Robert Schuman Centre

New Instruments for Environmental Policy in the EU

Environmental Taxes and Charges in the EU

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RSC No. 98/22

EUI WORKING PAPERS

EUROPEAN UNIVERSITY INSTITUTE

EUI Working Paper RSC No. 98/22

Delbeke/Bergman: *New Instruments for Environmental Policy in the EU. Environmental Taxes and Charges in the EU*

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EUROPEAN UNIVERSITY INSTITUTE, FLORENCE

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This paper is forthcoming (as Chapter 11) in J. Golub (ed.)
New Instruments for Environmental Policy in the EU
(London: Routledge)

EUI Working Paper **RSC** No. 98/22

BADIA FIESOLANA, SAN DOMENICO (FI)

Printed in Italy in April 1998
European University Institute
Badia Fiesolana
I – 50016 San Domenico (FI)
Italy

This paper focuses on environmental taxes and charges within the EU. This issue is particularly interesting as it concerns not only a new dimension in environmental policy but also the domain of taxation which remains the (almost) exclusive competence of the 15 Member States.

The opening section deals with the relevant parts of the Treaty of the European Union and the restructuring of environmental policy in the 1990s. It focuses on the institutional and policy framework in which economic instruments, as part of EU environmental policy, are being developed. Some specific examples in the fields of energy taxation and environmental levies are considered, as well as how the environment could be integrated into the broader context of comprehensive fiscal reform. The second part of the paper considers the division of responsibility between the EU and its respective member states, and briefly describes the increasing use of new instruments at the national level. The third section outlines some of the problems inherent to a proliferation of national instruments, and discusses several mechanisms available for preventing distortion of the internal market, including the emerging EU legal framework surrounding the use of fiscal instruments in Member States.

Redesigning environmental instruments at the EU level

When environmental legislation and harmonisation of the laws of individual Member States started in the European Community in the 1970s, it was mainly related to the functioning of the internal market. The Single European Act adopted in 1987 gave EU environment policy a much firmer basis through a full chapter in the Treaty, Articles 130R-T. That Treaty introduced three fundamental principles which are of relevance when considering implementation of economic instruments such as environmental charges and taxes:

- that prevention is better than cure;
- that damage should be rectified at its source;
- that the polluter should pay.

The next change to the legal framework governing environmental action came in the Treaty of European Union. Article 2 of the Treaty signed in Maastricht, November 1993 states: "The Community shall have as its task...to promote...sustainable and non-inflationary growth respecting the environment." The Fifth Environmental Action Programme (5th EAP), adopted by the EU in

March 1992, set the framework for action, stressing as key objectives the integration of environment into economic policies, and the broadening of the range of instruments.

The institutional discussions on the future shape of the European Union, and the continued economic recession of the mid-1990s, have led to a fundamental reflection on the nature of the Union's environmental legislation. Part of this discussion relates to the question of whether and how the cost-effectiveness of environmental policy measures could be improved. Most European environmental policy has been produced fairly recently and has in many cases been prompted by ad-hoc pressures. The result is a body of some 200 environmental laws which are based mainly on technical regulation. This represents the starting point for consolidation and improvement. Recent criticism, evidenced clearly by the Molitor Report, has focused on two main elements: the cost-effectiveness and coherence of the legislation in place (EC 1995, Collier 1997). In other words, the fundamental message is more concerned with the need for urgent re-regulation rather than deregulation. It is generally recognised that deregulation would not be in line with the consistent message the European citizen has been giving, for example through Eurobarometer polls, in which environmental policy and employment creation continue to appear as the two most important objectives for the EU.

A key theme in this reflection concerns the need for a sharper distinction between objectives and instruments. In particular the use of environmental quality objectives as explicit policy aims is likely to increase in the coming years. It is becoming essential to define more precisely what is meant by "clean" air, "clean" water, etc. At the European level, a framework directive (94/62/EC) on ambient air quality was adopted in 1996. Daughter directives on SO2, NOx, lead, particulate matter and ozone are being prepared, each of which incorporates extensive reliance on economic evaluation techniques.

An equally important aspect of restructuring EU environmental policy is the commitment to a broader range of instruments (EC 1992, 1993, 1994, 1996). The attractions for the use of economic and, particularly, fiscal incentives are multiple. In principle, they reduce the costs of compliance for industry, and therefore the consumer. They provide flexibility for industry in their response to environmental objectives and a continuous incentive for technological innovation. They also provide revenues which can be used to reduce other more distorting taxes. Taxes might be levied on input material, energy, products, emissions and waste. Depreciation allowances can be varied so that investments in clean technology are depreciated over a briefer period of time than is normal.

There has been wide recognition and acceptance of the idea that tax reforms are required, shifting tax burdens away from labour and capital towards natural resource consumption in order to achieve the so called double dividend--simultaneous environmental and economic improvement (see Golub 1997a). The idea was developed in the 1993 White Paper of the Commission on Growth, Competitiveness and Employment (COM (93) 700). As discussed below, and in the other working papers of this series, significant tax shifts of this kind have already occurred in some EU countries, mostly centred around energy and carbon taxes.

The relevance of energy taxation for Community policy concerns its ability to promote the use of more efficient technologies in general and to create incentives for consumers and producers to use cleaner fuels, not least because the more polluting fuels are usually cheaper to produce. The picture is, however, complex from a European Union point of view: 15 Member States, with different structures of primary energy use and endowment of energy resources, with different industrial structures and degrees of economic development, and finally with different environmental priorities and problems. In this respect, the European Commission has defined climate change and acidification as environmental problems where common action may bring value added to the policies Member States are implementing, because of their transboundary or global nature. Many local environmental problems, such as urban air quality, are caused by products which are extensively traded within the internal market (e.g. cars and fuels), and hence they are also more efficiently tackled through common initiatives at European level.

The carbon/energy tax proposal

The carbon/energy tax proposal was adopted in 1992 as a part of a comprehensive strategy presented by the European Union at the United Nations Conference on Environment and Development in Rio de Janeiro (Heller 1997, Skjaerseth, J. 1994). The joint Energy/Environment Council decision of October 1990 to stabilise CO_2 emissions in 2000 at 1990 levels was integrated in the Climate Change Convention. Recent simulations and forecasts confirm that the European Union is unlikely to reach its stabilisation target in the year 2000 without the use of an appropriate fiscal instrument.

Tax rates were proposed equivalent to 3 US dollars per barrel of oil equivalent at the outset, with annual increases taking it to 10 dollars after seven years. Several specific provisions were incorporated in view of mitigating the possible impact on industrial competitiveness: among other things, special

treatment for energy intensive industries was provided for, and the revenues raised (+/- 1% GDP of the EU) were to be used to offset other taxes.

The intensive discussion in the institutions of the European Union centred on two themes, the competitiveness impacts on industry and the increased fiscal competence of the Community. On the former theme, energy-intensive industry opposed the measure fearing loss of market share. Any decision would, according to industry, have to be followed up by analogous evolutions in the world, or at least within the OECD region. However, the decisive factor preventing the adoption of the carbon/energy tax proposal has been the unwillingness of some Member States to increase the tax competence of the European Community.

Transport

The regulatory model to control transport-related air pollution followed by the Community has been based primarily on setting emission standards associated with vehicle emissions control technology (e.g. catalytic converters) and with fuel quality (e.g. lead in gasoline). This is fundamentally a normative and technical model, which establishes emission limit values that must apply across the European Union, and depends on the existence of effective programmes of inspection and maintenance of vehicles to control their compliance with the standards.

With a view to improve and to update the existent legislation, the so-called auto-oil programme was created four years ago as a cooperation venture between the motor vehicle industry, the oil industry, and the Commission. The objective was to generate sufficiently reliable data and technical analysis to be used in the preparation of two proposals for directives on motor vehicle emission standards and on the quality of gasoline and diesel fuels. The proposals were adopted by the Commission on 18 June 1996 (COM(96) 248) and will be discussed in the European Parliament and the Council.

The auto-oil programme incorporates the question of how to ensure a cost-effective set of new proposals. To date, the regulatory approach has not made as much use of non-technical measures and economic incentives as their cost-effectiveness would imply.

A potentially cost-effective, non-technical policy measure is based on tax differentiation. Recent experience in Europe shows the effectiveness of tax differentials to facilitate the introduction of vehicles equipped with new emission control technology or the introduction of cleaner fuels. In the EU, the

percentage of unleaded gasoline sales, for example, has increased from below 1 percent in 1986 to on average 53 percent in 1993.

The role of fiscal incentives, differentiated or not, is not limited to facilitating the adoption of new vehicle technologies or cleaner fuels. Damage to public health, ecosystems and buildings, for example, caused by motor vehicle air pollution are primarily social costs, not covered by road users. Economic efficiency suggests that those social costs should be internalized, which is equivalent to the implementation of the "polluter pays principle". The green Paper "Towards Fair and Efficient Pricing in Transport" (COM(95) 691)) adopted by the Commission suggests the need to reform vehicle and fuel taxation to better reflect their respective environmental costs.

Comprehensive reform

Finally, tax 'rationalisation'--the need to ensure that environmental considerations are included in tax rules introduced in the past, is becoming an increasingly important issue. A case in point is the regulation that kerosene for aviation fuel should be exempted from taxes, and the environmental problems related to the expansion of air transport. As a matter of fact, about 15.5% of external costs of air pollution in Europe can be attributed to air transport. As in the case of cars, it should be asked whether environmental taxation is able to reduce air emissions more cost effectively than standards or technical devices.

A consultancy study, conducted on behalf of the Commission, which examined environmental implications of tax systems, identified significant scope for action (EC 1997). One conclusion from the study is that the current VAT-system offers room for improvement as concerns rational consumption of water and energy. It also concludes that urban sprawl and use of company cars are being favored through privileged tax provisions. Changes in some of these provisions could have positive effects for the environment and favour efficiency in resource allocation.

Thus a comprehensive strategy to enhance the cost-effectiveness of environmental policy must examine the consistency of current tax provisions vis-a-vis environmental objectives. In this field, one can not expect things to change overnight. However, there would be progress if policymakers in the Member States considered the environmental implications of the exemptions and derogations in their tax systems.

Once an environmental objective has been defined, either at EU or at Member State level, the problem of determining the most cost-effective method

of reaching it remains. The Commission supports an approach whereby in most cases the choice of instruments is determined at national level. This is often rational because ecosystems and geographical conditions vary amongst Member States. Moreover, preferences for instruments may differ.

An objective may be reached in one place through technical regulation, while elsewhere levies or negotiated agreements may be preferred. In the past, however, a common thread has been the emphasis placed on the definition of EU wide technical standards, mostly known as Best Available Technology. The use of technical harmonisation was seen as an essential means of avoiding unnecessary competitive pressures within the internal market.

Increasingly, however, it has been stressed other instruments than technical harmonisation may be more cost effective in solving environmental problems. Therefore much stress has been put on broadening the range of instruments available at the national level, mostly as a complement to the technical regulation. The following section briefly examines such developments in several states.

New Instruments in Member States

Since the early 1990s, there has been an increase in the use of environmental levies and charges in the Member States, e.g. on fertilisers, pesticides, packaging, batteries etc. This increase has in many ways led to a substantial improvement in reaching environmental objectives.

At national level, there are interesting initiatives along the lines proposed in the 1993 white paper on growth, competitiveness and employment advocating a reduction of indirect labour costs (about 1-2% of GDP), to be financed by other taxes like carbon and energy taxation, on energy taxes in general.

Belgium	Energy tax on households to finance employers contributions to social security schemes. Ministerial Commission is preparing a variety of ecotaxes on products.
Denmark	General tax reform 1994-98 decreased labour taxes to 2.7% of GDP and increased ecotaxes to 1.4% of GDP. Energy Package 1996-2000 increases taxes on industrial energy use by 0.2% of GDP, partly recycled as reduced non-wage labour costs.

Netherlands	Energy tax on small scale users mainly recycled as lower labour taxes. Green Tax Commission is looking at a possible "greening" of the tax system.
United Kingdom	Land-fill tax recycled as lower social security contributions.
Luxembourg	Cuts in employers social security contributions financed by increased energy taxes.
Sweden	Green Tax Commission is looking at a possible "greening" of the tax system. Increases in CO_2 tax rates.

Such national initiatives are evidence of the interest that Member States have in developing their economic and fiscal policies in complementary directions, thus diminishing the distortions of the fiscal system at the lowest cost and enhancing the effectiveness of environmental policy. In this respect, it should also be noted that Member State are under pressure to stabilise or reduce their budget deficits in view of further integration, particularly monetary union.

National diversity and preserving the single market

Given the continuing need to maintain a level economic playing field, Member States considering implementation of environmental levies (such as taxes, charges etc.) have sometimes been faced with an apparent contradiction between the environmental objectives of the Treaty and the other Treaty objectives--most notably the functioning of the internal market and technical harmonisation.

It is useful to distinguish between environmental levies on products and emissions. While levies on emissions in principle only affect domestic firms, e.g. factories situated in that Member State, levies on products can affect both domestic and foreign producers. Hence, levies on products tend to be more sensitive from an internal market point of view. The potential problems between levies and trade arise from the possibility of discrimination against imported products compared to domestically produced goods in an open or hidden way through a number of means:

- a higher levy on imported than domestically produced products. Such discrimination in an open fashion is prohibited under both EU and international trade law.

- a levy on products which are largely imported, while close substitutes produced domestically do not bear the levy. Such a case could be defendable, e.g. if the domestic products have a similar function but a better environmental effect. However, such a system could also be misused for purely protectionist purposes.

- in the packaging field it is increasingly common that levies give preference to reusable packaging compared to one way (recyclable) packaging. Such levies have created controversy, as it is often easier for a producer close to the local market to organise a deposit/return or bring-back system.

Levies often cause resistance, and have a tendency of giving rise to complaints to the Commission. Often both the complainants and the defenders (Member States) refer to EU legislation to support their views. After discussion with involved parties--Member States, complainants etc.--some modifications of tax laws often leads to a situation that satisfies all parties. There have therefore not been any fundamental European Court of Justice (ECJ) cases on environmental taxes or charges.

Traditional legal constraints on national experimentation

When Member States wish to use environmental taxes there are a number of different EU laws they need to be aware of, which are embodied in the Treaty and in secondary legislation such as directives and regulations.

The main relevant principles of the Treaty are expressed in Articles 9/12, 30/36, 76, 92-93, 95, 99, 100a, 130R-S. In summary, these articles aim to ensure that competition within the single market is not unduly disrupted by

- customs duties or charges having equivalent effect;
- quantitative restrictions on imports or exports of goods between Member States;
- state aid constituting distortions of competition affecting intra Community trade;
- internal taxation discriminating against imported products or otherwise protecting national production.

Protection of the environment is a legitimate objective of general interest and one of the main objectives of the Community as a whole as spelled out in Art 130R.

Quantitative restrictions

The borderline between customs duties and taxes is of relevance because the Treaty contains an absolute prohibition on customs duties and charges with similar effect as customs duties, while it only contains a prohibition against taxes which are discriminatory. If the revenues from a tax are used to fully offset the burden for domestic producers, the charge will be assessed as a customs duty or charge with similar effect. If the tax falls only on imported products, it can be assessed as a tax if the charge system is part of a general internal unbiased taxation system.

As regards the borderline between taxation and quantitative restrictions, environmental taxes in general fall within the scope of Art. 95 (taxation) which normally excludes the application of Art. 30 (quantitative restrictions). However, there are two situations where Art. 30 would apply. First, Art. 30 would apply in the absence of any similar or competing domestic production and in so far as the levy is of such an amount that the free movement of goods is impeded. Secondly, if the measures consist of several conditions or factors which are not necessarily linked to the levy itself or its proper functioning, such factors or conditions--for example labeling requirements--may then be assessed under Art. 30.

If Article 30 is applicable, the protection of the environment is recognized as a so called "mandatory requirement" which may justify the measure even if it would hinder the free movement of goods (ECJ Court case on Danish Bottles, Case C-302/86, 20/9-1988). In such a case, the following conditions shall be met:

- The measure must be non-discriminatory,
- It should be shown to be necessary in order to meet the environmental objective,
- The burden which the measure imposes should be proportionate in relation to the objective of protecting the environment.

Internal taxation

Article 95 aims at guaranteeing the complete neutrality of internal taxation as regards competition between domestic and imported products. However, differentiated taxation of imported and similar domestic products is legal provided the taxation is non-protective. Indeed, the ECJ has ruled (14 January 1981, Taxation of denatured alcohol, Case 46-80, [1981] ECR 77), that Community law did not restrict the freedom of each Member State to lay down

tax arrangements which differentiate between certain products on the basis of objective criteria, such as the nature of the raw materials used or the production processes employed.

Proportionality, i.e. balancing the gain for the environment with the potential impact on the Single Market, is not applicable when assessing an ecotax according to Article 95, except, as stated above, when it concerns administrative control measures of the levy.

The definition of a 'similar' product is important in determining whether a tax is discriminating. The case-law takes into account not only the objective characteristics of products, but also whether they satisfy the same consumer needs. The consumer impression of a product is thus an important aspect when assessing compatibility with Community law. By adopting a Regulation on ecolabelling, the Community has implicitly recognised that ecologically adapted products are not similar to products with the same function, but with different ecological properties. The ecological difference could be embodied in the product, or be due to differences in production methods (this regulation is discussed in ch9).

The case law of the Court also indicates that the mere fact that a tax is levied predominantly on imports is not enough to deem the tax discriminatory. The Court ruled that a tax which impose heavier charges on a certain product than on another one on the basis of the raw materials used and the manufacturing process employed, is not a violation of Article 95, if it is applied identically to the two categories of products.

Even when an environmental tax is based on objective and non-discriminatory criteria, it may be necessary to take into account how the revenue from the charge is used, in order to make a complete assessment of its effect on the internal market. When the revenue from a charge is used to partly offset the burden borne by domestic products, the charge constitutes discriminatory taxation within the meaning of Article 95 of the Treaty (Case C 17/91, [1992] ECR I 6523).

State aid

One area of concern to many Member States is the distributional impact of environmental levies. One way of addressing these concerns and increasing the acceptability of environmental levies is by using the revenues for specific purposes. For example, revenues can be redistributed to those who paid them, but in accordance with a set of different criteria than those defining the

payment. Alternatively, the revenue may be used for specific environmental purposes such as support for environmental investments or financing the collection of dangerous waste.

But the use of revenue can also have negative effects. According to the Treaty, state aid to firms is in principle not allowed. Permission must be sought from the Commission. Handing back revenues from environmental levies, either as investment support or in other ways is considered to be state aid, and thus, must fulfill certain requirements.

Under Article 92, any aid granted by a Member State which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market. Revenues from levies constitute "state resources," and their use may therefore constitute state aid in the meaning of Article 92. Exemptions from an environmental tax might also constitute aid. The principles according to which aid schemes pursuing environmental objectives shall be assessed by the Commission are set out in the Community guidelines on State aid for environmental protection (OJC 72, 10.3.1994, p. 3), as will be further discussed below.

Secondary legislation on indirect taxation

Community legislation adopted under Article 99 contains

a) harmonised rules on tax structure and minimum rates for excise duties on mineral oils, tobacco and alcoholic beverages

b) other general provisions in directive 92/12/EEC, allowing Member States to introduce indirect taxes on products provided that those taxes do not give rise to border-crossing formalities in trade between Member States.

An important provision of Directive 92/81/EEC (OJL 316, 31.10.1992, p.12) is that in general, only one tax rate per product can be used. Directive 92/12/EEC (OJL 76, 23.03.1992, p.1) provides Member States with the possibility, within certain restrictions, to introduce other national taxes on mineral oils. Such taxes must comply with the rules applicable for excise duty and VAT. Member States may request authorization from the Council to apply reduced tax rates or exemptions, e.g. for environmental reasons. Granted derogations concern tax differentiation such as reduced rates on environmentally improved diesel and on reformulated unleaded and leaded petrol. In addition, as discussed below, Member States have the right to apply reduced tax rates or tax exemptions on

mineral oils used for specific purposes, for example, in the field of public transport and within the agriculture sector.

Notification

The above examples show how Community law affects the use of environmental levies within the internal market. The levies can potentially harm the functioning of the internal market, e.g. by being misused for protectionist purposes, without creating benefit for the environment. At the same time it is clear that these levies can be very efficient in pursuing environmental policy. Thus it is important for the Commission to strike a balance between the environment, trade aspects, and avoiding misuse of environmental levies. The issues involved are often complex, resulting in a number of cases involving intense discussions between representatives for the environment and industry.

An important information tool is the notification requirement. This means that Member States in general have to inform the Commission before introducing a new measure. Through this procedure the Commission can study the proposal to ascertain its compatibility with Community legislation. In the process, other Member States are also informed, and have the opportunity to comment.

For measures considered to be state aid, including exemptions from new taxes, notification is compulsory. A state aid scheme put into operation without being notified is illegal, and the Commission may order the Member State to suspend the aid programme to give time for investigation. Should the Member State refuse, it risks being brought in front of the ECJ. So far this has not happened.

For environmental taxation the notification requirement is more indirect. Directive (83/189/EEC) contains a requirement for Member States to notify technical standards and regulations which are linked to fiscal or financial measures affecting the consumption of products. Normally this directive requires a standstill period of three months, giving time for the Commission to investigate, but this requirement does not apply to the fiscally related technical regulations.

If the Commission finds that any element of a new law does not fulfill the requirement of the Treaty it can demand the Member State to postpone implementation until certain changes in the legislation are made. Should the Member state refuse, it again risks being brought in front of the ECJ. During such standstill periods, informal contacts between the Commission, the Member

State concerned, other Member States which may have interest in the case and complainants take place. The objective is always to try to find a solution which satisfies all parties. So far no case has been taken to the Court of Justice by the Commission.

Emerging EU Framework

While the Treaty and secondary legislation provide a certain amount of guidance, a substantial level of uncertainty remains over how much scope national governments have to devise and apply new environmental instruments. A central objective of the Commission is therefore to provide Member States (including EEA states) with clarification on controversial issues related to the use of environmental levies, and provide guidance on existing possibilities to use them, as regulated by EU law. This section discusses several recently adopted pieces of an emerging EU framework, and describes some of the ways in which more formal, written guidelines for new national instruments might alter the relationship between the Commission and the member states.

The recognition of the need for a variety of instruments to reflect differing situations leads to new questions which have so far gone unanswered. As discussed above, the Treaty and its related legislation create some limitations on the freedom of action of the Member States, in particular where the functioning of the internal market may be affected. Hence, there is a need to spell out the legislative framework with which new environmental policy instruments can be introduced at national level. Obvious candidates for such initiatives are guidelines covering environmental taxes, voluntary or negotiated agreements, and environmental liability rules. This section looks only at the first of these categories.

Subsidies

Explicit guidelines exist on environmental state aid provided by Member States to firms (OJC 72, 10.3.1994). The guidelines were developed in 1993 in order to clarify for Member States for which objectives and to which intensity aid is allowed. Before the guidelines existed, there were often long discussions on whether different aid programmes were in conformity or not with state aid regulations.

The guidelines basically state that state aid to support environmental investments is allowed, by between 30% and 40%, only if the investments aim at achieving environmental protection at significantly higher levels than those

required by mandatory standards. However, for plants older than two years, state aid of between 15% and 25% may be authorized also to comply with mandatory requirements. The guidelines also indicate that exemption from environmental taxes, which is regarded as state aid, may be allowed if it is necessary to prevent domestic firms being placed at disadvantage compared with their competitors in countries that do not have such measures.

Environmental agreements

In the Communication on Environmental Agreements (COM(96) 561) of 27 November 1996, the Commission presented guidelines for the use of agreements between public authorities and industry in the field of the environment. The background for this initiative is the principle of shared responsibility and the need to broaden the range of policy instruments to achieve a better instrument mix.

Environmental Agreements can be legally binding with obligations for both parties, but they may also be non-binding "gentleman's agreements" in the form of a unilateral commitment recognized by the public authority. They can bring about effective measures in advance of legislation and thus reduce the volume of regulatory and administrative actions.

In addition, Environmental Agreements can encourage a pro-active approach from industry, and are likely to lead to cost-effective measures, because they allow industry to adjust environmental investment to their medium term capital investments. They can also be more quickly implemented than regulations, which is an important advantage in areas with fast technological developments.

On the other hand, not all of the past "voluntary" agreements were transparent and credible. The Commission therefore suggests that interested parties should be consulted before an agreement is concluded and that agreements should, wherever possible, be binding on the parties. They should go beyond unspecified "best effort" clauses and include quantified targets. Clear monitoring measures should be defined. Third party verification is also suggested as well as the publication of the agreement and of the results achieved.

While agreements are instruments which can be used at local, regional, national, Community and international level, the competencies of the European Community only relate to agreements concluded at Community level and to national agreements used to implement Community directives. Both aspects are not completely new to the environmental policy of the Community, but the

preconditions for the use of agreements need to be further clarified. Based on the Communication, the Commission issued a Recommendation concerning how environmental agreements can be used in implementing Community Directives (OJL 333, p.59, 21.12.1996).

Environmental taxes

The Commission recently published a Communication entitled "Environmental taxes and charges in the single market" (COM(97)9). The document supports the use of environmental taxes and charges in the Member States that are used in a way compatible with Community legislation. The document therefore explains the legal framework applicable to Member States, and clarifies both the possibilities and constraints for Member States to act in this field.

The document mainly deals with product taxation, as this is the area most sensitive to internal market aspects. It is explained that the effects of the European legislation, among other things, are that:

- if a levy has a clearly positive environmental effect, it may be judged in a more positive way in terms of its effect on other policy areas.
- levies may not be used to discriminate against products from other Member States.
- levies should be in accordance with secondary legislation on indirect taxation, e.g. in the field of energy taxation, where detailed rules exist.
- exemptions from paying the levy, and the way revenues from environmental levies are used, should fulfill rules in the field of state aid.

The document also specifies when Member States have to inform the Commission of their activities (notification rules). Such rules exist in the following areas:

- state aid.
- technical standards and regulations linked to fiscal measures (Directive 83/189/EC).
- national measures taken to transpose Community Directives into national law.

As this is a rapidly evolving area, the Commission will closely follow the evolution of the use of environmental taxes and charges in Member States and

their impact on the single market and on environmental policy. The Commission plans to carry out an evaluation on the economic and environmental effects of their use. The results of this work will be used to draw policy conclusions on the further use of environmental taxes and charges on Community and Member State levels. However, this does not mean that the Commission will not make proposals in this field before the evaluation is finalized.

Energy and fuel taxes

A substantial amount of work has gone into developing EC guidelines in the area of national energy and fuel taxes. The carbon/energy tax proposal together with the globalisation of the economy and the increased competitive pressure on European industry provoked a fundamental debate on the future of taxation in the European Union. This debate was launched by the European Commission in the previously mentioned White Paper on Growth, Competitiveness and Employment. It was shown that over recent decades, a significant erosion of tax revenues has taken place, originally only related to capital income.

The trend of the last few years, to increase tax revenues from labour, is no longer considered an appropriate way to compensate for this loss. Such a policy increases indirect labour costs and hinders the creation of new jobs, hence contributing to the historically high and persistent unemployment figures in the European Union. In this context, the Member States rely increasingly on two types of indirect taxes to counter the structural erosion of their tax receipts: value added taxes to be paid on all final consumption, or specific taxes on certain goods, e.g. energy products.

The Member States of the European Union have a long history of energy taxation, in particular on mineral oil products. This form of taxation was not originally motivated by environmental concerns. Governments tend to see energy as a stable fiscal base because of the relatively inelastic demand. Over the last decade and a half, energy taxation has increased slightly from 2.1% to 2.6% of GDP for the EU as a whole. Researchers have concluded that the side-effects of this type of taxation have been beneficial for the environment: it has been shown that it contributed substantially to the higher overall fuel efficiency of the car fleet in Europe compared to the United States. Today, consumer taxes on motor fuels, i.e. excise and value added tax, constitute some 65% - 75% of the final price (see Figure 1). Thus, Member States have a powerful tool, not only to raise revenue, but also to differentiate in accordance with environmental performance.

Figure 1 Petrol taxes in the EU

	EURO 95					DIESEL				
	price	tax	final price	% tax	% ad valorem	price	tax	final price	% tax	% ad valorem
B	220	632	852	0.74	2.87	231	413	644	0.64	1.79
DK	211	613	824	0.74	2.91	215	428	643	0.67	1.99
D	203	628	831	0.76	3.09	225	411	636	0.65	1.83
ELL	187	459	646	0.71	2.45	180	328	508	0.65	1.82
ES	212	469	681	0.69	2.21	201	348	549	0.63	1.73
FR	170	730	900	0.81	4.29	175	464	639	0.73	2.65
IRE	226	459	685	0.67	2.03	268	411	679	0.61	1.53
IT	222	634	856	0.74	2.86	217	474	691	0.69	2.18
LUX	211	430	641	0.67	2.04	198	332	530	0.63	1.68
NL	231	676	907	0.75	2.93	234	427	661	0.65	1.82
AUS	262	568	830	0.68	2.17	255	411	666	0.62	1.61
PO	225	557	782	0.71	2.48	200	341	541	0.63	1.71
SUO	219	717	936	0.77	3.27	225	405	630	0.64	1.80
SW	233	663	896	0.74	2.85	319	448	767	0.58	1.40
UK	164	506	670	0.76	3.09	175	508	683	0.74	2.90
EU AVER	213	583	796	0.73	2.73	221	410	631	0.65	1.85

The situation described above represents an important evolution. Firstly, the discussions on the carbon/energy tax have made it clear that in the current institutional context, Member States prefer not to create a new harmonised tax system. Thus, for the time being the requirement for unanimity in the Council of Ministers when voting on fiscal issues is set to stay. Secondly, despite the existence of this institutional constraint, Member States nevertheless need a Community framework to develop their fiscal policies, in particular on product taxation, as goods can be freely traded throughout the internal market without border controls. As a consequence of both considerations, the Commission was asked by the Member States in 1996 to develop a comprehensive Community approach towards the taxation of energy products, based on the experience with the system of excise duties.

On 12 March 1997, the Commission adopted a new energy tax proposal (COM(97)30), to be submitted to the Council and the European Parliament for decision. This proposal for a Directive intends to modernize the Community system for the taxation of mineral oils and extends its scope to other energy products such as coal and gas.

The Commission is thus meeting the obligation contained in Article 10 of Directive 92/82/EEC to review the minimum rates of excise duty on mineral oils. It is also responding to the Council's request, expressed following the deadlock of negotiations on the CO_2/energy tax, that it should present new proposals in the field of the taxation of energy products. Lastly, it takes into account the European Parliament opinion on the Commission's report on minimum excise duty rates (COM(95)285, 13.9.95), which asks it to define a consistent basis for taxation covering both mineral oils and competing products.

In addition, the Commission has recently presented a draft Directive laying down technical specifications which fuels to be put on the market in the Community must satisfy (COM(96)248). This will trigger new investments and operating costs for the oil industry, estimated at ECU 13.2 billion over 15 years. It would be unnecessarily costly to set up such standards at a level well beyond what most local environmental conditions within the EU might require. Thus the proposed Directive may require marketing of higher quality fuels.

Therefore Community framework legislation in this area was necessary to allow member states to use tax incentive schemes for cleaner fuels. It allows Member States to provide fiscal incentives in favour of cleaner fuels. Such differentiation within a Community framework can enhance the market penetration of higher quality fuels without disrupting the internal market. The internal market is undisrupted as the Directive specifies some cleaner fuels for which Member States may provide fiscal incentives. Thereby there may be two or three different fuel specifications in the EU, instead of perhaps 30, which would be the case if each Member State had two separate specifications.

Since its implementation, a number of Member States have utilised the possibility offered by the directive to apply tax differentiations in connection with objectives of environmental policy. In addition to the leaded/unleaded differential, six member states (Denmark, Greece, Ireland, Sweden, Finland) already apply or have requested to apply duty differentials based on the environmental qualities of fuels.

Car emissions

In the field of car emissions, there are harmonised technical regulations in order to create an internal market for cars in which competition can be free and fair. The Community has defined a legally required technical standard which all new cars must fulfill. Before this standard was mandatory, it was known for several years that it would become mandatory at a specified date. During this period a lower standard applied.

The Directive in question (94/62 EC) describes a precise framework for the use of fiscal incentives by the Member States, via the sales tax, to favour cars fulfilling the stricter standards before they became compulsory (see chs 3 and 4). The Directive is thus an example of a harmonised framework, where each Member State could work out the specific details of the environmental instrument according to their preferences and tax systems.

At the same time a well functioning internal market was maintained, as there was a maximum of two different technical specifications which car firms needed to adopt--the compulsory lower standard, and if they so wished, the higher standard to enjoy the tax discounts given by some Member States.

The Community is currently working out future emission standards for cars. As this work is somewhat delayed, there is right now only one Community standard (which applies to all cars sold today). There is therefore no future standard that Member States can give tax incentives to. Some Member States therefore currently give tax incentives for the purchase of new cars with technical specifications that go beyond those of existing Community law. This may not be fully in accordance with the Directive, but might be accepted due to the delay of the new Community legislation on future emission standards.

Conclusions

Pressures to reconsider the traditional command and control approach towards environmental policy have generated a lively debate in the European Union. This debate centres around three key issues: the requirements of the environment chapter of the Treaty on European Union, the safeguarding of sound competition within the internal market, and the recognition of the cultural, political and environmental differences amongst the Member States.

Broadening the range of environmental policy instruments available at both the EU and national level remains firmly on the Commission's agenda. The de-regulation trend in recent years reinforces, through its insistence on a cost-effective environmental policy, the critical role of a variety of instruments at the disposal of the Member States. This evolution coincides with the desire of Member States to follow their own preferences in the use of a particular instrument.

For reasons related to the different environmental conditions of Member States and the different preferences of their population for environmental policy measures, one can, for the immediate future, expect most initiatives in the area

of levies to be developed at the national level. According to the Eurobarometer 1995, national 'green' taxes receive a high degree of public support throughout the EU.

The existence of an internal market, however, has a tendency to impose a significant degree of convergence on the instruments chosen by Member States. Furthermore, current Community legislation specifies some limitations to the use of particular environmental policy instruments. Thus the Commission's essential role is in developing explicit frameworks on the use of some instruments such as energy taxes and specifications on how to use taxes to encourage sales of environmentally improved cars and fuels.

The Commission has also issued more general guidelines, which shows the room for national action on environmental policy instruments such as environmental taxes and charges and on environmental agreements.

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