

**Guiding Principles
for Reform of Environmental
Enforcement Authorities
in Transition Economies
of Eastern Europe, Caucasus
and Central Asia**



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PREFACE

Economic growth has been recorded during the last couple of years in the transition economies of Eastern Europe, Caucasus and Central Asia (EECCA). Thus, Environmental Enforcement Authorities are being challenged to prevent and control environmental pollution and degradation during the period of economic recovery and production upturn.

The transition period generated new, and accentuated old, problems of environmental enforcement systems. These include, for instance, a greater diversity in the regulated community and lobbying by powerful groups or individuals for special privileges. A number of studies have shown that enforcement has not received sufficient attention from decision-makers, and low environmental performance and violations of environmental laws have been widespread. Important factors that nourished non-compliance were the slow pace of governance and economic reforms, the complicated legal framework and poor economic situation, society's failure to believe in fair regulation and the erosion of the rule of the law. Limited powers, scarce financial and human resources of enforcement agencies are also major causes of low effectiveness in ensuring compliance.

Will the environmental enforcement authorities be able to face current challenges, while they still struggle with a heavy burden of past and current problems? To do so, they will require a clear vision of long, medium and short-term targets; to define optimal actions for achieving targets; to improve the regulatory frameworks, as well as to strengthen environmental enforcement institutions and the instruments they use. The «Guiding Principles for Environmental Enforcement Authorities in Transition Economies of EECCA» provides guidance to achieve these goals.

This document addresses the domestic enforcement of national legislation, a fundamental mechanism by which the environment is protected. The international dimensions are briefly discussed, but they are not the main focus of the Guiding Principles. This was a deliberate choice to avoid any duplication

with documents already developed or under development by other international bodies¹.

This document has been developed in the framework of the «New Independent States' Environmental Compliance and Enforcement Network» (NISECEN), with active participation of officials and experts from the EECCA region, OECD and Central European countries. The need to develop the Guiding Principles was agreed at the meeting of the network in September 2001, St Petersburg, Russia. At that meeting, an Institutional Strengthening Working Group was established to develop a first draft. The draft Guiding Principles were discussed by the members of the Working Group, as well as OECD experts and representatives from UNEP and UNITAR, in May 2002. Subsequently, the Secretariat incorporated comments received during the meeting into a second draft, which was discussed and endorsed at the fourth annual meeting of the NISECEN in October 2002 in Almaty, Kazakhstan.

These Guiding Principles were endorsed by the EAP Task Force in February 2003. The intention is that they serve as a tool in national and international efforts to strengthen enforcement and compliance in the EECCA region, and perhaps beyond.

Two other documents, a «Review of Enforcement and Compliance Practices in EECCA» and an «Inspection Toolkit for Environmental Enforcement and Compliance» have been developed within the NISECEN to accompany the Guiding Principles. They present the current situation in the region and describe the tools, which should facilitate the implementation of the Guiding Principles.

The OECD EAP Task Force Secretariat wishes to thank all officials and experts involved in the development of these Guiding Principles. Financial support for the implementation of this project was provided by the European Union, the Netherlands, Sweden, the United Kingdom and the United States.

The views expressed in this publication are those of authors and do not necessarily reflect those of the OECD or its Member countries. The Guiding Principles are published under the responsibility of the OECD Secretary-General.

¹ UNEP's Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements (MEA), adopted in February of 2002. UNECE is currently elaborating Guidelines for strengthening compliance with, and implementation of, MEAs in the ECE region.

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**JOINT STATEMENT
ON THE GUIDING PRINCIPLES FOR REFORM OF
ENVIRONMENTAL ENFORCEMENT AUTHORITIES IN
TRANSITION ECONOMIES OF EASTERN EUROPE, CAUCASUS AND
CENTRAL ASIA**

Adopted on October 7th, 2002 in Almaty, Kazakhstan

REPRESENTATIVES OF ENVIRONMENTAL
ENFORCEMENT AGENCIES OF THE REGION

RECOGNISING:

The need for more effective and efficient control of pollution and prevention of environmental degradation;

The need to gain political support, as well as support from the general public for this purpose;

The need to strengthen environmental enforcement and compliance promotion instruments and institutions and to adapt them to the context of emerging market economies;

The existing potential within Environmental Enforcement Authorities and the opportunity to benefit from recent or eventual improvement in regulatory and governance systems;

The importance of leadership and commitment to promote reform within individual environmental enforcement institutions in the NIS;

The usefulness of networking and regional harmonisation, in particular as applied to the goals, approaches and working methods of Environmental Enforcement Authorities, and

The value of co-operation among peers and with the international community,

ENDORSED, AND AGREED TO APPLY THESE GUIDING PRINCIPLES.

**GUIDING PRINCIPLES FOR REFORM OF ENVIRONMENTAL
ENFORCEMENT AUTHORITIES IN TRANSITION ECONOMIES OF
EASTERN EUROPE, CAUCASUS AND CENTRAL ASIA**

PURPOSE

The current Guiding Principles aim to:

- Create a reference that will help governments to identify key features of an effective and efficient system of environmental enforcement and compliance promotion and guide the long-term institutional reform of environmental enforcement agencies;
- Foster co-operation and information exchange among all parties involved in environmental enforcement and compliance promotion, including governmental agencies, industry, NGOs and the general public, as well as the donor community;
- Provide a framework for self-assessment, regional surveys or peer review of existing national systems of environmental enforcement and compliance promotion.

The Guiding Principles were developed to serve as non-binding guidance to the environmental ministries and Environmental Enforcement Authorities at national and sub-national levels in Eastern Europe, Caucasus and Central Asia (EECCA). However, they might be useful in other transition or emerging economies, as they are based on a wealth of experience accumulated internationally.

DEFINITIONS

In the context of this document, some key terms are defined as follows:

- **Compliance** is the behaviour response to regulatory requirements that ensures the protection of human health and the environment. For the regulatees, being in compliance means obeying environmental requirements established by law.
- **Enforcement**, in the broad sense of this notion, is the application of all available tools to achieve compliance, including compliance promotion, compliance monitoring and non-compliance response. In a narrow sense, enforcement can be defined as the set of actions that governments or others take to correct or halt behaviour that fails to comply with environmental requirements.
- **Compliance monitoring** is the collection and analysis of information on compliance status (through pre-inspection and inspection reviews, ambient and emission monitoring, when needed, and other kinds of data gathering).
- **Compliance promotion** is any activity that facilitates or encourages voluntary compliance with environmental requirements.
- An **Environmental Enforcement Authority** (ENFA) is defined as any part of the government structure, whose primary responsibility is to identify, monitor, prevent or take action to correct non-compliance with environmental requirements. The ENFA can be a sub-division of the main competent authority for environmental protection, an autonomous institution (called usually an «environmental inspectorate») or any other unit of public administration that has relevant responsibilities.
- **Institutions** encompass not only organisations, but also the stakeholders who interact with them, the process by which they reach decisions and the activities they undertake to implement their goals. **Institutional reform** means improving working methods, including organisational structures used by an institution.
- A **Regulatee** (also referred to as the **regulated community**) can be a natural person or legal entity, including governments and their subsidiary bodies that are subject to legally-defined environmental requirements. The definition of «regulatee» extends to enterprises in all their possible manifestations including, but not limited to, privately or publicly owned corporations, joint-stock companies, partnerships, trusts, *etc.* It includes both owners and operators of enterprises.

I. FUNDAMENTALS OF ENFORCEMENT

Principle 1. Environmental enforcement systems should ensure effective and efficient protection of human health and the environment.

It is not the number of successful enforcement actions and cases handled, but the environmental results that should matter. The ENFA should recognise that enforcement is not a value in itself, but a means to bring compliance with environmental requirements at least cost for society. If an ENFA is engaged in enforcement but does not bring the desired compliance, its methods are probably misdirected. On the other hand, if an ENFA achieves compliance without environmental improvements, the regulatory requirements should be re-designed.

Principle 2. In securing compliance, prevention is better than cure; therefore ENFAs should maximise the deterrent effect of their activities.

An ENFA should establish a deterrence atmosphere, *i.e.* widespread perception that violations will not be tolerated. This can be achieved in several ways: by providing strict and timely response to non-compliance; by establishing social disapproval of violators, resulting from public awareness of regulatees' environmental performance; by publicising successful enforcement actions; by addressing with perseverance minor but widespread violations and by creating incentives to improve compliance and reward for good behaviour. Deterrence stimulates voluntary compliance eliminating the need for a physically omnipresent ENFA, thus reducing enforcement costs.

Principle 3. ENFAs should treat the regulated community equitably; enforcement actions should have a solid justification.

In acting equitably, the ENFA should treat the regulated community with consistency, in a transparent and proportionate manner. Consistency means taking a similar approach in similar circumstances toward all violators. At the same time, criteria that justify variations of non-compliance response should be established, *e.g.*, the attitude of the company's management and history of compliance. Consistency should be promoted within the ENFA at the national and sub-national levels and also through more effective interaction with other enforcement authorities. Transparency makes clear what enforcement actions may be taken, in which situations, and why. Transparency helps those regulated, and others, to understand what is expected of them and what they

should expect from the ENFA. It also helps to maintain public confidence in the ENFA's ability to regulate. Proportionality means that the enforcement action is commensurate with the risks to the environment and with the severity of violation. To ensure that enforcement cases are equitable and consistent with legal requirements, appeal mechanisms need to be established for both administrative and judicial enforcement.

Principle 4. Environmental requirements should be enforceable and establish feasible compliance objectives.

Several factors determine enforceability. *Inter alia*, every legal act should define the scope of its application, provide an effective date (for partial or full compliance), identify areas that would need elaboration in secondary legislation, and include a clear reference to sanctions in response to violation of its provisions. Sanctions should ensure that good environmental performers do not suffer any disadvantage, in particular economically, as a result of their compliance activities. This presupposes that sanctions are proportional to any economic gains that result from non-compliance.

Only requirements that are economically and technically feasible are enforceable in the long run. Feasibility is a pre-condition to ensure industry's acceptance of requirements, even when requirements are stringent, and to keep the costs of compliance within reasonable limits. To reduce the costs of compliance, effective dates (introduction) of new regulatory requirements should be coordinated, to the extent possible, with investment cycles. This underlines the importance of involving the regulated community – and others – in the specification of environmental requirements.

Principle 5. ENFA staff should work with integrity and be fully accountable for any discretionary decision they take.

Integrity and accountability are fundamental characteristics of an ENFA that wants to gain respect among stakeholders and achieve environmental results. ENFA staff should base decisions on best professional judgement consistent with legal requirements and resist pressure from interest groups. The ENFA's professional ethics should prohibit theft, fraud, bribery, abuse, and misconduct of any kind. The danger should be avoided that, under the justification of professional ethics, transparency is restricted or conditions are created to hide misconduct. Accountability of the ENFA managers and other staff, *i.e.* their willingness to explain and justify their decisions and performance, is instrumental for ensuring integrity. This is especially important when the enforcement action or non-compliance response is taken on the basis of an

inspector's own judgement. Decision-making policies should be established and applied within ENFAs, against which the staff and the entire agency should be accountable. They should allow optimal delegation and decentralisation of decisions, avoiding over management, while assuring adherence to law and good practice inside the ENFA. Without being a blueprint for all possible decisions, these written rules should be commonly accepted, transparent, unambiguous and reader-friendly, helping to reassure staff and all other stakeholders that decisions are made on a sound basis. They should apply to areas where decision-making is likely to be flexible or discretionary.

II. RESPONSIBILITIES, POWERS, AND ENFA ORGANISATION

Principle 6. ENFAs should be established as autonomous institutions, with clear, legally-defined responsibilities and appropriate powers to achieve their objectives.

Irrespective of its position within the government, an ENFA should have institutional autonomy, *i.e.* full authority to make independent and objective (free from political and other pressures) decisions on inspection-related issues or enforcement responses. Institutional autonomy can not be achieved without adequate human and material resources.

ENFAs should receive clear, legally-defined responsibilities. At a minimum, they should serve as competent authorities to monitor compliance with environmental requirements and exercise administrative enforcement at the national and sub-national levels. A modern ENFA will offer compliance assistance to the regulated community and ensure open communication with, and participation of, the general public in the framework of environmental enforcement system.

Establishing and enforcing environmental regulatory requirements should be institutionally separate. Similarly, regulatory functions should be separate from direct government support to, or participation in, economic activities. Whether or not to delegate environmental permitting to an ENFA is an important decision that must be made by each country, taking account of its specific goals and conditions. To avoid conflict of interest, however, permitting and inspection should not be assigned to the same sub-unit within the ENFA's organisational structure. At the same time, a steady and timely flow of information should be ensured between units and individuals with these two functions.

Adequate powers should enable enforcement officials to identify violations and effectively bring violators to compliance. The key powers available to the ENFA should include: entering a facility without restrictions with measuring and sampling equipment, and, when needed, accompanied by authorised external experts or civil society representatives; having full access to any information from a public or private entity related to the violation, examining and taking samples of goods; issuing notices and warnings, imposing penalties, suspension or revocation of environmental licences/permits (in co-operation with licensing authorities), and filing a court suit against violators. When a violation falls under criminal law, the ENFAs should be able to secure quick

response from the police. An institutionally mature ENFA should be allowed to solve minor cases of environmental violations without recourse to a court, subject to precise internal decision-making/operation rules and effective provisions for administrative and court appeal. Oversight mechanisms – both formal, *e.g.* exercised by prosecutor offices, and informal, *i.e.* exercised by representatives of the general public – should be put in place to avoid any misuse of enforcement powers.

Principle 7. An ENFA's organisational structure should reflect environmental priorities and legally-defined responsibilities.

Major, legally-defined responsibilities of an ENFA should form the core of its organisational structure. In a horizontal structure, priority environmental components or issues, as well as main management functions (*e.g.* programming, human resource and budget management) should be clearly established. Emerging functions, *e.g.* compliance assistance or communication with the general public, should also have a place in the organisational structure, and sufficient human and other resources allocated for their achievement. The ENFA should periodically review its structure, and identify and fill in possible gaps in professional expertise. In addition to scientists, engineers, lawyers, economists, and various support staff, a modern ENFA will need staff trained in information management, public relations, and project management. The internal organisation should facilitate the application of the ENFA's wide-ranging professional expertise and promote teamwork among diverse ENFA staff. Also the ENFA should consider whether some of its functions might be performed more efficiently through contractual arrangements with non-governmental or private sector entities.

Principle 8. Enforcement decisions should be delegated to, and taken at, the lowest level where issues can be effectively managed; national level ENFAs should provide appropriate support and co-ordination.

An ENFA should clearly define its vertical organisation and the responsibilities assigned to each level of its hierarchy. The mandate to take enforcement-related decisions should be delegated to, and taken at, the lowest level where issues can be effectively managed. To enable effective decentralisation, powers should be delegated proportionally to assigned responsibilities. At the same time, the national ENFA should take into consideration that sub-national units may find it difficult to exercise authority over large, powerful enterprises at the local level. Therefore, the national ENFA itself should inspect the largest facilities, or be

involved in the inspection of large facilities at the sub-national level. When necessary, the ENFA should support sub-national units in maintaining institutional integrity when subject to pressure from interest groups. National level ENFAs should strengthen the capacity of sub-national units, provide methodological guidance, staff training and establish appropriate funding mechanisms. National oversight, reporting and dispute resolution mechanisms should be established as part of effective decentralisation.

The institutional sub-ordination of sub-national enforcement units should not compromise their ability to monitor compliance and react to non-compliance. Sub-national ENFAs should clearly define their relations with local public administration and keep it informed and, when necessary, involved in decision-making. Double subordination, *i.e.* being accountable to both the national ENFA and local governments, creates ambiguity about responsibilities and should be avoided.

Principle 9. ENFAs should identify and establish effective working relations with other agencies and departments whose activities influence environmental enforcement.

Since many institutions are involved in the environmental regulatory process, the need for co-ordination of activities and feedback among these institutions requires them to work in close co-operation. This will be crucial where there are, for example, separate institutions for environmental permitting, inspection of environmental health and safety, and construction inspections, *etc.* In such cases, the ENFA should foster co-operation, and work to clarify roles and responsibilities, with other branches, agencies, and levels of government. In relation to each of its partners, the responsibilities of the ENFA should be defined as clearly as possible, with close attention to eliminating gaps and overlaps. The responsibility coverage should be optimised by focussing the efforts of each institution on its core activities. Where appropriate, formal relations should be established through agreements or memoranda of understanding. They should identify the goals and outputs of co-operation, clearly delineate responsibilities, and describe lines and procedures of communication and conflict resolution.

III. ROLE OF THE GENERAL PUBLIC AND THE REGULATED COMMUNITY

Principle 10. ENFAs should ensure effective communication with the general public and provide opportunities for citizens to contribute to more effective environmental enforcement.

The general public, including NGOs and mass media, should have access to information on the ENFA's activities and environmental performance of the regulated community. This needs to be done, however, without prematurely revealing information on enforcement cases or compromising confidentiality. Beyond passively responding to requests for information, the ENFA should proactively issue news releases and otherwise disseminate information. The core ENFA message should create the public perception of «deterrence with fairness». To this end, the ENFA should make publicly known the names of bad, and also good, environmental performers, and transmit information on successful enforcement cases to the mass media.

The ENFA may engage civil society in non-compliance detection and compliance promotion efforts. The general public should have the right to provide information to the ENFA (*e.g.* complaints) and to have its concerns addressed. This might be done in the framework of the so-called system of citizen's environmental enforcement, with active involvement of environmental NGOs and other citizens' organisations. However, it must also be made clear that enforcement decisions are the primary Responsibility of the ENFA and not other stakeholders. In general, ENFAs should take account, and follow the requirements, of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus, 1998).

Principle 11. ENFAs should establish mechanisms to assist the regulated community to better understand and voluntarily comply with environmental requirements.

The regulated community should receive compliance assistance that makes environmental obligations easier to understand and voluntarily met. ENFAs should establish information centres or more comprehensive programmes within their organisational structure, or motivate third parties, private or public, to carry out this task. Compliance assistance includes on-site consultations, a help-line for enterprises, good practice guides, case studies, etc. Communication

through industry press or industry associations is another means. Informational materials should answer, in a reader-friendly form, the following basic questions: What are the requirements? Who must comply, when, and where? Why are the requirements needed, and what are the consequences of failure? How can compliance be assured? Compliance assistance programmes should be used as an entry point for promoting voluntary initiatives, for instance, self-auditing, environmental accounting, corporate environmental reporting and, in general, use of environmental management systems in enterprises (such as ISO 14 000 series or the European Union's Environmental Management and Audit Scheme, EMAS).

Principle 12. ENFAs should require the regulated community to conduct self-monitoring and to report on environmental performance.

Self-monitoring and reporting provisions require regulatees to track their own environmental performance, record the results and present them for government review. Effective self-monitoring ensures prompt internal response to irregular situations and can inspire the management of enterprises to improve environmental efficiency and prevent pollution. It also provides essential data to supplement and support compliance monitoring activities undertaken by government agencies. Self-monitoring and reporting requirements should be legally defined and made part of permit conditions. Self-monitoring and reporting should be accompanied by clear guidelines and enforceable requirements for record keeping, providing the records for inspection, and (at least for specified serious events and/or periodically) for self-reporting to the ENFA.

The legal framework for self-monitoring should stipulate that tampering with control or monitoring equipment to give false results, false reporting and intentional failure to report are serious offences. Willingness to self-monitor can be raised if sanctions are suspended when regulatees report non-compliance immediately and correct both the violation and any damage.

Regulatees should have the right to sub-contract sampling and laboratory analysis, required as part of their self-monitoring, to a third party. Authorities should ensure that the same quality criteria are applied to government, industry-based or third party laboratories. Should an ENFA's laboratory provide paid services to industry, procedures are needed to ensure that this does not result in conflicts of interest.

IV. WORKING METHODS, STRATEGIES AND TOOLS

Principle 13. ENFAs should adopt a performance-based approach in their working methods; this approach should be rooted in an iterative (cyclical) regulatory process.

An ENFA should adopt and promote a performance-based approach as an integral part of an iterative (cyclical) regulatory process aimed at continuous self-improvement. The regulatory process includes: setting of policy objectives, legislative development, programming, environment impact assessment and permitting, compliance promotion, inspection and enforcement response, reporting and evaluation. This process should function based on feedback and self-correction throughout all stages of regulation, regardless of the institutional affiliation of a certain regulatory function. Since enforcement will never be effective without a proper legal framework and permitting conditions, an ENFA should actively promote and rely on feedback between inspection and permitting, and between these two and legislative development. Also, better assessment of compliance requires feedback between ambient monitoring and inspection services. Such feedback should concern various levels: from the individual, where feedback from inspection requires changes in a concrete permit, to the general level, where low enforceability and regulatory failures are experienced and should be communicated to policy makers and legislators.

Principle 14. Taking into account the need to set priorities, effectively balance preventative and punitive measures and efficiently use scarce resources, an ENFA should develop tailored enforcement strategies, supported by annual implementation plans.

The ENFA should act based on strategic enforcement, which is systematic, well planned and fits the existing enforcement and compliance capacity. Through strategic enforcement, the ENFA should be able to effectively mix all available tools and relate them to the overall economic, social and cultural context. These tools should cover both inducement and compulsion, and be applied to potential and actual violators. In many transition economies, this implies renouncing the traditional focus on punitive measures and adopting a well-balanced combination of incentive-based and command-and-control measures. To this end, the ENFA should develop and use an Enforcement Strategy, which at a minimum would define the target groups, desired rate of compliance and environmental

targets, inspection activities, application of enforcement tools, and communication strategy.

Priorities should be set to achieve targets systematically. Possible criteria for priority setting include the magnitude of risk to human health and the environment of a pollution source, and the appropriateness of enforcement tools. Priorities need to be agreed internally within the ENFA and with partners at the national and sub-national levels. Once priorities have been established, they will need to be communicated to all ENFA personnel. As the ENFA begins to enforce each new requirement, ENFA managers should adjust both priorities and targeting policies to respond to newly revealed problems and challenges, as well as to changes in the law or lessons learned. The sophistication of the priority setting process will grow with experience from rough methods to more elaborated ones, in conjunction with budgets and manpower.

On the operational level, the ENFA should at least develop annual work plans. They should include at least frequency, time, resources and budget planning for installations to be inspected. They should also describe compliance assistance and promotion activities and should allow time and resources to carry out administrative or any unexpected tasks. The work plan should be progressively based on the approaches of professional project management, *e.g.* with clear targets, measures of effectiveness, time and resource allocation, and identified preconditions for implementation.

Principle 15. The ENFA's strategy and operational plans should accurately identify and profile the regulated community.

The ENFA should gather information about the regulated community. The relevant information will include the name of the facility, contact information, geographic location, type of business or operation, any existing licence or permit, emissions and risks associated with their release, etc. Information gathering should proceed in many ways (inventories, licence applications, review of existing government records, registering procedures, ambient monitoring, etc.). The ENFA should develop systems, computerised where possible, to store, access and analyse data on the regulated community. Creation of inventories or registers (such as Pollutant Release and Transfer Registers, PRTRs) would help in this regard.

Principle 16. New regulatory requirements should be phased in over an appropriate transition period and take account of actions to be undertaken by the ENFAs and the regulated community, and their associated costs.

A phase-in plan should be developed for new legal acts that allocates resources between permitting, compliance assistance, compliance monitoring and enforcement. Analysis of the ENFA resources available and needed to meet new regulatory burdens should be conducted before the requirements enter into force. In some cases, enforcement strategies can be tested before being made final. Part of pre-implementation actions should be official publication of new requirements and assistance to develop understanding of requirements and even compliance capabilities within the regulated community. After the initial phase of implementation, compliance assistance might be reduced. Starting upon the effective date, inspections should concentrate on priority facilities, especially those operating without a permit or in violation of a permit. Once the desired rate of compliance is achieved, inspection might be reduced to a maintenance level.

Principle 17. Each inspection should be planned and executed according to specified minimum criteria; an integrated approach should gradually be applied.

Working in the field and visiting the regulatees is a core mission of environmental inspectors. To achieve best results, inspections should be prepared in advance, carefully conducted on site and communicated in inspection reports. The ENFA should have the authority to conduct both routine (planned) and unplanned inspections. The ENFA should clearly define those members of the regulated community that are subject to routine inspection and define the optimal frequencies of these inspections. Formal approval from a judge or a high executive-branch official might be required for the annual schedule of routine inspections or in the case of specific facilities. This should be done, however, without adversely affecting the timeliness and effectiveness of inspection process. Unannounced inspections should be carried out, especially in response to repeated violations, and should not involve lengthy approval procedures.

An integrated approach needs to be progressively applied in inspection. This approach, however, should not phase out media-specific or other kinds of inspection. In considering whether to use the integrated approach, the ENFA should determine whether it can: (a) yield better environmental results (*e.g.* reduction of cross-media transfer of pollution, identification of pollution

prevention opportunities) than single-media inspection; (b) provide increased resource efficiency for the ENFA; (c) increase the plant manager's attention to environmental protection issues; and (d) enhance the ENFA's inspection and enforcement presence.

Inspections should also take into consideration the division of responsibilities with other agencies and, when possible, be organised with these agencies. In relation to the installations with transboundary impact, the ENFA should co-ordinate inspection procedures and even inspections with neighbouring countries. Inspection procedures should be described in an ENFA Inspection Manual.

Principle 18. ENFAs should have access to adequate remedies in order to sanction non-compliance in a timely and proportionate manner.

An ENFA will need access to the full range of informal, administrative, civil and criminal remedies. These may include, but are not limited to, the following:

- (1) Informal responses, such as warning phone calls and letters;
- (2) Formal warning letters, including recommendations, and notices of violation;
- (3) Changes in permit(s) conditions and suspension or cancellation of the permit(s);
- (4) Financial penalties (fines), administrative or judicial, accumulating as long as the illegal situation persists;
- (5) Attachment of property, facility shut down, or mandatory corrective actions, which may be required by administrative or judicial order (and may be effected by executive coercion, when authorities take remedial action at the expense of the offender);
- (6) Criminal punishment, including imprisonment.

Enforcement usually follows the following sequence: warning, monetary sanctions, attachment of property, and criminal prosecution. Seriousness of offence determines this escalation. The «appropriate» response should be proportionate to the violation and take into consideration aggravating or mitigating factors. In addition, the timeliness of the response should be guaranteed: case-opening decisions must occur at defined intervals after inspections, and without undue delay. Whatever remedies are available to the ENFA, guidelines should define the criteria for selecting one path to justice over another.

Recourse to courts will be necessary for serious criminal and civil cases. For cases that are small and simple (seeking financial penalties or other limited remedies), administrative enforcement, with appropriate provisions for appeal, should be optimal.

Principle 19. Indicators should be developed against which ENFA performance can be measured and continuously improved.

Substantive criteria or measures (indicators) should be used to evaluate the effectiveness of enforcement efforts. The ENFA should design indicators for both outputs (activities carried out) and outcomes (environmental compliance and results achieved), and to assess their evolution and relationship. The ENFA should gather factual data, anecdotal staff reports of experience and audit reports of case files. The ENFA should establish procedures to apply both quantitative and qualitative indicators, with regular feedback to managers, political leaders, and legislatures.

V. RESOURCES, BUDGET AND FINANCIAL MANAGEMENT

Principle 20. ENFAs should establish an effective system of personnel management that addresses remuneration, motivation and professional development.

Since an ENFA needs solid scientific, economic and legal expertise to support its decision-making, it should be able to select and reward adequately qualified staff. Minimum requirement to retain staff while assuring integrity and courage, include civil servant status for employees, adequate salaries, other types of remuneration for good or exceptional performance and social protection (*e.g.* insurance and secure pensions).

A system should be established to address staff selection and appraisal procedures, promotion criteria and professional development schemes. As part of staff motivation, the ENFA should establish continuous personal development and training activities. Initially, ENFA employees should be trained to understand their professional roles, the limits of their responsibilities and powers, and the basic application of their professional skills to environmental enforcement. Then their competencies should be expanded by cross-sectoral training. The national ENFA should offer training to its sub-national units and, when possible, to the police, judges, and prosecutors. Finally, based on adaptation of its internal training materials, an ENFA may develop programmes and offer environmental education to the representatives of the regulated community and the general public or contribute to awareness raising initiatives undertaken by a third party.

Principle 21. ENFAs should identify the human, material and financial resources required to carry out their responsibilities; they should submit requests for resource allocations, with full justification, through the normal budgetary process.

An appropriate material basis will be needed if enforcement is to be applied consistently and continuously. Start-up supply, and with funding for operation and maintenance, should include transport vehicles and fuel for inspections, safety suits and other material for entering contaminated sites, sampling and other testing equipment. An ENFA should preferably have its own certified laboratory capable of analysing the most common parameters used for compliance monitoring and/or have access to high quality, independent laboratory resources, capable of conducting the analysis required to support the

ENFA's work. This is essential for supporting the ENFA's case in contested enforcement proceedings. A substantial investment also will be needed for office and staff communications equipment. These resources should ensure the timeliness, efficiency, accuracy, and conclusiveness of information on the state of compliance with environmental requirements.

The ENFA should have an effective information system that would allow for gathering, storing and using data for decision-making, including planning and performance assessment. Such systems should offer textual information (legislation, administrative forms, training and educational materials, activity reports, state of environment reports, etc.), track the administrative information and cross-check it (facility descriptors, permits, statistical reports, sampling and laboratory analysis reports, inspection reports, non-compliance responses, etc), and provide well aggregated information required to take decisions and develop enforcement strategies. These systems should be linked to the information systems of other government enforcement agencies.

Based on a realistic assessment of resources needed to effectively perform its activities, the ENFA should prepare high quality budget proposals, based on cost-effective approaches to enforcement operations and linked to performance indicators. This would help the ENFA to defend against budget cuts. Appropriate provisions should be made for contingencies to cover unforeseen cost-increases. If additional substantial resources are required to enforce newly enacted requirements unforeseeable during the budget preparation period, there should be the possibility of submitting a supplementary budget request outside of, and in addition to, the regular budget cycle.

Principle 22. ENFAs should apply rigorous budget and financial management procedures.

In its budget and financial management, the ENFA should follow national rules and best international practices. The ENFA financial planning should match the government's budget cycle and be synchronised with its internal programme cycle. To be convincing to the rest of government and to the parliament, the ENFA should explain both its accomplishments and address any complaints of insufficient action.

Whether the ENFA should be authorised to collect and spend the monetary penalties in addition to money provided from the state budget, is a question governments should address with great care. Including penalty fees as a source of revenue could encourage the ENFA to maximise revenue instead of compliance. However, since compliance would reduce revenues, this could distort the priorities of the ENFA and its relations with the regulated

community. This approach may also facilitate corruption, particularly if the flow of public payments is exempt from regular budget discipline and treasury control, and generally undermine the credibility and integrity of the ENFA. Generally, the ENFA should not be authorised to receive financial penalties directly from violators and spend them on ENFA activities. Exceptionally, this might be allowed in the case of dramatic budget shortfalls, for a limited period and under strict provisions ensuring transparency, accountability for public money, fiscal control and appropriate incentives. For these reasons, the preferred approach should be to treat the penalties as public monies subject to treasury control and to be collected by fiscal or treasury services.

ENFAs should not provide services to the regulated community for monetary reward, which duplicate or conflict with their statutory responsibilities. Where a government deviates from this principle, it should establish strict rules to avoid any conflict of interest and corruption.

VI. INTERNATIONAL COOPERATION

Principle 23. ENFAs should contribute to, and draw from, international experience on enforcement and compliance.

The ENFA should participate in developing international environmental requirements and harmonising them with national legal frameworks. If not involved in the negotiation phase of Multilateral Environmental Agreements (MEA), the ENFA should be, at least, be informed and have the opportunity to comment on the implications of enforcing international agreements, and be trained and equipped proportionally to these new tasks. The ENFA should follow guidance provided by international organisations (*e.g.* UNEP, UNECE) to facilitate compliance with, and enforcement of, MEAs.

The ENFA also should co-operate, through formal or informal networks, with partners in other nations in technical assistance for capacity building and in all phases of any joint inspections and/or prosecution case.

PRACTICAL IMPLEMENTATION

The Guiding Principles presented in this document are intended to be comprehensive and might not immediately be attainable in transition economies of Eastern Europe, Caucasus and Central Asia. This should not detract from their usefulness in providing a long-term direction towards which progress should be made. At the same time, several principles may have already been adopted in the region and are widely accepted as good practice.

Transition Strategy

Taking account of national circumstances, countries may wish to adopt their own transition strategy with a phased approach to implement the most important principles. There is no «universal blueprint for action» to implement the Guiding Principles.

Enabling Environment

Effective implementation of the Guiding Principles will require a certain «enabling» environment. The enabling environment will consist of various elements, including agency-related and national pre-requisites, and international support.

The essential agency-related pre-requisites, *i.e.* those that should exist within an ENFA, include:

- **Clear objectives and a strategy to conduct reforms:** The environmental enforcement authorities in the EECCA countries will need to understand where they are now, where to go and how to get there. The reform objectives and the strategy should be clear not only to the policy makers and managers, but also to agency's employees, so that all accept that change is essential.
- **Firm leadership:** «Reform managers» are needed to lead the reform process. These individuals or organisations are responsible for moving the reform process forward.

- **Selectivity and gradualism:** It is important that enforcement agencies start the process of reform in those areas, where they have comparative strength, *i.e.* sufficient experience and resources. Selectivity and gradualism should be built into the implementation process to overcome a possible reform overload and shortage of resources. If the ENFAs try to address all the roots of non-compliance or to implement too many changes simultaneously, they may go beyond their current capacities. This could damage the credibility of the reform efforts. Focusing on performance, achieving results and building on success will be the best approach.
- **Understanding development trends:** The environmental enforcement authorities will have to be aware of latest trends in economic development, most dynamic industries, new processes and emerging environmental problems. This knowledge will be essential for establishing priorities, especially in a long-term perspective.

Political will is an essential national pre-requisite. An ENFA must be very strong itself to stand as a counterweight against a powerful industry in violation of environmental requirements. Having a strong ENFA will be an official priority only if there is a shared, national goal to protect the environment. A starting point for developing the political will is to dispose of the argument that environmental protection is unaffordable and can only be achieved at the loss of many jobs. High political officials need to understand that at issue is not the choice between economic development and environmental improvements but their mutual reinforcement through coherent reforms. Once launching institutional reforms, the national governments will have to ensure their continuity and consistency and to provide adequate financing.

Another pre-requisite involves stakeholders, in particular civil society, in environmental decision-making. The major stakeholders should be informed about proposed reforms in a timely manner and participate in shaping them. Stakeholder participation is likely to enhance the compatibility of authorities' responses to society's expectations and, in turn, will promote a higher understanding and acceptance of changes. Most fundamentally, implementation of the Guiding Principles is premised on the assumption that governments are committed to promoting the use of markets to organise economic activity, and establishing **democratic systems of governance** and the rule of law. Without these commitments, the roles and relations of enterprises, environmental enforcement agencies, civil society and the judiciary are likely to be different to those recommended.

It is important to maintain **international support** for strengthening environmental enforcement authorities in the EECCA countries. First, this presupposes international peer pressure, elevating environment protection in the political agenda of the EECCA country governments. Know-how transfer and technical assistance also will be required to strengthen environmental institutions in general, and enforcement authorities in particular.

Monitoring and Evaluation

Monitoring implementation of these Guiding Principles will help to assess progress, identify areas where further efforts are needed to strengthen enforcement and compliance practices, and indicate the impediments and achievements in implementation. The objective should not be to judge whether an institution is performing badly or well; monitoring should aim to strengthen environmental enforcement systems and institutions. Also, the results of monitoring should be used to evaluate the usefulness of Guiding Principles and their impact.

Several instruments of monitoring and evaluation can be applied:

- Each environmental enforcement authority might want to conduct self-assessment, using its internal resources;
- Representatives of civil society might take the lead in external assessment;
- Governments may agree to undertake peer reviews;
- Regional surveys could be produced to report progress to international forums.

The network of environmental enforcers from EECCA region and their partners could provide a framework for a peer review process. Implementing such an approach would require continued assistance from donor countries or international organisations.