Robert Schuman Centre

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KURT DEKETELAERE

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In Belgium, as in other arenas and levels of policymaking, a gradual change is taking place in the choice of environmental policy instruments: where environmental policy until recently was exclusively characterised by command and control, the market-based approach is becoming increasingly popular (Gains and Westin 1991, OECD 1993, Deketelaere and Martens 1994, Deketelaere and Pittevils 1995).

This contribution will briefly analyse the Belgian experience with traditional instruments of environmental protection, and then explore the ways in which a variety of new environmental policy instruments have been applied. Belgium is a federal state, made up of three communities and three regions. The latter, which include the Flemish Region, the Walloon Region and the Brussels-Capital Region, have substantial environmental competences. As a consequence, five sets of environmental legislation must be taken into account: the Flemish, Walloon, Brussels, federal and European environmental legislation. While each of these will be discussed at various points throughout this paper, the analysis will primarily deal with Flemish environmental legislation and federal environmental legislation which is applicable in the Flemish Region.

Environmental Protection in Belgium

In many European countries, including Belgium, the use of instruments of direct regulation (prohibitions, restrictions, permit systems, notification systems) in environmental policy prevailed in the sixties, seventies, eighties and even (the beginning of) the nineties (OECD 1993). The advantages of these instruments, known as command and control, are well known: they establish clear environmental norms which must be met, these norms apply to everybody, the government must not evaluate the individual circumstances of thousands of different cases, and the use of general norms limits administrative discretionary power and makes it easier for companies to plan their own environmental policy.

On the basis of these classic arguments, Belgium traditionally made enormous use of command and control environmental regulation. Federal environmental legislation (town and country planning (1962), air pollution control (1965), protection of surface waters (1971), protection against noise (1973), nature protection (1973), the management of risks of heavy accidents with certain industrial activities (1987), and the protection against ionising radiations (1994)), and also (later) regional (Flemish) environmental legislation (waste management (1981 and 1994), groundwater management (1984), environmental permits (1985, 1991 and 1995), environmental impact assessment (1989), protection of forests (1990), manure (1991), protection of dunes (1993), management of gravel

extraction (1993), environmental policy agreements (1994), environmental planning (1995), environmental care at plant level (1995), soil sanitation (1995), and spatial planning (1996)), established a wide variety of prohibitions and restrictions. Not only the original versions of these laws and decrees contained those instruments of direct regulations. Later modifications and updates also used these instruments, be it not (more) exclusively but in combination with other environmental policy instruments.

As an example of this still current command and control approach, the Flemish government fixed in 1995, for the first time, a general legal basis for the adoption and the use of environmental quality norms for the protection of the environment (although such quality norms were already used for a number of years in the framework of specific sectoral laws and decrees) (Lefebure 1996). These norms indicate the maximum allowed amounts of pollution factors in the atmosphere, the water or the soil. They can also determine which natural or other elements must be present in the environment in view of the protection of the ecosystems and the promotion of biological diversity. A distinction must be made between basic environmental quality norms (which establish quality demands throughout the whole Flemish Region) and specific environmental quality norms (which apply in areas which need special protection). Environmental quality norms can be fixed in the form of limit values (which may not be exceeded) and directional values (which must be achieved as much as possible or maintained).

Environmental quality norms (as fixed in part 2 of the so-called VLAREM II, the decision of the Flemish Government of 1 June 1995) are used in the Flemish Region for noise, surfacewaters, soil, groundwater and air (Lefebure 1996). Also sustainable development and protection of a healthy environment are considered as general basic environmental quality norms.

The general and sectoral environmental conditions for classified installations, as embedded in part 4 and part 5 of VLAREM II, are considered to agree with the best available technologies (BAT) (Gille and Lambrecht 1996). VLAREM II also prescribes that every licensee must apply BAT in order to protect man and environment. Before the adoption of VLAREM II (original version 1992 / present version 1995), there was no general obligation to apply BAT. In that period, application of BAT was only foreseen in laws and/or decrees, implementing European environmental directives which imposed the application of BAT. This means that environmental legislation, and the instruments of direct regulation in that legislation, in that period did not always reflect the BAT of that time. Rather, most instruments of direct regulation arose from political and technical consultation groups, composed of representatives of all concerned parties (government, industry, green NGO's, etc.). Real and clear interference by political

parties in this process of standard setting was and is still exceptional. A clear example in the Flemish environmental policy however was the adoption of the "manure-action-plan" (De Batselier 1996): because of the alliance of the agricultural organisations with the Christian-Democratic Party, this party intervened explicitly in the setting of the standards for the production and spreading of manure; this led to a real confrontation with the former Socialist Minister for the Environment, Mr. Norbert De Batselier, regardless of the fact that the Socialist Party was at that time the coalition partner of the Christian-Democratic Party. Because almost no farmers vote for the Socialist Party, this party could go very far in (proposals for) the setting of manure standards, and in this way, also profile itself as a "green" party.

The Introduction of New Environmental Policy Instruments

During the eighties and the beginning of the nineties, awareness grew that environmental policy goals could no longer be achieved by instruments of direct regulation alone. The main disadvantages of instruments of direct regulation are that they are often inflexible and economically inefficient, and discourage the development of clean technology (OECD 1993).

This new awareness had different causes. First of all, there was increased pressure from public opinion. Several environmental catastrophes (Bhopal, Seveso, Amoco Cadiz) and the publication of several (alarming) international, European, national and regional environmental reports increased substantially the environmental awareness of public opinion, which demanded more stringent and efficient environmental policy. Secondly, this increased environmental awareness was translated in a more concrete and active way by the green NGO's, who enjoyed great support during the eighties and the beginning of the nineties. They managed to put the problem of efficiency of environmental policy on the political agenda and to force the government in a more or less new direction. Thirdly, at the level of the Flemish government, there was an ambitious Christian-Democratic Minister for the Environment, who, for the first time, introduced a long term policy vision concerning real and effective environmental protection, with ambitious goals. Fourthly, and in my opinion the most important reason for a shift in the choice of environmental policy instruments, the lack of (Flemish) government means (both technical and financial). This led primarily to the introduction of (financing) environmental taxes (lack of financial means), environmental policy agreements and environmental care systems (lack of enforcement means).

Fifthly, the position of industry has always been a bit ambiguous. On the on hand they were in fact not demanding a change of environmental policy (instruments). This is quite understandable because instruments of direct regulation are the kind of instruments industry can best cope with. However, because they often were too stringent at short notice and changed very often, Flemish instruments of direct regulation have been heavily contested by industry in recent years. On the other hand, industry has always had a positive and cooperative reaction to new environmental policy instruments on the condition that they were drafted and introduced in what hey deemed to be a reasonable way. Because this was not always the case, on the regional or federal level, industry has also often opposed new environmental policy instruments. Finally, interest in expanding the arsenal of federal and regional environmental policy instruments was also highly influenced by the declarations, initiatives and activities of the EC and the OECD in this field.

In light of these reasons or appeals for reform, the number of Belgian instruments of direct regulation was supplemented by a variety of new instruments devoted to market regulation, social regulation, planning and financial aid (Deketelaere 1991, 1992, 1995, Deketelaere and Martens 1994, 1995, Deketelaere and Pittevils 1995). So, this means that in fact (i) the number of instruments of direct regulation did not decline and (ii) a lot of those instruments were not replaced by other instruments.

All of this happened in a period of consolidation of environmental competences of the regions (by the third (1988) and fourth (1993) reform of the state), as well as in the period of drafting the first "Environment and Nature Plan" for the Flemish Region (1990). But perhaps the most significant catalyst in this policy period, and in this policy shift towards new instruments, was the formation by the (former and present) Flemish Minister for the Environment (Mr. Theo Kelchtermans) of the "Interuniversity Commission for the Reform of the Environmental Legislation in the Flemish Region," which operated during the period 1989-1995 (IUCHM 1995). The task of that Commission was to integrate environmental concerns into other policy areas, but at the same time to rationalise and simplify environmental legislation, increase its efficiency and improve means for its enforcement. The Interuniversity Commission's "draft framework decree on environmental policy" led to several of the new instruments discussed below. In the future, more new decrees will be adopted and more existing environmental legislation will be modified on the basis of this draft.

The creation of the Interuniversity Commission was not a consequence of industry or green NGO's pressure. It was the consequence of a combined political-academic initiative. On the one hand, as mentioned before, a new

ambitious Christian-Democratic Minister for the Environment was nominated; the department of environment became more and more important, not only for reasons of public opinion but also for reasons of budget figures and political power. On the other hand, there was the academic world which was strongly interested, for academic and financial reasons, in the enormous project of rewriting Flemish environmental legislation.

But, a bit in contrast with his academic-legislative initiative, this same Minister for the Environment also produced a lot of environmental legislation during his first legislature (1989-1992) (Deketelaere 1994c). A great percentage of the legislation of this period can be characterised as command and control: a large number of new prohibitions, restrictions and quality norms were introduced. However, it is also in this period that a start was made with the introduction of new environmental policy instruments. For example, for financial reasons, financing environmental taxes were made operational since the beginning of the nineties.

Because in recent years the instruments of direct regulation were only supplemented with other environmental policy instruments and not replaced, the most important reproach to the present Minister for the Environment (Mr. Theo Kelchtermans) is that until now only new (even more stringent) environmental legislation was created (consisting of all kinds of environmental policy instruments) but that no environmental legislation was yet abolished. In order to meet with this demand, the Minister for the Environment has recently created a new commission ("Commission Evaluation Environmental Legislation"), which, in the first place, must make a technical and economic evaluation of the legislation concerning environmental permit demands and procedures. The intention is that after this specific evaluation, a global evaluation of the whole environmental legislation will be undertaken, from a technical, economic and legal perspective.

New Instruments in Practice

Environmental levies

The recently developed environmental tax legislation in Belgium includes two forms of environmental levies: "financing environmental levies" and "regulatory environmental levies".

Financing environmental levies

Financing environmental levies (levies aimed at financing the environmental policy of the government, be it totally or partially) were introduced throughout the 1980s and have become the most widely used new environmental instrument of market regulation in Belgian (Deketelaere and Pittevils 1995) and Flemish (Deketelaere and Martens 1994) environmental policy.

At the federal level, they were introduced for certain industrial activities which can cause heavy accidents (1990), the private use of energy (1993), ionising radiations (1994) and dangerous products (1994), and are deposited in specific sectoral funds which finance a few very expensive policy fields (nuclear plants, Seveso-companies, emergency planning, ionising radiations).

In addition to federal action, the Flemish Region established levies on the removal of waste (1986 and 1990), the pollution of surface waters (1990), the overproduction of manure (1991), the delivery of a permit for the intake of water (1990), the extraction of gravel (1993), and the import or export of waste (1994). Also the Walloon Region introduced in recent years levies on the discharge of industrial and household waste water (1990), the removal of waste (1991), and on groundwater and drinking water (1990). The Brussels Capital Region has adopted the following financing environmental levies: a levy on the delivery of environmental permits (1992) and a levy on the discharge of waste water (1996). The revenues of the most important Flemish environmental levies are deposited in the so-called MINA-Fund, and finance, especially, the building of water purification plants, sewerage systems and the regional environmental institutions.

The obvious advantage of financing environmental levies is of course that they can raise a lot of money. These levies are often the most important financial source for funding environmental policy of the competent authority. The disadvantage of financing environmental levies is that they are not a correct implementation of the polluter pays principle. They are in general too low for the large polluters and too high for the small polluters: the taxed polluting products, services or activities don't disappear from the market because the large polluter can easily pay the levy and decide not to change his behaviour; the small polluter can just pay the levy but does not change his behaviour because he has no money left to finance cleaner alternative production methods.

Although every financing environmental levy also has a certain regulatory effect, most of the federal and regional environmental levies in Belgium are aimed at revenue raising rather than providing incentives for environmentally friendly changes in the behaviour of polluters; their contribution to the improve-

ment of the environment is limited and their contribution to the concerned budget funds is significant (Van Humbeeck 1992).

This was proven by different studies of the Flemish Steering and Working Group on Environmental Levies (X 1993): the revenues of the most important Flemish environmental levies amount approximately to 10 billion BF, what is presently the most important source for the financing of Flemish environmental policy. A similar environmental policy without those financial means would not be possible in the Flemish region, certainly not if the only alternative were to draw funding from the general budget of the Flemish Government. The same studies have indicated that the environmental benefits created by those financing environmental levies are not impressive. On the contrary, any improvements made in environmental quality in the Flemish Region will certainly not have resulted from the new (financing) environmental levies alone. The recent and more stringent environmental instruments of direct regulation have been at least as important.

It is self-evident that the introduction in recent years of financing environmental levies has been (heavily) contested, by green NGO's as well as by industry. Green NGO's and political parties have continuously been pleading for regulating environmental levies (Steenwegen 1993a, 1993b, Pauwels and Decoster 1995); industry has always asked for environmental levies which were "society-relevant" (i.e. which take into account the pollution caused not only by industry, but also by households and farmers) and which implement the "polluter pays principle" (financing environmental levies violate this with a minimum rate and amount, to be paid by all possible tax payers) (VEV 1995a, 1995b).

Regulating environmental levies

In contrast to financing environmental levies, the big advantage of regulating environmental levies is that in general they seek to change the incentives facing consumers and producers rather than simply raising tax revenue (OECD 1993). Levies are high enough and targeted well enough so that the taxed polluting products, activities or services disappear from the market in a short period of time. These levies are a real implementation of the polluter pays principle.

However, it must be said that regulating environmental levies are often characterised by (i) a wrong choice of levy base; (ii) a wrong choice of levy rate; (iii) bad timing of introduction; (iv) poor co-ordination with other policy areas (which influence environmental policy) (OECD 1993). This will be illustrated hereafter with the Belgian "ecotax".

The 1993 levy on products damaging the environment ("ecotax") is presently the only real regulating environmental levy used in regional and/or federal environmental policy in Belgium (Van Orshoven 1993, Deketelaere 1994a, 1994b, 1996a). As concerns the motives for its introduction, they are quite strange. In 1993, when the fourth reform of the state had to be approved by the federal Parliament, the ruling majority needed the votes of some opposition parties, because the approval needed a two-thirds majority. Green parties (AGALEV, ECOLO) in particular were the ones who furnished the necessary votes. In return, however, they demanded an ecotax on packaging, packaging waste and environment unfriendly products. In this way, the ecotax was born, quite unexpected and quite unprepared.

The levy concerned the following products: beverage packaging; throw-away cameras and razors; batteries; packaging for certain industrial products; insecticides; paper. In most cases, the levy could be avoided (by meeting recycling and /or re-use percentages or by establishing deposit-refund systems), or reductions and exemptions could be obtained. The levy was equated to excise duties and placed on a product because of the damage which it is was deemed to cause to the environment.

However, when the levy on products damaging the environment was introduced in 1993 in Belgium, all of the abovementioned possible problems with regulating environmental levies appeared (Deketelaere 1994a, 1994b, 1996a) and provoked a lot of protests from industry (VEV 1995b):

(i) there was a wrong choice of levy base, in that in some cases, the levy base could not be controlled or there were no environment-friendly alternatives for the taxed products (being one of the basic ideas and conditions for the choice of taxed products); this was particularly problematic for the levy on paper (the levy base, being the amount of recycled fibres in the paper, was unverifiable) and insecticides (many insecticides were taxed, although there was no environment-friendly alternative for all concerned insecticides);

(ii) There was a wrong choice of levy rate. It was often too high taking into account the absence of an environment-friendly alternative for the taxed product and the introduction at short notice of the tax; this was particularly problematic for the levy on throw-away cameras (300 BF/camera), throw-away razors (10BF/razor) and batteries (20 BF/battery);

(iii) The introduction of the levy was poorly timed. For certain products it was due almost immediately; this was a major problem for the levy on beverage packagings (1 January 1994), batteries (1 January 1994), industrial packagings (1

January 1994) and paper (1 January 1994); taking into account that the levy was only published in the Belgian State Gazette of 20 July 1993, it was impossible for industry to adjust its production processes in order to avoid the levy;

(iv) There was poor co-ordination with other policy areas. Introduced as a federal levy, no account was taken of regional environmental policy (particularly regional waste policy, which already foresaw some ecotaxed products), federal fiscal policy (which had its own classification of products subjected to excise duties) or European environmental policy (where product-oriented environmental policy is governed by notification and technical information obligations (directive 83/189) as well as by directives 75/442 on waste, 91/157 on batteries and 94/62 on packaging and packaging waste).

The consequence of all these problems was that the different levies were repeatedly postponed for most of the ecotaxed products. Often demanded by industry because of economic reasons, postponements were always condemned by green NGO's and political parties (Steenwegen 1993a, 1993b, Pauwels and Decoster 1995). This was, for example, the case with the choice for recycling of beverage packagings instead of re-use, and with the reduction in the number of ecotaxed pesticides.

In its present form, the ecotax can in fact be more accurately characterised as a financing environmental levy than as a regulating environmental levy. The main lines of the present regulation (originally of 16 July 1993, amended 7 March 1996) can be summarised as follows (Deketelaere 1996a):

(i) A 15 BF levy on all packaging brought into consumption, regardless of the contents, the cubic measure, or the material from which it is produced. Exemptions are made for the setting up of a deposit system for re-usable packagings, or for attaining specified recycling percentages for recyclable packagings; this levy took effect on the following dates: 1 April 1994 for packagings of beer, soda water, cola and other lemonades; 1 January 1996 for packagings of other beverages;

(ii) A 10 BF and 300 BF levy, respectively, on disposable razors and disposable cameras. Exemptions are made in the case of razors for medical use, and, in the case of cameras, for the setting up of a collection system which attains specified re-use and/or recycling percentages; this levy took effect on 30 January 1994 for razors, and on 1 July 1994 for cameras;

(iii) A 20 BF levy on batteries. Exemptions are made for setting up a deposit system, return premium system, or collection- and recycling system; this levy took effect 1 January 1996;

(iv) A 25 BF levy per volume-unit liter of packaging, with a maximum of 500 BF/packaging. Exemptions are made in the case of setting up a deposit system for gum, solvents and insecticides brought into consumption and which are used professionally. This tax came into effect 1 January 1996;

(v) A 10 or 2 BF levy per gram of certain active substances. Some exemptions are made for insecticides. This ecotax took effect 1 July 1996;

(vi) A proposed 10 BF levy per kg paper or cardboard unless specified proportions of recycled fibres are not attained. A number of (inconsistent) exemptions are planned;

As regards financial impact, one can only say that this ecotax, until now, has been an expensive matter for the federal government. Its installation and application has cost a few tens or hundreds of million BF, while the revenues, although they are not pursued (because it is a regulating environmental levy), amount so far to only a few million BF, which, moreover, are distributed among the regions for environmental purposes.

As regards efficiency, it must be admitted that the ecotax, in spite of the many problems, has been very successful (Deketelaere 1995, 1996a). Several years before the compulsory introduction of measures concerning packaging and packaging waste (in 1996, implementing directive 94/62/EC), the Belgian ecotax, indebted or not, already forced industry to take measures in this field. With the ecotax as a stick behind the door, different branches of Belgian industry managed to adjust their products and production processes from an environmental point of view. As mentioned before, specific, environment-friendly collection systems were set up, for example for beverage packagings, batteries and disposable cameras. Of course, this also influenced consumer behaviour.

Instruments of financial aid

Although the federal government has been reducing the (fiscal) possibilities for investment deduction in general, the federal Code of Income Taxes provides since the beginning of the 1990s for an increased investment deduction for environmentally friendly investments (Deketelaere and Martens 1996). The standard deduction is increased (up to 13.5% in 1996) when the investment concerns the development of new products and future technologies which aim at

limiting as much as possible negative environmental effects, and also those which increase industrial energy efficiency.

Increased (regional) expansion aid for environment friendly investments is another example of a (fiscal) subsidy or (direct/indirect) financial aid. It can take the form of an investment premium or a repayable rentless advance. The introduction on the regional level of such an increased expansion aid was only possible after a revision of the expansion aid legislation in the beginning of the nineties. The former legislation (which was of a very general nature and made it possible to grant aid to almost every company on an ad hoc basis, without any sectoral or regional responsibility) was namely not in accordance with the European legislative framework on state aid (Article 92 EC-Treaty).

In the Flemish Region, increased expansion aid for environment friendly investments by small companies was already introduced in 1990 (on the basis of the so-called "ecology-criterion"). In the Walloon and Brussels Capital Region, similar legislation concerning the use of increased expansion aid for environment friendly investments has also been adopted in the first half of the nineties.

The main advantage of increased investment deductions and increased financial aid for environmentally friendly investments is that they can help to convince companies to invest in clean technology and environmentally friendly research and development (OECD 1993). The main drawbacks, however, are that the awarded percentage or the available amount of money is too low (only a 13.5% increased investment deduction and about 3 billion BF increased expansion aid in the Flemish Region), divided among large companies (the so-called Matthew-effect), can be lowered each year, and be spread over (too) many companies. Thus these instruments are usually not decisive factors in the decision about an investment, but only small additional incentives.

Tax differentiation

The use of differentiated tax rates for products and/or services, according to their environmental characteristics, is quite new and fits in the framework of the so-called "greening of taxation"-- shifting the tax burden from labour and capital to environment unfriendly products and services (OECD 1993). Interesting fields of action are products and/or services subjected to excise duties and value added tax. These indirect taxes (and their possible different rates) make it possible to stimulate the use of environment friendly products and/or services and to discourage the use of their environment unfriendly alternatives. This instrument is an indirect subsidy or financial aid: the consumer avoids paying a (higher) tax, and in effect makes a profit.

Tax differentiation has as its main advantage that it can be a very effective and efficient environmental policy instrument. Experience has shown that if the difference in tax rate is large enough, the results can be tremendous. In Belgium, tax differentiation for environmental goals can be found in the field of excise duties on petrol and heavy fuel, as introduced in the beginning of the nineties (Pittevils 1991). The excise duty rate on leaded petrol (21.4 BF/l) (total price of 39.40 BF/l at the pump on 31/10/96) is (still) higher than the one on unleaded petrol (19.0 BF/l) (total price of 37.10 BF/l at the pump on 31/10/96) and the excise duty rate on heavy fuel with a high sulphur content (0.25 BF/kg) is (still) higher than the one on heavy fuel with a low sulphur content (0.75 BF/kg).

These differentiated rates have proven to be very effective. For example, there has been a considerable shift from leaded petrol to unleaded petrol in Belgium (see also ch 11). However, now that almost every Belgian uses unleaded petrol, the federal government is once again reducing the difference in excise duties between unleaded and leaded petrol, but this time to the disadvantage of unleaded petrol, in order to raise revenues.

Another Belgian fiscal initiative concerning cars dates back to the beginning of the nineties: the fiscal stimulation of the anticipated use of clean cars (as suggested by EC directives 70/220 and 88/76) (Deketelaere 1991). The anticipated use of cars with catalytic converters was rewarded by a repayment of the traffic levy. This fiscal measure proved very successful.

However, the use of tax differentiation as an environmental policy instrument is still very limited because the scope of possible environment unfriendly products, activities and services for which differentiated tax rates (value added tax and excise duties) can be created, is very small. However, alteration is possible. An ecological revision of the (partially) European harmonised value added tax - and excise duty - legislation could create a lot more possibilities for this promising environmental policy instrument.

Environmental labels

The creation in 1994 of a Belgian Committee for the Award of Environmental Labels is the consequence of a European obligation (Regulation 880/92 on eco-labels) (Jadot and De Sadeleer 1992, see ch 9).

However, already in 1991, the misuse in advertising of unofficial environmental labels (for so-called environment friendly products) led to the adoption of some interesting provisions concerning the commerce practiceand the information and protection of the consumer. On the basis of these, a claim can

be introduced with the president of the tribunal of first instance, asking for the suspension of misleading (environmental) publicity. A Commission for Environmental Labelling and Environmental Publicity was also created in 1995 (Van Calster 1995).

Taking into account the recent character of most of these initiatives (1991, 1994 and 1995), no serious data are yet available concerning the use, the success and/or the failure of these measures concerning environmental labelling and/or environmental publicity.

Environmental policy agreements

Since the second half of the eighties, a number of voluntary (federal) environmental policy agreements were concluded in Belgium (Bocken and Traest 1991). Under a (voluntary) environmental agreement between the federal government and industry, the latter commits itself to make special efforts to reduce one or other form of pollution, while the government promises not to adopt new legislation in this particular field (see chs 1 and 8). The use of this environmental policy instrument was a consequence, on the one hand, of the growing environmental awareness, commitment and engagement of the industry and, on the other hand, the aspiration of the government for voluntary co-operation with entrepreneurs instead of the use of instruments of direct regulation.

These federal (voluntary) environmental agreements all aimed at a reduction of different forms of pollution: for example the reduction (and eventual elimination) of the use of CFC's, reduction of the emission of SO_2 and reduction of the production of packaging waste. Although quite successful (because of the fact that the goals of these agreements where not that ambitious), these agreements had a kind of "grey area" existence--their elaboration, adoption and application was not always clear; the impression existed that in most cases the government was a more demanding party than industry, and was therefore more easily satisfied with unambitious goals; the impression also existed that industry was often better informed than the government about the (detrimental) environmental impact of products and/or activities, and used that (superior) position in the elaboration and the setting of the environmental goals which had to be achieved; a general legal framework concerning these kind of agreements was lacking.

Because of these problems, which highlighted the public nature of the agreement, and the need for ultimate governmental control, the Interuniversity Commission suggested in the beginning of the nineties that a legal framework for

environmental policy agreements should be created (IUCHM 1995). This framework was eventually adopted by decree of the Flemish Parliament in June 1994, putting an end to the "grey zone" existence of those agreements and the often superior position of industry.

According to this framework (Lietaer 1994, Van Hoorick and Lambert 1995), a voluntary agreement is possible between the Flemish Region, represented by the Flemish Government, and one or more representative umbrella organisations of companies, with the goal to limit or prevent environmental pollution, or to promote more effective environmental management. A voluntary agreement cannot replace or be less stringent than the prevailing legislation or regulations. During its validity period, which cannot exceed five years, the Flemish Region cannot issue regulations which are more stringent than those in the agreement. However, the Flemish Region remains competent to issue regulations, either in case of urgent necessity, or in order to fulfil compelling obligations of an international or European legal nature. Similar legislation concerning the use of environmental policy agreements does not exist (yet) in the Walloon and Brussels Capital Region.

However, since its adoption, not one new environmental policy agreement has been concluded in Flanders. The reason for this is that the legal framework for the adoption of environmental policy agreements is too strict: a very detailed procedure must be followed, both new and former members of the umbrella organisations are bound by the agreement, the decree is of public order, what means that all established legal rules must be followed in detail, and if not, the agreement is null and void. Unless these characteristics of the present legal framework are modified, environmental policy agreements only have a bleak future in the Flemish Region.

Environmental care systems

The goal of an environmental care system is the construction of an instrument at plant level which limits the total environmental burden of a company (Deketelaere 1996b, see also ch 10). On the European level (EMAS-regulation 1863/93), a lot of attention has been paid to environmental care at plant level. As a consequence, the use of environmental care systems as an instrument in Flemish environmental policy was a suggestion of the Interuniversity Commission (IUCHM 1995), and led to the adoption of a decree on such systems in April 1995 (Deketelaere 1995b, 1996). In contrast to the EMAS-regulation however, the Flemish environmental care system is only a partial environmental care system and not an integral environmental care system. The Flemish legislature namely feared that companies which were not convinced of the merits of such a

system would limit themselves to a formal and minimalist application of it, in which case the legal obligation would miss its aim. Therefore, the Flemish environmental care system was limited to six elements (Deketelaere, M. 1996): the appointment of an environmental co-ordinator; the drafting of an environmental audit; the measurement and registration of emissions and immissions; the drafting of a yearly environmental report; the elaboration of a company policy in order to avoid heavy accidents and to reduce their consequences for man and environment; and the obligation to notify and to warn authorities in case of accidental emissions and disturbances.

It must be said (and as is demonstrated by the EU EMAS) that an integral environmental audit contains much more than these six elements. EU EMAS, which is an example of an integral environmental audit system, for example, also requires, among other things, the drafting of an environmental programme and an environmental declaration.

The before mentioned environmental audit, an important part of the Flemish environmental care system (Gille 1996), is a systematic, documented and objective evaluation of the policy, the organisation and equipment of an establishment or an activity in the field of environment protection. The environmental audit has to be verified by an external environmental validator. The Flemish Government has indicated for which categories of establishments one (once-only) or more (periodical) environmental audits are required and which elements have to be notified to the administration. Similar legislation concerning the use of environmental care systems does not exist in the Walloon or Brussels Capital Region.

The compulsory introduction in the Flemish Region of an environmental care system at plant level can have quite a lot of advantages (Deketelaere 1996b): (i) it can reduce the regulatory burden on industry by making the individual company responsible for its own environmental actions; (ii) it furnishes the environmental authorities with a lot of necessary environmental information; (iii) it makes better co-operation possible between the companies and the competent authorities. However, since this system of environmental care at plant level only entered into force in recent months, it is not clear yet whether all of these possible advantages will be realised. Probably, a lot will depend on the (environmental) willingness of individual companies.

It must be said that environmental care systems also could have some disadvantages (Deketelaere 1996b). In particular, they create a huge amount of paperwork (audit, registrations, report, etc.), and above all quite a few problems of personal liability. Certainly in the Flemish environmental care debate, the penal and civil liability of the appointed environmental co-ordinator (who has to

control the compliance of the company with the environmental legislation) and the leading officials of the company (who have to execute the advice of the environmental co-ordinator) is the central point of discussion (Faure 1996).

While it is not clear yet whether all of these possible disadvantages will materialise in practise, some have already been strongly emphasised by industry. For example, they are happy with neither the very broad description of the tasks of the environmental co-ordinator, because of liability reasons, nor with the important role which is foreseen for the Committee for Safety, Health and Embellishment of the Working Places (e.g. will this Committee agree with the person who is appointed as environmental co-ordinator?).

Deposit, refund, return premium or other collection systems

Deposit, refund, return premium or other collection systems oblige the buyer of a product, on top of the price of that product, to pay an amount of money to the seller. This amount is paid back to the buyer when he returns the product to the seller or an appointed third person. The introduction in Belgium of deposit, refund, return premium or other collection systems as environmental policy instruments is totally connected with the levy on products damaging the environment (Deketelaere 1995, 1996a). As indicated above, these systems are a way for industry to avoid the Belgian ecotax by taking responsibility for environmental harm: there are no levies on most of the ecotaxed products (beverage packagings, disposable cameras, batteries, packagings for certain industrial products) when a deposit, refund, return premium or other collection system that meets established conditions, is set up. As a consequence, the real goal of the present ecotax legislation is that not one branch of industry pays the levy. If every branch of industry meets its (environmental) responsibility by setting up one or other sufficient collection system (as already has been done by the battery and disposable camera industries), no branch of industry will pay ecotaxes.

The setting up of deposit, refund, return premium or other collection systems has the advantage that all concerned producers and consumers can shoulder their (environmental) responsibility. In this way, these systems are a good application of the polluter pays principle-- those who bring polluting products on the market engage themselves to take those products back after use. This also improves control and organisation of the management of specific waste streams and makes a final solution more likely.

The application of these systems is still quite limited in Belgium, but they can have a great future when the legislator broadens the field of application for ecotaxes. Although recent in their existence, deposit, refund, return premium or

other collection systems are very promising as environmental policy instruments. It is too early yet to speak about significant environmental improvement (e.g. reduction of waste streams) because of these systems, but no manifest disadvantages have emerged for the moment.

In the framework of these systems, one must also consider the federal and regional initiatives which are in preparation for implementing EC directive 94/62 concerning packaging and packaging waste (Deketelaere 1995). These initiatives concern the establishment of a take-back obligation in order to achieve the use and recycling targets laid down in the agreement between the three Belgian regions over the prevention and the management of household packaging waste. Those responsible for packaging are obligated to take back packaging waste that they bring into consumption in Belgium, enough to reach the specified use and recycling targets. The packaging producer can fulfil this take-back obligation himself or invoke a third party (e.g. a recognised organisation).

Furthermore, Article 10 of the decree of the Flemish Parliament of 2 July 1981 concerning the prevention and management of waste allows for additional acceptance obligations (Deketelaere 1995). For (not yet) indicated categories of waste, including packagings, the retail dealer, the wholesale dealer and the producer or importer have to accept the waste and the packagings of the products which they have sold, according to the principle "one for one". They can fulfil this acceptance obligation themselves or invoke a third party (e.g. a recognised organisation).

As of late 1996, neither the take-back obligation nor the acceptance obligation was yet applicable.

Conclusion

An analysis of environmental policy at the federal and regional levels in Belgium indicates that there is still a dominant use of traditional instruments of direct regulation. However, in recent years these have been more and more supplemented with other categories of environmental policy instruments, especially instruments of social regulation (environmental policy agreements; environmental care systems) and instruments of market regulation (environmental levies; ecological tax differentiation; environmental subsidies; deposit, refund, return premium or other collection systems).

This Belgian evolution concerning the choice of environmental policy instruments coincides with the European approach as formulated in the fifth

environmental action programme. Instruments of direct regulation will remain the cornerstone of environmental policy, but must be augmented with other environmental policy instruments where this is necessary and/or possible.

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