Single Market and Environment

SINGLE MARKET AND ENVIRONMENT

CHAPTER I: GENERAL ISSUES

1. WHY A COMMUNICATION ON THE SINGLE MARKET AND THE ENVIRONMENT?

(1) The increasing openness of markets coupled with growing environmental challenges and greater environmental awareness have revealed synergies, but inevitably there are also tensions between the functioning of the Single Market and the implementation of environmental policy. Environmental standards are sometimes perceived as barriers to market access, open markets as a threat to the quality of the environment.

The Community must seek a coherent approach to the pursuit of the objectives of the Treaty in relation to both the Single Market and the environment whilst also honouring its international obligations. This Communication is intended to contribute towards that objective, which is to achieve greater integration of the two policy areas by clarifying the Commission's approach to making the two policies mutually supportive and reinforcing, whilst at the same time developing positive synergies between them.

(2) The Amsterdam Treaty has reinforced the principle of the integration of environmental requirements into other policies, recognising that it is key to promoting sustainable development (article 6 EC Treaty). Moreover it is clear that, in accordance with the subsidiarity principle, responsibility for achieving sustainable development must be shared at all levels and among all actors. Thus, the Community needs to promote and leave scope for measures at national, regional and local level. Governments as well as enterprises and citizens need to be fully involved.

Recognising that further action was necessary to maximise the benefits of the Single Market in preparation for the launch of the single currency, the Amsterdam European Council strongly endorsed the Action Plan for the Single Market. This sets out the priority actions needed to improve its functioning; it takes account of the many dimensions of Single Market policy and includes among its four Strategic Targets that of "Delivering a Single Market for the benefit of all citizens". This emphasised that in delivering greater personal freedom and wider choice to consumers, the Single Market is also required to ensure a high level of protection of health, safety and the environment. The present Communication is a commitment to the Action Plan.

2. COMMUNITY SINGLE MARKET AND ENVIRONMENTAL POLICIES : ACHIEVEMENTS AND CHALLENGES

(3) Completion of the Single Market remains one of the main pillars of the strategy for growth, innovation and higher employment in Europe. There is already ample evidence[1] that the Single Market has given rise to tangible benefits for European enterprises and citizens.

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[1] The impact and effectiveness of the Single Market, COM (96) 520, 30.10.96.

- it has already created up to 900,000 new jobs that otherwise would not have existed;

- the Single Market Programme resulted in an increase in Community GDP of 1.1% - 1.5% in the period 1987 – 1993;

- inflation rates are estimated to be between 1 and 1.5% lower than they would have been in the absence of the Single Market.

By eliminating many trade and investment barriers inside the Community the Single Market has encouraged integration of Member State markets, stimulating changes in cross-border trade and investment flows and increasing competition. Introduction of the Euro is likely to stimulate further market integration. By enhancing cross-border price transparency and comparability it will probably intensify competition in product markets across the Community. Today, well over half of each Member State's trade is with other Member States. At the same time industrial concentration has increased, but should nevertheless remain compatible with increased competition.

(4) The economic growth engendered by the Single Market has been paralleled by considerable achievements in the environmental field. For example, there is evidence[2] that the quality of surface water has improved and emissions of sulphur dioxide, heavy metals in the air and ozone depleting substances have declined.

(5) Nevertheless, much remains to be done. Key Single Market rules are still to be put in place and further efforts are needed to ensure that the legislation is fully and fairly applied.

The percentage of environmental directives which have not been transposed in all 15 Member States is still too high at 18%, although significant progress has been achieved. Any failure to implement directives establishing minimum rules not only jeopardises the overall environmental objective but can also lead to a distortion in competition and affect trade between Member States.

The operation of the Single Market can also be impeded by uncoordinated technical legislation, and by national measures that are not proportionate to their objectives. For these reasons Member States have to notify draft technical Regulations to the Commission under Directive 98/34/EC of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations[3]. This Directive constitutes a valuable instrument to prevent potential obstacles to trade insofar as notified draft technical regulations are examined under the relevant provisions of EC law and brought into conformity with it before their adoption at national level. It has to be noted that the number of notified draft technical regulations on environment related issues has been constantly increasing in recent years. The procedure established by the Directive enables the Commission to monitor the areas in which Member States wish to

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2 Environment in the European Union, Report for the Review of the Fifth Environmental Action Programme, Copenhagen, 1995.

3 O.J. L204, 21/07/1998, pp. 37-48. The Directive consolidates Directive 83/189 and its amendments.

introduce new technical regulations and identify, where appropriate, the fields in which it may be useful to propose harmonisation measures at EC level.

Despite some progress, the overall quality of the environment remains unsatisfactory. Further action is needed in many fields, such as climate change, urban air quality and groundwater quality. As the European Environment Agency concluded "Without accelerated policies, pressures on the environment will continue to exceed human health standards and the often limited carrying capacity of the environment"[4]. European public opinion shares this view recognising that there is a need for strong action to protect the environment. The Amsterdam Treaty, with its requirement to better integrate environmental considerations in all Community policy areas, creates further challenges.

3. TACKLING THE PROBLEMS OF THE SINGLE MARKET AND THE ENVIRONMENT

(6) In view of the Amsterdam Treaty objectives of sustainable development and integrating environment policy into other Community policies , the Cardiff European Council endorsed a strategy for the integration of environmental objectives into all Community policies and actions. This strategy was confirmed and further developed by the Vienna European Council.

An important element of the strategy is the responsibility placed on individual Council formations to develop their own strategies to integrate environmental concerns into their respective policy areas, to identify indicators and to monitor progress. Future European Councils will take stock of progress. In Cardiff, the focus was on the energy, transport and agricultural sectors, while the Vienna European Council invited three more Council formations, including the Internal Market Council, to consider how integration could be achieved.,.

The European Council also invited the Commission to accompany major policy proposals by an appraisal of their environmental impact and to present a report to the European Council in Cologne on the mainstreaming of environmental policy.

Community harmonisation must embody a high level of environmental protection. This is not only a prerequisite to achieving sustainable development. It will also strengthen the Community's internal and external position, by making action by individual Member States unnecessary.

4 ibid

CHAPTER II : REINFORCING SYNERGIES BETWEEN SINGLE MARKET AND ENVIRONMENT POLICIES

4. NATIONAL ENVIRONMENTAL MEASURES AND COMMUNITY LAW

(7) Most of the Community's experience to date with regard to meeting the objectives of both Single Market and environmental policies has been in relation to the free movement of goods. The annex summarises this experience.

(8) The Community has adopted legislative measures in practically all areas of environmental protection, mainly based on Article 95 (ex-100a) and Article 175 (Ex-130s). Many of these environmental measures have a harmonisation effect, establishing rules for products or industrial processes. A careful balance needs to be found between harmonisation at Community level to guarantee the free movement of goods and the principle of subsidiarity which allows Member States, under certain conditions, to introduce further restrictions to protect the environment. This is particularly true for product related measures that have an effect on the marketing of goods.

Like all Community policies, harmonisation initiatives must pass the subsidiarity test. In each concrete case, therefore, the advantages of Community harmonisation, such as economies of scale and non-discrimination, need to be weighed against the advantages of allowing Member States to apply their own solutions, which might provide a better match to the national environmental problem, specific cost structures or simply to political preferences and traditions.

Where the measures are based on Article 175 (ex-130s), they are often to be considered as minimum rules. In line with the principle of subsidiarity, the Community's approach to environmental policy has shifted from detailed regulations to the setting of objectives at Community level by framework Directives, leaving Member States flexibility, in transposing these measures into national law, to choose the most cost-effective combination of instruments to reach the objectives. Thus, new instruments are increasingly used, whose compatibility with the Single market is not always clear.

National measures transposing or applying Community environmental measures based on Article 95 (ex-100a) or 175 (ex-130s) must be assessed to check correct implementation or application of the measure in question. However, if the Community measure does not fully harmonise the area in question, national measures may also be examined in the light of Articles 28 (ex-30) to 30 (ex-36) EC[5].

Under certain conditions stricter national measures than those agreed at Community level are possible. However, these measures have to comply with the requirements of either Article 95(4) (5) (6) (7) (8) (9) (ex-Article 100A §4) where the measure agreed at Community level is based on Article 95 or Article 176 (ex-

5 This applies, for example, to systems for the reuse of packaging waste in the context of Directive 94/62/EEC (see Annex, paragraph 3).

Article 130t) where Article 175 (ex-Article 130s) is the legal basis for the Community measure. In both cases the Member State has to notify its stricter measure to the Commission. The Commission has to assess whether the measure complies with the Treaty.

- In the case of Community measures based on Article 175 (ex-130s) Member States may maintain or introduce more stringent protection measures, which must be compatible with the Treaty.

- In the case of Community measures based on Article 95 (ex-100a) Member States may apply or adopt stricter national provisions on grounds of major needs. The Commission confirms the provisions involved if they are not a means of arbitrary discrimination or a disguised restriction on trade between Member States.

In the absence of Community measures, Member States may adopt national measures to protect the environment provided that they comply with the Treaty, including the general rules on the free movement of goods as set out in Articles 28 (ex-30) to 30 (ex-36) and the Community's international obligations.

5. PRINCIPLES TO BE APPLIED IN ASSESSING NATIONAL ENVIRONMENTAL MEASURES

(9) This section considers how the Community principles in relation to the free movement of goods, on the one hand, and environmental protection, on the other, should be applied in the assessment of national environmental measures in such a way as to ensure the effective achievement of both Community objectives.

(10) Article 28 (ex-30) of the Treaty prohibits unjustified national measures which have a restrictive effect on intra-Community trade in goods. It applies to all national rules that may hinder trade, even if they apply without distinction between national products and those from other Member States. It should be noted that this Article applies to State measures – legislative, regulatory or administrative acts – and not to private measures. There are also national measures which, by their very nature, fall outside the scope of Article 28 (ex-30). These are measures which do not define conditions which products must respect (e.g. denomination, shape, size, weight, composition, presentation, labelling and packaging) and which as such do not impede cross-border trade.

The following two paragraphs describe the fundamental Single Market and Environmental Principles that are applied in assessing national environmental rules.

(11) Where no harmonised rules exist, national environmental rules are compatible with Article 28 (ex-30) of the Treaty if they respect the following principles[6]:

- the measures must be **"indistinctly applicable"**, i.e., they should apply, de jure and de facto, without distinction to domestic products and those of other Member States[7];

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6 "Cassis de Dijon" case 120/78 judgement of 20.02.1979 ECR 1979, page 649 "Danish Bottle" case 302/86, judgment of 20.09.1988, ECR 1988, page 4607.

- they must be necessary to achieve their environmental objective, i.e. there must be a causal link between the measures and the result to be achieved to meet the environmental objective **(principle of necessity)**;

- they must be proportionate, which is the case if it is not possible to attain the same environmental objective by means of alternative measures, which are less restrictive of the free movement of goods **(principle of proportionality)**.

(12) Community environmental policy is based on three key principles[8]:

- **Principles of precaution and prevention**: Prevention requires that protective measures should be taken before the environmental damage has actually occurred. However, the link between cause and effect is often subject to a degree of uncertainty given the multitude of pressures on the eco-system. The principle of precaution may therefore justify action to prevent damage in some cases even though the causal link cannot be clearly established on the basis of available scientific evidence;

- **Principle of rectifying environmental damage at source:** Environmental problems should be tackled at source rather than at the level of their downstream effects. The environmental soundness and cost-effectiveness of the resulting solutions should be taken into consideration when applying the principle. The Court of Justice applied this principle to confirm a prohibition on the import of waste into the Belgian region of Wallonia, despite the restriction on intra-Community trade;

- **The "polluter pays" principle**: According to this principle, the polluter, and not society as a whole, should bear the cost of environmental pollution. If it were fully applied, prices would reflect the full cost of production and consumption, including the environmental cost.

(13) The onus is on Member States to justify their rules as being required in the interests of the effective protection of the environment. If the Commission considers the measure to be unjustified, it must give its reasons. For that purpose, the Commission would need to ascertain that there are viable alternative means of ensuring the necessary level of environmental protection while causing less restriction to intra-Community trade.

6. A BALANCED IMPLEMENTATION OF THESE PRINCIPLES

(14) In assessing national rules under Articles 95 (4) (5) (6) (ex-100A §4) or 176 (ex-130t), the principles referred to above will be applied rigorously, and the justifications offered by Member States will be analysed not only from legal point of view but also from scientific, technical, and economic standpoints. A Member State might justify a level of protection higher than that defined at Community

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[7] Measures which are not "indistinctly applicable" may only be justified by one of the general interests referred to in Article 30 (ex-36) of the EC Treaty.

[8] 130 R/EC Treaty.

level, for instance by reference to circumstances specific to the Member State in question[9].

(15) In the absence of harmonisation measures at Community level, obstacles to intra-Community trade resulting from diverging national rules are acceptable if they do not discriminate against goods from other Member States and provided that the rules are, first, necessary and, secondly, proportionate. The causal link between the measure and the environmental objective which is required by the principle of necessity should be demonstrated by the Member States by reference to relevant science. However, it is important to acknowledge that, as mentioned above, the principles of precaution and prevention may in some cases justify a measure even where the causal link cannot be clearly established on the basis of the scientific evidence available (paragraph 12).

(16) A measure is considered proportionate if it is not possible to attain the same environmental objective with alternative measures which are less restrictive of the free movement of goods. Therefore, a measure must be considered disproportionate if a viable and less restrictive alternative action exists which guarantees the necessary level of protection[10].

(17) The following questions illustrate the approach to the case by case analysis of complaints and infringements in the context of Article 28 (ex-30). There is a need for further transparency regarding the approach which will be provided in the forthcoming handbook on Article 28 (ex-30).

- What are the public interest objectives motivating the measure? Is the measure compatible with the Commmunity's international obligations?
- What is the impact on intra-Community trade?
- What is the potential economic chain reaction and the resulting impact on consumers and producers caused by the measure?
- What is the environmental impact of the product or production processes in question?
- What is the environmental impact of the substitute product or production processes which may be used after the adoption of a measure?
- What are the secondary effects of the environmental protection measure?
- What are the intentions of the Community with regard to legislating on the issue?
- How do other Member States tackle the issue? Are the conditions and effects similar?

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[9] See Annex, paragraph 6.

[10] See Annex, paragraph 9.

CHAPTER III: INTEGRATING ENVIRONMENTAL CONCERNS INTO POLICIES LINKED TO THE SINGLE MARKET

7. SINGLE MARKET POLICY AREAS AND THE ENVIRONMENT

(18) While most of the issues that have confronted the Community with regard to the links between Single Market and environmental policies so far have been in the field of the free movement of goods, the Commission has identified a number of other Single Market policy areas in which it will strive for a closer integration with environmental policy.

8. INSTRUMENTS OF ECONOMIC POLICY

(19) The Commission has on several occasions expressed support for the increased use of fiscal instruments. Environmental taxes and charges are increasingly used in the Member States. This opens up the scope for a more cost-effective environmental policy. Environmental taxes and charges can be an appropriate way of implementing the "polluter pays" principle, by including the environmental costs in the price of goods or services and by this means internalising external costs. Fiscal instruments are listed among the incentives available for producers and consumers, encouraging and steering choices towards more environmentally sustainable activities.

Obviously, these instruments should be used in a way that is compatible with Community law in particular with the free movement of goods and services, and the competition. A framework for their application was developed in the Communication from the Commission on Environmental Taxes and Charges in the Internal Market[11].

The Commission also monitors the development of national environmental taxation measures to see whether legislative initiatives are desirable at Community level to provide a suitable Community framework for environmental taxes. It is currently carrying out preparatory work to determine whether current and future options for action are possible at Community level in areas such as vehicle taxation, taxation of pesticides or other polluting materials.

Such a Community framework has been already proposed in the area of energy taxation through the Commission Proposal for a Council Directive restructuring the Community framework for the taxation of energy products (COM(97)30). This proposal is intended to provide an internal market framework within which Member States can use taxation as an instrument of environmental policy. It is currently under discussion within the relevant Council working-Group.

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[11] COM(97)9 final of 26.03.1997

9. STANDARDISATION

(20) Standardisation is a voluntary process carried out by independent bodies at national, European or international level. At European level, standardisation is conducted by bodies outside the institutional framework of the Community[12].Some European standards are developed on the basis of Community mandates, since they are required in connection with Community policy, such as in the field of testing and sampling for environmental emissions, environmental management systems or waste. Under the new approach to technical harmonisation, adopted in 1985, Directives specify only the essential requirements with which products must conform in the Single Market[13]. It is then for the standardisation organisations to draw up detailed technical specifications. Standards under a Community mandate are being elaborated for packaging and packaging waste.

(21) In response to the need to integrate environmental considerations into product standards, some guidelines for standards writers have already been developed at international level[14] CEN, the European standardisation body with horizontal competence, has recently adopted ISO Guide 64 and has created a structure (SABE[15]) to highlight environment-related needs in CEN itself. A Help Desk is about to be introduced in CEN to support its Technical Committees in incorporating environmental aspects in their product standards where relevant. Structures similar to SABE or the Help Desk have so far not been considered necessary by the other two European standardisation bodies CENELEC and ETSI. The search for technical solutions in standards should in principle be left to the interested parties. In certain areas such as environment, health and safety, the participation of public authorities on a technical level is important in the standardisation process, as noted in the report "Efficiency and Accountability in European standardisation under the New Approach"[16]. As for voluntary standards the interested parties , such as industry and environmental and consumer interest groups should themselves bear the main responsibility of the introduction of environmental considerations into the standardisation process.

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12 Directive [98/34/EC] requires notification of national standardisation programmes to the Commission and to the European standardisation bodies in order to increase transparency and allow for Commission proposals aimed at eliminating existing or foreseeable barriers to trade.

13 Council Regulation of 7 May 1985 on a new approach to technical harmonisation and standards, OJ C 136 of 4.6.85, p.1.

14 ISO Guide 64 and Guide 109 of the International Electrotechnic Committee, IEC.

15 Strategy Advisory Body on Environment

16 COM(1998) 291 final

10. PUBLIC PROCUREMENT

(22) Public authorities throughout the Union have considerable purchasing power. Taking account of environmental issues in contract award procedures in a manner consistent with Community law could provide an important stimulus towards sustainable production and consumption patterns.

(23) Initiatives for "greening" public procurement at national and local level have already been launched in a number of Member States. The Commission made it clear in its Green Paper on Public Procurement[17] and in its subsequent Communication[18] that Community rules on Public Procurement leave significant scope for public authorities to promote environmental protection. For example:

- administrations can define the goods and services they intend to purchase in the light of their environmental preoccupations, subject to normal Treaty principles, particularly non-discrimination;

- purchasing organisations can draw up technical specifications which take account of environmental values and encourage the development of a positive approach by companies to the environment by accepting tenders which meet the requirements of such specifications.

(24) The Commission reiterates that the object of public procurement remains essentially economic and that it is of the utmost importance to determine, for each procurement, the environmental factors linked to the goods and services required, which can, in consequence, be taken into consideration in a contract award procedure. The possibilities offered by the existing regime will be developed and clarified in a specific interpretative document in order to enable the optimum consideration of environmental protection in public procurement. The Commission will, in particular, examine how far it is possible to refer in technical specifications to the European eco-label or even to national eco-labels. It will also analyse the question of whether purchasing entities can require suppliers to have a certified environmental management system, in accordance with the Environmental Management Auditing System (EMAS) or ISO standard 14001.

11. ENVIRONMENTAL ISSUES IN FINANCIAL REPORTING

(25) The demands of investors and consumers have led to many companies beginning to disclose environmental information in their annual reports and accounts. However, in the absence of authoritative reporting guidelines in this area, comparability between companies is difficult. While the Community rules for the presentation and content of company accounts do not explicitly mention environmental issues, the general accounting principles laid down in the Directives apply. Nevertheless, the Commission is aware that the lack of explicit rules has led to a situation where investment analysts feel that environmental information disclosed by companies may not be reliable or objective. The first steps to improve

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[17] COM (96) 583, 27.11.1996

[18] COM (98) 143, 11.03.1998

the reporting of environmental issues in financial accounts have already been taken.

12. ECO-LABELLING

(26) The EU eco-label scheme was established in 1992[19]. Eco-labelling schemes are intended to allow consumers to identify and choose products with a lower than average environmental impact. By creating a market demand for such products, such schemes also provide producers with an incentive to adapt their production. The Community eco-label has been awarded to more than 200 products of different product groups. The Community eco-label scheme coexists with national eco-labels, some official, some private. Co-operation between the Community scheme and schemes in the Member States has as its ultimate goal the establishment of a well-defined European eco-labelling strategy in order to promote the objective of sustainable consumption. The Community eco-label criteria are based on an objective life-cycle approach, and it is therefore best placed to support the Environment while strengthening the Single Market.

13. TRANSPORT

(27) The growth in road traffic, passengers as well as freight, has provoked-on balance- an increase in the negative impact on the environment. This net-effect is the result of two divergent trends : significant technological progress has led to an important reduction of emissions from vehicles; but an increase in demand for transport has more than outweighed the improvements from technological progress.

This growth in the demand for transport is closely correlated with GDP-growth, part of which is the –expected- result from the completion of the Single Market. As the demand for transport is mainly a demand derived from other activities, a solution to the tension between the policy objectives of the Single Market and the objective of reducing the environmental impact from transport requires an integrated approach which must include elements other than transport policy measures.

The creation of an EU-wide transport market, by a process of liberalisation and deregulation, not only made possible the normal functioning of the Single Market, but also enhanced the overall efficiency of transport operations as a consequence of improved loading rates and less empty running.

Hence the liberalisation process should be continued, especially the phased liberalisation of the railway sector which is now under way. A revitalised railway sector would make it possible to reduce the environmental impact of the transport sector as a whole by a shift towards more environmentally friendly transport. Consistent implementation of the principles of open competition, both within and between the different modes of transport, will lead to a more balanced modal split.

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[19] Council Regulation (EEC) 880/92 of 23.3.92 on a Community eco-label award scheme, OJ 1992, L 99, p.1.

Community-wide implementation of appropriate charging systems for infrastructure and environmental costs (i.e. costs which instead of being paid by the polluter are shifted to society as a whole or to future generations) as advocated in various Green and White Papers presented by the Commission, will provide an additional support for the effective realisation of such a modal shift and for better use of transport in general.

14. ENERGY

(28) The European Community has started to liberalise the electricity and gas markets as part of its overall goal of creating a single energy market. The Electricity Directive[20] was adopted in December 1996[21] and the Gas Directive in June 1998[22]. When these directives are implemented, electricity and gas markets will be progressively open to competition. Environmental protection is one of the three pillars of an energy policy for the EU as laid down in the White Paper [23]and this needs to be taken fully into account in the process of liberalisation of energy markets. The transparency provided by liberalisation should facilitate this objective.

(29) One of the driving forces behind liberalisation is a need for economic efficiency which is expected to increase European competitiveness and eventually growth and living standards. Whilst, it is generally assumed that where energy prices are reduced, energy consumption will increase and that in the short to medium term this increase in consumption is likely to be fossil fuel based with the consequence that this will lead to an increase of CO2 emissions, experience to date does not bear this out. To ensure an increase in consumer choice the Commission's paper[24]on increasing the availability of renewables in electricity production was well received by the May 1999 Council and the Commission was invited to submit a formal proposal to this end in accordance with the common rules for the internal market in electricity. Furthermore, liberalisation is likely to entail a switch from older and inefficient coal and oil fired plants with relatively high carbon emissions, to gas-fired power generation. Liberalisation of electricity and gas markets encourages combined heat and power with considerably less emissions and independent and innovative generating activity. This not only reduces CO2 but also SO2emissions. Moreover, in a single energy market it is possible to import

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[20] OJ N° L27/20, 30.1.97.

[21] Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity. Official Journal L 027, 30/01/1997 p. 0020 – 0029.

[22] Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas. Official Journal L 204, 21/07/1998 p. 0001 – 0012.

[23] COM(95) 682

[24] SEC(99)470, 13/04/1999 - Working Paper of the European Commission - Electricity from Renewable Energy Sources and the Internal Energy Market.

power from countries with over-capacity and more environmentally friendly power generation.

(30) However, in the absence of safeguards, the internal energy market could pose problems. In liberalised markets it is more difficult for utilities to act as agents of public policy and to reflect external costs. This could put a brake on the development of renewable energies and a less carbon intensive energy system which is essential if environmental objectives such as on climate change are to be met. The rules for the internal electricity and gas market therefore include a possibility for Member States to impose environmental service obligations as well as giving electricity from renewable energy sources and from combined heat and power priority in dispatching. Voluntary agreements may also contribute to environmental protection in a liberalised market.

Against this background the Commission has developed a number of initiatives in the energy field having among their main objective the protection of the environment.

- The White Paper[25] on renewable energy sources with a strategy and an action plan. The objective is to double the current 6% share of gross inland energy consumption which is contributed by renewables by2010;

- The Communication on Energy Efficiency[26];

- The Communication aimed at doubling the contribution of co-generation in the EC from 9% to 18% by 2010;

- The Energy Framework Programme (1998-2008) and in particular the SAVE and ALTENER elements;

- The publication of a Working Paper on electricity from renewable energy sources and the internal electricity market.

- the 5th RTD framework programme (1998-2002) adopted by the Council on 22 December 1998 of which a specific programme is devoted to energy and environment.

The Commission is also developing other proposals, notably concerning the access of renewables to the electricity market, an action plan for energy efficiency and a take-off campaign for renewables, that could be influential on the future development of the environmental dimension of the internal energy market.

(31) In the internal market context of falling real energy prices, internalisation of external costs and benefits, including those relating to the environment, into energy prices should be considered , in particular through fiscal and incentive measures. A

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[25] COM (96) 599, 26.11.97, "Energy for the Future: Renewable Sources of Energy – White Paper for a Community Strategy and Action Plan".

[26] COM(98) 246 of 29.4.98

first step in this direction would be the adoption of the Commission's proposal on the energy products tax[27]. In addition, the role of cost effective mechanisms such as demand side management, and energy services in meeting future energy demand will continue to be explored.

[27] COM(97)30 of 12.3.97

KEY INITIATIVES TO INTEGRATE SINGLE MARKET AND ENVIRONMENTAL POLICY

(32) The Community has already made significant progress in reconciling the objectives of Single Market and environmental policy. The case-law of the Court has provided guidance on the application of the principles underlying Community environmental policy and those related to the free movement of goods. As indicated in Chapter III in relation to transport and energy, for example, it is clear that in many respects the opening up of markets can in itself make a positive contribution to the achievement of environmental objectives. In addition, steps are being taken to integrate environmental objectives more fully into various Single Market policy areas.

(33) However, further measures are necessary and the Commission could therefore:

- *publish a handbook on the application of Articles 28 (ex-30) to 30 (ex-36) of the Treaty, to national environmental measures, which will include concrete examples based on previous experience;*

- *publish an interpretative Communication that will clarify how environmental considerations may be taken into account in public procurement;*

- *press Member States to increase the degree of transposition of environmental Directives from its present below-average level of 82% compared with the overall average of 85% and to eliminate the backlog rapidly,, thereby contributing to a more level playing field within the Single Market;*

- *assess, with the help of appropriate impact analysis, and consultation processes such as the Business Test Panel and the Commission's business impact assessment system, how proposed environmental measures will contribute to a better functioning of the Single Market; identify within the SLIM initiative and other simplification actions how existing environmental legislation and administrative procedures could be simplified with the same aim and made more user-friendly;*

- *update the existing Commission database on environmental taxes and charges used in the Internal Market.*

- *develop, together with the European standardisation bodies, a programme that will progressively integrate environmental considerations in their activities, and explore the possibility of promoting the participation of environmental NGOs in standardisation processes;*

- *develop the role of EU-wide Environmental Agreements, together with appropriate consultation procedures, to further harmonise the levels of environmental performance by industry within the Single Market;*

- *develop, in close cooperation with the relevant national authorities, the role and contribution of the Community Eco-Label Award Scheme with respect to the Single Market;*

- *periodically review the environmentally-related national technical regulations notified under Directive 98/34 in order to determine where harmonisation measures may be required;*

- *review the Community framework for State Aids for environmental protection,*

- *issue a Recommendation on how to integrate environmental considerations into financial reporting;*

- *contribute to the initiatives that will be taken by the Transport and Energy Council to integrate environmental considerations into transport and energy policy, as decided at the Cardiff European Council (June 1998, paragraph 34 of the Conclusions of the Presidency).*

- *Contribute to the integration of environmental considerations in the Single Market and Industry Councils, in response of the invitation of the Vienna European Council (December 1998 §67 of the Conclusions).*

ANNEX

INTEGRATING SINGLE MARKET AND ENVIRONMENT POLICIES : A SUMMARY OF THE COMMUNITY EXPERIENCE TO DATE

1. EXPERIENCE IN THE FIELD OF FREE MOVEMENT OF GOODS

1.1. Assessment of experiences where relevant Community legislation exists.

1.1.1. Waste and packaging waste

(1) Waste, whether recyclable or not, constitutes a tradable good, to which the Treaty principle of free movement applies. Following difficulties with the import and export of waste[28], the Community established a system of supervision and control of waste shipments by adopting Regulation 259/93[29]. This Regulation strikes a balance between the environmental objective of treating the waste where it occurs, in accordance with the "principle of proximity" and the objective of free movement of goods. The European Court of Justice recently confirmed [30]a distinction between waste for disposal to which the principle of proximity and self-sufficiency applies, and waste for recovery. As regards waste for recovery competent authorities may object to their shipment only on the basis of a limited number of reasons such as illegal traffic and public order. However some open questions remain:

- different definitions of waste in the Member States continue to hamper the harmonised application of Community legislation;
- the lack of a clear definition of recovery of waste, in particular with respect to incineration with energy recovery.

Discussions on ways to improve this situation are ongoing in the relevant frameworks such as the Technical Adaptation Committee on waste legislation and the recently created Recycling Forum.

- In recent years, more and more specific instruments have been adopted, or are in the process of adoption, to achieve a high degree of environmental protection all over the Community, on the one hand, and to preserve fair conditions within the Internal Market on the other. Such instruments concern the incineration and landfilling of waste but also common initiatives towards the prevention, re-use and recovery of specific waste streams such as packaging, end of life vehicles, electric/ electronic waste and batteries.

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[28] Case C-2/90, judgement of 9.7.1992, ECR 1992, p. 4431.

[29] OJ 1993, L30, p.1.

[30] Case C-203/96, judgement of the Court 25.6.1998

(2) The waste strategy of the Commission clearly states that waste which cannot be avoided should be either re-used, recycled or recovered through energy recovery[31]. But promoting the return and the recovery of packaging for environmental reasons has implications for the internal market, since national producers might be better placed to comply with return and recovery obligations. In order to harmonise national measures concerning the management of packaging and packaging waste the Community adopted Directive 94/62[32]. This Directive aims at ensuring both the operation of the internal market and a high level of environmental protection. It defines the essential requirements which must be fulfilled regarding packaging and, inter alia, sets targets for the recovery and recycling of packaging waste.

However, the Directive does not fix targets for the reuse of packaging waste. According to Article 5, "Member States may encourage reuse systems of packaging, which can be reused in an environmentally sound manner, in conformity with the Treaty". This results in the need for the Commission to examine each reuse system introduced by a Member State in the light of the Treaty rules, particularly with regard to the free movement of goods.

1.1.2. Chemicals

(3) The chemical sector is one of the oldest areas covered by EC legislation.

The main clusters of EC legal instruments on chemicals adopted in the last 30 years have been conceived around the following concepts or principles:

- the distinction between substances (1967) and preparations (1988) with a classification system based on the intrinsic properties of the chemical, whether substances or preparations and specific requirements for packaging and labelling;

- the distinction between the so-called "new chemicals" (1979) and "existing chemicals" (1993);

- full risk assessment for humans and the environment for "new" and "existing" chemicals;

- on the basis of the risk assessment the possibility to introduce market restrictions (1976) in the form of a ban or a limitation of the use of the chemicals or of a system of common authorisation procedures for certain categories of chemicals as in the case of pesticides in 1991 or biocides in 1998.

Directive 67/548 relating to classification, packaging and labelling of dangerous substances was adopted to prevent barriers to trade resulting from differing national rules. In 1979, the Community system of prior notification of new chemicals before they could be placed on the market was introduced within the

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[31] COM (96) 399 of 30.7.1996.

[32] OJ 1994, L 365, p10.

framework of this Directive. The notification, accompanied by a dossier including results of tests for potentially harmful effects, is sent to the competent authority in the country of manufacture (or import), which sends it to the Commission, which in turn sends it to the other Member States. If no objections are raised then the manufacturer is assured of access to the whole internal market. This Community scheme is therefore both an environmental protection measure embodying the principle of prevention or precaution, and an internal market measure preventing the market fragmentation which could result from the introduction of conflicting national notification procedures. In Phase IV of the SLIM initiative, ways of simplifying Directive 67/548 will be explored.

Directive 88/379, known as the "Preparations Directive" sets out harmonised rules for the classification, packaging and labelling of dangerous preparations (mixtures). This Directive is linked to the Directive 67/548. The preparations Directive has been continuously developed over the past ten years. In addition to changes arising from the Substances Directive, rules have been introduced for gaseous preparations for Safety Data Sheets and for Child Resistant fastenings.

(4) The Community has also adopted a common scheme for assessing chemicals, Council Regulation 793/93 on the evaluation and control of the risks of existing substances[33].

The basic principle of the Regulation is that controls of hazardous chemicals should be based on an assessment of the actual risk to human health and the environment, rather than the hazardous properties of the substance only.

Manufacturers or importers were required to provide specific information on EINECS-listed chemicals produced or imported into the Community in volumes in excess of 10 tonnes per year. The most recent data provided by industry shows that of the 100,106 chemicals listed on EINECS, on the market there are approximately

- 2,500 High Production Volume chemicals (1,000 tonnes or more per year); and,
- between 15,000 to 20,000 Low Production Volume chemicals (10 to 1000 tonnes per year).

The remaining 80,000 or so chemicals are produced or imported in quantities of less than 10 tonnes per year or are not traded at all.

Of the 100,106 EINECS chemicals, approximately 3,000 have been classified as dangerous in Annex I of Directive 67/548.

For practical reasons, a priority setting approach for Regulation 793/93 was introduced to determine which chemicals should be assessed first. Three priority lists, totalling 110 chemicals, were adopted by a regulatory committee of national representatives and set out in three Commission Regulations between 1994 and 1997.

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[33] OJ 1993, L 4, p.1.

Directive 76/769/EEC, known as the "Limitations Directive" establishes harmonised rules to remove obstacles to intra-EU trade arising from restrictions in Member States applying to dangerous substances, preparations and articles associated within these. It also establishes harmonised rules where there is a consensus that these are needed to protect human health, the environment and the interests of consumers.

(5) Sometimes a Member State may want to place a greater restriction on the marketing and use of a substance than those provided in EU legislation or to impose restrictions at national level before they have been agreed at Community level. In fact, eight of the [ten] notifications introduced by Member States under ex-Art. 100a (4) (new Article 95 (4) (5) (6) (7) relating to environmental protection concern three chemical substances (PCP, cadmium and creosote). Moreover, most of the exemptions granted to Austria, Finland and Sweden in the Accession Act, entitling them to apply stricter standards during a four-year period, relate to chemicals.

1.1.3. Vehicles

Directives which limit the noxious emissions of motor vehicles constitute excellent examples of synergy between joint objectives: those of high environmental standards and highly efficient functioning of the Internal market.

By means of the progressive reductions in emission levels for cars and heavy duty vehicles, the European Union now disposes of rules which are amongst the most rigorous in the world. It is projected that the EC directives will result, by 2010 and despite the expected increases in traffic volume, in a reduction of road transport emissions to one third of the 1995 level.

The emission directives are based on the principle of total harmonisation which because of economies of scale resulting from the Internal Market, enable the development of new emission technologies at acceptable cost for the consumer.

The preparation of the draft directives required, on the part of the Commission and within the framework of the two Auto-Oil programmes, of wide ranging feasibility assessments of all measures contribution to the attainment of enhanced air quality targets. Theses assessments have been conducted with the full co-operation and partnership of stakeholders in order to establish a feasible, efficient and cost-effective strategy for the whole EU territory.

Ongoing improvements in vehicle and exhaust technologies clearly require considerable investments. This fact justifies a co-operative pan-Community approach based on rigorous analysis and thus allowing the reaching of more ambitious environmental objectives than an individual country could achieve acting alone.

Should even stricter norms need to be studied, it is probable that the scientific and technical basis for such a review would need to be extended to incorporate work carried out throughout the world.

1.2. Assessment of national measures where no relevant Community legislation exists.

1.2.1. The "Danish bottles case" : the Court judgement

(6) In 1981, Denmark established a requirement that beer and soft drinks had to be marketed only in reusable containers subject to a deposit-and-return system. The containers had to be approved by the National Agency for the Protection of the Environment. The rules were later amended to allow the use of non-approved containers for 3000 hectolitres a year per producer, provided a deposit-and-return system was established. The Commission asked the Court of Justice to declare this deposit-and-return system incompatible with ex-Article 30 (new Article 28) of the Treaty.

(7) The Court found that the deposit-and-return system was an indispensable element of a system intended to ensure the reuse of containers and was therefore necessary to achieve the environmental aims pursued by the contested rules. It therefore declared the restrictions which it imposes on the free movement of goods proportionate.

However, the Court took a different view of the quantitative restriction for imports in non-approved containers. It conceded that the approval system for containers was capable of protecting the environment because it ensured that the deposit and return system could operate effectively. However, the obligation for a foreign producer to manufacture or purchase approved containers could involve substantial additional costs and make the importation of his products very difficult. Since only limited quantities of beverages were imported in any case, due to the obligation to use re-usable containers, the Court found the quantitative restriction on imports in non-approved containers disproportionate and in breach of ex-Article 30 (new Article 28) of the Treaty.

1.2.2. Product bans and requirements : the Commission's approach

(8) National measures restricting the free movement of goods can vary in their effect on the single market. They may completely or partially prohibit the production, marketing or use of a product, or they may restrict its use or establish technical specifications. Two examples illustrate the kind of issues which arise and the Commission's approach in dealing with product bans:

(i) three German Länder banned the use of aluminium in houses (window frames and doors). The objective was to protect the environment, by reducing the amount of certain materials on German territory. Having analysed the impact of the measure on trade and the environment (an "ecobalance"), the Commission concluded that the measure was proportionate;

(ii) Swedish rules prohibit methylenechloride and trichloretylene for industrial use subject to certain exemptions. In this case, the Commission considers that the measure is disproportionate since a less restrictive measure could be used, namely the control of the use of the substances in the workplace.

2. ASSESSMENT OF NATIONAL ENVIRONMENTAL POLICY BASED ON OTHER MEANS OF INTERVENTION

(9) The advantages of other more market-friendly instruments have led to their increased use by Member States, often in combination with the more traditional instruments, rather than on a stand-alone basis. These new instruments, which do not always have a direct relationship to products, include environmental taxes and charges, environmental management and auditing schemes, eco-labelling, environmental agreements, the disclosure of environment-related information in financial reporting and the use of environmental criteria in standards and in public procurement. The increased use of these new instruments poses a challenge to the Commission and Member States: a coherent approach is necessary to take advantage of these new instruments without impeding the functioning of the Single Market.

(10) Most prominent in this respect are environmental taxes and charges, which are increasingly used in the Member States[34]. Evidence from evaluation studies suggests that they have achieved their environmental objectives at a reasonable cost[35]. The Commission has several times given its support to an increased use of fiscal instruments to make environmental policy more efficient and cost-effective. The Communication from the Commission on Environmental taxes and Charges in the Single Market[36] presents guidelines to ensure that environmental taxes and charges are used in a way which is compatible with Community law.

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[34] "Environmental taxes, Implementation and Environmental Effectiveness", Report of the European Environment Agency, July 1996.

[35] Report of the European Environment Agency, op.cit.

[36] COM (97) 9 final of 26.03.1997.