II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION RECOMMENDATION

of 9 December 1996

concerning Environmental Agreements implementing Community directives

(Text with EEA relevance)

(96/733/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the second indent of Article 155 thereof,

Whereas the Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council on 1 February 1993, on a Community programme of policy and action in relation to the environment and sustainable development [1] recognizes that the involvement of all levels of society in a spirit of shared responsibility requires a deepening and broadening of the range of instruments to complement normative legislation;

Whereas that Community programme indicates that legislative measures alone are not sufficient to bring about changes in current trends and practices;

Whereas despite some progress, broadening the range of instruments has proved more difficult than was envisaged, so that more efforts are needed to encourage maket-based instruments;

Whereas agreements between public authorities and industry ('Environmental Agreements') are a policy instrument which can cost-effectively contribute to achieving environmental objectives by encouraging a pro-active approach from industry;

Whereas the Commission wishes to promote the use of Environmental Agreements and, in its Communication to the Council and the European Parliament regarding Environmental Agreements [2], has outlined the advantages and the criteria for the success of such agreements;

Whereas Environmental Agreements might in certain circumstances complement legislation or replace otherwise more detailed legislation when they are used as a means for implementing certain provisions of directives;

Whereas directives are binding upon each Member State as to the result to be achieved, so that Member States using agreements to implement a directive need to be able at any time to guarantee the results imposed by that directive;

[1] OJ No C 138, 17. 5. 1993, p. 1.
[2] COM(96) 561 final.

Whereas, in order to ensure full compliance with Community directives, Environmental Agreements implementing certain provisions of directives need to take a binding form and should meet the requirements ensuring their transparency, credibility and reliability;

Whereas directives should specifically list the provisions of a directive which may be implemented by an Environmental Agreement;

Whereas binding requirements for agreements implementing the stated provisions of a directive should be laid down in those directives;

Whereas Member States should ensure that such Environmental Agreements comply both with the Treaty and in particular its internal market requirements and competition rules, and also with Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations [1], as last amended by Commission Decision 93/139/EC [2];

Whereas Environmental Agreements as well as all relevant information concerning them should be formally notified to the Commission alongside other national measures taken to implement the Directive, in order to permit verification of their effectiveness as a means of transposition,

HEREBY RECOMMENDS:

1. The purpose of this Recommendation is to give guidelines for the use of agreements between public authorities and the economic sectors concerned ('Environmental Agreements') as a means of implementing Community Directives in the field of the environment.

2.1 Where provisions in Directives in the field of the environment explicitly allow for implementation by way of Environmental Agreements, Member States should observe the following guidelines.

2.2 Agreements should in all cases

(a) take the form of a contract, enforceable either under civil or under public law;

(b) specify quantified objectives and indicate intermediary objectives with the corresponding deadlines;

(c) be published in the national Official Journal or as an official document equally accessible to the public;

(d) provide for the monitoring of the results achieved, for a regular reporting to the competent authorities and for appropriate information to the public;

(e) be open to all partners who wish to meet the conditions of the agreement.

2.3 Agreements should, where appropriate,

(a) establish effective arrangements for the collection, evaluation and verification of the results achieved;

(b) require the participating companies to make available the information regarding the implementation of the agreement to any third person under the same conditions applying to public authorities under Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment [3];

(c) establish dissuasive sanctions such as fines, penalties or the withdrawal of a permit, in case of non-compliance.

[1] OJ No L 109, 26. 4. 1983, p. 8.
[2] OJ No L 32, 10. 2. 1996, p. 31.
[3] OJ No L 158, 23. 6. 1990, p. 56.

3.1 In concluding environmental agreements, the competent authority should make provision for examining the progress reached under the agreement and for taking additional measures in due time, if this is necessary to fulfil the obligations under the Directive.

3.2 As a party to the agreement, the national authority should also ensure its compatibility with the Treaty and in particular with the Treaty's internal market requirements and competition rules and also with Directive 83/189/EEC.

4. When used as a means of implementing Community directives, Environmental Agreements, together with all relevant information concerning them, should be notified to the Commission at the same time as other national measures taken to implement the directive, in order to allow verification of their effectiveness as a means of transposition.

5. This Recommendation is addressed to the Member States.

Done at Brussels, 9 December 1996.

For the Commission

Ritt BJERREGAARD

Member of the Commission