

GUIDE TO THE

MAIN ADMINISTRATIVE STRUCTURES REQUIRED

FOR IMPLEMENTING THE *ACQUIS*

(updated: February 2013)

DISCLAIMER:

THIS GUIDE IS DESIGNED AS A WORKING TOOL FOR COMMISSION EXPERTS IN HEADQUARTERS AND DELEGATIONS INVOLVED IN THE ENLARGEMENT PROCESS AS WELL AS FOR EXPERTS WORKING FOR THE COMMISSION. IT MAY ALSO BE USED TO PROVIDE INFORMAL GUIDANCE TO ENLARGEMENT COUNTRIES TO SUPPORT THOSE EXPERTS IN PARTNER COUNTRIES WHO ARE ENGAGED IN A PROCESS OF APPROXIMATION OF THEIR LEGISLATION AND ADMINISTRATION WITH THOSE OF THE EU. ALTHOUGH THIS GUIDE IS PREPARED WITH CARE AND IS REGULARLY UPDATED, IT MAY BE INCOMPLETE AND MAY CONTAIN ERRORS. THIS DOCUMENT IS NOT AN OFFICIAL DOCUMENT OF THE EUROPEAN COMMISSION AND IS NOT BINDING.

Table of Contents

| | | |
|------|--|----|
| 1. | Free movement of goods..... | 6 |
| 1.1. | <i>General principles</i> | 6 |
| 1.2. | <i>Horizontal measures</i> | 6 |
| 1.3. | <i>Old approach product legislation</i> | 12 |
| 1.4. | <i>New and global approach product legislation</i> | 12 |
| 1.5. | <i>Procedural measures</i> | 13 |
| 2. | Freedom of movement for workers..... | 15 |
| 2.1. | <i>Access to the labour market</i> | 15 |
| 2.2. | <i>Coordination of social security systems</i> | 15 |
| 3. | Right of establishment and freedom to provide services | 17 |
| 3.1. | <i>Right of establishment</i> | 17 |
| 3.2. | <i>Freedom to provide cross-border services</i> | 17 |
| 3.3. | <i>Postal Services</i> | 18 |
| 3.4. | <i>Mutual recognition of professional qualifications</i> | 20 |
| 4. | Free movement of capital..... | 22 |
| 4.1. | <i>Capital movements and payments</i> | 22 |
| 4.2. | <i>Payment systems and services</i> | 22 |
| 4.3. | <i>Fight against money laundering</i> | 23 |
| 5. | Public procurement | 24 |
| 6. | Company law | 26 |
| 6.1. | <i>Company law</i> | 26 |
| 6.2. | <i>Corporate accounting and auditing</i> | 27 |
| 7. | Intellectual property law | 29 |
| 7.1. | <i>Copyright and neighbouring rights</i> | 29 |
| 7.2. | <i>Industrial property rights</i> | 30 |
| 7.3. | <i>Enforcement</i> | 31 |
| 8. | Competition policy | 32 |
| 8.1. | <i>Anti-trust and mergers</i> | 32 |

| | | |
|-------|---|----|
| 8.2. | <i>State aid</i> | 32 |
| 9. | Financial services | 33 |
| 9.1. | <i>Banking Sector</i> | 33 |
| 9.2. | <i>Insurance Sector and Occupational Pensions</i> | 33 |
| 9.3. | <i>Investment services, securities markets and investment funds</i> | 33 |
| 10. | Information society and media..... | 36 |
| 10.1. | <i>Telecommunications and information technologies</i> | 36 |
| 10.2. | <i>Audiovisual policy</i> | 38 |
| 11. | Agriculture and rural development | 40 |
| 11.1. | <i>Horizontal issues</i> | 40 |
| 11.2. | <i>Single Common Market Organisation</i> | 43 |
| 11.3. | <i>Rural development</i> | 46 |
| 12. | Food safety, veterinary and phytosanitary policy | 49 |
| 12.1. | <i>General foodstuffs policy</i> | 49 |
| 12.2. | <i>Veterinary and phytosanitary policy</i> | 52 |
| 13. | Fisheries | 55 |
| 13.1. | <i>Resource and fleet management, inspection and control</i> | 55 |
| 13.2. | <i>Structural actions</i> | 55 |
| 13.3. | <i>Market policy</i> | 56 |
| 14. | Transport policy | 57 |
| 14.1. | <i>Road transport</i> | 57 |
| 14.2. | <i>Rail transport</i> | 58 |
| 14.3. | <i>Inland waterways transport</i> | 60 |
| 14.4. | <i>Air transport</i> | 61 |
| 14.5. | <i>Maritime transport</i> | 62 |
| 15. | Energy | 64 |
| 15.1. | <i>Security of supply for oil and gas</i> | 64 |
| 15.2. | <i>Internal energy market</i> | 64 |
| 15.3. | <i>Energy efficiency</i> | 65 |
| 15.4. | <i>Nuclear energy, nuclear safety, radiation protection</i> | 66 |
| 16. | Taxation..... | 68 |

| | | |
|-----|---|-----|
| 17. | Economic and monetary policy..... | 73 |
| | 17.1. <i>Monetary policy</i> | 73 |
| | 17.2. <i>Economic policy</i> | 73 |
| 18. | Statistics | 74 |
| 19. | Social policy and employment..... | 76 |
| | 19.1. <i>Labour law</i> | 76 |
| | 19.2. <i>Health and safety at work</i> | 77 |
| | 19.3. <i>Social dialogue</i> | 77 |
| | 19.4. <i>Employment, Social Inclusion policy and European Social Fund</i> | 77 |
| | 19.5. <i>Social protection</i> | 79 |
| | 19.6. <i>Anti-discrimination and equal opportunities</i> | 79 |
| 20. | Enterprise and industrial policy | 81 |
| 21. | Trans-European networks | 83 |
| 22. | Regional policy and co-ordination of structural instruments..... | 84 |
| 23. | Judiciary and fundamental rights | 86 |
| | 23.1. <i>Judiciary</i> | 86 |
| | 23.2. <i>Anti-corruption policy</i> | 86 |
| | 23.3. <i>Fundamental rights</i> | 87 |
| | 23.4. <i>Citizens' rights</i> | 90 |
| 24. | Justice, freedom and security | 92 |
| | 24.1. <i>Schengen and external borders</i> | 92 |
| | 24.2. <i>Visa policy</i> | 92 |
| | 24.3. <i>External migration</i> | 93 |
| | 24.4. <i>Asylum</i> | 94 |
| | 24.5. <i>Police co-operation and fight against organised crime</i> | 94 |
| | 24.6. <i>Co-operation in the field of drugs</i> | 96 |
| | 24.7. <i>Customs co-operation</i> | 96 |
| | 24.8. <i>Judicial co-operation in criminal and civil matters</i> | 96 |
| 25. | Science and research | 98 |
| 26. | Education and culture..... | 99 |
| 27. | Environment and climate change..... | 100 |

| | | |
|--------|---|-----|
| 27.1. | <i>Horizontal legislation sector</i> | 100 |
| 27.2. | <i>Air quality sector</i> | 105 |
| 27.3. | <i>Waste management Sector</i> | 105 |
| 27.4. | <i>Water quality sector</i> | 106 |
| 27.5. | <i>Nature protection</i> | 107 |
| 27.6. | <i>Industrial pollution control and risk management</i> | 108 |
| 27.7. | <i>Chemicals</i> | 109 |
| 27.8. | <i>Noise</i> | 109 |
| 27.9. | <i>Civil Protection</i> | 111 |
| 27.10. | <i>Climate Change</i> | 110 |
| 28. | Consumer and health protection..... | 115 |
| 28.1. | <i>Safety related measures</i> | 115 |
| 28.2. | <i>Market surveillance</i> | 116 |
| 28.3. | <i>Non-safety related measures</i> | 116 |
| 28.4. | <i>Consumer organisations</i> | 116 |
| 28.5. | <i>Public health</i> | 116 |
| 29. | Customs union..... | 121 |
| 30. | External relations | 126 |
| 30.1. | <i>Common commercial policy</i> | 126 |
| 30.2. | <i>Development policy and humanitarian aid</i> | 126 |
| 31. | Foreign, security and defence policy | 127 |
| 31.1. | <i>CFSP and ESDP</i> | 127 |
| 31.2. | <i>Policy instruments</i> | 127 |
| 32. | Financial control..... | 128 |
| 32.1. | <i>Public internal financial control</i> | 128 |
| 32.2. | <i>External audit</i> | 128 |
| 32.3. | <i>Protection of EU financial interests</i> | 129 |
| 33. | Financial and budgetary provisions | 130 |

BACKGROUND

A candidate country or a potential candidate must bring its institutions, management capacity and administrative and judicial systems up to Union standards with a view to implementing the *acquis* effectively as a Member State 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 annual Progress Reports. Such an assessment is also an integral part of accession negotiations in each individual chapter of the *acquis*. It presupposes a clear view of the main administrative structures 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.

The present guide, which covers all the 33 chapters of the *acquis*, is conceived as a working tool for Commission experts involved in the enlargement process. It may also be used to provide informal guidance to enlargement countries on the administrative structures required for implementing the *acquis*. Whenever possible, a distinction is made between:

- Administrative structures explicitly required by the *acquis*
- Administrative structures not explicitly required by the *acquis* as such, but the establishment of which would strongly support the 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.

This working document serves **information purposes only**. It should not in any way be construed as committing the European Commission, also in view of the evolving nature of the *acquis communautaire*.

1. FREE MOVEMENT OF GOODS

1.1. *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:

- Which administrative entity will be responsible for the follow-up and implementation of Articles 34-36 of the Treaty on the Functioning of the European Union (TFEU) and the application and implementation of the principle of mutual recognition?
- Will this entity also be responsible for co-ordinating 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 objective of this exercise being co-ordination and sensitization 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 to set up contact points for consumers and **economic operators**; information campaigns and seminars?

1.2. *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.

1.2.1. *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 EU and international standards
- Membership of the European Committee for Standardisation (CEN), European Committee for Electrotechnical Standardisation (CENELEC), European Telecommunication Standards Institute (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.

1.2.2. *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. Regulation (EC) No 765/2008 lays down the accreditation provisions.

- **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 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.

1.2.3. *Conformity Assessment*

- **Role of conformity assessment**

- **Conformity assessment** is the procedure to demonstrate that a product, process, person or service fulfills specified requirements. Conformity assessment can be carried out as a first-, second- or third-party activity. Conformity assessment aims at creating confidence between suppliers/manufacturers and customers/users/consumers and/or national authorities. Decision 768/2008/EC lays down the conformity assessment provisions.
- **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 judgment, with general requirements.
- Certification involves the issuing, by a third party, of an attestation stating that fulfillment 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 with** 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 which could engage their **civil liability**, unless such liability is covered by the Member State under national law.

1.2.4. Metrology

- **Role:**

- **Legal metrology** concerns EU harmonization for units of measurement (SI system)¹ and pack sizes². (N.B. The EU does not have a harmonised ‘Law on Metrology’ and it does not require that Member States have one.)
- There is EU harmonisation for some widely used **measuring instruments** for **legal metrological control**. For example, such control can be stipulated for transactions to the public. **EU harmonisation** concerns the measuring instruments when placed on the market and put into use, whereby the use is determined by national law in which case harmonised instruments must be used. In the case of non-automatic weighing instruments EU law also prescribes their use. Both will be revised in the first wave of the NLF proposals³. Optional EU harmonisation also exists for prepacked products and bottles used as measuring containers.
- 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 of the New Approach Directive on Measuring Instruments⁴ which entered into force in 2006 and allows a 10 year transition period for then existing type approval certificates be they based on the 10 repealed ‘optional old approach’ directives or national legislation. The New Approach Directive on Non-Automatic Weighing Instruments⁵ exists 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.

In the case of the optional Old Approach directives for prepacked products⁶ and bottles used as measuring containers⁷ conformity assessment is done by

¹ Council Directive 80/181/EEC of 20 December 1979 on the approximation of the laws of the Member States relating to units of measurement and on the repeal of Directive 71/354/EEC.

² Directive 2007/45/EC of the European Parliament and of the Council of 5 September 2007 laying down rules on nominal quantities for prepacked products, repealing Council Directives 75/106/EEC and 80/232/EEC, and amending Council Directive 76/211/EEC.

³ NAWI: http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=201075

⁴ MID: http://ec.europa.eu/prelex/detail_dossier_real.cfm?CL=en&DosId=201063

⁵ Commission Directive 2009/137/EC of 10 November 2009 (OJ 2009 / L 294 p.7), which is amending Directive 2004/22/EC of 31 March 2004 of the European Parliament and of the Council on Measuring Instruments (MID).

⁶ Directive 2009/23/EC of the European Parliament and of the Council of 23 April 2009 (OJ 2009 / L 122 p.6), which is the codification replacing Council Directive 90/384/EEC of 20 June 1990 on the harmonization of the laws of the Member States relating to non-automatic weighing instruments (NAWI).

⁷ Directive 76/211 of 20 January 1976 on the approximation of the laws of the Member States relating to the making-up by weight or by volume of certain pre-packaged products (76/211/EEC).

the **authorities** or privatised organisations representing them. One Old Approach directive has been repealed in 2011 and 7 others will follow in 2015⁸ without new harmonization to replace them. The **legal metrology authorities** participate in the European Cooperation on legal metrology (WELMEC) and all Member States are members of the International Organisation of Legal Metrology (OIML), as most of the candidate countries.

Industrial/scientific metrology

A **national programme** for the **development** of the **metrology structure** 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 EURAMET, the European co-operation body in scientific/industrial metrology. Several candidate countries are already members of and actively participating in the work of EURAMET.

1.2.5. *Market surveillance*

- **Role**

- The purpose of **market surveillance** is to ensure that only products in conformity with the relevant EU 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. Regulation (EC) No 765/2008 lays down the provisions for market surveillance. 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.

⁷ Directive 75/107/EEC of 19 December 1974 on the approximation of the laws of the Member States relating to bottles used as measuring containers.

⁸ Directive 2011/17/EU repeals 8 Old Approach Directives

- **Key Characteristics**

- Control of **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.
- The surveillance authorities 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.

1.3. *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 authorization and post-market surveillance according to the sectors regulated.

1.4. *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.

1.5. Procedural measures

1.5.1. 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. The exchange of information between Member States and the Commission is done via the TRIS database (Technical Regulations Information System). In the Member States, these central units are normally composed of one or two officials and a secretary.
- Exchange of information on the application of the principle of mutual recognition (Regulation (EC) 764/2008):
 - Have you already designated the required **authorities** for the implementation of Regulation (EC) No 764/2008 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) No 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**?

1.5.2. External border checks

- Checks of conformity with the rules of product safety relating to products imported from third countries (Regulation (EC) 765/2008):
 - Have you already designated the **national authority** or **authorities** responsible for **monitoring the market** as having to be informed whenever the **customs authorities** suspend the release of products according to article 27 of Regulation (EC) No 765/2008?

1.5.3. Arms

- Have you already designated the **required authorities** for the implementation of

Directive 91/477/91/EEC as amended by Directive 2008/51/EC on the control of acquisition and the 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));
- **Marking firearms** at the time of the manufacture (Article 4 (2));
- Setting up of a **data filing system** for firearms (Article 2 (4)).

1.5.4. Cultural goods

- Have you already designated the **central authorities** responsible in your country for implementing the provisions of Directive 93/7/EEC 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/EEC?

2. FREEDOM OF MOVEMENT FOR WORKERS

2.1. *Access to the labour market*

The *acquis* is constituted primarily of Article 45 TFEU and Regulation (EU) No 492/2011 on freedom of movement of workers within the EU. It is complemented by Directive 2004/38/EC on residence rights of EU citizens and their family members to move and reside freely within the territory of the Member States which also applies to EU migrant workers when residing within the territory of the Member States (see for these rights 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 in the same way as nationals and without being subject to a work permit scheme.
- The right of EU nationals to be treated equally on grounds of nationality as regards any conditions of employment and work, in particular as regards remuneration, dismissal and re-instatement or re-employment.
- The rights of children of EU migrant workers to be admitted to the educational institutions under the same conditions as the nationals of the Member State concerned.
- The right of EU nationals to access employment in the public sector in the same way as nationals, with the exception of posts involving direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities.

The *acquis* in this field does not require setting up specific institutions or structures. It is therefore entirely for each Member State to decide which institutions and structures it will use, provided that the effect of correctly applying the *acquis* is achieved. For candidate countries this is largely a question of strengthening existing institutions and structures, in order to enable them to carry out new tasks. 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 EU 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 needs 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.

2.2. *Coordination of social security systems*

Sufficient administrative capacity needs to be developed for the application of the EU provisions in the field of the coordination of social security systems, in particular Regulations (EC) No 883/2004 and 987/2009. For example, pensions acquired under the legislation of the Member State concerned need to be exported to beneficiaries residing in other Member States. Moreover, in the healthcare 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 insured persons. The administrative framework should enable effective cooperation with other EU Member States including the capacity to exchange social security information electronically.

3. RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

The freedom (right) of establishment, set out in Article 49 TFEU and the freedom to provide cross border services, set out in Article 54 TFEU, are two of the “fundamental freedoms” which are central to the effective functioning of the EU Internal Market. These provisions have direct effect. The core piece of *acquis* in this area is the Services Directive 2006/123/EC. 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.

3.1. *Right of establishment*

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

3.2. *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 States need to 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 (monitoring and conformity assessment should ideally be done at the same administrative level as the legislation in force – a regional authority should control regional regulations etc.) 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?
- Which **bodies** and **institutions** are responsible for the implementation and enforcement of Directive 2006/123/EC on the internal market for services (the “Services directive”)? How is the coordination between them ensured?
- Which **bodies** or **institutions** will ensure a long-term monitoring of legislation in the field of services and make sure these are compliant with the obligations set in the directive?

- Have you set up Points of Single Contact in order to comply with the Services directive? Are the resources sufficient to ensure updating of the information and processing of the applications?
- Have competent authorities (responsible for the granting of authorisations) been registered to the Internal Market Information (IMI) system and trained for its use? (only relevant for countries shortly before accession)
- Do you have any legislative or administrative requirements, which apply to all businesses wishing to trade in, or with, your country in the field of services?

3.3. *Postal Services*

The Postal Services Directive (97/67/EC as amended by 2002/39/EC and 2008/6/EC) establishes a **regulatory framework** for the **Union postal sector** which, *inter alia*, defines the **common minimum characteristics** of the **universal postal service** to be guaranteed throughout the EU and sets maximum limits for the services which may be reserved to the universal service provider. The **National Regulatory Authorities (NRAs), which every Member State needs to establish**, are responsible for ensuring compliance with the **obligations** arising from the **Postal Services Directive** and could 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 ownership rights in the incumbent postal operator.

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, with the requirement for independence as defined above (independent or not?)
- Whether or not it has adequate resources (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:

3.3.1. *Structure of Supervisory Body*

- Has a **Postal Market NRA** 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 requirement of independence vis-à-vis the universal services provider, including the question of functional separation from the State where the latter still exercises the ownership control in the postal service provider(s)?
- 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 the head of the NRA? What are its **powers**? How many people work under this authority?

3.3.2. *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 tools? 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?
- 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?

3.4. *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:

3.4.1. *General Systems Directives*

- What are the **bodies and institutions authorising the practice** of a regulated profession?
- What are the **competent authorities** for the **mutual recognition** of professional qualifications as well as for the **enforcement** of the general systems directives?
- Have you already established a **national co-ordinator** to co-ordinate the activities of the bodies and institutions responsible for the recognition of professional qualifications?
- What are the human resources allocated to this authorities and bodies?

3.4.2. *Sectoral Directives for lawyers, architects and health care professions*

- Which **bodies and institutions** are responsible for the implementation and enforcement of Directive 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 Directive 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, Directive 77/453/EEC; veterinary surgeons, Directive 78/1027/EEC; dentists, Directive 78/687/EEC; nurses and midwives, Directive 77/453/EEC and Directive 80/155/EEC, and pharmacists, Directive 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?

3.4.3. *IT infrastructure*

- Please describe the IT infrastructure available to the competent authorities which play a role in the process of recognition of professional qualifications.

4. FREE MOVEMENT OF CAPITAL

4.1. *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**. Similarly, statistical reporting for balance of payments purposes based on bank settlements and related to payment transactions of bank customers would no longer be possible, with the exception of basic data, the collection of which could be fully automated by the banks.

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 case, 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 **EU 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**.

4.2. *Payment systems and services*

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

- How is the **payments oversight system** organized in your country? Is it managed entirely by the national central bank or are the responsibilities shared with other administrative bodies? In which way?
- What are the human resources allocated to the above bodies? Do you consider them sufficient to efficiently fulfill the obligations imposed by the existing EU payment laws?

In terms of administrative adaptation to the existing payments legislation:

- Payment Services Directive (2007/64/EC) and E-money Directive (2009/110/EC): Have the competent authorities, as indicated in Articles 20 and 82, been designated? Has a body responsible for handling consumer complaints (Article 80) been designated? Have the out-of-court redress procedures been set (Article 83)? Have the penalties (Art. 81) been adopted? Has the Commission been notified of these developments?

- Regulation (EC) No 924/2009 on cross-border payments, as amended by Regulation (EU) No 260/2012: Have the balance of payments reporting obligations based on bank settlements been abolished (Art. 5)? Have the competent authorities indicated in Article 9 been designated? Has a body responsible for handling consumer complaints (Article 10) been designated? Have the out-of-court redress procedures been set (Article 11)? Have the penalties (Art 13) been adopted? Has a decision on the extension of application of Regulation to payments in national currency (Article 14 and Article 3.3) been discussed and possibly taken? Has the Commission been notified of these developments?
- Regulation (EU) 260/2012 establishing technical and business requirements for credit transfers and direct debits in euro: Have the provisions of Articles 9, 10, 11 and 12 been fulfilled? Has the Commission been notified of these developments? Have any of the transitional provisions (Article 16) been used and notified to the Commission?

4.3. *Fight against money laundering*

- Has your country set up a **Financial Intelligence Unit (FIU)**, and if so, under the responsibility of which department/ body (Ministry of Justice, Ministry of Finance, Police etc.)?
- How many people work in this Unit?
- 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?
- Who is responsible for making sure that anti-money laundering obligations are being met – the FIU or the relevant financial supervisory authorities?
- How does the exchange of information with other FIUs work?
- Information on the Memorandums of Understanding signed at the national and international level.
- Does the FIU belong to the Egmont Group?
- Is your country a full member of the Council of Europe Moneyval Committee?
- How many cases have been reported and how many of them have led to prosecution?

Are there available statistics on the STRs (Suspicious Transactions Reports), indictments and convictions?

How is the inter-institutional cooperation ensured? How does the exchange of information with other relevant institutions works, including the protected information and respect of relevant data protection rules?

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 EU-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 4 priorities:

- **To set up a central policy unit** (policy makers). Such a 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, the three main tasks to be performed are:
 - Organizing / managing the public procurement policy
 - Drafting the legislation and providing operational support (e.g. guidelines and instructions)
 - 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 decisions taken by contracting entities may be reviewed effectively and in particular as soon as possible. Although the EU-Directives in the public procurement (Directives 2004/17/EC, 2004/18/EC and 2009/81/EC) field do not demand that Member States or Candidate Countries set up oversight bodies, such institutions are proven to be necessary and efficient in order to ensure / achieve the implementation of the objectives of the above Directives. It is mandatory to set up independent review bodies in the remedies system in line with Directive 2007/66/EC. Furthermore it is essential that the oversight and 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

6.1. *Company law*

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

- A **register** for **undertakings** capable *inter alia* to operate in an 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 are recognized by your law? What is the total number of enterprises in each category?
- What is the structure and nature of the national numbers/identification details of the companies in your business register?
- What types of companies exist?
- Is there a **central register** for companies? If not, are there any plans in this respect?
- What is the current staff of the register? Are there any plans to increase staff? When is it expected?
- Is there one or more electronic business register(s) in your country? If not, are there any plans in this respect?
- What are your future plans for measures as regards the interconnection of business registers from different countries? If you do have such plans, please clarify in relation to which information relating to companies and which functionalities.
- How does the register hold the company information? (In electronic form, paper form etc.)
- How is the 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 etc.? What is the **fee** for consultation?
- Is the content of the register cross border accessible by electronic means?
- Do you exchange information related to branches and the companies behind them with registers in other countries?

- What is the **average time-scale** between application for registration and effective registration of a company?
- What is the 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**?

6.2. *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 not 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 EU 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:

6.2.1. *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?

6.2.2. *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

EU *acquis* on intellectual property rights (IPR), including IPR enforcement, contributes to create an environment favorable to innovation, creativity and investment, as well as a safer market for consumers. IPR is instrumental for developing employment and growth, improving competitiveness and achieving a safer environment for consumers.

IPR is divided into two categories: industrial property (e.g. patents, trademarks and industrial design); and copyright (e.g. literary and artistic works) and related (neighbouring) rights, which include among others those of performing artists, producers of phonograms, and those of broadcasters.

Adoption of the *acquis* in the field of IPR requires:

- Building the necessary IPR-related institutional framework. The establishment of an efficient administrative infrastructure, with adequate and sustained capacity, allows for the registration (of industrial property rights), maintenance and enforcement of IPR. Public authorities dealing with IPR should be interconnected and coordinated to create an efficient IPR system in the country.

The institutional framework would normally comprise at least:

- An IPR Agency dealing with registration and maintenance of IPR in the industrial property field. Additional tasks can vary from IPR-related information services to coordinating/advisory role over the whole country IPR system
- Dedicated IPR units within the customs and police authorities
- A judiciary with a number of judges and prosecutors trained on IPR, preferably with specialized courts or a single court for allocation of civil IPR-related cases
- An inter-sectorial council to monitor and coordinate the IPR system in the country and the implementation of any national IPR strategy
- Collective management societies (copyright and related rights)
- A legal and institutional framework is not sufficient, if an effective enforcement of IPR is not performed by the said institutional framework. A sustained level of commitment and regular reporting/statistics might be demanded.

The adoption of a comprehensive country IPR strategy is recommended, including a number of measurable targets allowing for a proper follow-up and benchmarking.

7.1. *Copyright and neighbouring rights*

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

- Do you have a national IPR reform strategy, including copyright and related rights? At which stage is its implementation?
- Is there a **Copyright Office** or a **Ministerial department**?

- Staff number at this moment compared to the previous reporting period? Number of professionals?
- Which number (percentage) of staff has attended **training on EU legislation** and/or **enforcement methods**? In the country? In a Member State?
- Denomination and number of **collective management societies** per rights, including neighbouring rights, number of rightholders managed per society, amounts of rights managed per society in each of the past three years?

7.2. *Industrial property rights*

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

- Do you have a national IPR reform strategy, including industrial property rights?
- At which stage is its implementation?
- Do you have a **Patent Office** or a **Ministerial department**?
- Staff number this year compared to the previous reporting period? Number of trademark examiners? Of patent examiners? Of industrial designs examiners?
- **Is the country part of the European Patent Convention?**
- Does the Patent Office provide for free accessible and regularly updated databases on registrations of IPR? On IPR-related jurisprudence? A website linked with customs and police IPR divisions websites?
- Does the Patent Office have an IPR information center?
- Does the Patent Office provide for training to other public institutions and private sector? Training for trainers activities?
- Which number (percentage) of persons has attended **training on IPR legislation**? In the country? In a Member State?
- How many TAIEX and twinning actions have been implemented in the Patent Office during the last reporting period?
- How many IPR awareness-raising campaigns have been conducted by the Patent Office during the last reporting period?
- Are there any reported cases of scam registration of trademarks?
- Number of **patent/utility models/trademarks/designs applications** filed per annum in the two past years and number of registrations in force?
- **Average time-span** between application and registration of patents? Of industrial designs? Of trademarks?
- Is there a trademark association in your country?
- Can the authority in charge of trademarks registration provide a general evaluation

concerning **bad faith applications** for trademarks and information on possible **measures** against such behaviour?

7.3. *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.

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

- Which number (percentage) of persons in the Patent Office and Copyright Office have attended **training on 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 IPR legislation** and/or **enforcement** methods? In the country? In a Member State?
- 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 **specialized court(s) for IPR matters**? How many judges and prosecutors have benefited from training on IPR legislation?
- 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?

8. COMPETITION POLICY

8.1. *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 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 Council Regulation (EC) No 1/2003.

8.2. *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 *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 **upon 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

9.1. *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**.

9.2. *Insurance Sector and Occupational Pensions*

Supervisory authorities need to be established to **supervise** the (re-)**insurance undertakings and institutions for occupational retirement provision**, including the granting or withdrawal of **authorisations** and the monitoring of **prudential requirements**.

9.3. *Investment services, securities markets and investment funds*

Competent authorities need to 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, (re-)insurance, institutions for occupational retirement provision, investment services and securities markets supervision**. Is this body **independent**? (Please check against the following minimum indicators of independence):
 - Who does finance the authority?
 - Who does nominate its director/CEO?
 - How and by whom can this director/CEO be removed?
 - Can decisions taken by the authority be overruled (e.g. by government/prime minister/president etc.)? Has this occurred already in the past?
 - Who is in charge of **non-financial supervision** over insurance companies, e.g. consumer protection issues?
 - Do you have a **financial ombudsman or any other out-of-court dispute resolution body**? Please describe and provide with the exact address.
 - 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 (re-)insurance supervision and supervision over institutions for occupational retirement provision 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 **organizational 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 EU 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, **licenses** 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

10.1. *Telecommunications and information technologies*

The **EU regulatory framework**⁹ for electronic communications networks and services came into force in 2002. It was amended by the 2009 Reform Package¹⁰, which was to be transposed by the EU 27 Member States by 25 May 2011. The framework is technology neutral, covering all forms of fixed and wireless telecoms, data transmission and broadcasting. It aims to promote free and fair competition and to develop a better functioning internal market for electronic communications providing benefits for all European consumers.

To this end, the framework establishes a limited number of conditions for market entry, conditions for **fair competition** and the implementation of **sector specific** remedies imposed in particular on those operators identified as having a dominant position (significant market power or “**SMP**”) following an analysis of specific markets by the **National Regulatory Authorities** (NRAs). **Enforcement** lies with independent **NRAs**. Administrative charges imposed on undertakings providing a service or a network should cover only the administrative costs related to the regulatory tasks.

The 2009 Reform Package makes a decisive step towards more consistency in the application of EU rules in order to complete the internal market for electronic communications. More specifically, it adjusts the regulatory framework by improving its effectiveness, reducing the administrative resources needed for implementing economic regulation (the market analysis procedure) and making access to radio frequencies simpler and more efficient in accordance with the principle of technological and service neutrality. The new Body of European Regulators of Electronic Communications (BEREC) will help ensure fair competition and more consistency of regulation throughout the EU, by facilitating coordination between NRAs.

⁹ Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services, 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector.

¹⁰ Directive 2009/136/EC amending Directive 2002/22/EC on universal service and users' rights relating to electronic communications networks and services, Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector and Regulation (EC) No 2006/2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws ("Citizens' Rights" Directive), OJ L 337 , 18/12/2009 p. 11, and Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services ("Better Regulation" Directive), OJ L337, 18.12.2009, p. 37, Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the office, OJ L337/1, 18.12.2009.

The 2009 Reform Package furthermore strengthens the independence of the national regulatory authorities in the provisions that seek to limit political interference in the day-to-day duties of NRAs, to set predictable and transparent rules for the appointment and dismissal of NRA management, and to ensure that NRAs have their own independent budget and sufficient numbers of qualified staff (so that they can carry out the tasks assigned to them, especially to participate in BEREC). Moreover, the decisions of the NRAs are excluded from any control other than by an independent and qualified appeal body.

Specific **tasks** of the NRAs¹¹:

- **General authorisations** (in particular maintaining transparency of authorisation conditions, management of notifications (if required) and supervision of compliance)
- **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 national numbering plan.
- Effective **management of radio frequencies**, in accordance with the principle of technological and service neutrality. The Commission has however issued a number of decisions harmonising the use of radio spectrum in specific spectrum bands.
- **Market analysis** and identification of SMP operators according to objective, transparent and non-discriminatory conditions.
- **Imposition of appropriate obligations** [remedies], in particular on SMP operators, such as the power to require publication of a reference offer for wholesale network infrastructure access, unbundling of the local loop and the implementation of cost oriented access charges; **imposition of functional separation**, as an ultimate ex-ante remedy where SMP obligations have failed to achieve effective competition.
- Imposition of obligations on **non-SMP operators (symmetric regulation)**, ensuring co-location and sharing of network elements and associated facilities according to Article 12 of the Framework Directive and ensuring access and interconnection according to Article 5 of the Access Directive.
- Dispute settlement: settling disagreements between operators as well as between customers and operators.
- **Ensuring implementation arrangements for the provision of universal service** (in particular ensuring availability, accessibility and affordability and monitoring any financing scheme for its provision).
- **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). With regard to retail tariffs for

¹¹ Article 2 (g) of the Framework Directive allows for the existence of more than one bodies of NRA in a Member State.

customers roaming in another EU Member State, the **Roaming Regulation**¹² imposes caps for voice, SMS and data services.

- **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.

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

- Its conformity with the requirements 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, BEREC and with the Commission
- Its performance in terms of safeguarding competition and promoting infrastructure 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; effective 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.

10.2. Audiovisual policy

Legal approximation in this field presupposes the existence of **national regulatory systems** in the field of **broadcasting**. The audio-visual *acquis*, i.e. the Audiovisual Media Services Directive **2007/65/EC** 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 Audiovisual Media Services 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** allowing 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**

¹² Current version available at : http://ec.europa.eu/information_society/activities/roaming/docs/regulation/conso_reg.pdf

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.

10.3. Information society services

The **Electronic Commerce Directive** (2000/31/EC), adopted in 2000, sets up an Internal Market framework for electronic commerce. It establishes harmonized rules on issues such as the transparency and information requirements for online service providers, commercial communications, electronic contracts and limitations of liability of intermediary service providers.

The proper functioning of the Internal Market in electronic commerce is ensured by the Internal Market clause, which means that information society services are, in principle, subject to the law of the Member State in which the service provider is established. In turn, the Member State in which the information society service is received cannot restrict incoming services.

In addition, the Directive (i) seeks to ensure that Member States provide for adequate means of supervision and investigation necessary to implement the said Directive effectively and (ii) enhances administrative cooperation between the Member States and the role of self-regulation.

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

- Did you designate a horizontal state body that supervises and investigates the implementation of the regulatory framework in the area of information society services?
- What are the tasks and powers of this body (bodies)? What are the human and financial resources of this body (bodies)?
- How do you ensure cooperation with competent bodies in other countries?

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 needed. This means that it is left **to each Member State** to **decide** which institution is responsible for the 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***.

11.1. *Horizontal issues*

11.1.1. *Paying Agencies*

The administrative structures and systems required for handling CAP expenditure under the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD) must meet certain requirements. These structures are responsible for the payments of direct support measures defined in Council Regulation (EC) No 73/2009, the implementation of many of the common market organisation instruments defined in Council Regulation (EC) No 1234/2007 and rural development support outlined in Council Regulation EC (No) 1698/2005.

All **Paying Agencies** must be accredited according to EU rules (Council Regulation (EC) No 1290/2005 and Commission Regulation (EC) No 885/06). They must, in particular, be able to offer sufficient guarantees that:

- The eligibility of requests and, in the framework of rural development, the procedure for allocating aid, as well as their compliance with EU rules are checked before payment is authorised.
- Accurate and exhaustive accounts are kept of the payments made.
- The checks laid down by EU legislation are made.
- The requisite documents are presented within the time-limits and in the form stipulated by EU rules.
- The documents are accessible and kept in a manner which ensures their completeness, validity and legibility over time, including with regard to electronic documents within the meaning of EU rules.

11.1.2. *Co-ordinating Body*

Where more than one paying agency is established there must also be a central **Co-ordinating Body**. The coordinating body shall act as the Commission's sole

interlocutor for the Member State concerned for all questions relating to the EAGF and the EAFRD as regards:

- The distribution of EU texts and guidelines relating to the paying agencies and to bodies responsible for the implementation of those texts and guidelines, as well as the promotion of their harmonised application.
- The communication to the Commission of the information referred to in Articles 6 and 8 of Regulation (EC) No 1290/2005.
- The availability to the Commission of a full record of all accounting.

11.1.3. Competent Authority

The Member State concerned must also inform the Commission which **Competent Authority** is responsible for issuing and withdrawing accreditation of each paying agency.

The competent authority shall keep the paying agencies for which it is responsible under constant supervision, notably on the basis of the certificates and reports drawn up by the certification bodies and shall follow-up on any deficiencies identified. Every three years, the competent authority shall inform the Commission in writing of the results of its supervision and indicate whether the paying agencies continue to comply with the accreditation criteria.

11.1.4. Integrated Administration and Control System (IACS)

An **IACS** must be set-up and have the following characteristics, following the requirements laid down in Council Regulation EC (No) 1782/2003 and Commission Regulation EC (No) 795/2004:

- A computerised database
- 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 **cross compliance system**, a management, control and sanction system must be established (see Council Regulation (EC) No 73/2009 and Commission Regulation (EC) No 1122/2009).

In order to implement the **Farm Advisory System**, advisory bodies must be designated and the system must be established (see Council Regulation (EC) No. 73/2009).

11.1.5. Farm Accountancy Data Network (FADN)

In order to implement the **Farm Accountancy Data Network (FADN)** *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 (EC) No 1217/2009, for example:

- Be capable of approving a plan for the selection of returning holdings
- 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 and implementing a plan for the selection of returning holdings
- Deliver duly completed farm returns to the Commission

11.1.6. Ex-post scrutiny in accordance with Council Regulation (EC) No 485/2008

In each Member State a Special Department shall be responsible for monitoring the application of the above Regulation and for:

- The performance of the scrutiny provided for herein by officials employed directly by that special department or
- The coordination and general surveillance of the scrutiny carried out by officials belonging to other departments.

Member States may also provide that scrutinies to be carried out pursuant to this Regulation are allocated between the special department and other national departments, provided that the former is responsible for their coordination.

11.1.7. Trade mechanisms - Horizontal implementing rules concerning the single CMO

The administrative structure responsible for the operation mechanisms of the **Single Common Market Organisation in agricultural products** 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.

11.1.8. Agricultural Statistics

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.

11.1.9. Organic Farming

Member States must also have the administrative structures to effectively implement the EU 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 and exchange of information with the Commission and other Member States
- Establishment of an inspection system, including specific procedures on imports
- Operation of effective enforcement measures
- Supply of annual statistical information enabling the verification of the implementation efficiency and effectiveness of the systems put in place to encourage and control organic production.

11.1.10. Quality Policy

The designated competent authority must be able to carry out the following tasks *inter alia*:

- Scrutinize that the application for a geographical indication, designation of origin or traditional specialty guaranteed is justified and meets the legal requirements.
- Ensure that official controls verifying that a product complies with the corresponding product specification and monitoring the use of registered names on the market are in place.

11.2. Single Common Market Organisation (Council Regulation (EC) No 1234/2007)

11.2.1. Intervention Agencies and Paying Agencies

Intervention Agencies and paying agencies for management of the systems of public intervention (Commission Regulations (EU) No 1272/2009) and private storage (Commission Regulations (EC) No 826/2008) 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:

- Buying-in, storage, sales and stock control in premises approved to Union standards.
- Operation of a control system on the use/destination of intervention products.
- Management of private storage system – receiving the application/tender for aid, examination of the validity of the application/tender, notifications to the Commission, verification of the information concerning the place of storage, supervisions operations at the time of placing into storage for certain products (meat), issuance of contracts, payments, monitoring, checks at the beginning, during and at the end of the contractual storage period, application of penalties.
- Regular market and price monitoring.

11.2.2. To implement supply management instruments / Quotas

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:

- Provide proof of their status as dealers under national provisions
- Record all quantities of milk delivered to them
- 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.
- Forward various statements and declarations to the competent authority at least once a year

11.2.3. Producer Organisations

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 EU support. For example, in the fruit and vegetable sector, producer organisations must *inter alia* (Council Regulation (EC) No 1234/2007 and Commission Implementing Regulation (EU) No 543/2011):

- 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 and pursue a specific aim which shall include one or more of the following objectives.
- Ensuring that production is planned and adjusted to demand, particularly in terms of quality and quantity.
- Concentration of supply and the placing on the market of the products produced

by its members.

- Optimising production costs and stabilising producer prices.
- 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 to be set at MS level

11.2.4. Other structures

In the wine sector certified **distilleries** are required, which must be able to undertake the detailed tasks for the by-product distillation laid down in the *acquis* (Commission Regulation (EC) No 555/2008), 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 the wine sector Member States producing wines are required to establish a vineyard register and an inventory of planting rights. In addition, wine-grape and wine operators are required to keep inwards and outwards registers for those products and those products shall be put into circulation only with an officially authorised accompanying document (electronic). Producers of wine-grapes, must or wine shall declare to the competent national authorities quantities produced, quantities marketed and stocks (Articles 185a, b and c of Commission Regulation (EC) No1234/2007).

11.2.5. Meats sector

Member States must have the necessary administrative structure to be able to implement **carcass classification** and **reporting prices** of carcasses e.g. beef, pig and sheep carcasses (Commission Regulation (EC) No 1249/2008) and prices of other animal products.

11.2.6. Marketing standards, labelling and inspections

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 labeling (e.g. in the wine and beef sectors), analysis, inspections and monitoring. As regards international trade in agricultural products Member States must have an authority charged with receiving applications, checking eligibility, managing securities and issuing import licences, including TRQ management (Commission Regulation (EC) No 376/2008, (EU) No 282/2012, and (EC) No 1301/2006 and sectoral regulations). TRQ and other preferential import regimes could also be managed by customs on a "first

come/first served" basis (Art. 308a-308c Commission Regulation (EEC) No 2454/93), requiring communication structures between customs and agricultural authorities. Similar functions should exist for export licences including advanced fixing certificates for export refunds (Commission Regulation (EC/EU) No 376/2008, 282/2012, 612/2009, and 578/2010¹³). There must be a paying agency for control on and payment of export refunds (Commission Regulation (EC) No 612/2009; Council Regulation (EC) No 1290/2005 and Commission Regulation (EC) No 885/2006). These authorities should cooperate and coordinate control with other import and export authorities like licence, customs, and veterinary and phytosanitary authorities (Art. 12 and 13 Commission Regulation (EC) No 1276/2008, 612/2009, 376/2008, 817/2010, Council Regulation (EC) No 485/2008, Art.26 Council Regulation (EC) No 450/2008).

In preparing to meet these requirements, the candidate 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 labeling of products** which are closer to those of the EU needs to take place as well as **compliance with health and environmental standards**.

- Member States must also have the necessary administrative capacity to manage Union aid schemes applied in their countries, for example covering school fruit and milk, apiculture and national wine support programmes.
- The official notifications Member States must submit to the Commission under the single CMO Regulation EC (No) 1234/2007 and the Direct Payments Regulation EC (No) 73/2009 are increasingly done by the I.T. tool "Information System for Agricultural Markets Management Measures" (ISAMM); for each notification responsible authorities must be knowledgeable and designated (Commission Regulation (EC) No 792/2009).

11.3. Rural development

Member States shall designate, for each rural development programme, the following authorities:

- Managing Authority, which may be either a public or private body acting at national or regional level, or the Member State itself when it carries out that task, to be in charge of the management of the programme concerned.
- Accredited Paying Agency within the meaning of Article 6 of Regulation (EC) No 1290/2005 (and a Coordinating Body if there are more than one Paying Agency in the Member State).
- Certifying body, which may be either a public or private legal entity designated by the Member State with a view to certifying the truthfulness, completeness and accuracy of the accounts of the accredited paying agency, taking account of the management and control systems set up.

¹³ Concerning export refunds for non-Annex I goods, based on Council Regulation (EC) No 1216/2009

11.3.1 Managing Authority

The Managing Authority is responsible for managing and implementing the programme in an efficient, effective and correct way and in particular for:

- Ensuring that operations are selected for funding in accordance with the criteria applicable to the rural development programme.
- Ensuring that there is a system to record and maintain statistical information on implementation in computerised form adequate for the purposes of monitoring and evaluation.
- Ensuring that beneficiaries and other bodies involved in the implementation of operations are aware and informed about their obligations, etc.
- Ensuring that programme evaluations are conducted within the time limits laid down and conform to the common monitoring and evaluation framework and for submitting evaluations undertaken to the relevant national authorities and the Commission.
- Leading the Monitoring Committee and sending it the documents needed to monitor implementation of the programme in the light of its specific objectives.
- Ensuring compliance with the obligations concerning publicity referred to in Article 76 of Regulation (EC) 1698/2005.
- Drawing up the annual progress report and, after approval by the Monitoring Committee, submitting it to the Commission
- Ensuring that the paying agency receives all necessary information, in particular on the procedures operated and any controls carried out in relation to operations selected for funding, before payments are authorised.

11.3.2 Monitoring Committee

In addition to the administrative structures above, for each rural development programme, a Monitoring Committee should be set up.

The Monitoring Committee:

- Is responsible for the effectiveness of the implementation of the rural development programme.
- It should be consulted on the selection criteria for financed operations.
- Should periodically review progress made towards achieving the specific targets of the programme, on the basis of the documents submitted by the Managing Authority.
- Should examine the results of implementation, particularly achievement of the targets set for each axis and ongoing evaluations; should approve the annual progress reports.
- May propose to the Managing Authority any adjustment or review of the programme.

- And should consider and approve any proposal to amend the content of the Commission decision on the contribution from the EAFRD.

The Monitoring Committee shall draw up its rules of procedure within the institutional, legal and financial framework of the Member State concerned and adopt them in agreement with the Managing Authority. At their own initiative, Commission representatives may participate in the work of the Monitoring Committee in an advisory capacity.

11.3.3 Additional requirements

➤ LEADER

Local public-private partnerships (so-called Local Action Groups) are required by Council Regulation (EC) No 1698/2005 in order for the LEADER approach to be successfully implemented. At the decision-making level the economic and social partners, as well as other representatives of the civil society, such as farmers, rural women, young people and their associations, must make up at least 50 % of the local partnership.

The Managing Authority shall ensure that the Local Action Groups either select an administrative and financial lead actor able to administer public funds and ensure the satisfactory operation of the partnership, or come together in a legally constituted common structure the constitution of which guarantees the satisfactory operation of the partnership and the ability to administer public funds.

➤ Other requirements

Under the current rural development *acquis* provisions (Council Regulation (EC) No 1698/2005), the only compulsory part of the rural development programming are the agri-environment measures.

Beyond this, each Member State can choose whether or not to make use of the relevant EU measures in accordance with its conditions and needs.

However, Member States have to ensure that the minimum spending per axis (10% for axis 1 and axis 3, 25% for axis 2 and 5% for Leader, which is reduced to 2,5% in the case of Croatia) is respected. Member States are obliged to create and maintain the administrative structures for the measures they implement.

Nevertheless, all administrative structures established must be able to ensure that the strict Community rules on implementing the rural development measures are fully adhered to.

12. FOOD SAFETY, VETERINARY AND PHYTOSANITARY POLICY

12.1. 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. For this purpose, detailed guidelines have been published by the Commission to assist all relevant stakeholders and authorities.

12.1.1. Control / Hygiene

Appropriate structures are required to ensure the implementation of Regulation EC (No) 882/2004 on the official controls of feed and food, animal health and welfare and on good laboratory practice (Directive 2004/9/EC).

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 EU systems; time-table of accreditation according to EU 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

Member States shall also arrange for the designation of one or more national reference laboratories for each European Union laboratory¹⁴.

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

- Regulation (EC) No 852/2004 on the hygiene of foodstuffs.
- Regulation (EC) No 853/2004 laying down specific hygiene rules for food of animal origin.
- Regulation EC (No) 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 a special provision to ensure flexibility for food produced in remote areas (high mountains, remote island) and for traditional production and methods.

12.1.2. 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.

12.1.3. Novel food

Member States must have national authorities responsible for implementing EP and Council Regulation (EC) No 258/97 concerning novel foods and novel food ingredients. This implies the presence of:

¹⁴ A list of these laboratories can be found in Annex VII to Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004.

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

12.1.4. Genetically modified organisms (GMO)

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

A new GMO package was adopted establishing an EU authorisation procedure for the deliberate release into the environment of genetically modified organisms and EU authorisation procedure for genetically modified food and feed, with the involvement of EFSA for the risk assessment activity and the Commission/Member States for the management activities.

The above package consists of Directive 2001/18/EC of the European Parliament and of the Council, 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 EU reference laboratory, its network and specific provisions concerning the availability of the relevant detection methods and methods of analysis.

12.1.5. Irradiated food

In accordance with EP and Council Directive 1999/2/EC, 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 approved¹⁵.

¹⁵ *N.B.* In order to export irradiated food to the EU, irradiation facilities in third countries (including those of the candidate countries up to their accession) have to apply for approval by the EU. 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

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) of Directive 1992/2/EC).

12.1.6. Mineral waters

In accordance with Directive 2009/54/EC of the European Parliament and of the Council, 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. 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.

12.2. Veterinary and phytosanitary policy

The EU 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 have abolished **veterinary and plant health checks** at internal borders on **intra-Union trade**.

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).

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).

- 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 e.g. Regulation (EC) No 183/2005 and Regulation EC (No) 882/2004) 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 EU 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)**; 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**.

Member States shall also arrange for the designation of one or more national reference laboratories for each European Union laboratory¹⁶.

¹⁶ A list of these laboratories can be found in Annex VII to Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004.

13. FISHERIES

The following administrative capacities are required:

13.1. *Resource and fleet management, inspection and control*

An administration that:

- Provides and regularly updates data concerning fishing activities (included biological, socio-economic, and environmental data) necessary to the correct implementation of the Common Fisheries Policy, in accordance with sound sampling.
- Manages fishing quotas, effort and licenses through an efficient system of recording and cross-checking of the consumption of the fishing opportunities.
- Implements technical measures required by EU law
- Is capable to inspect and control fishing fleet activities and the processing and marketing of fish products
- Has a sufficient number of inspectors so to ensure the compliance with European law (i.e. control of fishing activities in national waters as well as fishing activities exercised by EU fishing vessels outside EU waters)
- Is equipped with devices needed to ensure the control of fishing activities, such as surveillance vessels, aircraft, land vehicles, remote control by satellites, and electronic reporting system.
- Has implemented the measures aimed at fighting illegal, unreported and unregulated fishing activity (IUU).
- Has put in place legislation as well as administrative and judicial structures so that is capable of applying proportionate and dissuasive measures (administrative and/or criminal sanctions) against persons failing to comply with the rules of the Common Fisheries Policy.
- Has a system of registering data related to its fishing fleet (i.a., tonnage and engine power).

13.2. *Structural actions*

An administration that is capable to:

- Elaborate and implement the structural programs co-financed by the European Maritime and Fisheries Fund (EMFF), in support of the Common Fisheries Policy and of the Integrated Maritime Policy.
- Ensure the proper management, control, auditing and reporting of the use of the EU funds.

13.3. *Market policy*

An administration that:

- Is capable to ensure the implementation of common marketing standards in ports and on wholesale markets
- Satisfies consumer information requirements
- Can monitor the withdrawal of products from the market pursuant to the EU law
- Can provide relevant market data
- Has adopted the administrative measures necessary to the recognition of producers' organizations.

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.

14.1. 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 2009/40/EC (as amended by Commission Directive 2010/48/EU) 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 roadside inspections, of Directive 89/459/EEC 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 2009/40/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 2009/40/EC and Directive 2000/30/EC (as amended by Commission Directive 2010/47/EU) respectively.

International transport is subject to a **licensing system** both in **road freight** (Regulation EC (NO) 1071/2009) and **road passenger transport** (Regulation (EC) No 1073/2009). Competent authorities of the Member States issue the relevant 'Community authorisation' (Regulation 1072/2009) respectively 'Community licence' (Regulation 1073/2009), 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 EC (No) 561/2006, amended by (EC) No 1073/2009), admission to the occupation of **road transport operator** (1071/2009), and the transport of **dangerous goods by road** (Directive 2008/68/EC), 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 (Directive 98/76/EC),

safety advisers (Directive 96/35/EC), and drivers of vehicles carrying dangerous goods (Directive 2008/68/EC).

Tachographs (Regulations EC (No) 3821/85, 2135/98 and 561/2006) and speed limitation devices (Directive 92/6/EEC 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.

Directives 91/439/EEC and 2006/126/EC as amended define categories of driving licenses. Attention has to be paid to the fact that licenses issued before entry into force of the national legislation to transpose those Directives can be categorized accordingly and are equally recognized compared to driving licenses issued later.

Regulation EU (No) 181/2011 on rights of passengers in bus and coach transport introduced various assistance and compensation rules applicable to regular bus and coach services within the EU. Member States are required to designate independent National enforcement bodies with the mandate to enforce the regulation and to impose penalties if applicable.

14.2. Rail transport

The following authorities and bodies have to be set up to carry out the tasks described in the EU legislation:

A **licensing authority**, which does not provide rail transport services itself and is independent of bodies or undertakings that do so, shall be responsible for issuing licences to railway undertakings (Directive 95/18/EC as amended by 2001/13/EC and 2004/49/EC).

If the infrastructure manager is not independent in its legal form, organisation and decision-making from any railway undertaking regarding the essential functions described in Directive 2001/14/EC (as amended by Directives 2004/49/EC and 2007/58/EC), an **allocation body** and/or a **charging body** must be set up for the allocation of infrastructure capacities and setting infrastructure charges. These functions may be combined in the same entity which must be independent in its legal form, organisation and decision-making from any railway undertaking.

According to the same Directive, a **regulatory body** is to be set up in order to act as an appeal body for complaints concerning the network statement, the allocation process and its result, the charging scheme, the level and structure of infrastructure fees, etc. The regulatory body shall be independent in its organisation, funding decisions, legal structure and decision-making from any infrastructure manager,

charging body, allocation body or applicant and it shall be functionally independent from any competent authority involved in the award of a public service contract. Beyond the tasks described above in accordance with Article 30 of Directive 2011/14/EC, it is responsible for the authorisation of framework agreements between an infrastructure manager (an allocation body) and an applicant. It also has to determine the principal purpose of a railway passenger service and to determine whether a new international passenger service compromises the economic equilibrium of a public service contract in line with the opening of the international rail passenger market (Directive 2007/58/EC). The regulatory body "or any other body enjoying the same degree of independence" has to monitor the competition in the rail services markets (Directive 2001/12/EC). It can perform the tasks of the licensing authority described above. Its decisions shall be subject to judicial review.

According to Directive 2004/49/EC as amended by Directives 2008/57/EC and 2008/110/EC, a **national safety authority** has to issue safety certificates to railway undertakings and safety authorisations to infrastructure managers. It shall be independent in its organisation, legal structure and decision-making from any railway undertaking, infrastructure manager, applicant and procurement entity. Beyond its tasks described in Article 18 of Directive 2004/49/EC, it is responsible for authorising railway vehicles to be placed in service (Directive 2008/57/EC), for issuing and updating licences for locomotive and train drivers as well as for accrediting and recognising training centres for those drivers (Directive 2007/59/EC). Its decisions shall be subject to judicial review.

According to Article 14a of Directive 2004/49/EC, each vehicle, before it is placed in service or used on the network, must have an **entity in charge of maintenance** assigned to it. In the case of freight wagons, each entity in charge of maintenance shall be certified by the national safety authority or by a body accredited or recognised by the Member State. Details are provided in Commission Regulation EU (No) 445/2011.

According to the same Directive 2004/49/EC, an **accident investigation body** is to be set up as well. It shall be independent in its organisation, legal structure and decision-making from any infrastructure manager, railway undertaking, charging body, allocation body, notified body and from any party whose interests could conflict with the tasks entrusted to the investigation body. It shall be functionally independent from the national safety authority and from the regulatory body.

A **notified body** shall be responsible for the assessment of conformity or suitability for use of an interoperability constituent and for the verification procedure of an interoperability subsystem (Directive 2008/57/EC). Such a notified body might take the form of a company or a body in another Member State.

Directive 2008/57/EC calls upon Member States to compile a **National Vehicle Register and an Infrastructure Register**. The National Vehicle Register is a listing of all those vehicles which are authorised to run on a Member State's network and includes data relevant for its operation including the owner, the organisation responsible for its maintenance and any restrictions on its use; likewise the infrastructure register details the characteristics of the fixed installations (infrastructure, energy and control-command and signaling trackside subsystem). The European Railway Agency is mandated to keep a register of authorised vehicle types which may be put into service on the European rail network.

The two main components of European Rail Traffic Management System (ERTMS) are the European Train Control System (ERTMS/ETCS) and GSM-R, the GSM mobile communications standard for railway operations. The equipment can further be subdivided between on-board and infrastructure equipment. ERTMS/ETCS sets a single signalling equipment standard across Europe, checking speeds and slowing trains down if needed. Decision 2012/88/EU requires Member States to submit a national voluntary **ERTMS deployment plan**.

Directive 2007/59/EC provides a train drivers licence, concerning the general competences, which has to be recognised in while EU and a complementary certificate attesting the competences for the rolling stock and the infrastructure used. Regulation 913/2010 concerning a European rail network for competitive freight imposes the **participation to a rail freight corridor**.

Regulation (EC) No 1371/2007 strengthens rail passengers' rights in various ways, ranging from ticket purchase, right to be informed comprehensively and lodging of complaints to the right to compensation in case of delays. It also guarantees non-discriminatory access to trains and assistance for disabled persons and persons with reduced mobility. Member states are required to set up National Enforcement Bodies that ensure proper application of Regulation (EC) No 1371/2007 and facilitate the lodging of complaints for passengers.

14.3. Inland waterways transport

Regulation (EC) No 1356/96 lays down general rules applicable to the **transport of goods or passengers** by inland waterway between Member States. It sets the conditions to be fulfilled in order to be allowed to carry out inland waterway transport operations.

A common interoperable **River Information Services (RIS)** system was introduced by Directive 2005/44/EC, enhancing safety and efficiency of inland waterway transport and ensuring compatibility and interoperability with other modes of transport. **Interoperability** has also been improved by Directive 2006/87/EC which harmonised various technical regulations on navigable waterways in the EU.

Council Regulation (EC) No 718/1999 on Community fleet capacity policy in inland waterway transport requires Member States with navigable waterways connected to those of another Member State and which have a fleet of over 100 000 tonnes to establish an internal waterways **fund** under their national legislation. The reserve fund can be used in the framework of improvement measures organised at EU level. It can also be used for promotion measures or social measures.

The capacity policy came to an end on 29 April 2003 (Regulation (EC) No 411/2003 of the European Commission). Therefore, the fund will not contain financial resources for the time being. However, setting up the fund may still be necessary in the event that structural improvement measures (Article 3 paragraph 4 of Council Regulation (EC) No 718/1999) or support measures (Article 3 paragraph 5) are **organised at EU level**. Only in these circumstances the fund might be used. The Fund is managed by the competent authorities, in general the Ministry of Transport.

Regulation (EC) No 1177/2010 concerns the rights of passengers when travelling by sea and inland waterway. It specifies rules for non-discrimination and assistance for disabled persons and persons with reduced mobility, rights of passengers in case of cancellation or delay, minimum information to be provided to passengers and the

handling of complaints. Each EU country must designate an independent national body with the mandate to enforce the regulation and to impose penalties where appropriate.

14.4. Air transport

The legislation on the Single Market for air transport (Regulation (EC) No 1008/2008) defines the granting of operating licences, the monitoring of airlines and their access to the market. It guarantees a competitive air transport market, quality services and more transparent fares.

The institutional structures of the civil aviation administration need to be capable of complying with the responsibilities, first of all, for the **safety oversight** of air carriers, air crew and air navigation services (Regulation (EC) No 216/2008 as amended by Regulation (EC) No 1108/2009) and for the **licensing** (Regulation (EC) No 1008/2008) of air carriers. In accordance with Regulation (EC) No 965/2012, Member States shall ensure that third-country aircraft are subject to ramp inspections and to adequate safety measures where necessary. Member States are responsible for contributing to the establishment of the safety list of air carriers that are subject to operating bans in the EU (Regulation (EC) No 2111/2005) and enforcing such bans. 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, air fares (both covered by Regulation (EC) No 1008/2008), CRSs (Regulation (EC) No 80/2009), cost of air navigation service provision (Regulation 1794/2006) etc.

A **permanent and independent investigating body** (under Regulation (EU) No 996/2010 establishing the fundamental principles governing the investigation of civil aviation accidents and incidents) shall be established to ensure in each Member State an **independent technical investigation on civil aviation accidents and incidents** with the aim of suggesting corrections to exposed deficiencies wherever they occurred. This is complemented by Directive 2003/42/EC on **occurrence reporting** in civil aviation according to which Member States shall establish mechanisms to collect, evaluate, process and store data on occurrences reported in accordance with the Directive. All occurrences collected by Member States are aggregated in a European Central Repository established by Regulation (EC) No 1321/2007. Access to this Repository is defined by Regulation (EC) No 1330/2007.

Airport charges fall under Directive 2009/12/EC which establishes a common framework regulating airport charges at EU airports. 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 (EEC) No 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/EC on access to the **groundhandling** market at Community airports establishes a framework opening up the groundhandling market at EU airports for groundhandling suppliers and self-handling airlines. The Directive sets conditions to ensure fair competition in the sector and also regulates when

groundhandling activities may be subject to access restrictions at an airport. The Directive also provides for setting up at each airport a **committee** composed of **all users of the airport**, to be consulted on groundhandling matters, including on the choice of suppliers when their number is limited.

Regulation (EC) No 300/2008 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**.

Member States also have to put in place **appropriate administrative structures to collect, process and transmit statistical data** as required by Regulation (EC) No 437/2003 on statistical returns in respect of the carriage of passengers, freight and mail by air.

In the context of congested airspace and flight delays the Commission considered that the creation of a Single European Sky (SES) requires not only joint technical and operational measures, but the collective management of airspace, which should permit a substantial reorganisation of its structures and organisation.

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 (EC) No 549/2004 (the framework Regulation), EC (No) 550/2004 (the service provision Regulation) and EC (No) 551/2009 (the airspace regulation). Furthermore, Member States shall appoint bodies to carry out tasks as required by Regulation (EC) No 552/2004 (the interoperability Regulation). The legislation adopted in 2004 brought Air Traffic Management under EU competence with the aim of reducing the fragmentation of the European airspace and increasing its capacity. The legislative package of SES I has been amended by Regulation (EC) No 1070/2009 with a view to accelerating the establishment of a truly single SES from 2012 onwards.

Regulation (EC) No 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.

Regulation (EC) No 1107/2006 concerns the rights of persons with reduced mobility and prohibits air operators from refusing reservation or boarding to persons because of their reduced mobility or disability. Member States are required to lay down penalties for infringements and to set up independent bodies to deal with complaints.

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.

14.5. Maritime transport

The overall objective of the EU's **maritime security policy** is to protect EU citizens and economies from the consequences of unlawful intentional acts against shipping and port operations.

Furthermore, the Commission has been given the obligation to monitor the application by Member States of the Maritime Security legislation and to verify the effectiveness of national maritime security measures, procedures and structures. In order to fulfill this task, the Commission adopted a Regulation (EC) No 324/2008 on procedures for conducting **Commission inspections** in the field of maritime security.

Enforcement of EU 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). The EU acquis in this area covers a variety of issues such as technical safety requirements, vessels traffic monitoring, accident investigation, training of seafarers, ship pollution and liability and insurance. Both port and flag State obligations are resource consuming.

Common rules on **port State control** of ships have been updated by Directive 2009/16/EC which requires Member States to take all necessary measures to carry out the inspection of ships in particular by making qualified inspectors available to the competent authorities. Member States have to comply with annual **inspection commitments for ships**. Ships due for inspections are selected according to the risk profile allocated to them.

The performance of Member States as **flag States** is also improved by Directive 2009/21/EC. Member States shall check that ships flying their flag comply with international rules and regulations in this domain. Besides, Directive 2009/15/EC and Regulation (EC) No 391/2009 ensure that Member States only authorize "EU recognised organisations" to carry out inspections, surveys and the certification of ships on their behalf.

Besides, two new authorities are to be put in place following the entry into force of the third maritime safety package: the **independent authority for the investigation of accidents** under Directive 2009/18/EC and the authority deciding independently on the **issue of places of refuge** under Directive. 2002/59/EC on vessel traffic monitoring as amended.

Administrative supervision is needed not only in the field of **maritime safety** but also of **ship registration**.

Regulation (EU) No 1177/2010 concerns the rights of passengers when travelling by sea and inland waterway. It specifies rules for non-discrimination and assistance for disabled persons and persons with reduced mobility, rights of passengers in case of cancellation or delay, minimum information to be provided to passengers and the handling of complaints. Each EU country must designate an independent national body with the mandate to enforce the regulation and to impose penalties where appropriate.

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.

15.1. Security of supply for oil and gas

- In accordance with Directives 2006/67/EC and 73/238/EEC (**oil stocks and crisis management**) a "**crisis**" **body** needs to be established to co-ordinate and implement crisis measures at national level (art. 2 Directive 73/238/EEC). According to Directive 2006/67/EC, 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).
- In accordance with Directive 2009/119/EC (**minimum stocks of crude oil and/or petroleum products**), Member States have to establish **arrangements for the identification, accounting and control of emergency and specific stocks** (Article 5(1)). Member States may set up **central stockholding entities** which hold all or part of the stocks (Article 7). Member States have to have procedures in place to enable their competent authorities to release stocks and to restrict consumption in case of a disruption (Article 20(1)). Member States have to have **contingency plans and organizational measures** which allow those plans to be implemented (Article 20(2)).
- In line with Regulation (EU) No 994/2010 concerning measures to safeguard **security of gas supply**, a "**Competent Authority**" must be established responsible for carrying out the provisions of the Regulation, inter alia drafting a Risk Assessment and Preventive Action and Emergency Plans, for ensuring the implementation of the infrastructure and supply standards and overall coordination of market players and public bodies at national level.

15.2. Internal energy market

- In order to ensure that the directive on **internal market for electricity** (Directive 2009/72/EC) and on **the internal market for gas** (Directive 2009/73/EC) 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 and gas industry. They shall at least be responsible inter alia for fixing and approving transmission or distribution tariffs, monitoring investment plans of the TSOs and the implementation of transparency obligations, ensuring non-discrimination, effective competition and the efficient functioning of the market (Art. 37 of directive 2009/72/EC and Art. 41 of Directive 2009/73/EC). 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. 9-23, and 24-29 of Directives 2009/72/EC and 2009/73/EC). In the framework of Directives 2009/72/EC and 2009/73/EC, Member States can choose from 3 models of unbundling in the case of existing transmission system operators that are part of a vertically integrated company: 1. ownership unbundling; 2. independent system operator; 3. independent transmission operator. The aim of all models is to ensure that transmission networks are managed separately from the supply/generation/trading activities.

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 (Directives 90/377/EC on Transparency of electricity/gas prices as amended and Regulation (EC) No 736/96 implemented by Regulation (EC) No 2386/96 on the Transparency of energy investments).
- In accordance with the **Hydrocarbons licensing directive** (94/22/EC) 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.

15.3. *Energy efficiency*

- Member States shall designate the authorities responsible for **market surveillance under the Energy Labelling and Ecodesign Directives** (2010/30/EU; 125/2009/EC) and the Tyre Labelling Regulation (EC) No 1222/2009 to ensure that the ecodesign and labelling requirements are being implemented.
- In order to implement the **Boiler Efficiency Directive** 92/42/EEC, Member States must appoint '**Notified Bodies**' (for conformity assessment procedures).
- In general it is useful to establish a **dedicated body promoting energy efficiency** (no explicit *acquis* reference).
- In general it is also useful to establish a **body promoting the use of renewable energy** (*no* explicit *acquis* reference). Concerning the promotion of **renewable energy in transport** (including biofuels) it is recommended to ensure political and/or administrative cooperation between, inter alia, the Ministries competent for

15.4. *Nuclear energy, nuclear safety, radiation protection*

- The Euratom acquis on **nuclear safeguards** requires a governmental/state body dealing with safeguards. The following are instruments relevant to safeguards: Commission Regulation (Euratom) No 302/2005 of 8 February 2005 on the application of Euratom safeguards, Commission Recommendation No 2006/40/Euratom of 15 December 2005 on guidelines for the application of Regulation (Euratom) No 302/2005 and Commission Recommendation No 2009/120/Euratom of 11 February 2009 on the implementation of a nuclear material accountancy and control system by operators of nuclear installations. Also certain persons and undertakings need to have a capacity to provide accountancy and plant data as required by the above 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 fulfill **Euratom obligations**.
- According to the Euratom **nuclear safety** acquis (Directive 2009/71/Euratom), a national competent regulatory body **needs to be established and maintained in the field of nuclear safety of nuclear installations** and be given the **legal powers**, amongst other, to **require the license holder to comply with nuclear safety requirements and the terms of the relevant license**; to **require demonstration of this compliance**; to **verify this compliance** through regulatory assessments and inspections; and **carry out regulatory enforcement actions**. There should be a **functional separation** of this body from any other body or organization concerned with the **promotion or utilization of nuclear energy**, including electricity production, in order to ensure effective independence from undue influence in its regulatory decision making.
- The nuclear safety Euratom acquis requires that the competent regulatory body is also given the **human and financial resources necessary** to fulfill its responsibilities.
- The Euratom acquis on safety of spent fuel and radioactive **waste management**, aimed to ensure **safety, responsibility towards future generations and public transparency** (Directive 2011/70/Euratom), rests upon the fundamental principle of the **national responsibility** of the Member States for the management of radioactive waste generated in them. As a consequence, the possibility of exporting spent fuel or radioactive waste to third countries is strictly restricted. Member States shall establish and maintain national policies on spent fuel and radioactive waste management. These policies shall be reflected in **national programmes** in the form of one or more documents, which shall ensure the transposition of political decisions into clear steps to manage radioactive waste from generation to disposal. The national programmes shall be drafted and implemented, regularly reviewed and updated and shall have a minimum content as established by the Nuclear Waste Directive (2011/70/Euratom). The "infrastructure" for the implementation of policies shall consist of a **national legislative, regulatory and organizational framework** providing for: national legislation for safety; licensing procedures; a system of inspection and control,

including sanctions; **allocation of responsibility to competent bodies** (with a focus on the **competence of the national regulatory body** and the **license holders**); requirements for public information and participation; and a cost assessment and financing scheme. Notification and reporting of the measures adopted are required to demonstrate compliance with the acquis; this includes regular self-assessments arranged by the Member States and peer-reviews.

- With regard to **radiation protection, competent authorities** shall be established to carry out tasks in different areas of radiation protection covered by Directive 96/29/Euratom and Directive 97/43/Euratom:
- Authorities to perform regulatory control (authorization regime and system of inspections) of practices involving ionizing radiation, to authorize releases, establish clearance levels, authorize exemption levels when different from those in the BSS or for radionuclides not specified in the BSS, grant type approval of apparatuses exempt from reporting, authorize special occupational exposures, ensure that estimates of population doses are made in accordance with Article 45 of Directive 96/29/Euratom, establish intervention levels, recognize services and experts.
 - Competent authorities to implement a system of inspections for compliance of the medical practices with the provisions introduced to transpose Directive 97/43 and having the task to adopt specific criteria of acceptability for radiological equipment.
 - Approved medical practitioners responsible for the medical surveillance of category A exposed workers.
 - Approved occupational health services.
 - Approved dosimetric services responsible for calibration, for reading or interpretation of individual monitoring devices, for measurement of the radioactivity in the human body, for assessment of doses.
 - Qualified experts to perform technical, physical and radiochemical tests to enable the assessment of doses and to give advice for the effective protection of individuals and correct operation of protective equipment;
 - Medical physics experts to act or give advice on patient dosimetry, on optimization, on quality assurance in medical exposure.
- According to Council Decision 87/600/Euratom and the Agreement between Euratom and non-member States of the EU on the participation of the latter in the Community arrangements for the early exchange of information in the event of **radiological emergency (Ecurie)**, a **competent authority and a point of contact** shall be designated to forward and receive the information referred to in Articles 2, 3 and 4. The contact point shall be available on a 24-hour basis.

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 was launched in 1999 and revised in 2007. This exercise encompasses fourteen 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 subject¹⁷.*

The administration of taxation is first and foremost a **matter** within the **competence** of **Member States**. The **EU 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**. However, tax administrations are changing into client-oriented administrations providing taxpayers services. The taxpayers, for their part, must have a right of **appeal**. A **system for managing** all taxpayer related data should be in place and **voluntary compliance** should be actively and continuously promoted.

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

¹⁷ 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.
 - **Taxpayer services:** defining the taxpayers' **rights and obligations**, developing a **system for managing** the taxpayers' related data and promoting **voluntary compliance** are ensuring a sufficient legal security and providing confidence in the fairness and equity of the tax administration.

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**.
- 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**, (in line with international tax standards on transparency and exchange of information) 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-Union 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)
- Excise Movement Control System (EMCS)
- Information exchange system on taxation of savings.

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 EU 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, Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States and Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital as well as Council Directive 211/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco were also adopted. Regarding excises, Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty were adopted. This Directive repealed Directive 92/12/EEC.

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/EC). 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 (EC) No 1798/2003) came into force 2004 with implementing Commission Regulation (EC) No 1925/2004. For administrative cooperation in the field of excise a new Regulation (EU) No 389/2012 came into force on 2nd May 2012. In the field of direct taxation the mutual assistance directive, No 77/799/EC has been repealed and replaced by Directive 2011/16/EC that enters into application on 01.01.2013, as well as the directive on taxation of savings income 2003/48/EC, 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. It is therefore important that candidate countries are well prepared in terms of IT and management of the information exchanged.

The Fiscalis Decision (Decision No 1482/2007/EC) is aimed to support the computer systems which are used for the exchange of information. Regulation (EC) No 684/2009 based on Directive 2008/118/EC provides a legal basis for the use of EMCS to exchange real-time information on excise movements taking place under excise duty suspension.

17. ECONOMIC AND MONETARY POLICY

17.1. *Monetary policy*

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

17.2. *Economic policy*

Member States must be able to **design** 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 - which has been substantially enhanced in 2011, including by the introduction of the European Semester – 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).

Member States must have appropriate capacities for medium-term fiscal programming and for reporting on fiscal and macroeconomic developments in the required definitions and formats.

Under the new set of rules on enhanced EU economic policy co-ordination which entered into force on 13 December 2011, coordination of national economic and fiscal policies has been significantly strengthened.

A new surveillance mechanism has been set up to prevent and correct macroeconomic and competitiveness imbalances. More emphasis is also given to national fiscal frameworks, which need to comply with quality standards.

During the enlargement process, the European Commission ensures with a number of instruments that enlargement countries are prepared and align towards obligations under chapter 17. These include the regular bilateral and multilateral economic dialogue.

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

18.1. *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 the European Statistics Code of Practice principles** applied to the **production of European statistics** as stipulated by Council Regulation (EC) No 223/2009. This is the so-called “**statistical law**”, which regulates such questions as the professional independence of statistics, **protection of confidentiality, quality and transparency of statistical production and dissemination**, 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 the entire statistical system of the country covering the dissemination of official statistics, they are also **responsible** for the **quality of statistics** and for the **application of the European Statistics Code of Practice 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 National statistical office (NSO), 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 and multi-annual programmes.
- **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**
- Coordination of the national statistical system
- Protection of professional **independence:** nomination of president, terms of his/her office and reasons for dismissal, access to individual data, pre-access to data for government, observance of the pre-defined dates for publication of sensitive data etc.
- Relationship with **users** and **dissemination policies**
- Relationship with **suppliers:** professional associations of enterprises, social

organisations, other

- **Internal organisation**
- **Planning, programming and reporting procedures** at the NSO.
- **Finance and budgeting:** budget dotation in normal and exceptional situation (censuses), flexibility of use, also for infrastructure like IT.
- **Staffing,** HR policy, 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.
- **Classifications and registers:** statistical classifications on activities, products, goods; business register, population register.
- **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 this is organised.

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

19.1. *Labour law*

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

- The **Insolvency Directive** (Directive 2008/94/EC, 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 **EU 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.

19.2. *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 structures** in the field of **health and safety** at work, **labour law** and **equal opportunities**, such as **labour inspectorates** and **occupational hygiene inspectorates exist and have** 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.

19.3. *Social dialogue*

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

- By the **social partner organisations**, having due regard to their role in the **elaboration and implementation of EU legislation**. In particular, Member States should ensure that freedom of association which implies the right of every one to form and join trade unions at all levels for the protection of his or her interest is respected, as well as the worker's right of information and consultation within the undertaking, the right of collective bargaining and actions, including strike action.

19.4. *Employment, Social Inclusion policy and European Social Fund*

Social policy is an area where competence is shared between the Union and the Member States (Article 4 (2) TFEU). As regards the social dimension, the TFEU in its horizontal social clause (HSC, Article 9 TFEU) states: "In defining and implementing its policies and activities, the Union shall take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health."

Member States should take into consideration and apply all legally binding horizontal clauses (Article 8 to 12 TFEU) thus ensuring EU coordination and cooperation in the social field.

The HSC is applied to the overall architecture of the "Europe 2020" Strategy's socioeconomic governance across its three dimensions (smart, sustainable and inclusive growth), five headline targets, and the ten Integrated Guidelines for employment and economic policies as well as within the framework of the "European Semester" and the new economic governance. Within the Europe 2020 Strategy framework, a better and mutually reinforcing balance between economic, employment and social objectives towards a stronger social EU is promoted.

- To be able to participate in the EU employment and social inclusion policy coordination, Member States must have appropriate **analytical capacity** to design and discuss employment and social inclusion policy issues in an EU environment. This requires knowledge and understanding of the employment and social situation and policies in the EU.
- The EU headline targets on employment, poverty or social exclusion and their

translation into national targets and the EU-wide policy guidelines require **appropriate measures, policies and actions** to meet them as well as mobilisation of all stakeholders (e.g. social partners and NGOs).

- This requires notably appropriate **labour market institutions**, 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, public employment institutes and social 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 Strategy for active inclusion of people excluded from the labour market endorsed by the Council¹⁸ and the European Parliament¹⁹ aims at facilitating the integration into sustainable and quality employment for those who can work and at providing those who cannot with resources which are sufficient to live in dignity, together with support for social participation. It promotes a comprehensive approach based on the integration of three social policy pillars: adequate income support, inclusive labour markets, and access to quality services²⁰.

As regards **Quality Social Services**, Member States are free to decide whether these services are delivered by public authorities, NGOs or profit-oriented organisations. But it is vital that appropriate certification and accreditation structures are in place at national, regional and local level as well as a sound mechanism for monitoring and evaluating of the implementation of all mechanisms needed to ensure quality services.

- Overall, to be able to monitor employment and social developments and policies, including in view of the Europe 2020 headline targets, it is essential to have good statistical information (*see Chapter 18 – Statistics*). In this context, the development of accurate, harmonised, timely and up-to-date employment and social statistics is required to provide the necessary background information, to permit monitoring of employment and social trends and measurement of social progress in national and EU policies.

Furthermore, Member States need appropriate administrative structures to support their representatives in the Employment Committee (EMCO) and the Social Protection Committee (SPC).

A major element/requirement of the *acquis* is the need to strengthen social dialogue and improve the capacities of the social partners.

¹⁸ See Council Conclusions of 17 December 2008 on "Common active inclusion principles to combat poverty more effectively"

¹⁹ See European Parliament Resolution of 6.5.2009 on the active inclusion of people excluded from the labour market (2008/2335(INI))

²⁰ See Commission Recommendation of 3.10.2008 *on the active inclusion of people excluded from the labour market* (2008/867/EC published in the OJ L. 307/11 of 18.11.2008).

With the aim of concentrating cohesion funding on Europe 2020, Member States should ensure that links are developed between EU employment and social objectives and cohesion policy, in particular the European Social Fund.

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

19.5. Social protection

Article 9 TFEU states that "In defining and implementing its policies and activities, the Union shall take into account requirements linked to [...] the guarantee of adequate social protection".

Member States also have to take into account the targets of sustainable and balanced growth agreed in the framework of enhanced economic governance and Europe 2020, in particular given the budgetary importance of social protection spending.

In this context, Member States have to develop **adequate social protection systems** and pay particular attention to the development of adequate and sustainable pension systems, as well as health and long-term care provision.

- Member States **social security institutions** need to implement the **requirement to co-ordinate social security schemes** in the framework of free movement of workers (*see Chapter 2*).

19.6. Anti-discrimination and equal opportunities

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

- Under Directives 2006/54/EC (recast) and 2004/113/EC (equal treatment of men and women in matters of employment and occupation) 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. Member States shall designate and make the necessary arrangements for such a body or bodies. These bodies may form part of agencies which are already at national level in charge of 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)²¹, 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 assistance** 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 national independent agencies (such as quasi-autonomous non-governmental organisations and non-departmental public bodies for example) 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**
- Sufficient budgetary and administrative means in order for the competent bodies to effectively carry out their missions.
- Ensure that the members and staff of the bodies will be fully independent (for example, they must not be civil servants or exercise other incompatible functions, and they must perform their activities for the equality body on a full-time basis).

²¹ Deadline for implementing Directive 2000/43/EC is 19 July 2003.

20. ENTERPRISE AND INDUSTRIAL POLICY

20.1. *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**.

20.1.1. *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.

20.1.2. *Implementing agencies*

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

National level

- Privatisation Agency
- Competition authorities
- Business Development Agency (FDI and export promotion)
- SME Agency or at least a dedicated Directorate for SME issues within the Ministry
- Chambers of Commerce

- Business associations (horizontal and sectoral)

It would be also recommended to nominate a SME envoy who would be an active interface with the SME business community.

Local level

- Regional Development Agencies
- Business Support Centres (including Enterprise Europe Network branches)

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 EU 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 EU policies** (competition, state aids, public procurement,

environment, equal opportunities);

- Elaboration of procedures for the certification of expenses and for correcting irregularities
- 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.

23. JUDICIARY AND FUNDAMENTAL RIGHTS

23.1. *Judiciary*

The rule of law principle and the right to a fair trial, as enshrined in Article 6 of the European Convention on Human Rights (ECHR) and Article 47 of the Charter of Fundamental Rights of the European Union, provide that the judiciary must be independent and impartial. This requires a firm commitment to eliminating external influences over the judiciary and to devoting adequate financial resources and training. Legal guarantees for fair trial procedures must be in place.

In order to manage the judiciary and to strengthen its independence many countries have established "**Judicial Councils**". The core elements in relation to the general mission, composition and functions of such bodies are described in [Opinion no. 10 of the Consultative Council of European Judges of the Council of Europe](#) (CCJE). The Committee of Ministers of the Council of Europe adopted Recommendation [CM/Rec\(2010\)12 on judges; independence, efficiency and responsibilities](#). Chapter IV deals with Councils for the Judiciary. A dedicated network of Judicial Councils has been established (<http://www.encj.eu/>).

A continuous investment solid training capacity (e.g. though the establishment of a dedicated **training institute**) is essential in order to ensure that magistrates, court staff, lawyers, notaries and other legal professions are kept up to date on the ever evolving legal framework, procedures or case law. A Commission's Communication "Building trust in EU-wide Justice "A new dimension to European judicial training", stresses the importance of improving knowledge of EU law and mutual trust between legal practitioners to ensure efficient implementation of EU law and swift cross-border judicial cooperation across the Member States.

23.2. *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:

- 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.
- Current and future EU Members shall fully align with the *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.
- 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.

- 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.
- 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 Administrations and the Strasbourg Resolution. Increased transparency is important in view of developing confidence between the citizens and public administration.
- Codes of conduct in the public sector should be established and monitored.
- 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.
- 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.
- 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.
- 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).

23.3. *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 EU 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** with 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)

23.4. *Citizens' rights*

Free movement of persons

EU 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 as regards the possibility of judicial or administrative redress.

Electoral rights

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

Secondly, **EU action** in this area **guarantees** that **the citizens of the Union** residing in a Member State of which they are not nationals can **participate in 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?
- 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.

24.1. 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 EU and 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.

24.2. Visa policy

As regards the *acquis* that Member States need to apply as of accession to the EU:

- For the implementation of Regulation (EC) No 1683/95 laying down a uniform format for visas the following is required: (1) sufficient technical equipment; (2)

trained personnel for secure production and printing of visa stickers.

- For the implementation of Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement and Article 3 – on third-country nationals required to hold an airport transit visa – of Regulation (EC) No 810/2009 (the Visa Code) the following is required: (1) trained personnel involved in processing visa applications.

As regards the *acquis* Member States need to apply as of their accession to the Schengen area:

- For the implementation of the Visa Code the following is required: the organisation of the procedures relating to visa applications is the responsibility of each Member State (Article 40(1)). The following requirements laid down or resulting from Regulation (EC) No 810/2009 have to be respected: (1) equipment with the required material for the collection of biometric identifiers of consulates, the authorities responsible for issuing visas at the borders and of honorary consuls where applicable (see Article 40(2)(a)); (2) appropriate staff in sufficient numbers to carry out the tasks relating to the examining of visa applications in such a way as to ensure reasonable and harmonized quality of service to the public (Article 38(1)), both in each consular location abroad, at the border and in the competent authorities inside the Member State concerned to implement the provisions contained in the Regulation in the timeframes prescribed therein, possibly by having recourse to limited representation, co-location, or Common Application Centers, cooperation with an external service provider, honorary consuls under the conditions laid down in Articles 40-43; (3) adequate training of expatriate staff and locally employed staff and provision of complete, precise and up-to-date information on the relevant Union and national law (Article 38(3)); (4) guarantee the right to an effective appeal before a tribunal against the refusal, revocation and annulment of visas (Article 47 of the Charter of Fundamental Rights of the European Union in connection with Articles 32(3), 34(7) and 35(7) of the Visa Code).
- For the implementation of the *acquis* related to the Visa Information System (VIS) the following is required: (1) necessary technical equipment; (2) trained personnel of the authorities having access to the VIS.

24.3. External migration

Adequate, well co-ordinated and efficient administrative structures are required to **implement the *acquis* on migration of third country nationals**. This includes controlling immigration and regulating the admission of third country nationals for employment, research and study purposes as well as family reunification and conferring rights to long-term residents according to the EU legislation. Member States must have the appropriate capacity to handle **readmission** and **expulsion**, including to remote countries of origin. **Co-operation** with the Commission and different authorities responsible for the implementation of legislation on aliens, as well as with other Member States and third countries, is necessary.

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

24.5. *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, including financial crimes 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** 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**.

In the field of **cross-border exchange of information** between law enforcement authorities, a best practice that strongly supports the effective implementation of the *acquis* (although not explicitly required by it) is the establishment of a **Single Point of Contact (SPOC)** (i) bringing together under a single administrative structure the central units for different channels (notably the Europol National Unit, SIRENE bureau, Interpol National Central Bureau) and (ii) having access to relevant national databases.

Financial investigations should be carried out in all serious and organised crime cases (which include terrorism) beyond the sole economic and financial crime offences. An overarching, financial crime and financial investigations policy/strategy should therefore be drawn up, covering all relevant authorities, including prosecution, aimed at speeding up complex and lengthy investigations in the field of financial crime. Whenever possible, a concept of financial intelligence-led policing should be included in the strategy, to allow pro-active enforcement measures on the basis of analysis products.

The countries should set up **permanent cooperation structures or mechanisms** between all separate law enforcement authorities (police, customs, border guards,

etc.), including also relevant non-law enforcement authorities, with a view to their acting jointly against financial crimes. For example, Council Decision 2007/845/JHA **obliges** EU Member States to set up or designate national **Asset Recovery Offices** which promote, through enhanced cooperation, the fastest possible EU-wide tracing of assets derived from crime.

Such a multi-agency structure or mechanism should be composed of members of different authorities, offering a multidisciplinary partnership approach in its investigations into the suspected proceeds of criminal conduct.

Operational cooperation between police, tax and customs services and units should be further enhanced via **mutual access and interoperability of databases**. Should it not be possible at national level, tailor-made agreements on data exchange should be promoted. Liaison officers between services should be appointed to facilitate operational cooperation. Temporary exchanges of staff for training purposes should be considered.

The countries should consider introducing centralised databases on both investigations and prosecutions (national case management systems), in order to avoid the risk of overlapping criminal cases and failure to match cases that often have a large geographical and even international scope. Such a system should ideally cover all facets of the investigation/prosecution chain, including information on asset recovery, freezing and confiscation.

The importance of financial investigations needs to be reflected in **the training of investigators, prosecutors and judges**. All countries should establish training curricula with a clear accreditation process for financial crime investigators and analysts and enable and encourage colleagues from other fields to participate in training on financial investigations.

This multi-disciplinary approach to tackle organised crime, is also reflected in the **EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016** which recommends the Establishment of National Multidisciplinary Law Enforcement Units. The units should function as contact points for EU agencies, in particular Europol and forward the information collected to the Europol National Units for further transmission to Europol. They should focus on all forms of human trafficking and improve the detection of human trafficking and the collection and analysis of information on the subject.

The *acquis* to fight child sexual abuse and sexual exploitation requires the adoption by Member States of a number of measures involving building up administrative capacity for that. This includes:

- Setting up investigative units or services to attempt to identify child victims of sexual abuse, in particular child pornography.
- Structures to conduct an individual assessment of each particular child victim with a view to establishing specific assistance and support.
- Providing for a special representative for child victims where the holders of parental responsibility are precluded from representing the child because of conflict of interest, of the child being unaccompanied or separated from the family.

- Structures to conduct an individual risk assessment of all convicted offenders for child sexual abuse or exploitation, and to make available appropriate intervention measures of programmes.

Cybercrime is another booming crime area where police forces in Member States are required to invest in building up know-how and specialisation. Member states are increasingly establishing specialised units in police or Ministries of Interior. In 2013 a **European Cybercrime Centre** will be established in EUROPOL to act as the focal point in the fight against cybercrime in the Union and which will among others pool European cybercrime expertise to support Member States and provide support to Member States' cybercrime investigations.

24.6. 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.

In the area of drug trafficking, full cooperation with Europol (qualitatively and quantitatively) and Eurojust in cross-border cases is to be ensured.

24.7. 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**.

24.8. 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 EU 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 judgments, and the transfer and enforcement of criminal judgments.

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 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 Framework Programmes for research and technological development (RTD), future Member States need to have appropriate capacities in the field of RTD.

All candidate countries and potential candidates, except Kosovo*²², are associated to the Seventh EU Research Framework Programme on Research and Technological Development (FP7). This means that they are already familiar with how to engage in cooperation with the EU on research and innovation and that they are aware of the structures that need to be set up to ensure effective participation.

It requires participation as **observers** in the FP7 management committees and the administrative capacity to attend the meetings. It also requires the setting up of a **National Contact Point** system including a **national coordinator** and thematic or/and specific coordinators depending on the interest and potential of the country. In addition, countries associated to the framework programme are also invited by the Council to nominate an **observer** in the **European Research Area Committee (ERAC)** which is the key advisory body to the Commission on Research and Innovation policy and hence the importance to attend on a regular basis the meetings. Given the broad range of issues covered under the EU Research and Innovation policy, a number of more specialized bodies addressing specific issues such as Human capital building in the Steering Group on Human Resources and Mobility (SGHRM) and the HR Group have been set up to which the countries associated to FP7 have also been invited to nominate an observer delegate.

The candidate countries and potential candidate countries associated to FP7 have also been invited to nominate observers in the **Strategic Forum on International Cooperation (SFIC)** which is coordinating the international cooperation on Research and Innovation and in the **European Strategic Forum on Research Infrastructure (ESFRI)** aiming at integrating research Infrastructures at EU level. It is important to attend at a regular basis the meetings of these Advisory bodies as a way to become familiar with EU policy-making and decision-making.

Finally, in order to fully integrate into the European Research Area and contribute to the Innovation Union, a **good research and innovation capacity** is necessary requiring close cooperation between the private and public sector, through for example Centers of Excellence and Science parks and private public partnerships in research areas in which these countries are already competitive and/ or have a potential to further develop (Smart Specialization Strategy).

²² * This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo declaration of independence.

26. EDUCATION AND CULTURE

26.1. *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** and designation of a supervising National Authority for the implementation of the relevant EU programmes, i.e. currently the "Lifelong learning" and the "Youth in action" programme.

In addition to providing information and counselling to potential beneficiaries, these national agencies manage most of the programme actions as financial intermediaries on behalf of the Commission and are responsible for the full implementation of the project life cycle of the actions financed by these programmes. They are reporting to the Commission and to the National Authority. In case of irregularity, fraud or negligence on behalf of the National Agency, the National Authority is liable to the Commission for any unrecovered EU funds.

27. ENVIRONMENT AND CLIMATE CHANGE

A **national competent authority or authorities must be identified** to assume **overall responsibility** for the practical **implementation of EU law** in the field of environment and climate change. Competent authorities can be appointed for individual directives, for environmental sectors or across environmental sectors. 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 EU 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. Where expertise or sufficient staff resources are lacking, the **competent authorities need to be strengthened** to cope with different type of tasks or additional workload. The staff in the competent authority needs to be **trained** if the legislation is to be implemented effectively.

There is an **absolute need** for strong and committed **environmental inspectorates** (at **central** and **regional** levels) with adequate **resources**, systems of **finances** 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 and each element of climate legislation 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 and Climate change legislation*’.

27.1. *Horizontal legislation sector*

27.1.1. *EIA (Environmental Impact Assessment) Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment*

- Establish the **competent authority** (or authorities) of first and second instance to **implement the permitting and evaluation** procedures. Ensure adequate financial, human and technical resources to competent authorities.
- Require Annex I projects to be subject to EIA.

- Establishing a procedure to decide which Annex II projects require EIA.
- Consider whether to integrate EIA into existing consent procedures and whether to combine the EIA and IPPC consent procedures.
- Deciding which information relating to EIA is made available to the public.
- Determine the scope of the information available to the developer.
- Establish public participation procedure and give appropriate attention to consolidated directive comprising provisions introduced by Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and Directive 2009/31/EC on geological storage of carbon dioxide.
- Establishing measures for notifying the public of the outcome of decisions on applications for development consent.
- 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.

27.1.2. SEA (Strategic environmental assessment) Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment

- Identify an authority or authorities which will **determine the application of the Directive** to particular plans and programmes. Other authorities likely to be concerned by the project by reason of having their specific environmental responsibilities (e.g. those responsible for transport) can be identified either in general terms or on a case-by case basis. Ensure that authorities responsible for plans or programmes **integrate planning and assessment procedures** and have the capacity to carry out assessments.
- Establish procedure to **ensure** that the public is consulted at all appropriate stages: screening, scoping, review and decision.
- 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.
- Design inclusive, participatory and transparent **consultation** procedures with well-conceived information/advertising. It is also important to develop a co-ordinated communication and decision-making framework, one that accounts for non-environment ministry/agency authority participation as well.
- It should be ensured that the other authorities likely to be concerned by the project by reason of their specific environmental responsibilities are given **an opportunity** to express their opinion on the SEA.
- Follow or if needed 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.

27.1.3. *Environmental Information Council Directive 2003/4/EC on public access to environmental information and repealing Council Directive 90/313/EEC*

- Develop procedure and designate related institutional responsibilities in order to address requests for environmental information (requests must be processed in a timely manner, which demands administrative efficiency), including an additional procedure for reviewing requests for environmental information that are not satisfied.
- Ensure that public authorities make environmental information **available** to the public.
- Establish a system to disseminate environmental information to the public. 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.
- Establish measures for **quality assurance** of information.
- Ensure co-ordination between the relevant environmental competent authority and other public authorities that hold environmental information so that dissemination takes place smoothly within the specified strict timelines.

27.1.4. *Public Participation Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of drawing up certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC*

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

27.1.5. 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).
- Appoint one representative as a **member** of the Management Board of the EEA.
- Appoint one **national focal** point and assure resourcing of its activities.

27.1.6. The LIFE Regulation (LIFE III programme (Regulation EC (No) 1655/2000) and Life + Regulation EC (No) 616/2007)

Appoint a competent authority to act as a **national focal point** for evaluation and forwarding applications to the Commission. Ensure that the competent authority has the resource to undertake the duties required under the regulation. Appoint representatives to attend meetings of the Life + committee to take implementing decision to assist the Commission and to evaluate applications for funding.

27.1.7. The Environmental Liability Directive (2004/35/EC)

- 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. The **main responsibility** of the competent authority/ies is to supervise and enforce the provisions of the Environmental Liability Directive, especially relating to defining the necessary preventive measures to respond to an imminent threat of environmental damage, and to give instructions to the operator on how to take these measures.
- Design the **assessment procedure** by which the competent authority can evaluate whether environmental damage has taken place and an operator is liable.
- Develop a procedure for **determining** when the competent authority should take remedial action.
- **Identify**, within the competent authority, those persons that shall be responsible for

overseeing clean-up operations.

- In determining the allocation of competent authority responsibilities, **determine** the balance between harmonised rules, procedures and standards and sub-national implementation responsibilities. Ensure sufficient coordination and cooperation mechanisms.
- 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.

27.1.8. Establishing an Infrastructure for Spatial Information in the European Community (INSPIRE) Directive 2007/2/EC

- Identify **competent authority/ies** who carry/ies out regulatory, coordination and cooperation measures
- Devise **memoranda of understanding** for various competent authorities that will work together to set up and co-ordinate networks.
- **Establish network services** that provide for discovery, view, download and transformation services for spatial data and for services allowing spatial data services to be invoked. The services must operate using search criteria in accordance with Article 11(2). Quality control assessment shall include accessibility, user friendliness and compatibility with the implementation rules in Article 2.2.
- **Conclude memoranda of understanding** identifying which public authorities are involved, and for which tasks, in order to ensure that the network facilitates the exchange of spatial data and related services.
- Prepare and **publish guidance** on the duties and the roles of the various public authorities that are obligated under the directive to provide access to spatial datasets and services.
- **Establish and manage arrangements for the sharing of spatial data** (as described in the INSPIRE annexes I/II/II) and services between public authorities within – across the country borders (including bodies established by international agreements and the EU institutions and bodies. Such arrangements shall preclude any restrictions likely to create practical obstacles, occurring at the point of use, to the sharing of spatial data sets and services

27.1.9. Environmental Crimes. Protection of the environment through criminal law – Directive 2008/99/EC

- **Identify the competent authority (or authorities)** that shall have responsibility for

implementing the directive and ensuring that adequate financial, human and technical resources are provided. Due to the wide scope of activities covered, several authorities are likely to be involved both in regard to the various as well as overall supervisory and enforcement authorities.

- In determining the allocation of competent authority responsibilities, **determine the balance** between harmonised rules, procedures and standards and sub-national implementation responsibilities. Ensure sufficient coordination and cooperation mechanisms.
- **Train the competent authority** and environmental inspectors to detect environmental offences through regular monitoring and supervision and also through effective cooperation with third parties that might submit complaints or important information; train judges and prosecutors on the relevance and particularities of environmental crimes.
- **Report to the Commission** on the main provisions of national law which Member States adopt in the field covered by this directive, together with a table showing how the provisions of the directive correspond to the national provisions adopted.

27.1.10. The Forest Focus Regulation

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

27.2. Air quality sector

- **Appoint a competent authority/ies** 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** zones and agglomerations
- 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.
- Establish an effective sampling system; Provide for **technical advice** on **pollutants** that require **quality assessment**.
- Provide for suitable arrangements for **data handling** and **storage**.
- Establish information database
- Ensure that **consultations** with **adjoining Member States** can be held when necessary.
- Ensure that the **mechanisms** exist to **inform the public rapidly** when necessary.

27.3. Waste management Sector

- Identify the **relevant competent authority** (or authorities) to **implement the EU 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 to undertake the following activities related to planning and implementation required under EU waste legislation (list is not exhaustive):
 - Development of a **waste management strategy** and waste management plans (including hazardous waste management plans) as well as implementation of planning at central and local levels
 - Classification of landfill sites
 - Mining
 - Incineration of waste
 - Waste shipments

The competent authorities should be in charge of:

- Setting technical standards (e.g. set emission limit values for certain polluters, approve sampling and monitoring programmes, standards for location and running of landfill sites)
- Issuing licenses/permits
- **Supervising, monitoring and inspecting** of waste management facilities and activities.
- Initiating and pursuing **enforcement** actions.
- Ensuring **data collection**, analysis and reporting.

27.4. Water quality sector

- Designate competent authorities responsible for the implementation of the EU water sector legislation. Competent authorities should be in charge of performing the following activities (not exhaustive): identifying river basins and preparing river basins management plans, identify bathing, shellfish and freshwater fish waters, identify agglomerations, identify nitrate vulnerable zones, set water quality objectives and set emission limit values etc.).
- 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, public organisations effected by river basin action plans, and other countries where cross border issues are concerned.

27.5. *Nature protection*

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

- **Designate competent** authority/ies responsible for the implementation of the EU nature protection 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.
- **Competent authorities** should be responsible to carry out the following activities (not exhaustively) in respect of EU nature sector legislation:
 - Establish a system whereby general protection is afforded to all bird in the wild state.
 - Identify and designate Special Protection Areas.
 - Implement procedures to prohibit import of certain seal products.
 - Establish management authorities and scientific authorities and designate customs offices for carrying out checks.
 - Establish strong enforcement and monitoring system.
 - Report to the Commission on designation of competent authority and transposition and implementation of EU nature sector legislation.
- 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 out functions related to 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).

27.6. Industrial pollution control and risk management

It should be ensured that the **institutional** framework in regard of Industrial Emissions Directive (IPPC recast) is the first piece of legislation that requires truly **integrated control** of pollution at source. The legislation in this sector has major implications for industrial activities and environmental protection in a country. Therefore, many institutions and other parties need to be involved. In particular, the steps set out below must be taken.

- Designate **competent authorities** responsible for the implementation of the EU legislation from IPC sector.
- Ensure that competent authority/ies and other involved parties work in **integrated** and **co-ordinated** approach, **avoiding overlaps**. Any implementation programme needs to be carried out in a transparent way with the maximum consultation of interested parties.
- 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. In particular, establish clear co-ordination mechanism between competent authorities for Seveso and Industrial Emission Directive (IPPC recast).
- Undertake supervision and regulation of the permitting and enforcement organisation if separate.
- 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. In this regard, establish a public register and ensure public access to IPPC (recast) applications, compliance data and related materials.
- 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**.
- Establish an operating and appropriate **monitoring system**.
- Ensure that transboundary consultations are carried out.
- 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.

27.7. *Chemicals*

A large number of stakeholders have an interest in or may be affected by the EU legislation from the Chemicals sector. Several Ministries will be directly involved in the implementation of the legislation on chemicals, being those responsible for the environment, health and welfare, labour, agriculture, industry and veterinary affairs (for CLP legislation).

- Ensure that a **competent authority** or authorities is designated and adequately staffed and equipped.
- 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** (establish effective inspection and enforcement system).
- 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**.
- Ensure that the mechanisms exist to inform the public rapidly when necessary (Directives 2001/18/EC; 98/81/EC and Regulation 1946/2003).

27.8. *Noise*

The following issues and requirements are **fundamental** to **EU 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 EU 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*

27.9 Civil Protection

According to Council Decision 2007/779/EC, Euratom, Member States shall designate contact points, as well as a number of further preparatory and response measures, to ensure participation in the Community Civil Protection Mechanism. Other preparatory measures include the advance identification of emergency intervention experts, teams, and modules, as well as taking the necessary measures to ensure the timely transport of the civil protection assistance they offer. In the response phase, Member States shall notify the Commission and other potentially affected Member States without delay in the event of a major emergency. When a request for assistance is addressed to a Member State through the Mechanism it shall promptly determine whether it is in a position to render the assistance required, and inform the requesting Member State thereof, indicating the scope and terms of any assistance it might render.

27.10. Climate Change

Greenhouse Gas Monitoring and Reporting

- Establish a national system for the monitoring and reporting of greenhouse gas emissions in line with the relevant decisions of the Conference of the Parties serving as the meeting of the Parties (CMP).
- In that context, designate a competent authority to ensure the implementation of all the obligations, even organizational issues.
- Ensure that the competent authority can manage reporting procedures, i.e. submission of a report to the UNFCCC Secretariat determining the country's assigned amount as equal to the country's respective emission levels determined pursuant to Decision 2002/358/EC and the Kyoto Protocol.
- Specifically appoint an entity to monitor the implementation of the obligations of these two decisions. Such an entity may be established under the environment ministry or the

environment agency but should have a regulatory cross-sectoral role to ensure that all public and private authorities required to submit an information report do so to one focal point and that information received from various sources is quality controlled and verified by one entity to avoid gaps, duplication and fragmentation, as well as to ensure accuracy, comparability and transparency.

- Due to the existing synergy between the reporting under consideration here and the reporting of air pollutants under the Ambient Air Quality Directive (2008/50/EC), National Emissions Ceilings Directive and the Convention on Long-Range Transboundary Air Pollution (CLRTAP), the streamlining of reporting systems should be given serious consideration in order to avoid overlaps, make better use of resources and avoid any conflicts between the two reporting regimes.
- The national entity should co-ordinate various national organizations in order to produce a GHG inventory by using data gathered from the best available sources, consistent with the guidelines and the good-practice guidance agreed upon by the Conference of the Parties to the UNFCCC.
- The national entity must ensure that information reported by the Member State to the European Commission and to the UNFCCC Secretariat is complete, accurate, consistent, transparent and comparable. To facilitate this, the country should have in place appropriate regulatory and/or procedural systems that allow for the facilitated and coordinated compilation of the necessary information from all relevant data and information providers.
- Establish a national administrator to maintain the national registry for accurate accounting of the issuing, holding, transfer, acquisition, cancellation and withdrawal of assigned amount units, emission reduction units and certified emission reductions and the carryover of assigned amount units, emission reduction units and certified emission reductions.

EU Emissions Trading System

- The primary competent authority for implementing the EU ETS Directive is usually the ministry responsible for environment, or an agency for environmental protection. It is possible for other authorities to be involved, particularly where local or regional authorities are designated as principal implementing bodies for specific elements such as the issuance of greenhouse gas emissions permits for installations and the receipt of verified emission reports. Other bodies responsible for certain elements, such as accreditation and verification, will also be part of the overall framework of the implementation of the EU ETS Directive and the monitoring of the compliance cycle. In this case, the primary competent authority should ensure the coordination of all authorities involved.
- Designate the competent authority (or authorities) to implement the rules provisions of the EU ETS Directive, including the identification of installations, the issuance of greenhouse gas emissions permits for such installations, the management of the free allocation provided to installations under Article 10a and 10c of the EU ETS Directive, the overseeing of the compliance cycle and the reporting procedures.

- Designate a national administrator to manage accounts in the registry system.
- Designate an entity overseeing the monitoring, reporting and verification of the emissions, whether it forms part of the competent authority or as a separate body.
- Put into place additional monitoring for derogations and for the proper use and surrender of JI/CDM credits.

Effort Sharing Decision

- Since the decision requires information from various sectors and close coordination with competent authorities and actors affected by EU ETS Directive and the Decision on Greenhouse Gas Emission Monitoring Mechanism, it is recommended that an entity is specifically set up to monitor the implementation from a holistic approach. Such an entity may be established under the environment ministry or the environment or energy agency but should have a regulatory cross-sectoral role to ensure that all public and private authorities required to submit an information report do so to one focal point and that information received from various sources is quality controlled and verified by one entity to avoid gaps, duplication and fragmentation, as well as to ensure accuracy, comparability and transparency.
- Establish and maintain registries for accurate accounting of the issuing, holding, transfer, acquisition, cancellation and withdrawal of assigned amount units, emission reduction units and certified emission reductions and the carryover of assigned amount units, emission reduction units and certified emission reductions.

Carbon Capture and Storage

- Designate competent authorities for the implementation of the Directive, comprising permit issuing, monitoring, providing guidance and consultation and put into place suitable coordination measures.
- The competent authority shall establish and maintain a registry for the storage permits granted and a permanent registry for closed sites and surrounding storage complexes.
- Put into place an inspection system to check compliance with the CCS Directive and effects on the environment and human health.
- Ensure that a suitable dispute settlement arrangement exist with an independent authority to arrange for the settling of disputes relating to access to transport networks and to storage sites.
- Introduce or adjust the existing penalty system for environmental offences, to ensure effective, proportionate and dissuasive enforcement in case of non-compliance.

Fuel Quality

- Designate authorities and other organizations with responsibility for regulating the quality of fuel. Responsibilities would include monitoring fuel quality and collecting and summarizing national fuel quality data.

- Put in place a system for assessing the need for more stringent fuel standards for instance in certain areas for environmental reasons.
- Set up an enforcement system to deal with non-compliance with national provisions transposing the requirements of the directive. This should include penalties to deal with breaches of the provisions.
- Ensure adequate verification regarding information and data coming from economic operators including verification of compliance with sustainability criteria to be taken into account in greenhouse gas reductions.
- Set up a system and procedure for monitoring compliance with fuel quality requirements.
- Establish a system to collect national fuel quality data (database or other system).

Cars/Vans

- Designate authorities and other organizations with responsibility for informing about the requirements of the CO₂ in light duty vehicle legislation. If different authorities are designated for the different regulations, countries have to ensure sufficient coordination between the authorities to ensure efficiency, legal certainty and transparency also vis-a-vis third parties and the general public.
- Set up a data gathering and reporting system to comply with the monitoring and reporting obligations pursuant to CO₂ and cars & vans legislation. Designate a competent authority for the collection and communication of the monitoring data.
- Set up an enforcement system to deal with non-compliance with national provisions transposing the requirements of the CO₂/ cars labeling directive. This should include penalties to deal with breaches of the provisions.

Ozone Layer Protection and Fluorinated Gases

- 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 central government services in particular customs and environmental services but also armed forces, regional and local government, municipalities, relevant industry sectors (such as chemical, refrigeration, aviation or foam blowing industry), the public, non-governmental organisations 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.

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 coordinating 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.

28.1. *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.

28.2. *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 EU 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”.

28.3. *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.

28.4. *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.

28.5. *Public health*

In some cases the EU public health legislation explicitly requires the setting-up of specific administrative structures needed to implement the *acquis*. In other cases no such requirements are in place. However, EU best practices exist and can be shared with enlargement countries. Enlargement countries are advised to establish contact points for EU cooperation in each public health field. Regular *acquis* obligations and requests include monitoring of national data and reporting to the EU.

EU public health systems should be sustainable, be based on adequate organisational structures and financial resources and aim at contributing to the health and well-being of the population in the following three broad categories:

- **Monitor the health of the population and the effectiveness of health policies**

Requirement:

Ensure appropriate administrative structures to **monitor the health of the population and the effectiveness of health policies** using the criteria and methodology of the list of European Community Health Indicators (ECHI).

Ensure appropriate administrative structures to collect, process and transmit statistical data on public health including safety at work.

- **Provide for health security, including surveillance and control of communicable diseases**

Ensure the safety and quality of substances of human origin; for health threats, provide the capacity to deploy preventative- and control-measures, including rapid exchange of information through dedicated surveillance networks in cooperation with the European Centre for Disease Prevention and Control; apply the International Health Regulations and participate in the EU Health Security Committee.

Requirements:

- In the field of **substances of human origin** (blood, tissues, cells and organs) it should be ensured that appropriate and sufficient administrative structures are put in place to implement and enforce the relevant legislation. In particular, the designation of a fully-independent and adequately-staffed Competent Authority is necessary in order to oversee the quality and safety of every step in the process of blood, organ and tissue cell applications from donation through to distribution. In addition, contact points should be established for the purposes of EU-level cooperation, particularly in terms of traceability systems and notifications of serious adverse reactions and events.
- In the field of **epidemiological surveillance and control** of communicable diseases structures and/or authorities with the competence to collect information relating to the epidemiological surveillance of communicable diseases and for the dissemination of the relevant surveillance data at EU level need to be in place. To ensure consistent and comparable reporting, input should be based on the EU list of specific diseases and specific EU case definitions for each disease. A contact point and the appropriate technical infrastructure should be in place to enhance permanent communication with the Commission and EU Member States.
- Public health authorities are responsible for determining the **measures** which may be required to **protect public health**. A contact point should be established for networking with the EU.
- Establishment of public health authorities/structure and specific contact point for the purpose of **Early Warning and Response System (EWRS)** for rapid collection and exchange of information on potentially **health-threatening events**, and measures intended or adopted in response to those events or indications. The information shall be communicated through the EWRS informatics application and, on a regular basis, a consolidated report of operations has to be provided to the Commission, the European Parliament and the Council.
- The designated national competent authority is required to submit annually to the Commission an analytical report of the events and on the procedures applied

within the EWRS.

- As regards the **operation of dedicated surveillance networks**, Member States shall specify a **contact point** for each dedicated surveillance network, 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.
- According to Regulation (EC) No 851/2004 on establishing a **European Centre for Disease Prevention and Control (ECDC)**, Member States shall (i) provide to the Centre, in a timely manner, available scientific and technical data relevant to its mission, (ii) communicate to the Centre any messages forwarded to the Community network via the early warning and response system, and (iii) identify, within the field of operation of the mission of the Centre, recognised competent bodies and public health experts who could be made available to assist in Community responses to health threats, such as field investigations in the event of disease clusters or outbreaks. An assessment tool has been developed by the ECDC to evaluate the implementation of the communicable diseases acquis with special focus on health governance, sustainability of the system, capacity development, surveillance, preparedness and response, public health microbiology laboratories as well as disease programmes.
- The **International Health Regulations (2005)** are being implemented worldwide since 15 June 2007. This legally-binding agreement significantly contributes to global public health security by providing a new framework for the coordination of the management of events that may constitute a public health emergency of international concern, and will improve the capacity of all countries to detect, assess, notify and respond to public health threats (e.g. chemical, radiological, environmental, etc.) as well as all communicable diseases causing public health emergencies. By now, all States Parties to the Regulations have had to assess their capacity and develop national action plans to meet the requirements regarding their national surveillance and response systems as well as the requirements at designated airports, ports and certain ground crossings.
- In the framework of the activities of the **Health Security Committee**, representatives of Member States meet in 2 plenary meetings per year and occasionally participate in section meetings, ad-hoc meetings by audio and video conferences on on-going serious cross border threats to health.
- **Ensure that health policies include a preventative aspect to promote health and healthy lifestyles and take actions to address the main risk factors, the determinants of health including health inequalities, as well as addressing cross-sectoral public health objectives.**

Requirements:

- Specific competencies at ministerial level to deal with **tobacco-control issues**, to ensure the implementation and enforcement of the relevant EU legislation, guidelines, and best practices and to regulate and monitor smoke-free environments in the context of a comprehensive tobacco control policy. Contact points should be established for EU level co-operation in tobacco control.

- Appropriate administrative structure responsible for the **national alcohol policy** and a national coordinating body which brings together the different sectors and actors involved. A regular report based on common indicators on alcohol consumption, alcohol-related harm and the development of measures to reduce alcohol related harm is essential for national monitoring and also for reporting at EU level.
- Appropriate administrative structure responsible for the **national nutrition policy** and coordinating body which brings together the different sectors and actors involved including mechanisms for regular monitoring and reporting.
- Appropriate administrative structure responsible for the **national mental health policy**. Capacity to provide community-based mental health services as an alternative to institutional care.
- Appropriate administrative, inter-sectorial structures to implement strategies focusing on **reducing health inequalities** within the different socioeconomic groups of population and between the different regions. A particular focus on vulnerable groups, such as ethnic minorities, disadvantaged migrants, people with disabilities, people living in poverty. Monitoring and regular reporting should be foreseen.
- Planning and operational capacity to develop strategies to prevent illness including the early detection of illness and **healthy ageing**.
- Appropriate administrative structures to implement organised **cancer screening** programmes for breast, cervical and colorectal cancer in accordance with European guidelines on best practice. Member States are expected to organise evidence-based cancer screening through a systematic population-based approach with quality assurance at all appropriate levels. Adequate training of personnel is a prerequisite for high quality screening, as well as sufficient human and financial resources.
- Appropriate administrative structure to establish and implement the national **rare diseases** plan or strategy. Member States are expected to implement appropriate measures as described in the Council Recommendation of 8 June 2009 on an action in the field of rare diseases (2009/C 151/02).
- Develop health strategies that focus on good quality healthcare taking into account **patients' rights in cross-border healthcare**. By 25 October 2013 which is the due transposition date for the Directive 2011/24/EU, establishment of at least one national contact point for cross-border healthcare that will provide a certain amount of information to ensure that patients may actually use their rights (e.g. quality and safety standards, entitlements to cross-border healthcare, complaints and redress procedure etc.). These contact points will be required to cooperate with counterparts in EU Member States and will have the duty to help clarify the content of invoices.
- Have in place the planning and training capacity to ensure that the healthcare system has a sufficient and competent well-trained public **health workforce** with adequate financial resources, respecting the WHO code of conduct on the

recruitment of health personnel. An appropriate number and appropriately-trained healthcare professionals in the different public health fields are required.

- Ensure that adequately-staffed structures are in place for **health policy planning and implementation** (impact assessment, evaluation etc.) both at national and regional level.

29. CUSTOMS UNION

29.1. Administrative and operational capacity

*In order to assist the candidate countries in preparing their customs administrations to operate effectively and in accordance with EU legislation and standards, a so-called Customs Blueprints process was launched in 1998 and reviewed in 2007. This exercise encompasses twenty two 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, supply-chain security, customs enforcement, audit, 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 cooperation 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 subject²³.

Implementation of the (EU 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 through effective business planning and management 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 EU 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 mutual administrative assistance**

²³ A copy of the Customs Blueprints can be obtained from DG Taxud.

between the national Customs administrations, as well as the development of **certain computerised systems**, including inter-operational Customs European Information Systems (EIS), 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 European Union own resources are accurately **collected**, recorded in the **accounts, disbursed, reported** and **audited**, both nationally and by the EU. 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 EU standard provisions;
 - Registration of revenue liabilities, their processing, accounting and allocation are separate modules of an **integrated customs European information system**.
- Ensuring **border and inland control**, so as to facilitate the flow of legitimate passengers and trade while ensuring the protection of the EU's financial interests, as well as the social protection of national and EU citizens. This implies that:
 - Customs and security controls are based upon intelligence-led risk analysis, pre-arrival information and selectivity techniques.
 - Controls are systematic, comprehensive and flexible and consistently applied.
 - Controls take account of relevant international conventions and trade / customs agreements.
- Ensuring end-to-end international **supply chain security** by introducing a balanced approach to security measures and facilitation;
- 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 EU legislation through the consistent application of the law. This implies in particular that:
 - Controls are based upon intelligence-led risk analysis, pre-arrival information 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.
- Ensuring the **customs enforcement of intellectual property rights (IPR)**

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** to audit the internal control systems that exist within the customs organization.
- **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 2013 (2020) programme, which focuses on harmonising EU practices.
- The customs administration should have an appropriate **human resources policy**, to support the achievement of the customs administration objectives to ensure that proper staff is selected for employment in the customs administration and to develop and implement an ethics policy for customs organization.
- All customs business processes must be properly documented and be aligned to the legal basis in force.
- All European Information Systems must be in line with the legal basis and agreed EU system specifications.
- All European Information Systems are created and operated in line with an established project management methodology approved by the Customs Administration management.
- 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 EU 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 EU-competence customs frauds and irregularities.
- A working **relationship** must be established with **economic operators**, also to develop and implement **trade facilitation** measures.
- A **communication** function must be established to build up public and governmental

confidence in customs.

- 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.
- A mechanism for **cooperation** between customs and other enforcement agencies must be developed and implemented.
- A **post-clearance control and audit** management system must ensure efficient, quality-controlled audits.
- The **customs valuation** procedures must be transparent, objective and verifiable and compliant with international rules.
- Procedures must be in place that allow for the correct implementation of the rules relating to both non-preferential and preferential **origin**, including the issuance of binding advance.
- Rulings on origin determination and the cooperation with other countries' authorities for the verification of proof of origin, in accordance with international obligations.
- 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, interoperating via the secure Common Communications Network/Common Systems Interface - CCN/CSI).
- An **Integrated Tariff Management System (ITMS)** capable of **interfacing with EU 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:
 - The online customs tariff database (TARIC)
 - Management of EU tariff quotas (Quota)
 - Surveillance (collection and transmission of data extracted from declarations for release for free circulation and for export)
 - Suspensions
 - 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

Further, IT interoperability and accessibility systems will have to be implemented in accordance with the security and modernization aspects of the EU Customs Code reform:

- An Export Control System (ECS), an Import Control System (ICS), the Application for Authorised Economic Operators (AEO) and for Economic Operators Registration and Identification (EORI).
- 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 (System Portal for Entry or Exit of Data (SPEED)).

30. EXTERNAL RELATIONS

30.1. *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 coordination 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 controls, 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 EU level, in particular in the Council committee on Trade Policy, as well as 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.

30.2. *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 EU action in this field. The administration also needs to ensure links with non-governmental organisations dealing with development and humanitarian aid. 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 in Council working groups and committees for the management of EU development programmes.

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 EU budget (*see Chapter 33 – Financial and budgetary provisions*).

31. FOREIGN, SECURITY AND DEFENCE POLICY

31.1. CFSP and CSDP

Participation in the formulation and implementation of the EU's Common Foreign and the Security Policy (CFSP) and the Common Security and Defence Policy (CSDP) 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**". As active participation in civil and military crisis management operations under the CSDP is encouraged, there should be appropriately trained officials who have the necessary technical skills to contribute to this type of operations.

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 CSDP information as of the moment of accession.

31.2. 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

This Chapter covers 3 areas: Public Internal Financial Control, External Audit, and the protection of EU financial interests.

The elements listed below are of key importance to ensuring that national and European funds are effectively controlled.

32.1. *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 with 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 frameworks (COSO), standards (INTOSAI, IPPF etc) and EU best practice.
- Effective implementation of the PIFC system. This includes the demonstration of **effective financial management and control and reporting systems** meeting **internationally accepted control frameworks and standards** (on the basis of managerial accountability) and the demonstration of an effective **functionally independent internal audit service (either centralised or decentralised)**, meeting **internationally accepted audit standards**.
- **Clear institutional responsibilities** and a framework for the **delegation of decision-making** powers to be included in relevant PIFC regulations.
- The principle of **separation of powers and duties** 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.
- Performance of **ex-ante and ex post financial controls** on the basis of **risk analysis**. Centralised, reactive ex post financial controls (inspection), where in place, are to be differentiated from internal audit.
- Establishment of a structure for the **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. Such a Central Harmonisation Unit should oversee the follow-up of its recommendations through compliance tests. Adequately **trained staff** in sufficient numbers must be available and assigned to the task.

32.2. *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.

- 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**.

32.3. Protection of EU financial interests

In the field of the **protection of the financial interests of the European Union**, an operationally independent anti-fraud co-ordinating service or structure, responsible for the co-ordination of all legislative, administrative and operational aspects of the protection of the EU' financial interests should be established and its effective functioning and co-operation with OLAF should be ensured. Other relevant national authorities in this field should also be involved.

33. FINANCIAL AND BUDGETARY PROVISIONS

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 EU, 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 administrative **capacity** to calculate, establish, and account for in a **reliable, accurate** and **transparent** way the level of **customs duties** and the capacity to reconstruct the statistical VAT-based own resource 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 EU, the country in question must have the **administrative capacity** to duly **collect** and **transfer** in a timely manner the **resources** thus established **to the EU 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 ²⁴ | Requirement | Answer | Source | Source remarks |
|---|--------------------------------|---|--------|--------|----------------|
| 1. Determination of eligible areas | Title I | Determination of Nuts 2 and 3 regions | | | |
| Objective Convergence | Article 5 | <p>Eligibility of the Member State for the Cohesion Fund: availability of data at Nuts II level on the gross national income (GNI) per capita, measures in purchasing power parities and calculated on the basis of Community figures for the period 2001 to 2003.</p> <p>Eligibility of Nuts 2 regions to the Structural Funds under this objective: availability of data at Nuts 2 level on the gross domestic product (GDP) per capita product (GDP) per capita, measured in</p> | | | |

²⁴ Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999.

| | | | | | |
|---|------------------|--|--|--|--|
| | | purchasing power parities and calculated on the basis of Community figures for the period 2001 to 2002. | | | |
| Objective Regional competitiveness and employment | Article 6 | Eligibility of Nuts 2 regions to this objective : Regions not eligible from the Structural Funds under the convergence objective. | | | |
| Objective European Territorial cooperation | Article 7 | Eligibility of Nuts 3 regions to cross-border cooperation : Nuts 3 regions of the Community along maritime borders separated, as a general rule, by a maximum of 150 kilometres. | | | |
| 2. Planning and programming capacity | | Legal framework Interministerial co-ordination (organisation and procedures), allocation of responsibilities between ministries Partnership with local and regional authorities. | | | |
| <u>Preparation of plans</u> | Article 9-16, 25 | Principles of assistance, Community strategic guidelines on cohesion, general provisions on the Structural Funds and the cohesion Fund. | | | |
| National Strategic Reference Framework | Articles 27-28 | Content, preparation and adoption. | | | |

| | | | | | |
|---|------------------------|---|--|--|--|
| | | | | | |
| Operational programmes | Articles 32-33, 37-38 | Content, preparation and adoption | | | |
| 3. Management | Title VI | Budgetary procedures in force | | | |
| Management and control systems | Articles 58- 62, 70-71 | Responsibilities of Member States, designation of authorities and their functions | | | |
| Budget commitments | Articles 52, 53, 75 | Existence of multiannual commitments or similar procedure Cofinancing procedure | | | |
| Payments | Article 76-80 | Payment procedures | | | |
| Use of the € | Article 81 | Compliance with Commission's rules | | | |
| 4. Monitoring, control, evaluation | Title IV | | | | |
| Financial control | Articles 97-98 | Separation of functions Compliance with other community policies: <ul style="list-style-type: none"> • competition • state aids • public procurements | | | |

| | | | | | |
|------------|----------------|--|--|--|--|
| | | <ul style="list-style-type: none"> • equal opportunities Procedures of certification of expenses • procedures of correcting irregularities | | | |
| Evaluation | Articles 47,48 | Independent evaluation Availability of data (in particular for ex-ante evaluation) | | | |