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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE COUNCIL, THE ECONOMIC AND SOCIAL COMMITTEE  
AND THE COMMITTEE OF THE REGIONS**

**Environmental Agreements at Community Level  
Within the Framework of the Action Plan on the Simplification and Improvement of the  
Regulatory Environment**

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## 1. INTRODUCTION

On 5<sup>th</sup> June 2002 the European Commission adopted the Action Plan “Simplifying and Improving the Regulatory Environment”<sup>1</sup> in accordance with the mandate issued by the European Council at Lisbon and confirmed at the Stockholm, Laeken and Barcelona summits. In accordance with the Conclusions of the Seville European Council, an inter-institutional agreement on this proposal is expected before the end 2002. The aim of simplifying and improving the regulatory environment is to ensure, in the interests of members of the public, that Community legislation is more attuned to the problems posed, to the challenge of enlargement and to technical and local conditions. The aim is also to ensure a high level of legal certainty across the EU and enable economic and social operators to be more dynamic and thus help to strengthen the Community’s credibility.

The Commission stressed in the Action Plan that appropriate use can be made of alternatives to legislation without undermining the provisions of the Treaty or the prerogatives of the legislator. There are several tools which can be used to achieve the objectives of the Treaty while simplifying lawmaking activities and legislation itself (coregulation, self-regulation, voluntary sectoral agreements, open co-ordination method, financial interventions, information campaign). A variety of approaches are possible under the self-regulation and the coregulation instruments. The overall aim should be to seek the least burdensome option consistent with the achievement of the goals pursued. While the Commission will be rigorous in setting ambitious objectives and in strictly monitoring the results, it will also be supportive of genuine efforts to achieve worthwhile progress by way of voluntary agreements. However, the Commission should remain free to exercise its right of initiative and the co-legislators their right of control.

The environment is a policy field with considerable recent experience of self-regulation and voluntary sectoral agreements. In 1996 the Commission issued a Communication on environmental agreements (see Section 3 below) at national level but which did not deal primarily with such agreements at Community level. Now that the Commission has adopted the Action Plan on “Simplifying and Improving the Regulatory Environment” it is possible to explain how the proposals of the Action Plan with regard to coregulation, self-regulation and voluntary sectoral agreements can be applied in the context of environmental agreements at Community level. This Communication does not prejudice the application of the Action Plan in other policy sectors. It is also intended to give effect to the goal established under the 6<sup>th</sup> Environmental Action Programme (6<sup>th</sup> EAP) to achieve environmental improvements in a more cost effective and rapid way.

Environmental agreements can come from a variety of sources. Firstly, they can be purely spontaneous decisions initiated by stakeholders in a broad range of areas in which the Commission has neither proposed legislation nor expressed an intention to do so. The Commission encourages stakeholders to be proactive in developing such agreements. Secondly, they can be a response by stakeholders to an expressed intention of the Commission to legislate. Thirdly, they can be initiated by the Commission. The assessment criteria and procedural requirements for handling environmental agreements will depend in part on the source of the initiative.

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<sup>1</sup> COM (2002) 278 final of 5.6.2002.

Policy makers have shown an increasing interest in environmental agreements in recent years. The potential of such agreements between stakeholders – often representative associations of business – to contribute to environmental policy objectives is widely recognised. Member States and the Community have already gained some experience with environmental agreements, and the results so far are encouraging. While such agreements are not an environmental panacea, nor will they be the optimal instrument in all circumstances, they have a potentially valuable role to play in complementing – but not replacing – other policy instruments, notably legislation.

Clarity of **definition** is required from the outset. The terms “voluntary agreement”, “environmental agreement” or “long term agreement” are frequently used without distinction, although the legal form and content of these instruments may differ widely. The term “agreement” is usually also applied to instruments which, in legal terms, are unilateral commitments from industry or business. In the interest of simplicity and clarity, this Communication only uses the term “environmental agreement”.

Environmental Agreements at Community level are those by which stakeholders undertake to achieve pollution abatement, as defined in environmental law, or environmental objectives set out in Article 174 of the Treaty. This Communication does not prejudice the dispositions to be defined by the inter-institutional agreement nor the modalities and criteria to be applied for voluntary agreements in other fields than the environment, neither does it concern the “new approach” legislation. Environmental agreements are not negotiated with the Commission. They can be acknowledged by the Commission either by an exchange of letters, by a Recommendation by the Commission, by a Recommendation accompanied by a Parliament and Council Decision on monitoring or under coregulation decided by the Community legislators. These environmental agreements should be distinguished from the environmental agreements entered into by the Member States as a national implementation measure of a Community Directive.

## **2. THE GENERAL CONTEXT**

Since the late 1980s, countries both within and outside the EU, as well as the Community itself, have made use of environmental agreements. The most comprehensive survey so far on their use was undertaken by the OECD in a Report published in 1999<sup>2</sup>. It concludes that environmental agreements are most efficiently used as part of a policy mix alongside legislative and economic instruments.

For the EU alone, the OECD Report lists a total of 312 environmental agreements concluded in the Member States (based on a 1997 survey conducted by the European Environment Agency). Some Member States have already published national reports on their approaches towards - and experiences with - environmental agreements. The OECD Report underlines that there is limited quantitative evidence so far as to the environmental effectiveness of environmental agreements. Further research is needed in this field. It is clear, however, that environmental agreements can bring qualitative benefits such as consensus building; broader sharing of information; awareness raising among enterprises; and, improving environmental management in businesses.<sup>3</sup> The Commission Proposal for the 6<sup>th</sup> Environmental Action

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<sup>2</sup> Voluntary Approaches for Environmental Policy – an Assessment. OECD 1999, ISBN 92-64-17131-2.

<sup>3</sup> Environmental Agreements – Environmental Effectiveness, European Environment Agency, Environmental Issues Series no. 3, 1997.

Programme explicitly highlights the need to achieve such qualitative improvements in environmental policy design and implementation.

In its Communication on the 6<sup>th</sup> Environmental Action Programme (6<sup>th</sup> EAP<sup>4</sup>), the Commission explained that, partly as a result of the success of Community environmental legislation, “the sources of environmental pollution are no longer concentrated in individual facilities but lie in manifold economic activities and consumer behaviour. This limits the scope for solving them through simple command-and-control.” As a consequence, “in some cases, non-regulatory methods will be the most appropriate and flexible means of addressing environmental issues”. Alternatives to traditional regulation, such as voluntary commitments, can also encourage enterprises to innovate and respond to environmental challenges.

The Internal Market, Consumer Affairs and Tourism Council also stated in its Strategy for the integration of environmental protection and sustainable development into Internal Market policy that the adoption of transparent and effective environmental agreements by industry to achieve clear environmental objectives should be encouraged by Member States and by the Commission.<sup>5</sup>

The Industry Council, in its Conclusions adopted in May 2001<sup>6</sup>, pointed out that “in a strategy for the integration of sustainable development into Enterprise Policy, within a balanced mix of policy instruments and bearing in mind that such a strategy cannot rely mainly on regulatory instruments, priority should be given to market based as well as voluntary approaches”.

In its Communication on “Corporate Social Responsibility: A Business Contribution to Sustainable Development”<sup>7</sup>, the Commission has indicated its support for a partnership approach which aims at reaching agreements between business and other stakeholders on guiding principles for corporate social responsibility practices and instruments. This is in line with the approach set out in this Communication.

### **3. THE 1996 COMMUNICATION ON ENVIRONMENTAL AGREEMENTS AND FOLLOW-UP**

In 1996, the Commission adopted a Communication to the Council and the European Parliament on environmental agreements<sup>8</sup>. Environmental agreements were at that time a new policy instrument to supplement regulatory measures. The Communication recognised that environmental agreements held a number of potential benefits, including:

- a pro-active approach by industry;
- cost-effectiveness and tailor-made solutions; and
- faster achievement of environmental objectives.

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<sup>4</sup> COM(2001)31final of 24.1.2001.

<sup>5</sup> Report to the Göteborg European Council of 15 and 16 June 2001. See also the Communication from the Commission to the European Parliament and the Council "Single Market and Environment" of 08.06.1999, COM(1999)263 final.

<sup>6</sup> “Integration of Sustainable Development into Enterprise Policy”, Council Conclusions, 2347<sup>th</sup> Council Meeting (Energy/Industry), Brussels, 14/15 May 2001; Council doc. 8763/01 of 29.5.2001

<sup>7</sup> COM(2002)347 final of 2.7.2002

<sup>8</sup> COM(96)561 final of 27.11.1996.

The Communication noted that achieving these outcomes requires agreements to have well defined environmental objectives, to be transparent to guarantee against “business as usual”, to include enforcement mechanisms such as fines or other penalties, as well as approaches to avoid “free-riding”. These and other requirements are considered in Section 5 below.

With regard to environmental agreements at Community level the 1996 Communication observed, *inter alia*, that “for the time being, the Commission has ... to resort to non-binding agreements as the available instrument to encourage a pro-active approach from industry and as an incentive for effective environmental action”. Consequently, the Commission has proceeded on a case-by-case basis with this type of agreement.

The best known examples of environmental agreements at Community level are the agreements of the European, Japanese and Korean carmaker associations on the reduction of CO<sub>2</sub> emissions from passenger cars. These were acknowledged through Commission Recommendations<sup>9</sup>. A Decision of the European Parliament and of the Council establishing a scheme to monitor the average specific emissions of CO<sub>2</sub> from new passenger cars<sup>10</sup> supplements these agreements. No final assessment of the success of these agreements is possible so far, as they have not yet reached the end of their lifetime, but civil society, NGOs, the social partners and the public in the broader sense should be involved, in light of their respective roles, in future environmental agreements to a greater extent than was the case in the past.

The European Parliament and the Council have both expressed their interest in a clearer definition of the procedures for reaching environmental agreements:

- In response to the 1996 Communication, the **European Parliament**, in a Resolution of 17 July 1997<sup>11</sup>, called on the Commission “to draw up proposals for a possible procedure for granting a negotiating mandate for any Environmental Agreement at Community level, ensuring when it does so that Parliament is involved, in accordance with Article 130s(3) of the Treaty, both in the granting of the negotiating mandate and during the negotiations”.
- In its resolution on the Commission Green Paper on Environmental Issues of PVC, the European Parliament again called on the Commission “to present as soon as possible a proposal for framework legislation on environmental agreements, which lays down the relevant criteria with regard to conditions, monitoring arrangements and penalties”<sup>12</sup>.
- The **Council** stated in its resolution of 7 October 1997 on environmental agreements “that ... environmental agreements should be negotiated in accordance with procedures to be agreed”<sup>13</sup>.

The Commission recognises the need for a clear explanation of how environmental agreements should be encouraged and handled at Community level. The Action Plan “Simplifying and improving the regulatory environment”, and in particular chapter 2.1 thereof “Making more appropriate use of legislative instruments”, already proposes a general answer

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<sup>9</sup> Recommendations 1999/125/EC, 2000/303/EC and 2000/304/EC.

<sup>10</sup> Decision N° 1753/2000/EC of 22 June 2000, OJ L 202 of 10.8.2000, p. 1

<sup>11</sup> OJ C 286 of 22.9.1997, p. 254.

<sup>12</sup> PE 303.049, 3.4.2001, point 25.

<sup>13</sup> OJ C 321 of 22.10.1997, p. 6.

to this call which is to be discussed between the three Institutions. This Communication specifies how environmental agreements should fit into this framework.

#### **4. SELF-REGULATION AND COREGULATION IN THE FIELD OF ENVIRONMENTAL POLICY**

Environmental agreements, by their very nature, are self-regulatory practices since they do not have legally binding effects at Community level. Many agreements are spontaneous. However, according to its proposals in the Action Plan, the Commission may also encourage or acknowledge them (under self-regulation) or propose to the legislator to use them when appropriate (coregulation).

It should be underlined that, in the case of purely spontaneous decisions initiated by stakeholders in areas in which the Commission has neither proposed legislation nor expressed an intention to do so, it may be that no action will be necessary on the part of the Commission.

##### **4.1. Self-Regulation**

According to the Action Plan “Simplifying and Improving the Regulatory Environment”, self-regulation concerns a large number of practices, common rules, codes of conduct and, in particular, voluntary agreements which economic actors, social players, NGOs and organised groups establish themselves on a voluntary basis in order to regulate and organise their activities. Unlike coregulation, self-regulation does not involve a legislative act. Self-regulation is usually initiated by stakeholders.

The Commission can consider it preferable not to make a legislative proposal where agreements of this kind already exist and can be useful to achieve the objectives set out in the Treaty. It could, however, propose that a formal process be introduced to enable it to closely monitor progress on particular agreements.

##### *4.1.1 Acknowledgement of the environmental agreement by an exchange of letters or Commission Recommendation*

In the environmental field, the modalities used so far at Community level to acknowledge self-regulation include **Commission Recommendations** and, in some instances, a simple **exchange of letters**. In other words, the Commission may stimulate or incite an environmental agreement by means of a Recommendation or recognise it by means of an exchange of letters with the relevant industry’s representatives, provided that the criteria set out in section 6 below are met.

It should be noted that a Recommendation, a non-binding act by its very nature, can only encourage economic operators that have chosen to engage themselves to reach an environmental objective in line with Article 174 of the Treaty. The Commission can never, by “acknowledging” such an engagement, forgo its right of initiative. In a similar way, no “acknowledgement” of an operators’ engagement by means of an exchange of letters can ever constitute any kind of engagement from the Commission’s side.

#### *4.1.2. Acknowledgement of the environmental agreement by a Commission Recommendation accompanied by a monitoring Decision*

In certain cases the Commission and the legislator may have an interest in the results of an environmental agreement and may therefore wish to monitor it closely, for example by combining a Commission Recommendation with a Parliament and Council Decision on monitoring.

#### **4.2. Coregulation**

Environmental agreements can also be concluded in the framework of a legislative act i.e. in a more binding and formal manner in the context of regulation, thereby enabling the parties concerned to implement a specific piece of Community legislation. Within this regulatory framework, the legislator establishes the essential aspects of the legislation: the objectives to achieve; the deadlines and mechanisms relating to its implementation; methods of monitoring the application of the legislation and any sanctions which are necessary to guarantee the legal certainty of the legislation. Coregulation is usually initiated by the Commission, either on its own initiative or in response to voluntary action on the part of industry.

Coregulation can therefore offer the advantages of environmental agreements with the legal guarantees provided through a legislative approach. The Commission proposes to the legislator that coregulation be used on the basis of a legislative act. Thus, all proposals on the subject concerned will be referred to the legislator.

Under coregulation arrangements, the European Parliament and the Council would adopt, upon a Proposal from the Commission, a Directive. This legal act would stipulate that a precise, well-defined environmental objective must be reached on a given target date. It would also set the conditions for monitoring compliance and introduce enforcement and appeal mechanisms. It need not contain detailed provisions on how to reach the objective. The legislator determines to what extent defining and implementing the measures can be left to the parties concerned because of the experience they are acknowledged to have gained in the field. These provisions must be compatible with European competition law.

Coregulation may also provide modalities for implementation. This means that in addition to defining the “what” and “when” only until the target date is reached, procedures including review clauses foreseen in the event that the objective is not met at the target date. In any event, in cases where using the coregulation mechanism does not produce the expected results, the Commission can exercise its right to make a traditional legislative proposal to the legislator.

The legal act could therefore include intermediate targets which would allow an assessment of whether the agreement is likely to achieve its objectives. In case of failure to meet these intermediate targets, coregulation could define the conditions under which the Member States have to apply supplementary provisions defining how the objectives are to be reached. The appropriate mechanisms should be carefully designed on a case-by-case basis.

This approach can be illustrated by a hypothetical example. If a recycling rate of 60% is sought for a particular product or material, in a simple coregulation approach, the legal act – a Directive – would set the objective and the deadline for meeting the target as well as provisions on monitoring. The legal act could also foresee interim steps with lower recycling targets at earlier dates. If monitoring shows that these interim targets are not being met and

the final objective is likely to be missed, additional measures could come into play, if they are included in the initial legal act.

As illustrated by the debates in the European Parliament, coregulation is one of the most sensitive issues faced not only by operators and organisations representing particular sectors but also by the institutions. Within the framework of a legislative act, coregulation makes it possible to ensure that the objectives defined by the legislator can be implemented in the context of measures carried out by parties recognised as being active in the field concerned. With a view to simplifying legislation, the Commission remains convinced that it is a method whose implementation -- circumscribed by criteria laid down in a joint interinstitutional agreement -- can prove to be a relevant option when it comes to adjusting legislation to the problems and sectors concerned, reducing the burden of legislative work by focusing on the essential aspects of legislation, and drawing on the experience of interested parties, particularly operators and social partners.

## 5. BASIC LEGAL CONDITIONS FOR THE USE OF ENVIRONMENTAL AGREEMENTS

The EC Treaty does not contain any specific provision related to environmental agreements. Nevertheless, such agreements must be in compliance with the totality of the Treaty provisions, as well as with the international engagements of the Community.

- According to Article 175, decisions as to what action is to be taken by the Community in environmental policy in order to achieve the objectives referred to in Article 174 falls within the competence of the Council and the European Parliament under the co-decision procedure, upon a proposal from the Commission and after consulting the Economic and Social Committee and the Committee of the Regions. The **institutional balance** in decision-making must be respected when it comes to the use of environmental agreements as an instrument of regulation.
- Environmental agreements have to comply with the provisions of the EC Treaty on **internal market and competition rules, including the Guidelines on state aids for the environment**. They should therefore be in compliance with Article 81 of the Treaty. Section 7 of the Commission Notice on guidelines on the applicability of Article 81 of the EC Treaty to horizontal co-operation agreements<sup>14</sup> specifically addresses environmental agreements.
- **Judicial control** of compliance with the obligations and commitments resulting from an environmental agreement should be ensured at national and, in accordance with the EC Treaty, at community level. The identification of individual and collective responsibilities should also be ensured in order to allow for any sanctions which may be necessary.
- When it comes to the implementation of legal obligations under **multilateral environmental agreements** (MEAs), the Community is responsible under international law, to the extent of its competence, for the implementation of all international agreements it has concluded. This responsibility cannot be transferred to other actors such as private parties to environmental agreements alone. This could give rise to problems if

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<sup>14</sup> OJ C 3 of 6.1.2001, p.2.

environmental agreements, without effective safeguards to address situations of non-compliance, were the *only* instruments used to implement commitments under MEAs.

- Multilateral **trade** rules need to be taken into account in the design and implementation of environmental agreements. In order to avoid discriminatory effects, it is essential to ensure that environmental agreements are open to the participation of third country operators, both in the preparatory and in the implementation phase. In addition, benefits (e.g. tax exemptions) granted to operators participating in an environmental agreement may fall under the scope of the WTO Agreement on Subsidies and Countervailing Measures. Hence proposed environmental agreements will have to be checked also in the light of full consistency with WTO rules.
- The UN-ECE Convention on **access to information, public participation in decision-making and access to justice** in environmental matters<sup>15</sup> strengthens the “right to know” of the public in the broad sense. Environmental agreements are explicitly listed under the definition of “environmental information” in Article 2 of the Convention. It is therefore necessary to ensure that information on environmental agreements is made accessible to the public in accordance with the provisions of the Convention. Beyond legal considerations, transparency in both the “design” and the “delivery” phases could be an important element for the success of environmental agreements.

## 6. ASSESSMENT CRITERIA FOR ENVIRONMENTAL AGREEMENTS

The 1996 Communication already identified a set of criteria considered necessary for the appropriate use (and success) of environmental agreements. It listed “prior consultation with interested parties, a binding form, quantified and staged objectives, the monitoring of results as well as the publication of the agreement and of the results obtained. These criteria should make it possible to avoid the stipulation of merely vague objectives, lack of transparency and possible distortion of competition caused by free-riders”(p.3).

An environmental agreement must deliver **added value** in terms of a high level of protection of the environment. Community policy on the environment shall always aim at a **high level of protection**. Before acknowledging an environmental agreement, the Commission must make sure that it also fulfils this condition. Its objectives should be derived in the first instance from the 6<sup>th</sup> Environmental Action Programme, other key policy documents or from multilateral environmental agreements. This should ensure that the agreement delivers more than “business as usual”.

In addition, the Commission will give due attention to the following criteria under both self-regulation and regulation.

### i. Cost-effectiveness of Administration

The 1996 Communication already underlined the potential cost-effectiveness of environmental agreements for industry. Beyond the general arguments put forward in this context – greater freedom for business on how to reach environmental objectives and room for creative tailor-made solutions - agreements must also be assessed in terms of the *comparative administrative costs* for the *Community institutions*. The costs of administering environmental agreements could be particularly significant when it comes to monitoring and

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<sup>15</sup> “Aarhus Convention”, signed on behalf of the Community on 25.6.1998. Not yet approved.

compliance assessment in the enforcement phase. Environmental agreements should not lead to a disproportionate administrative burden, as compared to their objectives and to other available policy instruments.

ii. Representativeness

The parties concerned must be considered to be representative, organised and responsible by the Commission, Council and European Parliament. Industry and their associations taking part in an agreement should represent the vast majority of the relevant economic sector, with as few exceptions as possible. Care will of course need to be taken, however, to ensure respect for competition rules.

iii. Quantified and staged objectives

When the Commission intends to issue a Recommendation or acknowledge an agreement between stakeholders or a unilateral commitment of stakeholders, it will verify that the objectives defined by the stakeholders are set in clear and unambiguous terms, starting from a well-defined baseline. If the agreement covers a long time-span, a “road map” with interim targets should be included. It must be possible to measure compliance with objectives and (interim) targets in an affordable and credible way using clear and reliable indicators. Research information, scientific and technological background data should facilitate the development of these indicators.

Under regulation, the objectives are already defined in the legal act. There is no need to repeat them in the individual agreement.

iv. Involvement of civil society

In the interest of transparency and in line with the 6<sup>th</sup> EAP as well as with the White Paper on European Governance, all agreements should be widely publicised, including through the use of the internet and other electronic means of disseminating information. The same holds true for interim and final monitoring reports. All stakeholders – industry, environmental NGOs and civil society in a broad sense - should be informed of - and have the possibility to comment on - an environmental agreement.

v. Monitoring and reporting

When the Commission decides to acknowledge an environmental agreement by means of an exchange of letters or to formulate a Recommendation, it must verify that the agreement contains a well-designed monitoring system, with clearly identified responsibilities for industry and independent verifiers. The Commission, in partnership with the parties to the agreement, will monitor the achievement of the objectives.

Under regulation, the monitoring and reporting requirements needed for checking progress towards the fulfilment of the environmental objectives should be integrated into the legal act defining these objectives. The plan for monitoring and reporting has to be detailed, transparent and objective. To this end, the Commission could make use of the well-established system of environmental verifiers under the EMAS Regulation. The final assessment of whether the underlying environmental objective has been met will be made by the Commission.

vi. Sustainability

Measures in favour of the environment should be consistent with the economic and social dimensions of sustainable development. The protection of consumers' interests (health, quality of life or economic interests) should also be fully integrated. Dependent on the scope and content of the environmental agreement under regulation, an impact assessment might be required, in line with the recent Communication of the Commission on impact assessment<sup>16</sup>. The structure and depth of such an assessment might vary according to the characteristics of the agreement.

vii. Incentive compatibility

An environmental agreement is unlikely to deliver the expected results if other factors and incentives – market pressure, taxes, and legislation at national level – send contradictory signals to participants in the agreement. Policy consistency is essential in this regard.

## **7. PROCEDURAL REQUIREMENTS**

The Action Plan “Simplifying and Improving the Regulatory Environment” made several proposals to define the procedures to be followed by the three Institutions in the case of self-regulation and coregulation. This Communication proposes procedures in line with this framework but which should apply specifically to environmental agreements.

### **7.1. Environmental Agreements as an Instrument of Self-Regulation**

Once the Commission has completed its analysis of a proposed environmental agreement, it may inform the European Parliament and the Council of its evaluation and conclusion, indicating whether it considers that an agreement can be acknowledged. Such an intention to acknowledge an environmental agreement could be included in the Commission work programme or a broader paper, for example a sufficiently detailed White Paper or a Thematic Strategy under the 6<sup>th</sup> EAP. The European Parliament and the Council would then have the opportunity to organise information events or hearings on the subject at their discretion.

- The Commission's evaluation and conclusion as to the appropriateness of an environmental agreement will be made publicly available, for example on the Commission's web site, in order to give the wider public a possibility to be informed of the proposed agreement and to comment thereupon.
- After considering any comments received, in particular those from the European Parliament and the Council, the Commission may take the decision to proceed by recognising an environmental agreement.
- Any Recommendation referring to an environmental agreement should be published in the Official Journal. The text of the environmental agreement itself should be published on the Commission's website.
- The Commission will verify, by appropriate monitoring and reporting mechanisms, if the underlying environmental objective is actually reached. The monitoring results and the reports will be communicated to the European Parliament and the Council, and will be made accessible to the public by electronic means.

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<sup>16</sup> COM(2002)276 final of 5.6.2002.

- The Commission may also propose monitoring and reporting mechanisms for evaluating the attainment of the environmental objective in the form of a Decision by the European Parliament and the Council.
- If an agreement considered in a Commission Recommendation or exchange of letters fails to deliver the expected results, the Commission can make use of its right of initiative and propose appropriate binding legislation.

## **7.2. Environmental Agreements as an Instrument of Coregulation**

- Under coregulation, key elements – notably the environmental objective and monitoring requirements - and potentially also a follow-up mechanism in case of failure of an environmental agreement to deliver, are integrated into the legal act itself. The latter is subject to stakeholder consultation during its preparation, in line with the Commission Communication on minimum standards for consultation, and is adopted under normal co-decision procedure. Given the above mentioned content of the legal act itself, procedural requirements for individual environmental agreements submitted in the framework of the legal act can be reduced.
- Where the Commission decides that coregulation is the best means of achieving an environmental objective and where key elements of its proposal are based on an existing or proposed voluntary agreement, which is satisfactory from the Commission’s point of view, the Commission will include these elements in its proposal and pursue them in discussions with the other institutions, making full use of the possibilities available to it in accordance with its Communication on the Action Plan “Simplifying and improving the regulatory environment”.
- The environmental agreement should be made public on the Commission’s website. Monitoring results and associated reports should also be made available by electronic means.
- Under coregulation, as for self-regulation, the Commission can always make use of its right of initiative and propose appropriate binding legislation if the agreement fails to deliver the expected results.

These procedures should ensure that environmental agreements are appropriately used wherever they are considered a genuine complement to existing policy tools. At the same time, they should guarantee the involvement of European institutions in the process as appropriate.

## **8. CONCLUSION: THE NEXT STEPS**

The European Commission wishes to encourage the preparation of voluntary environmental actions as well as environmental agreements at Community level, over a wide range of sectors, going beyond those where the Commission has announced its intention to propose legislation.

For its part, the Commission intends to recognise and make use of environmental agreements at Community level on a selective case-by-case basis. Since the instrument will not necessarily be the most appropriate in all circumstances, it is helpful to identify already a

limited number of policy areas in which environmental agreements could offer an added value or in which parties have already expressed an intention to present agreements. All in all, leaving aside purely spontaneous decisions initiated by stakeholders in areas in which the Commission has neither proposed legislation nor expressed an intention to do so, not more than four to six environmental agreements are likely to be considered during the remaining term of office of this Commission:

- An early candidate would be the **PVC Strategy**.
- Similarly, environmental agreements might be considered as part of the follow-up to the Green Paper on **Integrated Product Policy**<sup>17</sup>. The precise identification of the possible scope of environmental agreements in this field will of course depend on the outcome of the ongoing discussion of the Green Paper.
- Other policy areas to be considered for the effective application of the instrument are in the fields of **waste management** as well as **climate change**. The existing agreements on *CO2 reductions* from passenger cars might be complemented by similar environmental agreements for *light commercial vehicles* (LVC). In addition, the Communication “Towards an integrated European railway area”<sup>18</sup> proposes voluntary commitments concerning the retrofitting of in-use rolling stock to meet the *environmental requirements* applied to new rolling stock as a possible policy measure.

The Commission will continue to explore possibilities to develop other, additional modalities that might complement the two models outlined above.

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<sup>17</sup> COM(2001)68 of 7 February 2001.

<sup>18</sup> COM(2002)18 of 23 January 2002.