

GUIDE TO THE

MAIN ADMINISTRATIVE STRUCTURES REQUIRED

FOR IMPLEMENTING THE *ACQUIS*

(updated: May 2005)

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BACKGROUND

A candidate country preparing for accession to the EU must bring its institutions, management capacity and administrative and judicial systems up to Union standards with a view to implementing the *acquis* effectively or, as the case may be, being able to implement it effectively in good time before accession.

At the general level, this requires a **well-functioning and stable public administration** built on an efficient and impartial civil service, and an independent and efficient judicial system. Within the overall public administration, each area of the *acquis* may require **specific structures** to be put in place.

A **systematic assessment** of the candidate countries' administrative capacity takes place in the framework of the Commission's Regular Reports. Such an assessment is also an integral part of accession negotiations in each individual chapter of the *acquis*. Such an assessment presupposes a clear view of the main administrative structures that are required to implement the various chapters of the *acquis*, of the main functions that each of these structures must fulfil, and of the basic characteristics these structures must have to duly fulfil their functions.

In order to guide this assessment, the Commission services have prepared a detailed **guide** to the main administrative structures required to implement the *acquis* in its various aspects.

The result of this exercise is the present guide consisting of 29 fiches (one for each negotiating chapter) which seek to provide, for each area of the *acquis*, a list of

- administrative structures explicitly required by the *acquis*;
- administrative structures not explicitly required by the *acquis*, but necessary for an effective implementation of the *acquis*.

For each of these structures, an indication is given of

- the key functions which the structures in question must fulfil;
- the fundamental characteristics these structures must have to fulfil their functions.

The guide provides thereby a set of **standards**, on the basis of which an assessment can be made of the administrative capacity of each country for each chapter of the *acquis*, including the performance of the relevant administrative structures. This concerns both the way in which these structures fulfil their functions (e.g. independence, transparency), and the output they deliver.

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OVERVIEW BY ACQUIS CHAPTER

1. FREE MOVEMENT OF GOODS

General principles

The **institutional infrastructure** needed to support the *acquis* in this sector is very **diverse**. As regards the role of the **public authorities** in general, ministries should have sufficient and properly trained human resources to master the technicalities of new lawmaking. Further, the various ministries concerned should have appropriate co-ordination among themselves to elaborate the framework laws and ensure their legislative implementation.

The following questions may be asked in relation to general institutional capacity:

- Please confirm **which administrative entity** will be responsible for the follow-up and implementation of **Articles 28-30 of the EC Treaty** and the application and implementation of the principle of **mutual recognition**?
- Will **this entity** also be responsible for **co-ordination** of the **reaction** of the administrative bodies involved in the **infringement cases**? **If not who** will?
- Do you plan **secondment** of experts, **exchange** and **training** of civil servants? The object of this exercise being co-ordination and sensitisation of the national administrations applying and drafting legislation which may have an impact on the free movement of goods.
- Are you at this point considering the setting up of **contact points** for the **consumers** and the **economic operators**; information campaigns and seminars?

Horizontal measures

Institutionally, **separation** of the **regulatory, standardisation, accreditation and conformity assessment functions** is absolutely necessary for a proper implementation of the relevant directives.

Ideally, **public authorities** should retain only the **legislative** and **enforcement** (market surveillance) **functions**, while at the same time ensuring that the system of third party assessment of conformity to regulatory requirements has sufficient technical competence and independence.

a) *Standardisation*

- **Establishment of a Standards Institute**

Standards are **voluntary technical specifications**, which ensure compatibility of products and services throughout the single market; lay down appropriate levels for their safety, quality and efficiency; and set out test methods needed to establish the conformity of products and services to these specifications. Standards are, therefore, an instrument for economic and industrial integration and are used as a technical basis for the support of European legislation in order to ensure free

circulation of goods, services, capital and settlement. The **Commission recommends the establishment** in each (future) member state of a **standards institute** with the role and characteristics set out below.

- **Role of the Institute:**
 - **Implementation of EC and international standards.**
 - Membership of CEN, CENELEC, ETSI and international standard organisations should be sought. The criteria for membership in these organisations should be complied with.
- **Key characteristics of the Institute**
 - **Independence** (preferably a private body, not dominated by public authorities).
 - Decision making process is **consensus** driven.
 - Decision making process is **transparent**.
 - **All interests** and not only those of public administration are represented, both in the activities and on the management boards of the standardisation body (industry, consumers, certifiers, accreditors, trade and professional organisations, etc.).
 - The participation of the interested parties is **voluntary**.
 - The results of the Institute's work are **open to the public** and may be used by anybody.

b) Accreditation

- **Role of accreditation**

Accreditation is a procedure by which an **authoritative body** gives **formal recognition** that **conformity assessment bodies** are **competent to carry out specific conformity assessment tasks**. Accreditation entails that bodies performing conformity assessment activities, such as calibration, testing, inspection and certification (including certification of products, management systems¹, personnel) are assessed and audited at regular intervals by a third party to check their independence, impartiality and technical competence on the basis of published technical criteria. Confidence in the technical competence, capability, impartiality and integrity of these bodies is essential for the operation of mutual recognition of the conformity assessment results they issue, such as test reports and certificates. Accreditation aims to provide **confidence** in the **independence and technical competence** of these bodies.
- **Key characteristics**
 - Accreditation should be set up under the aegis of the public authorities in order to ensure its complete independence from commercial motivations and

¹ New Approach directives currently only refer to quality systems. Other Community legislation such as Council Regulation (EEC) N. 1836/93 allowing voluntary participation by companies in the industrial sector in a community co-management and audit scheme (EMAS) refers to environmental management systems. It is recommended that a single accreditation body should be able to cover both fields.

standards to serve as the last level of control of conformity assessment activities from a technical point of view. Membership of EA (European Cooperation for Accreditation) and the signature of EA's MLA (multilateral agreement) should be sought. The national authorities should ensure that their accreditation body or system is **independent, efficient**, and that it takes part in European and international **co-operation**.

- Accreditation should be set up as a **non-profit or non-profit-distributing activity**. This may entail some public financial support.
- Accreditation should be organised in such a way as to provide an **efficient and quality driven service** which meets the **needs** of the entire **conformity assessment market**, i.e. industry, certification bodies, public authorities, consumers, etc. Accreditation should be seen as a service of public interest. **Competition** between, and **unnecessary separation** or even **duplication** of, accreditation services **should be avoided** since this would undermine the independence and credibility of accreditation and lead to the need for an external control mechanism and, hence, a further layer of conformity assessment. This would entail the risk of increasing costs without adding value. Accreditation services should preferably be provided by a single national body active in both the regulatory and the non-regulatory spheres.
- A clear **distinction** between the activities of **accreditation** and **conformity assessment must be ensured**. An accreditation body may not offer the same services it accredits and, ideally, should not offer any conformity assessment services at all.

c) Conformity Assessment

- **Role of conformity assessment**
 - **Conformity assessment** is the procedure to demonstrate that a product, process, person or service fulfils specified requirements. Conformity assessment can be carried out as a first-, second- or third-party activity. Conformity assessment aims to provide confidence between suppliers/manufacturers and customers/users/consumers and/or national authorities.
 - **Testing** involves **the determination of one or more characteristics of a given product, process or service on the basis of specified procedures**.
 - **Inspection** involves examination of a product design, product, process or installation and the determination of its conformity with specific requirements or, on the basis of professional judgement, with general requirements
 - Certification involves the issue, by a third-party, of an attestation stating that fulfilment of specified requirements has been demonstrated.

Testing, inspection and certification activities are carried out by a **diverse range of conformity assessment bodies, including testing and calibration laboratories and inspection and certification bodies**.

- **Key Characteristics:**
 - Conformity assessment bodies that seek to carry out conformity assessment tasks under the New Approach Directives must themselves be **assessed** in order to verify that they comply with the relevant requirements in the

Directives and possess the necessary technical competence, independence and impartiality to be **authorised** to carry out these tasks (“designation”). **Accreditation** according to the relevant international standards as described above should be the preferred technical basis for this assessment, as it is based on technical specifications that are transparent and represent common consensus. However, **accreditation is not mandatory for bodies seeking notification under New Approach Directives.**

- Under the **New Approach Directives, conformity assessment bodies may be** designated by the competent national authorities and **notified** to the Commission and the other Member States. **National authorities** are responsible for designation and **notification**. Notified bodies carry out the tasks pertaining to the conformity assessment procedures referred to in the applicable New Approach Directives when a **third party** is required. For some products falling under these Directives, it is an obligation for the manufacturer to have the conformity assessment carried out by a notified body before affixing the CE marking on these products and placing them on the market. However, the national authorities are not obliged to notify bodies for each sector. For example, in countries where a certain industry sector is less strongly represented, use can be made of notified bodies established in other EU countries. Notified bodies are free to offer their conformity assessment services, within their scope of notification, to any economic operator established either inside or outside the territory of the country.
- The **assessment** of the body seeking notification determines if it is **technically competent** and **capable** of carrying out the conformity assessment procedure, and if it can demonstrate the necessary level of **independence, impartiality** and **integrity**. The competence of the notified body must be subject to **regular monitoring**.
- Notified bodies must **provide relevant information**, e.g. on the performance of their tasks, to their notifying authority, the market surveillance authority, other notified bodies, and the Commission.
- Notified bodies must carry out their activities in an **independent** and **impartial** manner. In particular, the independence and impartiality of personnel involved in conformity assessment work must be guaranteed.
- Notified bodies must employ the **necessary personnel** that has sufficient and relevant knowledge of the products and technologies applied within the sector of notification as well as adequate experience in carrying out the conformity assessment tasks required by the directive in question
- Notified bodies must make adequate arrangements to ensure **confidentiality** of the information obtained in the course of conformity assessment.
- Notified bodies must be adequately **insured** to cover the risks arising from their professional activity and that could engage their **civil liability**, unless such liability is covered by the Member State under national law.

d) Metrology

- **Role:**

- **Legal metrology** concerns the regulation of **measuring instruments** for **legal use**. Such use can be stipulated by law for transactions to the public concerning weights and quantities. **EC harmonisation** concerns the measuring instruments when placed on the market and in the case of non-automatic weighing instruments prescribes their use, while in the case of measuring instruments the use is determined by national law. EC harmonisation also exists for units of measurement (SI system) and for pre-packaged goods.
- While **legal metrology** is the responsibility of **public authorities**, industrial and scientific metrology generally is not. Industrial/scientific metrology aims at ensuring the reliability of measurements by calibration and traceability. It concerns parties, most of which are in the (semi-)private sector.
- **Key Characteristics**
 - Legal metrology

The *acquis* for metrology to be transposed consists mostly of ‘optional old approach’ directives, 10 of which will be repealed at the end of October 2006 New Approach Directive on Measuring Instruments². For non-automatic weighing machines there already exists a New Approach Directive since 1990. Both these directives allow manufacturers to use a Notified Body for Conformity Assessment in any Member State, so there is no need for every Member State to have across-the-board capacity and each can concentrate on needs that are specific to its industry

Generally conformity assessment of legal metrology is done by the **authorities**, although in **some Member States** it has been **privatised**. The **legal metrology authorities** participate in the European co-operation WELMEC and all Member States are member of OIML, as are most of the candidate countries.
 - Industrial/scientific metrology

A **national programme** for the **development** of the **metrology structure** is **important**. It describes the organisation and responsibilities in metrology in the country. The organisation can be centralised or decentralised. The metrology of different industrial sectors can be handled in separate bodies.

In most candidate countries the financing of metrology is almost entirely done with the income from legal metrology. A different financing structure is needed when the share of industrial/scientific metrology is increasing.

International co-operation is essential in metrology. **Traceability** to **international measurement standards** is a key element of metrology. International comparison tests are used for checking the quality and competence of national metrology services. Such international comparisons are e.g. arranged by EUROMET the European co-operation body in scientific/industrial metrology. Several candidate countries are already members of, and actively participating in, the work of EUROMET.

² Directive 2004/22/EC of the European Parliament and of the Council of 31 March 2004 on measuring instruments, OJ L135 of 30 April 2004

e) Market surveillance

• **Role**

- The purpose of **market surveillance** is to ensure that only products in conformity with the relevant Community legislation are placed on the market. Effective market surveillance ensures an equivalent level of protection for citizens throughout the Internal Market, and a level playing field for economic operators.
- It involves two main stages:
 - **monitoring** whether products placed on the EU market comply with the provisions of relevant legislation, and
 - taking **action** to bring non-compliant products into compliance with the legislation.
- Market surveillance is of **particular interest** in those areas where **no pre-marketing authorisation procedure** exists. In sectors which are subject to New Approach legislation, market surveillance is complementary to the requirement for Member States to allow free movement of compliant products. However, it is also very important in so-called Old Approach sectors, such as for example the sector of cosmetic products.

• **Key Characteristics**

- Control on **the implementation of legislation** is a **responsibility** of the **public authorities**. This is to guarantee the impartiality of market surveillance operations. National administrations must therefore establish responsible authorities.
- Surveillance authorities should be **independent** and should act in an **impartial** and **non-discriminatory** way.
- Each national administration can decide upon its market surveillance infrastructure (e.g. functional or geographical allocation of responsibilities), as long as surveillance is **efficient** and covers the **whole territory**.
- The market surveillance authorities should have the necessary resources and powers (e.g. to take samples, impose sufficiently dissuasive penalties) to enable them to carry out surveillance actions in a way which is **effective** and **sufficiently extensive** to **discover non-compliant products**.
- The surveillance authorities should have a sufficient number of **qualified staff** available, with the necessary technical competence to deal with specific product and risk areas.
- They should respect the principle of **proportionality**; action taken must be in accordance with the degree of risk or non-compliance.
- The surveillance authority **may subcontract technical tasks** to another body, but always **retains** the **responsibility** for its decisions.
- As a general rule, it is **inappropriate** for **Notified Bodies** to be **responsible** for **market surveillance**. If a market surveillance authority and a Notified Body come under the same superior authority in a national administration, lines of responsibility should be organised to avoid any conflict of interest.

Old approach product legislation

In the field covered by the **Old Approach** directives (for example chemicals, textiles, pharmaceuticals and motor vehicles), a deregulatory and legislative modernisation effort is requested with a view to ensuring minimum safety standards through horizontal and specific vertical measures, putting the emphasis on pre-market authorisation and post-market surveillance according to the sectors regulated.

New and global approach product legislation

Implementation of **New Approach** directives (for example the “toys” directive, the “machinery” directive, the “low voltage directive, the “electromagnetic compatibility” directive) implies the conversion of a system based on mandatory over-prescriptive technical requirements and state run mandatory certification into one where the regulatory sphere is limited to essential requirements, technical specifications are handled by voluntary standards, and conformity assessment is carried out in a decentralised way both by the manufacturer and by third parties. In addition, the weakening of pre-market authorisation requires the setting up of adequate market surveillance through enforcement authorities.

The necessary administrative structures may be deduced from analysis of the individual pieces of legislation. Minimum requirements include proportionate and effective market surveillance, the existence of test facilities and available expertise to underpin such activities, a national standardisation infrastructure as well as the identification of a competent body with sector policy responsibilities covering the general implementation of the legislation.

Procedural measures

a) Notification procedures

Obligation for Member States to notify the Commission and their counterparts of any draft technical regulation relating to products (Directive 98/34/EC):

- The establishment of a central unit is an indispensable core administrative task, in order to be able to implement this acquis from the day of accession. The role of such a central unit is twofold - to receive the notifications and information that are forwarded to it from the European Commission and to dispatch these to the relevant ministries and departments, and to send the notifications and information that it receives from its ministries and departments to the European Commission. In the Member States, these central units are normally composed of one or two officials and a secretary.

Exchange of information on national measures derogating from the principle of free movements of goods (Decision 3052/95/EC):

- Have you already designated the required **authorities** for the implementation of Decision 3052/95 in your country? Under the **competence** of **which administrative entity**?
- Have you also designated a **body responsible** for the **co-ordination** of the **transmission** of the **individual decisions** taken by the decentralised bodies?

Functioning of the internal market in relation to free movement of goods among the Member States (Regulation (EC) 2679/98):

- Have you already designated the **required authorities** for the implementation of Regulation 2679/98 in your country? Under the **competence** of **which administrative entity**?

b) External border checks

Checks of conformity with the rules of product safety relating to products imported from third countries (Regulation (EEC) 339/93):

- Have you already designated the **national authority** or **authorities** responsible for **monitoring the market** as having to be informed whenever the **customs authorities** suspend release of products according to article 2 of Regulation 339/93?

c) Arms

- Have you already designated the **required authorities** for the implementation of Directive 91/477/91/EEC on control of acquisition and possession of arms as regards, in particular:
 - the **exchange of information** between the **Member States** (Articles 8 (2) and (3), 11, 15 (4)),
 - **authorisation** of **arms dealers** (Article 4)
 - granting of **authorisations** for **firearms** and delivering of the **European firearms pass** (Articles 6, 7, 9 (2), 1 (4))?
 - conclusion of **agreements** for the **mutual recognition of national documents** (Article 12 (3))

Under the **competence** of **which administrative entity**?

d) Cultural goods

- Have you already designated the **central authorities** responsible in your country for implementing the provisions of Directive 93/7 on the return of cultural goods unlawfully removed from the territory of a Member State? Under the **competence** of **which administrative entity**?
- Have you established **networks** allowing for **exchange of information** between the **different competent authorities** in charge of **cultural goods** (customs, police, culture departments, jurisdictions)?
- Have you already designated which **courts** will be competent to rule on proceedings with the aim of **securing the return of a cultural object** within the meaning of Directive 93/7?

2. FREEDOM OF MOVEMENT FOR WORKERS

Access to the labour market

The *acquis* is constituted primarily of Art. 39 EC Treaty and Regulation 1612/68 on freedom of movement of workers as amended by the new Directive 2004/38 on residence rights of EU citizens and their families (see on residence rights also the section “citizens’ rights” under chapter 23). The Member States will have to ensure that **EU nationals are able to exercise their rights** in practice. The relevant public services must be aware of these rights and be able to respect them, in particular:

- The right of EU nationals to look for work and take up work without any restriction and without being subject to a work permit scheme.
- The right of EU nationals who have made use of their right to take up employment, to reside in the country concerned. EU nationals will no longer be subject to a residence permit requirement in accordance with the new Residence Directive 2004/38.
- The rights of family members accompanying EU migrant workers to reside in the Member State concerned, the right of family members to take up employment or self-employment.
- The rights of children of Community workers to be admitted to the educational institutions under the same conditions as the nationals of the Member State concerned.

Candidate countries need to prepare to participate in the **EURES system** (European Employment Services) aimed at promoting the freedom of movement for workers within the Community notably by exchanging information on employment opportunities. At the operational level, relevant databases of job vacancies need to be integrated with the EURES vacancy exchange mechanism, and general information on the labour market and on living and working conditions needs to be exchanged.

EURES personnel need to receive the necessary training. National EURES services need to ensure cooperation with the European Co-ordination Office in DG Employment and participation in the High Level Strategy Group composed of the Heads of the EURES members.

Coordination of social security systems

Sufficient administrative capacity needs to be developed for the application of the Community provisions in the field of the coordination of social security systems, in particular Regulations 1408/71 and 574/72. For example, pensions acquired under the legislation of the Member State concerned need to be exported to beneficiaries residing in other Member States, with which the Member State concerned has not concluded bilateral agreements. Moreover, in the health care field, medical expenses will need to be reimbursed for all necessary treatment of nationals falling ill or having an accident during a temporary stay in another Member State, e.g. as tourists. To this end, a European Health Insurance Card has to be issued to all nationals.

3. RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

The freedom (right) of establishment, set out in Article 43 of the Treaty and the freedom to provide cross border services, set out in Article 49, are two of the “fundamental freedoms” which are central to the effective functioning of the EU Internal Market. These provisions have direct effect. This means, in practice, that Member States must modify national laws that restrict freedom of establishment, or the freedom to provide services, and are therefore incompatible with these principles. This includes not only discriminatory national rules, but also any national rules which are indistinctly applicable to domestic and foreign operators but which hinder or render less attractive the exercise of these “fundamental freedoms”, in particular if they result in delays or additional costs. In these cases, Member States may only maintain such restrictions in specific circumstances where these are justified by overriding reasons of general interest, for instance on grounds of public policy, public security or public health; and where they are proportionate.

Right of establishment

The principle of freedom (right) of establishment enables an economic operator (whether a person or a company) to carry on an economic activity in a stable and continuous way in one or more Member States.

Freedom to provide cross-border services

The principle of the freedom to provide services enables an economic operator providing services in one Member State to offer services on a temporary basis in another Member State, without having to be established.

Member State should have the administrative capacity to continuously screen administrative or legal rules existing or under preparation as to their compatibility with both freedoms as interpreted by the European Court of Justice. This capacity is necessary not only at the level of the central state but also on the regional and local level where obstacles might also exist.

In assessing the administrative capacity in this area as well as the legal environment, the following questions can usefully be asked:

- Do you have a horizontal unit or working group at central state level which has the task of screening administrative and legal rules existing or under preparation as to their compatibility with the right of establishment and the freedom to provide cross-border services? Do such units or working groups exist at regional and/or local level?
- Do you have any horizontal legislative or administrative requirements, which apply to all businesses wishing to trade in, or with, your country in the field of services?

If YES:

- Do these apply equally to businesses wanting to establish in your market and to businesses established in the EU supplying cross-border services? If not, what are the differences between the regime applying to establishment and the regime applying to service provision?
- Will this system apply to businesses from EU Member States after accession?
- What are the procedures for obtaining a license (or other form of authorisation)?
- What are the requirements which have to be met to obtain a licence or authorisation? (For example, are there nationality or residence requirements, or does documentation have to be provided from the country of origin of the service provider?)
- To what extent are requirements which the business has already fulfilled in its state of establishment taken into account?
- How long does it take to obtain a licence?
- Is there a fee for the licence? If so, how much is it?
- Is the licensing requirement combined with mandatory membership of a chamber of commerce, trade association or other body? If this membership involves a fee, how much is it?
- What is the justification in policy terms for the licensing system?
- What alternative methods of achieving the same result have been considered (if any)?

Postal Services

The Postal Directive (97/67/EC) establishes a **regulatory framework** for the **Community postal sector** which, *inter alia*, defines the **common minimum characteristics** of the **universal postal service** to be guaranteed throughout the Community and sets maximum limits for the services which may be reserved to the universal service provider. The **National Regulatory Authorities (NRAs)** are responsible for ensuring compliance with the **obligations** arising from the **Postal**

Directive and should also be responsible for ensuring compliance with **competition rules** in the postal sector.

NRAs are required to be **legally separate** from and **operationally independent** of the postal operators. This includes ensuring that within the Government, regulatory responsibilities are separated structurally from the responsibility for exercising any property rights in the incumbent postal operator.

Main **tasks** of the NRA:

- **Licensing** (in particular granting, supervision, amendment and withdrawal of licenses);
- Supervision of provision of the **universal service** (in particular the granting of any exceptions or derogations from the universal service requirements);
- Supervision and control of **accounting requirements** for universal service providers (systems for cost accounting and accounting separation);
- **Monitoring performance** of the universal service providers (measuring quality of service against the standards set for domestic and cross-border mail).

The National Regulatory Authority will be **evaluated** according to:

- its establishment (established or not?);
- its conformity, once established, to the requirement for independence as defined above (independent or not?);
- whether or not it is adequately resourced (level dependent on the country – sufficient resources or not?);
- whether or not it has been allocated by law the responsibilities defined above.

In assessing the administrative capacity in this area, the following questions can usefully be asked:

a) Structure of Supervisory Body

- Has a **Postal Market NRA** (National Regulatory Authority) been **established**?
- If not, are there plans in this respect? Calendar?
- If yes, is it an **autonomous** body? Does the degree of autonomy respect the independence's requirement vis-à-vis the universal services provider?
- Sources of **financing**?
- What are the **responsibilities** of this regulatory body? Do they respond to the requirements set in the postal services *acquis*?
- What are the **nomination procedures** and **terms of office** of its NRA head? What are its **powers**? How many people work in this authority?

b) Other issues related directly with the *acquis*

- How is/are the USP(s) Universal service Provider(s) performing its/their current **general interest mission** in the country? By means of more or less recent legal tool? Past legislation? Ad-hoc legislation?

- How is the **licensing regime** (in particular grant, supervision and withdrawal of general authorisations and licenses) being applied?
- How is the **supervision** of the provision by the USP(s) of **universal service** exerted by the national regulatory authority or by other supervising national authorities? in particular regarding the granting of any exceptions or derogation from the universal service requirements?
- Is the **de jure reserved area** defined and regulated by law? If not, by which other means?
- What is the role, if any, of the NRA with regard to **State proprietary interests** in the USP?
- How are the supervision and control of **accounting requirements** for **universal service providers** (systems for cost accounting and accounting separation) ensured in practice? In the absence of such controls, what are the time schedules for their implementation?
- Is the **performance** of the **universal service providers** (e.g. measuring quality of service against the standards set for domestic and cross-border mail and ensuring corrective action when necessary) periodically **monitored**? If not by the NRA, by whom?

Mutual recognition of professional qualifications

The organisation of **mutual recognition of professional qualifications** is based on **mutual trust** between the different national authorities and, as regards professions for which sectoral Directives have been adopted, on the **previous co-ordination** of the **national legislations** on training giving access to the profession and on the **respect** of the **minimal training requirements** set out by those Directives.

Each Member State must therefore **have adequate structures** to **enforce compliance** with the requirements mentioned above and with the professional and ethical obligations of those practising regulated professions, to **certify** the **professional qualifications** of its **nationals** and to handle the **requests** for **professional recognition** by **non nationals**.

The **body ensuring compliance** is either a **Ministry** (or Ministries) or a **professional organisation**, or **both**. The Ministry is normally responsible for the training leading to access to the profession, alone or in association with the professional organisation, to which this power may be entirely delegated. Authorisation to practice the profession may be left to the professional organisation (compulsory registration), to the Ministry (licensing) or to both (licensing and compulsory registration).

In assessing the administrative capacity in this area, the following questions can usefully be asked:

a) General Systems Directives (Dir. 89/48/EC and 99/42/EC)

- Which are the **bodies** and **institutions authorising to practice** a regulated profession?
- What are the **competent authorities** for the **mutual recognition** of professional qualifications as well as for **enforcement** of the general systems directives?

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- Have you already established a **national co-ordinator** to co-ordinate the activities of the bodies and institutions responsible for recognition of professional qualifications?
- What are the human resources allocated to this authorities and bodies?

b) *Sectoral Directives for lawyers, architects and health care professions*

- Which **bodies** and **institutions** are responsible for the implementation and enforcement of Dir. 77/249/EC and 98/5/EC aiming at facilitating the **establishment** and the **freedom to provide services** for **lawyers**?
- What **authority** or **body** is foreseen to **implement** and enforce the mutual recognition of diplomas, certificates and other evidence of the formal qualifications for **architects** according to Dir. 85/384/EEC?
- Which **bodies** and **institutions** are foreseen to implement and enforce the mutual recognition of professional qualifications for the **health care** professions, such as doctors, Dir. 77/453/EEC; veterinary surgeons, Dir. 78/1027/EEC; dentists, Dir. 78/687/EEC; nurses and midwives, Dir. 77/453/EEC and Dir. 80/155/EEC, and pharmacists, Dir. 85/432/EEC ?
- What are the **implementing authorities** for the **recognition** of **foreign** university **diplomas** and professional **qualifications** for each of the **professions** covered by the **sectoral Directives**?
- What are the human resources allocated to each of the above bodies and institutions?

4. FREE MOVEMENT OF CAPITAL

Capital movements and payments

In this field, adoption of the *acquis* means essentially to **abolish present administrative systems** for **control** and **authorisation** of **capital movements**. Building up **new administrative infrastructures** is **not necessary per se** for free capital movements. **However**, there will be a **need for new legal and administrative infrastructure** in **areas**, where previously and up to the adoption of the *acquis* **practices** or **sectoral policies** **have relied on capital movement restrictions** or the **control mechanisms** used to implement them.

Countries which base their **balance-of-payments statistics** at present on information obtained from the authorisation and surveillance mechanism of the exchange controls will have to obtain this information from other sources. The responsible body for these statistics is **usually** the **Central Bank**.

Sectoral policies that will have to be adapted to free capital movements are, for example, found in the areas of **inward direct investment**, acquisition of **real estate** (zoning regulations and agricultural policies) and **financial services**. In the latter sector, the need for appropriate regulation and supervision is reinforced by the liberalisation of capital movements.

In addition to the above, a **legal and institutional framework** will have to be established to allow for the application of **safeguard clauses** and **sanction rules** decided by **Community bodies**, which provide for, or request, a temporary reapplication of capital movement restrictions. The responsible bodies for this would be the **Government** and the **Central Bank**.

Payment systems

In assessing the administrative capacity in this area, the following questions can usefully be asked:

- Has your country set up a **body** responsible to **handle customer complaints** as foreseen in Article 10 of Directive 97/5/EC on **cross-border credit transfers**?
- Could you provide information on the human resources allocated to this body and the number of complaints received?
- How many people of your **National Central Bank** are involved in the **payments oversight**?

Fight against money laundering

- Has your country set up a **Financial Intelligence Unit**, and if so, under the responsibility of which department/ body (Ministry of Justice, Ministry of Finance, Police...)?
- How is the complete independence of the Unit guaranteed?
- What are the exact duties and functions of the Unit? Are they only investigative or can the Unit also carry out certain police functions?

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- Who is responsible for making sure that anti-money laundering obligations are being met – the FIU or the relevant financial supervisory authorities?
- What is the definition of “predicate offences”? Are drugs crime included in this definition?
- How many people work in this Unit?
- How many cases have been reported and how many of them have led to prosecution?

5. PUBLIC PROCUREMENT

The purpose of implementing the Public Procurement *acquis* by the candidate countries is to ensure a procurement procedure in accordance with the principles of the EC-Treaty: the free movement of persons, goods, capital and services, non-discrimination on grounds of nationality and equality of treatment.

But it is certainly not sufficient to implement the Public Procurement Directives into national legislation, they must be effectively *enforced*.

▪ Key characteristics

There are 5 priorities:

- **To set up a central policy unit** (policy makers). Such central unit is seen as a key to the successful implementation of procurement legislation and the creation of an effective public procurement system. Whatever the internal organization of the State, they have three main tasks to perform:
 - (1) organizing / managing the public procurement policy,
 - (2) drafting the legislation and providing operational support (e.g. guide-lines and instructions),
 - (3) information, control and undertaking any necessary corrections.
- **To inform and train the main purchasers** (contracting entities). The main purchasers are key players since they have to apply the public procurement legislation when awarding contracts. It is therefore important to clearly identify the main contracting entities and the officers in charge of managing the awarding procedures. Furthermore it is necessary to ensure they have a good knowledge of the public procurement legislation and its implementation by providing special training and disseminating specialized information.
- **To inform and train the other contracting entities** (with contracts for smaller amounts) and **undertakings**. They are not to be neglected: they also need to have a good knowledge of the relevant legislation and procedure.
- **To set up monitoring and review bodies**. Such bodies, whether judicial or administrative, are essential for the implementation and enforcement of public procurement legislation. Through an administrative control, *ex-ante* or *ex-post*, awarding procedures are verified independently of any complaint. The review bodies and judges intervene after a complaint from a person who has been damaged by the awarding procedure. The aim of this remedy system is that decision taken by contracting entities may be reviewed effectively and in particular, as soon as possible. Although the EC-Directives do not demand that Member States or Candidate Countries set up controlling systems, such systems are proven to be necessary and efficient in order to ensure / achieve the objectives of the Directives. Furthermore it is essential that the review bodies and the judges receive specific training as well as operational support (technical documentation, practical tools etc.).

In assessing the administrative capacity in this area, the following questions can usefully be asked:

- Which governmental body is responsible for the managing of the public procurement policy? What are the human and material resources allocated to this body? Are they sufficient?
- Does the public procurement legislation appear to be well-known by the contracting entities? Are the main contracting entities identified for works, supplies or service contracts? Are the officials responsible for preparing and awarding contract identified?
- What types of administrative or judicial bodies are responsible for the monitoring and review of procurement procedures? How many people work in the review bodies? Do they also participate in the evaluation and award procedures? Have the officers of these bodies received specific training? Are they provided with operational support and technical documentation?
- How many cases have been reviewed during the last 12 months?
- Are private companies well informed about the public procurement legislation?
- Is there a central point of publication of notices? How many procurement procedures have been published during the last 12 months and by what means (national gazette, newspapers, internet...)?

6. COMPANY LAW

Company law

Legislative approximation in this field presupposes *inter alia* the existence of

- a **register** for **undertakings** capable *inter alia* to operate in electronic environment;
- **national Gazette (in paper or electronic form) for the publication of certain company information;**
- **administrative or judicial authority** which will ensure the **control** of the **incorporation** of a company (alternatively, it might be stipulated that the instrument of constitution, the company statutes and any amendments to those documents should be drawn up and certified by a notary).

In assessing the administrative capacity in this area, the following questions can usefully be asked:

- What types of companies exist?
- Is there a **central register** for companies? If not, are there any plans in this respect?
- How does the register hold the company information? (In electronic form, paper form.....)
- How is company information published? Is there a **national gazette**?
- How can the **public** get **access** to the company information in the register? In person, by mail, electronic means...? What is the **fee** for consultation?
- What is the **average time-scale** between application for registration, and effective registration of a company?
- Number of companies registered at this moment and the two previous years?
- Are there any **penalties/fines** imposed on companies if annual accounts are not deposited to company registers? What is the amount of such a fine?
- Identify the **administrative or judicial authority** responsible for **the control of the incorporation of companies**?

Corporate accounting and auditing

The **accounting Directives** (4th and 7th) do **not** contain **any requirements** on the **administrative structure** concerning the **preparation** and **disclosure** of **annual accounts**. However, as a **minimum** a country **needs** to have a **standard setter** either in the form of **private** body **and/or** in the form of a **public authority** body (often the Ministry of Finance, Justice or Economic Affairs) responsible for issuing **accounting standards** further to the basic law. The members of the standard setter should have adequate experience and knowledge of accounting. Furthermore, it is important that the standing of the work of the standard setter is clearly defined. Normally a differentiation is made between accounting standards, interpretations and guidelines.

In principle there should also be a **follow-up mechanism (enforcement)** of the **correct application** of the **accounting standards** (not introduced in every Member State) which should enable users of annual accounts to submit complaints for non respecting accounting law, regulations and standards. The tendency is to base accounting standards for big companies listed on the stock exchange, on the international accounting standards (IAS). The IAS are clearly less appropriate (too extensive and complicated) for small companies.

Statutory audits shall **only** be carried out by **persons approved** by the **competent national authorities**. The competent authorities may be professional associations provided that they are authorised by national law to grant approval according to EC requirements. Approved persons have to be registered in a public register for statutory auditors.

In addition to the required administrative infrastructure for implementing the *acquis*, all Member States have **professional bodies** for **auditors** representing the interest of the audit profession (not as such required to implement the *acquis*). These can be private bodies but also semi-public bodies with the competence of issuing by-laws on for example the code of ethics, auditing standards, permanent education and external quality assurance. Apart from basic requirements in national law, professional bodies may issue auditing standards to be complied with. The tendency is to base the national auditing standards on international standards on auditing (ISAs) issued by the international federation of accountancy bodies (IFAC).

In assessing the administrative capacity in this area, the following questions can usefully be asked:

a) Accounting

- Is there a **separate accounting standards setting body**? Who is responsible for developing implementation guidance and interpretations of accounting standards?
- Does **accounting standard setting** have a **legal basis**?
- How is the **enforcement** of the correct application of accounting standards organised?
- Is there for example a form of **pro-active checking** of **financial statements** by **supervisory authorities**? Is there a possibility for users of financial statements to submit **complaints** to a special panel or a Court in case of incorrect application of accounting standards?

b) Auditing

- Which institutions including ministries are responsible for: **registration of certified** auditors, contents of the **audit exams**, **code of ethics** (including **independence**), establishing **standards** on auditing, **disciplinary action** and **sanctions**?
- Is there a system of **external quality assurance** (such as peer review)?
- Are there specific provisions **for civil and criminal liability** for statutory auditors?
- How many certified auditors are there at present? Legal persons? natural persons?

7. INTELLECTUAL PROPERTY LAW

Copyright and neighbouring rights

In assessing the administrative capacity in this area, the following questions can usefully be asked:

- **Copyright Office** or **Ministerial department**?
- Staff number at this moment compared to the previous year? Number of professionals?
- Of which number of persons having attended **training on EC legislation** and/or **enforcement methods**? In the country? In a Member State?
- Denomination and number of **collective management societies** per rights and neighbouring rights, number of rightholders managed per society, amounts of rights managed per society in each of the past three years?
- Number of **seizures** performed at the border/ in the country in each of the last three years? Value of goods at stake? Conditions for seizures (e.g., application procedures; are ex-officio seizure foreseen and how)
- Existence or not of a **specialised court for intellectual property matters**? How many judges and prosecutors have benefited from training on intellectual property law?
- Number of **infringement cases prosecuted** per annum in the last three years?
- Current level of **fines**? Have they been increased? Have **jail sentences** been pronounced? Length?

Industrial property rights

In assessing the administrative capacity in this area, the following questions can usefully be asked:

- **Patent Office** or **Ministerial department**?
- Staff number this year compared to the previous year? Number of trademark examiners? Of patent examiners?
- Of which number of persons having attended **training on EC legislation** and/or **enforcement methods**? In the country? In a Member State?
- How many persons from the police force, from the **customs authorities** and where relevant from the **border guard** forces have benefited from **training on EC legislation** and/or **enforcement methods**? In the country? In a Member State?
- Number of **patent applications** filed per annum in the two past years? Idem for **trademark applications**?
- **Average time-span** between application and registration of patents? of trademarks?

- Number of **patents** and of **trademarks registrations in force** in the country by the end of the past year?
- Can the authority in charge of trademarks registration provide a general evaluation concerning **bad faith applications** for trade marks and information on possible **measures** against such behaviour?
- Number of **seizures** performed at the border/ in the country per annum in the last three years? Value of goods at stake? Conditions for seizures (e.g., application procedures; are ex-officio seizure foreseen and how)
- Existence or not of a **specialised court for industrial property matters**? How many judges and prosecutors have benefited from training on industrial property law?
- Number of **infringements cases** prosecuted per annum in the last three years?
- Current level of **finances**? Have they been increased? Have **jail sentences** been pronounced? Length?

Enforcement

There should be **at least one national authority to which nationals and others can present applications** for one or different kinds of **intellectual and industrial property protection**. This authority should have enough competent staff to be able to make decisions (or to carry out relevant administrative acts), for reasonable costs for the applicants, and without delay.

The implementation of the *acquis* in this area also entails the following requirements:

- **courts** and **tribunal** must be staffed with sufficient judges and prosecutors familiar with IPR legislation; **cases** should be **handled without delays**.
- **police** and **custom authorities**, including **border authorities**, need to get adequate training in the field of IPR;
- the **responsible structures dealing with IPR** in the competent **Ministries** and other **state bodies** must be adequately staffed and trained.

8. COMPETITION POLICY

Anti-trust and mergers

In order to enforce the competition rules, i.e. rules on **restrictive agreements, abuse of dominant position** and on the **control of mergers, both for the pre-accession period and beyond accession**, a **National Competition Authority** must be established.

The authority must be vested with the **necessary powers** enabling it to **investigate anti-competitive practices**, and the powers to **order the termination of such practices**, including the right to **impose** sufficient deterrent **sanctions**.

With the introduction of the new procedural rules for EU antitrust policy (Council Regulation No 1/2003), national competition authorities of the EU Member States have extensive responsibilities in applying the EU antitrust rules on restrictive agreements (such as cartels) and abusive market conduct by dominant companies in co-operation with the Commission and the other members of the European Competition Network consisting of all national competition authorities. Furthermore, national courts play an important role in directly applying the EU antitrust rules. This requires familiarisation of the EU competition rules by the national competition authorities and national courts. Finally, national authorities have jurisdiction to apply their respective national competition law, within the limits of Regulation 1/2003.

State aid

In order to create a proper framework for the **effective control** of **State aid** for the period preceding accession, a **National State Aid Monitoring Authority** must be established.

Its task is to **assess** and control the **compatibility of State aids** with the **criteria** arising from the relevant EC *acquis*. **Procedural rules** should be adopted to ensure that this Authority receives all necessary information from the aid granting bodies and has the power to effectively control all existing and new aid. The Authority should also create a **comprehensive inventory**, covering all direct and indirect aid granted by various institutions at central, regional and local Government levels.

Whilst **at the accession the European Commission will assume full responsibility** for **State aid monitoring and control**, the Commission needs an **interlocutor** in each Member State to **co-ordinate** the **fulfilment** of the **obligations** of **notification, reporting** and **information provision**.

9. FINANCIAL SERVICES

Banking Sector

It is necessary to establish **supervisory authorities** to **oversee** the **credit institutions**, including the granting of **authorisations** and the monitoring of **prudential requirements**.

Insurance Sector

Supervisory authorities should be established to **supervise** the **insurance undertakings** including the granting or withdrawal of **authorisations** and, the monitoring of **prudential requirements**.

Investment services and securities markets

Competent authorities should be designated to **supervise** the investment funds sector and the **security market** including the admission of securities to **official listings**.

In assessing the administrative capacity in each of the above areas, the following questions can usefully be asked:

General

- Please describe briefly the main features of your national market by indicating some key figures as e.g. the number of operating institutions/undertakings.
Comment: The replies below will be very difficult to assess without this basic information.
- Indicate **which supervisory body** is in charge of **banking, insurance, investment services and securities markets supervision**? Is this body **independent**?
Comment: What are the criteria used for independence, as there is no definition in the relevant directives? In the case of banking, is the supervision carried out by the Central Bank? What role does the Ministry of Finance play (also with regard to insurance supervision or in relation to a Securities and Exchange Commission)?
- Is there **more than one supervisory body** in the financial services sector?
- If so what are the **arrangements** for **co-operation** between the different supervisory authorities?
- In the banking area, has the compliance of your **prudential legislation** been self-assessed or assessed against the **Basle Core Principles for Banking Supervision**? If not, do you envisage doing so and in what time horizon?
- Has a corresponding exercise been carried out in the sectors of insurance and investment services, e.g. in the form of an IAIS self assessment exercise or an IMF Assessment? If not, what is the calendar in this respect?"

Structure of supervisory body

(Please answer for each sector separately).

- Is the supervisory body **autonomous**? What are the nomination procedures and terms of office of its head? Please describe the dismissal procedures.
- Is an **organisation chart** of the body available and can it be transmitted to the Commission?
- How is the supervision authority **financed**? Where there is more than one source of financing, what is the proportion between the different sources?
- Total number of **staff** of which number of staff in charge of (i) on-site and (ii) off-site inspections in *the past year and in the year before that*? Is there a split between on-site and off-site responsibility? What kind of training has the staff received in this respect?
- Can a statement be made on the general **level of remuneration** compared to the private sector? To another public sector?
- Number of persons having attended **training on EC legislation** and/or **enforcement** methods? In the country? In a Member State?
- Are the offices **appropriately equipped** with computers and relevant software?
- Is a **report** on the **activity** of the authority established **systematically**? With which **frequency** -yearly, every two years? **To whom** is the report addressed (Parliament, Minister of Finance, Governor of the Central Bank, other)?
- Have **memoranda of understanding** been concluded with **foreign supervisory bodies**? Do **confidentiality rules** allow for such exchanges?

Supervisory practice

(Please answer for each sector separately.)

- For the past year and the year before that, **number** of **on-site examinations** in relation to the number of operators? Number of **full-scope examination**? Of **targeted examinations**?
- **Frequency** of on-site examination of each operator?
- Which **reports** are requested from operators and with which frequency?
- What kind of sanctions may be imposed by the supervisory authorities?
- In the past year and each of the two years before that, number of cases where, **licences** have been **suspended**? **Withdrawn**? Have **financial sanctions** been pronounced?
- Describe the possibilities of legal recourse against measures imposed by the supervisory authorities. Who supervises the supervisor?

10. INFORMATION SOCIETY AND MEDIA

Telecommunications and information technologies

The new **EC regulatory framework** for electronic communications networks and services was to be applied by the EU15 from 25 July 2003 and by the 10 New Member States on their accession on 1 May 2004. The scope of this framework has been extended from the old framework covering “telecommunications” to cover “electronic communication networks and services”.

This **regulatory framework** establishes simplified conditions for market entry, conditions for **fair competition** and the implementation of **sector specific** remedies for those operators identified as having a dominant position (significant market power or “SMP”) in a relevant market following market analysis by the **National Regulatory Authorities (NRAs)**. The **enforcement** of national policy consistent with the law, and particularly the implementation of the market analysis, rests with the **NRA**.

The **NRA** must be **independent** of all market players and of any remaining governmental interest as a shareholder in the incumbent’s business. **Sufficient resources** must be allocated to the NRA, **both in terms of staff with the requisite qualifications and in terms of financial resources, to allow** the NRA to perform its functions effectively.

Specific **tasks** of the NRA:

- **general authorisations** (in particular maintaining transparency of authorisation conditions, management of notifications (if required) and supervision of compliance);
- **market analysis** and identification of SMP operators according to objective, transparent and non-discriminatory conditions;
- **imposition of appropriate obligations** [remedies] on SMP operators and obligations of transparency;
- **access and interconnection** (in particular the power to require publication of a reference interconnection offer (RIO), unbundling of the local loop and the implementation of cost oriented access charges);
- **making arrangements for the provision of universal service** (in particular ensuring affordability and monitoring any financing scheme);
- **Processing of personal data and protection of privacy in electronic communications:** to ensure the protection of the user’s traffic, location and directory data, prevent unsolicited communications and ensure privacy compliance of software and hardware used for electronic communications.
- **tariffs** (in particular supervision of the application of the principle of cost-orientation, accounting separation and the implementation of suitable cost accounting systems for operators with significant market power who carry such obligations following the market analysis);

- **numbering and frequencies:** ensuring access on an objective, transparent and non-discriminatory basis to these resources, monitoring of compliance with obligations and management of the numbering plan;
- **coordination with other relevant national regulatory bodies** required for the effective implementation of the legislation, **co-ordination with regulatory bodies of other Member States and the Commission;**
- monitoring of **frequency management;**
- **dispute settlement:** settling disagreements between operators as well as between customers and operators.

The National Regulatory Authority will be **evaluated** according to:

- its conformity with the requirement for political and financial independence, and independence from operators and manufacturers;
- publication of the tasks of the NRA and clear attribution of responsibilities where the tasks are assigned to more than one organisation;
- whether or not it is adequately resourced ;
- the degree of co-ordination with other relevant national regulatory bodies, NRAs in other Member States and with the Commission;
- its performance in terms of promoting competition in the markets; application of the principle of technological neutrality; management of the authorisation system and rights of use; application of sector specific regulation in an objective, non-discriminatory and transparent fashion; management of scarce resources in an objective, non-discriminatory and transparent fashion; establishing conditions for the provision of universal service and protection of the consumer;
- its regulatory intervention when justified by market conditions; effective exercise of all powers attributed to it; establishment of fair and efficient dispute resolution mechanisms.

Implementation of the **Directive on Radio and telecommunications terminal equipment (RTTE)** entails the designation and accreditation, by the government, of “**notified bodies**”, which will issue **type approvals** and other **authorisations**, in order to effectively implement the new approach to technical harmonisation and standards also in this sector; mechanisms for **posterior checks** (market surveillance) and **dispute resolution** must be put in place.

Audiovisual policy

Legal approximation in this field presupposes the existence of **national regulatory systems** in the field of **broadcasting**. The audio-visual *acquis* (Article 3.2 of the Television Without Frontiers Directive) requires that Member States shall ensure, by appropriate means and within the framework of their legislation that television broadcasters under their jurisdiction effectively comply with the provisions of the Directive.

Furthermore, the audio-visual *acquis* (Article 3.3 of the Television Without Frontiers Directive) **requires** that **national measures** provide for **appropriate procedures** for

third parties directly affected, including nationals from other Member States, to apply to the competent judicial or other authorities to seek effective compliance according to national provisions.

Regulatory systems should have **basic powers** which allow for the **effective application and enforcement** of audio-visual legislation. In terms of the audio-visual *acquis*, the regulatory systems should be in a position to address basic notions such as **applicable law, jurisdiction**, measures for the **promotion of European and independent works**, regulation of **advertising, tele-shopping and sponsorship, protection of minors** and the **right of reply**.

Such **powers include** the need for:

- **adequate monitoring powers**: the ability to monitor the content output of broadcasters, including the possibility to oblige broadcasters to provide data on their broadcasting activities. Regulatory systems must be in a position to provide, to the Commission, detailed reports on the implementation of, and compliance with, the broadcasting legislation. The ability to exercise such powers presupposes that the regulatory systems have adequate technical facilities, technical know-how and human resources to carry out the monitoring functions.
- **Adequate sanctioning powers**: the ability to impose a range of sanctions for breaches of the law and/or licence conditions, weighted according to the seriousness of the breach. Such powers should include the ability to issue warnings, impose fines and, ultimately, the power to prohibit broadcasting/revoke broadcasting licences (for serious breaches of the law, having regard to the trans-frontier nature of the audio-visual *acquis*). Regulatory systems should be accorded such powers in a way that allows for transparent application.

11. AGRICULTURE AND RURAL DEVELOPMENT

The **implementation, management and control** of the **Common Agricultural Policy (CAP)** require the **creation, modification and/or reinforcement** of **appropriate administrative structures**.

In some cases the *acquis* sets out, to a greater or lesser extent, detailed specifications for the administrative structures required.

The **administrative structures** required are **not always specified** in the *acquis*. In many cases the *acquis* simply uses terms such as the “**competent authority**” to refer to the administrative structure that is needed. This means that it is left **to each Member State** to **decide** which institution is responsible for effective implementation of the *acquis*. **In practice**, this is **most often** the **Ministry of Agriculture or a competent authority under its responsibility**, e.g. an agency. However, the **functions** that EU Member States must have the capacity to carry out - through the administrative structures they establish - are **clearly specified in the *acquis***.

Horizontal issues

(i) The key types of **administrative structures explicitly required** by the *acquis* **include**:

- The administrative structures and systems required for **handling CAP expenditure** under the **Guarantee Section of the EAGGF** (European Agricultural Guarantee and Guidance Fund) must meet certain requirements. All **Paying Agencies** must be **accredited** according to Community rules (Council Regulation No 1258/1999). They must, in particular, be able to offer sufficient guarantees that:
 - the admissibility of claims and compliance with Community rules are checked before payment is authorised;
 - the payments effected are correctly and fully recorded in the accounts;
 - the necessary documents are submitted within the time and in the form laid down by Community rules;
 - they must also maintain records justifying the payments effected and detailing the administrative and physical controls carried out;
 - where more than one paying agency is established there must also be a central co-ordinating body;
 - the Member State concerned must also inform the Commission which competent authority is responsible for issuing and withdrawing accreditation of each paying agency, i.e. the certifying body (Commission Regulation No 1663/95).
- An **Integrated Administration and Control System (IACS)**. This must have the following characteristics (see Council Regulation No. 1782/2003 and Commission Regulation (EC) No 795/2004):
 - a computerised database;

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- an alphanumeric identification system for agricultural parcels;
 - a system for the identification and registration of payment entitlements;
 - aid applications;
 - an integrated control system;
 - a single system to record the identity of each farmer who submits an aid application;
 - where appropriate, a system for the identification and registration of animals.
- In order to implement the **FADN (Farm Accountancy Data Network)** *acquis* Member States must establish a **National Committee** for the data network, with the responsibility for the selection of returning holdings. This must have the characteristics laid down by Council Regulation No 79/65/EEC, for example:
 - be capable of approving a plan for the selection of returning holdings and a report on the implementation of this plan;
 - follow the rules set out in the legislation for appointment of its chairman and for taking decisions.

The Member State must also establish a **liaison agency**, which must *inter alia*:

- be capable of producing a plan for the selection of returning holdings and of reporting on the implementation of this plan;
- verify farm returns.

(ii) **Examples of the key functions to be carried out by administrative structures not specified as such in the *acquis* include:**

- Operation of the **Common Market Organisations mechanisms** governing **trade with third countries**. The administrative structure must be able to carry out tasks that include:
 - management of export refunds and export taxes;
 - import/export licensing;
 - tariff quota management;
 - operation of a checking system on exports etc.;
 - application of the relevant rules of the Community Customs Code.
- Member States must also effectively carry out the requirements of the statistical elements of the *acquis*. The administrative structure must be able to conduct/participate in, for example:
 - the agricultural census;
 - Agricultural structural surveys;
 - Farm Income Survey (FIS);
 - sector specific requirements for the collection of data, e.g. on area and yields of arable crops.

- Member States must also have the administrative structures to effectively implement the Community legislation on **organic farming**. The designated “competent authority” must be able to carry out the following tasks *inter alia*:
 - administrative management tasks such as registration of certain notifications from operators;
 - establishment of an inspection system;
 - operation of effective enforcement measures.
- Implementation of the Community legislation on **quality policy**. The designated competent authority must be able to carry out the following tasks *inter alia*:
 - check that the application for a geographical indication, designation of origin or certificate of special character is justified;
 - ensure that approved inspection structures are in place.

Common market organisations and animal products

(i) The key types of **administrative structures explicitly required** by the *acquis* include:

- **Intervention Agencies and Centres required for implementation of intervention and withdrawal of produce in a number of sectors.** The agencies for different sectors may be established separately or as one body. Although the precise specification varies by sector they must normally be capable of carrying out tasks such as:
 - regular market and price monitoring;
 - buying-in, public storage, sales and stock control in premises approved to EC standards;
 - operation of a control system on the use/destination of intervention products;
 - further sector specific tasks and requirements, e.g. in the case of intervention for cereals those detailed in Commission Regulations (EC) No 824/2000, No 2131/93 and No 2273/93.
- Operation of the **EC supply management instruments** in some sectors requires specific administrative structures, e.g. **approved purchasers** (dairies) in the **milk sector** (Commission Regulation (EEC) No 595/2004). These purchasers must, for example:
 - keep detailed stock accounts and specified records;
 - have premises in the Member State concerned where the stock accounts, registers and other documents can be consulted.
- In a number of sectors, the *acquis* specifies precise rules for **Producer Organisations**, which must be fulfilled if such an organisation is to benefit from Community support. For example, in the fruit and vegetable sector, producer organisations must *inter alia* (Council Regulation No 2200/1996):

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- be formed on the own initiative of the growers of certain specified categories of produce;
 - have rules of association which conform with the requirements set out in the regulation;
 - effectively enable their members to obtain technical assistance in using environmentally-sound cultivation practices;
 - have a minimum number of members and cover a minimum volume of marketable production.
- In the wine sector approved **distilleries** are required, which must be able to undertake the detailed tasks laid down in the *acquis* (Commission Regulation 1623/2000), including:
 - certain requirements concerning payment of the buying-in price to producers;
 - providing producers with certificates of delivery;
 - providing the Intervention Agency with statements of quantities of products distilled and products obtained.
 - In certain sectors Member States are required to establish **registers**. For example,

the **vineyard register and inventory of planting rights** required in the wine sector and the **citrus register** required in the fruit and vegetables sector.

(ii) **Examples of the key functions to be carried out by administrative structures not specified as such in the *acquis* include:**

- operation of the **EC supply management instruments**.
- Member States must have the necessary administrative structure to be able to implement **carcass classification** and **reporting of prices** for livestock, e.g. bovine animals (Council Regulation No 1208/81 and No. 1186/90).
- Member States must also implement and enforce **specific rules of the Common Market Organisations for particular sectors, relating to the free movement of agricultural products**. The administrative structure must be capable of effectively ensuring:
 - compliance with various marketing, sizing and packaging standards;
 - compliance with rules on labelling (e.g. in the wine and beef sectors), analysis, inspections and monitoring.

In preparing to meet these requirements, the associated countries should **focus** on institution building within the **public sector**. However, additionally the **private sector** must carry out improvement of production, processing and marketing conditions as well as development of producer organisations to strengthen the competitiveness of the agricultural economy. A **gradual introduction of marketing standards and rules on presentation and labelling of products** which are closer to those of the Community needs to take place as well as **compliance with health and environmental standards**.

Rural development

The context for the guidance given below is Council Regulation (EC) No. 1257/1999)

a) Administrative structures explicitly required by the acquis

In rural development only one major administrative structure is specified by the acquis. Each Member State must establish **Monitoring Committees** to evaluate the effectiveness and quality of the implementation of the rural development programmes. The Committees must follow the requirements set out in Council Regulation No. 1260/99, *inter alia*:

- it shall be established in agreement with the managing authority after consultation with the partners (who shall promote the balanced participation of women and men);
- a representative of the Commission shall participate in its work in an advisory capacity; and
- it shall draw up its own rules of procedure within the institutional, legal and financial framework of the Member State concerned and agree them with the managing authority.

b) Non-specified administrative structures

Under the **Agenda 2000 provisions** (Council Regulation No. 1257/1999), **the only compulsory part of the rural development acquis** is the **agri-environment measures**. Beyond this, each Member State can choose whether or not to make use of the relevant EC provisions in accordance with its conditions and needs. Member States are therefore only obliged to create and maintain administrative structures for the measures they implement.

Nevertheless, all administrative structures established must be able to ensure that the strict EC rules on implementing the rural development measures are fully adhered to. Competent authorities must be designated by the national authorities and subsequently approved by the Commission.

The **non-specified administrative structures** established must be able to **carry out the following functions**:

- **identification of structural needs** within rural areas;
- **design, implementation and management** of rural development programmes;
- **control** of financial flows and implemented measures;
- **monitoring, reporting, auditing and evaluation** of the programmes and individual actions.

The **administrative structures established to carry out these functions** must **meet the requirements of the EC Regulations**. They must therefore *inter alia* be **characterised** by:

- involvement of the **full range of social partners**;
- involvement of **regional and local authorities and other competent public authorities**;
- compliance with the **rules of the Guidance and/or Guarantee sections**.

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(For the 2007-2013 period, all rural development measures will be operated under a single funding, programming, financial management and control system. The rules of the new system are not yet defined. Nevertheless, it is to be expected that the Member State should **designate appropriate bodies** and instruments and these must then gain **Commission approval** - see section above on paying agencies).

12. FOOD SAFETY, VETERINARY AND PHYTOSANITARY POLICY

General foodstuffs policy

For the implementation of food (safety) legislation, each Member State must have appropriate administrative structures to be able to carry out inspection and control of the implementation of the whole food legislation. In addition, there are a number of issues on which specific structures are required. A non-exhaustive list of these is provided below.

In 2002 the general food law Regulation was adopted laying down the general principles and requirements of food law. In particular, it lays down definitions, principles and obligations covering all stages of food/feed production and distribution.

Traceability requirements for all food and feed and food and feed business operators are also compulsory since 01/01/2005. Detailed guidelines on that purpose have been published by the Commission to assist all relevant stakeholders and authorities.

a) Control / Hygiene

Appropriate structures are required to ensure the implementation of the Council Directives on the official control of foodstuffs (89/397/EEC and 93/99/EEC), on the hygiene of foodstuffs (93/43/EEC), on the monitoring of foodstuffs (85/591/EEC), and on good laboratory practice (88/320/EEC).

In assessing the administrative capacity in this area, the following elements in particular are to be considered.

- Training of the various control officials on inspection in general and on HACCP (Hazard Analysis and Critical Points): state of advancement and future plans.
- HACCP implementation by food operators: state of advancement and future plans.
- Laboratories used in hygiene control and foodstuff analysis (chemical, microbiology, GMOs, etc): present or planned activities (with time-table) to comply with EC systems; time-table of accreditation according to EC law with name of accreditation body; methods of sampling and analysis (in general; for contaminants; for food contact materials, etc.).
- Procedures for registration and authorisation of establishments: state of advancement and future plans.
- Present (and planned) resources.
- Present (and planned) frequency of controls.
- Present (and planned) procedures for assessing and approving guides of good manufacturing practices.
- Evaluation of the control services (existing or planned audit system).
- Control of imports

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In April 2004 a new hygiene package was adopted entering into force on the 01/01/2006. The new package is composed by revised rules in the following areas:

- Regulation 852/2004 on the hygiene of foodstuffs.
- Regulation 853/2004 laying down specific hygiene rules for food of animal origin.
- Regulation 854/2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption.
- Directive 2004/41/EC repealing certain Directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives 89/662/EEC and 92/118/EEC and Council Decision 95/408/EC, 21 April 2004.

In addition to the new "farm to table" approach, covering all stages of the food chain (including primary production) the "Hazard Analysis and Critical Control Points" system (HACCP) has been reinforced by ensuring that adequate safety procedures are identified, implemented, maintained and reviewed.

A specific regime has also been introduced by setting-up special provision to ensure flexibility for food produced in remote areas (high mountains, remote island) and for traditional production and methods.

b) Rapid Alert System for Food and Feed

A vital element in ensuring food safety is played by the Alert System for food and feed. As laid down in the General Food Law (178/2002) each Member State shall designate an official contact point and set up a computer network system with the Commission to enable fast and efficient exchange of information on food and/or feed emergencies. This is particularly the case for all "alert notifications" which are to be sent when the food or feed is present on the market in more than one Member State and when immediate action is required (such as urgent withdrawal from the market).

Other kind of information, i.e. information notifications concerning food or feed for which a risk has been identified but for which the other members of the network do not have to take immediate action, because the product has not reached their market.

These notifications mostly concern food and feed consignments that have been tested and rejected at the external borders of the EU.

c) Novel food and genetically modified foodstuffs (GMO)

Member States must have national authorities responsible for implementing EP and Council Regulation (EC) N° 258/97 concerning novel foods and novel food ingredients. This implies the presence of:

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- a competent authority to which applications for marketing novel food and novel ingredients have to be submitted (Article 4 (1)) ;
- a food assessment body (Article 4 (3)) which has to assess the novel food from a scientific point of view.

There must be an accredited laboratory with capacity for detection methods for genetically modified food.

A new GMO package was adopted establishing a Community authorisation procedure, with the involvement of EFSA for the risk assessment activity and the Commission/Member States for the management activities (

The above package is composed by Regulation (EC) No 1829/2003 and Regulation (EC) No 1830/2003 which define also traceability and labelling requirements of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC.

The package establishes also the Community reference laboratory, its network and specific provisions concerning the availability of the relevant detection methods and methods of analysis.

d) Irradiated food

In accordance with EP and Council Directive 1999/2, which specifies that foodstuffs may only be irradiated in "approved irradiation facilities", Member States must approve irradiation facilities, and inform the Commission about the facilities they have approved³.

As regards the control over irradiated food and radiation facilities, the analytical methods used to detect irradiated foods have to be "validated" or "standardised". A number of methods have already been standardised by the European Committee for Standardisation (CEN). Member States have to inform the Commission about the results of control of irradiation facilities and irradiated food on a yearly basis (Art 7 (3)).

e) Mineral waters

In accordance with Council Directive 80/777/EEC, authorisation of the use of natural mineral water can only be given by the official competent authority which must carry out a number of specific surveys and analyses. In order to give such authorisation, the authority in question must have appropriate scientific and administrative capacity.

³ *N.B.* In order to export irradiated food to the EC, irradiation facilities in third countries (including those of the candidate countries up to their accession) have to apply for approval by the EC. Applications are to be forwarded by the competent authorities to the Commission. Irradiation facilities have to comply (as a minimum requirement) with the 'Joint FAO/WHO Codex Alimentarius Commission Recommended International Code of Practice for the Operation of Irradiation Facilities' (Art 7 and 9 of Directive 1999/2/EC). The Commission will inspect the competent authorities and the irradiation facility. Approval has to be granted via comitology (Art 9 (2) of 1999/2).

The list of official competent authorities in each Member States that can give authorisation of the use of natural mineral water is published in the Official Journal.

Member States must deliver a list of natural mineral waters which are officially recognised.

Veterinary and phytosanitary policy

The EC legislation in this field aims at **facilitating internal and external trade** in the veterinary, plant health and animal nutrition sectors while **safeguarding public and animal health and animal welfare and meeting consumer expectations**. It is based on **mutual recognition** of the **relevant authorities** in the **Member States** which has enabled **veterinary and plant health checks** at internal borders on **intra-Community trade** to be **abolished**.

The **principal pre-requisite** for the **single market** to be extended in this domain to the associated countries, in addition to the approximation of legislation, is the presence of properly structured and trained administrations. More generally this requires:

- **appropriate inspection arrangements** at the **site of origin**;
- **non-discriminatory checks** during **transport** and at the **destination point** as well as at the **external borders**;
- satisfactory **laboratory testing arrangements**.

The **following administrative structures** are **required** to implement the *acquis* in this domain (please note that the priority structures set out below do **not** constitute an **exhaustive** list):

- **national competent authorities**, with appropriate powers, for **veterinary, plant health, seeds and plant propagating material quality and animal nutrition legislation**, to be designated as responsible for operating and ensuring the **proper implementation** of legislation in this domain, with sufficient and properly trained staff and facilities, including transport facilities (see Directive 89/662/EEC and Directive 2000/29/EC);
- adequate **budget** including **emergency fund** for **disease control**;
- adequate **administrative instructions** to the **staff** (in all domains mentioned), as well as **contingency plans** (the latter only for **animal diseases**);
- **official veterinarians** designated by the **competent central veterinary authority** for, for example, **control of establishments** and issuing of **health certificates** (see Directive 96/93/EC), having access to proper **laboratory infrastructures**, including equipment and satisfactory **laboratory diagnostic arrangements**;
- **official plant health inspectors** designated by the **competent authority** for, for example, **control of establishments** and of **imported plants or plant products** (see e.g. Directive 2000/29/EC), having access to appropriate **laboratory infrastructures**;
- **official inspectors** designated by the **competent authority** for, for example, **control of establishments producing feeding stuffs** and of **imported feed**

material and feeding stuffs (see e.g. Directive 95/69/EEC and Directive 95/53/EC), having access to **appropriate laboratory infrastructures**;

- **official food inspectors** designated by the **competent authority** for, for example, **control of the wholesomeness of foodstuffs** placed on the **market**, having access to **appropriate laboratory infrastructures**;
- **official inspectors** for the control of the **quality of seeds and propagating material**, having access to **appropriate laboratory infrastructures** (plant health and quality testing such as seed purity, germination ratio, etc.);
- **appropriate structures and inspection arrangements** related to veterinary, plant health, plant quality and animal nutrition legislation, at the **site of origin** and at the **external borders**;
- overall **control of relevant establishments** so as to ensure **compliance with EC legislation** thus protecting animal health, public health, plant health and quality;
- a **competent veterinary authority** responsible for **identification of animals**, and for an up-to-date list for **registration of holdings** and **movement controls**, including databases;
- a competent **phytosanitary authority** responsible for the **registration of operators**;
- an **internal computerised system** linking **veterinary authorities inside the country**; an **external movement control system (ANIMO, now replaced by TRACES)**; and an animal **disease notification system (ADNS)**;
- a **comprehensive residue control programme**, and access to appropriate laboratory infrastructures;
- **zoonoses control programme**;
- **surveillance and monitoring programmes**;
- the **right of appeal and dispute resolution** by experts;
- an effective **breeders' organisation** capable of maintaining **herd books** under the **control of the competent authorities**;
- **official examination of seed and propagating material by national control bodies.**

13. FISHERIES

The following administrative capacities need to be put in place:

Resource and fleet management, inspection and control

- an administration that carries out **inspection** and **control** of fishing fleet activities and of processing and marketing of fish products; **manages fishing quotas, effort and licenses, implements technical measures**;
- **inspectors** who can ensure the **compliance** with **Community rules** (i.e. control of fishing activities in national waters as well as fishing activities exercised by national fishing vessels outside Community waters);
- the **necessary equipment** to ensure the **control** of **fishing activities**, such as surveillance vessels, aircraft, land vehicles;
- **efficient application** of the **satellite surveillance system** for the **fishing vessels** concerned;
- legislation as well as administrative and judicial structures capable of applying appropriate measures (administrative or criminal proceedings, application of dissuasive sanctions) against persons failing to comply with the rules of the Common Fisheries Policy;
- **measurement** of **fishing vessels (tonnage and engine power)**;

Structural actions

- an administration that can **implement** and **manage** the **structural policy** for **fisheries** and **aquaculture**, in particular structural programmes co-financed by the Financial Instrument for Fisheries Guidance (FIFG).

Market policy

- an administration that **controls** the **implementation** of **common marketing standards** (in particular respect of **size and freshness** categories) in **ports** and on **wholesale markets** and of **consumer information requirements**;
- an administration that **controls quantities** that are **withdrawn from the market** due to not being suitable for consumption or to intervention mechanisms;
- an administration that **collects market information** in the NUTS regions;
- an administration that **collects and transmits data** concerning the **price reference regime**;
- and—to the extent the candidate country wish to establish producers' organisations--an administration that can apply the **recognition conditions** for **producers' organisations**.
- **establishment** of a **fishing vessel register** from which **data** are **regularly communicated** to the **Community register**;

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- establishment of a **data base**, a **validation system** including **cross reference checking**, as well as the capacity to connect the national data base to that of the European Commission;
- **collection of fleet/biological/economic data** needed for the implementation of the Common Fisheries Policy.

14. TRANSPORT POLICY

The vast **majority** of the **legislative measures** in the **transport** sector does **not provide for the setting up of specific administrative structures**. There are a few Regulations and Directives for which this is the case, and these are addressed below. In general, it is left to each Member State to decide which institution (most often the Ministry of Transport) is responsible for an effective implementation of the *acquis*.

The application of the *acquis* requires a **Ministry for Transport, or a competent authority under its responsibility**, which is in charge of **policy-making** and of fulfilling such tasks as the issuing of **certificates**, ensuring respect of **safety rules**, **access to the market** and the **profession**, as well as a level playing field between the operators.

The **main specific bodies** in the **transport sector** which are **required** by the *acquis* are set out below.

Road transport

In the **road transport sector**, administrative structure requirements concentrate on **social legislation, licensing**, and legislation related to **technology** and **safety**.

According to Directive 96/96 on **roadworthiness tests** for motor vehicles and their trailers, tests shall be carried out by the State or by bodies designated and directly supervised by the State in order to guarantee an equal level of **safety** and **ecological quality**. In general the Member State authorities delegate the tasks outlined in the Directive to private companies. These companies, or the traffic police, also control the application, at road-side inspections, of Directive 89/459 on the **tread depth of tyres** of motor vehicles and their trailers. Also, in order to improve road safety and the environment, it must be ensured that the commercial vehicles circulating within the territories of the Member States and of the Community comply more fully with certain technical conditions imposed by Directive 96/96/EC. Roadside inspections can be carried out under Directive 2000/30/EC to check a number of items such as the braking and exhaust system or the lamps, lighting and signalling devices. The administrative capacity must also be put in place to implement or supervise the periodic roadworthiness tests and the technical roadside inspections, as foreseen by Directive 96/96/EC and Directive 2000/30/EC respectively.

International transport is subject to a **licensing system** both in **road freight** (Regulation 881/92) and **road passenger transport** (Regulation 684/92). Competent authorities of the Member States issue the relevant 'Community authorisation' (Regulation 881/92) respectively 'Community licence' (Regulation 684/92), take appropriate sanctions in cases of infringements and verify regularly whether the conditions of issue are still being met by the holder.

As regards **driving times** and **rest periods** (Regulation 3820/85), admission to the occupation of **road transport operator** (Directive 96/26 and 98/76), and the transport of **dangerous goods by road** (Directive 94/55 and 95/50), enforcement shall be carried out by the State or by bodies designated and directly supervised by the State. Independent examination and certificate issuing bodies shall be set up for the

purposes of the training of transport operators (98/76/CE), safety advisers (96/35/EC), and drivers of vehicles carrying dangerous goods (94/55/EC).

Tachographs (Regulation 3821/85 and 2135/98) and speed limitation devices (Directive 92/6 as amended) shall be installed by workshops approved by the Member State's authorities. For the digital tachograph the delivery of driver cards must be organised.

Moreover, the appropriate Member State's authorities, in general the Ministry of Transport, need to consider whether it is necessary to set up an administrative structure for the issuing of documents proving the **environmental classification** (e.g. Euro I, Euro II etc) of **heavy goods vehicles (HGV)**. This will contribute to HGVs travelling in EU Member States applying the Eurovignette being charged with the correct amounts.

According to Directive 2004/54/EC, Member States shall designate (an) administrative authority(ies), which shall have responsibility for ensuring that all aspects of the safety of a tunnel are assured and which shall take the necessary steps to ensure compliance with the Directive.

It is necessary for an effective implementation of the acquis relative to driving licences that the administrative capacity is put in place to establish the equivalence between the categories of licences issued before implementation of the Directive and the equivalence thereof with the categories as defined in Directive 91/439/EEC as amended. As all valid licences have to be mutually recognised, this equivalence is a necessity.

Rail transport

In the **railways sector**, bodies are needed to **license railway undertakings** (Directive 95/18, as amended by 01/13). If there is no independent rail infrastructure manager, a body setting **infrastructure charges** and **allocating infrastructure capacity** (Directive 2001/14) must be set up.

These bodies must not provide rail transport services themselves.

Under the new railways package adopted in early 2001 (article 30 of Directive 01/14) a **Regulatory Body** is to be set up. This body which shall be independent and shall act as an appeal body against decisions taken regarding (e.g.) the level of charging and access to the tracks. There could also be a **notified body** for **assessment** of the **conformity for interoperability** according to Directives 96/48 and 2001/16 (such a notified body might take the form of a company or a body in another Member State). Under the railway safety Directive 2004/49 adopted in April 2004 an independent rail safety authority and an independent accident and incident investigation body have to be set up.

Inland waterways transport

According to Article 3 of Council Regulation (EC) N° 718/1999 on a Community-fleet capacity policy to promote inland waterway transport, each Member State whose inland waterways are linked to another Member State and the tonnage of whose fleet is above 100 000 tonnes, shall set up under its national legislation and with its own administrative resources a **fund**.

Although the capacity policy came to an end on 29 April 2003 (Regulation (EC) N° 411/2003 of the European Commission), and therefore, the fund will, for the time being, not contain financial resources in the new Member States concerned, the set up of the fund may still be necessary in the event that structural improvement measures (Article 3 paragraph 4 of Council Regulation (EC) N° 718/1999) or support measures (Article 3 paragraph 5) are **organised at Community level**. Only in these circumstances the fund might be used. The Fund is managed by the competent authorities, in general the Ministry of Transport.

Air transport

The institutional structures of the civil aviation administration need to be capable of complying with the responsibilities, first of all, for the **safety oversight** and **licensing** of air carriers. In accordance with Directive 2004/36 on the safety of third-country aircraft using Community airports, Member States shall ensure that third-country aircraft are subject to ramp inspections and to adequate safety measures where necessary. Airport infrastructure and operations also need to comply with the *acquis* requirements in terms of **safety, security, efficiency, capacity** and the **environment** (noise standards). For these, a **conventional civil aviation administration**, within or separate from the Ministry of Transport, is necessary. Besides dealing with traditional safety oversight, civil aviation authorities must also be capable of carrying out a wide range of **economic-related tasks**, such as the oversight and enforcement of requirements as regards business plans and financial fitness of air carriers (Regulation 2407/92), air fares (Regulation 2409/92), CRSs (Regulation 2299/89) etc.

A **permanent and independent investigating body** (under Directive 94/56 establishing the fundamental principles governing the investigation of civil aviation accidents and incidents) shall be established to ensure in each Member State an **impartial technical analysis of civil aviation accidents and incidents** with the aim of suggesting corrections to exposed deficiencies wherever they occurred.

In the event that airports reach such a level of congestion that they need to be designated as "fully co-ordinated", the Member State concerned shall appoint an **independent slot co-ordinator** (under Regulation 95/93 on the allocation of slots at Community airports). The coordinator shall ensure **non-discriminatory access to congested airports** for competing airlines, and will be assisted by a co-ordination committee.

Furthermore, Directive 96/67 on access to the **groundhandling** market at Community airports also provides for setting up a **committee** composed of **all users of the airport**, to be consulted on the choice of suppliers or self-handling air carriers when their number is limited.

Regulation 2320/2002 establishing common rules in the field of civil aviation security provides for the designation by each Member State of an **appropriate authority** responsible for the coordination and monitoring of the **implementation of the national civil aviation security programme**.

According to Directive 2003/42 on **occurrence reporting** in civil aviation Member States shall designate one or more **competent authorities** to put in place a mechanism to collect, evaluate, process and store data on occurrences reported in accordance with the Directive. The national civil aviation authority; and/or the

independent civil aviation accident investigating body; and/or any other independent body or entity may be entrusted with that responsibility.

Member States also have to put in place **appropriate administrative structures to collect, process and transmit statistical data** as required by Regulation 437/2003 on statistical returns in respect of the carriage of passengers, freight and mail by air.

In the framework of the “**Single Sky Package**” adopted in the field of **air traffic management**, Member States shall nominate or establish a body or bodies as their **national supervisory authority** in order to assume the tasks under Regulation 549/2004 (the framework Regulation) and 550/2004 (the service provision Regulation). Furthermore, Member States shall appoint bodies to carry out tasks as required by Regulation 552/2004 (the interoperability Regulation).

Regulation 261/2004 on **denied boarding** and cancellation or long delay of flights provides that Each Member State shall designate **a body responsible for the enforcement** of that Regulation as regards flights from airports situated on its territory and flights from a third country to such airports. Where appropriate, this body shall take the measures necessary to ensure that the **rights of passengers** are respected.

Decision 2004/535 requires that Member States shall have **authorities competent** in the adequate protection of personal data contained in the **PNR of air passengers** transferred to the US authorities by Community air carriers.

Maritime transport

Enforcement of EC legislation on **maritime safety** and **prevention of pollution** requires the Member States' maritime administrations to have the necessary human resources in terms of **ship inspectors** and **associated support personnel** (depending on the importance of the country in terms of fleet and port traffic). It requires Member States to work with **classification societies** which are duly recognised by the EC.

While the acquis does not make reference to any specific administrative structure in this field, **Port State control officers**, responsible for the inspection of ships calling at the Member State's ports, are requested to meet **minimum criteria** as laid down in Annex VII to Dir. 95/21/EC on port state control. With regard to the **classification societies**--which are private companies appointed by the Member States to carry out tasks of inspection, survey and certification of ships flying their flag--they have to meet certain **minimum criteria** which are laid down in Annex to Dir. 94/57/EC on classification societies; Annex C to Dir. 96/98/EC on notified bodies authorised by Member States in the field of marine equipment.

Administrative supervision over the performance of the obligations carried out by third parties (e.g. classification societies, operators) is needed in particular in the field of **maritime safety** (e.g. Ship report, port state control, classification societies, management Ro-Ro ferries) and of **ship registration**.

15. ENERGY

In addition to a **ministry or ministry department responsible for energy policy formulation and monitoring tasks** (e.g. internal energy market), as well as for **sub-sectoral work** (e.g. solid fuels restructuring, nuclear energy, promoting energy efficiency and the use of renewable energy), a smooth functioning of the energy sector will generally require also the presence of such bodies as **energy statistics authorities** and of **sub-sectoral bodies**, such as energy efficiency organisations and a coal restructuring agency (*no specific acquis reference*).

In particular, efficient implementation of the energy *acquis* will require among others the **specific bodies** referred to below.

Security of supply

- In accordance with Directives 98/93 and 73/238 (**oil stocks and crisis management**) a "**crisis**" **body** needs to be established to co-ordinate and implement crisis measures at national level (art. 2 Dir 73/238). According to dir. 98/93, Member States have to ensure a smooth management of oil stocks (including accounting, verification, and identification). A **stockholding body** or entity (*not* compulsory - only preferable) to maintain and/or manage compulsory stocks would be instrumental in doing so (art 1, art. 3 §3).

Internal energy market

- In order to ensure that the directive on **internal market for electricity** (Dir. 2003/54) is equally and fairly applied, Member States shall designate one or more competent bodies with the function of regulatory authorities. These authorities shall be wholly independent from the interests of the electricity industry. They shall at least be responsible for ensuring non-discrimination, effective competition and the efficient functioning of the market (art. 23 of the directive). National regulatory authorities shall contribute to the development of the internal market and of a level playing field by cooperating with each other and with the Commission in a transparent manner.

An independent **Transmission System Operator (TSO) and Distribution System Operator (DSO)** are equally key to the functioning of the internal electricity market (art 8-12, and 13-17 Dir. 2003/54). The legal and management unbundling of TSO's and DSO's within a vertically integrated company are required.

In order to ensure that the directive on **internal market for natural gas** (Dir. 2003/55) is equally and fairly applied, Member States shall designate one or more competent bodies with the function of regulatory authorities. These authorities shall be wholly independent of the interests of the gas industry. They shall at least be responsible for ensuring non-discrimination, effective competition and the efficient functioning of the market (art 25 of the directive). National regulatory authorities shall contribute to the development of the internal market and of a level playing field by cooperating with each other and with the Commission in a transparent manner.

An independent **Transmission System Operator (TSO) and Distribution System Operator (DSO)** are equally key to the functioning of the internal gas

market (art 7-10, and 11-15 Dir. 2003/55). The legal and management unbundling of TSO's and DSO's within a vertically integrated company are required.

Other relevant administrative structures in the energy sector include the bodies set out below.

- **Statistical/information/enforcement capacities** are **required** in **Member States' administrations** and in certain **gas/electricity undertakings**. The form of such structures is, however, *not* prescribed (Dir. 90/377 on Transparency of electricity/gas prices as amended and Reg. 736/96 implemented by Reg. 2386/96 on the Transparency of energy investments).
- In accordance with the **Hydrocarbons licensing directive** (94/22) and the **Oil information procedure** (**Council Regulation 1995/2964/EC** and **Council Decision 1999/280/EC**), **statistical/information/enforcement capacities** are required in **Member States' administrations** and in **undertakings** falling within the scope of the *acquis* (form *not* prescribed).
- Pursuant to Article 20(3) of the **Energy Charter Treaty (ECT)**, signatories/contracting Parties have to designate one or more **Enquiry Points**, to which requests for information about laws, regulations, judicial decisions and administrative rulings may be addressed. *No* specific form is prescribed.

Energy efficiency

- An **enforcement agency** needs to be established to ensure that the directives on **energy labelling** and **minimum efficiency standards** are being implemented.
- In order to implement the **Boilers and heat generators directives**, appointment of '**Notified Bodies**' (for **conformity assessment** procedures) should be ensured.
- In general it is useful to establish a **body promoting energy efficiency** and the use of **renewable energy** (*no* explicit *acquis* reference).
- Concerning biofuels, Directive 2003/30 does not require a specific body, but this would nevertheless be useful to ensure political and/or administrative cooperation between, inter alia, the Ministries competent for Energy, Agriculture, Transport, Environment and Finances (taxation).

Nuclear energy

- The *acquis* on **nuclear safeguards** requires a governmental body dealing with **Euratom Safeguards** (Reg. 3227/76). Also certain persons and undertakings need to have a capacity to provide accountancy and plant data as required by the regulation.
- As regards **nuclear supplies**, both the **public authorities** (in practice a Ministry or ministry department) and **industry** (as regards the submission of nuclear supply contracts, and the notification of transformation contracts and application for export authorisations with the Commission via the Supply Agency) need to have **administrative capacity** to fulfil **Euratom obligations**.
- There is **no explicit reference** in the *acquis* to a body dealing with **nuclear safety**. However, an (**independent**) **Nuclear Safety Authority** is **necessary** and

exists in Member States. This body should, among other things, be given the legal authority to **grant licenses** and to **regulate the location, design, construction, commissioning, operation or decommissioning** of nuclear installations (i.e. any land-based nuclear power plant and on-site related installations such as storage, handling and treatment for radioactive materials). This body should be provided with adequate authority, competence and financial and human resources to fulfil its assigned responsibilities. There should be an effective **separation** between **its functions** and **those of organisations** concerned with the **promotion or utilisation of nuclear energy**.

- There is **no explicit *acquis* reference** for an **institutional structure** for handling **radwaste**, although its existence (in practice public or private) may be **useful**.

Nuclear safety and radiation protection

Achieving and maintaining compliance with EC legislation in the nuclear safety and radiation protection sector needs to be managed in a systematic and cost-effective manner, in order to minimise the associated administrative burden and costs. With this in mind, the governments of Candidate Countries should endeavour to focus their efforts on addressing those issues and requirements that are fundamental to EC approximation in this sector, in particular by ensuring that:

- a **single government department** is given the **overall responsibility** for planning and managing the process of achieving compliance with each directive or regulation in this sector;
- arrangements are put in place for the effective **involvement** and **participation** of all other bodies or interest groups which have a significant role or function to perform in nuclear safety and radiation protection (such as a technical advisory body to advise on radiation protection standards, employers, employees, the general public, research institutes and the private sector in terms of provision of services);
- appropriate **regulatory agencies** or **competent authorities** are established and their respective functions and powers are clearly defined. These could include: agencies working on behalf of central government (e.g. specialists in the nuclear industry or an environmental regulatory agency), regional and local government, health services (occupational health services, dosimetry services and medical surveillance, public and private);
- the resources and expertise of the private sector are utilised in appropriate ways.

16. TAXATION

In order to evaluate the administrative capacity of the candidate countries to effectively implement and control the tax acquis through a modernised administration, a so-called Fiscal Blueprint exercise has been launched in 1999. This exercise encompasses eleven Fiscal Blueprints, each representing a pillar of best practice for operating a modern tax administration in a Single Market with no internal frontier controls. These Blueprints establish the strategic objectives, which such a tax administration must set itself, as well as the key indicators to which this administration must respond. They cover a range of administrative structures explicitly required by the acquis, as well as structures, which are not explicitly required, but nonetheless necessary for the effective implementation of the acquis.

The Fiscal Blueprints have been elaborated by the Commission (DG Taxud) in co-operation with, and approved by, EU Member States. They are used by the Commission as “benchmarks” against which to measure shortfalls in the candidate countries’ operational capacity, as well as subsequent improvements. Candidate countries are also encouraged to use them as a guide to their reform process. Blueprints also provide a means of directing technical assistance.

During the pre-accession period an exercise of gaps and needs analysis is carried out on the basis of the Fiscal Blueprints, the purpose of which is to assess the state of readiness in each of the candidate countries from the perspective of the targets identified, to identify shortages in the operational capacity, and the means to cover these gaps. Within the framework of the gaps and needs analysis exercise each candidate country establishes a Business Change Management Plan. The Plan provides a means to deliver targets identified in the Fiscal Blueprints, including timetables and budgets, and an interactive process for the future self-development of each candidate country’s tax administration.

Below is a summary of the Fiscal Blueprints. The Blueprints themselves can be consulted for further guidance on this subject.⁴

The administration of taxation is first and foremost a **matter** within the **competence** of **Member States**. The **Community legislation** on administrative capacity and requirements only **lays down** the **main obligations** imposed on **traders** and leaves the details and the **administrative capacity** in accordance with the principles of **subsidiarity** to **Member States**.

Administering the tax system requires the presence of a **central tax administration**, as well as operational functions at **regional** and / or **local** levels. Roles, responsibilities and links between these different levels must be clearly defined and transparent. The tax administration must be granted **sufficient powers** to operate the tax legislation--assessing and collecting taxes and enforcing tax legislation when necessary--, as well as an adequate level of **autonomy**. The taxpayers, for their part, must have a right of **appeal**.

The main **tasks** to be fulfilled by national tax administrations are set out below.

⁴ A copy of the Taxation Blueprints can be obtained from DG Taxud.

- **Revenue collection and enforcement:** ensuring domestic taxation revenues to be accurately collected, accounted, reported and audited. This implies that:
 - a transparent set of systems and procedures for **tax assessment and revenue collection**, based on encouraging **voluntary compliance**, is in place. This includes a system to **register taxpayers' liabilities** by tax type, and **payment accounting systems** for deferred, cash and other types of payment which are linked to the register of liabilities;
 - systems and procedures are in place for a **robust enforcement regime**, ensuring that appropriate administrative / enforcement action is taken in respect of late, partial or non-payment of taxes;
 - tax administration **accounting** regulations and procedures provide for the proper management of tax revenue and for auditing of procedures and accounts by national authorities.
- **Fiscal control: implementing an effective fiscal control** strategy, through efficient control, audit and investigation methods, and **preventing and fighting fraud and corruption** in so doing underpinning tax compliance. This implies that:
 - controls are based upon **risk analysis** and other **selection techniques**;
 - specific regulations on **registration, identification, filing, accuracy and timely payment** are in place, and an up-to date file of taxpayers, as well as a system of exchanging information on taxpayers between all levels and locations of the tax administration are available;
 - **internal anti-fraud, investigation and intelligence units**, or functions specialised in these areas are set up, with a clear **separation** between the **intelligence** function, and the **investigation** function;
 - close **working relationships** with the **other national law enforcement agencies**, with the relevant **police departments, prosecution services** and other national bodies participating in the fight against fraud are established.

In order for the tax administration to duly implement these tasks, the following **conditions** should be fulfilled:

- the tax administration must have a solid **legal base** clearly setting out its organisation and structure;
- the tax administration is given a sufficient level of **autonomy**;
- the tax administration must be subject to **internal and external audit**;
- **staff** must work in accordance with the **rule of law** and perform their duties in a fair, impartial, honest, trustworthy and professional manner;
- an effective **training strategy** must be in place, to ensure the regular training of the staff (from the perspective of the candidate countries, it will be important to ensure that the staff of their tax administration have the possibility to participate in relevant Community programmes, e.g. the Fiscalis programme);
- the tax administration must strictly respect the **confidentiality** of data collected and ensure the protection of **privacy**;

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- the tax administration must **report** annually on its activities to the ministry of finance, other government departments, and other key stakeholders;
- an effective, transparent and consistent **sanctions** and **penalties regime** must be in place, whereby sanctions and penalties reflect the concept of “**proportionality**”, while being **sufficiently deterrent** to combat irregularities and fraud;
- an **appeal procedure**, including administrative and / or judicial levels, and with time limits, must be established and made public;
- effective external **information mechanisms** and **dialogues** must be in place to engender better understanding of taxation issues by both **taxpayers** and **stakeholders** in order to **encourage voluntary compliance**;
- **customer-friendly tax payer services** should be made available by the tax administration;
- effective **exchange of information** must exist, nationally, with other national administrations, enforcement agencies and other public bodies having connections with tax matters (e.g. registration bodies, social security, local governments, financial police, customs), taking into account the confidentiality of taxpayers’ information;
- efficient **co-operation** and exchange of anti-fraud information should be developed, **internationally**, with other **national tax administrations**; the tax administration should promote the establishment of a broad network of **tax treaties**, both bilateral and multilateral;
- for the purpose of **intra-Community co-operation**, every Member State must develop **co-operation procedures** at policy and operational levels, and ensure the interconnection and interoperability of its IT systems which comprise the centralized national databases and the network connections capable of interfacing with EU systems. **A Central Liaison Office (CLO) and an Excise Liaison Office (ELO) in each Member State are responsible for contacts with the other Member States for fiscal purposes.** In particular the following **specific IT systems** should be in place:
 - the secure network Common Communications Network/Common Systems Interface (CCN/CSI);
 - VAT Information Exchange System (VIES version I + II) and VIES on web
 - VAT on e-services (VoeS);
 - CCN mail messaging system (version I + II);
 - System for the Exchange of Excise Data (SEED);
 - Participation in the development of the Excise Movement Control System (EMCS) which is currently under preparation
 - Participation in the development of the information exchange system on taxation of savings, which is currently under definition.

The **integrated tax IT system** should **meet the EU requirements**.

Since the adoption of the Fiscal Blueprints, DG TAXUD has launched its interoperability activity for IT systems, in order to ensure that the Candidate

Countries would be able to participate fully in the exchanges of information from the first day of their accession.

On the legislative front, there have been a number of pieces of Community legislation which have been adopted since the blueprints were written. These include Directives amending the 6th VAT Directive:

- *The Directive on the person liable for payment of VAT;*
- *The invoicing Directive;*
- *The Directive dealing with the treatment of certain electronic services (e-Commerce) and TV and radio broadcasting.*

In addition, Directive 2003/96/EC on the taxation of energy products and electricity was also adopted.

Within administrative cooperation and fight against fraud a number of legal amendments have taken place. In principle all legal instruments have been reinforced. The Recovery Directive 76/308/EEC was also amended (by Directive 2001/44). The amended Recovery Directive now covers VAT, certain excise duties, direct taxation and taxes on insurance premiums. Implementing rules were laid down in Commission Directive 2002/94. For VAT a new Regulation on administrative cooperation (Regulation No 1798/2003) came into force 2004 with implementing Commission Regulation No 1925/2004. For administrative cooperation in the field of excise a new Regulation, No 2073/2004 will come into force 1 July 2005. In the field of direct taxation the mutual assistance directive, No 77/799 has been amended (Dir. 2003/93 and 2004/56) as well as the directive on taxation of savings income 2003/48, which also contains rules on exchange of information. The e-Commerce Directive, the Recovery Directive and the new Regulations on administrative cooperation in the field of VAT and excise in particular mean that there will be an intensification of the exchange of information between Member States by electronic means. These exchanges take place over the Common Communication Network (CCN), and have to be added to the electronic exchange of information computer systems. Other proposals on the Council table will also result in increased use of electronic means to transmit information between the Member States (and the candidate countries from the date of enlargement). It is therefore important that candidate countries are well prepared in terms of IT and management of the information exchanged.

A new Fiscalis Decision (Decision No 2235/2002/EC) is aimed to support the computer systems which are used for the community exchange of information.

17. ECONOMIC AND MONETARY POLICY

Monetary policy

The *acquis* related to economic and monetary union requires the presence in each Member State of an **independent Central Bank**.

Economic policy

Member States must be able to **conceive** and **implement** a **consistent set of economic policies**. In particular, the various economic policies (fiscal, monetary, exchange rate, structural reforms) must be sustainable and compatible with each other.

To be able to participate in **economic policy co-ordination** under EMU, Member States must have appropriate analytical capacity to discuss domestic economic policy issues in an EU environment. This requires knowledge and understanding of the economic situation and policies in the EU. Furthermore, Member States need an administrative structure to support their representatives in the Economic and Financial Committee (EFC) and the Economic Policy Committee (EPC).

It should be noted that candidate countries have already gained experience in discussing, and committing on, economic policies with the IMF and some with the OECD. The economic dialogue between the EU and the candidate countries, which is conducted in the Subcommittee on Economic and Monetary Issues under the Association Agreements and in the context of the Enhanced Economic Dialogue with Turkey, also prepares the candidates in this field.

To be able to participate in **fiscal surveillance** mechanisms, Member States must have appropriate capacities for medium-term fiscal programming and for reporting on fiscal developments in the required definitions and formats.

The capacities of the candidate countries for medium-term fiscal programming and for reporting on fiscal developments are being developed and monitored in the pre-accession fiscal surveillance exercise, which was launched by DG ECFIN in March 2000. This procedure helps to clarify, monitor and assess the public finance situation in the candidate countries and will prepare them for multilateral surveillance after accession.

Related issues

Overall, to be able to monitor economic developments and economic policies, it is essential to have good **statistical information** (see Chapter 18 – Statistics).

The **liberalisation of capital movements**, which is a precondition for EMU, does not per se require the development of administrative structures, but may nonetheless lead to certain steps in this regard (see Chapter 4 – Free movement of capital).

18. STATISTICS

Statistical infrastructure

The transposition of the statistical *acquis* is more a factual than a legal issue, and requires permanent implementation as opposed to one-off legal transposition.

The question of **implementation capacity** is to a certain extent **laid down** in the *acquis* itself, mainly with regard to the **respect of fundamental principles** applied to the **production of Community statistics** as stipulated by Council Regulation 322/97. This is the so-called “**statistical law**”, which regulates such questions as the **protection of confidentiality, quality and transparency of statistical production**, as well as **access to administrative data sources**.

The organisational patterns can vary between Countries: generally, the national **statistical offices** in each country are the **co-ordinating body** for all statistical production, also **responsible** for the **quality and respect of fundamental principles**. They produce and disseminate the vast majority of statistics themselves. In doing this, the statistical office often uses administrative sources of numerous other administrations like fiscal authorities, social security, registration etc. Certain types of statistics such as balance of payments and some financial statistics are in general established by the National Banks autonomously or in co-operation with the statistical office. In a number of specialised areas statistics are established autonomously or in co-operation with the responsible administrations, the most prominent but not the only example of which is the Ministry of Agriculture.

In assessing the administrative capacity in this domain, the following **criteria** are being used:

- **structure and legal setting:** mission of the NSO (national statistical office), scope of its task and co-ordinating power, definition of official statistics (as opposed to non-official statistics), role of other bodies and agencies in the production of official statistics (e.g. line ministries), statistical council, annual programme;
- **relationship with central government:** relationship to government in its multiple functions as user of statistics, provider of resources, and provider of administrative data;
- **relationship with regional and local government;**
- protection of **independence:** nomination of president, access to individual data etc.;
- relationship with **users and dissemination policies;**
- relationship with **suppliers:** professional associations of enterprises, social organisations, other;
- internal **organisation;**
- **planning and programming procedures** at the NSO;
- **finance and budgeting:** budget dotation in normal and exceptional situation (censuses), flexibility of use, also for infrastructure like IT;

- **staffing**, staff recruitment and development: composition by sex and age and education status, training and development of staff;
- **information technology**: very important infrastructure determining the performance to a large extent;
- **internal monitoring of performance**: follow-up and reporting about the annual programmes and general NPAA;
- **external accountability**: which institution provides for an external monitoring of performance, how is this organised.

In general it can be stated that in all the candidate countries the administrative structures to implement the acquis are largely in place. Statistical Offices exist in all the countries and they usually follow the fundamental principles of official statistics and produce the majority of required statistical information. However, certain shortcomings had been discovered in the past. Therefore, a close follow-up of those is done by assessment reports, monitoring missions, etc.

The permanent follow-up of the compliance situation in statistics by Eurostat is done through a compliance database and results of those assessments are used to define targeted technical assistance to the countries concerned in order to tackle the problems discovered.

19. SOCIAL POLICY AND EMPLOYMENT

Labour law

The **institutions** set out below are **explicitly required** by the *acquis*.

- The **Insolvency Directive** (Council Directive 80/987/EEC, Article 5) requires **independent guarantee institutions** for workers in the case of the insolvency of their employer. These institutions must in particular comply with the **following principles**:
 - the **assets** of the institutions shall be **independent** of the employers' operating capital and be **inaccessible** to proceedings for insolvency;
 - **employers** shall **contribute** to financing, **unless** it is **fully covered** by the **public authorities**;
 - the **institutions' liabilities** shall **not depend** on whether or not **obligations** to **contribute to financing** have been **fulfilled**.

Apart from these bodies, it is **entirely** for **each Member State** to **decide** which **structure it will use, provided** that the **effect of implementing the requirements** of the *acquis* is **achieved**. For the candidate countries, this is largely a question of strengthening existing institutions, in order to enable them to carry out new tasks.

The **structures for implementation and enforcement** of the **Community provisions** in this field **vary** between **Member States**, under the responsibility of the relevant **line ministries**. However, a **number of common elements** can be defined. These are in particular the following.

- Directive 96/71/EC "**Posting of workers**":
one or more **liaison offices** and one or more **competent national body(ies)** responsible for **monitoring** compliance with the terms and conditions of employment referred to in the Directive. **Each Member State** shall **notify** the **other Member States** and the **Commission** of the **competent bodies** (these can either be new structures or already existing ones which are able to carry out the required tasks; the body(ies) designated as liaison office(s) and the one(s) responsible for monitoring the terms and conditions of employment can be identical.);
- Directive 98/59/EC: "**Collective Redundancies**":
a **competent public authority** which should be **notified** in writing of **any projected collective redundancy** (in the Member States, these functions are often carried out by the County Labour Board or the Public Employment Service);
- **lawyers** and **judges** who will need to apply the law once it enters into force, whether through dedicated labour and social security tribunals, or through the civil and administrative courts.

Health and safety at work

In this area, it is **entirely** for **each Member State** to **decide** which **structure it will use, provided** that the **effect of implementing the requirements** of the *acquis* is **achieved**:

- **enforcement agencies** in the field of **health and safety** at work, **labour law** and **equal opportunities**, such as **labour inspectorates** and **occupational hygiene inspectorates** with the competencies needed to ensure control and information leading to improved working conditions, as well as health and hygiene services, first aid services, fire prevention services, training services, and services for promotion and research.

Social dialogue

In this area, it is **entirely for each Member State to decide** which **structure it will use, provided** that the **effect of implementing the requirements** of the *acquis* is **achieved**:

- **representatives of the two sides of industry**, including **social partner organisations**, in view in particular of their role in the **elaboration and implementation** of **Community legislation**.

Employment policy and European Social Fund

In this area, it is **entirely for each Member State to decide** which **structure it will use, provided** that the **effect of implementing the requirements** of the *acquis* is **achieved**:

- **labour market institutions** involved in **implementing the European employment strategy**, notably – but not exclusively – through implementation of the European Social Fund. This includes not only the relevant line Ministries and their agencies, but also structures for co-operation with other key players such as Finance Ministries and regional and local authorities. Other important institutions include vocational training institutes and public employment services. In particular, within the **public employment service** the **network of local employment offices** should be sufficiently equipped and widespread in order to implement, in due course, the European employment strategy.

The administrative structures required for the operation of the European Social Fund are described in *Chapter 22 – Regional policy and coordination of structural instruments*.

Social inclusion

In this area, it is **entirely for each Member State to decide** which **structure it will use, provided** that the **effect of implementing the requirements** of the *acquis* is **achieved**:

- **Non-Governmental Organisations** or other players in **civil society**.

Social protection

In this area, it is **entirely for each Member State to decide** which **structure it will use, provided** that the **effect of implementing the requirements** of the *acquis* is **achieved**:

- **social security institutions**, with regard to the **development of sustainable and equitable social protection systems** and **especially** as regards the **requirement to co-ordinate social security schemes** (in the framework of free movement of workers).

- **Non-Governmental Organisations** or other players in **civil society**.

Anti-discrimination and equal opportunities

The **institutions** set out below are **explicitly required** by the *acquis*.

- Under Directive 2002/73/EC (amending Directive 76/207/EEC) an **equality body** ("a body or bodies for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on the grounds of sex"...) is required. This body should be established at the latest in September 2005. Member States shall designate and make the necessary arrangements for such a body or bodies. These bodies may form part of agencies charged already at national level with the defence of human rights or the safeguard of individuals' rights.

Member States shall also ensure that the competencies of these bodies include the following **tasks**:

- without prejudice to the right of victims and of associations, organisations or other legal entities, **providing independent assistance to victims** of discrimination in pursuing their complaints about discrimination;
 - conducting **independent surveys** concerning discrimination;
 - publishing **independent reports** and making **recommendations** on any issue relating to such discrimination
- Under the **Directive** implementing the principle of **equal treatment between persons irrespective of racial or ethnic origin** (Directive 2000/43/EC of 29 June 2000, Article 13)⁵, a body for the promotion of equal treatment of all persons without discrimination on grounds of race or ethnic origin is required. The **body must be able to**:
 - provide **independent legal advice to victims** of discrimination
 - conduct **independent surveys** concerning discrimination
 - publish **independent reports** and make **recommendations** on any issue relating to discrimination,

This body can be part of the state's national agencies responsible for the defence of human rights or the safeguard of the rights of individuals.

Apart from those bodies, it is **entirely for each Member State to decide** which **structure it will use, provided** that the **effect of implementing the requirements** of the *acquis* is **achieved**:

- **independent commissions, ombudsmen or other bodies** overseeing **policy development** in fields such as equal opportunities for women and men, or the fight against racism.
- **Non-Governmental Organisations** or other players in **civil society**.

⁵ Deadline for implementing Directive 2000/43/EC is 19 July 2003.

20. ENTERPRISE AND INDUSTRIAL POLICY

Administrative capacity

Although there is **no formal requirement** in terms of **administrative structures** for the implementation of this chapter of the *acquis*, the **following bodies** are **commonly involved in policy-making and implementation**.

a) *Policy-making*

The **central body** responsible for the **formulation** and **co-ordination** of these policies is usually the Ministry of Economic affairs. In some countries there is a dedicated Ministry of Industry (and Trade).

In most countries **line ministries** that are **responsible** for **managing specific industrial branches** take part in the policy-making process. This is e.g. typically the case for foodstuffs and wood processing, which fall under the competence of the Ministry of Agriculture; chemicals under the competence of the Ministry of Environment; and pharmaceuticals under the competence of the Ministry of Health.

It is **important to know**:

- whether **enterprise policy** is **developed** in an **integrated manner**, with the involvement of other ministries;
- whether/how the **Ministry responsible for drafting the National Development Plan consults** the **Ministry in charge of SME and industrial policies**;
- if the **Ministry in charge of SME and industrial policies** participates in the preparation of a pipeline of projects that could be funded by pre-structural funds instruments;
- whether there is a **co-ordinating structure in place for simplifying and improving the business environment**, which involves representatives of the business community.

b) *Implementing agencies*

It would be **expected** to find **at least the following key institutions** in candidate countries:

National level

- Privatisation Agency
- Competition authorities
- Development Agency (FDI and export promotion)
- SME Agency
- Chambers of Commerce
- Business associations (horizontal and sectoral)

Local level

- Regional Development Agencies

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- Business Support Centres (including Euro Info Centres).

21. TRANS-EUROPEAN NETWORKS

The acquis does not prescribe specific institutions in this area. It is entirely for each Member State to decide which structures it will use, provided that the **effect** of **implementing** the requirements of the acquis is **achieved**.

22. REGIONAL POLICY AND CO-ORDINATION OF STRUCTURAL INSTRUMENTS

Structural fund regulations are **directly applicable** in **Member States** from the moment of accession. **Compliance** is necessary with **related Community policies** notably competition, state aid, public procurement, environment and equal opportunities.

Effective implementation of the **Structural fund regulations** involves the following key **tasks**:

- determination of eligible areas;
- planning and programming;
- programme and project implementation and management
- monitoring, control and evaluation.

In order to fulfill these tasks, the following **requirements** with regard to the country's administrative capacity can be formulated:

- capacity to prepare adequate **statistical data** (GNP/cap/PPS, unemployment rates) at NUTS 2 and 3 levels for the **determination of eligible areas by the Commission**. Collection of statistics also concerns data required for **programming, monitoring and evaluation**;
- **clear ministerial responsibilities**, and responsibilities of **other state bodies**, for **Structural Funds** and the **Cohesion Fund**, in particular for preparation of programmes;
- establishment of an **inter-ministerial co-ordination body** and elaboration of co-ordination procedures;
- designation of a **Managing Authority** for each programme;
- **partnership**: involvement of **regional/local authorities, socio-economic** and other **partners**;
- existence of adequate **budgetary procedures**, including procedure for multi-annual commitments and co-financing procedure;
- a Member State is required to be able to show that **additionality** had been **respected**;
- designation of a **payment agency** and elaboration of payment procedures;
- establishment of **monitoring committees**;
- elaboration and appraisal of **indicators** for **monitoring and evaluation**;
- capacity to perform independent (ex ante) **evaluation** of programmes;
- functioning **financial control, independent** from final beneficiaries;
- **compliance** with **other community policies** (competition, state aids, public procurement, environment, equal opportunities);
- elaboration of procedures for the certification of expenses and for correcting irregularities;

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- independent **auditing** capacity;
- the **capacity to prepare projects** for the implementation of Structural Funds and the Cohesion Fund ("project pipeline"). In fact this is likely to become one of the key issues.

In assessing the administrative capacity in this area, it will be useful to refer to the table which is at Annex A to this document. Please note that Annex A is based on current Structural Funds regulations. According to article 55 of Council Regulation 1260/99, the Council shall review this Regulation on the basis of a proposal from the Commission by 31 December 2006 at the latest.

The Commission proposals (COM(2004)492 final, 493 final, 494 final, 495 final and 496 final) are currently under discussion at the Council. Therefore, it should be taken into account that current regulations can be revised in the next months (and by end of 2006 at the latest)

Under the new Regulations a number of changes can be expected:

- Designation of 3 main authorities: managing authority, certifying authority (paying authority under current regulations) and audit authority. The 3 authorities can be located within the same body provided that there is adequate separation of functions.
- The audit authority . The responsibility for all audit work for a programme throughout the period is placed under the body which provides the declaration of validity at closure.
- Member States will have to designate appropriate bodies to evaluate and give an opinion on the compliance of management and control systems.
- The Cohesion Fund and the ERDF will follow a single programming system, concerning transport and environment infrastructures operations.. Large projects would be adopted by the Commission separately, but managed within the related programmes.

NB: Implementation by the candidate countries of the pre-accession fund ISPA, will serve to prepare these countries in a most concrete manner for the implementation of the Community's cohesion funds.

23. JUDICIARY AND FUNDAMENTAL RIGHTS⁶

Judiciary

The establishment of an **independent, reliable and efficient judiciary** is of paramount importance. This notably requires sufficient human resources and qualified staff, adequate and modern equipment, acceleration of court proceedings, reduction of the number of pending cases so as to avoid unreasonable delays, measures to ensure the enforcement of judgements, and procedures to ensure ethical conduct by the judiciary and the effective access to justice.

Anti-corruption policy

The JHA Council's approval (14 April 2005) of the Commission's Communication on a Comprehensive EU Policy against Corruption (Brussels, 28.5.2003 COM(2003) 317 final) encompassed 10 Principles for Improving the Fight against Corruption in Acceding, Candidate and Other Third Countries, set out in the Annex to that Communication. These Principles are reproduced below:

1. To ensure credibility, a clear stance against corruption is essential from leaders and decision-makers. Bearing in mind that no universally applicable recipes exist, national anti-corruption strategies or programmes, covering both preventive and repressive measures, should be drawn up and implemented. These strategies should be subject to broad consultation at all levels.
2. Current and future EU Members shall fully align with the EU *acquis* and ratify and implement all main international anti-corruption instruments they are party to (UN, Council of Europe and OECD Conventions). Third countries should sign and ratify as well as implement relevant international anti-corruption instruments.
3. Anti-corruption laws are important, but more important is their implementation by competent and visible anti-corruption bodies (i.e. well trained and specialised services such as anti-corruption prosecutors). Targeted investigative techniques, statistics and indicators should be developed. The role of law enforcement bodies should be strengthened concerning not only corruption but also fraud, tax offences and money laundering.
4. Access to public office must be open to every citizen. Recruitment and promotion should be regulated by objective and merit-based criteria. Salaries and social rights must be adequate. Civil servants should be required to disclose their assets. Sensitive posts should be subject to rotation.
5. Integrity, accountability and transparency in public administration (judiciary; police, customs, tax administration, health sector, public procurement) should be raised through employing quality management tools and auditing and monitoring standards, such as the Common Assessment Framework of EU Heads of Public

⁶ To be developed in further detail in a future update of this guide.

Administrations and the Strasbourg Resolution. Increased transparency is important in view of developing confidence between the citizens and public administration.

6. Codes of conduct in the public sector should be established and monitored.
7. Clear rules should be established in both the public and private sector on whistle blowing (given that corruption is an offence without direct victims who could witness and report it) and reporting.
8. Public intolerance of corruption should be increased, through awareness-raising campaigns in the media and training. The central message must be that corruption is not a tolerable phenomenon, but a criminal offence. Civil society has an important role to play in preventing and fighting the problem.
9. Clear and transparent rules on party financing, and external financial control of political parties, should be introduced to avoid covert links between politicians and (illicit) business interests. Political parties evidently have strong influence on decision-makers, but are often immune to anti-bribery laws.
10. Incentives should be developed for the private sector to refrain from corrupt practices such as codes of conduct or “white lists” for integer companies.

Furthermore, with regard to criminal law aspects of the prevention of, and fight against, corruption, one needs to keep in mind their close links to relevant aspects of Chapter 24 (law enforcement measures etc).

Fundamental rights

In assessing the administrative capacity in this area, the following questions can usefully be asked:

- Can citizens address an Ombudsman and/or similar bodies (e.g. a petitions committee in parliament) for problems related to the exercise of fundamental rights? If so, please provide information on the Ombudsman service, the number of its staff and its training. To whom is the Ombudsman/men accountable? How is functional independence guaranteed?
- Are there independent national institutions for the promotion and protection of human rights (as called for by the Council of Europe (Recommendation from the Committee of Ministers R(97) of 30 September 1997 on the establishment of independent national institutions for the promotion and protection of human rights)

Data protection

A **public supervisory authority** responsible for **monitoring the correct application of the Data Protection provisions must be established.**

According to the relevant provisions of the EC Data Protection Directive, the supervisory authority shall act with complete **independence** in exercising its functions and be endowed in particular with:

- **investigative powers**, such as powers of access to personal data processed by any data controller (either public administrations or private undertakings) and powers to collect all the information necessary ;
- **effective powers of intervention**, such as, for example, the power of ordering the blocking, erasure or destruction of personal data, of imposing a temporary ban on processing, of warning or admonishing the controller or referring the matter to national parliaments or other political institutions ;
- the power to engage in **legal proceeding** where the national provisions have been violated.

Moreover the supervisory authority **has to hear claims** lodged by **any person** in regard to the processing of personal data and **draw up a public report** on its activities at **regular intervals**.

In assessing the administrative capacity in this area, the following questions can usefully be asked:

- *Is there a Supervisory Authority responsible for monitoring the application of Data Protection provisions?* (if so, please provide information on the organisation of the Authority, its sources of financing, the number of its staff, notably of inspectors. Please provide information on the elements put in place in order to ensure that it acts in **complete independence**, e.g. nomination procedure and terms of office of its head).
- Has the supervisory Authority **investigative powers**, such as powers of access to data forming the subject of processing operations and powers to collect all the information necessary for the performance of its supervisory duties? (if so, please indicate for the past year the number of inspectors, type of specific training on data protection received by them, the resources available for inspection purposes and the number of inspections carried out)
- *Has the Supervisory Authority effective powers of intervention such as the following:*
 - **delivering opinions before data processing operations are carried out?** (if so, please indicate for the past year the number of data processing operations submitted to the opinion of the Supervisory Authority)
 - **ensuring appropriate publication of such opinions?** (if so, please indicate for 1999 the means used for publication, the type of information relating to the data processing that is published and the number of opinions published)
 - **ordering the blocking, erasure or destruction of personal data?** (if so, please indicate for the past year the number of cases where blocking, erasure and destruction of data was ordered and the means to verify that the order was actually implemented)
 - **imposing a temporary or definitive ban on processing?** (if so, please indicate for the past year the number of temporary bans imposed, the average time of temporary bans, the main reasons for imposing them, the conditions, if any, that had to occur for the ban to be lifted and the means to verify that the conditions had actually been fulfilled)

- **warning or admonishing the controller?** (if so, please indicate for the past year the number of warnings and admonishments issued, and the main reasons for them)
- **imposing sanctions on controllers?** (if so, please indicate for the past year the number of sanctions imposed, their main types, the average level of fines, the number of sanctions effectively implemented, the average level of fines actually paid)
- ***Has the Supervisory Authority powers to engage in legal proceedings in case of violation of data protection provisions?*** (if so, please describe these legal proceedings and indicate for the past year the number of them engaged, concluded, the average time taken and the percentage of them with a conclusion favourable to the Authority)
- ***Has the Supervisory Authority powers to bring to the attention of judicial authorities the violations of data protection provisions?*** (if so, please describe the procedures and indicate for the past year the number of cases brought to the attention of the justice and the percentage of them which resulted in legal proceedings being engaged)
- ***Can the decisions taken by the Supervisory Authority which give rise to complaints be appealed against through the courts?*** (if so, please describe the procedures and indicate for the past year the number of decisions appealed and what percentage of all decisions giving rise to a complaint they represent)
- ***Does the Supervisory Authority hear claims by any person in regard to the processing of personal data?*** (if so, please indicate for the past year the number of claims introduced, what percentage of them gave rise to effective intervention by the Supervisory Authority and the means used for informing the complainant of the outcome of the claim)

Citizens' rights

Free movement of persons

Community measures lay down a detailed set of rules concerning the right to move and reside freely within the territory of Member States. Other chapters deal with certain aspects of the free movement of persons (esp. chapter 2 in relation to workers).

In assessing the administrative capacity in this area, the following questions can usefully be asked:

- Which **bodies** and **institutions** will be responsible for implementation of Directive 2004/38/EC on the right of Union citizens and their family members to move and reside freely within the territory of the Member States?
 - Which **body** will be responsible for **registration of Union citizens**? Please provide information on the body, the number of its staff and its training.
 - Which **body** will be responsible for **issuing the residence cards to family members** of a Union citizen who are not nationals of a Member State? Please provide information on the body, the number of its staff and its training.

- Which **body** will be responsible for **granting every facility to obtain the necessary visas** to family members who are not nationals of a Member State who are required to have an entry visa?
- Which **body** will be responsible for dealing with Union citizens and their family members' **obligation to report their presence** within the State's territory?
- Which **body** will be responsible for **Union citizens and their family members'** right of permanent residence? Please provide information on the body, the number of its staff and its training.
- Which **bodies** will be responsible for adopting the **decisions restricting free movement** of Union citizens and their family members on grounds of public policy, public security, public health and other grounds? Please provide information on the organisation of the bodies, the number of their staff and their training. Please provide details the possibility of judicial or administrative redress.

Electoral rights

Community measures lay down a framework of common principles according to which election of members of European Parliament must be organised.

Secondly, **Community action** in this area **guarantees** that **the citizens of Union** residing in a Member State of which they are not nationals can **participate to municipal and European parliamentary elections under the same conditions as the nationals** of that State.

The Member State of residence may require information on the possible **disqualification of electoral rights** in the home Member States. In order to prevent double voting in elections to the European Parliament, the Member States must appoint competent authorities to deal with **exchange of information** on electoral registration with other Member States.

In assessing the administrative capacity in this area, the following questions can usefully be asked:

- Which **bodies** and **institutions** are responsible for the implementation of the Act concerning the election of the representatives of the European Parliament by direct universal suffrage (annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20/09/1976)?
- Which are **the bodies** and **institutions informing citizens** of the Union about their electoral rights?
- Which **bodies** and **institutions** are responsible for handling **electoral registration** of citizens of the Union and applications to stand as a candidate?
- Which are the **bodies** and **institutions** granting **an attestation**, asking or providing another Member State with information that a person has **not been deprived of the right** to vote in elections to the European Parliament or that a person has not been deprived of the right to stand as a candidate in municipal elections or in elections to the European Parliament?

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- Have you established a **national contact point** to co-ordinate the exchange of information under Article 13 of Directive 93/109/EC?

24. JUSTICE, FREEDOM AND SECURITY

Effective implementation of the *acquis* related to co-operation in the field of justice, freedom and security requires Member States to have in place appropriate **administrative and other arrangements**, so as to ensure **close practical co-operation** between **Member States' institutions** and **organisations** working in the field of justice, freedom and security. Member States must have **institutions, management systems and administrative arrangements** which are up to **Union standards** with a view to implementing effectively the *acquis*, and in particular to implement measures with respect to external border controls, asylum and immigration, as well as measures to prevent and combat organised crime, terrorism and illicit drug trafficking.

Implementation of the *acquis* in specific areas of the Justice, freedom and security domain requires a number of **specific bodies and structures**. An overview of these is provided below. Overall, in order to allow these various structures to perform their tasks efficiently, adequate **staffing, infrastructure and equipment** are required. Staff must work in accordance with the **rule of law**; perform their duties in a fair, impartial, honest, trustworthy and professional manner; and must be duly trained. For the candidate countries, training is of particular importance, given that implementation of the *acquis* often requires from them the introduction of new structures and procedures for which so far non-existent expertise must be developed.

In general, it is **up to the respective Member State** to **decide** in **which way** exactly it **organises** its administrative bodies and its judiciary (subsidiarity), **provided** that the ***acquis* requirements are met** (task / quality performance). Due **co-ordination** between the various relevant authorities must be ensured.

Schengen and external borders

There is a need to ensure **effective control** of the EU's **external borders** by **specialised trained professionals**. All persons crossing the external borders must be checked in a systematic way, and effective border surveillance must be ensured between authorised border crossing points. This presupposes sufficient staffing by duly trained personnel, the number of which will depend on the nature of the border concerned (land border, sea border, airport), its geographical location, and the volume of border crossing traffic. Proper **co-ordination between authorities**, as well as close **co-operation between Member States and neighbouring third countries**, is of crucial importance.

An equal degree of control at external borders is required, carried out in accordance with uniform principles set out in the Schengen *acquis*. This will require also having the capability to exchange data with **the Schengen Information System**.

Member States should furthermore be in line with the international standards in relation to the **security of travel documents** and be equipped with the necessary technical devices for detection of counterfeit and falsified documents. This will also help Member States to participate in the **FADO** system.

Visa policy

Implementation of the *acquis* related to visa policy requires the presence of technical capacity to carry out the necessary checks for issuing visas (this is required when visas are being issued abroad, i.e. through embassies, consulates), which all services competent for issuing and controlling visas have access to, as well as the existence of a **national visa register**. Furthermore, Member States need to have the **capacity to detect falsified documents**. Finally, the proper functioning of a Member State's **consular services in third countries** must be ensured. *It should be noted that, although the new Member States would not be delivering Schengen visas before the internal border controls are lifted, guidance for applying the visa procedures should be sought from the Common Consular Instructions.*

External migration

Adequate, well co-ordinated and efficient administrative structures are required to **implement the *acquis* on migration of third country nationals** (including controlling immigration, admission of third country nationals for employment and for study purposes, family reunification). Member States must have the appropriate capacity to handle **readmission** and **expulsion**, including to remote countries of origin. **Co-operation** with other authorities responsible for the implementation of legislation on aliens, as well as with other Member States and third countries, is important.

Asylum

Implementation of the *acquis* on asylum requires the presence of a fair, effective and efficient **set of procedures** relating to the **treatment of asylum applications**, especially with regard to the safeguards necessary to respect fully the principle of non-refoulement. Furthermore, a functioning **structure** must be in place, with duly trained staff, to **conduct the asylum procedures, which includes meeting the requirements for the effective implementation of EURODAC**; this structure should be capable of handling applications within a reasonable time limit. Finally, there must be an **independent appeal procedure**.

Effective implementation of the **Dublin Regulation**⁷ requires due **co-operation** with other Member States and other states party to the Dublin Regulation and the European Commission.

Police co-operation and fight against organised crime

An **accountable, reliable and effective police organisation**, which **co-operates fully internally**, is essential for adequate implementation of the *acquis* related to co-operation in the field of Justice, freedom and security, and in particular for the fight against organised crime and new types of crime.

This presupposes the availability of an **integrated computer-based investigation system** accessible by the relevant police services, basic and further **training** tailored to the fight against specific types of crime, as well as **national statistical instruments**

⁷ Since the Dublin Convention is still applicable in the relations with Denmark, this Convention should be ratified.

for measuring the crime rate and clearing up rate. **Co-operation** between the police and other competent agencies is also essential

Furthermore, this requires the capacity to participate in **Europol**, to ensure that **liaison officers** in third countries work within the common framework established for this purpose by the Joint Action of 14 October 1996, and, within the **Schengen** framework, to co-operate with other Member States with which the Member State in question has a common border, for the purposes of **hot pursuit** and **cross-border surveillance**.

Co-operation in the field of drugs

Implementation of the *acquis* related to drugs requires participation in the **European information network on drugs and drug addiction (Reitox)** of the European monitoring centre for drugs and drug addiction (EMCDDA). Although the *acquis* does not specify any administrative structure at national level, present EU Member States have all set up **national focal points** for this purpose. They also have all prepared a **national drug strategy**.

A **clear allocation of tasks** and **co-ordination** between authorities competent for **drug demand reduction**, as well as between authorities involved in **reducing drug supply** is highly important. In addition, co-ordination must extend to all aspects of drugs policy including social and public-health aspects, enforcement measures, international co-operation and policy on youth Furthermore, adequate administrative capacity must be in place to **fight drug-related crime**. Due **co-operation** with other **Member States** must be ensured.

Customs co-operation

Full involvement in customs co-operation (*see Chapter 29 – Customs Union*) requires the establishment of an **integrated computer system** and the development of **risk analysis**, using, *inter alia*, information derived from **Memoranda of Understanding**.

Furthermore, due implementation capacity must be in place to **ensure inter-agency co-operation**, and **implement mutual assistance agreements**. The presence of a **special investigation service** with sufficient resources is required, as well as adequate methods for the fight against fraud, including the introduction of **mobile surveillance units**.

Judicial co-operation in criminal and civil matters

Appropriate administrative structures must be in place to **co-operate** with other Member States on the basis of Community instruments and the **international conventions** on judicial co-operation in criminal and civil matters included in the *acquis*. This includes the **capacity** to deal with such matters as the direct transmission of requests, the appointment of contact authorities, administrative offences, spontaneous information, requests for extradition, recognition and enforcement of civil judgements, and the transfer and enforcement of criminal judgements.

In the field of the protection of the euro against counterfeiting (Council Framework Decision of 29 May 2000), establishment of the competent national authorities (National Analysis Centre, National Coin Analysis Centre and National Central

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Office) and their effective functioning and cooperation with other Member State national authorities, OLAF, Europol and ECB, should be ensured. The relevant staff should be trained in the protection of the euro against counterfeiting.

25. SCIENCE AND RESEARCH

Due to its specificity, the *acquis* in the field of science and research does **not require any transposition** into the **national legal order**. However, in order to ensure the **successful implementation** of the *acquis* in this domain, notably the implementation of the RTD Framework Programmes, future Member States need to have appropriate capacities in the field of RTD.

Several candidate countries are associated with 6th EC Framework Programme. Some are also associated with 6th Euratom Framework Programme. In this capacity, they participate in Programme committees and in CREST as observers. A number of developments in the institutional set-up have already taken place. A network of National Contact Points (NCP) has been established in each of these countries.

In order to be successfully integrated into the European Research Area and to fully benefit of the possibilities offered by the 6th Framework Programme, the increase of the spending on RTD; the strengthening of links between research institutes/industry/SMEs; and further development of research infrastructures and administrative capacity should be encouraged in all candidate countries.

26. EDUCATION AND CULTURE

Education and training

No specific administrative structures are required for the implementation of the *acquis* in the field of education and training, except for the establishment in each Member State of a **National Agency** for the implementation of the relevant **Community programmes**, notably Youth, Socrates, and Leonardo.

These national agencies **manage** decentralised activities covered by these programmes and provide information and counselling to potential beneficiaries (institutions and individuals). They are contact points for the Commission and ensure due **co-ordination** between the various national ministries and other bodies concerned by these programmes.

Given that a number of candidate countries are already participating in the Community programmes in the domain of education, training, and youth, National Agencies do already exist in these countries.

27. ENVIRONMENT

At least one authority at national level must assume overall responsibility for the implementation of EC law in the field of environment. A national “competent authority” is also required in federal states, even where the bulk of the legislation is adopted and implemented at the level of the regional government. The competent authorities, especially where they have licensing or enforcement powers under environmental directives, should normally be public bodies or agencies of some sort.

Competencies may be divided among several institutions at the same level or at different levels. For example, a Ministry of Public Works may have responsibilities in the implementation of the directive on environmental impact assessment. Local, regional and national authorities may all have competence for issuing environmental permits controlling emissions to air, water or land. Monitoring and enforcement may be partially or wholly delegated to regional or local authorities. However, the division of competencies should be very clear between the different actors and levels.

Because of the particular nature of the Community environmental legislation it should be ensured that there are skilled professionals at all relevant levels ranging from environmental scientists, engineers and ecologists to environmental law experts.

There is an absolute need for strong and committed environmental inspectorates (at central and regional levels) with adequate resources, systems of fines and penalties. Provisions for criminal liability for serious violations should be in place.

As a general rule, competent authorities in the various domains should have the means to obtain the necessary information to fulfil their tasks from private as well as public sources. Where required, they should be able to duly report to the Commission.

The information below summarises by broad environmental sector the key administrative tasks to be fulfilled and the structures necessary to implement these tasks. More detailed and specific information for each individual piece of legislation can be found in the ‘Handbook on the Implementation of EC Environment Legislation’.

Horizontal legislation

a) EIA (Environmental Impact Assessment)

- Establish the competent authority (or authorities) to implement the permitting and evaluation procedures required, including arrangements for public participation in line with Directive 2003/35 (below);
- Establish protocols and administrative procedures with neighbouring member states to exchange information and consult with them regarding projects with potential trans-boundary impact, including arrangements allowing for public participation

b) SEA (Strategic environmental assessment)

- Select an authority or authorities which will **determine the application of the Directive** to particular plans and programmes. Ensure that authorities responsible for plans or programmes **integrate planning and assessment procedures** and have the capacity to carry out assessments, including consultation with environmental authorities and the public. Establish procedures by which those authorities give the necessary **information** about how the assessment has been carried out when they publish their decisions. Ensure that the authorities can establish appropriate **monitoring** arrangements.
- Establish **protocols** and **administrative procedures** with **neighbouring member states** to exchange information and consult with them regarding projects with potential trans-boundary impact, including arrangements allowing for public participation.

c) Access to environmental information

- Organise the **information services organisations** so as to provide an acceptable level of service to those wishing to access the information, e.g. in terms of staffing, databases and reporting facilities, and publicising the service to be provided;
- Organise the production of the “**State of the Environment**” reports and other publications.

d) Participation of the public in the preparation of certain plans and programmes relating to the environment and in environmental decision-making under the EIA and IPPC Directives (to be implemented by 25 June 2005)

- ♦ With respect to the preparation of plans and programmes listed in Annex I to Directive 2003/35/EC (in the areas of waste management, protection of waters against nitrate pollution, air quality assessment and management), establish arrangements for early and effective public participation. These are to include administrative arrangements for identifying the public entitled to participate, providing early information on the issue/ draft plans and programmes and the authorities responsible, for receiving and evaluating comments made by the public and for providing information on the decisions taken and underlying considerations, including the outcome of public participation;
- ♦ With respect to environmental-decision making under the EIA Directive and permitting/ permit updating under the IPPC Directive (see also below), establish administrative arrangements allowing for early and effective participation of the public concerned. These are to include arrangements for informing the public of the decision-making/permit application in question, of the authority/authorities in charge, for providing / making available related environmental information (such as EIA report), for receiving and evaluating comments made by the public concerned and for providing information on the decisions taken and underlying considerations, including the outcome of public participation;

Establish (the case given, bilateral) arrangements allowing for participation of the public affected with respect to decision-making/permitting with cross-border impact;

In relation to decisions taken under EIA/IPPC Directive, establish review procedures 'before a court of law or another independent and impartial body' allowing members of the public concerned to challenge the legality of decisions subject to public participation, and establish arrangements making available practical information on access to such review procedures.

e) Reporting

- Identify the **competent authority** (or authorities) to be appointed to implement the reporting Directive;
- Establish the **administrative procedure** to collect the **relevant data** and **report** to the **Commission**.

f) Civil protection

The **implementation** of these Decisions is based on Member States' recognition of the need to collaborate, co-operate and exchange experience in the fields of **civil protection** and **marine pollution**. The **main administrative tasks** include:

- The identification of intervention teams, supports and experts with a view to providing, on request, support to other Member States and third countries in the event of major emergencies.
- The identification of contact points able to react immediately 24 hours a day.
- the selection of the **competent authority** (or authorities) able to act as the **national representative** on the **Permanent Network of National Correspondents on Civil Protection**, and the **nomination** of a **representative** from the competent authority to participate in the **Management Committee** in order to advise the Commission on the Community action programme;
- the **review** of the **country's policy** on **accidental marine pollution**, and in particular the conditions for offering assistance to other Member States;
- the **selection** of the **competent authority** (or authorities) for **marine pollution**;
- the **identification** and **role of organisations** involved in the field of marine pollution and the lines of responsibility and communication between them;

g) The European Environment Agency Regulation

- **Identify appropriate institutions** and **organisations** to **collaborate** in the **European Environment Information and Observation Network (EIONET)** with its main components;
- **Inform** the **Agency** of the representative at the **national level** for the **EIONET** (National Focal Points, European Topic Centres, National Reference Centres and the Main Component Element).

h) The LIFE Regulation

- Appoint a **competent authority** to act as a **national focal point** for **evaluation** and **forwarding applications** to the Commission.

i) The Environmental Liability Directive

- Appoint one or several **competent authorities** responsible for fulfilling the duties provided for in the Directive in respect of the prevention and remedying of environmental damage. These authorities will have contacts both with the operators that have caused environmental damage or an imminent threat thereof and interested third parties (including environmental non-governmental organisations), which are entitled to request the competent authorities to take action.
- Ensure that the designated competent authorities do have the expertise and means enabling them to **determine which remedial measures should be taken** in accordance with the criteria laid down in the Directive.
- Ensure that the appropriate administrative cooperation mechanisms are in place in case of **cross-border damage** between Member States.
- Ensure that the appropriate administrative mechanisms are in place in order to allow for the smooth running of the **reporting requirements** under the Directive.
- The competent authorities are due to be in place at the date of transposition of the directive, which is 30/04/2007.

j) The Forest Focus Regulation

Designate bodies competent to propose the national programmes and to implement them.

Air quality

- **Appoint a competent authority** appropriate in terms of its technical expertise, its relationship with other governmental and non-governmental bodies, its enforcement powers and its authority to report to the Commission;
- Identify and appoint **appropriate institutions** to carry out **air quality assessment** (including monitoring, modelling), the compilation of **inventories** and **independent quality assurance** in all the different areas;
- Provide for **technical advice on pollutants** that require **quality assessment**;
- Provide for suitable arrangements for **data handling** and **storage**;
- Ensure that **consultations** with **adjoining Member States** can be held when necessary;
- Ensure that the **mechanisms** exist to **inform the public rapidly** when necessary.

EU greenhouse gas emission allowance trading scheme:

- Establish the **competent authority** (or authorities) to **implement the permitting, and allocation procedures** required, and to carry out functions relating to maintaining a **registry**;
- Ensure that the competent authority can manage **reporting** procedures, and is able to **monitor compliance** and carry out **enforcement measures**.

Waste management

- Identify the **relevant competent authority** (or authorities) to **implement the Community waste legislation**; clearly establish the **division of competencies** among the **different actors** (central government, environmental agencies working on behalf of the central government, regional and local governments, municipalities, waste management companies, industrial /commercial waste producers, public research institutions).
- **Competent authorities** should be established which should be **in charge of**:
 - Development of a **waste management strategy** and implementation of planning at central and local levels;
 - Issuing **licenses/permits**;
 - **Supervising, monitoring and inspecting** of waste management facilities and activities;
 - Initiating and pursuing **enforcement** actions;
 - Ensuring **data collection**, analysis and reporting.

Water quality

- Ensure that the **institutional framework** is **organised** so as to operate on a **river basin basis**;
- Establish organisations with expertise and resources to act as **competent authorities**;
- Collect the necessary **data** capable of being assessed on a river basin basis;
- Ensure that there are organisations capable of undertaking **sampling programmes**;
- Ensure that there are **laboratories** which can analyse water and effluents in the prescribed manner, using **accredited and standardised methods**;
- Establish **clear links** between the **competent authority control government** and **other organisations** which have responsibilities for issues that affect the quality of water;
- Identify clearly the **responsibilities** for **setting and meeting water quality objectives** and **limit values**, as well as for **issuing permits**;
- Ensure that the **legal/institutional framework** gives sufficient **powers** to the competent authorities to enter premises, **inspect and sample**, authorise or otherwise **control industrial effluent, regulate urban water discharges, regulate the quality of drinking water and control activities within river catchments**.
- Ensure that there are **arrangements** in place for **monitoring, surveillance and review of water and affluent quality**.
- Ensure that there is an **adequate data processing system** available.

- Ensure that there is an **adequate system/means of consultation/reporting** with the Commission, the public, organisations effected by river basin action plans, and other countries where cross border issues are concerned.

Nature protection

The governments of the Candidate Countries should focus on efforts and actions that are fundamental to EC approximation in this sector. They should in particular ensure that the steps set out below are taken.

- A **single national government authority** should be given the **overall responsibility** and authority for planning and managing the process of achieving compliance with EU policies and legislation. In many Member States the Ministry of Environment includes a number of specialists, whilst a specialist government agency (such as an Environmental Protection Agency or a Nature Conservation Agency) holds the majority of expertise necessary for this sector.
 - Where national constitutions or administrative arrangements confer responsibility for nature issues on regional bodies, these authorities should ensure that they have the necessary capacity to carry functions related to the planning, site protection and management and public awareness responsibilities in an adequate fashion.
- Arrangements should be put in place for the effective **involvement and participation** of all other bodies or interest groups which have a significant function to perform in relation to nature protection (environmental agencies working on behalf of central government e.g. nature conservation bodies and national research centres, regional and local government, research institutions e.g. universities, other stakeholders e.g. farmers, landowners, hunters, fishermen).

Industrial pollution control and risk management

It should be ensured that the **institutional framework** in this field can operate on an **integrated basis**. In particular, the steps set out below must be taken.

- Establish organisations that have the expertise and resources to act as **competent authorities**.
- Ensure that these organisations work in a **co-operative fashion** to ensure an **integrated and co-ordinated** approach, **avoiding overlaps**.
- Ensure that there are **clear links** between the competent authorities, central government, and other organisations that have responsibilities for issues that affect pollution control and hazard management such as local, health and planning authorities.
- Ensure that there are arrangements in place for the effective involvement and participation of all other bodies or interested groups, including the public in conformity with Directive 2003/35/EC, which have a significant role or function to perform in relation to pollution control and major accident hazard issues.
- Ensure that there is a suitable **accreditation body** established.
- Ensure that there are competent bodies that can issue **guidance** on: best available techniques (BAT); permitting arrangements and procedures; transitional

arrangements for dealing with industrial air pollution and combustion plants; preparation of accident prevention policy; preparation of emergency plans and safety reports; inspections; environmental management systems and approaches to accreditation; standards for eco-labels.

- Ensure that there is an adequate system in place for **recording** and **processing data** and preparing **reports**.
- Ensure that there are adequate means/procedures of **consultation / reporting** with the Commission, the public, organisations affected by IPPC, organisations which undertake accident prevention, other countries where cross-border issues are concerned.

Chemicals and GMOs

Chemicals:

- Ensure that a **competent authority** or authorities is designated.
- Ensure that the competent authority has taken steps to **consult stakeholders**, and has prepared and published **guidance notes** for them. The stakeholders include environmental agencies working on behalf of central government (e.g. regulatory authority, national standards laboratory, veterinary service), regional and local government, municipalities, chemical industry (dangerous substances, manufacture of products including asbestos), construction industry, the public and research institutions (e.g. universities).
- Ensure that the competent authority can manage **notification** and **authorisation** procedures, and is able to **monitor compliance** with the regulations and carry out **enforcement measures**.
- Ensure that the competent authority has established adequate **data collection** and data handling procedures to allow it to meet the **reporting requirements** of the directives and regulations; ensure that the competent authority has created formal reporting procedures; ensure that the competent authority has taken measures to provide a summary of the collected statistical information.
- Ensure that the competent authority can **guarantee that commercially sensitive information is not published**.
- Ensure that relevant and adequate **laboratories** are **authorised**.

GMOs:

- Appoint a competent authority appropriate in terms of its technical expertise, its relationship with other governmental and non-governmental bodies, its enforcement powers and its authority to report to the Commission (Directives 2001/18/EC; 98/81/EC and Regulation 1946/2003);
- Identify and appoint appropriate institutions to carry out environmental risk assessment and sampling and detection of GMOs (Directive 2001/18/EC and Regulation 1830/2003);
- Appoint competent authorities and focal points to liaise at international level with the Biosafety Clearing House (Regulation 1946/2003)

- Ensure that the mechanisms exist to inform the public rapidly when necessary (Directives 2001/18/EC; 98/81/EC and Regulation 1946/2003)

Noise

The following issues and requirements are **fundamental to EC approximation** in this sector.

- **Designate a competent authority** appropriate in terms of its technical expertise, its relationship with other governmental and non-governmental bodies and its enforcement powers to **report to the Commission** information on noise as required by relevant EC legislation.
- **Designate competent authorities** responsible for making and, where relevant, approving **strategic noise maps** and **action plans** for agglomerations, roads, railways and airports covered by the Environmental Noise Directive 2002/49/EC.
- Provide for suitable arrangements for **information of the public** about noise exposure and its effects, and for **public participation and involvement** in noise management.
- **Ensure** that **consultations** with neighbouring Member States can be held where necessary for strategic noise mapping and action planning.
- **Designate competent authorities** responsible for the follow up of the implementation of Directive 2000/14/EC on noise from outdoor equipment, including **market surveillance**
- *Appoint notified bodies responsible for carrying out or supervise the conformity assessment procedures under Directive 2000/14/EC*

28. CONSUMER AND HEALTH PROTECTION

An adequate institutional structure in charge of consumer affairs needs to be set up within the public administration. This includes the allocation of general competence in this domain to one designated authority, which will be responsible for co-ordinating policy in the field of consumer protection. Consumers themselves should also be represented in discussions on consumer policy.

Consumers must have effective access to justice through the courts in order to seek individual redress. Out-of-court bodies should also exist in order to provide alternative dispute resolution systems which can provide consumers with simple and effective access to justice whilst avoiding the cost, delay, complexity and representation which can be implied by seeking redress through the courts. These should be linked to similar bodies in other Member States in order to help resolve cross-border disputes.

Safety related measures

For **product safety**, administrative structures and enforcement powers should be in place to:

- ensure that effective, proportional and dissuasive sanctions are applied as necessary;
- ensure that systematic and co-ordinated market surveillance systems are put in place aiming at comparable levels of effectiveness and able to guarantee a high level of consumer protection;
- ensure that the market surveillance systems work in a transparent manner and are open to consumers and other stakeholders;
- provide the results achieved by the market surveillance systems for a periodic assessment by the Commission;
- set-up a framework for systematic collaboration between the enforcement authorities, with the participation of the Commission;
- ensure that the authorities make use and are informed of the most recent scientific developments;
- prohibit export of dangerous products to non-member countries;
- recall dangerous products already supplied to consumers, and to inform consumers about the risks adequately;
- ensure the temporary prohibition of the placing on the market of certain products, pending verification and assessment of their risks;
- ensure rapid action, in case of serious risks requiring immediate or rapid intervention;

- and to notify the Commission, through Rapid Alert Systems, of measures taken which restrict the placing on the market, or require the withdrawal, of a product or product batch and of voluntary action by producers or distributors instigated by or agreed with the authorities.

Market surveillance

Independent and effective market surveillance and the establishment and application of enforcement powers are of the utmost importance to ensure the effective and consistent implementation of Community requirements. Authorities need to be able to monitor the market for consumer goods and services at local level in order to be aware of breaches of consumer protection rules and to ensure they are corrected, both for safety issues and for economic interests.

Further details are given above and below under “safety related measures” and “non-safety related measures”.

Non-safety related measures

Market surveillance must also address the **economic interests** of consumers. This includes commercial communications to consumers prior to contracts being agreed (for instance misleading or comparative advertising, and prior information requirements in the areas of consumer credit, timeshare, distance selling and indication of prices). It also needs to cover the terms of those contracts (also regarding consumer credit, timeshare and distance selling, plus unfair contract terms and guarantees).

The competent authorities should also respond to information from consumer complaints. Persons or organisations with a legitimate interest in bringing cases concerning infringements of consumer protection rules need to be able to do so, such as public bodies concerned with consumer protection and non-governmental consumer associations. The competent authorities also should be able to consider infringements against the collective interest of consumers brought by relevant organisations in other Member States and issue injunctions where necessary.

Consumer organisations

Although not specifically required under the *acquis*, organisations representing consumers’ interests are needed to ensure that consumer protection interests are taken into account in developing policy and in its implementing and enforcement. Directly or through consumer associations information and education should be provided to consumers so that they are aware of their rights and able to exercise them.

Public health

Decision 2119/98/EC of the European Parliament and of the Council setting up a network for the **epidemiological surveillance and control** of communicable diseases in the Community assumes the existence of national systems for communicable disease surveillance and control. Under Decision 2119/98/EC Member States should designate:

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- Structures and/or authorities competent for collecting information relating to the epidemiological surveillance of communicable diseases and for the dissemination of the relevant surveillance data at Community level.
- Competent- competent public health authorities responsible for determining the measures which may be required to protect public health.

Both authorities are expected to appoint the contact point for networking with the EC and other MS.

Implementing Commission Decision 2000/57/EC Member States are expected to organise 24 hour/ 7 days a week contact point for the purpose of Early Warning and Response System for rapid exchange of information on potentially **health threatening events**, and for assuring the required consultation before taking preventive measures. Every year, the competent authorities in Member States shall submit to the Commission not later than 31 March an analytical report of the events and on the procedures applied within the early warning and response system.

Under Commission Decision 2003/542/EC amending the Decision 2000/96/EC as regards the operation of dedicated surveillance networks, Member States shall, through their designated structures and/or authorities, specify a **contact point** for each dedicated surveillance network, delegated to be their national representative to provide data and information in accordance with Articles 3 and 4 of Decision 2119/98/EC. The networks are enumerated in the annex to the Decision.

Apart from these bodies, it is **entirely** for **each Member State to decide** which **structure it will use, provided** that the **effect of implementing the requirements** of the *acquis* is **achieved**. For the candidate countries, this is largely a question of strengthening existing institutions, in order to enable them to carry out new tasks.

- Under the Health Security Programme Member States should designate the competent authority and 24 hours /7 days contact point for the purpose of the Rapid Alert System BICHAT (Biological, Chemical, Atomic Threats), exchanging the information and assuring consultation in case of events of public health threats related to use the Biological, Chemical and radiological agents.
- Appropriate and sufficient **administrative infrastructures to follow up and participate** in EC **public health programmes**.
- **Specific competencies at ministerial level** to deal with **tobacco control issues** and ensure the implementation of the relevant directives.
- Appropriately trained **health care professionals**, who are an important element in successful co-operation in the light of the new Community competencies created by the Amsterdam Treaty.
- **Specific competencies** to deal with ensuring the **quality and safety of organs and substances of human origin, blood and blood derivatives and the implementation of the relevant directives**.

29. CUSTOMS UNION

Administrative and operational capacity

In order to assist the candidate countries in preparing their customs administrations to operate effectively and in accordance with EC legislation and standards, a so-called Customs Blueprints process was launched in 1998. This exercise encompasses thirteen Customs Blueprints, which each represent a pillar of best practice for operating a modern customs administration in the context of the European Single Market. These Blueprints guide the improvement of the operational capacity in the customs services of the candidate countries by setting measurable standards of achievement in each customs function. They lay down minimum requirements for candidate countries to improve operational capacity, organisation and management, training, trade facilitation, infrastructure and equipment. In doing so, they cover a range of administrative structures explicitly required by the acquis, as well as structures which are not explicitly required, but nonetheless necessary for the effective implementation of the acquis.

The Customs Blueprints were drawn up by the Commission (DG Taxud) in co-operation with, and approved by, EU Member States. They are used by the candidate countries themselves as a guide to their reform process, and by the Commission as “benchmarks” against which to measure shortfalls in the candidate countries’ operational capacity, as well as subsequent improvements. They also provide a means of directing technical assistance. On the basis of the Customs Blueprints an exercise of gaps and needs analysis is carried out during the pre-accession period, the purpose of which is to assess the state of readiness in each of the candidate countries, by comparison with the targets identified, and to identify shortages in administrative/ operational (IT) capacity.

Below is a summary of the Customs Blueprints. The Blueprints themselves can be consulted for further guidance on this subject.⁸

Implementation of the (Community competence) Customs Union *acquis* requires the existence in each Member State of effective **customs authorities** which need to ensure the **correct, uniform application of customs rules** and, where appropriate, of other provisions applicable to goods subject to customs supervision. The Customs authorities must be granted extensive powers of **control**, and the economic operators subject to these rules must have a right of **appeal**.

Ensuring the correct, uniform application of customs rules and related provisions requires the presence of a **central customs administration**, as well as of operational functions at **regional** and **local levels** as appropriate, including a presence at **ports, airports, and external land and sea borders**. Roles, responsibilities and links between these different levels must be clearly defined and transparent.

Given that there is no Community customs administration in place, it needs to be ensured that customs regulations are implemented in a **harmonised** way at any point within the customs territory of the Union. In this context close **co-operation and**

⁸ A copy of the Customs Blueprints can be obtained from DG Taxud.

mutual administrative assistance between the national Customs administrations, as well as the development of **certain computerised systems**, including inter-operational systems, are of crucial importance.

The main **tasks** to be fulfilled by the customs authorities are set out below.

- Ensuring the **harmonised implementation** of the *acquis*.
- Ensuring that Community own resources are accurately **collected**, recorded in the **accounts, disbursed, reported** and **audited**, both nationally and by the EC. This implies that:
 - a system is in place to **register traders' liabilities** to customs revenue;
 - **payment accounting systems** for deferred, cash and other types of customs related payment are in place and linked to the register of customs liabilities;
 - **accounting** and **revenue allocation processes** are clearly defined and executed and agreed with national and EC standard provisions;
 - registration of revenue liabilities, their processing, accounting and allocation are separate modules of an **integrated customs information system**.
- Ensuring **border** and **inland control**, so as to facilitate the flow of legitimate passengers and trade while ensuring the collection of Community revenues, as well as the social protection of national and EU citizens. This implies that:
 - controls are based upon **intelligence-led risk analysis** and **selectivity techniques**;
 - controls are **systematic, comprehensive** and **flexible** and **consistently applied**;
 - controls take account of **relevant international conventions** and **trade / customs agreements**.
- Ensuring the **detection, prevention** and **investigation of fraud**, as well as the preparation of cases for the prosecution of offenders; **enforcing compliance** with national and EC legislation through the consistent application of the law. This implies in particular that:
 - controls are based upon **intelligence-led risk analysis** and **selectivity techniques**;
 - **relationships** and adequate **co-operation** are established with other enforcement bodies, the **prosecution services** and the **courts** which ensure that offence cases are dealt with promptly and efficiently;
 - a comprehensive **intelligence and information system** in support of investigation and enforcement is in place.

In order for the customs administration to duly implement these tasks, the following **conditions** should be fulfilled:

- the customs administration must have a solid **legal base** clearly setting out its organisation and structure, including administrative structures, explaining in detail the implementation of the *acquis* for the operational staff;
- the customs administration must be subject to **independent audit**;

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- **staff** must work in accordance with the **rule of law** and perform their duties in a fair, impartial, honest, trustworthy and professional manner;
- a **training strategy** should be in place, which ensures regular training of the staff. This includes participation in the Customs 2007 programme, which focus on harmonising EC practices);
- the customs administration should have an appropriate **human resources policy**, to ensure that proper staff is selected for employment in the customs administration;
- the customs administration must **report** annually on its activities to the ministry of finance, other government departments, and other key stakeholders (including trade);
- an effective and harmonised **offence and penalty regime** must be in place, whereby penalties reflect the concept of “**proportionality**”, while being **sufficiently strong** to combat irregularities and fraud;
- an **appeal procedure**, with time limits, must be established and made public;
- effective **co-operation** must exist, **nationally**, with other national **law enforcement agencies**, and **mutual administrative assistance** and **co-operation** must be developed, at Community level and **internationally**, with other **customs administrations** and other **law enforcement agencies**; this includes the implementation of the Customs Information System (CIS) and any other IT systems/databases developed for the pursuit of Community-competence customs frauds and irregularities;
- a working **relationship** must be established with **economic operators**;
- the customs administration must have the support of **customs laboratories** which are capable of establishing, when necessary, the nature of goods in view of their tariff classification, and thus to allow for the correct customs treatment of such goods. Customs laboratories also provide support for the prevention of illegal traffic in goods;
- there must be an **appropriate transit system**, based upon the rules of Community Transit and the Common Transit convention, which supports the effective control of transit operations, facilitates legitimate trade and the movement of legitimate goods, using modern technology (New Computerised Transit System – NCTS – based upon MMC (Minimal Common Core = Commission-developed Transit Application) or an NDTA (Nationally Developed Transit Application) that is NCTS-compatible, interoperating via the secure Common Communications Network/Common Systems Interface – CCN/CSI);
- an **Integrated Tariff Management System (ITMS)** capable of **interfacing with EC systems** via the aforementioned secure CCN/CSI network must be in place, which meets the user requirements of the customs administration. In particular, the following IT systems/databases should be in place:
 - Integrated Community Tariff (TARIC);
 - Management of tariff quotas, ceilings and goods under surveillance (TQS);

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- European Binding Tariff Information (EBTI);
- Information System for Processing Procedures (ISPP);
- Specimen Management System (SMS);
- European Customs Inventory of Chemical Substances (ECICS): there is currently no IT support required, nevertheless new IT interoperability and accessibility projects will have to be implemented;

For the management of applications for new autonomous tariff quotas and suspensions for Binding Origin Information (ORNET/BOI) there is currently no IT support required;

Further, new IT interoperability and accessibility projects will have to be implemented in accordance with the security and modernization aspects of the EC Customs Code reform

- Participation in the development of the Automated Export and Import Control Systems (AES and AIS), the Application for Authorised Economic Operators (AEO) and the risk information management application (RIF);
- Participation in the development of the interoperability between customs administrations and other administrations or agencies involved in customs transactions within the same Member State; accessibility for the trade community (common customs information portal and single access point for transactions).

30. EXTERNAL RELATIONS

Common commercial policy

Participation in the formulation and implementation of the EU's **Common Commercial Policy** requires the existence of functioning and sufficiently staffed **Ministry(ies)** of National Economy/Industry and Trade/Foreign Affairs. Close co-ordination between all services responsible for trade and trade related issues must be ensured. This includes inter alia services responsible for technical and industrial standards, sanitary/phytosanitary issues, intellectual property rights or government procurement rules. Moreover, it requires a **functioning and modern customs administration** (see Chapter 29- Customs Union).

This implies also the presence of appropriately trained officials with the necessary technical and linguistic skills to participate in the various policy making bodies at different levels, in particular in the 133 Committee, as well as in the 133 committees for textiles and steel, the shipbuilding and export credits committees and in the Commercial Questions Group.

Prior to, and up until the day of accession, applicants should ensure that the administrative statistical authorities which provide the data on tariffs and trade necessary for discussions under Article XXIV:5 GATT and the negotiations under Article XXIV:6 GATT continue to provide the information necessary for the establishment of the concordance tables..

Development policy and humanitarian aid

Participation in the formulation and implementation of the EU's Development and Humanitarian Aid policies require the existence of a functioning **Ministry** or **ministerial department** of Development, which can also ensure complementarities between national actions and Community action in this field. This implies also the presence of appropriately trained officials who have the necessary technical and language skills to participate in the various policy making and management bodies at different levels, including Council working groups and committees for the management of aid programmes (including EDF, ALA, MEDA, HAC).

In view of Member States' financial contribution to the **European Development Fund**, the national **budget organisation** should enable **effective management of flows of funds** for this purpose to the EC budget (see Chapter 33 – Financial and budgetary provisions).

31. FOREIGN, SECURITY AND DEFENCE POLICY

CFSP and ESDP

Participation in the formulation and implementation of the EU's Common Foreign and Security Policy (CFSP) and the European Security and Defence Policy (ESDP) requires the existence of functioning administrative structures in the **Ministry of Foreign Affairs** and possibly other line ministries, with appropriately trained officials who have the necessary technical and language skills to participate in the various policy making bodies and Council working groups at different levels. Foreign Ministries' organigrammes will include the posts of "**Political Director**" and "**European correspondent**".

Each Member State must have a functioning **cipher system** fully compatible with established EU technical and security standards for the transmission of classified information, in order to participate in the exchange of encrypted electronic CFSP and ESDP information as of the moment of accession.

Policy instruments

Furthermore, the implementation of CFSP Joint Actions and Common Positions requires the existence of an appropriate administrative infrastructure in ministries and law enforcement agencies to apply, monitor and control the implementation of EU sanctions and restrictive measures. It is of particular importance that the structures concerned have the necessary powers and administrative capacity to duly enforce the relevant EU measures.

32. FINANCIAL CONTROL

The elements listed below are of key importance to ensuring that national and European funds are effectively controlled. It should be noted that the **indicators set out below** can be used to **assess a country's capacity** in the context of the control of **pre-accession funds** and, **upon accession**, the control of **Own Resources, Agricultural Funds** and **Structural Actions**.

Public internal financial control

- A well-defined **Public Internal Financial Control (PIFC) system**, i.e. the overall internal control system performed by the Government or by its delegated organisations, aiming to ensure that the **financial management and control systems** as well as the **internal audit systems** of its **national budget income and spending centres (including foreign funds)** comply to the relevant **legislation, budget descriptions**, the principles of **sound financial management, transparency, efficiency, effectiveness** and **economy**. The PIFC system should be developed on the basis of a PIFC Policy Paper, analysing and benchmarking existing public control and audit systems against internationally accepted standards and EU best practice.
- Demonstration of **effective financial management and control, accounting and reporting systems** meeting **internationally accepted control standards** (on the basis of managerial accountability)
- Performance of **ex-ante and ex post financial controls** on the basis of **risk analysis**. Ex post financial controls (inspection) are to be differentiated from internal audit.
- Demonstration of an effective **functionally independent internal audit service (either centralised or decentralised)**, meeting **internationally accepted audit standards**.
- **Clear institutional and personal responsibilities** in relevant PIFC regulations.
- The principle of **separation of powers** must be respected so that there is no risk of conflict of interest between managing and controlling tender and contracting procedures, procurement, commitments, disbursements and recoveries.
- Demonstration of **central harmonisation and co-ordination of control and audit** methodologies and of the implementation of the PIFC Policy Paper to ensure a **common control/audit approach** throughout the public sector. The implementation of PIFC includes drafting template manuals for control and audit, audit charter and code of ethics, audit trails, PR and networking control and audit professions, training, etc. The Central Harmonisation Units should check the follow-up of its recommendations through compliance tests. Adequately **trained staff** in sufficient numbers must be available and assigned to the task. Specialised staff should have suitable **controlling or auditing skills and experience**, as well as **language skills**, and should be fully **trained** in **controlling and auditing Community programmes**.

- INTOSAI standards should be adopted; i.e. all types of audit work carried out should cover the **full range of regularity and performance audit** as well as presence of **audit manuals**.
- A **detailed description** of the **audit trail**, i.e. the cash flow and the management information-communication flow due to EC funds.
- **Procurement rules** which are **endorsed by the Commission** as meeting the requirements of Title IX of the Financial Regulation applicable to the General Budget of the European Communities.

External audit

- Presence of an independent Supreme Audit Institution (SAI) responsible for the **External Audit** with appropriate legal basis; i.e. **operational** and **functional independence** of the SAI from the legislative (Parliament), the executive and the judicial organs of State. There should be a clear authority to **audit final beneficiaries of EU resources**. The SAI's reporting requirements to Parliament including **a formal mechanism for reactions of Parliament of the SAI's reports** should be in place.

Protection of EC financial interests

In the field of the **protection of the financial interests of the European Communities**, an operationally independent anti-fraud co-ordinating structure or service, responsible for the co-ordination of all legislative, administrative and operational aspects of the protection of the Communities' financial interests should be established and its effective functioning and co-operation with OLAF should be ensured.

33. FINANCIAL AND BUDGETARY PROVISIONS

National budget formulation and execution

The *acquis* does **not prescribe** any **particular model** of **budgetary system** for the Member States. However, besides the procedures and instruments needed to support budgetary discipline required in the context of the EMU, the budget organisation should enable effective management of **flows of funds from and to the EC budget**. Management of flows of **funds from the EC budget** is of particular importance for the implementation of all EU policies, and **particularly** so for **co-financed measures**.

Own resources

Implementation of the *acquis* in this regard **requires** the **presence** in each Member State of a **body** or **bodies** that can properly **establish** and **make available** the **country's contribution** to the **own resources** of the **Community**, for the various types of own resources (**traditional, VAT, GNI**). (In case more than one body is involved, experience shows that the presence of a **co-ordinating agency** is particularly helpful.)

This implies the **capacity** to calculate in a **reliable, accurate** and **transparent** way the level of **customs duties** and **VAT** collected by the country in question over a given time, and to duly **calculate** the country's **GNI**. These calculations must be made in a **harmonised** and **controllable way**. The information on the basis of which these calculations have been made must be kept available for at least three years, so as to allow for control by the Commission.

Besides the administrative capacity to properly **calculate** the level of the country's contribution to the own resources of the Community, the country in question must have the **administrative capacity** to duly **collect** and **transfer** in a timely manner the **resources** thus established **to the Community budget**. Furthermore, each Member State must have the administrative capacity to **accurately** and **regularly report** to the Commission on the situation with regard to each of the types of own resources.

ASSESSMENT OF ADMINISTRATIVE CAPACITY UNDER CHAPTER 22

section	Reference acquis	requirement	answer	source	remarks
1. Determination of eligible areas	Title I	Availability of data Determination of NUTS			
Objective 1	Article 3	PIB/cap/PPS for three recent years NUTS 2 division			
Objective 2	Article 4	Unemployment rates at NUTS 3 level or below			
INTERREG	Guidelines	NUTS 3 division			
2. Planning and programming capacity	Title II	Legal framework Interministerial co-ordination (organisation and procedures), allocation of responsibilities between ministries Partnership with local and regional authorities			
Preparation of plans	Article 13-14-15	Geographical coverage Mode of selection of priorities Consistency with National development plans			
CSF	Article 17	Procedures for preparation, Priorities for Community funding Indicative financing plan Possible sources of funding			

section	Reference acquis	requirement	answer	source	remarks
Operational programmes	Article 18	Selection of managing authority (RDA, representative of the State, elected body)			
Community initiatives	Article 20-21	Allocation of responsibilities corresponding to the area of intervention of INTERREG (Ministries, regional/local authorities)			
3. Management	Title III And article 34	Budgetary procedures in force			
Budget commitments	Article 31	Existence of multiannual commitments or similar procedure Cofinancing procedure			
payments	Article 32	Paying authority Payment procedures			
Use of the €	Article 33	Compliance with Commission's rules			
4. Monitoring, control, evaluation	Title IV				
Monitoring	Article 35	Monitoring committee Monitoring of projects Availability of monitoring indicators			

section	Reference acquis	requirement	answer	source	remarks
Financial control	Articles 38, 39	Separation of functions Compliance with other community policies: - competition - state aids - public procurements - equal opportunities procedures of certification of expenses procedures of correcting irregularities			
Evaluation	Article 40	Independent evaluation Availability of data (in particular for ex-ante evaluation			