



Institute for
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**Policy Brief for the EP Environment Committee
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**Prospects for the Implementation of Selected New
and Future EU Environmental Legislation in the
Acceding Countries**

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SUMMARY

- 1 This brief examines the prospects for implementation of the emissions trading Directive (2003/87) and proposals on an amended directive on packaging and packaging waste, on the management of waste from the extractive industries, on an amended bathing water directive, an amended detergents regulation and on an amended groundwater directive in the Accessing Countries. These EU policy developments have all occurred since the closure of accession negotiations at the December 2002 Council and, therefore, they do not form part of the Commission's regular review of progress on approximation in the Accessing Countries (ACs). The briefing provides, for each issue, a short overview followed by more detailed case examples for the Czech Republic and Poland.
- 2 The emissions trading Directive presents a number of challenges for the ACs. This principally concerns the quality of data management systems to support a trading regime. Such systems (actual emission data, national inventories, etc) are required to support other measures, such as the PER. However, data on many sources is of questionable quality and there can be confusing administrative responsibilities for data handling. This problem needs to be addressed and ACs are aware of the issue. The trading regime itself, however, does not seem to raise concerns.
- 3 The existing packaging and packaging waste Directive has posed significant challenges to the ACs. The proposal has an amendment to delay implementation for nine of the ACs, doubts have been expressed about the readiness to meet even these targets. Concern exists over the ability of particular sectors to reduce packaging waste and over the regulation of the Directive. For example, in Poland the supervision of the information on recycling, etc, has gaps that make conclusions over implementation highly questionable.
- 4 The mining waste proposal is of high importance in the ACs. Not only did the high profile Baia Mare accident affect two of the countries, but it is also important to note that mining activities in Poland will represent a high proportion of the EU as a whole after accession. The countries have a long history of aspects of mine regulation, especially with regard to safety. However, the main challenges concern the extension of schemes for recycling, the link to generally poor overall waste management systems, adequate examination of environmental risks and financial guarantees.
- 5 The consequences of the bathing water proposal are difficult to assess. Given the reduction in the number of parameters to be assessed compared to the 1976 Directive, it is not thought to be an administrative challenge (the public information requirements are considered to be achievable and other issues are integrated with implementation of the water framework Directive). However, achieving standards depends largely on effective waste water treatment. It is unclear if upgrading programmes fully take account of microbiological objectives, as opposed to other objectives in the urban waste water treatment Directive. Also, given that all ACs have derogations on the UWWT Directive (up to 2015), it is unclear how deadlines in the proposal would relate to these.

- 6 The detergents proposal is not thought to represent major challenges to the ACs. The proposal affects manufacturers, many of which, in these countries, are owned by a few western European companies. Although industry is concerned over some cost issues, lower manufacturing costs in the ACs should, at least, mean that the burden is no greater there. However, it should be noted that some SMEs in these countries will be affected, but the impact on this sector is uncertain. Regulation and testing facilities for implementation are considered to be in place, or readily achieved.

- 7 The Commission argued that sound groundwater management systems are in place in the ACs. This is largely true, in that extensive monitoring is undertaken. However, in some cases such monitoring does not identify all parameters to determine groundwaters at risk. However, the basic understanding of groundwaters is good. In contrast, there is a need to regulate discharges to groundwaters and the general concern over the effectiveness of regulatory bodies in the ACs applies also to groundwater protection, not least because of problems in controlling small pollutant sources.

POLICY BRIEF FOR THE EP ENVIRONMENT COMMITTEE
EP/IV/A/2003/09/01

**PROSPECTS FOR THE IMPLEMENTATION OF SELECTED NEW AND FUTURE
EU ENVIRONMENTAL LEGISLATION IN THE ACCEDING COUNTRIES**

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1.		

Introduction

On 1 May 2004 ten new Member States will join the European Union (EU). EU membership requires that the new Member States fully implement all EU legislation that is in force upon accession as well as, subsequently, all future legislation to be adopted by the EU. The enlargement process has involved lengthy negotiations on the extensive body of existing legislation and, for some Directives, additional time for implementation, in the form of transition periods, has been agreed. However, since negotiations concluded (at the Council meeting of December 2002), further legislation has been adopted by the EU and more is currently in the adoption process. These have not formed part of the assessment of the preparedness of the Acceding Countries, although the situation in these countries may have, variously, been considered in the drafting of proposals.

As a result the European Parliament's Committee on the Environment, Public Health and Consumer Policy has requested a written briefing on how prepared the Acceding Countries are for the implementation (or potential implementation) of a selection of new and likely future legislation and the challenges that they might face. The legislation and proposals to be considered are:

Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC;
Proposal for a Directive amending Directive 94/62/EC on packaging and packaging waste - COM(2001)729 final;
Proposal for a Directive on the management of waste from the extractive industries - COM(2003)319 final;
Proposal for a Directive concerning the quality of bathing water - COM(2002)581 final;
Amended proposal for a Regulation on Detergents - COM(2003)306 final;
Proposal for a Directive on the protection of groundwater against pollution - COM(2003)550 final.

The list includes one Directive and five proposals. The Directive sets out a new mechanism for pollution reduction for the EU, ie an emissions trading scheme, and is also a new development for many of the existing Member States. Acceding Countries and Member States alike might be expected, therefore, to have similar challenges. Similarly the mining waste proposal will present novel challenges to old and new Member States.

The other proposals all amend existing legislation. Existing Member States have extensive experience of implementing the existing legislation and are able to judge in some detail the likely consequences of proposed amendments. Acceding Countries have, of course, transposed the existing legislation and have begun implementation. However, the full implications of existing legislation might still yet to be realised and the implications of the amendments might not yet be fully determined.

This briefing provides a short overview of the situation. It presents general information on the challenges for the ten Acceding Countries as a whole and, as case studies, more detailed information about the situation in the Czech Republic and Poland.

The implementation process concerning the proposals is at a very initial stage in the Acceding Countries. For this reason it is difficult to obtain pan-country information and, for

some countries, even country-specific information is lacking. For example, in most cases in the Czech Republic the proposed legislation is to be discussed at the expert level starting from the beginning of the year 2004. In certain cases, even, it still has not been decided which ministry will be responsible for implementation.

2 Directive 2003/87/EC Establishing a Scheme for Greenhouse Gas Emission Allowance Trading within the Community

2.1 Introduction

This Directive establishes a scheme for greenhouse gas emission allowance trading within the Community (hereinafter referred to as the ‘Community scheme’) in order to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner.

2.2 Overview

The Regional Environmental Centre and World Resources Institute have undertaken a study to examine the capacity needs of central and eastern European countries to meet the requirements of the Kyoto Protocol¹. This study focused on the availability of data and the administrative capacity necessary to ensure that systems are in place to meet the objectives of the Protocol. It did not address emissions trading per se, but most of its conclusions would apply equally to a trading regime as to most other mechanisms that could be adopted to reduce greenhouse gas emissions. Its main findings were as follows.

The countries need to make significant progress in implementing national systems for inventory compilation, management and reporting, and participation in the Kyoto Mechanisms.

Considerable capacity does exist in the Czech Republic, Hungary, Poland and Slovenia to implement national systems, but there remain priority areas for capacity building which represent significant hurdles.

Responsibilities for carrying out key aspects of national inventory compilation and management are not clearly assigned. Thus roles and mandates need to be clarified.

In some cases the legal frameworks necessary to undertake several aspects of inventory management are inadequate or lacking, in particular the lack of access to emissions data due to confidentiality issues.

Staff in all countries would strongly benefit from expert assistance in establishing and using methodological best practices, including calculation of emissions factors, evaluation of inventory uncertainty, quality control and establishment of a national registry. International assistance is important for delivery.

Countries have invested considerable resources in creating the institutions and systems necessary for successful implementation of the Protocol. However, current levels of government funding are inadequate to meet all of the many responsibilities. This needs to be overcome with strong commitments from national governments and international assistance.

¹ *Complying with the Kyoto Protocol Requirements: Capacity Needs in Central and Eastern Europe*. Regional Environmental Centre and World Resources Institute. 2002.

A further REC report examined the development of national emission inventories more widely². This study focused upon the pollutant release and transfer protocol, but some of its conclusions also apply to the information needs for emissions trading. These include:

the recent transposition and start of implementation of the IPPC Directive has stimulated more detailed requirements on self-monitoring in permits, the 'right to know' and reporting mechanisms; and
in all of the countries several different data collection and processing methods are used, resulting in problems of co-ordination and gaps in information. Different authorities can be involved and this represents a major challenge.

In conclusion, it can be seen that there is a significant challenge to the Accessing Countries in establishing the systems needed to assess emissions and develop inventories. This issue, of course, concerns not only the emissions trading Directive, but also the EU's PER and the implementation of the PRTR Protocol. The trading regime itself will be a new administrative challenge, although concerns have not been explicitly expressed in relation to its potential management in the Accessing Countries other than in the quality of data necessary to support its operation.

2.3 Czech Republic

The Ministry of Environment is responsible for implementing the Directive. Transposition will be achieved through a special Act. So far, work on a national allocation plan has been launched. The plan has to be completed before May 2004, when the Czech Republic will forward it for approval to the European Commission.

The Ministry has selected about 500 sources of CO₂ emissions and, in co-operation with industry, is verifying the necessary data (in particular those on CO₂ emissions) connected with the introduction of the scheme.

Preparation of the national allocation plan is closely connected with other strategic documents for the Czech Republic:

the national programme on alleviation of the impact of climate change in the Czech Republic (due to be forwarded to the Cabinet by the end of February 2004); and
the national energy policy.

All of the documents mentioned above will be background material for the National environmental policy to be on the Cabinet's agenda in 2004.

A number of issues remain to be resolved in terms of implementing the Directive. These include: monitoring, regulating the allowances, verification of emission data from individual companies, organisation of the emission market, etc.

Another issue seems to arise from the fact that the Directive has not reflected the situation of candidate countries in relation to the Kyoto Protocol. Industrial companies might oppose

² Bolshakova, M. and Nagy, M.T. *Developing and Implementing Integrated National Pollutant Release and Transfer Registers in the Accession Countries of Central and Eastern Europe*. REC. May 2003.

further emission reductions claiming that there is no reason for an additional obligation if the country is in compliance with the Kyoto Protocol obligations.

Irrespective of this concern, the scheme for emission allowance trading is considered to be a positive instrument for greenhouse gas emission reduction in the Czech Republic in the future. Czech companies also might benefit from its implementation due to lower expected costs of pollution prevention.

2.4 Poland

In the period from 1988 to 2001 emissions of greenhouse gases in Poland significantly decreased (CO₂ by 33.4%, 159.7 million tonnes, whilst CH₄ by 41.1%, 27.1 million tonnes), which has created a considerable potential for emission trading (ET) and joint implementation (JI) activities. Forecasts of future GHG emissions clearly indicate that Poland will have significant surplus reductions in the first budget period of the Kyoto Protocol. At the same time, it appears possible to further reduce the amount of gases released to the atmosphere. In this regard, one of the aims of the Climate Policy of Poland is to reduce GHG emissions by 40 per cent compared to 1988, by 2020. Under the Kyoto Protocol Poland has committed itself to reduce emissions of GHG between 2008 and 2012 by 6 per cent compared to 1988. The target of EU is 8 per cent and Poland as a future member of the EU for the first period will not take part in the Burden Sharing Agreement in this respect.

The preparatory work on transposition has just started. The Ministry of Environment is developing outlines of the new act on emission trading. The draft act needs to be ready by the end of June and during the autumn the approval of the Parliament is expected. In Poland the work on the National Allocation Plan (NAP) has just begun. The deadline for preparation of the draft NAP is 15 March. The work is divided into three stages:

- First stage – calculation of the total amount of allowances in the trading scheme;
- Second stage – grandfathering of allowances to each installation for trading (approximately 1000 installations); and
- Third stage – how to incorporate new installations into the scheme.

This is a very short timescale to prepare a good NAP, with a full consultation process including the business and NGO community. The critical elements of the NAP are as follows.

- How solve the problems of allowances for installations that no longer exist, but were shut down during 1988-2003.
- During 1988-2003 some companies received some privileges from the government, for example long term contracts with stable prices for electricity for large power stations. How can the NAP create fair conditions to share the allowances?
- How to deal with new installations, or will the government save some allowances for them or will they need to buy them on the market?

One critical problem is to set up the registration system of GHG emission allowances in Poland. At present, in formal terms, the obligation to manage the national registry rests on the National Centre for Recording Emissions (NCRE). However, given its other urgent tasks and the lack of funds for the implementation of this task, as well as that its other duties are recognised as higher priorities, no measures to this end have been taken to date. A detailed study is urgently needed to answer questions related to the establishment of the national

registry of emissions. It is necessary to abandon the task-based mode in which NCRE is financed and operates, and to create the legal basis for placing this institution within the institutional system of the management of environmental protection in Poland. This requires:

- the definition of the tasks and competencies of NCRE in relevant legislation;
- the identification of the sources of financing the Centre;
- the formalisation of the legal requirements for emission data flow to NCRE;
- strengthening the role of the Centre in monitoring and reporting in the emission trading scheme.

3 Proposal for a Directive amending Directive 94/62/EC on Packaging and Packaging Waste

3.1 Introduction

The Proposal establishes recovery and recycling targets to be achieved by Member States by 30 June 2006, with different values for various packaging materials. Some of the targets are substantially higher than before. The proposed amendment also contains a clarification of the packaging definition and other definitions used in the Directive.

The impetus for the revision of Directive 94/62/EC stems from analysis undertaken on the state of implementation of the Directive in the existing Member States and the prospects for achieving more stringent targets in the future. While debate surrounds the interpretation of these analyses, and hence the detail of the proposed revised Directive, the studies undertaken by the Commission have not addressed the situation in the Accessing Countries³. This is reflected in the Explanatory Memorandum to the proposal which provides a wide ranging overview of research undertaken on the issue, but all of which is addressed to the situation in the existing Member States.

3.2 Overview

The existing packaging waste Directive 94/62 proved to be one of the more difficult for the Accessing Countries to implement prior to accession. However, laws have been introduced in the Accessing Countries and mechanisms are being put in place to meet the targets, including transition periods, for the Directive⁴. This has included the establishment of co-operative relationships to examine methods to achieve the targets. For example, in Estonia a committee has been established with national and local government, industry and NGOs to take this forward. These initiatives would support the implementation of any further targets adopted under a revised Directive.

EUROPEN, the association of the packaging industry, issued a statement that it was concerned over statements issued by some Accessing Countries that they would be able to meet the increased targets for packaging waste⁵. It argues firstly that reliable data are not yet

³ ARGUS, ACR and Carl Bro. European Packaging Waste Management Systems. Report for DG Environment. February 2001 and RDC and PIRA. Evaluation of costs and benefits for the achievement of reuse and recycling targets for the different packaging materials in the frame of the packaging and packaging waste Directive. 94/62/EC. Report to DG Environment, March 2003.

⁴ EUROPEN. Status report on European packaging and waste law. 2003.

⁵ EUROPEN comments on amendment seven concerning derogations for accession countries. EUROPEN, April 2003.

available in these countries realistically to assess their ability to meet the recycling and recovery obligations. Secondly, it argues that there has not been a 'sound' analysis of the capacity of the individual countries to build appropriate systems to achieve the objectives. For example, EUROOPEN considers that because of the state of waste treatment infrastructure, and especially incinerators, in these countries, the entire recovery volume will have to be met through recycling. It is far from clear whether this is practical or cost-effective.

Having said this, EUROOPEN supports the use of derogations for the Accessing Countries. The arguments used to allow derogations for Greece, Ireland and Portugal focused on the influence of islands, rural populations, mountain areas and low packaging consumption. These arguments are also valid for many Accessing Countries, such as the large rural areas in Poland. The derogations also need to take account of the current state and advances in infrastructure in developing systems for recovery and recycling. For example, the Czech Republic has had a functioning packaging and packaging waste system for a number of years, but Slovakia has only just begun to develop such systems in response to the existing packaging waste Directive.

The European Environment Bureau also recognises the potential use of derogations for Accessing Countries, although it considers that these should only be on the same grounds as Greece, Ireland and Portugal and that there should be similar timeframes for all Accessing Countries to avoid 'complications'⁶.

As a result all of the countries, except Estonia, received proposed transition periods in an amendment to the proposal: 2005 (CY, CR, HU), 2006 (LT,), 2007 (LV, PL, SK, SLO) and 2009 (MT).

In conclusion, the existing Directive presents a major challenge to the Accessing Countries and doubts are expressed about their ability to meet the requirements of the agreed transition periods. The extended targets of the proposal are a further challenge and it will be important for more detailed critical analysis of the preparedness of industrial sectors to implement the proposal to be carried out.

3.3 Czech Republic

The Ministry of Environment is responsible for this issue. The Proposal will be discussed at the expert level and consultations are to start in the first half of 2004. No specific problems have been indicated by the Ministry so far and these are not expected to be highlighted until after the results of early consultations.

3.4 Poland

Poland negotiated a transition period for the Directive for 31 December 2007, to achieve the 2001 targets of the existing Member States. In order to achieve the recovery and recycling targets of the Directive, Poland introduced a system of product fees. An obligation has been imposed on producers, importers and large retailers of packaged products to recover and recycle an established percentage of the packaging introduced to the market. The producers or importers who fail to comply with these requirements are obliged to pay a product fee

⁶ EEB position paper on the draft Recommendation for Second Reading on the Council common position for adopting a European Parliament and Council directive amending Directive 94/62/EC on packaging and packaging waste. EEB, April 2003.

calculated according to the difference between the required level of recovery/recycling and the achieved level.

The targets set by Polish law for different materials are in most cases lower than those in the proposed amendment (see table below). But even some of these targets seem difficult to achieve at present, as the system of product fees is only beginning to operate. Polish law also includes targets for the recycling of natural (textile and wood) packaging, which has not been (but may be in the future) included in the Directive.

	EU targets for 2001 (Directive)	proposed EU 2006 targets (Amendment)	levels achieved in Poland in 2002 (data from Ministry of Environment)	Polish 2007 targets (in Decree of the Ministry of Env.)
overall recovery	50-65%	60-75%		50%
overall recycling	25-45%	55-70%		25%
material-specific recycling:				
glass	15%	60%	15%	40%
paper and board	15%	55%	44.4%	48%
aluminium	15%	50%	22.8%	40%
steel	15%	50%	16.4%	20%
plastics	15%	20%	11.4%	25%

Under Polish law large retailers, producers and importers of packaging are obliged to report to the Voivodship Marshall office (self-government) their recovery/recycling levels and if necessary, pay product fees (collected also by the Marshall). Instead of fulfilling this responsibility themselves, operators may entrust it to specialized recovery organizations. It will probably take a few years until the whole system operates correctly – 2003 was the second year of its operation. A report of the State Environmental Protection Inspectorate of November 2003 describes a number of difficulties and uncertainties which have arisen, which include difficulties with establishing the amount of packaging introduced to the market and with documentation of the amount of recovered/recycled packaging waste, as well as numerous mistakes in procedures and calculating the product fee made by operators and recovery organizations.

Out of 110 operators included in the State Inspectorate report about one-third achieved the recycling targets established by law, the rest were obliged to pay a product fee for one or more types of packaging introduced to the market (70% of them actually paid the fee before the inspection). The report does not indicate the percentage of operators not taking any action concerning the recovery/recycling and product fee obligations (they were not part of the inspection).

In the view of the Inspectorate, so far the system has not stimulated investments in recycling or selective waste collection. In many cases, neither the operators nor the recycling organizations conduct the technical recovery/recycling process themselves – there are separate agents specialized in recycling. These third parties are not obliged to collect documentation concerning their contracts. The Inspectorate suspects that in some cases the same amount of recycled waste was used more than once in contracts with different operators or recovery organizations, allowing them theoretically to fulfil their recycling obligations. It

is difficult to track what actually happens to the packaging waste taken over by these third parties – for example, it could be sold further to another recycling agent or disposed of. This makes inspection of the whole ‘waste chain’ very difficult and creates opportunities for corrupt practices, putting at risk the proper operation of the entire product fee system.

The critical barrier for recycling is, and will be, the capacity of domestic industry to meet its future requirements. Presently only the glass industry has sufficient capacity. Investments in the paper industry also seek to increase recycling to 49 per cent by 2007. The requirements for recycling of metal packaging will require new technology in Polish mills.

In conclusion, the most important legal issue which needs to be tackled and regulated is the responsibility of third parties for their recycling contracts – extra documentation should be required from recycling agents. Further effort can also be made to raise awareness among operators concerning their responsibilities. There is also a need for strengthening the capacity of Marshall offices and Inspectorates, responsible for the proper functioning of the product fee system.

4 Proposal for a Directive on the Management of Waste from the Extractive Industries (Mining Waste Proposal)

4.1 Introduction

The proposal would oblige the operator of a waste facility to take all measures necessary to prevent or reduce as far as possible any adverse effects on the environment or on human health, taking into account, *inter alia*, best available techniques (without prescribing the use of any technique or specific technology). The requirements include:

- operators shall draw up a waste management plan containing specified elements, eg waste characterisation, control and monitoring procedures;
- waste facilities shall be classified into two categories, depending on their hazard potential. Operators classified into the ‘hazardous’ category are obliged to draw up a major-accident prevention policy, appoint a safety manager, draw up internal and external emergency plan and are made subject to periodic inspections by the competent authority and notification to the public;
- operators are obliged to provide closure and after-closure procedures;
- operators have to take necessary measures with respect to prevention of water and soil pollution;
- operators, prior to the beginning of disposal operations, are obliged to establish a financial guarantee system in order to cover any expenses that a third party would incur in rehabilitating the site in case of insolvency;
- national authorities shall inspect waste facilities to ensure that they comply with the relevant conditions of the granted permit; and
- waste facilities, that have been granted a permit or are already in operation before the date of transposition receive a transitional period of four years to achieve compliance with the provisions of the proposal, except from establishing a financial guarantee – six years.

4.2 Overview

Many of the Acceding Countries include mining waste, to varying extents, in their national waste management legislation.⁷ However, hazardous mining wastes are managed within the scope of hazardous waste generally, as none of the Acceding Countries has adopted legislation specific to the management of hazardous mining waste.

It is, however, important to note that the Acceding Countries do not have a strong track record on waste management generally and even some of the EU *acquis* remains to be transposed and implemented, such as the landfill Directive.

National legislation is variable in its coverage of the elements of the proposal. Key points include:

- countries with a long history of underground mining often have detailed laws relating to mining safety;

- tailings ponds are, however, not considered as a priority issue. Some countries do have legislation, while others are drafting such legislation;

- closure is regulated in much less detail than mine operation. For example, many countries have regulations for site remediation during operation but not for the post-operational phase. The Acceding Countries have a large number of abandoned mines, with no remediation provisions, safety controls or operator. This presents a high risk to health and the environment, as well as to government budgets which would have to bear relevant costs; and

- in many Acceding Countries mining royalties are paid to local and/or central government and environment funds can be used to finance remediation operations. Fees can be varied according to the hazardousness, handling difficulty and treatment requirements of waste, as well as quantity and period of storage.

The importance of the effective management of mining waste in Acceding Countries has been highlighted by the Baia Mare accident in 2000 which, together with that in the Cota Donana in Spain, has been a major impetus for the Commission to produce its proposal. Although the Baia Mare accident occurred in Romania (not one of the ten Acceding Countries), its impacts were felt into the Tisza River basin, part of the Danube Basin, especially in Hungary. Following the accident the Baia Mare Task Force was established, which sought to identify potential risk sites in the Tisza River basin⁸. It concluded that there were 19 'hot spots' (risk sites) in Romania, and one each in Hungary and Slovakia.

Given the high profile of the Baia Mare accident and its importance in driving the development of the proposal, it is, perhaps, surprising that the proposal could fail adequately to tackle the problems highlighted by the Baia Mare Task Force. WWF, for example, has emphasised the need to act upon the mining hot spots in the Tisza River basin as a matter of

⁷ Explanatory Memorandum of the proposal which itself draws upon a draft report of the PECOMines project ('inventory, regulation and environmental impact of toxic mining wastes in pre-Accession Countries') drawn up by the PECOMines team in the Soil and Waste Unit at the JRC: Tamas Hamor, *Legislation of mining waste management in Central and Eastern European Candidate Countries*, Ispra, March 2002 (unpublished).

⁸ Regional inventory of potential accidental risk spots in the Tisza catchment area of Romania, Hungary, Ukraine and Slovakia. Prepared by the Permanent Secretary of the ICPDR in co-operation with Zinke Environment Consulting for CEE, Vienna. August 2000.

urgency in order to prevent any further accidents⁹. However, it considers that the proposal fails to achieve this because:

under the proposal there would not be a direct obligation to identify and/or rehabilitate any 'existing' waste facilities at risk. These would include the hot spots identified in the Tisza River basin;

the proposal does not indicate how to obtain any financial assistance, eg from EU funds, to assist in remediation.

WWF proposes amendments to achieve this. Its concerns, however, are equally applicable to all existing mining waste sites in the Acceding Countries, which undoubtedly constitute the majority of environmental risk from this industry sector.

In conclusion, it is therefore likely that the Acceding Countries will have some difficulties in implementing the proposal as it stands, given their current capacity problems with waste management generally. However, the proposal might fail to tackle some of the more pressing environmental problems with mining waste in the Acceding Countries. If it were amended so as to tackle these problems, then pressure on the capacity of Acceding Country institutions would increase.

4.3 Czech Republic

The Ministry of Environment currently has the portfolio for this proposal. The Ministry is negotiating the delegation of responsibility in this respect with the Czech Mining Office. Currently, therefore, it has not reached any specific conclusions on implementation issues.

4.4 Poland

Poland has one of the largest extractive industries in Europe: annual production of 100mln tonnes of coal (similar to the EU15), 60mln tonnes of lignite (25 per cent of EU-15), 460 thousand tonnes of copper (2.5 times more than the EU-15), 150 thousand tonnes of zinc (30 per cent of EU-15). Therefore, the industry potentially affected by the proposed Directive is significant. The proposal contains no elements specific to the Polish situation, but several important issues would arise if the proposal is adopted.

With regard to many provisions, the proposed Directive is consistent with current Polish regulations, such as the following.

1. The Geological and Mining Act of 4 February 1994: contains obligations necessary to obtain a permit for the operation of a waste facility, *inter alia*, the proposed location of a facility, waste characterisation and estimated total quantities of waste, technology of treatment – such regulations could serve as a framework for a waste management plan. The Act also stresses the importance of the geological works plan (the only basis for extraction), that has to consider 'all activities necessary from the environmental point of view, particularly groundwater, and means for (...) the land rehabilitation and measures aimed at damage prevention'. Moreover, the Act requires, for every mining site, a Spatial Plan that should integrate environmental problems into all mining

⁹ WWF. Position paper on the European Commission proposal for a Directive on the management of waste from the extractive industries. November 2003.

activities. Regulations concerning claims assurance (for selected types of activities), an external control system and evidence requirements are specified in the Act. Finally, the Act considers closure procedures, underlined in the proposed Directive, in that it obliges operators closing their mines to ‘take all measures necessary to protect the environment and rehabilitate the site after mining activity’.

2. The Decree of the Ministry of Environment of 28 December 2001 on detailed requirements for deposit management projects, which contains obligations for presenting the state of environment and measures for protecting it from adverse effects of extraction, as well as protecting surface and groundwaters.
3. The Decree of the Ministry of Environment of 30 December 2002 on serious accidents covered by the obligation to notify the State Inspectorate of Environmental Protection, detailed requirements about information to be communicated to the public, closely consistent with requirements in Annex I (2) of the proposed Directive.
4. The Waste Act of 27 April 2001 is generally not applicable for waste from extractive industries, however an Annex contains regulations for hazardous waste that is consistent with one from the proposed Directive.

However, the proposed Directive contains many provisions, that are not present in Polish law or for which Polish regulations are different, especially the financial guarantee for extractive industry insurance and major-accident prevention (emergency plans and the safety management system).

According to a working document ‘The management of waste from the extractive industry’ (Working document no 3, September 2002), the most important comments and opinions made in Poland are as follows.

The Ministry of Environment suggests that after closure and reclamation it is necessary to change the status of land under the facility in order to reduce tax loads, as there are no further incomes from the activity.

The State Mining Authority stresses that longer transitional periods should be established, pointing out the eight year period provided under the regulations of the Landfill Directive.

According to the National Waste Management Plan (NWMP), waste from extractive industries amounted, in 2000, to 73mln tonnes – compared to 400mln in EU-15 (hard coal 37mln, non-ferrous metals 29mln, rock waste 6mln). Eighty-two per cent of this was recovered, and 17 per cent deposited in piles and heaps. The latter figure is due to the low cost of deposit of waste compared with the costs of reuse. The price of deposit should include the cost of waste facility construction, operation, liquidation, land reclamation, monitoring and supervising.

Although the quantity of waste from extractive industries is significant, only some is to be classified as hazardous. Thus the majority of the operators are expected to be subject to limited provisions of the proposed Directive. Therefore, there is a need to create a list of hazardous facilities, along with potential effects on them of implementing the proposed Directive.

According to the NWMP the main problem remains waste from flotation raw materials – coal, copper, zinc and lead, that is always deposited in heaps (currently there is no other method of dealing with such waste). Therefore the quantity of such waste depends directly on

the quantity of the extracted minerals. Prospects for the Polish extractive industry suggests, that in the future the quantity of flotation waste should decrease: extraction of coal should fall from 100mln tonnes to 60mln in 2020, while extraction of zinc and lead is going to cease by 2014 (extraction of lignite and copper is expected to stabilise during the next few years).

According to an evaluation carried out for the Commission (Symonds Group), the rise in waste management costs resulting from the proposal would fall within a range of 5-10 per cent of current waste management costs for many mines. This suggests, that adjusting to the provisions of the proposed Directive is not going to be very costly. However, many coal mines in Poland are on the edge of bankruptcy, and it is necessary to provide (with respect to the state restructuring plan) suitable adjustment plans, along with potential sources of financial support. Another problem is the ability of small and medium sized companies (mainly quarries) to cover the extra costs.

The low awareness and weak development of BAT in the extractive waste management could make the effectiveness of measures necessary to prevent or reduce any adverse effects uncertain. However, the sector recognises the need for co-operation towards BAT and exchange of information (in July 2003 there was a meeting in Wrocław ‘Waste management in extractive industries and application of BAT project’), thus progress towards BAT should occur.

Some difficulties could occur with respect to the obligation to provide for an appropriate level of financial security aimed at leaving waste sites in a satisfactory state after closure. It is uncertain what forms of guarantee could be taken into consideration. There is a danger that companies with financial or economic difficulties, or smaller ones, may well struggle to arrange the necessary guarantees.

National administrations are going to face the need to create and then maintain regulatory and inspection systems capable of meeting the obligations established for them by the proposed Directive.

In conclusion, the problem of waste from the extractive industries has been considered in NWMP, as well as in the Provincial WMP, which belongs to the voivodeships with a significant extractive industry (eg Silesia). The recommendations and suggestions specified in the plans, should be included and developed in local WMPs. The main suggestions contained in the NWMP, with respect to the proposed Directive, could be summarised as follows:

- local WMPs should consider the list of deposits of extractive waste requiring rehabilitation;
- a list of after-closure degraded sites requiring rehabilitation should be drawn up;
- research on new technologies of reusing flotation waste should be continued; and
- more waste should be recovered.

5 Proposal for a Directive Concerning the Quality of Bathing Water

5.1 Introduction

The proposal would introduce a radical change to the monitoring system of 19 parameters in the 1976 Directive, ie that only two key microbiological parameters of Intestinal Enterococci and Escherischia are necessary. These are to be complemented by visual inspections of algae blooms and oil, along with pH measurements in fresh water. The Commission presents two levels for each parameter, a legally binding ‘Good Quality’ value and an ‘Excellent Quality’ guide value (these replace the current classification of mandatory and guide). Classifications are based on data collected for the previous three years. If waters fall below the ‘Good Quality’ level, they are considered to be of ‘Poor Quality’ and are considered not to conform with the Directive, unless certain conditions are met. The regularity of sampling decreases with increased water quality, the maximum monitoring frequency being twice monthly for poor waters.

In addition to sampling and monitoring the proposal places a high emphasis on the development of bathing water profiles. These will detail the physical, geographical and hydrological characteristics of the bathing water; identify all potential sources of pollution – qualitative and quantitative; and assess the risk posed by a potential pollution source. The updating of profiles, as with monitoring, is dependent on the quality level applied to a site. Within the document priority is also placed upon passing information about the water quality on to the public/users of the bathing water and the active involvement of all interested parties in the development of the bathing water profile.

5.2 Overview

While data on the state of bathing waters in the existing Member States are readily available in great detail and comparisons with the proposal are readily achievable, this is not the case for the Acceding Countries. However, it is understood that there are widespread problems with meeting the limit values in the existing Directive, especially on parts of the Baltic Coast and in major inland bathing waters, such as Lake Balaton in Hungary.

The proposed Directive imposes a number of new administrative conditions on Member States, such as on public information and integration with river basin planning under the water framework Directive. However, these do not present significant new challenges to the Acceding Countries. The proposed standards in the proposal are however new and it is here that problems in implementation are most likely to occur.

The main driver of non-compliance with bathing water standards is discharges from waste water systems. Acceding Countries have widespread problems in upgrading their waste water collection and treatment systems and all have transition periods to meet the requirements of the urban waste water treatment Directive¹⁰. This Directive not only imposes its own conditions, but also requires treatment to meet objectives set out in the existing bathing water Directive. It is unclear whether full analysis of UWWT upgrading has taken account of all bathing water requirements (ie the need for tertiary disinfection) as opposed to other high level environmental protection (eg tertiary nutrient removal). If not, as may well be the case,

¹⁰ Progress in implementing five environmental Directives in the Acceding Countries. IEEP/Ecologic Briefing to the European Parliament Environment Committee. 06/2003.

then this would impose further significant costs to these countries. The case studies below concentrate on the administrative impacts.

5.3 Czech Republic

The Ministry of Public Health has responsibility for implementation of the existing Directive and consideration of the new proposal. The Ministry has finished the transposition stage of implement Directive 76/160/EEC. It has now prepared a draft of the Decree specifying requirements on bathing water. The Decree is to be approved in the near future.

As regards the proposal for a new directive, according to the information of the Ministry's officials, no implementation procedure has been started so far. Therefore they were not able to identify any possible implementation problems or challenges.

5.4 Poland

The quality of bathing water in Poland is regulated by the Order of the Minister of Health of 16 October 2002. The Order establishes seven parameters for bathing water quality complemented by visual inspection of colour, odour in the temperature of 20 – 25 ° C, mineral oil, active foam producing substances, water transparency, tarry residuals, presence of algae bloom and pH measurement. The parameters include Escherichia coli or Faecal Coliforms, Intestinal Enterococci, Total Coliforms, Salmonella. Phenol, DO and BOD₅.

The bathing water monitoring frequency is to sample every two weeks, for the period April 1 to September 30 (bathing season in Poland). Sampling depth is 30 cm. For surface waters where bathing was not permitted for more than two years, sampling frequency must be doubled. For surface waters where contamination in the past was less than the maximum acceptable values, frequency of sampling may be halved by the Voivodship Sanitary Inspector. If the length of the bathing beach is less than 1.5 km, samples are taken at two locations. If the beach is longer they are taken at the interval of 750 m. If needed, additional sampling may be required upstream of the bathing locations. Bathing water is of acceptable quality if: (i) at least 80 per cent of samples meet the Total Coliform and Faecal Coli maximum acceptable values, (ii) at least 95 per cent of samples meet the other parameters.

Comparing the bathing water quality regulations currently in force in Poland with the proposed Directive, implementation in Poland should not entail any special administrative problems. The frequency of sampling is similar in both documents and the proposal features fewer parameters to be measured. Hence, monitoring should be less expensive and should contribute to the promotion of tourist activities.

6 Amended Proposal for a Regulation on Detergents

6.1 Introduction

The Regulation extends the scope of regulation of following Directives: 73/404/EEC, 73/405/EEC, 82/242/EEC, 82/243/EEC and 86/94/EEC. It extends the definition of detergents and adds surfactants to the list of chemicals which should now be controlled on the EU internal market. It puts limits for placing detergents and surfactants on the market. The limits are set by the levels of biodegradability. All detergents or surfactants which do not pass the primary biodegradability test are banned from the market. All the detergents and

surfactants which pass primary biodegradability tests, but do not pass ultimate biodegradability tests are banned, but may be derogated from the regulation. Member States shall appoint an institution responsible for managing of the Regulation and laboratories to carry the biodegradability tests. The detergents or surfactants put on sale should have certain information on the packaging.

6.2 Overview

The proposal affects detergent manufacturers. It does not, therefore, impact upon users of detergents. European soap production is dominated by a small group of companies. Thus Procter & Gamble, Unilever, Henkel, Colgate-Palmolive and Benckiser account for 90 per cent of the market. While some detergents are manufactured in the Acceding Countries, a number of these plants are owned by the large west European companies. For example, in Poland about 230,000 tonnes of laundry detergents are produced each year, mostly from factories owned by the large companies listed above¹¹.

Clearly the rules of the proposal will impact on all manufacturers. However, there is no particular reason to consider that the burden will be greater or more difficult to control in the Acceding Countries than in the Member States. Indeed, if implementation does impose some significant costs (as some industry representatives have argued) then this might make the lower-cost manufacturing opportunities in the Acceding Countries more attractive. Having said this, there are still a number of SMEs involved in the production process in the Acceding Countries and it is here that implementation problems are most likely to occur.

6.3 Czech Republic

The Ministry of Environment has responsibility for this issue. The implementation procedure is to start as from the beginning of 2004. The Ministry does not expect any problems connected with the implementation of the proposal.

6.4 Poland

All of the legislation which would be amended by the proposed regulation was transposed and implemented in Poland by the end of 2002. The existing legislation concerning detergents and surfactants is:

- Chemical Substances and Preparations Law of 11 January 2001;
- Regulation about methods of biodegradation testing of 6 November 2002;
- Regulation about the conditions to dump sewage into water or soil and about substances especially harmful for the aquatic environment of 16 December 2002;
- Regulation about the conditions applicable for products because of health and environment protection of 28 October 1998; and
- Regulation about chemicals testing, concerning biodegradation tests from 31 December 2003.

These laws, at least, would require amendment if the proposal were adopted. The Bureau for Chemicals Substances and Preparations is the institution which is already responsible for

¹¹ Dubik, K. Use of detergents. Polish Ecological Club, 2002.

chemicals, their testing and risk assessments, as well as cooperation with the European Commission. It will probably be responsible for this Regulation in Poland.

There is no legislation especially concerning the labeling of products containing detergents and surfactants, which could implement Commission Recommendation 89/542. Probably regulations under the Law concerning product safety of 22 January 2002, could be used to introduce this.

The Bureau for Chemical Substances and Preparations appoints laboratories which carry out tests on various chemicals put into the internal EU market. The laboratories which now carry on the tests are able to fulfill the requirements of the proposed amended regulation. Many of them already fulfill it and are able to make biodegradability tests, as these standards have been used in Poland since 1999.

There are also institutions which fulfill the requirements concerning accreditation, eg the Polish Centre for Accreditation.

According to the European Commission, most of the manufacturers in EU Member States complied with Commission Recommendation 89/542. This was one of the reasons to make this a binding obligation in the new proposed regulation. The extent to which Polish manufacturers applied Recommendation 89/542 is not known. However, given that many Polish manufacturers are owned by foreign firms, implementation of this requirements should not be a problem in Poland. However, many products in Poland are not properly labeled (about 25 per cent according to a survey from the end of 2002 made by the Office for Consumer and Competition Protection), so this new requirement may add to the general problem of product labeling in Poland.

There is also a problem of access to environmental information in Poland. Therefore there could be a concern that manufacturers of detergents and surfactants will be reluctant to provide datasheets of substances even to health care professionals.

Polish authorities have not identified any further problems with the proposed regulation. However, this is being investigated.

7 Proposal for a Directive on the Protection of Groundwater against Pollution

7.1 Introduction

The proposal aims at providing criteria for assessing ‘good groundwater chemical status’, for the identification of ‘significant and sustained upward trends’ and the definition of ‘starting points for trend reversals’, in accordance with Article 17 of the water framework Directive (WFD). In addition, the proposal seeks to ensure the continuation of groundwater protection against indirect discharges beyond 2013, when the existing groundwater Directive (80/68) will be repealed.

The proposal was prepared during 2001-2003 by the Commission with input by the Expert Advisory Forum with representatives of the Member States, stakeholders and observers from the Associated and Candidate Countries.

7.2 Overview

The Explanatory Memorandum (EM) to the proposal states that Acceding Countries were involved in the development of the proposal to the same extent as Member States and stakeholders. Specifically two workshops were held with officials and experts from the Candidate Countries to discuss groundwater management and its integration into current practices in these countries. The EM concludes that sound groundwater management systems are already in place in the Candidate Countries and that the level of awareness of EU groundwater policy issues 'is very high'. Information from two countries can illustrate this in more detail.

In Hungary¹² inventories on human activities affecting groundwaters (pollutant loads, sources, etc) have been assessed for a number of years and have resulted in a vulnerability map of groundwater for the country. This includes detailed information on many parameters, including diffuse agricultural sources.

In Lithuania¹³ groundwater monitoring is currently required to be undertaken mostly at groundwater abstraction sources and the monitoring network currently covers more than 300 sampling stations. However, evaluation of the data in terms of the requirements of the proposed Directive is difficult. Thus identifying water bodies 'at risk' is a problem because national monitoring focuses on issues such as conductivity, which is not sensitive enough to major contamination problems. Further, more detailed, analysis is required.

Thus, although the systems are in place as the EM describes, they provide variable levels of information with which to implement the proposal. More problematic are the requirements to protect groundwaters. This requires full enforcement of requirements to control discharge of pollutants and the capacity of Acceding Countries to achieve full regulatory compliance is in doubt, as in other areas of regulation¹⁴. It is this which will present the greatest challenge to many of the countries.

7.3 Czech Republic

The Ministry of Environment, in co-operation with the Ministry of Agriculture, has responsibility for this issue. The negotiations of experts are due to start during the first half of 2004. As a result, for the time being, the officials cannot specify potential challenges or problems of the future implementation.

7.4 Poland

Although most problems related to the activities and rules of water protection were codified with the new Polish Water Law, difficulties in their introduction and implementation still exist. Poland is equipped appropriately and has enough laboratories to monitor water

¹² Delineation and characterisation of groundwater bodies in Hungary. Paper to the Expert Advisory Forum on Groundwater.

¹³ Kadunas, K. Groundwater characterisation case study: Lithuania. Paper to the Expert Advisory Forum on Groundwater.

¹⁴ Ecotec (2002) *Administrative Capacity for Implementation and Enforcement of EU Environmental Policy in the 13 Candidate Countries*. Available at: http://europa.eu.int/comm/environment/enlarg/administrativecapacity_en.htm

chemistry. However, there are no threshold concentration values for many substances and there are no long-term observations to define the trends of changes of water quality.

At present the proposal is being reviewed. Apart from the Ministry of Environment the proposal was sent to Regional Boards of Water Management and the appropriate departments of the voivodeship authorities. It is necessary to begin work on the list of substances polluting groundwaters, which should be included in the reports of the Member States by June 2005. However, efficient and long-term monitoring of groundwater is needed to adjust Poland to the requirements of the proposed Directive.

Prior implementation of the water framework Directive (WFD) is necessary for the enforcement of the proposed Directive. Work on the WFD at the national and regional levels has been undertaken for the last two years, but the so-called water administration has been poorly prepared. Its weakness results from a lack of funds. Weakness also lies in the very scarce information on the implementation of the WFD, particularly among local authorities and municipal enterprises.

It might be difficult to identify the areas susceptible to groundwater pollution and determine the threshold values of hundreds of polluting substances. There are no common standards of water protection or specified laboratory methods for particular substances. It will also be difficult to assess the concentration and load of pollutants carried by groundwater into lakes and rivers. Therefore, it is vital to define a hydrochemical background for groundwater bodies and to define polluted areas and contaminated groundwater.

In conclusion, the appointment of an interdisciplinary team equipped with financial support and full powers of the Minister of Environment appears to be the most likely solution to the problems which may result from the implementation of the proposed Directive. This team's objective should be to manage tasks concerning legislation, instruction, standards, scientific research and information for those who make decisions at specific administrative levels.