

The Netherlands and the European Environment

Advice on Differentiation in European Environmental Policy

Advice 019E
21 December 1999



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VROMraad

Date: 21 December 1999
Reference: br991221.021
Subject: Advice "The Netherlands and the European Environment"

Dear Sir,

In your letter of 23 December 1998 you asked the Council for Housing, Spatial Planning and the Environment to draw up an advice on the future Dutch stance on European environmental policy in the light of the existing and future possibilities for a multi-speed Europe and for differences in environmental protection levels within the EU.

We have pleasure in offering you this advice, entitled 'The Netherlands and the European Environment'.

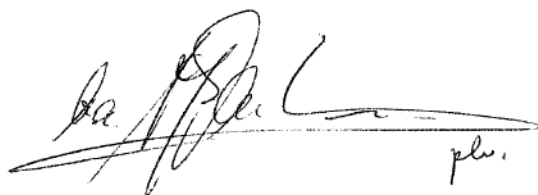
The following are some of the key points:

- Environmental policy is based on risks to human health and the vulnerability of ecosystems. Differential standards in these areas are in principle not appropriate, except for a relaxation in transitional situations or a tightening in specific vulnerable areas.
- Variations in local and regional circumstances do however often justify differentials in product standards, emission standards and policy instruments. Such differentials are circumscribed by the harmonisation requirements of policy on the internal market and competition. Within these constraints there is however scope for differentiation of this kind.

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- *The Netherlands is no longer a pacesetter in Europe; it can however (continue to) make a major contribution, within tactical alliances, to strengthening Community environmental policy.*
- *Matters requiring attention in order to achieve this strengthening are: ensure that the environmental acquis is adopted over as much European territory as possible (also after enlargement); buttress the inspection and enforcement of environmental policy agreed at the European level; integrate environmental considerations into other European policy sectors; strengthen the backing for environmental policy in member states; and ensure that the further liberalisation of world trade is made subject to environmental conditions.*

This advice is also being sent to the State Secretary for Foreign Affairs, Mr. D.A. Benschop.

A handwritten signature in cursive script, appearing to read 'J. de Krom', with a long horizontal flourish underneath.A handwritten signature in cursive script, appearing to read 'D.A. Benschop', with a long horizontal flourish underneath and the initials 'plw.' written at the end.

Attachment: Advice "The Netherlands and the European Environment"

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Summary and conclusions

Introduction

The European Union presently comprises 15 member states, but talks are being held with at least another 13 potential members: ten from Central and Eastern Europe, as well as Cyprus, Malta and Turkey. In a number of cases these talks have become full-blown negotiations about accession, with some countries possibly acceding to the EU as early as 2003. This enlargement is concentrating minds on the future decision-making structure within the EU. But the anticipated enlargement is also giving rise to questions about the shaping of environmental policy in the European Union and leading to a re-think about the role of the Netherlands in all this.

Underlying the Minister's request is the objective of realising Dutch environmental objectives as set forth in the Third National Environmental Policy Plan (NEPP3). The questions posed by the Minister were the following:

- a Should the Netherlands be seeking, in its European policy, maximum uniformity in protection levels? or
- b should the Netherlands be seeking to make active use of the possibilities offered by European law for a multi-speed Europe and for differentials in the level of environmental protection? and
- c should the Netherlands be taking a lead in forming alliances with a view to 'closer cooperation'?

European environmental policy to date

European environmental policy got off to a slow start in the 1950s with a number of stand-alone directives. During the 1970s the flow of directives began to gain momentum in terms of both their number and coherency. 1973 saw the publication of the first Environmental Action Plan (EAP). The First (1973 - 1977) and the Second EAP (1977-1981) were heavily oriented towards isolated problems and pollutants. Environmental policy at this time was driven mainly by environmental considerations. This was to change, however. The Third EAP (1982-1986) analysed the potential advantages and disadvantages of environmental policy for the internal market and indicated that environmental considerations took second place to the internal market. Emission standards and product regulations had to be harmonised in order to ensure that competition between companies and between countries could proceed with as little hindrance as possible.

The Single European Act of 1987 devoted a whole chapter to environmental policy. Enshrining environmental objectives in the Treaty in this way gave significant additional impetus to environmental policy; the environment was now included amongst the

formal objectives of the Community. A new shift was discernible in the Fourth EAP (1987-1992) towards a more integrated approach. For the first time, environmental protection was seen as an integral part of, rather than an addition to, the production process. Reducing energy and raw materials consumption and the closing of cycles were now on the agenda. Environmental effects were analysed by sector, and new instruments such as taxes, subsidies and tradeable emission rights were introduced.

This marked the start of a strategic reorientation of environmental policy in the EU which is reflected in the Fifth EAP (1992-1999). This EAP starts by enunciating a number of principles, most of which are also to be found in the Treaty, such as the precautionary principle and sustainable development, and presents an approach of a responsibility shared between governments and target groups. It also introduces the concept of environmental themes, and short- and long-term objectives are formulated. The old end-of-pipe approach is abandoned, and the integration of environmental objectives into the policy of other sectors is espoused. New market-based instruments such as tax incentives and voluntary instruments such as covenants are also advocated, and ways are considered of making environmentally sound decisions more attractive for producers and consumers. Environmental policy must increasingly form an integral component of economic decisions.

The new approach of the Fifth EAP should be implemented as far as possible by member states at the national or regional level in accordance with the subsidiarity principle, with some room for differentiation, provided neither the basic environmental quality objectives nor the internal market is jeopardised as a result. A shift is taking place, intended to ensure cost-effectiveness and efficiency, whereby objectives are set at Community level in framework directives, but the member states retain the flexibility to choose the combination of instruments which in their view is most cost-effective and efficient. Framework directives also permit views on the use of environmental quality objectives which are sometimes very divergent to be reconciled. However a consequence of this is that the Commission, as enforcer of environmental policy, is less able to ensure effective implementation than would be the case with a system of rigid, prescriptive directives and regulations.

The evaluation of the Fifth Environmental Action Programme was published at the end of November 1999. It was stated there again that, although a great deal had been achieved, the accomplishments are being cancelled out by rapid growth in sectors such as transport, energy and tourism. The Commission also pointed out that member states are not yet implementing the entire system of environmental regulations (the 'environmental acquis') in full. The Sixth EAP, which will be drawn up in the coming year, will have to concentrate, according to the Commission, on achieving more eco-efficient patterns of production and consumption by decoupling economic growth and the environmental pressure it causes.

Bottlenecks in European environmental policy

Policy-makers face a number of problems in further developing European environmental policy.

The *first* such problem bears on the discussion of the future configuration of the EU. Uncertainty about the future decision-making structure also means uncertainty about the progress of environmental policy. Existing alliances and cooperative relationships may change as the balance of power changes. The new member states will have to be in compliance with much of the environmental *acquis* on their accession, but transitional periods will be agreed for some elements because of the huge investments involved and the institutional and organisational changes needed. After their accession these countries will be able to exercise influence on, and therefore possibly delay, the further progress of environmental policy.

The *second* problem relates to the effective implementation of environmental policy. This involves four successive steps: firstly the transposition into national legislation, with delegation where appropriate to the regional level, followed by implementation, inspection and enforcement. All four steps could be improved, with inspection and enforcement in particular not only needing new instruments, but also being subject to major between-country differences in quality. The fines which can be imposed by the European Commission in fact constitute a formidable enforcement instrument, even the threat of which can achieve the desired effect.

The *third* problem relates to the 'external integration' of environmental objectives into the other policy sectors. This is as yet insufficiently developed, and is further complicated by the fact that many EU decisions are made in the sectoral Councils of Ministers (Transport, Agriculture, Environment, etc.). Given that financial support is a powerful policy instrument, the allocation of EU funds is not yet sufficiently subjected to sustainability criteria, which is also handicapping this integration process. The non-sustainable use of natural resources is sometimes being stimulated, for example, and thereby actually sanctioned, while environmental policy is promoting the concept of sustainability. The reports on the integration of sustainability policy into the various policy sectors submitted to the Helsinki summit (10-12 December 1999) contain little by way of concrete examples of actual integration.

The *fourth* bottleneck concerns the need to increase public support for environmental policy in the various member states, and particularly the Accession Countries. Sometimes the civic institutions needed are missing, or the administrative machinery is insufficient. If the expertise and involvement of societal stakeholders and government structures are not engaged, the effective implementation of environmental policy is almost impossible.

And *fifthly*, developments are taking place, also at the global level, regarding the relationship between trade and the environment which could have major consequences for the relationship between the internal market and the environment within the EU. The Millennium Round of the World Trade Organisation (WTO) will start in 2000, and the results could have far-reaching consequences for the freedom of the EU to pursue its own environmental policy. Amongst the topics which need to be discussed are the scope for granting export subsidies, for using ecolabelling to inform consumers and for rejecting products because of their environmental or health effects. Another crucial issue is whether WTO agreements take precedence in international law over multilateral and other environmental agreements.

Uniformity and differentiation

The concepts of uniformity and differentiation lie at the heart of European environmental policy. The key point here is the degree of flexibility permitted under European law to pursue an environmental policy tailored to local and regional circumstances. These local and regional circumstances are extremely diverse, and the forthcoming enlargement of the EU will only increase this diversity further. Where environmental quality standards are based on health risks for humans and animals and the vulnerability of ecosystems, widely differing measures are needed to produce an adequate ultimate level of environmental protection. This flexibility is constrained by the need for harmonisation imposed by the EU internal market and competition policy. The differences which exist should in principle not affect relative competitiveness or create obstacles to trade.

Contrary to what many think, EU regulation already permits a considerable measure of differentiation in European environmental policy. The extent possible depends on whether the regulation is based on the Environment Title of the EU Treaty or is motivated by internal market harmonisation. The possibilities for and limits of differentiation can be summarised as follows:

- Differentials in environmental quality standards for water, soil and air can be justified by differences in regional and local circumstances. This can lead to maximum permissible limit values and desired target values which may diverge in order to protect specific, sensitive ecosystems.
- Differentials in emission standards can be justified by the proximity of concentrations of economic activity or population, or of sensitive ecosystems. Differentials in emission standards are to some extent restricted by internal market policy and competition, but this restriction is not absolute.
- Differentiation in product standards is severely restricted by policy to implement a single internal market and competition policy. The internal market requires production and market conditions to be made as equal as possible and competi-

tion policy requires the dismantling of trade barriers.

- Differentiation can also relate, even where the policy objectives are the same, to the choice of instruments. As long as a country meets its objectives within the periods set it seems logical to allow it to determine itself how it does this. But there is not unlimited latitude for differentiation here. The European Commission will need to be satisfied that the instruments do not affect competitiveness too greatly, and that they are likely to be sufficiently effective (e.g. covenants, benchmarking). Instruments which in particular have been designed to act at international level will certainly have to be introduced as uniformly as possible in order to ensure that the area covered is as wide as possible.

The VROM Council took an in-depth look at the history and present status of six examples from the annals of Dutch environmental policy which relate to differentiation. These examples are interesting because they relate to some of the most refractory areas of Dutch environmental policy, partly because they can only be tackled effectively by international cooperation. They are: climate change, acidification, eutrophication, waste, priority substances and pesticides. The scope for differentiation proves to have been limited, but there are often arguments for differentiation in emission standards, product standards and instruments. The arguments are usually related to the vulnerability of specific areas or the transboundary nature of emissions. The harmonisation requirements of the internal market and competition policy represent a constraint, however. The Netherlands will have to remain alert on a number of different issues to ensure that it makes a timely case for differentiation in Brussels where desired. It is also vital that it contributes to conceptual thinking and to innovation on instruments.

Pacesetters are vital catalysts for changes in society such as the development of environmental policy. The Netherlands has had, together with countries like Denmark and Germany, a major impact on the development of European environmental policy. The Netherlands has in particular been at the forefront in terms of the conceptual thinking, planning, innovation with regard to instruments and the practical translation of policy to regional and local government and the various societal protagonists. The Netherlands has quite consciously set out to exercise considerable influence on the evolution of environmental policy in Brussels. Experience and expertise were made available by means of secondments, cooperative links with other countries have been developed, the presidency was utilised strategically, and so on. The EU's Fifth Environmental Action Programme, for example, drew heavily on the system of the Dutch National Environmental Policy Plans.

It must be said, however, that in recent years the Netherlands has been less in the vanguard, particularly in relation to the implementation of environmental policy. Furthermore the VROM Council is under the impression that, despite the influence which the Netherlands has had in the past on the creation of European environmental policy, there is a wide gulf between policy-makers in the Dutch ministries and those in Brussels. Although 70-80% of Dutch environmental legislation is determined directly or indirectly by the EU, Brussels seems a long way away to many Dutch politicians and officials. There is also sometimes a considerable gap between the negotiators in Brussels and the future implementers of this policy in the Netherlands.

The VROM Council's answers to the questions of the Minister

Uniform protection level throughout Europe?

Any desired level of environmental protection (in terms of quality standards) is based on some form of scientific and/or political consensus on the acceptability of the risks to human health and the vulnerability of ecosystems. These are translated into limit values and sometimes also target values for individual pollutants. A differentiated approach to the underlying risk assessments between member states is not appropriate below a certain level: a Greek woman and a Swiss man do not differ in their sensitivity to pollution, and nor do a Spanish and a Finnish osprey, so there are no grounds for differentiation in risks in this respect. These risk assessments may of course be adjusted at any time by decision-makers on the basis of new scientific data or social considerations, but they will then again apply to all member states. In so far as the Minister's question relates to human health, it can be answered very clearly in the affirmative: the assessment of the health risks which are acceptable should be the same throughout the EU and should lead to the same basic set of limit and target values everywhere. In the case of environmental effects which affect human well-being but do not threaten health and do not cross national frontiers (such as noise), a uniform level of protection need not necessarily be imposed mandatorily; national or regional standards can be set within a certain range which reflect local circumstances and preferences. A certain differentiation is possible in relation to ecosystems: sensitive ecosystems may justify a higher protection level. Finally, standards less stringent than the uniform protection level can be contemplated for a pre-agreed period, provided this is only a transitional situation. In such cases the time over which the final objective is achieved may be negotiable, but not the final objective itself.

Differentiation in the manner in which the protection level is achieved?

Given environmental quality standards based on risks to the health of humans and animals, and on the vulnerability of ecosystems, considerable variation will be needed in the way in which the protection level is achieved. There is already a huge

diversity in local and regional circumstances, and this diversity will increase further with the enlargement of the EU. These circumstances include population density, soil characteristics, water resources, biodiversity, precipitation patterns, industrialisation, agriculture and animal husbandry, etc. Variation will therefore be needed in emission and product standards to produce a satisfactory final situation in terms of the protection level. This is often regarded, incorrectly, as a differentiation in the level of protection.

The Netherlands must also be ready to argue for differences in speed, emission standards and product standards for itself, where necessary. In the view of the Council it is equally important that differentiation in the permitted instruments should be permitted. Given the diversity of local circumstances it is very important that EU directives and regulations should shift from means-oriented to results-oriented measures. Covenants are a good example of this, although this instrument is not equally appropriate in all member states given the differences in size, legal system and culture. This will make tough demands in terms of improvements in the quality and coordination of inspection and enforcement in all member states. Furthermore, instruments designed in particular to operate at the international level will have to be introduced as uniformly as possible in order to maximise the territory over which they apply. The scope for differentiation in product standards, emission standards and instruments is limited because of European policy on the internal market and competition. The rules concerned do however provide some latitude for differentiation.

A lead role for the Netherlands in seeking closer cooperation?

The Netherlands is increasingly becoming a *part of* Europe. Most environmental matters can only be solved through international cooperation, and even this is difficult enough. There will still however be room for countries which, in close cooperation with like-minded member states, wish to exert pressure to go beyond the common denominator in certain policy areas. These trailblazers are necessary, but can only function properly if they form temporary tactical alliances with other member states. A 'holier-than-thou' attitude in this regard will be counterproductive, and it is also clear that (the restoration of) credibility is an essential precondition if the Netherlands is to play a stimulatory role in the further development of European environmental policy.

It is still unclear precisely what form this closer cooperation will take. This is related closely to the forthcoming changes in the EU's decision-making structure. But the Minister's question can therefore be answered in the affirmative. The Netherlands can certainly, with appropriate modesty and a restored credibility in relation to its implementation of EU policy, participate in a vanguard group which seeks, for example, to develop new instruments for climate policy. The discussions already taking place about the introduction of a European energy/CO₂ tax in a small group of countries exemplifies

this well. The Netherlands could also join with other countries in advocating, for example: an innovative rethink on the issue of waste, improving the implementability of regulations and inspection and enforcement at national and regional but also European level, closer integration between the various policy sectors at the European Commission, bolstering the support for environmental policy and the role of environmental organisations in the Accession Countries, and placing European funding on a sustainable basis. And in relation to the posture of the EU in the forthcoming WTO Millennium Round, the aim should be to ensure that international trade treaties incorporate environmental conditions, and do not detract from present European environmental policy.

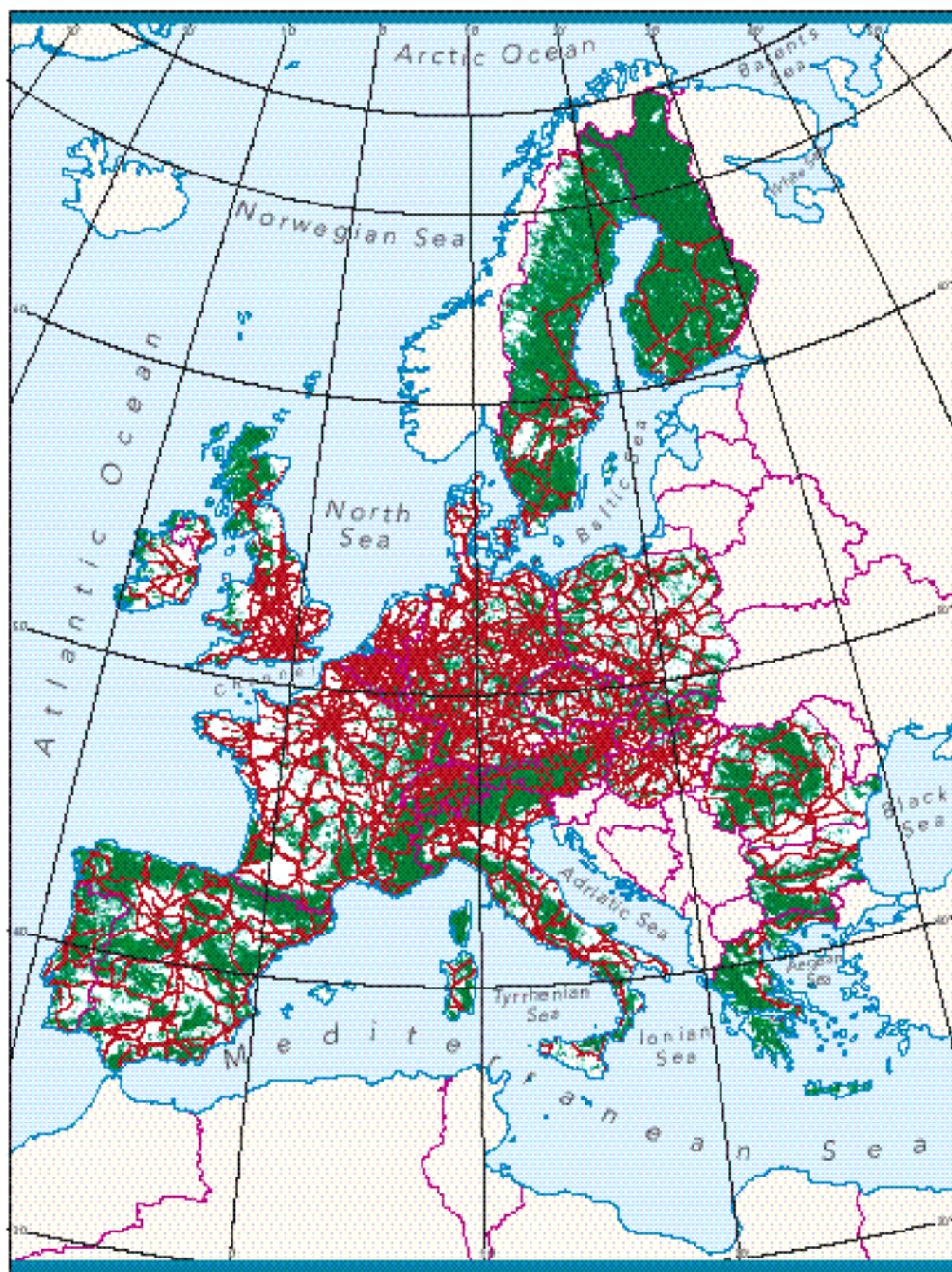
Recommendations:

- 1 Essentially the level of protection for humans, animals and ecosystems as reflected in environmental quality standards should be the same everywhere because these standards are based on the maximum permissible risks. A higher level of protection can be provided in specific, vulnerable areas or in specific situations where rare flora, fauna or ecosystems are in need of protection. A temporary relaxation of the protection level may also be permissible as a transitional situation.
- 2 In the case of environmental effects which affect human well-being but do not threaten human health and do not cross national frontiers (such as noise), a uniform EU-wide protection level should be formulated, but this need not necessarily be imposed mandatorily; the standards implemented at the national or regional level could be set within a certain range, appropriate to local circumstances and preferences.
- 3 Different measures and instruments are needed to achieve a uniform basic level of protection in different local situations, so that there may be differentiation in emission standards, product standards and instruments. Different timetables may also be agreed when directives are being adopted or during accession negotiations. There can be no argument for a permanent relaxation, however.
- 4 It is becoming increasingly unlikely that individual member states will act as pacesetter. Temporary cooperation between tactical alliances of member states in order to bolster Community environmental policy is more likely. The Netherlands can in the view of the VROM Council certainly play a role in such alliances, for example in developing instruments for climate policy: a European energy/CO₂ tax, tradeable emission rights. It can also contribute to a conceptual rethink on the issue of waste.

- 5 The Netherlands must be alert to developments relative to the various environmental issues. European environmental objectives may be expressed in terms of results to be achieved, and they must therefore be realisable, amongst other reasons so that the Netherlands retains its credibility in negotiations on European environmental policy. The objectives of the NEPP3 are being evaluated for the purposes of the NEPP4, and the results of this evaluation will affect the Dutch stance on the various issues at the European level. Equally important, however, is that Dutch efforts in environmental diplomacy should - in cooperation with other member states - address the bottlenecks to the further progress of European environmental policy.
- 6 As far as the forthcoming enlargement of the EU is concerned, the environmental acquis should apply to as large a territory as possible. This will ultimately produce the greatest environmental benefit. Accession Countries will certainly have to be allowed transitional periods, but all agreements must envisage the adoption in full of the environmental acquis and full membership. It will therefore be not so much a question of a multi-speed Europe as a Europe with different 'distances to target', these targets not varying between countries.
- 7 In order to ensure that European environmental policy is effectively implemented, national and European inspection and enforcement agencies, which are cooperating well together, are in urgent need of strengthening. The function which conservation and environmental organisations already fulfil as whistle-blowers for the European Commission and the European Court of Justice where implementation is inadequate can be extended and will also fulfil a vital role in the Accession Countries.
- 8 Environmental policy must be integrated more thoroughly into other policy sectors. Changes should be made to ensure more coordination and horizontal harmonisation between the sectoral Councils of Ministers. It is important in this connection that the decision-making role of the European Parliament is strengthened. European funding, much of which is allocated sectorally, must be made subject to clear conditions as to sustainability and the assessment of environmental impacts.
- 9 Building support for environmental policy in national societies is a precondition for the strengthening of environmental policy and the policing of its implementation. This must be facilitated through European measures, but support-building is an activity well suited to being undertaken by individual member states in bilateral cooperation with other member states or applicant states. A great deal is

already happening, but this needs to be reinforced, with member states making use of their expertise and knowledge in areas of environmental policy in which they are themselves strong.

- 10 The quest for the greater liberalisation of world trade should be accompanied by a greater internalisation of policy on the environment and sustainability. Not one without the other. Efforts should be made during the Millennium Round to anchor environmental requirements more firmly in international trade agreements. The shifting of environmental costs to others must be prevented, and all countries must have fair access to the global 'ecospace'.



Pressures on land resources and landscapes from urban areas and transport network

Source: EEA



1 Introduction

The 1999 Work Programme of the Council for Housing, Spatial Planning and the Environment (the 'VROM Council' or 'Council') refers to a request for an advice on the position the Netherlands should adopt on the development of European environmental policy in an expanding European Union (EU). The Council received the request (see Annex 1) together with a request to advise on the 'ecological footprint'. The Council completed its work on the ecological footprint with the formal adoption, in September of this year, of its advice 'Global sustainability and the Ecological Footprint'¹.

The present advice is strongly oriented towards the Dutch stance on policy at the European level, as specified in the advice request. The interest of the Minister is particularly in the achievement of the Dutch environmental policy objectives as specified in the NEPP3 (Third National Environmental Policy Plan). The key question in this regard is how the Netherlands can best exploit the scope, both existing and future, for European environmental policy to advance at different speeds and with differing levels of environmental protection. This question does not only arise in connection with the accession of new member states, but is also relevant within the present EU-15. The environmental policy discussions between the Northern and Southern member states testify to this, as does the fact that European environmental policy already exhibits, in various forms, differing speeds and levels of protection, in terms both of actual content and of implementation. The recent Treaty of Amsterdam² created further flexibility in this regard, and the future enlargement of the EU makes this question particularly topical.

The Minister posed the following questions in this regard:

- a Should the Netherlands be seeking, in its European policy, maximum uniformity in protection levels? or
- b should the Netherlands be seeking to make active use of the possibilities offered by European law for a multi-speed Europe and for differentials in the level of environmental protection? and
- c should the Netherlands be taking a lead in forming alliances with a view to 'closer cooperation'?

In order to answer these questions, stock must be taken of where European environmental policy has got to so far, and of the various positions on the issue of differentiation. The Council discovered that policy in this area is in a state of flux, but also that the know-

¹ VROM Council: Mondiale duurzaamheid en de ecologische voetafdruk. Advice no. 16. The Hague, 1999. English translation available.

² Entered into force May 1999.

ledge needed to address these issues is not very broadly spread. In drawing up this advice the Council therefore consulted various external experts, both verbally and in writing.

In a short retrospective evaluation, the Council identifies, in chapter 2, the main developments in European environmental policy, and the main bottlenecks constraining its further development. Naturally these matters are affected by the forthcoming enlargement of the EU. This enlargement is not however the subject of this advice, and will only be discussed peripherally. Chapter 3 considers the terms 'uniformity' and 'differentiation', illustrating them by taking a bird's eye look at six environmental issues in the Netherlands. Chapter 3 also looks at the phenomenon of the 'pacesetter'. In chapter 4 the Council states its position in relation to the bottlenecks to further expansion of European environmental policy listed in chapter 2, and the specific questions posed by the Minister are answered. The recommendations of the Council are set forth at the end of the summary. Appended to this advice are: the text of the advice request (Annex 1), a glossary of terms and abbreviations used (Annex 2), further information on the enlargement of the EU (Annex 3) and a statement of the composition of the Council (Annex 4).

2 European environmental policy: a brief review

The authors of the original treaty establishing the Community, the Treaty Of Rome (1956/1957) concentrated exclusively on economic cooperation. A start was only made with a common environmental policy in October 1972, as a result of pressures from heads of state and leaders of governments. Since then there have been five Environmental Action Programmes (EAPs), with a sixth EAP in the offing, and the EU has produced more than 260 items of environmental legislation, apart from all the amendments.

This chapter briefly describes the development of community environmental policy and identifies the main bottlenecks constraining its further development. A number of boxes on the present state of Europe's environment are included for information purposes.

2.1 Developments in the common environmental policy

We begin by briefly reviewing the development of the present regulatory structure. The five EAPs are then considered in turn, and the sixth EAP is previewed. Thirdly, we look at progress being made with the 'external integration' of European environmental policy into other EU policy sectors. And finally the Council examines the involvement of the various social partners in EU environmental policy.

2.1.1 Review of environmental legislation

The first European environmental directive³ dates from 1959 and contains basic standards for "the health protection of the general public and workers against the dangers of ionising radiation". In 1967 came the second directive "regarding the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances". In 1970 three directives on motor vehicles were enacted, dealing with matters such as roadworthiness inspections, noise and exhaust systems, and regulating emissions in exhaust gases. In 1972 followed regulations for diesel engines, in 1973 for solvents and detergents, and in 1974 for agricultural and forestry tractors, and the 1970 directive on exhaust gases from motor vehicles with electrical ignition was amended for the first time. In 1975 came regulations on aerosols, and the use of natural gas in power stations followed, several months later, by regulations on the use of petroleum products in power stations, the disposal of waste oils, and surface water quality requirements for producing drinking water. 1975 also saw the first directive on waste and the first directive on the sulphur content of certain liquid fuels. There then

³ In European terms radiological protection in fact falls under nuclear energy rather than the environment.

followed, in rapid succession, rules on fertilisers, bathing water quality, polychlorinated compounds, dangerous substances in the aquatic environment, paints and printing inks, the lead content of petrol, noise from equipment on building sites, pesticides and bird stocks (in April 1979). A steady production of directives has since continued. Meanwhile a whole raft of agreements were being made, by means of conclusions and resolutions⁴, on research programmes, admission to various international environmental treaties, product labelling, the harmonisation of certain excise duties, etc. Community policy is therefore broadening out and becoming more comprehensive, and this process has also been occurring in the various EAPs.

2.1.2 The successive EAPs

In response to the 1972 UN Conference on the Human Environment in Stockholm and to growing public disquiet about the limits to growth (Club of Rome), European heads of government decided at a summit conference in Paris in 1972 that a common environmental policy should be launched. The European Commission produced the first EAP as a response to this. This document raised in conceptual terms⁵ the interdependence between economic development and living standards on one hand and environmental protection on the other; it talked about the rational use of raw materials, the need for an ecological balance, and about the prevention, reduction and control of environmental damage. This line was continued in the Second EAP (1977-81). In both the First and Second EAPs, however, the first concrete steps were strongly oriented towards isolated problems and pollutants: quality standards for air and water, and attention for waste issues.

In these early years environmental policy was driven mainly by environmental considerations. There was a change of emphasis in the Third (1982-1986) and Fourth (1987-1992) EAPs, however, which were much more concerned with the process of consummating the internal market. The Third EAP examined the potential advantages and disadvantages of environmental policy for the internal market, and made it clear that the environment was subservient to internal market considerations. Emissions standards and product regulation should be harmonised in order to permit the competition between companies and between countries to be as untrammelled as possible. There is a shift in the Third EAP from a quality-based to an emissions-based approach, with the focus on

⁴ Note the difference. Of the instruments 'regulation, directive, decision, conclusion, agreement, resolution, recommendation, advice, communication', only the first three are binding, i.e. they can statutorily 'integrate' the legislation of member states. The first EAP was the only one to be adopted by the Council of Ministers, the succeeding ones 'only' being accepted by resolution, and therefore not being binding. See also H.G. Sevenster: *Milleubeleid en gemeenschapsrecht, het interne juridische kader en de praktijk*. Deventer, 1992, p.22. This series is based on the EC Treaty, but there are differences between treaties. In the Euratom Treaty, for example, a recommendation is binding on the parties to the Treaty.

⁵ Christian Hey/Karola Tasschner: *A critical evaluation of available European Legislation on Industry and the Environment*, EEB, Brussels, Dec.1998.

the formulation of emissions standards for both stationary and mobile sources. But the objectives of the First and Second EAPs were reasserted and they refer positively to the concept of sustainable development.

The Single European Act of 1987 devoted a whole chapter specifically to environmental policy. Enshrining environmental objectives in the Treaty in this way gave significant additional impetus to environmental policy, which also found expression in the Fourth EAP; the environment was now included amongst the formal objectives of the Community. 1987 was also designated European Year of the Environment. A new shift was discernible in the Fourth EAP, towards an integrated approach. For the first time, environmental protection was seen as an integral part of, rather than an addition to, the production process. Reducing energy and raw materials consumption and the closing of cycles were now on the agenda. Environmental effects were analysed by sector, and new instruments such as taxes, subsidies and tradeable emission rights were introduced. This marked the start of a strategic reorientation of environmental policy in the EU which took place during the years 1989-1994. The ideas in the Fourth EAP (integrated approach, new instruments, sectoral analysis) were developed further. This change is sometimes described as a paradigm shift, from a trade orientation to a sustainable framework, with environmental policy increasingly becoming an inseparable component of economic decisions. During this period the urgency of the climate problem became clearer, the UN Conference on Environment and Development was held in Rio in 1992, producing Agenda 21, and the EU began to seek to profile itself as a global leader in the field of the environment. There was a 'second wave' of public disquiet about the environment. There was an explosive growth in the membership of environmental organisations, and in Europe there was also an increase in the number of environmental organisations; green parties won more seats in national parliaments and in the European Parliament.

This strategic reorientation was also reflected in the Fifth EAP (1992-1999). This EAP starts by enunciating a number of principles which are for the greater part also to be found in the Treaty, such as the precautionary principle and sustainable development, and presents an approach of a responsibility shared between governments and target groups. It also introduced the concept of environmental themes, and short- and long-term international objectives were formulated. The old end-of-pipe approach was abandoned, and the integration of environmental objectives into the policy of other sectors was espoused. New market-based instruments such as tax incentives and voluntary instruments such as covenants were also advocated, and ways were considered of making environmentally sound decisions more attractive for producers and consumers. The vital roles of environmental organisations and local government were also recognised, and medium and long term objectives were set for a number of pollutants.

The new approach announced in the Fifth EAP, which was accepted by resolution but was not formally adopted, should be implemented as far as possible by member states at the national or regional level in accordance with the subsidiarity principle, with some room for differentiation, provided neither the basic environmental quality objectives nor the internal market is jeopardised. A shift is taking place, intended to ensure cost-effectiveness and efficiency, whereby objectives are set at Community level in framework directives, but the member states retain the flexibility to choose the combination of instruments which in their view is most cost-effective and efficient. Framework directives also permit views on the use of environmental quality objectives which are sometimes very divergent to be reconciled. However a consequence of this is that the Commission, as enforcer of environmental policy, is less able to ensure effective implementation than would be the case with a system of rigid, prescriptive directives and regulations.

The new approach of the Commission as contained in the Fifth EAP is not particularly easy to implement. There was evidence of a 'roll-back' during the period 1992-1995. The proposal for an energy/CO₂ tax, which can be regarded as a test-case for the new approach, was watered down after two years of negotiation and eventually withdrawn in 1994. Nor was CO₂ the only casualty. The discussion on ecotaxes in other sectors such as transport, the packaging directive and the proposal for a strategic EIA also underwent severe delay. The Commission is surprisingly frank, in the interim evaluation⁶ of the Fifth EAP, about these setbacks: *"The political will to make (the elements of the Fifth Programme) work is lacking, however. ... a greater realisation of common responsibility is needed.... At the end of the day, the main task is to find out how pressure can be exercised such that real progress is made and the feeling is created that further action is necessary."*

Since 1995 the Commission has been experimenting to see what works and what does not work in the field of environmental policy. A further important step was taken with the signing of the Treaty of Amsterdam (September 1997, took effect in May 1999), however. The objective of a balanced and sustainable development was given equal status in the Treaty - and thus on a par institutionally - with the objective of economic and social progress. This made it possible for the Commission to present new proposals at the Cardiff summit (June 1998) for strengthening external integration (see 2.1.3). The strategy for combating acidification which the Commission has since introduced is an example of a new long-term policy aimed at sustainable development, in this case to ensure that acidification is reduced to below 'critical loads'. The CO₂ reduction objectives following Kyoto and the revival of ideas for an eco-tax exemplify the fact that sustainable development is again on the agenda. Market-oriented instruments to encourage the effi-

⁶ Towards sustainability. Progress report of the European Commission. Luxembourg, 1997.

cient use of raw materials are again the subject of discussion, together with matters such as producer responsibility for waste from vehicles, electronics and building materials.

With the introduction of framework directives, ranges are being prescribed in a number of cases within which it is left to member states to set their own emission limits (water framework directive, IPPC⁷), and with the emphasis being placed on procedural rather than substantive legislation (IPPC, EMAS⁸), and with the formulation of environmental standards being delegated to technical bodies (CEN⁹, Packaging Directive, Ecolabel, chemicals legislation, IPPC).

In advance of the evaluation of the Fifth EAP, the Commission itself¹⁰ said that “in accordance with the subsidiarity principle, *the approach of Community environmental policy has shifted from detailed regulation to the setting of objectives at the Community level in framework directives, member states retaining the flexibility, when the regulations are implemented in national law, to choose the most cost-effective combination of instruments with which the objectives can be achieved. This involves making increasing use of a few instruments the extent of whose compatibility with the internal market is not always clear*”. The evaluation of the Fifth Environmental Action Programme was published at the end of November 1999¹¹. It was stated there again that, although a great deal had been achieved, the accomplishments are being cancelled out by rapid growth in sectors such as transport, energy and tourism. The Commission also pointed out that the member states are not yet implementing the environmental acquis in full. The Fifth EAP has contributed to improving understanding and building awareness of environmental issues, but the basic principles of the Fifth EAP need to be put much more effectively into practice by all the parties.

The Sixth EAP, which will be drawn up in the course of the coming year, will have to concentrate, according to the Commission, on achieving more eco-efficient patterns of production and consumption by decoupling economic growth and the environmental pressure it causes.

⁷ Council Directive 96/61 EC ‘Integrated Pollution Prevention and Control’ provides for an integrated permitting procedure for new and existing installations.

⁸ Council Regulation 93/1836 ‘Environmental Management and Audit Systems’, providing for voluntary participation by companies in an eco-management and audit scheme.

⁹ European Standards Institute. CENELEC and ETSI are also standard-setting Institutes. The latter are criticised on the grounds that the standards are left too much to technical experts.

¹⁰ COM99/263 Communication on the Internal Market and the Environment, 8 June 1999.

¹¹ Global Assessment on the overall results of the European Union’s 5th Environment Action Programme, November 1999. See also background document Commission Services Working Paper SEC (1999)1911.

2.1.3 External integration in the other policy sectors

The *external integration* of environmental objectives into other policy areas (also referred to as the 'mainstreaming' of environmental policy) is proceeding only slowly. It was only in the Fifth EAP (1992) that the importance of sectoral integration - the integration of environmental objectives into, for example, agricultural, transport and energy policy - was clearly pointed out. In formulating new policies or measures the possible environmental implications need to be considered and in relevant cases an environmental impact assessment needs to be carried out. Several attempts have been made (in particular by DGXI) to initiate closer cooperation between directorates-general, but these have made little headway. In the progress report referred to earlier¹² the Commission observed that the measures designed to bring about this external integration "have so far had little effect the message of the Fifth Environmental Action Programme has not been sufficiently integrated operationally within the Commission".

The Treaty of Amsterdam has given this issue a new boost by acknowledging that the integration of environmental protection requirements into other policy sectors is essential to promote sustainable development (Article 6). The Commission produced a strategy memorandum for the Cardiff summit (1998) in which heads of government invited the Councils of Ministers for Agriculture, Energy and Transport to draw up a report and present a strategy for environmental integration and sustainable development. In December 1998 the Vienna European Council extended this request to cover the development of the internal market, Development Cooperation and Industry. The Cologne European Council (June 1999) added Ecofin, Fisheries and General. The first six reported to the Helsinki summit in December 1999. These reports contain very little by way of concrete examples of actual integration. The Commission will also present a report on indicators to measure integration and a proposal for the introduction of a scheme for the environmental screening of proposed regulation.

One problem arising is to decide how progress with external integration can be determined. How can we demonstrate the extent to which other sectors are internalising environmental considerations into their own policy? Qualitative reports can give rise to window-dressing; the European Environment Agency¹³ seeks to measure progress in terms of the extent to which use is made of economic instruments in the various policy fields. It looks in particular at the role of prices, taxes and subsidies in making sectoral economic activities more environmentally friendly (market integration). The Agency also records the use of EIAs, environmental management systems and product policy as a means of anticipating and minimising environmental effects (management integration).

¹² See footnote 6.

¹³ Europe's Environment: The Second Assessment. European Environment Agency, Copenhagen. 1998.

2.1.4 Building societal support

In EU parlance the internalisation of the need for environmental policy is referred to as shared responsibility, and in the Netherlands as building a support base. This was one of the purposes of the General Consultative Forum¹⁴, set up in 1994 and consisting of 32 influential representatives of the target sectors to advise the Commission on sustainable development. There is also an Environmental Policy Review Group in which environmental directors-general from member states confer with the Commission. And an informal network of inspectors of industrial installations (IMPEL, the network of European enforcers) was created in December 1993. The Commission also holds discussions with a broad range of European organisations (industry, environmental organisations, regional and local authorities) at widely differing levels.

The Commission regards the drawing up of national strategic environmental plans (such as the National Environmental Policy Plans in the Netherlands) as being of the utmost importance in creating this shared responsibility. The establishment of advisory and consultative councils is also encouraged. In 1994 the Committee of the Regions set up a committee for the environment, spatial planning and energy in which regional and local authorities deliberate on the environment and sustainable development. The Commission also actively supports organisations with an environmental orientation which are operating or seeking to operate at the European level, and an interaction is organised between the President of the Commission and the Commissioner for the Environment and the representatives of these environmental organisations.

Finally, many member states, including the Netherlands, are actively helping, through bilateral contacts, to build up and support the environmental movement, environmental ministries, inspectorates, industrial associations, etc., not only in existing member states but also in candidate countries.

2.2 Bottlenecks to further progress

The Council now turns to consider, in relation to the question of possible/desirable differentiation, a number of bottlenecks of various kinds which, in its view, policy-makers will have to face in further developing European environmental policy.

The first bottleneck bears on the discussion of the future configuration of the EU, all the more urgent given the future accession of ten Central and Eastern European countries, as well as Cyprus, Malta and Turkey, with even countries like the Ukraine presenting their candidature. Seen in terms of the objectives of environmental policy it is preferable that the environmental *acquis* should be applied effectively over as large a ter-

¹⁴ Since 1997 the European Consultative Forum on the Environment and Sustainable Development.

ritory as possible. Many of the commentaries which appeared in response to the Treaty of Amsterdam¹⁵ advance the view forcefully that the EU will in the coming years need to design a system of coordinated diversity. Donner means by this that there will continue to be some differences between national systems, including in the environment, with distortions and barriers being prevented by means of reciprocal acknowledgement and the coordination of legal systems. Carius et al. anticipate that the term 'flexibility', used for the first in the Treaty of Amsterdam, indicates that European integration will be different in scope in different groups of countries. They hark back to the 'variable geometry' concept. Even here, however, there would always be increased cooperation, and there would be no backsliding from Community law.

The Dehaene Committee¹⁶, in its proposal for the modification of the European decision-making structure, also envisages different degrees of integration applying to different groups of countries within the EU. This Committee again introduced the concept of 'a Europe of concentric circles'. It depicts Europe as being like an onion, with a core of member states which would include the Netherlands cooperating on a federal basis. Around them would be a layer of countries which desire little more integration than at present, such as the United Kingdom and Denmark. The outermost layer would comprise the newcomers from Central and Eastern Europe. The latter would be far from being able to join in all policy areas, but would nevertheless be members. It is important that there should be a proper promotion route for the countries in the outermost layer: gradual participation in the internal market occurring in parallel with the implementation of the environmental *acquis*. This proposal allows the rapid enlargement of the EU, which is very important in terms of European security and geo-political stability. At the same time this enlargement does not jeopardise progress with European environmental policy.

If some kind of separation into groups does occur there will be an inner layer of countries which apply the environmental *acquis* in full, with a number of surrounding layers comprising countries which participate in lesser measure. The dominance of the internal market will then be environmentally beneficial because it is difficult to envisage that the outer layers will gain access to the internal market without complying with the minimum harmonisation of (at least) product standards. Uncertainty about the future of the EU's structure does however mean uncertainty about the progress of environmental

¹⁵ See J.P.H. Donner: 'Het verdrag van Amsterdam, slotbeschouwing', NJB 16 July 1999 no. 27; also Alexander Carius, Ingmar von Homeyer, Stefani Bär: 'The Eastern Enlargement of the European Union and Environmental Policy: Challenges, Expectations, Speed and Flexibility'. To be published in Katharina Holzinger and Peter Knoepfel (eds.): *Environmental Policy in a European Union of Variable Geometry? The Challenge of the Next Enlargement*. Basle, 1999.

¹⁶ R. von Weizsäcker, J.-L. Dehaene, D. Simon: *The institutional implications of enlargement*. Report to the European Commission. 18 October 1999.

policy. It also means that after their accession the new member states will be a party to the discussions about the further advancement of the common environmental policy, in a situation where they are already having to make good a backlog in many areas (including the environment). In these circumstances, the further tightening of European environmental policy cannot be expected.

The product measures amongst the environmental acquis will have to be put in place from day one after accession, due to their influence on the internal market, but the rest of the environmental acquis will be a matter for negotiation on phasing and implementation. The European Commission recently informed Poland that the full transposition of the environmental acquis into national law is non-negotiable, and that the only matter open to discussion is the question of the timetable for transition. While the European Commission is willing to consider periods extending to 2010, at latest, observers fear that political pressures may lead to longer periods being put on the table.

(continued on page 29)

Developments in the environment of the Accession Countries

(all the boxes in this advice contain extracts from 'Environment in the European Union at the turn of the century', European Environment Agency, Copenhagen 1998. This report does not in fact contain any information on Malta and Turkey)

Central and Eastern Europe Accession Countries:

- With expanding economies, consumption and production increases could be greater than in EU countries. In particular, private car use could increase by about 60% by 2010. The expected economic growth could well exacerbate, for example, municipal waste levels, and traffic congestion and pollution.
- With measures likely to be applied under the convergence process, energy consumption and intensity will probably dramatically decrease. Energy intensity in industry, especially, could improve by 35% by 2010. The energy restructuring process could result in significant declines of sulphur dioxide and carbon dioxide emissions at relatively low cost. With lower depositions, ecosystems adversely affected by acidification would probably be reduced from 44% in 1990 to 6% in 2010; ecosystems in the EU will also benefit from reduced emissions in Accession Countries; more modest gains can be expected from eutrophication. Improvements in energy efficiency and other baseline scenario assumptions would lead to a decrease in CO₂ emissions by about 8% between 1990 and 2010 for the Accession Countries.
- Currently the transportation systems have less adverse implications for the environment than those in the EU. The rail network in most Accession Countries is well developed, although modernisation is required. At the same time, the road infrastructure and private transportation is less developed. This situation provides the basis for developing an efficient transportation system which is relatively harmless from the environmental perspective.
- Recent increasing yields and production occurred in agriculture, accompanied by lower use of pesticides and fertiliser. But the potential for increasing the use of fertilisers and the spread of manure represents an important threat to water quality. The land tenure changes already instituted in Accession Countries have significant implications for land use and increased agricultural output. Nevertheless, the opportunity exists to protect ecosystem assets through the agricultural-environment integration under the proposed reforms of the Common Agricultural Policy. This could have major benefits for the rural economies through the enhancement of low impact agriculture and development of ecotourism, while at the same time maintaining biodiversity.

(see continuation boxes)

The second bottleneck relates to the effective implementation of European environmental policy. There are four aspects to this: (a) the transposition of the European measures into national legislation, with delegation where appropriate to the regional level; (b) the actual application of this national/regional legislation: implementation; (c) the monitoring of implementation (inspection); and (d) where appropriate, enforcement. Regulations apply directly, so that transposition does not apply, but the subsequent steps of course do. With inspection and enforcement, a distinction also needs to be made between the European and the national or regional level.

The percentage of environmental laws which have not yet been transposed into national legislation - 18% in 1999 - is still too high¹⁷. Member states are frequently declared to be in default by organisations and private individuals, but also by the Commission, and 40% of the complaints relate to the environment. The transposition of European laws therefore needs to be scrutinised closely. There are even greater concerns, however, about the implementation of European environmental policy which has been transposed into national legislation. Until recently the inspection and enforcement of national or regional implementation was left, as provided in the Treaty, entirely to member states, and there are large between-country differences in the quality of inspection and enforcement. To date, member states have blocked the establishment of an independent European environment inspectorate for matters to be enforced at the European level. There have been initiatives by member states to make inspection by or on behalf of the EU more effective, but these are at a very early stage. The Netherlands has contributed, by providing manpower and financial resources, to the formation of a network of European enforcers (IMPEL) in which expertise and institutional experience are exchanged and joint pilot projects are established.

The Commission has also initiated a discussion on implementation¹⁸. The Commission is now publishing an annual report on the application of the environmental law¹⁹. The complaints of citizens and environmental organisations which the Commission receives directly or via questions from the European Parliament form an important source of information for the Commission. Increasing use is also being made of the infringement proceedings against member states, which can culminate in the European Court imposing a large fine; the power to impose fines means that this instrument is now being taken seriously. Infringement proceedings were taken four times against the Netherlands, for example, before fines were introduced, as a result of the failure to observe the Birds Directive. Now that there is a threat of stiff fines based on a percentage of GNP there is a desire to avoid further infringement proceedings. The strong

¹⁷ COM 99/263 Internal Market and the Environment.

¹⁸ COM 96/500.

¹⁹ Annual Report on Monitoring the Application of Community Environmental Law, 1998.

pressure on the present Minister of Agriculture, Nature Management and Fisheries to comply with the Nitrate Directive is partly a result of the coming-of-age of the fine as an enforcement instrument; the amount involved in the case of the Netherlands would be over EURO 250,000 per day. This sanction was first created by the Treaty of Maastricht for a number of policy areas, including the environment.

The third bottleneck relates to the external integration of environmental objectives into the other policy sectors. This integration is crucially important if progress is to be made with environmental policy. The European Environment Agency judges²⁰, however, that integrated strategies, where sectoral objectives take account of environmental considerations, are still few and far between. Examples are to be found in some member states, however: at least five countries, including the Netherlands, have formulated a transport policy which includes environmental objectives. Anyone who can remember the Boers-Wijnsberg motion²¹ and sees the faltering progress actually being made today knows that paper is also patient in the Netherlands and that the introduction of external integration is proving laborious. But it is obvious that without effective external integration, a problem like climate change will never be successfully tackled.

²⁰ The Environment of the European Union at the Turn of the Century. Summary p. 26. Office of Official Publications of the European Communities, Luxembourg, 1999.

²¹ In this motion, which was passed by the Second Chamber of the Dutch Parliament (Second Chamber 1987-1988, 20298, no. 5) the Dutch government was asked to report on what progress was being made by government departments with sustainable development.

Developments in the environment of the Accession Countries (continued)

Central and Eastern Europe Accession Countries:

- The implementation of the urban waste water treatment Directive in the Accession Countries could result, with high effort on sewerage development and wastewater treatment with nutrient removal, in a two-thirds reduction in organic matter load, and a 40-50% reduction of nutrients input. This would potentially reduce the nitrate and phosphorus loading to both the Baltic and Black Seas by around 15-30%. However, such measures are expected to originate a very serious sludge problem, due to a drastic increase of the amounts produced. Furthermore the costs estimated for building up the necessary sewage treatment plants (excluding connections) could be of the order of 9 billion Euros.
- Major reductions in the emissions of certain hazardous substances could be achieved with the application of EU policy within Accession Countries. Over the next decade, considerable reductions could be expected, mostly for lead, although growth in traffic would largely counter this potential improvement; also for copper and mercury. EU policy could also reduce the amount of cadmium emissions. Large increases in the emissions of all the studied pesticides are anticipated due to growth in agricultural production, while the increase in hexachlorocyclohexane (HCB) emissions stems from the expected growth in the volume of incinerated waste.
- As regards transboundary air pollution, sulphur dioxide and nitrogen oxide emissions are expected to be reduced by approximately 40-50%. Deposition of these pollutants will subsequently decrease but nonetheless two-thirds of the ecosystems areas will still be affected by acidification and mainly eutrophication.
- Urban air pollution: around 90% of the population lives in cities where exposure exceeds threshold values. For all air pollutants an improvement is expected, mainly for benzene. Nevertheless, benzo(a)pyrene, nitrogen oxides and, to a lesser extent, sulphur dioxide and particulate matters (especially PM10) will remain serious problems.
- The existing hazardous waste sites and nuclear plants in the area pose significant health risks and represent an environmental liability. Indeed, the severe environmental and health impacts include lower life expectancy, higher incidence of certain diseases, and greater impact on certain ecosystems.

The decision-making procedures within the EU are a complicating factor here. The impetus for external integration must come largely from the Commission and the European Parliament, while decisions are for the most part taken by the Councils of Ministers, which by definition are sectorally organised. The new European Commission may be able to play a pivotal role in fostering external integration.

Closely related to the foregoing is the question of so-called 'perverse subsidies'²². Financial support is a powerful instrument for accomplishing policy objectives, but there is far from enough coordination between environmental and other policy areas when European funds are being allocated. It is still possible for monies from the Structural Funds to be used to implement projects where sustainability criteria are inadequately applied. The non-sustainable use of natural resources may be stimulated, for example, and thereby actually sanctioned; this applies in particular in the fishing, agriculture, transport and energy sectors. In 1992 conditions were placed on expenditures on regional programmes such as the requirement for an environmental impact assessment and a state of the environment report; this is also monitored by the Commission. For example funds allocated to Portugal are being frozen may have to be reimbursed because the required conditions have not been met. In Agenda 2000 the supervision of this cross-compliance for agricultural funds is delegated to the member state in question. Approximately 50% of the EU budget²³ is spent on the common agricultural policy (CAP), part of which goes to promote large-scale, intensive forms of agriculture. Another example of inadequate external integration when resources are allocated is that 55% of research funding in the field of energy production is spent on nuclear energy and only 25% on wind/water/solar energy. Also in this area there is therefore a waxing and waning as progress is followed by setback, while what is needed in sustainability terms is for a major improvement in the application of the conditions set.

²² Perverse subsidies are subsidies which as a side-effect stimulate and therefore sanction the unsustainable use of resources; they crop up notably in the fishing, agriculture, transport and energy sectors.

Bennett, G. et al: *Onderzoek naar de internationale aspecten van milieubeleid*, Ministry of VROM, 1999.

²³ Figures 1998 from: *EU Accession and the Environment: An Introduction*. FoEE/EEB Brussels, 1998.

Developments in the environment of the Accession Countries (continued)

Cyprus:

- Despite its partial degradation, the quality of the environment remains quite good on the whole. However, urbanisation, which rose from about 44% in 1974 to 68% in 1992, has mostly concentrated along the coast. This increase, combined with the fact that 93% of tourist bed capacity is also located along the coast, has led to heavy pressures exacerbated by infrastructure development and, to a lesser extent, by agricultural and industrial development.
- Moreover, as water resources are scarce, the demands for water are causing concern, as are pressures to its quality in some areas, due to its effluent and use of agrochemicals. In the coastal plain aquifers, nitrate concentrations in some areas have increased. The principal groundwater quality problem is salinity due to overpumping. The annual per capita production of solid waste, estimated at 470 kg/year for residential areas and 670 kg/year for tourist areas has given rise to the generation of a variety of associated problems. In the agricultural sector, soil erosion, use of weedkillers and agrochemicals and the losses of prime agricultural lands to other uses, are some of the most important concerns, though the quality of the soil is good.
- Undoubtedly the protection of the coastal zone and the prudent management of water resources are the two most critical and urgent issues requiring a core programme of immediate - mostly corrective - tasks. Thereafter what gives rise to the greatest concern, given its small size and geographical limitations, is the great sensitivity and vulnerability of Cyprus to accidents which pollute water and soil, and the over-exploitation of natural resources.

The fourth bottleneck concerns the need to increase public support for environmental policy in the various member states. This applies to some of the present 15 member states, and *a fortiori* to the countries aspiring to accession. If the expertise and involvement of societal stakeholders and government structures are not engaged, the effective implementation of environmental policy is foredoomed. Analyses of the development of Dutch environmental policy²⁴ show that societal pressure is one of the important factors driving the integration of environmental policy into other policy sectors. This undoubtedly also applies, *mutatis mutandis*, to European environmental policy. This can be reinforced by bilateral projects between present member states and the applicant countries; these are already occurring, but the plans set forth in the Fifth EAP will also have to be realised and extended. The question as to the extent to which European

²⁴ Hans T. A. Bressers: Instruments in environmental policy and their mutual relations, CSTM, University of Twente, Netherlands, 1999.

citizens identify with the EU is an important one. They are familiar with local, regional and national government tiers, but the European government is not very transparent and has limited democratic legitimacy in the eyes of the most of the public. The discussion about the future configuration of the EU touched on earlier will have to include improvement in transparency and legitimacy, amongst other reasons to ensure that the common environmental policy is more effective.

The fifth bottleneck concerns global agreements on trade liberalisation and the associated relationship between trade and the environment. Within the EU the relationship between the internal market and the environment is undergoing a gradual change, with the wording of the Treaty appearing to indicate an increase in the relative importance of environmental objectives. The fact is, however, that in the quest to solve the environmental problems related to the global commons (ozone layer, climate, the oceans, biodiversity) the EU, although a major player, is not big enough to solve the problem by itself. This also applies to the environmental issues which are related to the world trade system. This means that, while it is important to work on the relationship internal market - environment within the EU, this must be complemented by similar steps in regard to trade and the environment at the global level. This is a slow process. Since Rio (1992) no substantial advances have been made other than the reiteration of good intentions.

In 2000 the World Trade Organisation (WTO) is planning to hold a new round of negotiations (the Millennium Round). Member states will not participate in their own right in the negotiations, but will be represented by the European Commission²⁵. The EU will therefore speak with a single voice and member states will not later be able to disassociate themselves from the results. The US will be seeking primarily to discuss reductions in import duties and agriculture, while the EU intends to raise issues such as the environment, social standards and food security. Issues such as intellectual property, the free movement of services and how biotechnology should be dealt with also need to be addressed. Developing countries take yet a different view: they still have major problems with the agreements of the previous round (the Uruguay Round should first be thoroughly evaluated, with particular attention to the consequences of the agreements then made for the environment and social conditions). Nor are their hearts set on trade-restricting environmental agreements determined largely by the environmental problems of the rich nations, and which pay little or no regard to the deficit position from which developing countries start. The discussions held in Seattle at the end of last November to agree an agenda for this Millennium Round failed to reach any firm agreement, so that is now not known when the next WTO round will occur and what its agenda will be.

²⁵ The responsibility of member states vests in the EU, represented by the Commission, only in the case of international trade treaties. In all other areas the role of the EU (as represented by the Commission and/or the country currently holding the presidency) is confined to coordinating the positions of member states, and agreements made, such as at Kyoto, must be ratified by each member state separately.

This WTO round could have far-reaching consequences for the content of environmental policy and the freedom of countries to pursue their own policy. Amongst the topics which need to be discussed are the scope for granting export subsidies, for using ecolabelling to provide information to consumers and for rejecting products because of their environmental or health effects. Another crucial issue is whether WTO agreements take precedence in international law over multilateral and other environmental agreements. The US, for example, appears to be willing to sign the Biodiversity Treaty on condition that it is established that in the event of a conflict the WTO agreements will prevail. This has hitherto been unacceptable to Europe. The Millennium Round could have just as powerful an impact on the EU's environmental policy as the internal market policy has had on the environmental policy of individual member states. The results constitute a major potential threat to the results achieved within the EU to date, and a major imponderable in regard to the progress of EU environmental policy.

3 Uniformity and differentiation

3.1 Motives for environmental policy

In order to reflect meaningfully about the issue of differentiation we need to be clear about the rationale for environmental policy, which is also in part a rationale for a *common* environmental policy. Broadly speaking, there are four motives underlying environmental policy.

The first motive is that of social welfare. There is a relationship between environmental degradation and health. Poor-quality drinking water can help to spread disease, noise can cause stress, air pollution can cause respiratory ailments, and a hole in the ozone layer increases the likelihood of skin cancer. Human well-being is also enhanced by living in close contact with nature and/or green facilities. This welfare argument also applies to future generations. Furthermore when we disrupt our natural surroundings, this can have a profound impact on our lives (for example the climate problem).

The state of the environment in the European Union

Nature and biodiversity

- Integrating biodiversity issues into other policies has started through agri-environment measures (on 20% of the agricultural land) and more targeted conservation approaches (management for multiple use, on-site and off-site conservation).
- Growing fragmentation (in particular the suburbanisation of rural areas), uniformity and simplification of landscapes continues to threaten biodiversity via severe reduction of areas available for flora and fauna. Natura 2000 has been implemented very slowly.
- Pollution (eutrophication, acidification) and introduction of species continue to facilitate the spreading of robust generalist species at the expense of specialist species.

The second motive is that nature has an intrinsic value: not only individuals but also plant and animal species and ecosystems have a right to exist. Biodiversity must be protected because of this intrinsic value, but also because of the potential economic value of the genetic material which it contains. The Birds and the Habitat Directives are examples of regulation which reposes on a combination of these two motives.

The third is the economic motive. A well-functioning (common) internal market requires that companies in the various member states produce under circumstances which are as similar as possible, which means that states must comply with environmental standards as similar as possible. Failure to harmonise environmental legislation results in competitive distortion: companies adopting more environmentally sound methods would incur costs not incurred in member states with less stringent environmental rules. Adverse environmental effects also give rise to costs due to health problems and cleaning requirements. And investments in clean technology create new markets and new jobs.

Finally, a fourth motive can be adduced for a common environmental policy. Transboundary pollution together with the associated risks and health effects can only be combated in a coordinated manner involving transboundary cooperation. This applies to the problem of acidification, but also to global problems such as ozone depletion and the climate problem.

An important factor in determining the level at which policy needs to be made is the geographical level at which environmental effects manifest themselves. Local problems demand local measures, while global environmental problems demand globally coordinated agreements which of course must have local follow-up. Economic harmonisation calls for measures which make the same demands of products and production processes throughout the area of jurisdiction. Regional but transboundary environmental problems call for bilateral or multilateral coordination. Geographical level is therefore also important when thinking about differentiation.

The objectives of environmental policy are translated into standards which can be set at different points in the causal chain. Two types of standards can be distinguished:

- *Environmental quality standards* specify the maximum permissible ('limit values') or desirable ('target values') levels or concentrations of pollutants or phenomena (radiation, noise). They do not provide a basis for regulating individual pollution sources, but set geographically specific limits to total loadings, and thereby determine the level of protection. Environmental quality standards are specific to the various environmental media (soil, water, air) and are based on scientific and/or political consensus on the vulnerability of humans and other species.
- *Emission standards* are formulated so as to ensure that total emissions remain within specified ceilings so that the desired environmental quality is achieved. Emission standards are directed towards polluters: they place limits on the nuisance caused or emissions of pollutants from an installation (factory, fireplace, incinerator) or activity (roadbuilding, spreading of cremation ash). Emission

standards determine the permitted emissions per installation or take the form of eco-efficiency standards which determine the permitted emissions per unit raw material, energy or product. These eco-efficiency standards are environmental *product standards* which form part of a wider package of product requirements (related for example to electrical safety, public health, e.g. use of colouring agents in food, bacteriological hygiene, etc.).

If the internal market is to be fair, emission standards must be comparable throughout the European Union, but in some cases (e.g. where there are high concentrations of pigs in the Netherlands, or of industry in or close to a heavily populated area) where a specific environmental quality is to be achieved in regard to a pollutant which has its impact locally/regionally, a more stringent emission standard may need to be met so that emissions remain within the ceiling.

Policy instruments are needed to implement the quality or emissions standards set. Not all instruments are suited to both of the aforementioned types of standards. Environmental licences and general rules are most appropriate for emission standards. Market-based instruments and in particular tradeable emission permits can, on the other hand, be derived directly from environmental quality standards.

These matters are all relevant in determining the scope for a differentiated approach to (European) environmental policy. Different directives tackle this issue in different ways. Where uniform emission standards are chosen in order to ensure a level playing field for industry, considerable differences in local environmental quality will wittingly or unwittingly occur, depending on the density of the polluting sources and the local environmental circumstances. Where uniform environmental quality standards are preferred, emission standards will usually have to vary between different sources²⁶.

3.2 Uniformity and differentiation to date

The concepts of uniformity and differentiation lie at the heart of European environmental policy. The view endures that in principle European environmental policy compels uniformity, and is therefore inflexible, and is prompted mainly by the (minimum) harmonisation demands of the internal market policy. Contrary to what many think, EU regulation already permits a considerable measure of differentiation in European environmental policy²⁷.

²⁶ See G. Bennett: De diverse dimensies van differentiatie, essay for the VROM Council, July 1999. Bennett substantiates his case by reference to various directives on asbestos, lead, oxides of nitrogen emissions, conservation of flora and fauna, the electrolysis sector, waste from the titanium dioxide industry, biotechnological discoveries, greenhouse gas reduction objectives, etc.

²⁷ H.G. Sevenster: Het EG-milieubeleid: duurzaam op weg?, in Milieu en Recht, June 1993, p.344.

The key point here is the degree of flexibility permitted under European law to pursue an environmental policy tailored to local and regional circumstances. These local and regional circumstances are extremely diverse, and the forthcoming enlargement of the EU will only increase this diversity further in terms of variation in population density, soil characteristics, water resources, biodiversity stocks, precipitation patterns, industry, agriculture and animal husbandry, etc. Where environmental quality standards are based on health risks for humans and animals and the vulnerability of ecosystems, widely differing measures are needed to produce the same ultimate level of environmental protection. This flexibility is constrained by the need for harmonisation imposed by the EU internal market objective. The differences which exist should not fundamentally affect relative competitiveness and the free movement of goods.

The extent to which flexibility is possible depends on whether the regulation is based on the Environment Title of the EU Treaty or is motivated by internal market harmonisation. If an environmental measure is taken on the basis of the Environment Title, member states can maintain or introduce a more stringent level of protection if they consider they have good reason to do so. This upward deviation must be approved by the European Commission (notification procedure). Such an environmental measure can also allow member states to maintain a lower level of protection temporarily (i.e. for a predetermined period). In the case of an internal market harmonisation rule, member states also require the permission of the European Commission to adopt a more stringent protection level. These might for example be a ban on substances such as cadmium and creosote where Community directives still permit low concentrations. These harmonisation measures also sometimes set ranges rather than univalent standards; member states must then amend their national legislation within the specified range. The scope for setting more stringent national standards than those of the EU - where the rules are motivated by market harmonisation, for example product specifications - have been clarified and expanded. If a member state wishes to adopt a higher level of environmental protection by adopting more stringent standards, the Commission must decide within six months (extendable to a maximum of one year) whether to approve this. If no decision is forthcoming within the term set then approval is deemed granted by default.

When countries accede to the EU, transitional periods can also be laid down for modifying national legislation to implement the environmental acquis. Countries will be given a deadline within which they must achieve compliance. This appears to be the only form of differentiation - *because it is temporary* - within the EU in which *relaxation* of the policy objectives is possible. All other forms of differentiation relate to situations in which, for a variety of reasons (ecological sensitivity or uniqueness, soil composition), tighter standards are desirable. Another possibility is that an acceding

country already has a higher level of environmental protection. An agreement then applies that it can maintain this level for a given period. If the EU as a whole does not achieve this higher protection level, the country must then reduce its protection level.

If for a given item of policy (e.g. the energy tax) there is no Community policy, a group of countries can agree amongst themselves, outside of the Union, to harmonise their national policy as a means of ultimately boosting the protection level throughout the EU. Deviations must be notified to the Commission. The latter will investigate, having regard to the operation of the internal market, whether the departure applies *with - out distinction* between domestic products and products from other member states, whether the measure is *necessary* to bring about the desired environmental objective, and whether the measure is *in proportion* to the desired objective (are there no other measures which would limit the free movement of goods less?). From an environmental viewpoint the Commission investigates whether the measure complies with the three central principles underpinning environmental policy: the *precautionary principle* (also referred to as the principle of *preventive action*), *abatement of pollution at source* and the *polluter pays principle*. This possibility for differentiated policy by a group of countries is developed further in the Treaty of Amsterdam and is referred to as 'closer cooperation'. The Dehaene Committee report observed that there are so many complex conditions attached to such activities that this option has become unworkable, and is therefore in need of early review.

The state of the environment in the European Union

Coastal and marine areas

- Some 85% of the coasts, where about a third of EU population lives, are at high or moderate risk from different kinds of pressures while urbanisation, in general, has increased in most of the coastal areas.
- Among 25 less favoured areas in EU in 1983, 23 were coastal areas; 19 remain so in 1996. The lack of economic growth curbs the conditions for environmental management.
- All EU seas are covered by regional conventions, yet to be full enforced; remaining poor water quality, coastal erosion and lack of integrated coastal zone management are the main problems.

In terms of the scope for differentiated environmental standards and policy instruments, the foregoing analysis can be summarised as follows:

- Differentials in environmental quality standards for water, soil and air can be justified by differences in regional and local circumstances. This can lead to divergent limit and target values being set for pollutants in order to protect specific, sensitive ecosystems. These limit values in fact guarantee the minimum acceptable environmental quality which must be achieved, and should ideally be brought to the level of the target value.

- Differentials in emission standards can be justified by the proximity of concentrations of economic activity or population, or of sensitive ecosystems. Differentials in emission standards are to some extent restricted by internal market policy and competition, but this restriction is not absolute. Various studies²⁸ indicate that environmental legislation is only one of the many, and certainly not the decisive, factors influencing locational decisions, and environmental regulations seldom lead to company relocation²⁹. Some differentiation is also acceptable from a competition perspective. Furthermore the introduction of more stringent standards is conducive to technological innovation, which in time can generate competitive advantage in terms of the export of new technology (see the Pollution of Surface Waters Act).

- Differentiation in product standards (in this advice we are referring in particular to eco-efficiency standards) is severely restricted by policy to implement a single internal market and competition policy. The internal market requires production and market conditions to be made as equal as possible and competition policy requires the dismantling of trade barriers. The automobile is a good example of this: this product will have to meet the same standards of safety, durability and emissions throughout the EU, and the only differentiation admissible relates to the final date by which the objectives must be realised. But the same applies - to mention just a few arbitrary examples - to noise from mowing-machines, to the safety standards for window-cleaners' ladders (wooden ladders are no longer permitted) and microwave cookers and to standards for biotechnology products.

²⁸ A. Kolk: *The Economics of Environmental Management* 1999, Financial Times Prentice Hall (Harlow), based on research by, amongst others, the Scientific Institute for Environmental Management (WIMM). Also the papers of the OECD Conference on Foreign Direct Investment and the Environment, The Hague, 28-29 January 1999.

²⁹ A.B. Jaffe, S.R. Peterson and P.R. Portney (1995): *Environmental Regulation and the Competitiveness of U.S. Manufacturing: What Does the Evidence Tell Us?* *Journal of Economic Literature*, Vol. XXXIII, March, pp. 132-163.

- Differentiation can also relate, even where the policy objectives are the same, to the choice of *instruments*. In the Netherlands 'framework environmental licences' are issued to some companies. These licences leave it up to the company itself to *choose the means* by which it meets the licence conditions. If a country meets its objectives within the periods set it seems logical to allow it to determine itself *how* it does this. But there is not unlimited latitude for differentiation here either. The European Commission will need to be satisfied that the instruments do not affect competitiveness too greatly (e.g. taxes, sectoral grants), and that the instruments are likely to be sufficiently effective (e.g. covenants, benchmarking). In addition, instruments which in particular have been designed to act at international level will certainly have to be introduced as uniformly as possible in order to ensure that the area covered is as wide as possible.

The degree of differentiation permitted when the various directives are adopted is determined less by juridical considerations and more by the political willingness of member states to permit fellow members to apply differentiation. Furthermore all kinds of processes external to the EU affect the direction in which environmental policy may develop in the future. Standards do not always have to be formally adopted at Community level to acquire authority within the Community. There is also an informal circulation of standards which are sometimes also espoused by industrial pressure groups for reasons of their own³⁰. This cooperation, which takes place outside formal EU frameworks, for example in arenas such as the Committee on Environmental Policy of the United Nations Economic Commission for Europe (UN/ECE). The Convention on Long Range Transboundary Air Pollution has been in existence since 1979, under the auspices of the UN/ECE; within that framework, the Netherlands recently signed an international acidification protocol in Gothenburg. All the environmental ministers in Europe, including those from Central and Eastern Europe, have been working on long-term environmental policy at the pan-European level since 1991³¹ within the Environment for Europe process. This process also incorporates the Environmental Action Programme for Central and Eastern Europe of the World Bank and the OECD, as well as the pan-European Strategy for Biological Landscape Diversity.

3.3 Uniformity and differentiation in Dutch environmental policy: some case studies

The Council presents below a bird's eye view of six cases studies from Dutch environmental policy in relation to differentiation in Europe. These case studies are

³⁰ A preference for firm, long-term objectives over a series of progressively more stringent shorter-term objectives, but also the utilisation of a technical advantage obtained otherwise.

³¹ The first meeting was held on the initiative of the then Environment Minister of the erstwhile Czechoslovakia, in Dobris Castle. Ministers' conferences followed in Lucerne (1993), Sofia (1995), en Aarhus (1998).

interesting because they relate to some of the most refractory areas of Dutch environmental policy, partly because they can only be tackled effectively by international cooperation. In each case the Netherlands formulated national policy before EU policy was initiated.

Climate

Pivotal to climate policy is the abatement of CO₂ which is released when fossil fuels are burned. The Netherlands has a relatively energy-intensive, export-oriented industry which has considerably increased its energy-efficiency through a range of policy measures. Many cost-effective measures have already been taken in the Netherlands. In distributing the reduction objective for the six greenhouse gases which the EU signed up for in Kyoto (8% reduction by 2008/2012 relative to 1990), allowance was made for differences in ability to pay, costs, economic structure and other national circumstances; an objective of -6% was set for the Netherlands³². The VROM Council dealt in detail with this issue in its climate advice³³.

There has been considerable discussion in the EU about the instruments by which the reduction objectives can be achieved, as well as how the reduction obligation should be split between domestic and foreign measures. The Kyoto Protocol leaves considerable leeway for interpretation. Criteria for applying these instruments will be set in 2000/2001. The Netherlands would like to undertake half its effort as measures in other countries, on grounds of cost-effectiveness. This accords with the position adopted to date by the EU as a whole. The VROM Council believes that maximising flexibility in the choice of locations and the manner in which CO₂ emissions can be reduced will lead to better progress being made with climate policy. In environmental terms the location in which an emission occurs is immaterial; in order to maximise cost-effectiveness, there must be flexibility in the choice of instruments.

The environmental quality standard for this global environmental issue is a single figure, resulting from intensive international discussion. The question of differentiation between countries does not arise, since we all live in the same greenhouse. The emissions of CO₂ (and other greenhouse gases) will be reduced by setting national emissions ceilings. These ceilings are in fact already differentiated, depending on results already achieved, economic conditions, etc. A further distribution can be made in each country of the objective imposed over the various emitting sectors. Environmental efficiency standards adopted must be tested against the harmonisation requirements due to the internal market. Because there is considerable between-country variation in situation, there are reasons for differenti-

³² For comparison purposes: Germany -21%, France 0%, Denmark -21%, Portugal +27%, Greece +25%, Sweden +4%, Italy -6.5%.

³³ VROM Council: *Transitie naar een koolstofarme energiehuishouding*, The Hague, December 1998. Available in English as 'Transition to a low-carbon energy economy'.

ation in instruments. This differentiation must therefore be possible within EU climate policy, also for the Netherlands. It is also the case that there are instruments whose effectiveness is directly related to the area of the territory over which they are applied. And, if we consider for example a European energy tax, this argues, if its introduction throughout Europe encounters too much resistance, for beginning by introducing it in a number of cooperating countries with the express intention of seeing it ultimately apply across the entire EU.

The state of the environment in the European Union

Greenhouse gases and climate change

- Carbon dioxide emissions fell about 1% between 1990 and 1996, with considerable variation between member states. Methane emissions are decreasing.
- Global and European annual mean temperatures have increased by 0.3 - 0.6 °C since 1900; 1998 was the warmest year on record.

Ozone-depleting substances

- The potential 'chlorine plus bromine' concentration (total potential depletion of the ozone layer) peaked in 1994 and is now decreasing.
- The use of ozone-depleting substances has decreased sharply, faster than required by the international measures, but atmospheric concentration of halons is still increasing against expectation.

Transboundary air pollution

- In most countries, sulphur dioxide, volatile organic compounds and, to a lesser extent, nitrogen oxide emissions have declined. But success in abating emissions from stationary sources was almost counterbalanced by increased emissions due to rapid transport growth; emissions from international shipping are expanding their share.
- Harmful effects of transboundary air pollution on ecosystems have been reduced.
- All threshold values for summer smog set under the Ozone Directive have been exceeded since 1994.

Acidification

Acidification is caused by sulphur dioxide (SO₂), nitrogen dioxides (NO_x), volatile organic compounds (VOC) and ammonia (NH₃), the main sources being industry, agriculture and traffic. The first three pollutants freely cross national frontiers, while ammonia has a major effect at the regional level.

The Netherlands suffers acidification from its own sources, causes acidification in neighbouring countries and receives acidifying components from other countries. As soon as the problem of acidification was acknowledged, the Netherlands began to establish stiff objectives for its own national target groups. The Netherlands also played a pacesetter role in Europe, and has endeavoured to get major emissions reductions agreed. Further reductions can now only be achieved at steeply rising costs, which makes international coordination even more necessary. This coordination is occurring, for example, in the framework of the EN/ECE, within which national emission ceilings for the four acidifying components for 2010 have now been agreed³⁴. The European Union is trying to set more stringent (i.e. lower) emission ceilings for many member states in a directive. In the case of the Netherlands the objectives for NO_x, VOC and NH₃ lie comfortably within these ceilings. The Netherlands has not in fact yet agreed the ceilings in the proposed directive.

Other European directives are also important in relation to acidification. The directives on the reduction of automobile emissions are relevant here. The IPPC Directive (Integrated Pollution Prevention and Control) requires that information be exchanged on Best Available Techniques (BAT); in the Netherlands this is subsumed in the ALARA (As Low As Reasonably Achievable) principle, already enshrined in the Environmental Management Act. The IPPC Directive also requires the exchange of information on BAT at the European level, which can be a major harmonising influence. The Large Combustion Plants Directive is being revised, with more stringent standards for new large combustion plants; the present Dutch standards are more stringent.

One half of the acidification loading in the Netherlands originates in our own country, so that the Netherlands gains from stringent domestic standards. Given the international character of this environmental phenomenon, however, the Netherlands has an interest in seeing emission standards as low as possible in neighbouring countries, from whence a major proportion of the acidification load originates. Lower emissions in neighbouring countries will lead to a reduction in the deposition on vulnerable areas in the Netherlands; stringent agreements within the EU (or at least in surrounding countries) are therefore desirable. The adequate protection of vulnerable areas from acidification is therefore only possible by having differentiated emission standards, this differentiation being determined by the type of ecosystem, soil characteristics, and having regard to cost-effectiveness. Countries with more stringent emission ceilings (based on the desired environmental quality) will have to take additional measures: in places with higher densities of polluting production processes and products, more stringent emission standards must be adopted. Apart from emission standards for the different

³⁴ This Protocol was recently signed in Gothenburg by various member states including the Netherlands. The SO₂ ceiling for the Netherlands lies below the target set in the NEPP3; there are however sufficient measures available to comply with this ceiling.

relevant sectors, other instruments must be possible which allow sectors to trade emissions so that the cost-effectiveness of the measures is maximised. These are being developed in the Netherlands at present, and differentiation of this kind in the choice of instruments should be written into future EU agreements; the first moves in this direction are being made in the forthcoming tightening of the Large Combustion Plant by allowing countries to adopt a national strategy as an alternative to meeting specific emission standards.

Eutrophication

Eutrophication is caused by an excess of phosphate and nitrogen in soil and water, with consequences for wildlife and the countryside. Most of the nitrogen in Dutch surface waters is brought in by river from other countries. The Netherlands also itself pollutes the Rhine and the North Sea. The North Sea Action Programme prescribes an emission reduction of 50% for nitrate and phosphate by 1995 relative to 1985. The Netherlands has met this objective for phosphate, but not yet for nitrate. The NEPP1 and NEPP2 also specified that an equilibrium situation should be achieved in agriculture by 2000; the NEPP3 observed that additional policy would be needed to achieve this. Meanwhile, the Nitrate Directive (1991) has been adopted, which prescribes a groundwater quality standard of a maximum of 50 mg nitrate per litre to be achieved by 2003. The Directive also prescribes a standard for the application of manure as a means of achieving this. Until recently, however, Dutch national policy was based on the MINAS system with standards for nutrient losses, was seeking to meet the EU goals by 2008 and failed to make use of the possibility to opt for divergent standards for a part of Dutch territory.

In order to maintain its credibility the Netherlands recently modified its policy so as to achieve compliance with the Nitrate Directive in terms of timetable and system. In relation to phosphate, it should be noted that the Netherlands has requested the European Commission to agree to a subsidy scheme for the extra costs of removing manure from certain areas of ecological interest which have heavy phosphate burdens. The Commission is expected to agree to this. The sums involved are in fact relatively small.

The environmental quality standard is expressed in terms of limit and target values for soil and water, and international coordination is necessary because of the transboundary nature of some of the emissions. The Directive offers scope for differentiation in protection levels, depending on soil type. The Netherlands has the most eco-efficient pig (and other livestock) farms in Europe, but this eco-efficiency is not enough to provide for compliance with the emission ceilings set. Either the ceiling will have to be raised further or the pig (and other livestock) herd will have to be reduced. The Netherlands is confronted with the fact that insufficient differentiation in instruments

is permitted. The manure application standard prescribed in the directive is effectively a prescription of the means to be adopted, and does not give the latitude to seek to meet the desired goal by means more suited to the Dutch situation. The question of the internal market and competition will arise, for example, if payments are made to support a downsizing of the sector. It can in any case be observed that the fact that there is supranational policy (including provision for stiff fines) has accelerated national policy.

The state of the environment in the European Union

Water stress

- There has been a significant decrease in the number of heavily polluted rivers due to reductions in point source discharges (such as phosphorus); organic matter discharges have fallen by 50 to 80% over the last 15 years.
- Nitrate concentrations in EU rivers have shown little change since 1980, contributing to eutrophication in coastal waters. Nutrient input from agriculture is still high.
- EU countries are yearly, on average, abstracting around 21% of their renewable freshwater resources, which is regarded as a sustainable position. Big water losses occur in Southern EU countries - around 18% of the resource is lost each year in irrigation, and over-exploitation and salinisation of groundwaters in coastal areas continue to be critical.

Waste disposal

The Netherlands has pursued a vigorous policy with regard to waste. The reasons for this are the vulnerable geo-hydrological situation of the Netherlands, the risks to public health and the space requirements of landfill sites, but also the desire to be parsimonious with raw materials. Waste prevention is the paramount aim, after which comes recycling, incineration and landfill; this hierarchy was established in the so-called Lansink ladder. The Netherlands played an important role in getting a European waste policy off the ground aimed at preventing the flight of waste to foreign countries, which would have the effect of passing on the environmental effects to others, and at the same time placing pressure on the viability of recycling systems and waste incinerators established in the Netherlands. As part of this, the Netherlands accepted more flexible EU directives on condition that it retained the option to introduce more stringent national measures. The Landfill Directive has now come into force, however, and the Waste Incineration Directive is nearing completion, bringing European standards very close to the German/Dutch standards. The problem which will arise will be that of providing for

a reasonably uniform interpretation of these Directives in the different countries, as well, certainly, as that of inspection and enforcement.

While the approach during the 1970s and 1980s was relatively dogmatic, attitudes tended to be more pragmatic in the 1990s. The Netherlands still considers that strict requirements regarding recycling, incineration, landfill, import and export are necessary for environmental reasons. With that object in view the Netherlands also participated in the creation in 1993 of the Regulation on the supervision and control of the carriage of waste within, to and from the European Community. But with the dismantling of internal frontiers in Europe, the discordance between the internal market rules and an environmentally sound disposal within countries' own national frontiers is growing. National requirements which are more stringent than those of neighbouring countries are more difficult to enforce and can have deleterious economic consequences. Improvements in existing techniques (for example post-collection waste separation techniques) and new technologies (e.g. flue gas clean-up) call for a re-think of the disposal hierarchy indicated by the Lansink ladder. The ladder was of great value in conceptual terms but if applied too dogmatically or on an operational basis could result in inflexibility and inhibit innovation. Innovative thinking is needed in this area.

A reorientation seems to be needed in the attitude of the Netherlands towards waste. The question as to when a substance is waste, for which environmental protection measures are needed, and when it is a tradeable commodity, to which the internal market rules apply, proved to be an area where the Netherlands did not see eye to eye with Europe. Waste is increasingly seen in Europe as a tradeable commodity, as a product, and it is no longer possible to sustain the argument that waste should remain within Dutch borders. What is important is that a good European infrastructure for the processing of that product should be created which meets the same environmental requirements throughout Europe. This places stringent demands on inspection and enforcement. It will become increasingly difficult to protect the Dutch waste processing sector. Instead, the focus must be on harmonising product standards and the environmental standards for production processes, with a view to the operation of the internal market. The Netherlands can certainly help to instigate a rethink of the waste issue in Europe. Alliances need to be formed with other like-minded countries.

The state of the environment in the European Union

Soil degradation

- Damage is increasing and leads to irreversible losses due to growing water erosion, continuing local and diffuse contamination and sealing of soil surfaces.

Waste

- The EU is generating and transporting more solid waste. EU waste strategy goals have not been reached: waste prevention measures have not stabilised production, and landfilling is still the most common treatment measure, despite significant progress in recovery and recycling.
- Recycling of glass and paper has been increasing, but not sufficiently quickly to reduce overall generation for these streams.

Hazardous substances

The NEPP1 and NEPP2 named 49 substances as 'priority substances'. These substances are considered to pose a non-negligible risk to man and/or ecosystems. They include, for example, asbestos, heavy metals such as cadmium, mercury and lead, fine particles, benzene and CFCs. Separate measures apply to pesticides (see following heading). National policy has been based on gathering information by drawing up so-called baseline documents, formulating limit and target values and emission reduction objectives and restricting uses in appropriate cases. Constraints are set at company or plant level through the licensing system. The establishments of 'covenants' and multiyear agreements with the various sectors in which reduction objectives are set has been promoted.

Collecting data on the risks of substances is proving very problematic, particularly due to the large numbers of substances involved. In Europe, EINECS³⁵ has been established, with data on 110,000 substances. The OECD has begun by inventorising 4500 existing high production-volume substances (greater than 1000 tonnes per year). The EU existing substances programme (1993) covers 2100 substances, but has run up against the problem that the workload of member states and the European Commission arising out of this programme was badly underestimated, and that industry and, particularly, industrial users are unwilling or unable to provide data on use and exposure. In addition there are a number of European directives which set emission limit values.

³⁵ The European Inventory of Existing Chemical Substances which lists 110,000 chemical substances based on details furnished by industry.

In the past the Netherlands has always pleaded for the right where necessary to pursue a more stringent national policy. This has often run into the problem that the legislation on existing substances has hitherto been subject to rules of the internal market. A member state can adopt a more stringent policy if this can be justified in terms of the specific national situation. The Netherlands, for example, has succeeded in adopting stricter standards for the timber preservation agents pentachlorophenol (PCP) and creosote by pointing to the vulnerability of the large expanses of surface water in the Netherlands. A similar request for a more stringent standard for cadmium was however refused by the European Union on the grounds that the Dutch are no more sensitive to health risks than other Europeans.

For new substances the problem of national diversity hardly arises. A harmonised notification system has been developed at the European level so that quite a good idea of the possible risks associated with any new substance is obtained well before it is put onto the market. If appropriate, restrictions can be introduced quickly at the European level, since there is hardly any question of vested interests in the case of a new substance. Between-country differences are not permitted because of competition considerations.

The European Commission is currently developing a strategic vision on chemicals which will invoke the precautionary principle and the responsibility of the chemicals industry. The Netherlands has taken the initiative to formulate a package of recommendations based on the current national programme SOMS (Strategic Approach to Substances). This strategic vision is expected to be published around the middle of 2000.

It would not be possible for one or just a few countries to take on the register of hazardous substances; international cooperation is definitely necessary. This is taking place, but coordination is poor. A uniform protection level in terms of exposure (expressed in limit and target values) is obviously needed. It is inconceivable that the health of some Europeans should require a different protection level from others. Questions as to the protection level which should be adopted by the EU have regularly generated disagreement between member states. As far as the exposure of ecosystems is concerned, variations in limit and target values are possible, depending on their sensitivity. The Netherlands has invoked this possibility in relation to its extensive surface water. Differentiation in policy instruments is also desirable because the approach may need to be adapted to local circumstances.

The state of the environment in the European Union

Hazardous substances

- Various control measures have reduced chemical risk and some emissions, and environmental concentrations of persistent organic pollutants and heavy metals are declining.
- However, for 75% of the large volume chemicals on the market, there is insufficient analysis of toxicity and ecotoxicity available to support minimal risk assessment.

Hazards

- Between 1990-1996, economic losses due to floods and landslides were four times those in the whole of the preceding decade. As yet, there is no targeted policy to reduce natural hazards.
- Major industrial accidents continue to occur; over 300 accidents have been reported since 1984 in EU. There is an indication that many of the often seemingly trivial 'lessons learned' from accidents have not yet been sufficiently evaluated and/or implemented in industry's practices and standards.

Pesticides

The production of pesticides gives rise to health risks; their use can harm both the environment (nationally) and health (locally). The market for pesticides is an international one involving major vested interests. An awareness of the risks gradually grew in the 1960s; during the 1970s a faltering start was made with the development of policy in the Netherlands, and alternatives began to be developed, including organic methods of pest control.

The Netherlands with its large-scale, intensive production of foodstuffs and flowers - a high proportion of which for export - also has a high pesticide use³⁶. Organic pest control is taking a growing share, and environmental measures are having an effect, but not all companies are in full compliance with their licences. The environment, in particular surface water, is being exposed to risks.

Policy aimed at this international market was initiated with the adoption of the Crop Protection Directive (1991), which contains uniform criteria for the approval of pesticides. The goal is to have a positive European list by 2003³⁷. There is also a directive on the marketing of biocides³⁸. These directives deal only with approval. Quantitative

³⁶ Dutch usage is relatively low per unit of food produced, but high in total.

³⁷ It is currently anticipated that this goal will only be achieved some years after 2003.

³⁸ Biocides are non-agricultural pesticides used, for example in timber treatment and anti-fouling marine coatings.

objectives fall under hazardous substances and the EU strategy on such substances is still in preparation.

By virtue of a number of specific national circumstances (such as its abundance of water, precipitation patterns and soil characteristics) the Netherlands has implemented this approval directive quite specifically; furthermore the government is aiming to see a positive list set up containing a list of the substances permitted in the Netherlands. There has been considerable protest from producers, regular dealers and users, notwithstanding the fact that Dutch policy (prepared in consultation with the target groups) involved a considerable preparatory period, and that more environmentally friendly alternatives are available for some of the regular applications. The Netherlands originally took the lead in preparing the positive list, but as a result of the resistance encountered in going firm on the list, has been overtaken by other member states.

As far as possible pleas by the Netherlands for a differentiated policy are concerned, the same remarks apply as for hazardous substances. This case study illustrates once more that specific circumstances - in this case intensive use on a small land area with a vulnerable, water-rich ecology - call for specific instruments which can therefore differ between countries.

The state of the environment in the European Union

Human health

- Traditional environmental health problems from unsafe drinking water, inadequate sanitation and poor housing have largely disappeared from the EU.
- According to the World Health Organisation, available evidence suggests that the environment has a limited (i.e. responsible for less than 5%) direct impact on public health. Particulate air pollutants possibly cause, per year, 40 - 150 000 deaths in adults in the EU cities, and a proportion of the rising skin cancer rates is caused by increased radiation through the thinning ozone layer.
- Low level exposure to a complex of pollutants in air, water, food, consumer products and buildings may be affecting overall quality of life or significantly contributing to asthma, allergies, food poisoning, some cancers, neuro-toxicity and immune-suppression.

In conclusion we see that the six case studies considered exhibit the entire range of possibilities and impossibilities for differentiation in environmental quality, emission standards, product standards and instruments. It appears that the possibilities for differ-

entiation in environmental quality standards are limited, but there are often arguments for differentials in emission standards, product standards and instruments. These arguments are often related to the specific vulnerability of a particular area or region or to the transboundary nature of emissions. The harmonisation requirements of the internal market and competition policy constrain such freedom. The Netherlands will have to remain alert on a number of different issues to ensure that it makes a timely case for differentiation in Brussels where this would be opportune. It is also vital that it contributes to conceptual thinking and innovation on instruments.

3.4 Pacesetters

The role of pacesetters

The development of environmental policy is a process of social change which crystallises out slowly. Small groups break new ground, urge change, seek government initiatives, policy, regulation. This applies whether within a member state or an association of states like the European Union. Indeed the genesis of the EU itself is an example of such a process. Within this burgeoning cooperation some countries attached more urgency to the development of a common environmental policy than others. Given its characteristic as a densely populated, highly urbanised, country containing the estuaries of several major European rivers, the Netherlands has for years been forced to remain a step ahead of many other European countries in shaping and implementing national environmental policy. It was almost automatic that it should become one of the lead group in Europe, since strengthening European policy was seen as a vital key to strengthening national environmental policy. Many environmental problems can only be tackled properly at the international level. Intensive pressure from the Netherlands, but also countries like Denmark and Germany, have undeniably had a major impact on the development and fashioning of European environmental policy.

The Netherlands has in particular been at the forefront in terms of the conceptual thinking, planning, innovation with regard to instruments and the practical translation of policy to regional and local government and the various societal protagonists. The Netherlands was and continues to be in the European vanguard in these areas. Looking back it can be said that our country has had a much greater impact on the development of European environmental policy than might be expected from its size. The Netherlands has quite consciously exercised considerable influence on the evolution of environmental policy in Brussels. Experience and expertise were made available by means of secondments, cooperative links with other countries have been developed, the presidency was utilised strategically, and so on. The EU's Fifth Environmental Action Programme, for example, drew heavily on the system of the Dutch National Environmental Policy Plans.

The Netherlands: a more middle-of-the-road position

This image of the Netherlands as a pacesetter has since been distinctly tempered not only in the Netherlands but also elsewhere. Both in Brussels and in other European capitals the Netherlands is seen as being much more middle-of-the-road. In a range of negotiations it has adopted a more defensive stance, more inclined to promote its own interests. The Netherlands is certainly not top-of-the-table when it comes to the actual quality of its environment, nor does it by any means always take the lead in applying European regulations (e.g. the Habitat and Birds Directives³⁹, pesticides, Nitrate Directive). In particular, in the case surrounding the Nitrate Directive, where infringement proceedings are involved, the earlier lead position of the Netherlands now counts against it. The credibility of the Netherlands in relation to the proper implementation of EU environmental policy is being put into jeopardy. Other member states put under great pressure during and after their accession to properly implement all environmental policy are little disposed to be accommodating. A pacesetter must be credible in the implementation of environmental policy if his role is to be effective.

From pacesetter to tactical alliances

There is therefore a pressing need to update the image of the Netherlands as a pacesetter in European environmental policy. This is not a value judgement in an absolute sense, and there is no denying the benefits of the Dutch stance in the past. Furthermore the term 'pacesetter' cannot be applied to any other member state either. It is more meaningful to interpret events in terms of a series of tactical alliances between countries on special issues, such as the European energy tax. In this context it is possible to talk about one or more countries taking the lead, but then only as a component of a strategy developed with other countries in order to achieve specific changes in European environmental policy.

³⁹ The Netherlands is still in default after 20 years in implementing the Birds Directive despite the European Court taking infringement proceedings on four occasions for breach of its obligations.

4 The position of the Netherlands

4.1 The Netherlands, part of Europe

The Netherlands is a small European country which right from the start saw the benefits of European cooperation and union. The Netherlands worked in the vanguard to bring about a community environmental policy, and was able to exercise an influence disproportionate to its size. This was not only because the Netherlands felt obliged, by a combination of its geographical situation and demographic pressure, to pursue an ambitious environmental policy, and therefore to invent the wheel itself. It was also able to make judicious use of the way in which decisions are made in Brussels by feeding in ideas and concepts at an early stage, and by seconding Dutch experts to the European Commission.

It must be said, however, that in recent years the Netherlands has been less in the vanguard, in particular in regard to the implementation of environmental policy. Furthermore the VROM Council is under the impression that, despite the influence which the Netherlands has had in the past on the creation of European environmental policy, there is a wide gulf between policy-makers in the Dutch ministries and those in Brussels. Although 70-80% of Dutch environmental legislation is determined directly or indirectly by the EU, Brussels seems a long way away to many Dutch politicians and officials. There is also sometimes a considerable gap between the negotiators in Brussels and the future implementers of this policy in the Netherlands, as has been apparent in relation to, amongst others, the Nitrate Directive.

Although the Netherlands is still a major contributor in conceptual terms, shortcomings in the implementation of policy are undermining its credibility. The restoration of this credibility is an essential precondition if the Netherlands is to play a stimulatory role, when desirable, in the further development of European environmental policy, however. The Netherlands is increasingly becoming *a part of* Europe. This Europe is undergoing dynamic developments, and rapid changes are taking place on many fronts in its constitution, balance of power and cooperative relationships. There will still be room for countries which wish to press, in close cooperation with like-minded fellow states, to go beyond the common denominator in certain policy areas. These pacesetters are necessary, but can only function properly if they form tactical alliances with other member states. Furthermore the role of pioneer can only be fulfilled properly if EU law is implemented satisfactorily at home.

4.2 Future development of European environmental policy

The future development of European environmental policy is uncertain. Progress can be rather faltering, with two steps forward being followed by a step backwards. Over

the long term the achievements at the European level have been considerable. But much still remains to be done; in the light of this the Council has the following comments on the five European environmental policy bottlenecks referred to earlier.

The decision-making structure of the EU is under discussion. During the coming decades the EU will grow from its current 15 member states to a possible membership of over 30. We cannot yet say at present where this process will or should stop. What is clear is that radical changes need to be made to the transparency and democratic legitimacy of European institutions such as the European Parliament, the Commission, the role of heads of government and the individual sectoral Councils of Ministers, but also to the way standards and certification bodies function. This is important not only to ensure the EU works as a political entity, but also specifically for the future of EU environmental policy. The support base for European environmental policy will have to be broadened, both within member states and at the European level. As far as the enlargement of the EU is concerned, the Council considers that on environmental grounds the environmental acquis should apply to as large a territory as possible. This will ultimately produce the greatest environmental benefit. Accession Countries will certainly have to be allowed transitional periods, but all agreements must envisage the (ultimate) adoption in full of the environmental acquis and full membership. It will therefore be not so much a question of a multi-speed Europe as a Europe with different 'distances to target', these targets not varying between countries⁴⁰. The Council of course realises that more is at stake, in the enlargement of the EU, than just the environment; considerations of stability or security may take precedence. But it is vital that solidarity - after all an essential element in the present structure of the EU - is not undermined. From considerations of environmental effectiveness it must be made as attractive as possible to progress from the outermost layer inwards.

The effective implementation of European environmental policy must be taken more firmly in hand not only by monitoring the transposition and implementation more closely, but also by operationalising and improving the quality of inspection and enforcement, both at the European level and at the national and regional levels within the member states themselves. As part of this, the inter-country comparability of the national inspection and monitoring instruments should be enhanced. An independent European Environment Inspectorate is needed which cooperates effectively with the national inspectorates. The power to fine should be consistently invoked and if necessary fines should be stiffened. At present the Commission is heavily dependent on the complaints it receives from individuals and environmental organisations, and it could strengthen this mechanism by publicising opportunities to lodge complaints and by

⁴⁰ But the targets can of course change when policy is tightened. Again, this will apply to all member states.

facilitating the role of environmental organisations. Support for these mechanisms will be particularly important for the Accession Countries.

The integration of the environment into other policy sectors must be intensified in various ways. A positive development is that President Prodi has established a core group of Commissioners under his personal leadership for a number of policy areas, including sustainable development. Not only will this hopefully boost effectiveness, but it is also an important signal of the value which the President of the Commission attaches to these topics. In addition, the various sectoral Councils of Ministers need to coordinate their decision-making more closely. It is important that the European Parliament takes a more prominent role in decision-making. Individual sectors also need to report on the progress they are making along the road to sustainability; societal and political pressure is a precondition for this. Sustainability criteria need to be set for expenditure under the major EU budgets for the various policy sectors, with reimbursement being required if the conditions are not met within specified terms. Experience with the penalty clause shows that this sanction can be a particularly effective instrument in getting directives implemented. Because the need for external integration is spelled out in the wording of treaties, it is legitimate to consider whether this integration process could be accelerated by appealing to the European Court.

The importance of increasing support for strengthening environmental policy and ensuring its implementation is better policed has already been emphasised. It should be observed that support-building is an activity well suited to being undertaken by individual member states in bilateral cooperation with other member states or applicant states. A great deal is already happening, but this needs to be reinforced, with member states making use of their expertise and knowledge in areas of environmental policy in which they are themselves strong.

Global agreements on containing the environmental impact of trade are needed because no single bloc or continent is able to solve environmental problems without the help of others. The forthcoming Millennium Round may help in this regard, although prospects here are unpromising. While from the Dutch perspective European environmental policy sometimes appears to be a step backwards, in the context of world trade it should be cherished as an achievement. The Council takes the view that the quest for the greater liberalisation of world trade should be accompanied by a greater institutionalisation and internalisation of environmental policy. Not one without the other. In its advice 'Global sustainability and the ecological footprint'⁴¹ the VROM Council advocates that the WTO should accept the consequences of international environmental treaties and

⁴¹ See footnote 1.

apply them in the trade rules. The shifting of environmental costs to others or to future generations must be prevented, and all countries have a right to a fair share to the global 'ecospace'. In this spirit of partnership, which echoes the 1992 Declaration of Rio, efforts should be made during the Millennium Round to anchor environmental requirements more firmly in international trade agreements.

4.3 Dutch environmental policy in the European context

Far more than could be envisaged when the advice request was formulated, the forthcoming enlargement looks as though it will lead to radical changes in the configuration and decision-making structure of the EU. The proposals of the Dehaene Committee, for example, will have profound consequences for the landscape within which European environmental policy will take form over the coming years; it is not yet possible to make out all the features of this landscape. Furthermore it is not entirely clear what the ground rules will be. This does not make it any easier to formulate this advice, but a number of clear conclusions can be drawn in regard to the questions asked by the Minister:

- a Should the Netherlands be seeking, in its European policy, maximum uniformity in protection levels? or
- b should the Netherlands be seeking to make active use of the possibilities offered by European law for a multi-speed Europe and for differentials in the level of environmental protection? and
- c should the Netherlands be taking a lead in forming alliances with a view to 'closer cooperation'?

Uniform protection level throughout Europe?

Any desired level of environmental protection (in terms of quality standards) is based on some form of scientific and/or political consensus on the acceptability of the risks to human health and the vulnerability of ecosystems. These are translated into limit values and sometimes also target values for individual pollutants. A differentiated approach to the underlying risk assessments between member states is not appropriate below a certain level: a Greek woman and a Swiss man do not differ in their sensitivity to pollution, and nor do a Spanish and a Finnish osprey, so there are no grounds for differentiation in risks in this respect. These risk assessments may of course be adjusted at any time by decision-makers on the basis of new scientific data or social considerations, but they will then again apply to all member states. In so far as the Minister's question relates to human health, it can be answered very clearly in the affirmative: the assessment of the health risks which are acceptable should be the same throughout the EU and should lead to the same basic set of limit and target values everywhere. In the case of environmental effects which affect human well-being but do not threaten health and do not cross national frontiers (such as noise), a uniform level of protection need not necessarily be

imposed mandatorily; national or regional standards can be set within a certain range which reflect local circumstances and preferences.

A certain differentiation is possible in relation to ecosystems: sensitive ecosystems may justify a higher protection level. Finally, standards less stringent than the uniform protection level can be contemplated for a pre-agreed period, provided this is a transitional situation. In such cases the time over which the final objective is achieved may be negotiable, but not the final objective itself.

Differentiation in the manner in which the protection level is achieved?

Given environmental quality standards based on risks to the health of humans and animals, and on the vulnerability of ecosystems, considerable variation will be needed in the way in which the protection level is achieved. There is already a huge diversity in local and regional circumstances, and this diversity will increase further with the enlargement of the EU. These circumstances include population density, soil characteristics, water resources, biodiversity, precipitation patterns, industrialisation, agriculture and animal husbandry, etc. Variation will therefore be needed in emission and product standards to produce a satisfactory final situation in terms of the protection level. This is often regarded, incorrectly, as a differentiation in the level of protection.

The Netherlands must also be ready to argue for differences in speed, emission standards and product standards for itself, where necessary. In the view of the Council it is equally important that differentiation in the permitted instruments should be permitted. Given the diversity of local circumstances it is very important that EU directives and regulations should shift from means-oriented to results-oriented measures. Covenants are a good example of this, although this instrument is not equally appropriate in all member states given the differences in size, legal system and culture. This will make tough demands in terms of improvements in the quality and coordination of inspection and enforcement in all member states. Furthermore, instruments designed in particular to operate at the international level will have to be introduced as uniformly as possible in order to maximise the territory over which they apply. The scope for differentiation in product standards, emission standards and instruments is limited because of European policy on the internal market and competition. The rules concerned do however provide some latitude for differentiation.

A lead role for the Netherlands in seeking closer cooperation?

The Netherlands is increasingly becoming a *part of* Europe. Most environmental matters can only be solved through international cooperation, and even this is difficult enough. There will still however be room for countries which, in close cooperation with like-minded member states, wish to exert pressure to go beyond the common denomina-

tor in certain policy areas. These trailblazers are necessary, but can only function properly if they form temporary tactical alliances with other member states. A 'holier-than-thou' attitude in this regard will be counterproductive, and it is also clear that (the restoration of) credibility is an essential precondition if the Netherlands is to play a stimulatory role in the further development of European environmental policy.

It is still unclear precisely what form this closer cooperation will take. This is related closely to the forthcoming changes in the EU's decision-making structure. But the Minister's question can therefore be answered in the affirmative. The Netherlands can certainly, with appropriate modesty and a restored credibility in relation to its implementation of EU policy, participate in a vanguard group which seeks, for example, to develop new instruments for climate policy. The discussions already taking place about the introduction of a European energy/CO₂ tax in a small group of countries⁴² exemplifies this well. The Netherlands could also join with other countries in advocating, for example: an innovative rethink on the issue of waste, improving the implementability of regulations and inspection and enforcement at national and regional but also European level, closer integration between the various policy sectors at the European Commission, bolstering the support for environmental policy and the role of environmental organisations in the Accession Countries, and placing European funding on a sustainable basis. And in relation to the posture of the EU in the forthcoming WTO Millennium Round, the aim should be to ensure that international trade treaties incorporate environmental conditions, and do not detract from present European environmental policy

⁴² The term eco-Schengen has been used to refer to such a grouping, by analogy with agreements made by the group of EU countries on policy towards asylum-seekers. These agreements have since been 'promoted' to EU policy.



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Annex 1

Advice request

Directorate-General Environmental Management
International Directorate Environmental Affairs
Global

To the Chairman and members of the
VROM Council
Postbus 30945
P.O. Box 30945
IPC 105
2500 GX The Hague

Reference:

DGM/IMZ/98123916

Date:

23 Dec. 1998

Subject:

Advice request

Chairman,

The 1999 Work Programme of the VROM Council refers to one global and one European advice.

I hereby request you to orient the global advice towards the so-called 'ecological footprint', and the advice on European environmental policy towards the issue of a multi-speed Europe.

A more detailed specification of the issues to be tackled in these two advices is attached.

Please would you let me have your advices by 1 May 1999 (Global) and 31 December 1999 (Europe) respectively.

Yours faithfully

The Minister of Housing, Public Health and the Environment

J.P. Pronk

Request for advice on European environmental policy

1. Introduction

The environmental situation in the Netherlands can be likened to a patchwork quilt of problems and solutions. Not all problems are equally severe, and policy is formulated in many arenas and implemented in many different ways. There are therefore considerable differences in environmental protection levels across Europe.

The new possibilities offered by the Treaty of Amsterdam for differences in the speed at which environmental policy is developed and in protection level, and the future enlargement of the EU make it relevant to ask how these possibilities should be used.

I therefore hereby request you to advise on the future Dutch stance on European environmental policy in the light of the existing and future possibilities for a multi-speed Europe and for differences in environmental protection levels in the EU.

The background to this request is outlined below, in particular the possibilities in European law for flexibility, the prospect of an enlarged EU and various considerations relating to the development of European environmental policy. The question is then spelled out in greater detail.

2. Background

Possibilities in European law for flexibility

According to current practice the EC Treaty offers, or does not exclude, the following possibilities for flexibility:

- a. Member states can - subject to an obligation to notify the Commission - maintain or adopt a higher national level of protection after community measures have been taken under the 'Environment Title' (Articles 130r to 130t incl.)
- b. Such measures can specify that member states can maintain their lower level of protection temporarily and partially (Article 130s(5)).
- c. Member states can - provided this is approved by the Commission - apply a higher level of environmental protection when an Internal Market harmonisation measure is adopted (Article 100a(4)). So far this has happened on 10 occasions (the Netherlands 3, Denmark 3, Germany 2 and Sweden 2), of which only 2 have been processed by the Commission (approval). These relate mainly to national bans on the use of the substances cadmium, creosote and PCPs, while Community product directives still permit these substances in low concentrations.
- d. The Internal Market harmonisation measures referred to in c. sometimes establish ranges within which member states are required to adjust their national legislation, instead of univalent standards.

e. On the accession of a country to the EU, transitional periods can be established within which national legislation must be amended. Finland, Austria and Sweden obtained derogations until 1 January 1999 for their higher protection levels relative to some internal market directives. The Community may achieve these higher levels in the intervening period. If not these countries will have to take a step backwards (or make use of Article 100a(4)).

f. In areas where Community regulation is lacking, a group of member states can decide, outside of the EU, to harmonise, or to limit the divergence in, their national regulatory regimes. An example of this is the series of agreements between The Hague, Helsinki, Vienna, Berlin and Stockholm on energy taxes, which have so far stalled in the EcoFin Council because of the unanimity requirement (Article 99).

g. Recent proposed directives and other regulatory initiatives have explicitly included differentiation (or the possibility of differentiation) between countries or regions. Examples include the Water Framework Directive with its river basin approach and the agreements on differing national percentage reductions for CO₂ emissions.

In summary, both the Treaty and decisions based on it give member states the latitude to maintain their protection levels at, or adjust them to, a higher level than that of the *acquis communautaire*, and sometimes to maintain them temporarily at a lower level.

Treaty of Amsterdam

The Treaty of Amsterdam increased the latitude for member states to deviate from Community policy.

a. The uncertainty as to whether the exception provisions of Article 100a(4) apply to national environmental policy still to be introduced was resolved, affirmatively.

b. 'Closer cooperation' between member states within the EU was made possible by means of nine general conditions (e.g. a last resort clause and participation by a majority of member states).

The approximately 20% of Community environmental policy based on the creation of the internal market (Article 100a) is excluded from 'closer cooperation' in the first pillar of the EU. The same applies to environmental policy based on Articles relating to trade, agriculture, fisheries, transport and economic and social cohesion.

An enlarged EU

A start has now been made with the formal negotiations with six candidates for membership from Central and Eastern Europe and Cyprus. The first accessions are expected to take place in the first half of the next decade.

The Netherlands has hitherto taken the view in the enlargement negotiations that the full adoption of the *acquis communautaire* and its prompt implementation in the environmental field is a condition of accession. For environmental legislation for specific media, a differentiated approach can be taken to transitional periods for individual direc-

tive articles for different acceding countries, depending on the environmental situation. Legislation on administrative procedures such as EIA, integrated pollution prevention and control (IPPC) and access to environmental information must be adopted at the time of accession. Where the environmental quality is better than in the EU it is necessary to guard against any deterioration in that quality.

Considerations in developing European environmental policy

Many analysts suggest that the *acquis communautaire* in the environmental field has developed during the last 25 years because of pressure from a leading group of countries such as Germany, the Netherlands and Denmark. This leading group was always able to persuade the other member states during this period - also when decisions on environmental matters were subject to unanimous voting - by referring to the transboundary nature of the pollution (air, water) and the trade implications of the policy on substances. These arguments in fact militate against 'closer cooperation'. Furthermore the pressure of the leading group might weaken because the other member states can invite the leading group to cooperate more closely amongst themselves. In the long run this could lead to a two-tier system of environmental protection levels in Europe.

It could however also become increasingly difficult to convince a qualified majority of member states, in particular after the enlargement, of the need to raise the level of protection in the EU. 'Closer cooperation' will then provide an opportunity to those member states which favour a more stringent policy. Furthermore it is possible that this higher level of environmental protection could become a benchmark within the EU, for example through investment decisions by industry.

Environmental policy is also based on Treaty articles for which the unanimity of member states is required, e.g. Article 99 (indirect taxes) and Article 235 (safety net clause). A familiar example is the hitherto vain attempts to set up a European energy tax. Although the introduction of qualified majority voting would be the preferred course, the introduction of 'closer cooperation' can also provide a solution. The decision in this regard would then in fact be taken by qualified majority.

3. Advice request

Against the background of the above, my advice request can be formulated as follows:

- Should the Netherlands be seeking, in its European policy, maximum uniformity in protection levels? or
- should the Netherlands be seeking to make active use of the possibilities offered by European law for a multi-speed Europe and for differentials in the level of environmental protection? and
- should the Netherlands be taking a lead in forming alliances with a view to 'closer cooperation'?

These matters need to be looked at in the context of the future enlargement of Europe.

The criteria for addressing these questions are the objectives set forth in the NEPP3 to the extent that decisions at the EU level contribute to their realisation. Relevant areas

would in the first place be issues with a global and regional scope such as climate change and acidification, and target groups such as transport and industry.

Given the wide range of objectives formulated in the NEPP3, a distinction might be made, for example by theme, target group, policy phase and aspect, in formulating the advice. For example the Dutch room for manoeuvre in EU negotiations may be greater in relation to the deployment of instruments, for example for the introduction of an energy tax, than in relation to setting quality objectives, for example limit values for airborne particles.

The Treaty of Amsterdam is expected to enter into force in March 1999. I would therefore appreciate receiving your advice by the end of December 1999.

Annex 2: Glossary of terms and abbreviations

Acquis communautaire	the totality of laws and regulations of the European Union
Agenda 21	a result of the 1992 UN Conference on Environment and Development in Rio de Janeiro
BAT	Best Available Techniques
Benchmarking	policy instrument by which companies undertake to be amongst world leaders in terms of (environmental) performance
Biocide	non-agricultural pesticide
CAP	common agricultural policy
CEN	European Standards Institute
CFCs	chlorofluorocarbons (which deplete the ozone layer)
Clean Development Mechanism	a so-called flexible instrument by which a country achieves part or all of its greenhouse gas reduction obligation in a country without a Kyoto obligation
CO ₂	carbon dioxide, the main greenhouse gas
Commission	in this advice, the European Commission: the EU institution which makes proposals for European legislation and measures, supervises their application and coordinates implementation of Community policy
Council of Ministers	meeting of the Ministers of member states responsible for a particular policy area, for example the Environment Council
Covenant	arrangement by which agreements are made without legal compulsion
Cross-compliance	support for agriculture in exchange for specific environmental performance
Declaration of Rio	declaration resulting from the UNCED in Rio de Janeiro in 1992
Dehaene Committee	reported to the European Commission on the enlargement of the EU
Directive	binding instrument of European policy, which must be transposed into national legislation
EAP	Environmental Action Programme of the EC/EU
EC	European Community
Ecolabel	environmental information on products
Ecotax	fiscal instrument for achieving environmental policy objectives

EEB	European Environmental Bureau (a European association of environmental organisations)
EINECS	European Inventory of Existing Chemical Substances
Emissions trading	a so-called flexible instrument by which a country or organisation realises its greenhouse gas reduction obligation in part or in full by negotiation in another country or organisation with a Kyoto obligation
End-of-pipe approach	approach by which pollution is tackled just before release into the environment rather than further upstream in the process
Environment Council	meeting of the Environment Ministers of member states
Environmental acquis	totality of environmental laws and regulations
EU	European Union
EU15	The present configuration of the EU with 15 member states
European Court of Justice	highest court in the European Union, also referred to as the European Court
European Environment Agency	European organisation for monitoring environmental quality in member states, located in Copenhagen
Framework directive	directive whereby objectives are set at Community level, but member states retain the flexibility to choose the mix of instruments which in their view is most cost-effective and efficient
GMOs	genetically modified organisms
GNP	gross national product
Helsinki	venue of European summit in December 1999
IMPEL	European enforcement network
Implementation	application of legislation
Infringement proceedings	proceedings taken by the European Court of Justice when it considers a member state is applying, for example the provisions of a directive, inadequately
Internal market	the economic market within the EU
IPPC	Integrated Pollution Prevention and Control (European Directive)
Joint Implementation	a so-called flexible instrument by which a country realises its greenhouse gas reduction obligation in part or in full by negotiation in another country with a Kyoto obligation

Kyoto	venue of the fifth Conference of the Parties to the Climate Treaty, December 1997, at which the so-called Kyoto Protocol was passed
Limit value	statutory environmental quality standard, of which account must be taken
Maastricht Treaty	treaty of European Union, 1992
Millennium Round	forthcoming round of negotiations of WTO
NEPP	National Environmental Policy Plan
NGO	non-governmental organisation
NH ₃	ammonia
NO _x	nitrogen oxides
OECD:	Organisation for Economic Cooperation and Development
PCP	pentachlorophenol, a biocide used in timber preservation agents
Perverse subsidy	a subsidy which, as a side-effect, stimulates, and thereby effectively sanctions, the non-sustainable use of resources
Priority substances	substances present in the environment which are causing a non-negligible risk to humans and/or ecosystems
Regulation	European legal instrument directly binding on member states without requiring transposition into national legislation
Resolution	non-binding instrument of European policy
Rio	Rio de Janeiro, the venue of the 1992 UN Conference on Environment and Development
Single European Act	document revising the Treaty of Rome
SO ₂	sulphur dioxide
Structural fund	(sectoral) European fund for financing projects in member states
Subsidiarity principle	principle that matters which can be dealt with by a lower body should not be undertaken by a higher body
Sustainable development	a development which satisfies the needs of the present generation without compromising the ability of future generations to meet their own needs
Target value	a non-statutory value which indicates the point at which environmental effects can be considered negligible

Treaty of Amsterdam	treaty of European Union, 1997, entered into force May 1999
Treaty of Rome UN/ECE	first treaty of EC, revised by the Single European Act the Economic Commission for Europe of the United Nations
UNCED	United Nations Conference on Economics and Development
Uruguay Round	the last round of negotiations of the WTO
Variable geometry concept	concept whereby the scope of European integration differs in different groups of countries
VOC	volatile organic compounds
VROM Council	Council for Housing, Spatial Planning and the Environment
WTO	World Trade Organisation: consultative forum on free trade with considerable powers involving countries from all over the world

Annex 3: Information on the enlargement of the EU

Increasing influence of 'Europe'

Political, legal and monetary cooperation in Europe is growing. The integration process was started some forty years ago. Following the recent enlargement from 12 to 15 member states with the accession of Sweden, Finland and Austria, further enlargement is scheduled involving ten Central and Eastern European countries⁴³, as well as Cyprus, Malta and Turkey. This process of integration means a gradual shift in policy-making from the national to the supranational level. Although the subsidiarity principle is consistently emphasised, European regulation will have an increasing impact on daily life. The free movement of goods, people, capital and services will lead to a downgrading of national frontiers to mere signposts on the motorway: you are now entering/leaving the Netherlands. The introduction of the Euro will considerably accelerate this process. National frontiers will increasingly be the delimiters of areas with a different historical, political and cultural past rather than marking a crossing to a different legal/economic/political system. The quest for the harmonisation of policy within the EU is driven mainly by the desire to minimise trade barriers. Inequalities in environmental policy could jeopardise the competitiveness of companies and/or countries. Only 20% of environmental legislation derives from considerations of the internal market (generally, the free movement of goods rather than competitiveness), however, and 80% from environmental considerations.

Political shifts

Enlarging the EU to encompass new member states undeniably offers advantages, varying from expanding the internal market by more than 100 million consumers and workers to greater political stability in Europe. But after their accession these countries will be fully involved in the decision-making, and the question is what, for example, this means for the politics of environmental policy. The accession of the Scandinavian countries and Austria strengthened the position of countries such as the Netherlands, Denmark and Germany relative to the countries of Southern Europe, but the anticipated further enlargement could swing the political balance-of-power back again. These countries have already invested heavily in the economic structure and in modifying their legal and administrative systems, with much remaining to be done, and are unlikely to be very keen on a further tightening of environmental policy. In the field of the environment alone (this includes nature conservation in EU terms) there are some 260 items of European regulation which will have to be implemented. Major modifications will be needed, particularly in the sectors water (particularly urban wastewater), air (large combustion plant) and waste management.

⁴³ These are Poland, Hungary, the Czech Republic, Estonia, Slovenia, Bulgaria, Latvia, Lithuania, Romania and the Slovak Republic.

How will accession work?

The Treaty of Amsterdam (1997) makes further enlargement of the EU possible. Agenda 2000 sets forth the strategy for this, and speaks of a 'Marshall Plan for the countries of Central and Eastern Europe' amounting (in 1997!) to Euro 75 billion. This will be accompanied by a restructuring of the Structural Funds. This amount does not include the investments to be made by the candidate countries themselves, which will also be enormous. DG-XI recently estimated that the total cost of transposing the environmental acquis⁴⁴ into the legislation of all the candidate member states will be about Euro 100-120 billion⁴⁵ altogether.

The Accession Countries must meet the criteria formulated by the Copenhagen European Council in 1993:

- *possess stable institutions which guarantee constitutional democracy, human rights and the respect for and protection of minorities;*
- *possess a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union;*
- *must be in a position to take on the obligations of membership, which implies that the country subscribes to the objectives of a political, economic and monetary union.*

The first phase of the negotiation process comprises the so-called 'screening' of the acquis communautaire. This screening is intended to answer three questions:

- is the candidate country willing to accept the acquis?
- does the necessary legislation exist?
- does the country have the institutions and financial resources needed for implementation?

The results of the screening for the six countries named are available. It is now quite clear that assimilating the acquis will be a major task, that the civil service and other institutions are not up to the task, and that both the candidate countries themselves and the EU have nowhere near the financial resources needed to fund this transformation. Sometimes the years 2005-2007 are mentioned instead of 2002-2003 as possible dates for the accession⁴⁶. The acceding countries must be able and willing to apply the entire edifice of community laws, prescriptions, standards and benchmarks. Although a transitional period would appear to be justified in some cases, the Council of Europe has ruled out any idea of accession after only a partial acceptance of the acquis. It

⁴⁴ The 'acquis' is the totality of EU legislation and agreements made (of which the environment represents a part) in force in the EU and which will also have to apply to the new member states.

⁴⁵ Accession Strategies for Environment: Meeting the Challenge of Enlargement with the Candidate Countries of Central and Eastern Europe, COM(98) 294, 15 May 1998.

⁴⁶ Rondje Europa, Actuele onderwerpen in het kader van het Duitse voorzitterschap van de Europese Unie. VNO-NCW, March 1999.

is therefore all or nothing, although a transitional period will be negotiable. The Council of Europe concludes that it will take years before the new member states comply with all applicable environmental regulation: partly because of the high costs of introduction and partly because the incentive to continue with the transposition of the environmental acquis will reduce once accession is a fact.

Annex 4

Composition of VROM Council

The VROM Council is made up as follows:

Dr. T. Quené, Chairman
Mr. L.C. Brinkman
Ms. M. Daalmeijer
Professor J.W. Duyvendak
Professor R. van Engelsdorp Gastelaars
Mr. J.J. de Graeff
Professor W.A. Hafkamp
Ms. F.M.J. Houben
Professor J. de Jong
Ms. M.C. Meindertsma
Mr. P.G.A. Noordanus
Professor I.S. Sariyildiz
Professor J. van der Schaar
Professor W.C. Turkenburg
Mr. T.J. Wams
Ms. L.M. Wolfs-Kokkeler

Observers

Dr. J.A. Vijlbrief, on behalf of the Central Planning Bureau
Professor N.D. van Egmond, on behalf of the RIVM
Mr. T.H. Roes, on behalf of the Social and Cultural Planning Bureau

General Secretary

Mr. W.A. Haeser

Secretariat staff involved:

Mr. H. Kieft (project leader)
Ms. A.M.H. Bruines
Mr. D.H. van Dijk
Ms. M.A.C.C. Oomen

