

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

**October 1996 to December 1997**

**WORKING DOCUMENT OF THE COMMISSION SERVICES**

## EXECUTIVE SUMMARY

Improving the implementation and enforcement of Community environmental law is an important priority for the Commission. Ensuring that the main actors in the field are informed and aware of the state of implementation and enforcement of Community law in the Member States helps to contribute to its correct application. Whilst the Commission's Annual Report on Monitoring the Application of Community Law contains a certain amount of information in this regard, the Commission recognised in its Communication on Implementing Community Environmental Law<sup>1</sup> that more information, particularly on questions of policy and procedure, could be provided in the form of an Annual Survey.

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

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

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

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

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<sup>1</sup> COM (96) 500 final, 22.10.1996

<sup>2</sup> COM (1998) 317 final, 19.5.1998

# CONTENTS

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

## **1. INTRODUCTION**

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

Concern about the state of implementation and enforcement of Community environmental legislation has grown in recent years as the *acquis communautaire* in this sector has developed. The Dublin European Council in June 1990 stressed that Community environmental legislation would only be effective if fully implemented and enforced by Member States. The European Parliament adopted a resolution in 1992 on the subject<sup>3</sup>. The Commission and European Parliament held a joint public hearing in May 1996 entitled “Challenges to Environmental Protection: making the Legislation Work”. This activity and interest culminated in the adoption by the Commission of its Communication on Implementing Community Environmental Law on 22 October 1996<sup>4</sup> (“the Communication”). It was sent to the Council and the European Parliament on 5 November 1996.

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

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

Consequently, the Environment chapter of the 15<sup>th</sup> edition of the Commission’s Annual Report on the Monitoring of the Application of Community law concerning 1997<sup>6</sup> has been considerably expanded and developed largely on the basis of information supplied by the Member States. Details of the most important judgements of the European Court of Justice are also included on a sector by sector basis.

After adoption of the Communication by the Commission, the Council adopted a resolution<sup>7</sup> which contained the following:

[the Council]...“*INVITES the Commission in addition to its Annual Report on Monitoring the Application of Community Law, to submit to Council an annual survey of the environment*<sup>8</sup> containing, inter alia, detailed information on transposition and practical application by Member States of Community environmental law and furthermore on the principal activities and concrete

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<sup>3</sup> OJ No C125, 18.5.1992, p.122

<sup>4</sup> COM (96)500 final, 22.10.1996

<sup>5</sup> Underlining added

<sup>6</sup> COM(1998) 317 final, 19.5.1998

<sup>7</sup> OJ no C321, 22.10.1997

<sup>8</sup> Underlining added

*results of the IMPEL network including its current and future work programme, on the basis of a report by IMPEL<sup>9</sup>".<sup>10</sup>*

Similarly, the European Parliament, in its resolution on the Communication<sup>11</sup>

*"....calls on the Commission to produce and publicize an Annual Report<sup>12</sup> on progress in adopting and implementing Community environmental law, containing detailed tables showing its implementation;"<sup>13</sup>*

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

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

## **1.2 Period covered by the Annual Survey**

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

## **1.3 Contents of the Annual Survey**

The Survey contains five main parts:

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

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<sup>9</sup> IMPEL – European Union Network for the Implementation and Enforcement of Environmental Law

<sup>10</sup> Para 26, p.7

<sup>11</sup> PE259.215/63,14.5.97

<sup>12</sup> Underlining added

<sup>13</sup> Para 4

<sup>14</sup> See footnote 6 above

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

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

### **Background**

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

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

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

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

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

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

In its Communication, the Commission acknowledged the wide disparity between Member States' environmental inspection activities, identified the *lacunae* and recognised the necessity of ensuring that minimum inspection tasks were performed, in particular as regards the monitoring of industrial point source emissions. The Communication therefore recommended the "*establishment of guidelines, thereby reducing the currently existing wide disparity among Member States' inspections*". The European Parliament and the Council endorsed this recommendation in their Resolutions<sup>15</sup> adopted in response to the Communication.

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

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<sup>15</sup> See footnotes 11 and 7 above

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

IMPEL thus set up a Working Group to carry out work on the topic of minimum criteria for environmental inspections. The group met several times from late 1996 to late 1997 and a paper containing minimum criteria on environmental inspections at Member State level was adopted by IMPEL by way of a written procedure in November 1997. A copy of the paper, as published, is available from the IMPEL Secretariat<sup>16</sup>.

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

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

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

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

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

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

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

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

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

## **2.3 Promoting Knowledge of Community Environmental Law**

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

<sup>17</sup> Para 12

## a) Magistrates Training

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

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

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

The Economic and Social Committee, in its opinion of 15 April 1997<sup>19</sup>, recognised the important role played by the promotion of knowledge of Community environmental law and the Committee of the Regions, in its opinion of 11 and 12 June 1997<sup>20</sup>, noted that one of the great weaknesses of the existing system lies in the insufficiency of information and training concerning Community environmental law. It welcomed the proposal that the Commission would consider initiatives for financial and technical assistance for judges, lawyers and officials of the Member States.

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

In 1997 four further courses were organised:

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

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

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

It is planned to hold the following courses in 1998:

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

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<sup>18</sup> Para60, p. 22.

<sup>19</sup> ESC 128/97, p. 5, No 3.3.1.

<sup>20</sup> COR 437/96 fin., p. 19 and 26.

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

<sup>22</sup> About 300 magistrates and barristers from Athens and Piraeus also received training.



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

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

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

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

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

#### **b) Pilot project for teaching Community environmental law at universities**

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

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

"Green Chair" means:

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

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

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

The universities selected are:

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

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

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

## **2.4 Proposals for sanctions in new Community legislation**

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

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

The Council echoed this in its Resolution and invited the Commission to consider the inclusion in its future proposals for environmental measures, where appropriate, and on a case by case basis<sup>23</sup>, of a provision requiring national measures to include appropriately dissuasive sanctions for non-compliance with the requirements of the relevant Community acts and having regard to the principle of subsidiarity.

The Commission has taken this into account in the past when formulating environmental legislation (see, for example, Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein<sup>24</sup>, as amended) and has stressed the importance of deterrent sanctions on various occasions (see, for example, its Communication on the role of penalties in implementing Community internal market legislation<sup>25</sup> where it was said that *“the effectiveness, proportionality and dissuasiveness of penalties for breaching Community law depend, in the first place on the common rules being transposed and/or implemented correctly and efficiently, and on sound administrative co-operation which is based on transparency”*). Regulation 338/97 provides for a communication system between Member States to ensure uniformity, which is an example of this co-operation. Although distinctions can be drawn between internal market and environmental legislation, the Commission will essentially follow the internal market approach in this regard, enlisting the assistance of IMPEL, as necessary.

The Commission will probably call upon IMPEL to look into the problem of sanctions, whether administrative, civil or criminal, during 1999, with a view to guidelines eventually being drawn up through which appropriately deterrent sanctions can be effectively used in national law in the future,

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<sup>23</sup> See for example Article 16 of the CITES Regulation

<sup>24</sup> OJ NoL61, 3.3.1997, p.1

<sup>25</sup> COM(95)162 final

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

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### **3. OTHER SPECIFIC HORIZONTAL ACTIONS**

#### **3.1 White Paper on Environmental Liability**

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

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

Environmental issues are best handled with the participation of all concerned citizens at the relevant level. Public awareness and involvement depends first of all on the general public having access to information. A cornerstone in the Community legislation in public participation is Directive 90/313/EEC on the freedom of access to information on the environment<sup>27</sup>. It is designed to ensure freedom of access to information and dissemination of information on the environment which is held by public authorities and to set out the basic terms and conditions on which such information should be available. It proceeds from the premise that a better public access to environmental information will contribute to improving the protection of the environment by increasing public awareness which in itself is a prerequisite for better access to justice.

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

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

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

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<sup>26</sup> OJ No C188, 22.7.1995, p.1

<sup>27</sup> OJ No L158, 7.6.1996, p.56

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

### **3.3 Reporting requirements**

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

In order to harmonize and supplement these provisions, Directive 91/692/EEC, standardizing and rationalizing reports on certain directives relating to the environment<sup>28</sup>, harmonized and supplemented already existing reporting provisions in order to improve them on a sectoral basis and to make them more consistent and complete. Under Directive 91/692/EEC, Member States must now submit reports on the different sectors at three-yearly intervals on the basis of a questionnaire produced by the Commission with the assistance of a management committee. The Commission is then required to produce a consolidated report on the sector concerned within nine months of the submission by Member States of their respective reports. The first reports for the various sectors cover the period 1993 to 1995 inclusive and should have been submitted to the Commission within nine months of the end of that period. Unfortunately, due to delay on the part of the Member States in submitting these reports in time, it has not been possible to adhere to the time limits set out in Directive 91/692/EEC. The Commission is currently working on the first consolidated report which will cover the water sector. It is hoped that the report, covering some thirteen directives, will be published in early 1999.

With regard to the waste sector, Member States are due to submit their national reports by September 1998 for the period 1995-1997. It is anticipated that the Commission's report will be finalised by June 1999. So far as the shipment of hazardous waste is concerned, the Commission will publish a report in the summer of 1998, in conformity with Article 41(2) of Regulation (EEC) 259/93 on the supervision and control of shipments of waste within, into and out of the European Community<sup>29</sup>.

### **3.4 Commission Publications on Implementing Community and International Environmental Law**

As part of its commitment to ensuring the transparency of its activities and to making available as much information on environmental matters as possible to the authorities in the Member States, industry, NGOs and the general public, the Commission issues specific publications from time to

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<sup>28</sup> OJ No L377, 31.12.1991, p.48

<sup>29</sup> OJ No L30, 6.2.1993, p.1

time. The following publications (all of which are available from the DG XI Documentation Centre<sup>30</sup> or from the Office for Official Publications of the European Communities<sup>31</sup>) have either been issued in relation to activities carried out during (or, in some cases, before) the period covered by this Survey or issued during the period covered by this Survey or in early 1998:

- **General Policy and Overviews**

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

- **Water**

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

- **Air**

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

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

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

- **Waste**

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

- **Community Environment Funding**

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

- **Nature Protection and Biodiversity**

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

<sup>31</sup> 2, Rue Mercier, L-2985, Luxembourg (Fax +352 488573)

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

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

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

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

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

#### **3.5.1 Background to and structure of IMPEL**

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

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

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

The Community's Fifth Environmental Action Programme<sup>32</sup> called for a body similar to the Chester Network. Thus, during the IMPEL Plenary Meeting in December 1993, the Commission and Member States agreed to modify the terms of reference of the Network with a wider mandate for the application and control of environmental legislation. In addition, it was agreed that the Network should look at how to ensure better implementation and enforcement by regional and local bodies. The modified Network became known as the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL).

In the Commission's Communication<sup>33</sup> it was stated that:

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

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

### ***A modified structure, role and scope for IMPEL***

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

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

#### **a) Plenary Meeting**

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

<sup>33</sup> See footnote 1 above

<sup>34</sup> Para 56, p.20

<sup>35</sup> Para 19, p.6

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

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

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

#### **b) Standing Committees**

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

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

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

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

#### **c) Ad hoc Working Groups**

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

#### **d) The IMPEL Secretariat**

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



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

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

### ***Participation of other countries and bodies***

#### **a) Central and Eastern European countries and Cyprus**

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

#### **b) Other European countries**

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

#### **c) European Environment Agency**

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

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

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

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

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

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

### **3.5.2 Activities and products from October 1996 - 31 December 1997**

#### ***Meetings Held***

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

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

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

#### ***Meetings of Standing Committees 1 and 2, October, 1997***

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

#### ***Report of the IMPEL Budget 1997***

#### ***Financing in 1997***

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

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

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

### *Spending by Member States*

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

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

### ***Priorities and strategy for IMPEL resources in 1997***

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

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

#### ***“Legal” Projects***

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

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

The second legal project was a workshop on “Access to Environmental Information”. This project considered the implementation issues across the Member States of Directive 90/313/EEC on the freedom of access to information on the environment<sup>37</sup>.

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

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

#### ***“Permitting” Projects***

Two other projects were undertaken in relation to questions of “permitting” which is central to the role of the environmental regulator. The first project has a broad scope: to clarify the interrelationship between four different instruments: the Environmental Impact Assessment Directive<sup>38</sup>, the so-called “Seveso” Directive<sup>39</sup>, the Integrated Pollution Prevention and Control Directive<sup>40</sup> and the Eco-Management and Audit Scheme Regulation<sup>41</sup>. The goal of this project on integrated permitting is to allow Member States to share experiences and have sound information to formulate their own policies on the adoption of integrated permitting rules. It will continue during

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<sup>36</sup> See chapter 2.2 above

<sup>37</sup> See chapter 3.2 above

<sup>38</sup> OJ No L175, 5.7.1985, p.40 and OJ No L73, 14.3.1997, p.5

<sup>39</sup> OJ No L10, 14.1.1997, p.13

<sup>40</sup> OJ No L257, 10.10.1996, p.26

<sup>41</sup> OJ No L168, 10.7.1993, p.1

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

### ***Training and Exchange Projects***

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

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

### ***Evaluation of 1997 IMPEL projects - Review of strategy and priorities***

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

### **3.5.3 IMPEL work programme for 1998<sup>42</sup>**

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

#### **Standing Committee 1 (legal policy and legal implementation issues)**

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

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

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

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

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

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

This cluster aims at the following outcome:

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

This cluster contains the following projects:

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

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

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

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

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

This cluster contains the following project:

##### *SMEs and the environment: information and education*

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

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

This cluster contains the following projects:

*Access to justice and the environment and*

*Environmental complaints mechanisms in the Member States*

See Chapters 2.2 and 3.5.2 above.

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

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

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

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

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

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

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

*Reference book for environmental inspectors*

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

*Project on environmental enforcement practices*

This project on Environmental Enforcement Practices (PEEP) considers the latter half of the regulatory chain, i.e. the consideration of the limits and limit values set in permits, the monitoring of compliance with the conditions, and how non-compliance with the conditions is dealt with. It will involve a training exercise which is a natural progression from the current exchange programmes which end in 1998. The

project will start with a pilot run in five countries. On completion of the five country reports the results will be presented to IMPEL (at the end of 1998), proposing future action.

#### *Exchange programme for Member States' inspectors*

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

#### **g) Cluster: Inspections (carried over from 1997)**

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

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

This cluster consists of the following individual projects:

#### *Minimum criteria for inspections*

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

#### *Planning, Monitoring and Reporting*

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

#### *Frequency of Inspection*

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

#### *Guidelines for the Use of Operator Self Monitoring*

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



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

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

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

#### **i) Cluster: Implementation of permitting practices**

This cluster contains the following projects:

##### *Diffuse emissions*

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

##### *Lessons learned from accidents*

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

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

Community directives are usually applied in the Member States on the basis of transposing national legislation. Timely and correct transposition is crucial to the practical application of a directive. In order to achieve maximum transparency in the implementation of Community environmental law and thus assist the citizen in knowing exactly how a Community directive has been transposed into his own national legal system, it is intended that the Annual Survey will include details of Member States' transposing legislation communicated for directives which have to be transposed during the period covered by the Survey. Thus, Annex 1 contains a table showing details of Member States' legislation communicated for the Community directives, or parts thereof, which had to be transposed between October 1996 and December 1997, namely:

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

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

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

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

The introduction to that part of the report is particularly useful in relation to the enforcement of Community environmental law in that it details the ways in which the Commission monitors the application of Community law in applying the procedure set out in Article 169 of the Treaty. In practical terms this entails the Commission checking that transposal measures are notified and that they implement directives properly, and monitoring the application of regulations. In exercising these duties in 1997 in relation to environmental law, the Commission referred 37 cases to the European Court of Justice in Luxembourg and sent 69 reasoned opinions to the Member States. These figures demonstrate the vigilance with which the Commission monitors the implementation of Community environmental law. However, they do not give a complete picture of the situation as these

procedures are only the closing stages in infringement proceedings. Before reaching that stage, many cases are terminated, usually after a warning letter is sent. Much time is spent in correspondence and contact with members of the public and national government departments in this regard.

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

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## **6. CONCLUSION**

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

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