a voluntary basis, and national governments need to plan for these activities within the national budget for public bodies, since bodies which will be included in the national system of Eionet bodies will be required to provide regular reports. These reports will, in turn, require data correction and analyses – tasks that may go beyond or be different from their existing activities.
- Countries may apply for membership to the EEA before accession to the EU. If successful, they would then have a status similar to Iceland, Norway and Liechtenstein: they would participate in Eionet and have representation on the Membership Board but without having voting rights.

Involvement of Applicant Countries in EEA Activities through the Phare Programme

Candidate countries are currently benefiting from co-operation between the Phare programme and the European Environment Agency. The range of projects funded through this co-operation is very diverse and includes, for example:

- the establishment of topic links between institutions in the Phare countries and EU Member States (for air quality and air emissions, inland waters, nature conservation and land cover) as an extension of the EEA Topic Centres and parts of Eionet;
- the extension of the Eionet telematics network to all Phare countries as a tool for rapid communication and information exchange in the field of environment between the EEA and all the European collaborating institutions;
- the establishment within the EEA of a Phare expert team, responsible for efficient and rapid liaison between the EEA, the Commission and the beneficiary countries.

- The NFPs in Member States are typically national environmental authorities such as the ministry with responsibility for the environment, a state-funded environment agency or a prominent national environmental institute, e.g. the Dutch National Institute of Public Health and the Environment, or the Federal Environment Agency in Austria.

- Countries cannot participate in the ETCs until they become members of the EEA. The ETCs currently have three-year contracts which were awarded over the last few years. When these come to an end, the EEA may decide to re-tender some or all of these contracts. Candidate countries wishing to participate in these consortia should consider which topic centres they are most able to contribute to, develop links with potential partner organisations, and monitor and respond to tendering opportunities.

4.2 Environmental Topic Centres

- Candidate countries should ensure that their institutes and organisations that collect environmental data or are involved in environmental studies are kept up to date with the EEA's activities and encourage their institutes to develop international links with Member States. Governments and institutions need to seek mechanisms to support this type of initiative, e.g. through Phare funding, partnership arrangements, twinning, and joint research programmes.
- Full participation in Eionet depends to some extent on the national institutions that hold environmental data supplying it to the NFP and the EEA within a reasonable time-frame. This does not always happen for a variety of reasons. Countries should assess how they can meet the data provision requirements and reporting schedules of Eionet and analyse whether they need to modify their existing collection and reporting systems.

5. Costs

The main cost of implementing this regulation is financing the operation of the EEA, which is met from the EC budget. Existing Member States contribute to the funding of the EEA through their annual budgets to the EC. Non-Member States wishing to join the EEA have to negotiate membership in the EEA with the Community, including annual fees.

The cost of implementing the regulation to national governments is centred on financing the activities of participating institutions. Most of the existing Member States have well-established protocols for preparing budgets and financing environmental institutions, but some do have problems supporting institutions financially. In the candidate countries the financial burden may vary according to factors such as size and GDP, though in the first three-year period, accession countries may use Community assistance (including Phare funds) to pay the contribution to the EEA. Full costs will have to be paid by accession countries in the fourth year.

SECTION 2 – HORIZONTAL LEGISLATION
THE EUROPEAN ENVIRONMENT AGENCY REGULATION

Recommendation on Environmental Inspections in Member States

Official Title: Recommendation 2001/331/EC of the European Parliament and of the Council of 4 April 2001 providing for minimum criteria for environmental inspections in the Member States (RMCEI, OJ L 118, 27.4.01)

1. Summary of the Main Aims and Provisions

The recommendation mainly aims at:

- contributing to the more consistent implementation and enforcement of Community environmental law;
- defining minimum standards for checking the compliance of industrial installations;
- promoting the advance planning of environmental inspections (setting up inspections plans); and
- defining standards for reporting on environmental inspections, including public access to these reports.

2. Principal Obligations of Member States

2.1 Planning

- On the basis of the definition set out in Article II, No. 1(a), determine which installations fall under the scope of the recommendation.
- Designate competent authorities and other bodies to implement the requirements of the recommendation.
- Create the required procedures for the competent authority to carry out environmental inspections.
- Provide for co-ordination between different inspection authorities, where relevant.

2.2 Regulation

Notwithstanding the legal nature of this legal act as a non-binding recommendation, Member States should:

- Define routine and non-routine environmental inspections and the circumstances under which they should be carried out as defined in Article V of the recommendation.
- Set up one or more inspection plans at national, regional and/or local levels containing information as suggested in Article IV, Paragraph 3 of the recommendation.
- Define site visits in accordance with the criteria of the recommendation.
- Ensure the investigation of serious accidents and incidents.

2.3 Monitoring

- Ensure that inspections contribute to the monitoring of the environmental impact of controlled installations to determine whether further inspection or enforcement action (including issuing, modification or revocation of any authorisation, permit or licence) is required.

2.4 Information and Reporting

Member States should ensure that:

- After every site visit inspection data, the evaluation thereof and a conclusion on whether any further action should follow (e.g. enforcement proceedings, including sanctions) are processed or stored (inspection report).
- The report is communicated to the operator of the installation.
- The public has access to the report within two months of the inspection.
- A report is submitted to the European Commission on their experience of the operation of this recommendation.

2.5 Additional Legal Instruments

A number of other legal instruments are relevant to the Recommendation on Environmental Inspections and should be borne in mind when implementing it. These are:

- Directive 2008/1/EC concerning integrated pollution prevention and control (IPPC Directive, as amended by 2003/35/EC) (see Section 7 of the Handbook).
- Directive 96/82/EC on the control of major-accident hazards involving dangerous substances (Seveso II Directive), as amended by Directive 2003/105/EC (see Section 7 of the Handbook).
- The Water Framework Directive (2000/60/EC) (see Section 5 of the Handbook).
- Directive 2006/11/EC on the discharge of dangerous substances into the aquatic environment (see Section 5 of the Handbook).
- Directive 2006/118/EC on the protection of groundwater from dangerous substances (see Section 5 of the Handbook).
- Directive 96/62/EC, the Air Quality Framework Directive, plus daughter directives (see Section 3 of the Handbook).
- Directive 2001/18/EC on national emission ceilings (NEC Directive, see Section 3 of the Handbook).

SECTION 2 – HORIZONTAL LEGISLATION
RECOMMENDATION ON ENVIRONMENTAL INSPECTIONS IN MEMBER STATES

- Directive 2006/12/EC on waste (see Section 4 of the Handbook).
- Directive 2000/76/EC on the incineration of waste (see Section 4 of the Handbook).
- Directive 91/689/EC on hazardous waste (see Section 4 of the Handbook).
- Directive 1999/31/EC on the landfill of waste (see Section 4 of the Handbook).

3. Implementation

The key tasks involved in implementing this recommendation are summarised in the checklist below.

ENVIRONMENTAL INSPECTIONS RECOMMENDATION - KEY IMPLEMENTATION TASKS
1. Planning
1.1 Identify the competent authority (or authorities) that shall set up inspection plans and carry out inspections.
1.2 Identify which installations fall under the scope of this recommendation (so-called controlled installations).
2. Regulation
2.1 Define activities to be carried out by the inspection body both for routine and non-routine inspections
2.2. Set up inspection plans for the whole territory of a Member State and all controlled installations within it.
2.3. Define mechanisms and procedures for carrying out inspections.
3. Consultation
3.1 Consult with neighbouring countries to prevent illegal cross-border environmental practices and to ensure co-ordination of inspections with regard to installations and activities that might have significant transboundary impact.
3.2 Communicate the results of environmental inspections to operators.
3.3 Make publicly available according to Directive 2003/4/EC/EEC both inspection plans and the results (reports) on environmental inspections carried out.
3.4 Consult within the IMPEL Network (network for the implementation and enforcement of environmental law) and consider the establishment of a scheme under which Member States report and offer advice on inspections to each other.
4. Reporting
5.1 Report to the Commission on the country's experience of the operation of this recommendation, including information as defined in Article VIII, Paragraph 2 of this recommendation.

4. Implementation Guidance

In their respective resolutions of 14 May 1997 and 7 October 1997, the European Parliament and the Council stressed the need to establish criteria and/or minimum guidelines for inspections performed by Member States.

This recommendation aims at meeting this need by putting forward minimum criteria for organising, performing, following up and publishing the results of environmental inspections.

The IMPEL Network (network for the implementation and enforcement of environmental law) provides guidance on the implementation of the recommendation on its website

SECTION 2 – HORIZONTAL LEGISLATION
RECOMMENDATION ON ENVIRONMENTAL INSPECTIONS IN MEMBER STATES

(http://ec.europa.eu/environment/impel/impel_guidance_doc.htm) and gives input to its further development.

A management reference book can also be downloaded from this website as well as a document on best practices with respect to the training and qualifications of environmental inspectors. Further guidance on the website deals with the frequency of inspections and operator self-monitoring. The full list of guidance provided on the website is as follows:

- IMPEL input to the further development of the RMCEI (2007).
- "Doing the Right Things II" (2007).
- *Benchmarking on Quality Parameters for Environmental Inspectorates* (June 2006).
- *Management Reference Book for Environmental Inspectorates* (Nov 2003).
- *Best Practices Concerning Training and Qualification for Environmental Inspectors* (March 2003).
- *IMPEL Guidance Document on Point VIII of the Recommendation of the European Parliament and of the Council of 4 April 2001 providing for minimum criteria for environmental inspections* (Dec 2002).
- Minimum criteria for inspections.
- *IMPEL Reference Book for Environmental Inspections* (June 1999).
- National reports on RMCEI.

The Commission recently issue the Communication on the Review of the Recommendation, COM(2007) 707 final. In this document, the Commission suggests:

- redefining the scope of the recommendation;
- more precise definitions;
- sectoral provisions on inspections to be included in sectoral legislation;
- guidelines for cross-border co-operation.

4.1 Planning

Environmental Inspections Programme of the Province of Styria, Austria:

In 2004, the province of Styria, Austria, introduced an environmental inspections programme, making reference to and implementing the recommendation. The programme sets out a framework for the different types of inspections so far carried out by licensing, water and waste authorities and ensures co-ordination between them. Special focus is placed on Seveso II installations, as they represent an issue of special concern.

Inspections are carried out both following the annual or multi-annual inspection plan and for the purposes of investigating complaints, accidents or information received on non-compliance with permit conditions.

The following rules are applied in the inspection plan 2008-2010 as to intervals between inspections:

Installations for which national legislation prescribes annual examinations	every year
Seveso II installations, threshold 2	every year
Seveso II installations, threshold 1	every 3 years
IPPC installations	every 3 years

SECTION 2 – HORIZONTAL LEGISLATION
RECOMMENDATION ON ENVIRONMENTAL INSPECTIONS IN MEMBER STATES

VOC installations > 5 tons solvents use	every 3 years
Wastewater treatment plants (sensitive aquatic environment)	every 3 years
Waste disposal sites	every 5 years
Waste treatment facilities (non-IPPC)	every 5 years
VOC installations < 5 tons solvents use	every 5 years
Wastewater treatment plants (non-sensitive aquatic environment)	every 5 years
EMAS organisations	every 5 years

The evaluation carried out shows that the related costs of the public administration could be reduced. A key factor in cost reduction is the establishment of a database that allows all inspectors to use up-to-date information on industrial facilities in their inspection activities. This can prevent the duplication of data collection work.

4.2 Guidance and Training

Balkan Environmental Regulatory Compliance and Enforcement Network (BERCEN):

The Balkan Environmental Regulatory Compliance and Enforcement Network (BERCEN) was established by high-level officials from the environmental ministries of South Eastern Europe (SEE) in Tirana, Albania in December 2001. BERCEN operated under the framework of the Stabilisation and Association Process, the European Union's strategy for creating the conditions needed to integrate the countries of the region into European structures.

BERCEN facilitated, assisted and promoted the enforcement of regulations throughout SEE by disseminating information, finding common denominators for co-operation and developing projects of common interest with the countries participating in the network. The members of BERCEN worked together to advance the application and implementation of environmental legislation and to increase the effectiveness of enforcement agencies and inspectorates.

BERCEN used the experience of the IMPEL, INECE and Regulatory Environmental Programme Implementation Network (REPIN, previously known as NISECEN, the NIS Environmental Compliance and Enforcement Network) to provide a good strategic framework for future co-operation and the exchange of information.

For further information see: <http://www.rec.org/REC/programs/REREP/BERCEN/>

Environmental Compliance and Enforcement Network for Accession (ECENA):

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

ECENA is an informal network of environmental authorities from the potential candidate countries. The following countries are members of ECENA: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Serbia (including Kosovo as defined by the United Nations Security Council Resolution 1244 of 10 June 1999) and Turkey. The European Commission is also a member of ECENA.

The mission of ECENA is to protect the environment in its member countries through the effective transposition, implementation and enforcement of EC environmental legislation by increasing the effectiveness of inspectorate bodies and promoting compliance with environmental requirements.

ECENA tends to take over the role of accession countries' IMPEL (AC IMPEL). It is a logical continuation of the work of BERCEN.

SECTION 2 – HORIZONTAL LEGISLATION
RECOMMENDATION ON ENVIRONMENTAL INSPECTIONS IN MEMBER STATES

ECENA operates under the framework of the Stabilisation and Association Process, the European Union's strategy for creating the conditions needed to integrate the countries of the region into European structures.

Further information can be obtained from:

http://www.rec.org/REC/Programs/environmental_policy/ecena/

4.3 Information and Reporting

Example of Arrangements

Environmental Inspections Programme of the Province of Styria, Austria:

Under this programme, a database has been set up to record the results of all inspections carried out and to provide public access to these data. The database is integrated into the so-called Provincial Environmental Information System (Landesumweltinformationssystem - LUIS).

The public has access to the data via <http://www.umwelt.steiermark.at/cms/ziel/6983699/DE/>. An overview of all the inspections carried out is given on this website for every district. Upon request via e-mail, inspection protocols can be obtained. A map shows the location of the respective installations.

The Federal Ministry for Environment in Austria encourages the administrations of all provinces to implement the recommendation by introducing similar approaches, and has set up a co-ordination body.

5. Costs

The costs incurred largely depend on the size of the country, the constitutional and administrative system (e.g. centrally organised administration or decentralised/federal administration) and on the existing structure. Most Member States already have an inspection system in place, which may need modification only. In this case, costs will be lower.

Checklist of the Types of Cost Incurred to Implement the Recommendation

Initial set-up costs:

- costs of organisational change, set-up costs for inspection units;
- improvements to procedures for data collection, storage and retrieval;
- provision of, or improvements to, databases, including computer systems and PCs;
- training of inspectors in communications and information dissemination methods;
- information technology for running relevant databases, information networks and websites.

Ongoing costs:

- providing the inspections unit (staffing, office space, etc);
- reporting to the public and to the Commission;
- information technology maintenance and updating, as necessary.