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**“Monitoring transposition and  
Implementation of the EU  
Environmental *acquis*”**

**MANUAL 2011**



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# European Union Environmental Law Approximation Progress Monitoring Manual

## 2011

by Cynthia Whitehead, JurDr

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## 1. INTRODUCTION

The purpose of this Manual is to support the potential and candidate countries of Southeast Europe to adopt and implement environmental and climate-related legislation to meet the requirements for accession to the European Union. This process of adopting and implementing European Union law is called “approximation.”

The **approximation of law** is a unique obligation of membership in the European Union.

It means that countries aspiring to join the European Union must align their national laws, regulations, rules, and procedures in order to give effect to the entire body of European Union law in their countries. This body of law is known by the French term *acquis communautaire*, which is usually shortened to “acquis”. The environment acquis and the climate acquis are the focus of this Manual.

The European Union has created a new body of environmental law – more than 5,000 pages – that integrates science, technology, engineering, economics, legal principles, and management like no other body of European Union law.

Because the European Union’s environmental standards cannot be met without substantial investment in new waste, water and air pollution control infrastructure, countries must plan their investments as part of their program of compliance with European Union law.

These potential and candidate countries need up-to-date information on their progress in environmental approximation in order to support their negotiations with the EU on deadlines and requirements under EU law. In particular, they need to document that the legal obligations set forth in the environmental acquis have been **transposed** and **implemented**.

The European Commission’s Directorate-General for Environment (DG ENV) assists the potential and candidate countries in environmental approximation through the project “Monitoring transposition and implementation of the EU Environmental Acquis.” This project has been incorporated into the “Regional Environmental Network or Accession” (RENA) project 2010-2013.

Countries who seek to join the European Union must establish systems for monitoring progress in approximation so that they can report on their progress every year.

This project supports systems for progress monitoring by the potential and candidate countries and by DG ENV, so that everyone can objectively track progress and evaluate the way the potential and candidate countries are transposing and implementing the environmental acquis.

This Progress Monitoring Manual describes the system for monitoring progress in adopting (transposition of directives) and implementing (directives, regulations and decisions) the environmental acquis before and after accession (Chapter 2) through the use of Tables of Concordance (transposition) and Implementation Questionnaires.

It also provides suggestions for how to set up efficient ongoing systems of monitoring in the candidate countries. These suggestions include the methodologies for monitoring progress in transposition and implementation developed under the "Progress Monitoring" project. The Manual also contains recommendations for the candidate countries concerning measures to ensure availability of up-to-date information on their approximation progress.

The European Commission's 1998 *Communication on Accession Strategies for Environment* describes how to develop national programmes for transposition and implementation of the environmental acquis.<sup>1</sup> It notes the need for each country to carry out a provision-by-provision legal gap analysis through use of "tables of concordance" of each directive, identifying where national law is or is not in conformity with the EU requirements.

**The legal gap analysis is the foundation of a legislative programme with precise timetables for different stages of the legislative process.**

Countries also need to develop implementation programmes that set priorities and realistic timetables for achieving compliance. The mechanism for monitoring the programme and for annual reporting is a series of "implementation questionnaires" – one for each EU directive, regulation, or decision.

During 2011-2013, the information on a country's progress in legal conformity and implementation will be summarised once a year in an approximation **Progress Monitoring Report** on the basis of the tables of concordance and implementation questionnaires prepared by the Government of each country with the support of external lawyers working for the RENA project.

The schedule each year is:

<b>February</b>	Lists of Environment and Climate <i>Acquis</i> provided to Governments
<b>Feb-March</b>	Training, Information
<b>March-May</b>	Draft ToCs & IQs prepared by Governments, with Support from RENA experts
<b>May-June</b>	Draft ToCs and IQs reviewed and revised by RENA experts
<b>1-15 June</b>	Draft Progress Monitoring Report written by RENA expert
<b>15 June</b>	<b>Draft tables of concordance, implementation questionnaires and Progress Monitoring Report submitted to the European Commission DG ENV</b>
<b>1 July</b>	<b>Comments received from EC DG ENV</b>
<b>1 September</b>	<b>Final tables of concordance, implementation questionnaires and Progress Monitoring Report submitted to the European Commission DG ENV.</b>

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<sup>1</sup> COM (98)0294-C4-0380198

## 1.1 What is the *acquis*?

The *acquis communautaire* includes all the legal acts – directives, regulations, and decisions – adopted on the basis of the Treaties which are the primary law of the European Union and the Communities.<sup>2</sup> It includes:

- the Treaties
- all Community legislation
- all the principles of law and decisions of the European Court of Justice
- all international agreements signed by the European Commission and interpreted by the declarations and resolutions of the Council of Ministers.

Thus, the *acquis* includes much more than the formal legal texts. The future member states must comply with the jurisprudence and spirit, as well as with the letter of EU legislation.

## 1.2 What is approximation?

The approximation of law is a unique obligation of membership in the European Union. It means that countries aspiring to join the European Union must align their national laws, rules and procedures in order to give effect to the entire body of EU law contained in the *acquis communautaire*.

Formally, **approximation applies only to directives**. Remember, decisions and regulations are directly effective and do not require the intermediate step of transposition into national law.

There are three key elements in approximation. They are called “elements” and not “steps” because governments must take all three into account **at each stage in the process**:

**Transposition** – The government must adopt or amend national laws, rules, and procedures so that the requirements of the relevant EU directive are fully incorporated into binding national laws and regulations.

The member states have considerable discretion in choosing the most appropriate type of national and sub-national legal acts to transpose EU environmental obligations. This discretion is limited by general principles of EU law and the decisions of the Court of Justice.

In most cases only national legislation passed by Parliament or Presidential or Governmental Decrees will be considered sufficient.

**Implementation** or “**practical application**” – This means to provide the institutions and budgets necessary to carry out the laws and regulations. Often, governments can begin to prepare the necessary institutions and procedures before the new laws and regulations are formally adopted.

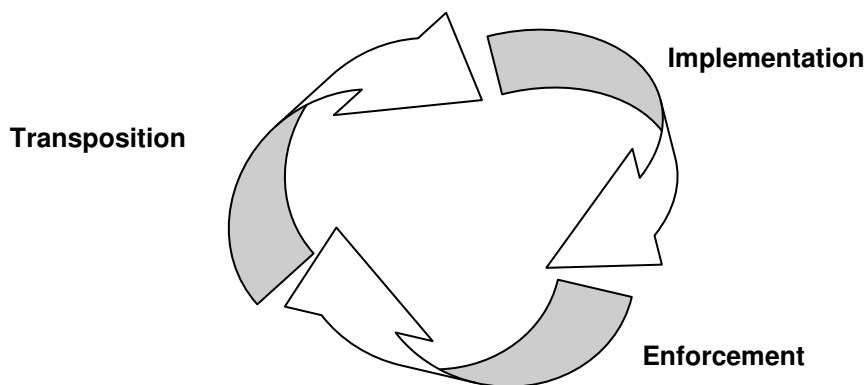
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<sup>2</sup> The legal differences between the three European Communities and the European Union are important and complex, but distracting for the reader who is concerned with understanding the obligations of approximation. Therefore, although it is not formally correct from a legal point of view, this Manual will follow common practice and refer to legislation as EU legislation.

(In some member states where the legislative process can be very long and complex, the government has implemented directives before the laws and regulations are formally adopted.)

**Enforcement** – This means to provide sufficiently strong controls and penalties to ensure that the laws and regulations are complied with. Since the 1990s, enforcement has become a very important issue, because weak enforcement by some member states will prevent achievement of the EU’s health and environmental policies as well as the single market.

**Figure 1. The three elements of approximation.**



### 1.3 Approximation starts before accession and continues

The pre-accession approximation process is an opportunity for governments to reform their institutions and procedures and to train their staff for the daily responsibilities and processes of European Union lawmaking, implementation and enforcement.

In *Agenda 2000*, the EU recognised that none of the candidate countries could be expected to comply fully with the *acquis* in the near future. So:

"... in partnership with the Union realistic national long-term strategies for gradual effective alignment should be drawn up and start being implemented in all the applicant countries before accession, in particular for tackling water and air pollution. These strategies should identify key priority areas and objectives to be fulfilled by the dates of accession as well as timetables for further full compliance; ensuing obligations should be incorporated in the accession treaties. All new investments should comply with the *acquis*."<sup>3</sup>

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<sup>3</sup> *Agenda 2000, Volume I, Communication: For a Stronger and Wider Union*, DOC/97/6, 15.07.1997, p. 65.



## 1.4 Three types of legal instrument: Directives, Regulations, Decisions

Article 288 of the *Treaty on the Functioning of the European Union* briefly defines the three types of legal instrument the EU institutions may adopt. Note that each type of legal act may be adopted by:

- the Parliament acting jointly with the Council,
- the Council alone or
- the Commission alone.

Article 288 is worth memorising:

“In order to carry out their tasks and in accordance with the provisions of this Treaty, the European Parliament acting jointly with the Council, the Council and the Commission shall make regulations and issue directives, take decisions, make recommendations or deliver opinions.

A **regulation**\* shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

A **directive**\* shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

A **decision**\* shall be binding in its entirety upon those to whom it is addressed.

**Recommendations** and **opinions** shall have no binding force.”

### *Directives*

Most EU environmental laws are **directives**. The vast majority of EU legal acts in the environmental *acquis* are directives. They are the focus of approximation.

This is a form of law that exists only in the European Union. Directives are designed to impose obligations on member states yet to be sufficiently flexible to allow the member states to take into account differing legal and administrative traditions and practices, as well as different conditions of geography, economy, and culture.

With directives, each member state can choose how it will transpose the directive into its national legal system and adapt its administrative structures and procedures to implement and enforce the law.

Furthermore, directives may contain special requirements for each member state.

For example, the Directive on large combustion plants sets different targets for the reduction of emissions from each Member State, and even allows some which are economically less

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\* Emphasis added.

developed to increase their emissions. Similarly, directives that require states to adopt pollution reduction action plans often contain requirements that reflect the different socio-economic and geographical conditions in each member state.

**Framework directives** set out general principles, procedures, and requirements for legislation in different sectors. So far, framework directives have been adopted for the air, waste and water sectors. Within the framework, more focused directives in each sector must conform to the general requirements of the framework directive. These are sometimes known as “daughter” directives.

Table 1, below, gives an example of a framework directive in the water sector and three specific “daughter” directives that apply the general approach of the framework directive to specific types of water and pollutants.

**Table 1. Water Framework Directive**

<p>Water Framework Directive 2000/60/EC <b>establishing a framework for Community action in the field of water policy</b></p> <p>The purpose is to establish a framework for the preservation and the improvement of water quality of inland surface waters, transitional and coastal waters, and groundwater.</p>		
<p>Directive 2006/118/EC on the <b>protection of groundwater against pollution and deterioration</b></p>	<p>Directive 91/271/EEC concerning <b>urban waste-water treatment</b></p>	<p>Directive 2008/105/EC on <b>environmental quality standards in the field of water policy</b></p>

### *Regulations*

**About ten percent of EU environmental laws are regulations.**

Regulations are directly binding in member states and supersede any conflicting national laws.

Regulations fall outside the transposition process. They do require applicants to establish administrative bodies and procedures and to take steps so that they are ready to implement the regulation from the date of accession.

In fact, member states are **forbidden to transpose** regulations into national law, even if the national law is identical to the regulation.

Regulations require the member states to organise their institutions and procedures in order to carry out or “give full effect” to the regulation.

This organisation is internal to the governments, so steps need to be taken before accession.

On the other hand, if the candidate countries have adopted national laws that set up parallel systems modelled on the EU legislation – for example regarding environmental management (EMAS) or eco-labelling – **these laws must be repealed by the date of accession.**

The types of measures which governments will have to take in order to implement EU regulations include:

- the appointment of competent authorities
- the establishment of procedures
- the publication of guides and forms
- the establishment of consultation, monitoring and reporting systems
- the designation of administrative, civil and criminal sanctions for violations of the law.

### *Decisions*

A **decision** is “binding in its entirety upon those to whom it is addressed.” This means that a decision is addressed to a particular, limited group of institutions or organisations – not to the governments of the member states (as with directives) nor to the EU as a whole (as with regulations).

In practice, the EU institutions use decisions to regulate themselves, to ratify international and bilateral agreements, and to clarify aspects of the implementation of regulations and directives, especially, for example, by defining the format to be used for submitting information to the European Commission.

For example, under the Water Framework Directive, the European Commission has adopted a series of decisions on how to establish ecological status, identified sites, and the results of the intercalibration exercise.

A decision may not be transposed into national law. Unlike a regulation, a decision does not have “general effect”, that is, it is not binding on any person outside the specified group.

A decision may or may not be relevant to the implementation and enforcement of a directive. Obviously, where it is used to ratify an international agreement on behalf of the European Union, no action is required from the member states. Where it is used to clarify the obligations of the member state governments under a directive, it is relevant and binding on the governments of the member states.

### *What about international treaties?*

This is a tough question. Treaties are ratified by a Decision addressed to the institutions of the European Union. Therefore it should be binding only on the EU institutions.

But what does this mean? Some people argue that it means an international treaty or agreement (they are the same) is binding on the member states in the same way as a regulation is – from the date of ratification.

Others disagree, and say that the individual member states must still ratify and implement an international treaty by themselves. In other words, that the European Union has not been delegated the power to bind the member states directly by ratifying an international treaty.

It is a very complicated legal and constitutional question, and the European Court of Justice some day may will have to decide this issue.

The European Union adopts both regulations (CITES) and directives (Aarhus Convention) to ensure that member states comply with international environmental agreements, whether or not the individual member state has ratified the agreement. But in these cases, the

member states are complying with European Union law, not with the international agreement.

**Table 2. Typology of Community legal acts**

<b>Aspect</b>	<b>Directive</b>	<b>Regulation</b>	<b>Decision</b>
Entry into Force	Upon the date specified in the directive or on the 20th day after publication in the Official Journal	Upon the date specified in the Regulation or on the 20th day after publication in the Official Journal	Upon notification to the persons to whom it is addressed.
Approximation Deadline	Stated in the directive: The same as the date of transposition unless other date(s) is(are) indicated in the directive. May be 1 month to 3 or more years after entry into force. Some directives can have direct effect if the Member State fails to transpose into national legislation.	Not applicable. Direct application and effect. Enters into force upon notification to the party to whom they are addressed.	Not applicable, direct application and effect. Binding on the parties to whom it is addressed on the date it comes into force
Usage and Frequency	The most frequently used instruments of EU environmental law	Are used when a unified policy system is needed: Funds, institutions; EU voluntary schemes such as eco-label, EMAS; controls on products or trade - ozone-depleting substances, chemicals control (REACH),	Used to specify detailed administrative requirements or update technical aspects of regulations or directives - reporting, ratification of international agreements and protocols
Legal Obligations of the Member States	Adopt laws, regulations and procedures to give effect to the directive by the transposition deadline	Establish institutions and procedures; they should repeal any conflicting national provisions	Binding on the parties to whom they are addressed; these may or may not include the Member States.

## 2. APPROXIMATION IN PRACTICE

### 2.1 What is the scope of the approximation obligation?

Following the principles laid down in *Agenda 2000*,<sup>4</sup> each applicant country must adopt the entire *acquis communautaire* into its national legal system, and to adapt its administrative system to implement and enforce the new legislation.

### 2.2 What is included in the environmental *acquis*? the climate *acquis*?

The European Commission publishes a list of legal acts in the environmental and climate *acquis* several times a year. This list is provided to the Ministers responsible for environment in potential and candidate countries at the start of each progress monitoring exercise, usually in February.

In broad terms, EU environmental and climate legislation covers:

**Product technical standards and controls:** for example, control of noise from construction equipment, control of emissions from motor vehicles, control of hazardous chemicals in consumer products, control of waste shipments and disposal, control of hazardous chemicals and preparation in general, and trade in endangered species. These directives use technical standards to achieve both a high level of protection and to ensure a common market in the regulated products.

**Control of activities or processes** which can have environmental or health impacts: for example, the construction, operation closure and aftercare of industrial plants, waste management and disposal facilities, and nature protection. Environmental impact assessment procedures are in this group.

**Environmental quality protection**, for example setting limits on the release of hazardous substances to air, water or land, setting standards and procedures for the use of land; nature and resource conservation; biodiversity protection, climate change.

**Procedures and procedural rights**, such as strategic and environmental impact assessment, access to information and public consultation.

### 2.3 What is the deadline for approximation?

Subject to any delays agreed in the Act of Accession, the national laws, regulations and administrative procedures which are needed to give effect to the body of EU law must be **adopted and implemented** before the date of accession.

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<sup>4</sup> *Agenda 2000, Volume I, Communication: For a Stronger and Wider Union*, DOC/97/6, 15.07.1997.

Some directives contain deadlines for action by the member states that may be after the date of accession, for example, the preparation of pollution control plans, the designation of protected or 'sensitive' areas, requirements for strategic environmental assessment, construction of waste water treatment facilities, or compliance with emission limits or environmental quality standards.

The central European countries that joined the EU in 2004 had completely transposed the directives in the environmental *acquis*, but the accession treaties contained a few **derogations** to the timetables for full compliance in certain complex and costly areas of environmental protection. The government of the candidate country must ask for a derogation from any deadline, and must present adequate arguments to justify its request.

When candidate countries join forces to ask for a common derogation from a specific requirement, this has often proved more successful than when a country asks by itself.

**New facilities** and projects started during or after the accession period are usually expected to comply with all the requirements of the *acquis*.

## 2.4 What national legal instruments may be used?

EU environmental directives are designed to be implemented in ways which are adjusted to the unique circumstances of each Member State.

So, the responsible Ministry must analyse the individual EU laws to determine how much flexibility they have concerning the scope, form, level and definition of requirements through their national laws and rules.

Their ultimate responsibility is to adopt **binding measures** which fully carry out the letter and the spirit of EU law.

For example, where the directive contains precise requirements, governments must transpose the requirement precisely. Some examples of precise requirements are:

- all definitions used in the directive
- emission limit values
- environmental quality standards
- mandatory environmental impact assessment requirements
- chemical testing and notification requirements
- reporting to the European Commission
- technical standards defined in annexes and decisions.

Directives also allow scope for different national approaches that allow governments to integrate the new requirements of the directives into longstanding administrative law systems. For example:

- permitting procedures
- public consultations

- public information
- monitoring and inspections
- enforcement
- action plans to achieve compliance with a standard or requirement
- strategic environmental assessments
- discretionary environmental impact assessment requirements and procedures
- planning and implementation of plans.

Governments have many choices:

They may adopt entirely new laws and administrative measures based on the relevant directives and modern administrative and technical understanding.

They may amend existing laws and regulations.

They may decide that a single law should be introduced or modified.

Or that a series of laws and regulations need to be adopted or modified. Or a country may also decide to implement several directives through one national law.

## 2.5 What institutional set-up is required?

The directives do not require the member states to adopt a particular institutional set-up. The competent national ministry may act alone or in agreement with other involved ministries and institutions such as state inspectorates and laboratories. In a federal state such as Belgium, Germany, or Spain, many or most responsibilities may be given to regional governments or provinces. Sometimes three or more governmental bodies may share competency for one legal obligation. For example, the examination of a dossier for notification of a new chemical might be examined by different agencies with responsibility for public health, toxicology, worker protection, and ecotoxicology. Obviously, good coordination and an efficient review process are important in this case.

National legal acts and measure aimed at approximating EU legislation should be integrated with national environmental priorities and programmes in a manner that fully reinforces the principles, objectives and requirements of EU law. Existing national legislation shows how varied the legal and institutional approaches of the different member states can be. Each member state takes the actions which it considers appropriate and feasible in its own unique legal, economic and political circumstances.

In Belgium, where powers to regulate the environment are devolved almost entirely to the regional governments, each region implements EU law separately. In contrast, in France, the transposed directives are contained in the Environment Code, which provides a single legislative framework.

The choice of measures may also be governed by the form of the requirement or type of legislation. When a directive prohibits an action (the use or the discharge of certain substances such as asbestos or heavy metals in products), it provides fixed requirements. But when a directive fixes limit values, it allows the member states to decide how to comply.

New facilities and projects constructed during or after the accession period are usually expected to comply with all the requirements of the *acquis*.



### 3. THE APPROXIMATION PROCESS

When confronted with the more than 4,000 pages of the EU environmental *acquis*, some governments have sought to simplify the approximation process by translating the text of each directive into the national language and legal system. This is appropriate for some elements of the directive, and **very risky for other elements**.

So the first step is always to understand the directive as well as possible before beginning to design a plan of approximation.

#### 3.1 The preamble

Begin by reading the preamble of the legal instrument. This is a formal part of the legal act that sets out the legal basis, lists the documents prepared by the European institutions during the legal procedure, and summarizes the main objectives and elements of each article. The preamble acts as a kind of executive summary of the legal act, and gives the reader a good overview of the elements, the reasoning, and the political compromises between the needs and interests of the different member states.

The first sentences of the preamble are crucial to understanding the legal act, as explained in the table below. Different legal acts will vary from this example.

**Table 3. Reading the Preamble**

<b>Preamble text</b>	<b>Place</b>	<b>Purpose</b>
Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof,	Sentence 1.	This is the legal basis, which depends on the purpose of the directive. The legal basis establishes some of the criteria for review of member state legislation by the courts.
Having regard to the proposal from the Commission (1),	Sentence 2.	Only the European Commission is empowered to propose legislation; each proposal is accompanied by a lengthy explanatory memorandum. Both are published in the <i>Official Journal</i> "C" (communication) series. Footnote 1 gives the reference.
Having regard to the opinion of the European Parliament (2),	Sentence 3.	The EP opinion provides information about different priorities in society and the member states, and often contains proposals that either tighten or loosen certain requirements. Footnote 2 gives the reference.
Having regard to the opinion of the Economic and Social Committee (3),"	Sentence 4.	This committee represents public and private interests in the legislative process. Footnote 3 gives the reference.
Having regard to the opinion of the Committee of Regions, (4),	Sentence 5.	This committee brings the viewpoints of the regional levels of government formally into the legislative process. Footnote 4 gives the

<b>Preamble text</b>	<b>Place</b>	<b>Purpose</b>
		reference.
Acting in accordance with the procedure laid down in Article 251 of the Treaty ( 5) in the light of the joint text approved by the Conciliation Committee on 8 November 2002,	Sentence 6.	This is the legal basis for the procedure and notes the date on which a final text was agreed between the EU institutions.
Whereas: (1) Increased public access to environmental information and the dissemination of such information contribute to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment.	Sentence 7.	This sentence is the first “whereas” of the series of remaining paragraphs in the preamble. They describe the justification for the legal act and the purpose and regulatory approach of each article.  <b>This is the place to find an description of the relationship between the legal act and other EU legislation.</b>

### 3.2 The Explanatory Memorandum

Second, **read the explanatory memorandum** submitted by the European Commission when it proposed the directive.

**The key to understanding complex EU legislation is to understand the need to define a legal structure that will solve an EU-wide problem and yet take into account differing needs and circumstances across the continent of Europe. Developing a political consensus on the solution of a problem is a task that can take 3-5 years.**

The Commission proposal and explanatory memorandum are usually referenced in the first footnote in the preamble. If only the formal proposal has been published in the *Official Journal*, the explanatory memorandum can be obtained from the DG Environment at the European Commission or downloaded from the DG Environment website.<sup>5</sup>

The memorandum aims to give a comprehensive overview of the background of the proposed legal act, that is, the problems that the EU law is intended to solve, steps already taken by the member states. research related to the problems, political concerns, costs, potential impacts, the positions of the concerned groups, and any other relevant information.

It is important to look at the problems and actions in the member states that gave rise to the need for legislation at the EU level, and to compare them with the situation in one’s own country. What is right for Lithuania or Germany may be wrong for Cyprus, and vice versa.

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<sup>5</sup> This and other relevant websites are in Annex 2.

### 3.3 The articles

Environmental directives are often developed and drafted by the scientific staff of the European Commission and lawyers are brought into the process at a late stage, when the main decisions have been made.

This means that the focus of the directive is often on the development of precise technical standards and requirements that are set out in annex to the directive. Procedural requirements are set out in the articles and are often less clearly defined and organised. The articles may include general policy statements, clarifications, and political compromises. The grammar is not felicitous and may be awkward. The sequence of the phrases may seem illogical.

This is because EU legislation is very much a work in progress. The precise practical meaning and application of the requirements is developed, clarified and implemented in close consultation between the competent authorities and the European Commission. Sometimes meetings are held to clarify the meaning of a preposition that has different implications for industry, depending on the language of the translation of the directive.

So, it is important to read through the directive sentence by sentence, and sometimes phrase by phrase and be clear about each requirement. Reading aloud is a good way to help clarify the meaning of an article or sentence, using the aural as well as the visual processing capacities of the brain.

There are basically four types of “obligations” in the directive:

**Obligatory or Mandatory:** These are of two types: minimum requirements where the member states are free to adopt stricter requirements, and absolute requirements where the member states are not allowed to adopt requirements that are different from the directive. Obligations are easily identified by the use of the verbs “shall” or “means” or “need to.”

Obligations may be extremely precise, as in technical standards, or very general, as in the strategic environmental assessment. Obviously, the member states have much more freedom to design their own systems when the text of the obligation is in very general language.

**As a general rule, obligations must be precise – setting both the minimum and maximum requirement – when an EU legal act applies to something that can move across national frontiers, a product, substance, mixture, or waste.**

An example of when a directive does not prevent a member state from imposing separate, restrictive requirements is in the European Court of Justice’s Advocate-General’s decision to allow the Brussels Region to impose fines on airlines that violate the noise standards for landing and take-off at the airport.

“Thus, ... the Advocate General concludes that Directive 2002/30 allows measures for the abatement of airport noise to be adopted which are distinct from those expressly provided for in the directive. If that were not the case, State action against noise pollution would come to a virtual standstill, with States losing all latitude in the exercise of their environmental, planning and health policies.”<sup>6</sup>

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<sup>6</sup> Court of Justice of the European Union. Press Release No. 8/11, Luxembourg, 17 February 2011, Advocate General’s Opinion in Case C-120/10 European Air Transport SA v Collège d’Environnement de la Région de Bruxelles-Capitale and Région de Bruxelles-Capital.

**Conditional:** This is an obligation that is triggered by a set of circumstances, usually a phrase in the form of “where ..., then ...”. For example, “where air pollution standards are exceeded, the public must be notified immediately.”

**Options or Choices:** This is text that respects differences in national situations by offering a choice of ways to comply. For example, in the early years of environmental policy the UK argued for the use of discharge limit values in water protection directives, because it has short, fast rivers that quickly empty into the sea. On the continent, where long, slow rivers may pass through several or more countries, this approach is inadequate to protect water quality, so they argued for the use of water quality standards. The early European Community water legislation reflected this disagreement until all sides recognised that both tools are necessary to achieve good water quality. Options may reflect a lack of scientific consensus as well as national differences.

**Discretionary or Voluntary text:** Where political consensus cannot be achieved or is considered not necessary, a directive may contain language that describes desirable actions or goals, rather than enforceable obligations. Discretionary text is often indicated by the use of the verb “may” or “shall undertake to” or “are encouraged to.”

**Other text:** This includes clarifications, explanations, descriptions of objectives, principles and scope.

Some examples of obligatory, optional/discretionary and other requirements are given in the table on the following pages.

**Table 4. Understanding the nature of the requirement**

<b>Obligation</b>	<b>Type</b>	<b>Comment</b>
Member States <b>shall adopt all measures necessary to ensure that</b> , before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects. These projects are defined in Article 4.	Mandatory	This is standard language in directives - precise as to the objective and general as to the means.  The second sentence makes the general obligation more precise by means of a list of activities.
The environmental impact assessment <b>may be integrated into the existing procedures</b> for consent to projects in the Member States, or, failing this, into other procedures or into procedures to be established to comply with the aims of this Directive.	Voluntary	This sentence allows member states that have longstanding land use planning procedures to insert the EIA procedure under the directive into their existing systems. This may involve amending a series of laws and regulations.  Other member states may prefer, like the USA, to establish a separate EIA procedure.
Member States <b>may provide for a single procedure</b> in order to fulfil the requirements of this Directive and the requirements of Council Directive 96/61/EC of 24 September 1996 on integrated pollution prevention and control.	Voluntary	This sentence clarifies that member states are not required to adopt separate procedures for EIA and integrated permitting.
Without prejudice to Article 7, Member States <b>may, in exceptional cases</b> , exempt a specific project in whole or in part from the provisions laid down in this Directive. In this event, the Member States <b>shall</b> : (a) consider whether another form of assessment would be appropriate; (b) make available to the public concerned the information obtained under other forms of assessment referred to in point (a), the information relating to the exemption decision and the reasons for granting it; (c) inform the Commission, prior to granting consent, of the reasons justifying the exemption granted, and provide it with the information made available, where applicable, to their own nationals.	Voluntary with conditions and obligatory elements	This sentence gives the member states the power to exempt certain projects from the EIA procedure. If it decides to exempt a project, it must comply with certain obligations - the exemption must be specific, exceptional, and the member state must comply with certain conditions and take actions to inform the public and the Commission.

Obligation	Type	Comment
The information to be provided by the developer in accordance with paragraph 1 <b>shall include at least:</b> ...	Minimum Obligation	The minimum content of the information is listed. The member states may require more detailed information.
The provisions of this Directive <b>shall not affect the obligation</b> on the competent authorities to respect the limitations imposed by national regulations and administrative provisions and accepted legal practices with regard to commercial and industrial confidentiality, including intellectual property, and the safeguarding of the public interest.	Clarification neither mandatory nor voluntary	The EU is explaining that the directive does not intend to modify national laws or practices regarding certain non-environmental issues.
This Directive <b>shall apply</b> to emissions from the activities listed in Annex I and greenhouse gases listed in Annex II.	Mandatory	This paragraph describes the scope of the directive, that is, the types activities and greenhouse gases that are regulated by the directive.  It does not oblige the member states to adopt a law with exactly the same scope.  If some activities producing greenhouse gases are not listed in Annex I, the member state must decide whether to try to broaden the emissions trading scheme, to limit them in some other way, or to leave them uncontrolled.
"greenhouse gases" <b>means</b> the gases listed in Annex II;	Mandatory	This is a definition in terms of a list.
The competent authority <b>shall issue</b> a greenhouse gas emissions permit granting authorisation to emit greenhouse gases from all or part of an installation <b>if it is satisfied that the operator is capable of monitoring and reporting emissions.</b>	Mandatory	This paragraph establishes the condition for issuing a permit. If this condition is met, the competent authority is obliged to issue the permit.
Member States shall take all necessary steps to ensure that as from 1 January 2003 within their territory heavy fuel oils are not used if their sulphur content exceeds 1,00 % by mass.	Mandatory	A straightforward technical standard.
The following rules <b>shall be</b> observed when using sludge: — the sludge <b>shall be used</b> in such a way that <b>account is taken</b> of the	Mandatory	This is a very general obligation that allows the member states to decide their own rules, as long as the rules (1) take account of the nutrient needs of the



Obligation	Type	Comment
nutrient needs of the plants and that the quality of the soil and of the surface and ground water <b>is not impaired</b> ,	Voluntary	plants and (2) do not impair the quality of soil, surface and groundwater. The second requirement is clearly stronger than the first.

### 3.4 The objectives

Article 1 usually define the **objectives** of the EU legal act. Objectives may also be called “subject matter” and are usually very general. They simply indicate the overall purpose of the directive.

Understanding the objectives is important, because EU legislation contains regulatory elements that are needed to create a common system throughout the Union. National legislation on the same subject often has more and broader objectives than the corresponding EU directive, because national legislation also regulates national, regional and local matters that are beyond the EU’s authority.

For example, The Directive on environmental liability simply states:

“The purpose of this Directive is to establish a framework of environmental liability based on the ‘polluter-pays’ principle, to prevent and remedy environmental damage.”

At the other extreme, the Directive on the landfill of waste uses Article 1 to define the objectives, part of the scope, and its relationship to another directive:

“1. With a view to meeting the requirements of Directive 75/442/EEC, and in particular Articles 3 and 4 thereof, the aim of this Directive is, by way of stringent operational and technical requirements on the waste and landfills, to provide for measures, procedures and guidance to prevent or reduce as far as possible negative effects on the environment, in particular the pollution of surface water, groundwater, soil and air, and on the global environment, including the greenhouse effect, as well as any resulting risk to human health, from landfilling of waste, during the whole life-cycle of the landfill.

2. In respect of the technical characteristics of landfills, this Directive contains, for those landfills to which Directive 96/61/EC is applicable, the relevant technical requirements in order to elaborate in concrete terms the general requirements of that Directive. The relevant requirements of Directive 96/61/EC shall be deemed to be fulfilled if the requirements of this Directive are complied with.”

### 3.5 The scope

The **scope** of a directive follows from its objectives. It defines what is regulated by the directive.

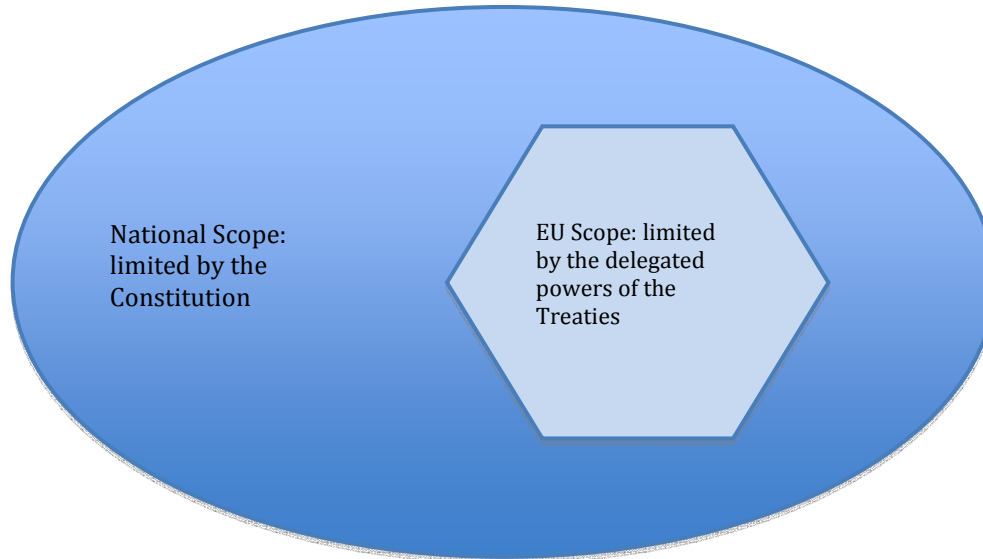
Therefore, what is outside the scope of the directive is not regulated by the directive and the member state is not required to extend the requirements of the directive to it. The scope may be defined in a particular article, but it is more often determined step by step throughout the text of the directive in relation to specific requirements. The scope may be defined in the annexes to the directive, in terms of technical standards, levels of emissions, calendar dates, or whatever criteria are considered appropriate by the policymakers.

However, as the scope of the directive is often the result of political compromises between the member states and the European institutions, it is wise to take a close look at what is excluded from the directive’s regulatory system.

Then the government should decide on the basis of national needs whether the scope of the national law transposing the directive should be exactly the same as the scope of the directive, or broader. This relationship is set out in the diagram on the following page:



**Figure 2. National and supranational European Union scope of legislation.**



### 3.6 Definitions

The **definitions** are usually placed in Article 2 of the directive. Usually they must be transposed word for word into national law. This has the implication for national lawmakers that the national definitions used in environmental policymaking are willy nilly taken over from the European Union rather than national experience and understanding.

This is generally a valuable impact of EU policymaking. The European Commission bases its legal definitions on the consensus of scientists, engineers, lawyers, and policymakers from all the member states and often draws on international organisations such as the World Health Organisation and the UN Environment Programme as well. Sometimes these definitions have taken years to be agreed.

### 3.7 Core requirements

Some directives, particularly those adopted in the 1960s-70s, are reactive in nature. That is, they are adopted in response to a particular international or national problem and seek to prevent such crises from arising in the future. Their requirements are often narrowly focused and precise.

The directives on major industrial accidents, on hazardous substances in consumer products, and limits on trade in seal pups and products made from seals are examples of this kind of directive.

Since the 1980s, the EU has adopted framework directives for environmental sectors or issues. These directive establish comprehensive regulatory regimes that will identify and

prevent environmental and health problems from arising. Chemicals were the first area to be regulated in this way, then waste management, nature, water, and air.

As the member states gained experience with legislation based on the precautionary and prevention principles, the basic administrative structures of environmental protection have begun to develop common characteristics throughout the European Union.

Thus, the core requirements are often consistent across the sectors of air, water, land, and waste management. They include requirements for:

- planning and setting targets for improvement
- information gathering and monitoring
- assessment of environmental impacts
- public information and consultation
- opportunities for administrative and judicial review of government decisions
- inspection
- enforcement
- consultation between national and EU regulatory bodies and institutions.

### 3.8 The case law

The European Court of Justice<sup>7</sup> decides disputes and advises national courts on the application and legality of EU measures, with the goals of ensuring the uniform interpretation and application of the law.

Hence, the meaning of EU laws ultimately may be decided by a conflict that is brought before the Court. It is wise to check the text of a directive against the Court's decisions, to determine whether any case law will have an impact on a government's proposals for transposition and implementation.

Over the years, through its case law the Court has established that governments and national courts must apply EU law in full within their sphere of competence and protect the rights of their inhabitants under EU law. This is known as "direct application."

Because EU law is higher than national law, governments and national courts must also set any conflicting national laws out of force.

The Court has also recognised the principle that member states are liable for breach of Community law. This means that individuals can sue for redress when a member state fails to respect a right conferred by EU law. Any breach of EU law by a member state may be brought before the Court.

National courts must also apply EU law. A national court or tribunal which is called upon to decide a dispute involving Community law may, and sometimes must, submit questions to

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<sup>7</sup> Its formal title is Court of Justice of the European Union.

the Court of Justice for a preliminary ruling. The Court must then give an interpretation or review the legality of a rule of Community law.

### **3.9 Member states fined for disrespect**

The Court of Justice can impose a fine on a member state that is condemned a second time for the same offence.

In November 2004, for the first time, the Court imposed a fine of €20,000 per day on Greece until it complied with two waste directives.<sup>8</sup> Later in 2004, the Court imposed a fine on Spain of €634,150 per year for every percentage point of inland bathing sites that fall short of the standards, from the following season until all sites comply.<sup>9</sup> In 2005, citing major improvements in Spain's implementation of the directive, the Commission decided not to collect the penalty.

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<sup>8</sup> Case C-387/97 Commission v. Greece [2000] ECR I-5047.

<sup>9</sup> Case C-278/01 Commission v Kingdom of Spain [2004]



## 4. MONITORING PROGRESS

**The laws and regulations cannot be drafted until the government knows what institutional objectives, structures and procedures it wants to implement, and the economic implications of do so.**

In other words, the sequence of assessment and planning is like a triple-helix – the legislative, institutional and economic analyses and changes cannot be carried out separately. Each one must always take the facts and needs of the others into account. Only this way can the necessary changes be taken in a consistent and effective manner.

The member states must report to the European Commission on the status of transposition and implementation of EU legal acts . So, in addition to meeting the requirements **for** accession, by establishing a progress monitoring system during the accession period enables a new member state to easily meet the reporting requirements **after** accession.

The monitoring structure should enable the Ministry of Environment to receive:

- **Regular updates (2x/year or 3x/year)** on the status of transposition and implementation, including timetables for the approximation of each legal act, that will be needed by the negotiating team and for reporting to the European Commission.
- **Updates on changes in EU requirements**, legislation or policy that may impact plans for transposition and implementation, and expenditures.
- **Information needed to prepare for accession.** In tracking progress in transposition. The Ministry of Finance should know how much investment in environmental infrastructure will be needed in the years to come, in order to better plan overall public financing strategies. This information will also help the Commission to determine how better to assist the country to meet its environmental approximation goals. Finally, thorough progress monitoring will help to prepare for the screening exercise and ensure correct transposition and implementation. This mitigates the risk of infringement procedures after accession, which also might have consequences for future Community funding in the environment sector.

Ministries of Environment should monitor the approximation and implementation by other Ministries, especially where the competence for transposing and implementing some of the environmental acquis is shared, e.g. with Ministries of Health Care, Agriculture, and Finance. Once the full picture is known, realistic internal work programmes can be developed, with a view to better manage the approximation process. Capacity for collecting detailed information has to be developed to comply with the reporting responsibilities that follow EU accession.

## 4.1 Tables of Concordance – the legal or transposition gap assessment

The baseline comparison of national laws and regulations in a country that is seeking to join the European Union is summarised in a “table of concordance” (ToC or TOC). This is a common tool used to display changes to laws in tabular form. Some form of the table of concordance is used by all member states routinely to track the transposition of EU directives into national law. This may take the simple form or a two-column table with the text of the directive in the left-hand column and the text or citation of the national law or draft in the right-hand column.

Directive	National law
Article 6 Liability of legal persons 1. Member States shall ensure that legal persons can be held liable for offences referred to in Article 3 where such offences have been committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on (a) a power of representation of the legal person, or (b) an authority to take decisions on behalf of the legal person, or (c) an authority to exercise control within the legal person.	

The standard format used for measuring progress in the transposition of legislation is set out on the follow page:

**Table 5. Model table of concordance**

<b>Country:</b>		<b>NAME OF COUNTRY</b>			Date Table Completed:		<b>8.09.2010</b>	
Person(s) completing Table:		<b>NAME, POSITION, DEPARTMENT, MINISTRY, EMAIL,</b>						
Total no. of points if full transposition:		435 (87 x 5)			Total no. of points for current status of transposition: _____ (____ x 5)			
Article	EU Obligation	Existing national law (give relevant law or regulation & no. of article)	Fully in accord? (yes/no)	If not, how will transpos'n occur? (L, GO, MO)	If draft, give no. of article transposing EU obligation	Status of transposition (5-0 according to lawmaking stage)	Planned year for full transpos'n	
Art. 1	[Overall objective]	Not to be scored.						
Art. 2	Definitions: (a) waste	Art.2.4 of Law 9010, OF 13.02.2003 on environmental treatment of solid waste  Art 3.7 Law 8934 EPL	No	L	Draft LWM Art.2 (a)	1	2010	

These tables must be updated every year and submitted to the European Commission with the Progress Monitoring Reports.

First, each obligation in a Directive is scored on a scale ranging from 0 to 5, according to the stage in a country's legislative procedure: column b). The conformity of a national legal provision with the corresponding European Union legal provision is a separate question.

### ***Scoring Progress***

Scoring system for **monitoring progress in transposition**

#### **Legislative act (L):**

- 0 = No steps taken to date
- 1 = Draft in process
- 2 = Ministry approves
- 3 = Government approves
- 4 = After first reading in Parliament
- 5 = Fully transposed and published

#### **Government order (GO):**

- 0 = No steps taken to date
- 1 = Draft in process
- 3 = Ministry approves
- 4 = Other relevant ministries approve
- 5 = Government approves and publishes

#### **Ministerial order (MO):**

- 0 = No steps taken to date
- 1 = Draft in process
- 3 = Draft in consultation
- 5 = Ministry approves and publishes

### ***Example***

A Directive has 22 separate legal obligations. If half of these obligations have been transposed into national law and no draft legislation is in process, it will receive a score of 55 (11 x 5).

A draft law to transpose the remaining provisions will add an additional 11 points (11 x 1).

As the draft goes through the process of adoption, additional points are added, until the score reaches the total of 110 (22 x 5) - transposition is completed.

### ***When a provision is not scored***

In certain cases, provisions are not scored. Either these are not included in the table of concordance or are put in brackets and the relevant rows are marked in grey. I



The following types of provisions are not scored:

- **Provisions that do not contain legal obligations on the member states.**  
Example. Article 1, the objective of a directive.
- **Provisions that cannot for geographical reasons be complied with.** Example. A directive on marine pollution would not apply to a landlocked country.
- **Provisions that contain important information but do not establish a legal obligation.** For example, a list of exemptions from the Directive's requirements.
- **Provisions that allow options for transposing or implementing the directive.** An example may be found in Directive 1999/22/EC relating to the keeping of wild animals in zoos, where a country may choose to license zoos pursuant to Article 4 or, alternatively, it may establish a system of regulation and registration pursuant to Article 5. In such cases, a country may decide to transpose (and implement) either one or the other option. Only one of them should be scored. These cases are specifically marked in blue on the TOC formats.
- **Provisions – such as reporting requirements – that will not be legal obligations until the date of accession.** Nonetheless, since the administrative and data management systems that will be needed for reporting will have to be in place before accession, these provisions are included in the tables of concordance.<sup>10</sup>
- **Discretionary provisions** are set in [square brackets]. There are two types:

A. The directive gives member states a **policy choice**.

Example. Article 10 of Directive 2006/12/EC on Waste requires waste recovery and disposal installations to have a permit, but Article 11 allows member states to exempt certain installations from that general requirement, and only require them to be registered if certain conditions are met.

So a country must decide if it wants to exempt some types of waste recovery and disposal installations from the permit requirement in Article 10?

If **yes**, they must transpose Article 11.

If **no**, they do not have to transpose Article 11.

B. The directive gives the competent authorities **implementation options**.

Example. Directive 2002/96/EC on waste electronic and electric. The member states must decide either to introduce **full producer liability** where the producers and physical and financial responsibility for the collection and treatment of both new and historic waste, or a shared liability involving public funding for the collection of historic or other types of waste.

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<sup>10</sup> Ludwig Krämer, *EC Environmental Law*, Fourth edition, 2000, p. 280, section 11-08 lists the measures that should be taken to prepare for reporting obligations after accession.

The directive also allows member states to decide on the financial arrangements that must be used to meet the liability through a blocked bank account, recycling insurance, or other means. The member states **must choose one or more of these implementation options** because, in many cases, they affect the rights and obligations of individuals or firms. However, because the discretion is at the level of implementation, where the EU acquis is incorporated into individual decisions by the competent authorities, the ToCs do not require those provisions to be scored. Nevertheless, **countries are asked to provide details on the transposing legislation, i.e. the legal basis in national law, on which the competent authorities base their implementation.**

Where a provision is marked "not to be scored", it may still have to be taken into account in national legislation. This should always be examined.

**The annexes**, including the technical annexes, to directives usually contain precise, complex, legally binding obligations, and must be transposed. These obligations have not been listed in the tables of concordance, because they will often need to be transposed verbatim.

The tables of concordance provide space for noting when an Annex to the directive has been transposed, and for indicating any divergences.

Finally, although the reporting obligation at the end of a directive does not have to be transposed into national law, a government clearly must assign internal responsibility to report the transposition measures to the European Commission from the date of accession when the exercise of progress monitoring comes to an end.

**An example of a table of concordance prepared for the Progress Monitoring is provided in Annex 1, with detailed instructions on how to complete the it.**

## 4.2 Implementation Questionnaires – the institutional and procedural gap assessment

The administrative functions, competencies, and procedures that will be needed to implement a directive, regulation or decision are often described in detail in the EU legal act. However, the member states have considerable discretion in integrating the new obligations into their existing administrative systems. How a government decides between these options is key to effective implementation. This is discussed in detail in Chapter ???.

### *The Implementation Review*

**The starting point** for the implementation gap assessment is the existing administrative structure as the starting point for the institutional gap assessment.

**Second**, examine the extent to which the administrative functions, competencies and procedures required under the directive, regulation or decision can be carried out.

**Third**, decide how existing administrative structures, competencies, procedures, resources and capacities must be organised and expanded to implement and enforce the directive, regulation or decision.

**Fourth**, review any draft legislation or implementing regulations to ensure that they fully express the administrative changes that will be needed to implement the directive, regulation or decision.

### ***The Implementation Questionnaire***

The Implementation Questionnaires consist of a set of basic and secondary questions that can be answered “yes” or “no”.

These questions are designed to indicate how advanced a country is in:

- Carrying out the information gathering and planning needed to implement a directive, regulation or decision, or a group of EU legal acts.
- Establishing the administrative structures, competencies, procedures, resources and capacities needed.

Each basic question leads to secondary questions, depending on whether a "yes" or "no" answer was given. The secondary questions guide the government to decisions that must be made in implementation. They also provide guidance about the scope and implementing measures still to be taken.

Annex II give an example of Implementation Questionnaire and a description of how to complete the questionnaires for the Progress Monitoring.

### ***The economic gap assessment***

The cost of administering environmental legislation must be divided between the general budget, that is, the tax-paying public, and the particular individuals and organisations that are the subject of the regulation. In the latter case, for example, developers should pay for the cost of environmental impact assessment, regulated industries should pay for the costs associated with permitting and controls, and chemical importers and manufacturers should pay for the cost of testing and reporting the chemicals and products they handle.

Where substantial capital investments are needed to comply with EU legislation, for example, on waste water treatment plants, air quality, or waste management, the targets for compliance will have to reflect the availability of capital in the country and the time needed to construct the facilities.

The economic gap assessment is not part of the Progress Monitoring, but is supported through a series of EC and bilateral projects that respond to the needs identified through the Progress Monitoring.

## 5. APPROXIMATION IN ACTION

After gaining a detailed understanding of the directive and how it fits into the legal regime in the environmental sector, other related sectors, and the EU *acquis* as a whole, the Government is ready to begin designing the regulatory framework that will approximate – transpose, implement and enforce – the directive.

### 5.1 What is required by the EU legislation?

This initial legal evaluation, which is represented in the table of concordance, answers two questions:

Step 1. Is there national legislation covering this subject matter?

Step 2. Where there is national legislation, the relevant national law(s) and regulations must be compared to each article of the EU law.

The national legislation may:

- respond entirely to EU obligations in which case the evaluation is more a check of conformity;
- correspond in part to EU obligations, in which case the evaluation will need to consider gaps which may remain and the possible ways of dealing with them;
- appear to be in conflict with EU legislation.

In the last case, the evaluation should include a review of options for the modification of relevant national legislation (whether to adapt existing laws or to replace them, for example); here again all parts of the relevant national law need to be considered.

The tables of concordance are supplied to the applicant governments by the European Commission.

Governments must be aware that national administrative instructions, circulars, and some types of ministerial order or decree which correspond to EU environmental legislation but which are not binding **are not sufficient for transposition**. They must be converted into formal and binding legal measures.

For example, one member state had incorporated Directive 80/778/EEC on the quality of drinking water into its law by means of an administrative circular. The Court of Justice said that it must adopt legislation which transposed the directive's maximum admissible concentration limits for pollutants into national law, because an administrative circular is only an instruction to employees of the government.

## 5.2 Choice and content of national measures

While EU environmental directives are designed to be implemented in ways which are adjusted to the unique circumstances of each Member State, the ultimate responsibility is on the government to take binding measures which fully carry out the letter and the spirit of EU environmental law. Where the directive is precise, countries must transpose the precise requirement, for example, as in the definitions used in the directive, minimum quality standards, and permitting requirements. Where the directive allows scope for different national actions, as in the details of the permitting procedures or public consultations, or in the designation of geographical areas to be covered by the directive, then Member States have greater freedom.

These laws may need the involvement of different levels of government and different institutions. The competent Ministry may act alone or in agreement with other involved ministries and institutions such as State Inspectorates and laboratories.

To the greatest possible extent, national legal measures aimed at approximating EU legislation should be integrated with national environmental priorities and principles in a manner which fully reinforces the principles, objectives and requirements of EU law. It may be helpful to look at existing Member State legislation for examples of different types of solutions to approximation issues. However, each Member State takes the actions which it considers appropriate and feasible in its own unique legal, economic and political circumstances.

## 5.3 The competent authority or authorities

At least one authority at national level must assume overall responsibility for the implementation of the EU law and be the European Union's interlocutor. A national 'competent authority' is also required in federal states even where the bulk of the legislation is adopted and implemented at the level of the regional government. The competent authorities, especially where they have licensing or enforcement powers under environmental directives, 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 in 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.

## 5.4 Institutions, administration and financing

The practical application of the new legislation means that changes may have to be made to institutions, procedures and standards. The responsible ministries and authorities should consider these institutional needs, the financing of administration and enforcement, and investments. Transitional provisions are normally used to bring existing industrial plants or activities gradually within the scope of the new regulatory system, such as the requirements for the provision of waste water treatment which are phased in to 2005.

The costs and benefits of different implementation choices have to be considered. An evaluation of the financing needed for administration and for investment, in order to improve environmental quality should be carried out, and methods need to be identified whereby which the needed financing can be obtained.

## 5.5 Enforcement

Enforcement is a growing focus of attention in the European Union, both because of the problems of uneven implementation by the Member States and the recognition that compliance problems can arise even in countries which have relatively strict laws and procedures.

Therefore, associated countries should take all necessary measures to improve their monitoring and control mechanisms, for example, by strengthening their inspection systems and by taking administrative and judicial measures, in order to ensure that their environmental legislation is properly implemented and eventually enforced.

## 5.6 Consulting interested groups and individuals

The responsible ministry or ministries will benefit greatly from early consultations with interested groups during the process of transposition as well as implementation.

Early and ongoing consultation serves to identify and avoid potential problems and to identify solutions and approaches that are widely acceptable. Consultation is also a means of gaining support and cooperation from the groups which are involved in or subject to the national laws and procedures. Ideally, all the groups affected by a regulatory regime should understand and agree with the need for the regime, the approach taken, and what is necessary for compliance. Enforcement, then can focus on the small percentage of people who do not comply willingly.

## 6. QUESTIONS AND ANSWERS ABOUT APPROXIMATION

A number of crucial principles that should guide the process of approximation and implementation are derived mainly from the case law of the European Court concerning the failure of a Member State to properly implement a directive. These general principles of approximation are explained below.

### 6.1 Can a government use non-binding administrative measures to achieve the aims of the directive?

**No.** Although the Treaty appears to give wide discretion as the means of transposition adopted, the Court of Justice has held that reliance on non-legal methods of transposition conflicts with the binding legal nature of directives. This principle is especially important for those countries who have traditionally relied upon administrative measures in carrying out environmental policy.

The obligation to transpose the directives means that member states must ensure the full application of directives in law, as well as in fact. In other words, it is not enough to do the right thing, the action must also be binding in law. Thus, it is not enough for a member state to issue an internal administrative order. Such an order can be modified at will by the administration, which means that it does not create specific rights and obligations of the citizens of the country. Similarly, a national law cannot simply refer to European Union law. It must incorporate the requirements of the directive into the national legal act.

Where a provision of a directive provides for the setting up of general programmes or for the achievement of general targets, legally binding Environmental Agreements between public authorities and industry can be an appropriate means of implementation.<sup>11</sup>

Provisions which oblige Member States to gather information and produce reports, do not necessarily have to be transposed into binding national legislation in Member States.

### 6.2 Does new national legislation have to be adopted?

Not necessarily. Countries may use existing national laws or amendments to existing laws to implement the directive. But it is rare that an existing law is a perfect match and experience has shown that it is unwise to rely on existing legislation unless their adequacy has been demonstrated on the basis of a detailed provision by provision comparison of national law with the EU directive.

For example, In 1985, France informed the Commission that its 1977 law on environmental impact assessment satisfied all the requirements of Directive 85/337/EEC, but later had to modify the law in order to come into compliance.

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<sup>11</sup> See, for example, the Commission's *Communication on Environmental Agreements*, COM(96) 591 of 27.11.1996 and Commission Recommendation 96/733/EC, OJ L 333/59 of 21.12.1996.

### **6.3 Do the precise terms of the directive have to be transposed in national legislation?**

No. Directives are designed to give some flexibility to Member States, and word for word transposition is not essential if the requirements of the directive are complied with by national laws. But, countries need to be very careful that the language of national law fully reflects the directive. Some Member States have in fact adopted a practice of word for word transposition (known as 'copy-out') in order to avoid problems of non-conformity. This practice has its dangers: transposition without accompanying legal and administrative measures to ensure effective implementation and enforcement of the directive will not be sufficient. It is at times necessary, in order to achieve in practice the result required by the directive, to make transposing legislation more detailed than broadly phrased obligations in the directive. In doing so great care must be taken not to restrict the scope of the obligations contained in the directive.

It is particularly important to ensure that the definitions in the EU directive are literally and fully transposed in the national legislation intended to implement the directive.

### **6.4 May government choose the sanctions to enforce national laws transposing directives?**

Yes. Directives generally leave the form of sanction to the discretion of Member States. Only rarely do they even prescribe that breach of national law implementing a directive must be punished by civil or criminal penalties. But this discretion is not completely free:

The form of national sanction chosen must be effective to ensure that the aims of the directive are achieved.

There must be no discrimination between the sanctions adopted for measures implementing directives and sanctions laid down under related national legislation – for example, an environmental offence under national law should not have unduly severe sanctions compared to an offence under a national law which transposes a comparable requirement under an EU directive.

For example, a penalty for violation of emission limits on discharges to water should be comparable, whether or not those discharge limits are covered by an EU directive.

### **6.5 May countries adopt higher national environmental standards?**

That depends on the legal basis of the directive. The EC Treaty in Article 176 explicitly reserves the right of member states to adopt – or to maintain – national environmental standards and requirements which are more stringent than those contained in EU environmental legislation. But this freedom is not absolute; those more stringent requirements must be consistent with the Treaties.

Some EU environmental directives explicitly allow – or encourage – the Member States to take more stringent measures. That is, they set the minimum standard for compliance, not the maximum standard. This is frequently the case for emission limit values on discharges to air or water, or for environmental quality standards.

For example, EU directives on air and water quality often set mandatory limit values for certain pollutants, supplemented with guide values which set environmental quality objectives the Member States should strive to achieve.



Where EU environmental legislation is based on the environmental provisions of the EC Treaty, member states have broader rights to adopt more stringent measures. These measures must be notified to the Commission (but not in advance) and they may not be a disguised form of trade restriction or arbitrarily discriminate against the goods or services of another Member State. Where an EU directive or regulation aims to fully regulate an area of activity, such as the regulation on transfrontier shipment of waste, countries should be very cautious in introducing more stringent measures.

## **6.6 Does a government have complete discretion to designate geographical areas under environmental directives?**

No. Many of the environmental directives call for the Member States to designate areas within their territory according to criteria given in the directive which will be subject to the directive's requirements. Examples include: habitat protection areas, sensitive and less sensitive areas under the Directive on urban waste water treatment, and areas where the air quality does not meet EU standards. Usually these areas must be notified to the European Commission and plans for their protection or remediation must be adopted.

Although the criteria given in the directive may leave some discretion to Member States in how they go about the task of designating such areas, failure to correctly apply the criteria, e.g. by introducing illegitimate economic considerations in the designation procedure, can get the Member State government into trouble with the European Commission and ultimately with the European Court of Justice.

The following general principles apply:

- The designation must be carried out by the competent national authority in an appropriately legally binding form, whether or not the proposal is developed by other institutions.
- The criteria for designation specified in the directive must be carefully applied.

Governments must be particularly wary of allowing extraneous factors to influence the choice of designated areas. Because of the costs for protection or environmental improvement which may follow from the designation, there will be pressure to designate as few and as small areas as possible. But economic and other non-environmental considerations may not be taken into account, unless they are specifically allowed by the directive.

For example, under Directive 85/203/EEC Member States may fix limit values lower than those in the directive in zones where they consider it necessary to limit or prevent a foreseeable increase in pollution by nitrogen dioxide in the wake of urban or industrial development.

## **6.7 Does approximation apply to regulations?**

Strictly speaking, no, but countries must still take some administrative steps to implement regulations. The environmental sector has some very important regulations, which, for example, implement controls on international trade in waste and on endangered species, and the Eco-management and Audit Scheme. These will not come into force in the acceding countries until the date of accession, and no transposition into national law is required – or indeed permitted.

But governments should be aware that some regulations require the designation or establishment of authorities or bodies responsible for their implementation; this may be done by administrative order or decree.

Some expressly require countries to specify penalties in national law – the civil or criminal code, for example – for non-compliance with the EU regulation. Even if there is no such express provision there must be effective national sanctions to ensure compliance with the regulations.

So governments should ensure that the necessary administrative and institutional measures are in place by the date of accession and that any overlapping or conflicting national laws are repealed.

Where the EU legislation in an environmental sector contains a mixture of directives and regulations, countries must take particular care to ensure that the national measures implementing the directives are fully integrated and do not conflict with the EU regulations.

The steps to implementing regulations are listed in Annex 3.

## 7. FIVE STEPS TO APPROXIMATING EU LEGISLATION

Many of the steps which member states routinely follow in the process of approximation are the same for all directives and regulations. These are listed on the following pages, together with some of the more specific issues that need to be decided in the process of aligning national legislation with that of the European Union.

### Step 1. Determine the type of law and its requirements

1. What type: directive, regulation, decision?
2. What are its aims and objectives?
3. What competent authorities are needed?
4. What information must be collected and provided to the Commission?
5. What planning is required?
6. What scientific or technical knowledge is required?
7. What consultation procedures are required?
8. What investments are required?

### Step 2. Determine your national choices

1. Which requirements (in the EU legislation) allow choices to be made?
2. Which requirements do not allow choice?
3. National Laws or administrative measures?
4. New or amended legislation?
5. Content of national legal measures?
6. What are the costs and benefits to the economy and to the environment?
7. Which sectors will bear the burden?
8. How should the transition to the new requirements be organised: deadlines, transition periods, implementation programmes, investments & reports

### Step 3. Determine how the national law will be implemented and enforced

1. Central, regional or local level implementation? Staff and technical needs?
2. What powers will officials need to have?
3. What co-ordination and consultation amongst regulatory bodies is needed?
4. What is the need for Information, Guidelines, Training?
5. Costs and benefits of different implementation choices?
6. What financing is needed for administration? for investment?
7. How will costs be recovered and financing be obtained?
8. What monitoring is needed?

9. Who will carry out the monitoring? Do they need training, staff, equipment?
10. What penalties should apply? How will they be applied (administrative, judicial)?

**Step 4. Decide information and consultation procedures**

1. Who should be consulted? Government departments, Local and regional authorities, Industry, NGOs, neighbourhood groups?
2. What form of consultation is needed?
3. At what stage in the process?
4. Other possible roles of organisations outside the national government?

**Step 5. Define the Implementation Programme**

1. Legislative schedule
2. Preparation of implementing administrative rules, decrees, etc.
3. Budgetary schedule
4. Institutions, staff and resources
5. Training, information materials, meetings with concerned government offices, industry, public, etc. and communication activities
6. Investments
7. Operational expenses
8. Monitoring
9. Information assembly and reporting
10. Enforcement

## 8. GOVERNMENTAL DISCRETION

The process of approximation emphasizes what is needed to transpose and comply with EU legislation. However, it is just as important to understand the areas where the government is free to make its own decisions according to the conditions and needs in their country. areas in which national governments are free to make their own arrangements in the implementation of EU legislation include:

- Organisation of the central government
- Centralisation vs. decentralisation of functions and competencies
- Information management
- Public information and consultation
- Assessment costs and benefits of different regulatory options
- Cost-recovery schemes
- Investment planning
- Monitoring implementation and compliance
- Sanctions and penalties.

It is important to keep in mind the balance between the authority of the European Union which adopted the directive and the authority of the member state which transposes, implements and enforces the directive as part of its national legal and administrative order.

The European institutions and the other member states will look both at the formal steps which are taken to make the directive part of the national legal order, and at the concrete results of the practical steps that are taken.



## ANNEX 1. HOW TO FILL OUT THE TABLE OF CONCORDANCE

**A Table of Concordance is a checklist for recording progress towards complete transposition of a directive.**

**Always compare the full text of the national law, regulation or by-law against the full text of the Directive.<sup>12</sup>**

The top of each Table of Concordance has a section for:

- the Country/Entity
- the name of the person(s) filling out the Table of Concordance + office, ministry/agency, telephone, email
- the date.

The last space in the top section is for the score to show progress in transposition. At the left is the total number of points possible if all of the directive's legal obligations have been fully transposed. At the right is a place for entering the total number of points for the current status of transposition. The method of calculating the points for current status of transposition is described below.

The Table of Concordance has seven columns:

1	2	3	4	5	6	7
Article EU Obligation	Existing national law (give relevant law or regulation & no. of article)	Fully in accord? (Yes/No)	If not, how will transposition occur? (L, GO, MO)	If draft, give no. of article transposing EU obligation	Status of transposition (5-0 accdg <sup>13</sup> to lawmaking stage)	Planned year for full transposition

### Column 1. EU Obligation

The Article, paragraph and legal obligations in the Directive that must be transposed into national law.

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<sup>12</sup> Many member states will use a two-column table with the full text of the directive in the left column and the full text of the transposing national legislation in the right column. When transposition is carried out by mean of amending several laws and regulations, this is a way to keep track of which element in the directive is transposed by each modification to national law.

<sup>13</sup> according

Where an article or paragraph contains more than one legal obligation, each legal obligation listed separately.

Brackets and grey shading indicate the provisions that do not need to be transposed and are not scored. These include the following obligations:

- of the European Commission
- of member states to report on transposition and implementation of the directive to the Commission
- of member states to participate in advisory committees to the Commission
- of member states to include a reference to the directive in the national law transposing the directive.

Because the administrative and data management systems required for reporting are an important part of implementation and must be in place before accession, these provisions have been included in the table of concordance as a reminder.

Provision allowing member states to choose between different alternatives of transposition are indicated. Only one of those alternatives must be scored.

Provisions allowing member states choices at the policy level or at the implementation level are also not scored, but countries will regularly be asked to provide information on the national legal and regulatory framework.

*The grey fields are not scored and do not have to be filled in unless there is legal act through which the country transposes a discretionary provision.*

#### **Column 2. Existing national legal act (law or regulation & no. of provision)**

This column provides a place to enter the relevant provision from national law that transposes the directive's requirement. Provide the full title of each legal act and publication reference.

The title of the legal act can be abbreviated in subsequent citations. If more than one legal act has been used to transpose the requirements of the directive, provide a key to the abbreviations at the end of the table of concordance.

Only legal acts that are adopted and in force may be cited in this column. Leave the column blank when no legal act transposing the provision of the directive is in force.

#### **Column 3. Fully in accord?**

This column indicates whether national law fully corresponds to the directive's requirement or not. The answer "Yes" can be given only if transposition is complete. For example, key definitions sometimes must be transposed with the exact language in the directive. Under all other circumstances, the answer must be "No".

#### **Column 4. If not, how will transposition occur?**

This column provides the candidate country with an opportunity to show how transposition is proceeding. This column indicate **how** the directive's obligation will be transposed. There are three options:

"L" - a law adopted by the national parliament

"GO" - a government order

"MO" - a ministerial order.



If an existing legal act must be amended in order to complete transposition, or if no act is yet in place, indicate L, GO, or MO, depending on the type of legal act that will be adopted.

**Column 5. Title of draft legal act and provision number**

If the legal act is in draft form, give the title of the draft legal act and the number of the article transposing the directive's obligation.

**Column 6. Status of transposition**

This column summarises how far the country has progressed in transposing the directive, by giving points from 0 to 5.

- If the legal obligation **has been fully transposed and is in force** (Column 2), the score is 5.
- If **no steps have been taken** to transpose the legal obligation to date, or if the act in place or in draft form does not transpose the directive's provision completely, the score is 0.
- If a **draft law has been prepared**, the score is from 1 to 4, depending on their status in the procedure.

The list on the following page indicates the score to enter to indicate the status of a legislative or administrative act (or draft act) transposing the directive's requirement:

**Types of Legal Acts and Scoring of Transposition Status**

<b>Act of Parliament (L)</b>
<p>0 = No steps taken to date Work on the draft has not started yet, although the draft is planned.</p> <p>1 = Draft in process A draft is being elaborated. Consultations are taking place.</p> <p>2 = Ministry approves The responsible Minister approves the draft. The draft is submitted to the Government/Council of Ministers.</p> <p>3 = Government Approves The draft is approved by the Government/Council of Ministers.</p> <p>4 = The draft is submitted to the Parliament/Assembly. After first reading in the parliament The draft is debated and possibly amended before the Parliament/Assembly. The text is adopted/sent for promulgation.</p> <p>5 = Fully transposed and published The act is published in the official journal/gazette and has entered into force.</p>
<b>Government Order (GO)</b>
<p>0 = No steps taken to date Work on the draft has not started yet, although the draft is planned.</p> <p>1 = Draft in process A draft is being elaborated.</p> <p>3 = Ministry approves The draft is approved by the relevant ministry. The draft is submitted to other relevant ministries.</p> <p>4 = Other relevant ministries approve The draft is approved by other relevant ministries.</p> <p>5 = Government approves and publishes The act is published in the official journal/gazette and has entered into force.</p>
<b>Ministerial Order (MO)</b>
<p>0 = No steps taken to date Work on the draft has not started yet, although the draft is planned.</p> <p>1 = Draft in process A draft is being elaborated.</p> <p>3 = Draft in consultation The draft is in consultations with relevant ministries and institutions.</p> <p>5 = Ministry approves and publishes The act is published in the official journal/gazette and has entered into force.</p>

**Conclusion:** Each legal obligation may receive only one score showing the status of transposition, even if several acts or drafts are used to achieve transposition. The total number of points in that column should be added up and entered at the top of the Table of Concordance. A comparison between this figure and the total number of points possible (full transposition) indicates the Transposition Status.

**Column 7. Planned year for full transposition:**

This is one of the most important columns to fill out from a progress monitoring point of view. The projected date for full transposition is the date on which the national legislative or

administrative act transposing the EU obligation comes into force. The date should be entered in a day/month/year format.

### Three choices:

#### 1. If a legal act has been adopted and transposes the directive 100%:

- Give the **Title** of the legal act in the column Existing national law (give relevant law or regulation & no. of article),
- Write **YES** under Fully in accord?
- Give the score **5** under Status of transposition.

#### 2. If the existing legal act only partly transposes the directive's obligation or if there is no act in place:

Write **NO** in Column 2, under Fully in accord?

Write the abbreviation for the type of national legal act that will transpose the directive - **L, GO or MO** under If not, how will transposition occur?

#### 3. When a draft national legal act will completely transpose the directive:

In Column 3, give the **number of the Article** that transposes the directive's obligation under If draft.

Give a **Score from 0 to 4** under Status of transposition - 0 = no draft, 4 = After first reading in the Parliament.

Give the deadline **Year** for completion of transposition under Planned year for full transposition.

Country:	COUNTRY	Date Table Completed:	MONTH, YEAR
Person(s) completing Table:	NAME, OFFICE, MINISTRY, EMAIL		
Total no. of points if full transposition:	585 (117x 5)	Total no. of points for current status of transposition:	

Article	EU Obligation	Existing national law (give relevant law or regulation & no. of article)	Fully in accord? (yes/no)	If not, how will transpos'n occur? (L, GO, MO)	If draft, give no. of article transposing EU obligation	Status of transposition (5-0 accdg to lawmaking stage)	Planned year for full transpos'n
Art. 1	Subject matter	Not to be scored.					
Art. 2	Definitions						
	1. ambient air						
	2. pollutant						
	3. level						
	4. assessment						
	5. limit value						
	6. critical level						
	7. margin of tolerance						
	8. air quality plans						
	9. target value						
	10. alert threshold						
	11. information threshold						

Article	EU Obligation	Existing national law (give relevant law or regulation & no. of article)	Fully in accord? (yes/no)	If not, how will transpos'n occur? (L, GO, MO)	If draft, give no. of article transposing EU obligation	Status of transposition (5-0 accdg to lawmaking stage)	Planned year for full transpos'n
	12. upper assessment threshold						
	13. lower assessment threshold						
	14. long term objective						
	15. contributions from natural sources						
	16. zone						
	17. agglomeration						
	18. PM10						
	19. PM2.5						
	20. average exposure indicator						
	21. exposure concentration obligation						
	22. national exposure reduction target						
	23. urban background locations						
	24. oxides of nitrogen						
	25. fixed measurements						
	26. indicative measurements						
	27. volatile organic compounds						
	28. ozone precursor substances						
Art. 3	MS must designate competent authorities for: <ul style="list-style-type: none"> <li>- implementation of the Directive</li> <li>- assessment of ambient air quality</li> <li>- approval of measuring system</li> <li>- ensuring accuracy of measuring devices</li> <li>- analysis of assessment methods</li> <li>- national coordination of EC quality assurance programmes.</li> <li>- cooperation with other MS and the Commission</li> </ul> Where relevant, the competent authorities and bodies shall comply with Section C of Annex I						

Article	EU Obligation	Existing national law (give relevant law or regulation & no. of article)	Fully in accord? (yes/no)	If not, how will transpos'n occur? (L, GO, MO)	If draft, give no. of article transposing EU obligation	Status of transposition (5-0 accdg to lawmaking stage)	Planned year for full transpos'n
Art. 4	MS must establish zones and agglomerations throughout the territory. Air quality assessment and management must be carried out in all zones and agglomerations						
Art. 5.1	The upper and lower assessment thresholds specified in Section A of Annex II must apply to SO <sub>2</sub> , NO <sub>2</sub> & NO <sub>x</sub> , particulate matter (PM <sub>10</sub> & PM <sub>2.5</sub> ), lead, benzene & CO						
	Each zone and agglomeration has to be classified in relation to the assessment thresholds						
Art 5.2	This classification must be reviewed at least every five years in accordance with the procedure laid down in Section B of Annex II. In the case of significant changes in activities relevant to the ambient concentrations of these pollutants the classification must be reviewed more frequently						
Art. 6.1	MS must assess ambient air quality for SO <sub>2</sub> , NO <sub>2</sub> & NO <sub>x</sub> , particulate matter (PM <sub>10</sub> & PM <sub>2.5</sub> ), lead, benzene & CO in all zones and agglomerations.						
	Assessment must be done in accordance with the criteria laid down in Art. 6.2, 6.3 and 6.4						
	Assessment must be done in accordance with the criteria laid down in Annex III.						
Art. 6.2	Fixed measurement is mandatory where the level of pollutants exceeds the upper assessment threshold.						
	[These measurements may be supplemented by modeling and/or indicative measurements]	Not to be scored-discretionary provision Please provide					

Article	EU Obligation	Existing national law (give relevant law or regulation & no. of article)	Fully in accord? (yes/no)	If not, how will transpos'n occur? (L, GO, MO)	If draft, give no. of article transposing EU obligation	Status of transposition (5-0 accdg to lawmaking stage)	Planned year for full transpos'n
		information on national legislation in place but do not score					
Art. 6.3	[A combination of fixed measurements and modeling and/or indicative measurements can be used in zones and agglomerations where pollutant levels are below the upper assessment threshold]	Not to be scored-discretionary provision Please provide information on national legislation in place but do not score					
Art. 6.4	If pollutant levels are below the lower assessment threshold modeling techniques or objective-estimation techniques are sufficient	Law on Ambient Air Quality (OJ MN, No 48/07), Art 25					
Art. 6.5	MS must establish rural background sites to monitor PM2.5 and the chemical speciation of PM2.5 on an annual basis						
	(a) For every 100.000km <sup>2</sup> of MS area one measurement site must be established						
	(b) At least one measurement site must be established in the MS or a common site with adjoining MS must be set up.						
	[(c) MS may coordinate monitoring with EMEP]	Not to be scored-discretionary provision Please provide information on national legislation in place but do not					

Article	EU Obligation	Existing national law (give relevant law or regulation & no. of article)	Fully in accord? (yes/no)	If not, how will transpos'n occur? (L, GO, MO)	If draft, give no. of article transposing EU obligation	Status of transposition (5-0 accdg to lawmaking stage)	Planned year for full transpos'n
		score					
	(d) Data quality objectives of sections A and C of Annex I must apply for measurements of PM mass and Annex IV must apply in its entirety						
Art. 7.1	The location of sampling points for the measurement of SO <sub>2</sub> , NO <sub>2</sub> and NO <sub>x</sub> , PM <sub>10</sub> , PM <sub>2.5</sub> , Pb, benzene and CO shall be determined using the criteria listed in Annex III						
Art. 7.2	In each zone or agglomeration where fixed measurements are the sole source of information for assessing air quality, the number of sampling points for each relevant pollutant shall not be less than the minimum number of sampling points specified in Section A of Annex V.						
Art. 7.3	[For zones and agglomerations within which information from fixed measurement sampling points is supplemented by information from modelling and/or indicative measurement, the total number of sampling points specified in Section A of Annex V may be reduced by up to 50 %, provided that the following conditions are met: (a) the supplementary methods provide sufficient information for the assessment of air quality with regard to limit values or alert thresholds, as well as adequate information for the public; (b) the number of sampling points to be installed and the spatial resolution of other techniques are sufficient for the concentration of the relevant pollutant to be established in accordance with the data quality objectives specified in Section A of Annex I and	Not to be scored-discretionary provision  Please provide information on national legislation in place but do not score					



Article	EU Obligation	Existing national law (give relevant law or regulation & no. of article)	Fully in accord? (yes/no)	If not, how will transpos'n occur? (L, GO, MO)	If draft, give no. of article transposing EU obligation	Status of transposition (5-0 accdg to lawmaking stage)	Planned year for full transpos'n
	enable assessment results to meet the criteria specified in Section B of Annex I. The results of modelling and/or indicative measurement shall be taken into account for the assessment of air quality with respect to the limit values.]						
Art. 7.4	The application in MS of the criteria for selecting sampling points shall be monitored by the Commission so as to facilitate the harmonised application of those criteria throughout the European Union	Not to be scored					
Art. 8.1	MS shall apply the reference measurement methods and criteria specified in Section A and Section C of Annex VI						
Art. 8.2	[MS may use other measurement methods subject to the conditions set out in Section B of Annex VI.]	Not to be scored-discretionary provision Please provide information on national legislation in place but do not score					
Art. 9.1	MS shall perform fixed measurements in a zone or agglomeration, if concentrations of ozone have exceeded the long-term objectives specified in Section C of Annex VII during any of the previous five years of measurement	Regulation on determination of Types of Pollutants, Limit values and other air quality standards, (OJ MN, No 45/08), Art 9,	Yes			5	

Article	EU Obligation	Existing national law (give relevant law or regulation & no. of article)	Fully in accord? (yes/no)	If not, how will transpos'n occur? (L, GO, MO)	If draft, give no. of article transposing EU obligation	Status of transposition (5-0 accdg to lawmaking stage)	Planned year for full transpos'n
		Table 5					
Art. 9.2	[Where fewer than five years' data are available, MS may, for the purposes of determining whether the longterm objectives referred to in Art. 9.1 have been exceeded during those five years, combine the results from measurement campaigns of short duration carried out when and where levels are likely to be at their highest, with the results obtained from emission inventories and modeling]	Not to be scored-discretionary provision Please provide information on national legislation in place but do not score					
Art. 10.1	The siting of sampling points for the measurement of ozone shall be determined using the criteria set out in Annex VIII						
Art. 10.2	The sampling points for fixed measurements of ozone in each zone or agglomeration within which measurement is the sole source of information for assessing air quality shall not be less than the minimum number of sampling points specified in Section A of Annex IX						
Art. 10.3	[For zones and agglomerations within which information from sampling points for fixed measurements is supplemented by information from modelling and/or indicative measurements, the number of sampling points specified in Section A of Annex IX may be reduced provided that the following conditions are met: (a) the supplementary methods provide sufficient information for the assessment of air quality with regard to target values, long-term objectives, information and alert thresholds; (b) the number of sampling points to be installed and	Not to be scored-discretionary provision Please provide information on national legislation in place but do not score					

Article	EU Obligation	Existing national law (give relevant law or regulation & no. of article)	Fully in accord? (yes/no)	If not, how will transpos'n occur? (L, GO, MO)	If draft, give no. of article transposing EU obligation	Status of transposition (5-0 accdg to lawmaking stage)	Planned year for full transpos'n
	<p>the spatial resolution of other techniques are sufficient for the concentration of ozone to be established in accordance with the data quality objectives specified in Section A of Annex I and enable assessment results to meet the criteria specified in Section B of Annex I;</p> <p>(c) the number of sampling points in each zone or agglomeration amounts to at least one sampling point per two million inhabitants or one sampling point per 50 000 km<sup>2</sup>, whichever produces the greater number of sampling points, but must not be less than one sampling point in each zone or agglomeration;</p> <p>(d) nitrogen dioxide is measured at all remaining sampling points except at rural background stations as referred to in Section A of Annex VIII. The results of modelling and/or indicative measurement shall be taken into account for the assessment of air quality with respect to the target values.]</p>						
Art. 10.4	Nitrogen dioxide shall be measured at a minimum of 50 % of the ozone sampling points required under Section A of Annex IX. That measurement shall be continuous except at rural background stations, as referred to in Section A of Annex VIII, where other measurement methods may be used						
Art. 10.5	In zones and agglomerations where, during each of the previous five years of measurement, concentrations are below the long-term objectives, the number of sampling points for fixed measurements shall be determined in accordance with Section B of Annex IX						

Article	EU Obligation	Existing national law (give relevant law or regulation & no. of article)	Fully in accord? (yes/no)	If not, how will transpos'n occur? (L, GO, MO)	If draft, give no. of article transposing EU obligation	Status of transposition (5-0 accdg to lawmaking stage)	Planned year for full transpos'n
Art. 10.6	MS shall ensure that at least one sampling point is installed and operated in its territory to supply data on concentrations of the ozone precursor substances listed in Annex X. MS shall choose the number and siting of the stations at which ozone precursor substances are to be measured, taking into account the objectives and methods laid down in Annex X.						
Art. 11.1	MS shall apply the reference method for measurement of ozone, set out in point 8 of Section A of Annex VI.						
	[MS may use other measuring methods subject to the conditions set out in Section B of Annex VI]	Not to be scored-discretionary provision Please provide information on national legislation in place but do not score					
Art. 11.2	MS shall inform the Commission of the methods it uses to sample and measure VOC, as listed in Annex X.						
Art. 12	In zones and agglomerations where the levels of SO <sub>2</sub> , NO <sub>2</sub> and NO <sub>x</sub> , PM <sub>10</sub> , PM <sub>2.5</sub> , Pb, benzene and CO are below the respective limit values specified in Annexes XI and XIV, MS shall maintain the levels below the limit values and shall endeavour to preserve the best ambient air quality, compatible with sustainable development						
Art. 13.1	MS shall ensure that, throughout their zones and agglomerations, levels of SO <sub>2</sub> , PM <sub>10</sub> , Pb, and CO in ambient air do not exceed the limit values laid down in Annex XI						

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	In respect of nitrogen dioxide and benzene, the limit values specified in Annex XI may not be exceeded from the dates specified therein						
	Compliance with these requirements shall be assessed in accordance with Annex III						
	The margins of tolerance laid down in Annex XI shall apply in accordance with Article 22(3) and Article 23(1)						
Art. 13.2	The alert thresholds for concentrations of SO <sub>2</sub> and NO <sub>2</sub> in ambient air shall be those laid down in Section A of Annex XII						
Art. 14.1	MS shall ensure compliance with the critical levels for SO <sub>2</sub> and NO <sub>x</sub> specified in Annex XIII as assessed in accordance with Section A of Annex III						
Art. 14.2	Where fixed measurements are the sole source of information for assessing air quality, the number of sampling points shall not be less than the minimum number specified in Section C of Annex V.						
	[Where that information is supplemented by indicative measurements or modelling, the minimum number of sampling points may be reduced by up to 50 % so long as the assessed concentrations of the relevant pollutant can be established in accordance with the data quality objectives specified in Section A of Annex I.]	Not to be scored-discretionary provision Please provide information on national legislation in place but do not score					
Art. 15.1	MS shall take all necessary measures not entailing disproportionate costs to reduce exposure to PM <sub>2,5</sub> with a view to attaining the national exposure reduction target laid down in Section B of Annex XIV						

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	by the year specified therein						
Art. 15.2	MS shall ensure that the average exposure indicator for the year 2015 established in accordance with Section A of Annex XIV does not exceed the exposure concentration obligation laid down in Section C of that Annex						
Art. 15.3	The average exposure indicator for PM <sub>2,5</sub> shall be assessed in accordance with Section A of Annex XIV.						
Art. 15.4	MS shall, in accordance with Annex III, ensure that the distribution and the number of sampling points on which the average exposure indicator for PM <sub>2,5</sub> is based reflect the general population exposure adequately.						
	The number of sampling points shall be no less than that determined by application of Section B of Annex V						
Art. 16.1	MS shall take all necessary measures not entailing disproportionate costs to ensure that concentrations of PM <sub>2,5</sub> in ambient air do not exceed the target value laid down in Section D of Annex XIV as from the date specified therein.						
Art. 16.2	MS shall ensure that concentrations of PM <sub>2,5</sub> in ambient air do not exceed the limit value laid down in Section E of Annex XIV throughout their zones and agglomerations as from the date specified therein.						
	Compliance with this requirement shall be assessed in accordance with Annex III.						
Art. 16.3	The margin of tolerance for PM <sub>2.5</sub> laid down in Section E of Annex XIV shall apply in accordance with Article 23(1).						
Art. 17.1	MS shall take all necessary measures not entailing						

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	disproportionate costs to ensure that the target values and long-term objectives for ozone are attained						
Art. 17.2	For zones and agglomerations in which a target value is exceeded, MS shall ensure that the programme prepared pursuant to Article 6 of Directive 2001/81/EC and, if appropriate, an air quality plan is implemented in order to attain the target values, save where not achievable through measures not entailing disproportionate costs, as from the date specified in Section B of Annex VII to this Directive						
Art. 17.3	For zones and agglomerations in which the levels of ozone in ambient air are higher than the long-term objectives but below, or equal to, the target values, MS shall prepare and implement cost-effective measures with the aim of achieving the long-term objectives. Those measures shall, at least, be consistent with all the air quality plans and the programme referred to in Art. 17.2.						
Art. 18	In zones and agglomerations in which ozone levels meet the longterm objectives, MS shall, in so far as factors including the transboundary nature of ozone pollution and meteorological conditions permit, maintain those levels below the long-term objectives and shall preserve through proportionate measures the best ambient air quality compatible with sustainable development and a high level of environmental and human health protection.						
Art. 19	Where the information threshold specified in Annex XII or any of the alert thresholds laid down therein is exceeded, MS shall take the necessary steps to inform						

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	the public by means of radio, television, newspapers or the Internet.						
	MS shall forward to the Commission, on a provisional basis, information concerning the levels recorded and the duration of the periods during which the alert threshold or information threshold was exceeded						
Art. 20.1	MS shall transmit to the Commission, for a given year, lists of zones and agglomerations where exceedances of limit values for a given pollutant are attributable to natural sources.						
	MS shall provide information on concentrations and sources and the evidence demonstrating that the exceedances are attributable to natural sources						
Art. 20.2	Where the Commission has been informed of an exceedance attributable to natural sources in accordance with paragraph 1, that exceedance shall not be considered as an exceedance for the purposes of this Directive						
Art. 20.3	The Commission shall by 11 June 2010 publish guidelines for demonstration and subtraction of exceedances attributable to natural sources.						
Art. 21.1	[MS may designate zones or agglomerations within which limit values for PM10 are exceeded in ambient air due to the re-suspension of particulates following winter-sanding or -salting of roads.]	Not to be scored-discretionary provision Please provide information on national legislation in place but do not score					
Art. 21.2	MS shall send the Commission lists of any such zones	to be scored only if					



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	or agglomerations together with information on concentrations and sources of PM10 therein.	Art. 21.1 is applied					
Art. 21.3	When informing the Commission in accordance with Art. 27, MS shall provide the necessary evidence to demonstrate that any exceedances are due to re-suspended particulates and that reasonable measures have been taken to lower the concentrations	to be scored only if Art. 21.1 is applied					
Art. 21.4	Without prejudice to Article 20, in the case of zones and agglomerations referred to Art. 21.1, MS need to establish the air quality plan provided for in Article 23 only in so far as exceedances are attributable to PM10 sources other than winter-sanding or -salting of roads.	to be scored only if Art. 21.1 is applied					
Art. 21.5	The Commission shall by 11 June 2010 publish guidelines for determination of contributions from the re-suspension of particulates following winter-sanding or -salting of roads.	not to be scored					
Art. 22.1	[Where, in a given zone or agglomeration, conformity with the limit values for nitrogen dioxide or benzene cannot be achieved by the deadlines specified in Annex XI, a MS may postpone those deadlines by a maximum of five years for that particular zone or agglomeration, on condition that an air quality plan is established in accordance with Article 23 for the zone or agglomeration to which the postponement would apply; such air quality plan shall be supplemented by the information listed in Section B of Annex XV related to the pollutants concerned and shall demonstrate how conformity will be achieved with the limit values before the new deadline]	Not to be scored-discretionary provision Please provide information on national legislation in place but do not score					
Art. 22.2	Where, in a given zone or agglomeration, conformity					0	

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	with the limit values for PM10 as specified in Annex XI cannot be achieved because of site-specific dispersion characteristics, adverse climatic conditions or transboundary contributions, the MS shall be exempt from the obligation to apply those limit values until 11 June 2011 provided that the conditions laid down in paragraph 1 are fulfilled and that the MS shows that all appropriate measures have been taken at national, regional and local level to meet the deadlines						
Art. 22.3	Where a MS applies Art. 22.1 or 22.2, it shall ensure that the limit value for each pollutant is not exceeded by more than the maximum margin of tolerance specified in Annex XI for each of the pollutants concerned.					0	
Art. 22.4	MS shall notify the Commission where, in their view, Art. 22.1 or 22.2 are applicable, and shall communicate the air quality plan referred to in Art. 22.1 including all relevant information necessary for the Commission to assess whether or not the relevant conditions are satisfied.	Not to be scored					
	In its assessment, the Commission shall take into account estimated effects on ambient air quality in the MS, at present and in the future, of measures that have been taken by the MS as well as estimated effects on ambient air quality of current Community measures and planned Community measures to be proposed by the Commission	not to be scored					
	Where the Commission has raised no objections within nine months of receipt of that notification, the relevant conditions for the application of Art. 22.1 or	not to be scored					

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	22.2 shall be deemed to be satisfied.						
	If objections are raised, the Commission may require MS to adjust or provide new air quality plans.	not to be scored					
Art. 23.1	Where, in given zones or agglomerations, the levels of pollutants in ambient air exceed any limit value or target value, plus any relevant margin of tolerance in each case, MS shall ensure that air quality plans are established for those zones and agglomerations in order to achieve the related limit value or target value specified in Annexes XI and XIV					5	
	In the event of exceedances of those limit values for which the attainment deadline is already expired, the air quality plans shall set out appropriate measures, so that the exceedance period can be kept as short as possible.						
	[The air quality plans may additionally include specific measures aiming at the protection of sensitive population groups, including children. Those air quality plans shall incorporate at least the information listed in Section A of Annex XV and may include measures pursuant to Art. 24. Those plans shall be communicated to the Commission without delay, but no later than two years after the end of the year the first exceedance was observed.]	Not to be scored-discretionary provision					
	Where air quality plans must be prepared or implemented in respect of several pollutants, MS shall, where appropriate, prepare and implement integrated air quality plans covering all pollutants concerned						
Art. 23.2	MS shall, to the extent feasible, ensure consistency						

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	with other plans required under Directive 2001/80/EC, Directive 2001/81/EC or Directive 2002/49/EC in order to achieve the relevant environmental objectives.						
Art. 24.1	Where, in a given zone or agglomeration, there is a risk that the levels of pollutants will exceed one or more of the alert thresholds specified in Annex XII, MS shall draw up action plans indicating the measures to be taken in the short term in order to reduce the risk or duration of such an exceedance.						
	[Where this risk applies to one or more limit values or target values specified in Annexes VII, XI and XIV, MS may, where appropriate, draw up such short-term action plans.]	Not to be scored-discretionary provision Please provide information on national legislation in place but do not score					
	However, where there is a risk that the alert threshold for ozone specified in Section B of Annex XII will be exceeded, MS shall only draw up such short-term action plans when in its opinion there is a significant potential, taking into account national geographical, meteorological and economic conditions, to reduce the risk, duration or severity of such an exceedance. When drawing up such a short-term action plan MS shall take account of Decision 2004/279/EC.						
Art. 24.2	[The short-term action plans referred to in Art. 24.1 may, depending on the individual case, provide for effective measures to control and, where necessary,	Not to be scored-discretionary provision					

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	suspend activities which contribute to the risk of the respective limit values or target values or alert threshold being exceeded. Those action plans may include measures in relation to motor-vehicle traffic, construction works, ships at berth, and the use of industrial plants or products and domestic heating. Specific actions aiming at the protection of sensitive population groups, including children, may also be considered in the framework of those plans.]	Please provide information on national legislation in place but do not score					
Art. 24.3	When MS has drawn up a short-term action plan, it shall make available to the public and to appropriate organisations such as environmental organisations, consumer organisations, organisations representing the interests of sensitive population groups, other relevant health-care bodies and the relevant industrial federations both the results of its investigations on the feasibility and the content of specific short-term action plans as well as information on the implementation of these plans						
Art. 24.4	For the first time before 11 June 2010 and at regular intervals thereafter, the Commission shall publish examples of best practices for the drawing-up of short-term action plans, including examples of best practices for the protection of sensitive population groups, including children.	not to be scored					
Art. 25.1	Where any alert threshold, limit value or target value plus any relevant margin of tolerance or long-term objective is exceeded due to significant transboundary transport of air pollutants or their precursors, the MS concerned shall cooperate and, where appropriate,						

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	draw up joint activities, such as the preparation of joint or coordinated air quality plans pursuant to Art. 23 in order to remove such exceedances through the application of appropriate but proportionate measures.						
Art. 25.2	The Commission shall be invited to be present and to assist in any cooperation referred to in Art. 25.1.	Not to be scored.					
	Where appropriate, the Commission shall, taking into account the reports established pursuant to Article 9 of Directive 2001/81/EC, consider whether further action should be taken at Community level in order to reduce precursor emissions responsible for transboundary pollution.	Not to be scored					
Art. 25.3	MS shall, if appropriate pursuant to Article 24, prepare and implement joint short-term action plans covering neighbouring zones in other MS. ms shall ensure that neighbouring zones in other MS which have developed short-term action plans receive all appropriate information.						
Art. 25.4	Where the information threshold or alert thresholds are exceeded in zones or agglomerations close to national borders, information shall be provided as soon as possible to the competent authorities in the neighbouring MS concerned. That information shall also be made available to the public.						
Art. 25.5	In drawing up plans as provided for in Art. 25.1 and Art. 25.3 and in informing the public as referred to in Art. 25.4, MS shall, where appropriate, endeavour to pursue cooperation with third countries, and in particular with candidate countries.						

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Art. 26.1	MS shall ensure that the public as well as appropriate organisations such as environmental organisations, consumer organisations, organisations representing the interests of sensitive populations, other relevant health-care bodies and the relevant industrial federations are informed, adequately and in good time, of the following: (a) ambient air quality in accordance with Annex XVI; (b) any postponement decisions pursuant to Article 22(1); (c) any exemptions pursuant to Article 22(2); (d) air quality plans as provided for in Article 22(1) and Article 23 and programmes referred to in Article 17(2).						
	The information shall be made available free of charge by means of any easily accessible media including the Internet or any other appropriate means of telecommunication, and shall take into account the provisions laid down in Directive 2007/2/EC.						
Art. 26.2	MS shall make available to the public annual reports for all pollutants covered by this Directive. Those reports shall summarise the levels exceeding limit values, target values, long-term objectives, information thresholds and alert thresholds, for the relevant averaging periods. That information shall be combined with a summary assessment of the effects of those exceedances.						
	[The reports may include, where appropriate, further information and assessments on forest protection as well as information on other pollutants for which	Not to be scored-discretionary provision					

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	monitoring provisions are specified in this Directive, such as, inter alia, selected non-regulated ozone precursor substances as listed in Section B of Annex X.]	Please provide information on national legislation in place but do not score					
Art. 26.3	MS shall inform the public of the competent authority or body designated in relation to the tasks referred to in Art. 3.						
Art. 27.1	MS shall ensure that information on ambient air quality is made available to the Commission within the required timescale as determined by the implementing measures referred to in Art. 28(2).	Not to be scored					
Art. 27.2	This information shall be made available to the Commission no later than nine months after the end of each year and shall include: (a) the changes made in that year to the list and delimitation of zones and agglomerations established under Art. 4; (b) the list of zones and agglomerations in which the levels of one or more pollutants are higher than the limit values plus the margin of tolerance where applicable or higher than target values or critical levels; and for these zones and agglomerations: (i) levels assessed and, if relevant, the dates and periods when such levels were observed; (ii) if appropriate, an assessment on contributions from natural sources and from re-suspension of particulates following winter-sanding or -salting of roads to the levels assessed, as declared to the Commission under Art. 20 and 21.	Not to be scored					



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Art. 27.3	Art. 27.1 and 2 shall apply to information collected as from the beginning of the second calendar year after the entry into force of the implementing measures referred to in Art. 28(2).	Not to be scored					
Art. 28.1	Measures designed to amend the non-essential elements of this Directive, namely Annexes I to VI, Annexes VIII to X and Annex XV, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Art. 29(3). However, the amendments may not have the effect of directly or indirectly modifying either of the following: (a) the limit values, exposure reduction targets, critical levels, target values, information or alert thresholds or long-term objectives specified in Annex VII and Annexes XI to XIV; (b) the dates for compliance with any of the parameters referred to in point (a).	Not to be scored					
Art. 28.2	The Commission shall, in accordance with the regulatory procedure referred to in Art. 29(2), determine the additional information to be made available by MS pursuant to Art. 27 as well as the timescales in which such information is to be communicated. The Commission shall also identify ways of streamlining the way data are reported and the reciprocal exchange of information and data from networks and individual stations measuring ambient air pollution within the MS, in accordance with the regulatory procedure referred to in Art. 29(2).	Not to be scored					
Art. 28.3	The Commission shall draw up guidelines for the	Not to be scored					

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	agreements on setting up common measuring stations as referred to in Art. 6(5).						
Art. 28.4	The Commission shall publish guidance on the demonstration of equivalence referred to in Section B of Annex VI.	Not to be scored					
Art. 29.1	The Commission shall be assisted by a committee, 'the Ambient Air Quality Committee'. 2. 3.	Not to be scored					
Art. 29.2	Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof. The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.	Not to be scored					
Art. 29.3	Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.	Not to be scored					
Art. 30	MS shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.						
Art. 31.1	Directives 96/62/EC, 1999/30/EC, 2000/69/EC and 2002/3/EC shall be repealed as from 11 June 2010, without prejudice to the obligations on the MS relating to time-limits for transposition or application of those Directives.	Not to be scored.					
	However, from 11 June 2008, the following shall apply: (a) in Directive 96/62/EC, paragraph 1 of Article 12	Not to be scored.					

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	shall be replaced by the following: '1. The detailed arrangements for forwarding the information to be provided under Article 11 shall be adopted in accordance with the procedure referred to in paragraph 3.'; (b) in Directive 1999/30/EC, Article 7(7), footnote 1 in point I of Annex VIII and point VI of Annex IX shall be deleted; (c) in Directive 2000/69/EC, Article 5(7) and point III in Annex VII shall be deleted; (d) in Directive 2002/3/EC, Article 9(5) and point II of Annex VIII shall be deleted.						
Art. 31.2	Notwithstanding the first subparagraph of Art. 31.1, the following Articles shall remain in force: (a) Article 5 of Directive 96/62/EC until 31 December 2010; (b) Article 11(1) of Directive 96/62/EC and Article 10(1), (2) and (3) of Directive 2002/3/EC until the end of the second calendar year following the entry into force of the implementing measures referred to in Art. 28(2) of this Directive; (c) Art. 9(3) and (4) of Directive 1999/30/EC until 31 December 2009.	Not to be scored					
Art. 31.3	References made to the repealed Directives shall be construed as being made to this Directive and should be read in accordance with the correlation table in Annex XVII.	Not to be scored					
Art. 31.4	Decision 97/101/EC shall be repealed with effect from the end of the second calendar year following the entry into force of the implementing measures	Not to be scored					

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	referred to in Art. 28(2) of this Directive.						
	The third, fourth and fifth indents of Art. 7 of Decision 97/101/EC shall be deleted with effect from 11 June 2008.	Not to be scored					
Art. 32.1	In 2013 the Commission shall review the provisions related to PM <sub>2,5</sub> and, as appropriate, other pollutants, and shall present a proposal to the European Parliament and the Council. As regards PM <sub>2,5</sub> , the review shall be undertaken with a view to establishing a legally binding national exposure reduction obligation in order to replace the national exposure reduction target and to review the exposure concentration obligation laid down in Article 15, taking into account, inter alia, the following elements: — latest scientific information from WHO and other relevant organisations, — air quality situations and reduction potentials in the MS, — the revision of Directive 2001/81/EC, — progress made in implementing Community reduction measures for air pollutants.	Not to be scored					
Art. 32.2	The Commission shall take into account the feasibility of adopting a more ambitious limit value for PM <sub>2,5</sub> , shall review the indicative limit value of the second stage for PM <sub>2,5</sub> and consider confirming or altering that value.	Not to be scored					
Art. 32.3	As part of the review, the Commission shall also prepare a report on the experience and on the necessity of monitoring of PM <sub>10</sub> and PM <sub>2,5</sub> , taking	Not to be scored					

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	into account technical progress in automatic measuring techniques. If appropriate, new reference methods for the measurement of PM10 and PM2,5 shall be proposed						
Art. 33.1	MS shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 11 June 2010.						
	They shall forthwith communicate to the Commission the text of those measures.	Not to be scored					
	When MS adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by MS.	Not to be scored					
Art. 33.2	MS shall ensure that a sufficient number of urban background measurement stations of PM2,5 necessary for the calculation of the Average Exposure Indicator, in accordance with Section B of Annex V, is established at the latest by 1 January 2009, in order to comply with the timeframe and the conditions indicated in Section A of Annex XIV.						
Art. 33.3	MS shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.	not to be scored					
Annex I	Data-quality objectives						
Annex II	Determination of requirements for assessment of concentrations of sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter (PM10 and PM2,5), lead, benzene and carbon monoxide in ambient air within a zone or agglomeration						

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Annex III	Assessment of ambient air quality and location of sampling points for the measurement of sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter (PM10 and PM2,5), lead, benzene and carbon monoxide in ambient air						
Annex IV	Measurements at rural background locations irrespective of concentration						
Annex V	Criteria for determining minimum numbers of sampling points for fixed measurement of concentrations of sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter (PM10, PM2,5), lead, benzene and carbon monoxide in ambient air						
Annex VI	Reference methods for assessment of concentrations of sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter (PM10, PM2,5), lead, benzene, carbon monoxide, and ozone						
Annex VII	Ozone target values and long-term objectives						
Annex VIII	Criteria for classifying and locating sampling points for assessments of ozone concentrations						
Annex IX	Criteria for determining the minimum number of sampling points for fixed measurement of concentrations of ozone						
Annex X	Measurements of ozone precursor substances						
Annex XI	Limit values for the protection of human health						
Annex XII	Information and alert thresholds						
Annex XIII	Critical levels for the protection of vegetation						
Annex XIV	National exposure reduction target, target value and limit value for PM2,5						



Article	EU Obligation	Existing national law (give relevant law or regulation & no. of article)	Fully in accord? (yes/no)	If not, how will transpos'n occur? (L, GO, MO)	If draft, give no. of article transposing EU obligation	Status of transposition (5-0 accdg to lawmaking stage)	Planned year for full transpos'n
Annex XV	Information to be included in the local, regional or national air quality plans for improvement in ambient air quality						
Annex XVI	Public information						
Annex XVII	Correlation table	Not to be scored					





## ANNEX 2. HOW TO FILL OUT THE IMPLEMENTATION QUESTIONNAIRES

The Implementation Questionnaires focus on the practical elements of carrying out a Directive's requirements and the answers provided are aimed at showing the steps undertaken towards full implementation of the EC legislation and what remains to be done.

The top of each Implementation Questionnaire has a section for:

- the Country/Entity
- the name of the person(s) filling out the questionnaire + office, ministry/agency, telephone, email
- the date.

The questionnaire sets out the main administrative obligations of the EU Regulation, Decision or Directive in a "decision tree" series of questions. A primary question leads to a choice of secondary questions depending on the answer to the primary question. Primary questions can be usually answered by YES or NO, while secondary questions require more information, often in the form of numerical data or references to competent authorities.

First, answer the primary question on the left by underlining YES or NO.

If the first answer is 70% or more YES, then answer the secondary questions on the right. Answers should be factual, comprehensive and concise. Provide information about existing measures, such as strategies, plans, projects and practical measures wherever possible. List future measures under NO.

If the answer is mostly NO, identify the competent authority for implementing the measures and give details about future implementing measures.

The last column is for comments and explanations. Remember, adoption of legislation and administrative orders is Transposition. Implementation involves institutional structures, functions, competencies, resources, procedures, and investments.

The third section of the Implementation Questionnaire is a timetable for implementation. Report the future deadlines for completion of the implementation obligations on the list.

### Model Implementation Questionnaire

<b>Country</b>	<b>NAME OF COUNTRY</b>	<b>Date: Month YEAR</b>
Person(s) completing Questionnaire:	<b>NAME, OFFICE, Ministry, Email</b>	

Instructions:

1. Please answer the primary question by underlining either YES or NO.
2. If the first answer is YES, reply to the subsequent questions on the right by providing the appropriate factual information. If only part of the questions following YES can be answered, please provide whatever information is available.
3. If the first answer is NO, please indicate when the information will be available.
4. The last column is available for comments and/or further explanations. If possible, please provide supporting documentation for your answers.

PRIMARY QUESTION	SECONDARY QUESTION	
	Answer	Explanation/References
1. Have authorities and bodies with competencies for air quality assessment, management and reporting been designated?	YES	If yes, which authorities are responsible for: Implementation of this Directive? Assessing of ambient air quality? Approving of the measurement system? Ensuring accuracy of the measurements? Analysis of assessment methods? Co-ordination of quality assurance programmes? Ensuring compliance with air quality standards? Co-operation with the Commission and other member states Reporting to the Commission
	NO	If no, what plans are there to designate such authorities? Who will do this?
2. Have agglomerations and zones been identified?	YES	If yes: What was the basis for identifying them? How does it compare with that in Articles 2.16 and 2.17, respectively, of the Directive?
	NO	If no, what plans are there to identify them? Who will do this?

PRIMARY QUESTION	SECONDARY QUESTION		Explanation/References
	Answer		
3. Has a system been established to designate zones or agglomerations within which assessment thresholds for one or more relevant pollutant are exceeded?	YES	If yes: Which zones/agglomerations have been designated? What mechanism is there for reviewing the classification of such zones/agglomerations?	
	NO	If no, what plans are there to establish such a system? Who will do this?	
4. Is an ambient air quality-monitoring system according to the assessment criteria in operation?	YES	If yes: How do number and siting of monitoring sites match the requirements of Annex III and V? How do sampling and analytical methods match with the requirements of Annex I and VI? Are modelling techniques available to supplement monitoring – please specify?	
	NO	If no, what plans are there to introduce such a programme? Who will do this?	
5. Have limit values, target values, long-term objectives, critical values, a national exposure reduction target, information and alert thresholds for the various air pollutants been introduced?	YES	If yes: What pollutants are covered? How do the limit values/ target values/ long-term objectives/ critical values/ national exposure reduction target/ information and alert thresholds for these pollutants compare with those of the Directive? How do the margins of tolerance compare to those of the directive? How do the dates at which the limit values/ target values/ long-term objectives/ critical values/ national exposure reduction target have to be attained compare to those of the directive? How do the information requirements in case of an alert threshold exceedance match with those laid down in the directive?	
	NO	If no, what plans are there to introduce these values and thresholds? Who will do this?	

PRIMARY QUESTION	SECONDARY QUESTION	
	Answer	Explanation/References
6. Has a system been established so as to prepare and implement measures to attain the national PM2.5 exposure reduction target, as well as the target and limit values for PM2.5?	YES	If yes: Which bodies are responsible for preparing and implementing measures? What measures can be foreseen by the responsible bodies? Do the responsible bodies have the authority to address the relevant sources according to their relevance? Is the timeframe of these measures in-line with that of the national PM2.5 exposure reduction target, the target and limit values?
	NO	If no, what plans are there to establish a system for preparing and implementing such measures? Who will do this?
7. Has a system been established so as to prepare and implement measures when ozone concentrations exceed the target values and long term objectives as well as an air quality plan when target values are exceeded?	YES	If yes: What bodies are responsible for preparing and implementing measures and an air quality plan and how is coordination be ensured? What measures can be foreseen by the responsible bodies? Do the responsible bodies have the authority to address the relevant sources according to their relevance? Is the programme prepared pursuant to Art. 6 of the Dir. 2001/81/EC?
	NO	If no, what plans are there to establish a system for preparing and implementing such measures? Who will do this?
8. Has a system been established to identify contributions from natural sources?	YES	If yes: What bodies are responsible for identifying contributions from national sources? Are the methods used comparable to those of the Commission's guidelines?
	NO	If no, what plans are there to draw up such a system? Who will do this?
9. If PM10 exceedances are attributed to winter-sanding or salting; has a system been established to identify these contributions?	YES	If yes: What bodies are responsible for identifying contributions from winter-sanding or salting? Are the methods used comparable to those of the Commission's guidelines? What bodies are responsible for preparing and implementing measures to reduce the contribution from winter-sanding or salting?

PRIMARY QUESTION	SECONDARY QUESTION	
	Answer	Explanation/References
	NO	If no, what plans are there to draw up such a system? Who will do this?
10. If the deadline for the attainment date will be postponed: Has a system been established to prepare and implement an air quality plan and the measures?	YES	If yes: What bodies are responsible for preparing and implementing measures and an air quality plan How is coordination between these bodies ensured? What bodies are responsible for preparing and providing the necessary information? How is compliance with sum of limit value and margin of tolerance until the extended deadline ensured?
	NO	If no, what plans are there to draw up such a system? Who will do this?
11. If conformity with PM10 limit values as well as limit or target values plus any relevant margin of tolerance specified in Annexes XI and XIV cannot be achieved: Has a system been established to prepare the necessary information and implement an air quality plan and the measures?	YES	If yes: What bodies are responsible for preparing and implementing measures and an air quality plan How is coordination between these bodies ensured? What bodies are responsible for preparing and providing the necessary information? How is compliance with sum of limit value and margin of tolerance of PM10 until the extended deadline ensured? How is the preparation of an integrated air quality plan ensured in case several pollutants are concerned? How is consistency with other plans (2001/80/EC, 2001/81/EC, 2002/49/EC) ensured?
	NO	If no, what plans are there to draw up such a system? Who will do this?
12. Have action plans been drawn up to indicate short-term measures to be taken where there is a risk of alert thresholds being exceeded?	YES	If yes: What measures are included in these action plans? What bodies are involved in drawing up the action plans and how will co-ordination be ensured?
	NO	If no, what plans are there to draw up Art. 7 action plans? Who will do this?

PRIMARY QUESTION	SECONDARY QUESTION	
	Answer	Explanation/References
13. Is the public provided with information on air quality and air quality plans?	YES	If yes: What bodies are responsible for collecting, preparing and providing this information? Are the public informed in the event of exceedances of alert thresholds? If they are, how and for which parameters are they informed? Is up-to-date information about air quality routinely available to the public? How are they provided with this information, and how frequently? Is the public informed about exemptions from the obligation to apply certain limit values? How? Is the public informed about air quality plans? How? Are annual reports available to the public? How?
	NO	If no, what plans are there to provide the public with information on ambient air quality? Who will do this?
13. Has a system been implemented to cooperate with other MS or third countries?	YES	If yes: What bodies are responsible for preparing and conducting such a cooperation?
	NO	If no, what plans are there to establish such a system? Who will do this?
14. Have penalties applicable to infringements of national provisions been laid down?	YES	If yes: Are the penalties effective, proportionate and dissuasive?
	NO	If no, what plans are there to establish such penalties? Who will do this?
15. Have the financial implications of implementing the Directive been assessed?	YES	If yes, have the cost implications been assessed for: Monitoring ambient air quality? Improving ambient air quality? Providing information to the public?
	NO	If no, what plans are there to undertake such an assessment? Who will do this and by when?

<b>TIMETABLE FOR IMPLEMENTATION</b>	
<b>Actual or estimated date for:</b>	<b>Day/month/year</b>
1. Designating the competent authority/ies and bodies (Art. 3)	
2. Establishing zones and agglomerations (Art. 4)	
3. Setting up an assessment regime (Art. 5)	
4. Establishing a system for assessing ambient air quality (Arts. 6, 7, 8, 9, 10 & 11)	
5. Establishing a system for maintaining ambient air quality where levels are lower than limit values (Art. 12)	
6. Establishing a system for ensuring compliance with limit values and critical levels (Arts. 13 & 14)	
7. Establishing a system for ensuring compliance with the national PM <sub>2.5</sub> exposure reduction targets, target values and limit values (Art. 15 & 16)	
8. Establishing a system for ensuring compliance with target values and long-term objectives for ozone (Arts. 17 & 18)	
9. Establishing a system for ensuring information of the public of exceedances of alert thresholds (Art. 19)	
10. Drawing up a list of zones/agglomerations where exceedances are due to natural sources, winter sanding or -salting (Art. 20 & 21)	

11. Establishing a system for postponement of attainment deadlines (Art. 22)	
12. Establishing a system for exemption of obligation to apply limit values for PM <sub>10</sub> (Art. 22)	
13. Establishing a system for plans/programmes to ensure that limit values are complied with within a specified time limit (Art. 23)	
14. Establishing a system for short term action plans to reduce the risk of exceedance of alert thresholds (Art. 24)	
15. Establishing a system for cooperation with other countries (Art. 25)	
16. Establishing a system to provide information to the public and to the Commission (Arts. 26 & 27)	
17. Establishing a system to penalise infringements of national provisions (Art. 28)	
- Full implementation	



### **ANNEX 3. CHECKLIST FOR IMPLEMENTATION**

1. Identify a national competent authority or authorities to implement the regulation
2. Identify what legislation (if any) is necessary (e.g. to prescribe sanctions or designate competent authorities).
3. Establish a legislative timetable (as appropriate).
4. Prepare administrative instructions and procedures to the relevant authorities
5. Consult with other concerned government departments and with the groups affected by the regulation (e.g. importers and exporters; major industries; environmental organisations)
6. Determine and provide necessary staff and resources
7. Train staff
8. Inform affected industrial sectors, companies, other organizations and the public of what is required
9. Provide the relevant documents, forms and certification to the groups concerned
10. After accession, monitor implementation and report to other member states and to the European Commission as needed.



## ANNEX 4. WEBSITES

**[http://ec.europa.eu/environment/legal/links\\_en.htm](http://ec.europa.eu/environment/legal/links_en.htm)**

The European Commission's page of links regarding environmental law.

**[http://europa.eu/legislation\\_summaries/environment/index\\_en.htm](http://europa.eu/legislation_summaries/environment/index_en.htm)**

Summaries of all EU environmental legislation.

**<http://ec.europa.eu/environment/enlarg/handbook/handbook.htm>**

The *Handbook for Implementation of EU Environmental Legislation* provides step-by-step guidance on the approaches and specific activities required to implement EC environmental legislation. It contains a series of overview chapters which set out a framework for planning the implementation of the legislation contained within that particular environmental sector; a series of specific pages containing information and guidance about each legal act in the environmental *acquis*, and references.

**<http://ec.europa.eu/prelex/apcnet.cfm?CL=en>**

Pre-Lex is the database on inter-institutional procedures which follows all Commission proposals (legislative and budgetary dossiers, conclusions of international agreements) and communications from their transmission to the Council or the European Parliament until final adoption. It has links to all documents issued by the institutions.

**<http://eur-lex.europa.eu/en/index.htm>**

This site presents links to the sections Eur-lex's analytical register; Environment is Chapter 15.10-40. It also provides links to search engines for: the Official Journal, legislation, legislation in preparation, case-law, parliamentary questions, documents of public interest, and preparing enlargement.

**<http://eur-lex.europa.eu/en/treaties/index.htm>** This site provides links to the treaties in force and proposed, in all the official languages of the EU.

**[http://ec.europa.eu/environment/index\\_en.htm](http://ec.europa.eu/environment/index_en.htm)**

The European Commission's environment website. Current news with many links to more detailed information about all aspects of the Commission's work.

**<http://www.eea.europa.eu/>**

The homepage of the European Environment Agency, with news and links to activities and programmes.

**[http://curia.europa.eu/jcms/jcms/j\\_6/](http://curia.europa.eu/jcms/jcms/j_6/)**

Search page of the European Court of Justice and the Court of First Instance.

**[http://ec.europa.eu/eu\\_law/infringements/infringements\\_en.htm](http://ec.europa.eu/eu_law/infringements/infringements_en.htm)**

European Commission website about infringement proceedings against the member states.

**<http://impel.eu/>**

Homepage of the European Union Network for the Implementation and Enforcement of Environmental Law. IMPEL is an informal network of the environmental authorities of the member states, acceding and candidate countries of the European Union and Norway. It is chaired by the European Commission.