ENVIRONMENTAL POLICY

INTRODUCTION

Environmental policy, like the Single Market, is a Community success story, and a relatively recent one. It was only with the introduction of the Single European Act (SEA), just over ten years ago, that the word 'environment' first appeared in the Treaties, and since then, the Member States have been content to transfer increasing powers to Brussels, not only to harmonise national policies and coordinate policy on international issues, but to dictate strategy as well.

In 1987, the SEA introduced the new Community objectives of preserving, protecting and improving the quality of the environment, protecting human health, and ensuring a prudent and rational utilisation of natural resources. Legislative powers, though, were constrained by the need for the Council to act unanimously and by the purely consultative role given to the European Parliament.

Then, in the mid-1990s, the Maastricht Treaty boosted the EU's powers enormously. It added a further objective: "promoting measures at international level to deal with regional or worldwide environmental problems". It introduced, for environmental policies, qualified majority decision-making in the Council; and it gave the European Parliament codecision powers on framework proposals.

Moreover, the European Union Treaty strengthened the underlying principles upon which the environmental legislation was to be based. One key paragraph in Article 130r states the following: "*Community policy shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community. It shall be based on the precautionary principle and the principles that preventative action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay. Environmental protection requirements must be integrated into the definition and implementation of other Community policies.*"

This chapter looks at the EU's overall framework for environmental policy and at several horizontal instruments. However, although the Commission itself develops, presents and analyses its policies through a number of different major and minor lenses - Agenda 21 in the international arena, and the Sustainable Cities Project, for example - this report concentrates on the frameworks and issues which are most relevant for the energy sector. Thus, internally, the Fifth Environmental Action Programme has been the main blueprint for developing the Community's environmental objectives throughout the 1990s, and the legislative review of this will be important in the forthcoming years.

It should also be noted that the Community is involved in a vast array of environmental actions - to control noise, to enhance water quality, to preserve habitats etc. - which, although they may impose significant constraints and costs on companies, including those in the energy sector, are not within the scope of this report.

One instrument, growing in stature, is the European Environment Agency, which is quickly developing powerful networks for data collection and dissemination. In terms of regulation, there are new and stronger mechanisms for ensuring, at the planning and operational stages, that industrial and infrastructure projects damage the environment as little as possible. The issue of oil platform decommissioning, which now has an EU dimension, is covered in this section. There is also pressure for a more effective system of civil environmental liability.

This chapter also refers briefly to a range of voluntary instruments - such as negotiated agreements, the ecolabel system, ecomanagement schemes - designed to encourage industry and manufacturers towards an increased environmental awareness, either through their efforts to avoid legislation or through the mechanism of publicity and people power.

The two subsequent chapters look in more detail at some of the greatest environmental threats facing Europe -urban pollution/acidification and climate change - and at the Community's policy responses, many of which are directed at the industries which produce, transform and use energy. Environmental protection measures aimed at nuclear safety, which are also included in the Fifth Environmental Action Programme, are covered in Chapter Seven.

Chapter Four

TOWARDS SUSTAINABILITY - TOWARDS A MAJOR NEW AGENDA

In 1992, the Commission put forward its major programme for the 1990s, the Fifth Environmental Action Programme which it called "Towards Sustainability". The Commission argued that regulatory actions would be insufficient to bring about the necessary changes in consumption and behaviour patterns and that a much broader range of instruments would be necessary:
- legislation to set environmental standards;
- economic instruments to encourage the production and use of environmentally-friendly products and processes;
- horizontal measures in support of information, research and education;
- financial support measures.

Moreover, environmental considerations would have to be integrated into all other policy areas, the Commission said, and implementation of legislation would have to be properly enforced. There was a need, it suggested, for much improved data on the environment in order to underpin future strategy.

Five target sectors and seven themes

The programme defined five target sectors, including energy, transport and industry; and seven themes, including climate change, acidification/air quality, and the urban environment. It stressed that action in many areas would be carried out at levels other than that of the Community, and it looked forward to a much deeper partnership between industry, government and the consumer, with shared responsibilities among the main actors.

In response to the programme, the Environment Council, meeting in December 1992, agreed that "more progressive, coherent and better-coordinated policies and strategies for the environment and development involving all levels of society are called for". It also recognised that there must be "a deepening and broadening of the range of instruments to complement normative legislation", and it suggested using economic instruments, R&D, training, financial support mechanisms and voluntary schemes to help reach this objective.

Review pinpoints unwillingness to make progress

In early 1996, the Commission published a very detailed report on the Fifth Programme which looked at the progress, or lack of it, in every nook and cranny of environmental policy, at national as well as Community level. It concluded that the strategy and objectives of the Programme remained valid, but that there was still a fundamental unwillingness to make "the quantum leap" necessary for progress towards sustainability.

The report noted that, although there had been some integration of environmental considerations into other policy areas as required, there had been little concrete action towards integrated structural issues in either the transport or energy sectors. It said it had been more difficult than expected to broaden the range of policy instruments (because of the failure to persuade the Member States to implement a CO_2/energy tax, for example). It called for more effective implementation structures and new patterns of shared responsibility to cope with the increasing need for sophisticated responses to environmental problems, with the increasing number of instruments, and with internationalisation of many issues.

Growing importance of international scene

The Commission also pointed to the growing importance of the international scene. In this context it mentioned the UN Conference on Environment and Development, the opening up of Eastern Europe with its huge environmental problems, and the creation of the World Trade Organisation which recognises the increasing interdependence between the environment and trade. "*One effect of this transformation has been to give the Union a different and stronger role: it now finds itself increasingly in the role of honest broker, of being the principle interlocutor of the G77, bringing together the Member States and the world community. Increasingly there is an international agenda which has a life and a timetable of its own. This has important implications for the Union programme, its working methods and relationships.*"

Draft Decision to strengthen environmental policy

In parallel with the progress report, the Commission put forward a proposal for a Council and Parliament Decision "to review" the Fifth Programme. This was a substantial legislative proposal which contained two parts: "key priorities" and "other issues to which particular attention will be given". The first of the key priorities was further integration of the environment into other policies, such as agriculture, transport, industry, tourism and energy.

A second priority was to broaden the range of instruments. In terms of market-based tools, special attention would be given, it said, to the use of environmental charges, the application of the

concept of environmental liability, the use of voluntary agreements in conformity with competition rules and the encouragement of fiscal reform as a means to protect the environment. Other instruments, such as standardisation, environmental impact assessments, eco-audits, and integration of environmental concerns into the procurement rules, would also be developed. Three other key priorities were amplified in the proposal: implementation and enforcement of legislation, awareness-raising, and international cooperation.

In the second part of the draft Decision, priorities for specific themes were laid out. For the climate change strategy, it said, particular attention would be given to identifying reduction objectives for CO_2 and other greenhouse gases for 2005 and 2010 and defining policies and measures for their achievement (Chapter Four B). In relation to acidification and air quality, particular attention would be given to developing a strategy to ensure that critical loads, in relation to acidifying pollutants, are not exceeded; and to establishing or amending quality objectives with respect to specific pollutants, and developing common procedures for the assessment and monitoring of air quality (Chapter Four A).

MEPs seek to strengthen framework programme

The Parliament, which for the first time had been given the opportunity of influencing the Union's general environmental policy, took nearly a year to adopt its first reading on the draft review Decision. It called for over 50 amendments, many of them aimed at strengthening significantly environmental policy development. For instance, where the Commission had written "the priorities are" in the draft Decision, the Parliament said the text should read "the Community will". Moreover, MEPs wanted to introduce amendments to ensure the "highest level" of environmental protection and the introduction of a "user of natural resources pays" principle.

Scheme wanted to remove subsidies which encourage energy use

Among the changes required by MEPs specifically for the energy part of the Decision were the addition of "an EU action programme to remove by the year 2000 all energy-sector subsidies which encourage energy consumption and prevent the introduction of clean technologies"; the reinforcement of the SAVE, Altener, Thermie and Joule programmes by setting targets for a 3% per annum reduction in primary energy consumption per unit of GDP and for a 1% per annum increase in sustainable and renewable energy sources' share of energy consumption; and a redirection of 50% of Community funding for fusion energy towards energy efficiency and sustainable and renewable energy sources.

Despite the use of the codecision procedure, the Council took very little notice of the European Parliament's Opinion and adopted its Common Position in April 1997 with relatively minor changes (at least with regard to energy) from the Commission's original proposal. Subsequently, the European Parliament's environment committee wanted to retain all the amendments from the first reading, but in plenary many of the more radical proposals failed to attract an absolute majority of MEPs, and the second reading - the basis for conciliation with the Council in 1998 - contained a milder, yet still significant, set of proposed changes.

THE EUROPEAN ENVIRONMENT AGENCY - A BACKBONE FOR POLICY

The decision to set up a European Environment Agency (EEA) was taken at the start of the decade in 1990 but, due to a dispute over the location of other EU institutions, its Copenhagen headquarters was not inaugurated until October 1993. In line with the needs identified in the Fifth Environmental Action Programme, the main duties of the EEA are:

- to produce reliable and comparable information for policy-makers and the public alike;
- to identify, prepare and evaluate suitable environmental measures, guidelines and legislation;
- to coordinate the European Environmental Information and Observation Network (Eionet) and publish a triennial report on the state of the environment;
- to liaise with other national, regional and global environmental programmes and institutions.

Duties of the European Environment Agency

As one of its first tasks, the EEA was invited to look at the Fifth Programme and, using statistical evidence, report on the Community's progress. In November 1995, the EEA's conclusions, which were clearly echoed in the Commission's progress report (as above), noted that the EU was reducing certain pressures on the environment but not enough to progress towards sustainability. It also concluded that transgression of human health standards and the carrying capacity of the environment would continue unless efforts, especially in the transport sector, were accelerated.

In October 1995, the EEA also established its credentials in the wider international sphere with the presentation, to a meeting of Europe's environment ministers in Sofia, of the so-called Dobris

assessment (after the location of the first such meeting of ministers, at Dobris Castle in 1991). The report was 600 pages long and contained detailed descriptions on the state of 20 different environmental areas across most countries in Europe. With respect to air, the Dobris assessment found short-term pollution levels of one or more pollutants exceeded the WHO Air Quality Guidelines (AQG) at least once in a typical year in 70-80% of European cities with more than 500,000 inhabitants. Long-term exposure to SO_2 and particulate matter exceeded WHO AQGs in 24 of the 61 cities studied.

EU emissions (1,000t)

	1990	1994	% change
SO_2	16.5	12.1	-27
NOx	13.6	12.3	-10
CH_4	14.7	22.8	-8
CO	52.0	43.3	-17
CO_2	3,290.0	3,230.0	-2
N_2O	1.02	0.91	-11

Source: EEA

Coordination of the Topic Centres' work

Another of the EEA's tasks is to coordinate the work of eight European Topic Centres (one of which collects data on air emissions), 18 National Focal Points (one in each Member State, and in Norway, Iceland and Liechtenstein who are also represented on the EEA management board), and many National Reference Centres appointed for specific topics by the Member States. Building on the earlier work of the important Corinair 85 and 90 studies, the EEA published, in mid-1996, the first data from the air emissions Topic Centre. The figures showed a marked downward trend for SO_2 and NOx, and a 2% decline in CO_2 emissions, relative to 1990 (see table).

A widening of the EEA's cooperative network

In order to improve and enhance the collection and compatibility of information on the environment and thus contribute to the harmonisation of environmental standards, the EEA is widening its network into Eastern Europe and across the Atlantic.

Cooperation with the CEEC and with the US

In collaboration with the United Nations Environment Programme and funds from the EU's Phare scheme, for example, the EEA is extending the data collection Eionet across the Central and Eastern European countries. More modestly and under the umbrella of the New Transatlantic Agenda (Chapter Ten), the EEA has established a basis for cooperation with the US's Environmental Protection Agency (EPA). There are a number of joint projects, focusing on the development of a common approach to environmental information. There appears to be a particular emphasis on the internet and how best to make available detailed information to the widest possible audience. The EPA has much experience of providing web services, and the EEA, which has already established a successful and useful site, intends to expand its services.

Although facts and figures are the backbone of the EEA's work, it does not shy away from commenting on the important debates. In autumn 1996, it produced reports on green taxes and on current measures to prevent CO_2 emissions after 2000. In June 1997, it published a report on the importance of access to environmental information, and, in July 1997, it responded to a request from the European Parliament with a report on the effectiveness of environmental agreements.

Proposal to amend EEA statutes

In mid-1997, the Commission put forward a report on the first five years of the Agency and a proposal to amend the Council Regulation which governs the EEA's operations. The Commission concluded that the EEA had succeeded over a short period in building the basis of "a European network of institutions and individuals who can contribute to our knowledge on the state and prospects of the environment". Moreover, it said, agreement had been reached on a programme of cooperation with the EEA, notably on the production of a pan-European state of the environment report in 1998. The Commission proposal suggested, among other changes, that the EEA should be developed into a one-stop shop for environmental information and data with modern internet communications. As of April 1998, it was still under discussion by the institutions.

THE REGULATORY APPROACH - POTENT NEW PREVENTATIVE LEGISLATION

In terms of regulatory action designed to prevent environmental damage, during both the construction and operation of infrastructure and industrial plants, the EU has agreed two highly important Directives, both of which will come into force during 1999. The first is a major upgrading of the 1985 law requiring environmental impact assessments (EIA); and the second is a new and powerful permit mechanism to ensure integrated prevention and control of environmentally damaging emissions. There has also been pressure in some quarters for EU legislation on civil liability, but, despite pressure from the Parliament and a five year debate, the Commission had not been able, by spring 1998, to make any proposals.

The Commission put forward its proposal for a revision of the ten year old EIA Directive in order to iron out the practical difficulties caused by different interpretations of the Directive and to ensure better assessments across a wider range of projects. The European Parliament's Opinion, under the cooperation procedure, called for the European Environment Agency to be involved in the setting of criteria and for the extension of the Directive to EU-financed public works in third countries.

New rules for environmental impact assessments

The Council, after reaching political agreement in December 1995, did not formally adopt the Directive until March 1997 with Germany voting against. Almost every article in the original Directive was amended to a greater or lesser extent. As finalised, it requires that "Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their direct and indirect effects" on the following factors: "human beings, fauna and flora; soil, water, air, climate and the landscape; material assets and the cultural heritage"; and the interaction between these factors.

Most significantly, the annexes have been considerably reinforced. The first lists the projects for which an EIA must be carried out, and the second annex lists project areas in which the Member State is free to decide on whether an EIA should be carried out, either on a case-by-case basis or through the use of thresholds or criteria set by the Member State (see box). A "competent authority", designated by each Member State, will be responsible for providing the necessary "development consent" and will also ensure public access to information on EIAs. The new Directive must be transposed by the Member States and in force by March 1999.

Energy sector installations in EIA Directive

Energy-related project areas included in annex I:

- crude oil refineries and installations for the gasification and liquefaction of 500t/day or more of coal or bituminous shale (excluding units only manufacturing lubricants);
- thermal power stations and other combustion installations with a heat output over 300 MW;
- nuclear power stations and other nuclear reactors including decommissioning (except when all nuclear materials have been removed permanently) but excluding research installations with a max power output of 1 kW continuous load;
- installations for reprocessing irradiated nuclear fuel and other nuclear installations (such as enrichment, storage, final disposal etc.);
- extraction of petroleum and natural gas for commercial purposes at over 500t/day or 500,000 cubic metre/day respectively;
- pipelines for the transport of gas, oil or chemicals with a diameter of more than 800 millimetres and a length of more than 40km;
- construction of overhead electrical power lines with a voltage of 220 kV and over 15km long;
- installations for storage of oil or chemical products with a capacity of 200,000t.

Energy-related project areas included in annex II:

- quarries, opencast mining and peat extraction (those not included in annex I);
- underground mining;
- deep drilling (in particular, geothermal, for storage of nuclear waste, for water supplies);
- surface industrial installations for the extraction of coal, oil, natural gas and ores, as well as bituminous shale;
- industrial installations for the production of electricity, steam and hot water (those not included in annex I);
- industrial installations for carrying gas, steam and hot water, transmission of electrical energy by overhead cables (those not included in annex I);
- surface storage of natural gas;
- underground storage of combustible gases;
- surface storage of fossil fuels;
- industrial briquetting of coal and lignite;
- installations for processing and storage of radioactive waste (unless included in annex I);
- installations for hydroelectric energy production;
- installations for harnessing wind power;
- coke ovens;
- oil and gas pipelines (those not included in annex I).

Source: Directive 97/11/EC

Proposal for strategic environmental assessment

The Commission also proposed, in December 1996, an extension of the EIA idea to an even earlier stage in the planning process. The application of EIAs to specific projects in specific locations often takes place very soon before the project is due to be implemented, the Commission said, and this can be costly in both environmental and economic terms. There was a need, therefore, for a Strategic Environmental Assessment procedure to be imposed on development "plans and programmes", as part of the land use planning process. This would ensure, the Commission argued, that significant environmental issues, which cannot be addressed by the current system, are confronted properly in future. There would also be benefits for developers, due to a reduced risk of approval not being given at project level.

The concepts of "plan" and "programme" are defined carefully in the proposal and embrace town and country planning in sectors such as energy, transport and the extraction industries. In essence, an environmental assessment must be carried out, according to the general principles in the Directive, "before adoption of the submission to the legislative procedure by the competent authority of a plan or programme".

The kind of information to be presented in the assessment is laid out in an annex and includes the environmental characteristics of the area; existing environmental problems; the relevant local, national and EC objectives; any alternative ways of achieving the objectives of the plan; and measures envisaged to minimise environmental problems. The definitions of "competent authority" and "development consent" are defined as in the EIA Directive. As of early 1998, however, this Strategic Environmental Assessment proposal appears to have been stalled in the Council.

International EIA developments

The EIA Directive insists on a Member State informing ("no later than when informing its own public") another State where a project may have an impact across the border. The EU also agreed, in October 1996, some four years after a Commission proposal, to the Community becoming a member of the 1991 Convention on Environmental Impact Assessment in a Transboundary Context (Espoo). It stipulates the obligations of Parties to assess the environmental impact of certain activities at an early stage of planning. It also lays down the general obligation on countries to notify and consult each other on all major projects under consideration that are likely to have a significant adverse environmental impact across boundaries.

Finding a consensus with UK and Norway on oil platform decommissioning

One particular class of energy installation has rarely been far from the headlines in recent years, following Greenpeace's success in focusing public opinion against the offshore disposal of Shell's Brent Spar oil platform in mid-1995. The European Parliament's environment committee asked Shell and the UK government to reverse the decision to dump Brent Spar at sea, but it was public opinion in Germany that eventually persuaded the oil giant to back down.

Shell decision to decommission Brent Spar on land

Just prior to the Shell decision, the Fourth International Conference on the Protection of the North Sea, held in June 1995, had agreed to a Ministerial Declaration covering many issues including support for a ban on the dumping of offshore installations. However, the UK and Norway refused to accept the paragraph of the Declaration which referred to this ban. The European Commission signalled its approval of the whole Declaration and, on 21 June, the Environment Commissioner Ritt Bjerregaard hailed the Shell decision to abandon plans to sink the oil platform in the North Sea as "a great victory for the environment".

The Commission then spent two years studying the subject, before putting forward a Communication, in February 1998, containing an analysis of the situation, a discussion of the Community dimension, and clear recommendations for the inaugural meeting, in Lisbon the following July, of the OSPAR Convention for the Protection of the Marine Environment of the North-East Atlantic. The Commission said it was acutely aware that, because the OSPAR Convention allows for contracting parties to opt out of decisions, consensus is a prerequisite for a meaningful result.

Commission favours general ban on dumping

In the report, the Commission explained that most contracting parties favour an OSPAR decision based on a general prohibition of dumping, with a list of possible exclusions, while two parties prefer a general authorisation with specific bans. Further disputes exist, the Commission noted, over defining the technical characteristics of the categories of large steel installations for which the decision would allow sea disposal; over differing rules for existing and future installations; and over the time allowed for consultations for a proposed permit for disposal at sea. In each case, the UK and Norway, the main countries to be affected by the regulations, are on one side of the argument, and the other contracting parties are in opposition.

The Commission, therefore, proposed a negotiating stance for the Community. It insisted that the decision should be based on a high level of environmental protection and, specifically, that the main rule should be a prohibition on dumping at sea with clearly defined and limited exceptions (such as large concrete installations). It further proposed that all new installations (after January 1998) should be completely removed and brought to land for recycling and safe disposal of unavoidable residues "whenever this is feasible, safe, and does not pose a significant risk to the environment". There should be an unambiguous legal situation for any installation left in place; and there should be a regular review, at least every five years, to ensure that decommissioning experiences are taken into account, the Commission said.

Integrated pollution prevention and control

Although its impact will not be felt until the new century, the Directive concerning integrated pollution prevention and control, adopted by the Council in September 1996, is likely to prove one of the most potent regulatory environmental actions ever adopted by the European Union. In essence, it introduces a mandatory system of permits ensuring that new industrial plants are based on the use of best available techniques to protect the environment. The Directive, according to the first Article, "lays down measures designed to prevent or, where that is not practicable, to reduce emissions in the air, water and land" from those activities listed in annex one, "in order to achieve a high level of protection of the environment taken as a whole".

Energy industry activities caught by IPPC Directive

Four categories of energy industry activities are listed in annex one - "combustion installations with a thermal rated input of 50 MW; mineral oil and gas refineries; coke ovens; [and] coal gasification and liquefaction plants." Annex three contains the indicative list of substances to be taken account of "if they are relevant for fixing emission limit values"; for air, thirteen substances are listed including SO_2, NOx, CO, and VOCs.

The Directive states that Member States shall take the necessary measures to ensure that installations are operated in such a way that:
- all the appropriate preventative measures are taken against pollution, in particular through application of best available techniques;
- no significant pollution is caused;
- waste production is avoided or recovered;
- energy is used efficiently;
- the necessary measures are taken to avoid accidents;
- the necessary measures are taken to return the site to a satisfactory state after a cessation of activities.

Implementation and information requirements

In terms of implementation, the Directive prescribes in detail the requirement of a permit mechanism which the competent authorities, appointed by the Member States, must use for ensuring that installations meet the required standards. Significantly, the Directive also insists on public access to the applications for permits and to the results of mandatory emission monitoring, and on triennial analyses from the Commission with details of emissions and sources based on reports from each Member State.

The Directive must be transposed into Member State legislation and applied by October 1999. Existing installations will be exempted for a transition period until October 2007, although any substantial modification to an existing installation would bring it within the framework of the new Directive, as if it were new. (The terms of the Large Combustion Plant Directive are to remain extant until December 2003 - Chapter Four A). Member States will be allowed to use a single procedure to fulfil the terms of the EIA and IPPC Directives.

The mandatory use of best available techniques

During the 1994-95 negotiations over the Directive, there was some dispute over the role of best available techniques (BAT). The Parliament, in its Opinion, asked for some very substantial amendments including the mandatory use of BAT (and the inclusion of non-Euratom nuclear installations, for instance). However, under the cooperation procedure, the Council ignored most of them. The use of BAT, though, was one of the main sticking points in the Council, with several of the greener Member States taking the Parliament's line. The final compromise involved basing the emission standards on BAT, but with flexibility built into the Directive both through its application and through its definition: there is even an annex listing twelve elements, the costs and advantages of which can be taken into account when determining BAT.

In fact, the Commission is now taking a very active role, as required under the Directive, to ensure a full exchange of information on BAT, between Member States, industry and NGOs. Moreover,

it has fixed a timetable for publishing documents, including latest information on BAT and emissions standards for various industries, including iron/steel and cement in 1997, metals in 1998, refineries in 1999, coal liquefaction in 2000 and combustion plants in 2001.

The difficult area of environmental liability

There is a third general policy area - that of EU-wide rules for environmental liability in case of accidents - which may be destined for regulatory action but which, to date, has only been the subject of a green paper, in 1993, and a lengthy debate. Among the many responses to the green paper, the Parliament used its new powers under the Maastricht Treaty to require the Commission to bring forward legislative proposals (and, in a number of Resolutions, it has since repeatedly reminded the Commission of its request).

Commission unable to adopt a proposal

By 1997, the Environment Commissioner Ritt Bjerregaard had still not been able to persuade her fellow Commissioners to agree on a draft Directive and she therefore took the unusual step of publishing a paper addressed to the Commission. She admitted that EU action on environmental liability would be controversial (several States continue to oppose the idea) and raised important legal and economic issues which needed to be handled with great care. Nevertheless, many Member States wanted a Community approach, she said, and were even delaying national legislation in the hope of seeing a coherent EU scheme.

Bjerregaard proposed three ways forward for the Commission. The first would be to adopt a draft Directive establishing a general environmental liability scheme. This would be beneficial from both an environmental and a Single Market point of view but might prove rather slow.

Bjerregaard's options for making progress

Secondly, the Commission could propose the EC's accession to the Lugano Convention, which deals with liability in a general, horizontal way and covers impairment of the environment alongside traditional types of damage. This option would be in accordance with subsidiarity and facilitate the extension of the regime to the Eastern European countries. It would, though, raise difficult questions of external competence. Five Member States are already members of the Convention; three of these - Finland, Greece, and the Netherlands - as well as Austria have already drafted national laws in line with Lugano and others have given their support to this approach. Germany, UK, Denmark and France, however, are against this option.

A third approach, Bjerregaard said, would be to choose a more focused objective to fill some gaps in Community policy. This would entail a Directive which addressed only environmental damage in the two senses of site clean-up and ecological damage, but not personal injury and property damage, for example. Finally, in the paper, Bjerregaard asked the Commission to give "concrete indications" on a preferred course of action and, having chosen one, to decide on whether it would prefer a white paper first, or a draft Directive. By April 1998, there was still no sign of any further developments.

COERCION - EU LAW ENFORCEMENT AND TRADE MECHANISMS

Regulations, however tough, are likely to mean little if Member States continually fail to implement them. The Commission drew attention to this in a Communication, adopted in October 1996. It noted that, in mid-1996, there were over 600 infringement proceedings under way and 85 legal cases in the Court of Justice against Member States over environmental law failures.

More effective implementation is not just a case of taking States to Court, it said, but of introducing more innovative proposals: EU environmental law has to be put into practice on a daily basis by large numbers of people throughout the Community and it is neither possible or practical for all the legal actions resulting from non-compliance to be channelled through one enforcing authority, the Commission, and one court of law, the Court of Justice.

More action needed at Member State level

The Commission said, in future, it would include in proposed Community legislation, where appropriate, provisions requiring Member States to provide for national sanctions in the case of non-compliance with EU environmental law. It also suggested three policies, to be applied and enforced on the ground:

- the establishment of guidelines to assist the Member States in their environmental inspections;
- the establishment of a procedure within the Member States to receive and examine complaints from the public about the implementation of Community environmental law;
- the examination, according to the principles of subsidiarity, of how best to ensure that representative organisations are guaranteed basic access to the national jurisdictions responsible for the implementation of EU environmental law.

Environment ministers, meeting in June 1997, agreed a detailed Resolution confirming the Commission's assessment that "increased efforts are needed by all actors in the different links of the regulatory chain to improve the drafting, implementation and enforcement of Community environmental law". In particular, the Resolution covered inspection, which is considered "a prerequisite to achieve the even, practical application and enforcement of environmental law in all Member States", but it stressed that the various systems used in some countries should not be replaced by a system of inspection at Community level. The Resolution gave the Commission a mandate to produce an annual report on the environment containing information on the progress Member States have made in implementing legislation.

Council Resolution on enforcement of environmental law

The Council also acknowledged the work of the EU's informal network for the implementation and enforcement of environmental law (Impel) (in which Member States and the Commission are represented). The Resolution said Impel should play an important role in the different stages of the regulatory chain and that consideration should be given to broadening its mandate.

International efforts to improve environmental policies

Internationally, the EU is also calling for a more rigorous respect of environmental issues - this can be seen clearly through the proactive role played by the EU in Agenda 21 and the more specific international negotiations concerning acidification problems and climate change (Chapters Four A, B). However, there is also an increasing effort being made to link trade to good environmental practice. Although the environment was not included in the negotiations for the Uruguay Round, the April 1994 meeting of world trade ministers in Marrakech did start-up a World Trade Organisation (WTO) committee on trade and environment issues (CTE).

In the run-up to the first ministerial meeting of the WTO in Singapore in December 1996, the Commission adopted a paper on trade and environment which called for rules to avoid trade friction and the use of unilateral measures such as eco-duties. It referred to two fundamentals: trade is not automatically bad for the environment, because trade makes possible a more efficient use of natural resources and because green technology itself is a major component of trade; and environmental measures do not automatically hinder trade (environmental costs are not a decisive factor for industries - just 1-2% of overall production costs).

Commission paper on trade and environment

Friction can arise in two ways, the Commission said: when domestic rules hamper or discriminate against imports, and when nations tackle transboundary problems by setting rules beyond their jurisdiction. In order to avoid the former, the rules must be made non-discriminatory and must avoid protectionism in disguise, it said; and concerning the latter, the EU must remain committed to multilateral solutions. It urged the WTO to accommodate trade measures through Multilateral Environment Agreements (MEAs), within the multilateral trading system under clear and predictable rules. The Communication also detailed a number of complex issues which needed resolution within the WTO.

The Council, in Conclusions agreed during July 1996, backed the Commission's ideas, saying it shared the objectives of a high level of environmental protection and of ensuring an open, equitable and non-discriminatory multilateral trading system and that it "considers them to be equally important". The Council stressed that all countries have the sovereign right to design and implement their own environmental policies through the measures they consider appropriate to protect their domestic environment, but at the same time have a responsibility to contribute to the solution of environmental problems of global and transboundary nature. It said the EU should remain strongly committed to a multilateral approach as the most effective way to tackle global and transboundary environmental problems and it backed some of the Commission's suggestions for the CTE.

Multilateral approach for tackling global problems needed

Although the EU believed that the time was ripe for some formal decisions as a result of the work of the CTE, the Singapore meeting simply received a report from the CTE covering the areas of its work. These included trade measures applied pursuant to MEAs, dispute settlement, ecolabelling and transparency provisions.

THE VOLUNTARY APPROACH - A GREEN CONSCIENCE FOR BUSINESS

Apart from the imposition of increasingly tough regulations, the Commission is also broadening its approach, as prescribed under the Fifth Environmental Programme, through the use of voluntary instruments, some aimed at avoiding legislation, and some at harnessing the power of the public to choose, by environmental criteria, products and services.

One aspect of this is to allow, indeed to encourage, the use of voluntary or negotiated agreements. The Commission says that, after 20 years, the basic regulatory framework for environmental policy is now in place but that legislative measures alone will not bring about the substantial change in current trends and practices which are necessary to make development sustainable. The electricity sector has been particularly interested in the concept as a possible mechanism for avoiding taxation designed to reduce CO_2 emissions. However, the first examples of such agreements affecting energy policies at the EU level, have been negotiated by appliance manufacturers (Chapter Four B).

Checklist for analysing environmental agreements

In late 1996, the Commission published both a discussion document on environmental agreements, and a Recommendation setting guidelines for their use by Member States. In the former, the Commission showed that a very wide range of such agreements already exists. It set out conditions under which they could be used for implementing certain provisions of Community Directives and managed at Community level. More specifically, the Communication included a detailed checklist in four stages - reasons for choice of the instrument, content, compliance with the EC Treaties, publication - which should be used in analysing the use of an agreement. The Commission said it would carefully consider, when preparing new regulatory action, whether binding environmental agreements could be used instead.

Recommendation setting guidelines for agreements

In the Recommendation, the Commission specified that agreements should:
- be open to all partners who wish to meet their conditions;
- take the form of binding contracts;
- include quantified objectives and deadlines;
- be published in national official journals available to the public;
- allow for monitoring and verification of results;
- allow for dissuasive sanctions in cases of non-compliance.

The guidelines also stated that the national authority should make provisions for examining progress under the agreements and their compatibility with the EU's Treaty provisions. When used as a means of implementing EC directives, environmental agreements, together with all relevant information, would need to be notified to the Commission for verification of their effectiveness as a means of transposition.

Council Resolution confirming role of voluntary accords

In its response to the Commission's ideas, the Council adopted, during June 1997, a Resolution in which it stated that environmental agreements "can play an important role within the mix of instruments". It recognised that they must have "specified objectives, be transparent, reliable and enforceable" and considered the Commission's checklist as a useful starting point. The Commission was asked, when proposing new legislation, to indicate and specifically justify, where appropriate, which provisions could be implemented by environmental agreements, taking account of the obligation of Member States to guarantee the results required by Directives. However, more work needs to be done, the Council stated, to clarify how environmental agreements could be used to implement EU Directives, and it invited the Commission to look into the matter.

Ecolabel, ecomanagement and environmental auditing

The ecolabel and ecomanagement instruments are further examples of the voluntary approach, but the aim in both cases is to persuade businesses that there is a promotional or publicity advantage to be gained through acting in a more environmentally-conscious way or through producing more environmentally-friendly products.

The voluntary ecolabel scheme

The voluntary ecolabel scheme, which allows manufacturers to identify their products with a distinctive EU flower symbol if they meet high environmental standards, was introduced by a Council Regulation in 1992. Since then, the Commission, in conjunction with an ecolabel committee, has defined and published in the Official Journal the environmental criteria (which includes energy efficiency where relevant) for 12 product groups, including single and double-ended light bulbs and washing machines. Although few manufacturers came forward at first, interest in the scheme began to grow in 1997.

Looking at one product group as an example, a cradle-to-grave assessment of refrigerators revealed that the main environmental impacts resulted from the use of electrical energy and the use of agents which deplete the ozone layer and contribute to global warming. The criteria, adopted in November 1996, therefore focused on those environmental characteristics. (However, as far as electrical appliances are concerned, the mandatory energy labelling and energy efficiency

standards are far more important - Chapter Four B). In December 1996, the Commission proposed a streamlining of the Regulation with improved procedures, a more rational cost structure, and the obligation on Member States to promote the ecolabel.

The ecomanagement and audit scheme

The EU's voluntary ecomanagement and audit scheme, known as EMAS, came into force in April 1995. Companies wishing to be part of the scheme must establish and implement environmental policies, programmes and management systems in relation to their sites; they must provide information on environmental performance to the public through "environmental statements"; and they must seek independent evaluation of their actions from accredited external auditors.

Although the regulations do not need to be transposed into national law, countries must take certain administrative steps to give them effect. They need to establish a system for the accreditation and supervision of environmental verifiers; send an updated list of accredited environmental verifiers every six months to the Commission; and set up competent bodies in charge of the registration of sites and of communicating the list of registered sites to the Commission. Each year, in the Official Journal, the Commission publishes a list of all the registered sites in the Community. Companies, moreover, are allowed to publicise the inclusion of their sites in the scheme, although not in direct relation to any product or packaging.

Developing green accountancy tools

A further aspect of the voluntary approach is that of encouraging companies to engage in green accountancy. A Commission discussion paper, dating from 1994, called on companies to prepare accounts reflecting not only their attitude to the environment but also the impact of the environmental risks and liabilities on their financial position. A set of guidelines on how to reflect such considerations in annual reports was drawn up for the European Commission by the Accounting Advisory Forum during 1995. It suggested that environmental expenditure should be defined as "costs of steps taken by an undertaking, or on its behalf by others, to prevent, reduce or repair damage to the environment which results from its operating activities, or to deal with the conservation of renewable and non-renewable resources".

ASSESSMENT

The European Union has made quite astonishing advances during the 1990s in the area of sustainable development and environmental policy. So much so that the frameworks for many, if not most, future national policies are now set jointly in Brussels rather than individually by the Member States. This undoubted success is not as easy to explain, at least at first glance, as the EU's achievements in the Single Market area. This is because, whereas the Single Market, just to exist, requires Member States to work together, this is not the case for environmental policy, where Member States could naturally continue to set their own agendas.

Single Market aspects of environmental policy

One part of the explanation is, of course, related to the Single Market in that some elements of environmental policy - vehicle emission limits, fuel quality (lead content, for example), some energy saving legislation - are themselves a result of the need for standardisation. There is also a more fundamental argument - gaining ground as the Single Market takes root - that competing companies need to be operating from a level playing field, and that includes environmental constraints, which are increasingly costly. The European Parliament, for example, in its Opinion on the electricity and gas market Directives stressed the need for harmonised conditions not directly related to the supply of gas or electricity. There is a third Single Market-related reason: environmental technologies are a major business growth area and EU companies need to be competitive in a world market.

Nevertheless, these reasons are not sufficient to explain much of the content of this chapter, and why the EU's competences over environmental rule-making have apparently moved forward so quickly, at least in relation to energy policy, for example.

Advantages of environmental responsibility at EU level

A less obvious but important part of the answer is that there are political advantages for Member State governments. These advantages stem from the simple fact that citizens everywhere want strict environmental legislation but do not want to pay for it. Thus, with decisions on environmental policy dispersed to Brussels, from where national media reporting is notoriously less detailed and analytical, Member State governments can take credit for environmental advances when it is advantageous to do so, and blame Brussels when the results are not to their liking or, indeed, when the costs come in. This explanation needs one further component - an ever ambitious Commission ready to exploit every opportunity, especially in the international arena - opened up by the Council's political sensitivities.

Chapter Four

In its Fifth Environmental Action Programme, the Commission set out an ambitious agenda for the 1990s. It may not have been apparent at the time quite how familiar some of its themes would become - the use of economic instruments, the integration of environment concerns into other policy areas (taken up more specifically by the Amsterdam Treaty), the need to encourage a deeper partnership between industry, government and the consumer. Much progress was made with the Programme but, by the mid-1990s, the Commission had become even more ambitious.

With the introduction of the Maastricht Treaty and codecision for environmental framework programmes, the Commission perceived an opportunity to accelerate the environmental policy process. Alongside the mid-term review of the Fifth Programme, it proposed a somewhat benign-looking Council and Parliament Decision to strengthen the Programme. The draft Decision covered all the main areas of the Programme itself, but by proposing a legislative act, rather than simply a non-legislative action programme, the Commission was asking for a more powerful platform from which to launch further proposals. Moreover, because of the codecision procedure, the draft Decision engaged the Parliament, for the very first time, in the process of setting the EU's environmental policy agenda. It remains to be seen how the Council, with its inevitable caution and compromises between Member States, and the Parliament, with its very keen ideas on strengthening environmental protection, will resolve the wide differences in their approach to the Decision when they finally get round to negotiations in the conciliation procedure. Since the Council might be willing to let the Decision fall, the Parliament may well have to make major compromises. Nevertheless, the involvement of the Parliament as an equal player in setting the EU's environmental policy agenda is surely the right way forward.

EP engaged for first time in environmental policy setting

In recent years, several highly important laws have been passed at EU level. Although their full force will not be felt until the new century, the impact of Directives for environmental impact assessments and integrated pollution prevention and control, for example, should not be underestimated. The Member States would do well if they could also see their way forward on strategic environmental impact assessments, and start serious discussions on a harmonised regime for civil liability - both these areas are consistently put forward as priorities by environmental groups.