THE SINGLE MARKET

Chapter Three

INTRODUCTION

The European Community's Single Market programme, launched by the Commission's white paper in 1985, proved to be a major milestone in Europe's history. The 1992 deadline for the Single Market now seems quite distant and, although many measures did come into force then, many others have been negotiated since, either on the basis of new proposals, or because the Commission has seen the need to strengthen the existing legislation. In the case of the energy sector, which was left out of the 1985 white paper, the Commission did not even make the key liberalisation proposals until January 1992.

In October 1996, the Commission published its first comprehensive review of the achievements of the Single Market. Although it concluded that the Single Market had been responsible for an increase in EU income and for the creation of jobs, it also noted that a number of barriers remained and that action was still necessary for "a properly working Single Market". With backing from the European Council, the Commission adopted a detailed action plan in June 1997 "designed to improve the performance of the Single Market in the years ahead". Effective liberalisation of the gas and electricity markets was considered as one of the priority measures in the plan. Subsequently, the Amsterdam European Council backed most of the Commission's ideas.

The willingness of Member States to transfer legislative powers to Brussels has been crucial in the success of the Single Market. The process began with the Single European Act (SEA) which instigated qualified majority decision-making under Article 100a for "the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market". This process was taken a significant step further when the Maastricht Treaty gave the European Parliament codecision powers.

Apart from a plethora of new laws, liberalisation has also required a far greater vigilance by the European authorities as regards anti-competitive behaviour. The Treaties give the Commission broad powers to control state aid, to vet mergers and acquisitions, and to investigate antitrust cases. These powers are utilised, sometimes to great effect, by the Commission's Competition Directorate-General, although there has been limited success in the energy sectors.

This chapter looks first at the Single Market in general with some background to the internal energy market. Two horizontal issues - public procurement and taxation - are examined in more detail. The opening up of procurement practices has been of very great concern to the electricity and upstream oil/gas industries (the related Hydrocarbon Licensing Directive is discussed in Chapter Three C). Similarly, taxation policy is of concern across the energy sector, especially with regard to the excise tax regime, (the failure of the EU to agree on a CO_2/energy tax is more properly treated with the climate change issues in Chapter Four B).

The three subsequent chapters focus on the electricity market, the gas market, and on liberalisation/competition issues relevant to other specific energy sectors (coal, oil, biofuels) and to environment policy.

A SINGLE MARKET - BUT WITH ENERGY LAGGING BEHIND

The Single Market initiative, as set out in the 1985 white paper, "constituted the most ambitious and comprehensive supply-side programme ever launched", the Commission said in the first comprehensive analysis of achievements, and "it has begun to remove the market rigidities and barriers to mobility which in the mid-1980s gave rise to persistent economic under-performance, reflected in rising unemployment and poor competitiveness".

The Commission stressed that its assessment, published in October 1996, could neither be definitive nor unqualified because not all the legislation was implemented and because it was difficult to isolate the effects directly attributable to Single Market legislation. Nevertheless, it listed the following benefits:
- growing competition between companies in both manufacturing and services;
- an accelerated pace of industrial restructuring;
- a wider range of products and services, particular in the liberalised sectors;
- faster and cheaper cross-frontier deliveries;

- greater mobility of workers between Member States;
- 300,000-900,000 more jobs;
- an increase of 1.1-1.5% in EU income between 1987 and 1993;
- inflation rates 1.0-1.5% lower than without the programme;
- economic convergence and cohesion between different regions.

The report also criticised the Member States: "*Delays in applying and enforcing Single Market rules at national level continue to limit the Single Market's positive contribution to growth, competitiveness and more employment. The Community must build on its successes and iron out the remaining political and practical difficulties which inhibit the Single Market's full potential from being achieved.*"

Four strategic targets of Single Market action plan

This analysis led to the Commission's action plan, in June 1997, with four strategic targets and a list of very specific measures for each: making the rules more effective (such as eliminating all delays in transposition of legislation, an internet shop for information on Single Market rules, and follow-up rules on public procurement); dealing with key market distortions (such as restructuring energy taxation and new guidelines on state aid); removing obstacles to market integration (such as agreement on liberalisation of gas markets and effective implementation of the electricity Directive); and delivering a Single Market for the benefit of all citizens.

Each one is categorised according to three phases: actions which can be implemented in the very short term (such as implementation of the electricity Directive); measures that have already been proposed but still need to be adopted (such as the gas liberalisation Directive); and actions where progress is likely to prove more difficult (such as the energy tax proposal).

In June 1997, the Amsterdam European Council confirmed the importance of a well-functioning internal market "as an essential element of the overall strategy to promote competitiveness, economic growth and employment throughout the Union" and endorsed the four strategic targets in the Commission's action plan. It emphasised the need to make existing rules for the Single Market more effective and the importance of timely and correct transposition of all agreed legislation into national law. It also welcomed a commitment by the UK and Austria to use their Presidencies in 1998 to support the action plan "with a view to accelerating, to the maximum extent possible, the adoption of those legislative measures concerned".

Early background to the internal energy market

Although the action plan recognised that both the electricity and gas market Directives were either in place or close to approval, the process has taken ten years. The aim of an internal energy market was agreed in September 1986: the Council said there was a need for "greater integration, free from barriers to trade, of the internal energy market with a view to improving security of supply, reducing costs, and improving economic competitiveness". Two years later, and as the result of a Commission working paper on the obstacles to an internal energy market, the Council gave the Commission the necessary mandate to bring forward proposals to remove those obstacles.

The price transparency Directive

In a first stage, the Council adopted laws on price transparency (and on the transit of electricity and gas in 1990 and 1991 - Chapters Three A, B). The price transparency Directive requires that Member States provide, to the EC's statistical office (SOEC), information on gas and electricity prices. Since 1991, SOEC has used the information in published Eurostat reports. There are four of these reports published twice a year: electricity prices for EU industry, electricity prices for EU households, gas prices for EU industry, and gas prices for EU households. Each report provides statistical information, with and without taxes, ranging across various standard consumer categories: five for household consumers, and 7-10 for industrial consumers. Eurostat also converts the information for each category from national currencies into a standard purchasing power standard and into Ecu.

In its second report on the application of the price transparency Directive, adopted in March 1996, the Commission used the figures collected over five years to point to a marked convergence in gas prices across the EU, with the exception of Germany, but a widening in electricity prices. It said this "could indicate greater inertia in the electricity industry than in the gas sector in response to competition".

However, it concluded, the biggest typical consumers in several Member States qualified for low electricity prices which were relatively similar. Moreover, these prices were closer together in central, frontier regions of the Union, where the tariffs and price structures "seem to be designed" to offer competitive prices to big consumers. The report said: "*Beyond doubt, this must be seen as*

one result of the pressure exerted on electricity generators' pricing by the opening-up of the internal market in industrial products." In some cases though, the Commission said, these lower prices were caused by cross-subsidisation to the detriment of the smaller consumers, as illustrated by the widening gap between the maximum and minimum prices in the sample. This effect was even more marked in the gas industry.

At Community level, the report noted, the interval between the maximum and minimum prices for the entire sample of industrial gas and electricity users was larger than could be reasonably explained by economic factors. This could only stem from national and regional market fragmentation, the Commission concluded, or, in some cases, uneconomic investments. More recently, in a Communication adopted in April 1998 on "The state of liberalisation of the energy markets", the Commission commented briefly on the price transparency Directive. It said: "*The figures published so far show large differences in the conditions and terms on which industrial consumers of electricity and gas are supplied in the different Member States and even within the same country which is the result of the closed market.*"

Differences in the conditions on which gas and electricity are supplied

In its 1996 report, the Commission expressed concern over a number of difficulties with the Directive - the late notification of figures, the drift towards the use of commercial confidentiality as grounds for exemption, a fall in price notifications from the locations where liberalisation has produced a proliferation of suppliers, and a fragmentation of the market. Finally, it noted that publication of prices, as provided for by the Directive, "is not capable, on its own, of bringing about any significant convergence of prices until the grid-based energy markets are opened up to competition". A new report on the operation of the Directive was scheduled to appear in 1998.

PROCUREMENT RULES - INCLUDING THE EXCLUDED SECTORS

Community rules setting non-discriminatory conditions for public procurement contracts are one of the cornerstones of the Single Market: the Commission has estimated that public procurement accounted for 11.5% of the EU's GDP in 1994. There are a range of Directives covering public procurement, with the energy, water, transport and telecommunications sectors controlled by the so-called Utilities Directive, approved in 1990. It sets basic rules requiring open tenders for works contracts worth over Ecu5m and supplies contracts valued at Ecu400,000 and above. In 1993, the rules for the excluded sectors were enlarged with provisions for services (at the same threshold level as supplies), and consolidated into a single Directive.

Under pressure from the upstream oil and gas industries and their Member States, who argued that the new bureaucracy would slow-down and threaten contract procedures, an alternative and simpler authorisation mechanism for the extraction industries was incorporated into the Directive (Article 3). In order to utilise it, though, a Member State needs to convince the Commission that contracts are dispensed according to objective criteria and without discrimination. A further piece of legislation agreed in 1994, on the granting of hydrocarbon licenses in the upstream oil and gas sector (Chapter Three C), served to confuse the exemption situation. It allowed Member States to partly meet the Article 3 criteria of the Utilities Directive through a full transposition of the licensing rules.

Alternative regime in the Utilities Directive

Only the Netherlands succeeded in winning approval for the alternative procedure to the Utilities Directive early on (in December 1993). France and the UK were granted temporary one year authorisations (December-January 1993 and July 1993-June 1994, respectively) but then failed to provide sufficient guarantees, based on national legislation, for the permanent authorisation to be granted. It was only after several further attempts, partly through the Hydrocarbon Licensing Directive, that the Commission finally granted the UK a permanent authorisation on 30 May 1997. Meanwhile, Norway, which must apply Single Market legislation when agreed within the European Economic Area (EEA), applied in July 1996 for the derogation through the EEA procedure. In early 1998, however, it was still adapting national legislation to meet the Directive's requirements.

The Netherlands and UK win Article 3 authorisation

Slow transposition and inadequate economic benefits

In general, the procurement rules have not proved as effective as the Commission had hoped. In its review of the Single Market, the Commission picked out public procurement as one area of specific concern with regard to transposition into national law, as well as surveillance and enforcement. The Commission's annual reviews of Community law regularly show below average transposition levels and several infringement procedures were started by the Commission. By early 1998, Greece, Spain, France, Portugal and Austria had still failed to satisfy the Commission that they had transposed the Utilities Directive (although, because of an agreed transition period, the deadline for Spain was 1 January 1997, and for Greece and Portugal was 1 January 1998).

In July 1997, the Commission announced it was taking action against France for a specific violation of the Utilities Directive. It alleged that the Syndicat Departmental d'Electrification de la Vendee made geographical divisions of its three year work programme, worth FFr600m, so as to ensure each one was below the threshold which required publication of the tenders in the Official Journal. In addition, the Commission said, the restricted procedure, originally specified for the contracts, was illegal, as was the failure to award contracts without award notices being published.

1996 green paper and 1998 Communication

In November 1996, the Commission, launched a debate on public procurement policy with a green paper. It pointed to the poor state of transposition of the Directives and their relatively minor economic impact. After receiving nearly 300 contributions, the Commission followed it with a Communication, in March 1998, which made a number of conclusions: firstly, the Union must take action to ensure the public procurement regime in place delivers the economic benefits that were promised; and secondly, existing instruments need to be adapted to the changing economic environment. "Achieving this will require enormous effort from all those involved: the Commission, the Member States and the private sector", the Commission explained. Consequently, it promised a series of measures to simplify the legal framework (including the exclusion of some sectors from the Utilities Directive, but not, apparently, energy) and adapt it to the new electronic age.

International aspects of the Utilities Directive

In approving the public procurement Directives, the Council insisted on a provision to allow buyers to give preferential treatment to Community suppliers (Article 36 in the Utilities Directive) but also to permit the provision to be used as a lever to open up third country procurement markets. The strategy produced quick results. In April 1994, the EU's 12 Member States signed, within the GATT framework, a new Government Procurement Agreement (GPA) with the five EFTA states (three of which subsequently joined the EC), Japan, Canada, Hong Kong, Israel, and the US.

The GPA and agreement with the US

The GPA, more ambitious than its predecessor, covers procurement of goods, services and construction at central government level (Category A), at local government level (Category B) and in a number of utilities sectors (Category C). For Category C, the GPA states that the EU will only grant access where a party is prepared to offer "comparable and effective" access to EU firms in that same sector, as stipulated in Article 36. Under the GPA umbrella, the EU quickly reached deals with Israel and Korea and, most importantly, with the US for market access to the electricity generating sector. The agreement with the US, which was much criticised by European industry, was calculated to open up opportunities worth $25-30bn/yr.

April 1998 report on negotiations with third countries

The Council approved the GPA in 1994, and the agreement with the US in 1995. At multilateral level the GPA came into force on 1 January 1996. Two years later, in April 1998, the Commission published a report on the state of negotiations regarding access to third country public procurement markets in the fields covered by the Utilities Directive. It listed the rights of suppliers, contractors and service providers of the EU in third countries by sector. Those for electricity are summarised in the table below. In addition, the report included two others sectors - "energy networks other than electricity" and "energy (exploitation of geographical areas)" - to which EU organisations have rights in Japan and in Korea. In Japan, the access thresholds are the same as in the EU's Utilities Directive; in Korea they are the same as for electricity (i.e. as in the table below). The report noted that Article 36 no longer applies to tenders for electricity production, transport or distribution products originating in Aruba, Hong Kong (where, due to privatisation, no barriers exist), Israel, Korea, Switzerland and the US.

The Commission continues to look to extend rights for EU firms, through bilateral agreements (such as those with the CEEC and Mediterranean countries) and through an early review of the GPA, as well as through other international frameworks.

Threshold values above which EU suppliers have access rights in the electricity sector

	Aruba	Israel	Korea	Switzerland	US
Supplies	0.4	0.355	0.45	0.4	0.4
Works	5.0	8.5	15.0	5.0	5.0
Services	0.4	0.355	0.45	0.4	0.4[1]

NB: All figures expressed in million standard drawing rights; [1] certain services excluded

Source: COM/98/230

Fraught attempt to adapt the Utilities Directive

Although the GPA itself did not require any legislative changes, the Commission put forward, in March 1995, a controversial proposal to align the EU rules with those of the GPA. In particular, the Commission was anxious to ensure that EU suppliers, contractors and service providers received as favourable treatment as those from third countries, pursuant to the GPA.

The Commission's proposal, which came after the entry into force of the Maastricht Treaty and therefore used the codecision procedure, was not received well. In order to examine the issue more closely, the Parliament held a hearing at which the various lobby groups spoke, largely with one voice, against the proposal. From the energy sector, Eurelectric argued the GPA should not apply to the electricity sector because it was primarily concerned with regulating procurement by government bodies rather than utilities, and, in any case, the Utilities Directive was already too harsh on commercial organisations. The Exploration & Production Forum claimed that upstream oil and gas companies should not be covered by the changes because the sector was not even included in the GPA. Several industrial groupings also pointed out that the US authorities had no intention of introducing any new legislation to meet the requirements of the GPA.

Industry opposed to extension of procurement rules

Having taken on board the arguments of industry and having engaged in an unusually lengthy period of debate with the Commission, the Parliament finally rejected the proposal on first reading. Nevertheless, the Commission accepted many of the Parliament's concerns and amended its proposal substantially. Subsequently, the Council's Common Position, which also embraced many of the amendments and which was adopted in December 1996, was passed by the Parliament on second reading, subject to very few amendments. However, even the EP's few amendments required the conciliation procedure during 1997, and the amending Directive was finally adopted in February 1998, three years after the Commission's proposal.

TAXATION - INDUCING HARMONISATION WITH GREEN OVERTONES

Legislation to harmonise excise taxes was in place at the start of the Single Market in January 1993. Two Directives applied specifically to mineral oils. One laid down rules for duty structures. The other defined minimum levels for gasoline (with a differential for unleaded), gasoil, heavy fuel oil, LPGs and kerosene. These levels, though, were largely set to accommodate each Member States' existing tax regimes. For most of the products, the minimum tax level depends on whether it is used for fuel or heating. Transition periods for Luxembourg and Greece, during which they were allowed to utilise reduced rates, expired at the end of 1994.

Large number of national exceptions continue

There was also provision, in the Directive on structures, for the Council to authorise individual Member States to exempt certain products for certain uses and for a review of the situation before the end of 1996. In November 1996, the Commission put out a substantial report looking at the 70 or so derogations according to their basic justification: transport, industrial and commercial sector, environmental policy, regional policy, and other policy. The existing derogations were listed by country and by sector in two annexes (with Council Decisions and dates).

The Commission made a number of specific proposals relating to individual derogations but, more generally and especially with regard to the environment-related derogations, it called for a more rational approach to be negotiated with the expected revision of the energy excise tax framework. Moreover, with regard to those short-term derogations which it accepted, the Commission said they should expire with entry into force of the new framework.

The Council, in its June 1997 Decision, failed to follow the advice of the Commission on many of these points. It approved over 50 exceptions not, as the Commission suggested, until December 1998 but for a further year, until December 1999. Where the Commission had proposed

Prevailing minimum excise taxes

Petrol (leaded)	Ecu337/1,000 litres
(unleaded)	Ecu287/1,000 litres
Gasoil (propellant)	Ecu245/1,000 litres
(other)	Ecu18/1,000 litres
(heating)	Ecu18/1,000 litres
Heavy fuel oil	Ecu13/1,000kg
LPG/methane (propellant)	Ecu100/1,000kg
(other)	Ecu36/1,000kg
(heating)	0
Kerosene (propellant)	Ecu245/1,000 litres
(other)	Ecu18/1,000 litres
(heating)	0

Source: Directive 92/82/EEC

Attempts to limit the excise tax derogations

the removal of 28 exemptions, the final text disposed of only 11. The Decision also allowed the Member States to continue to apply the derogations automatically for subsequent periods of two years unless the Council should decide otherwise on a proposal from the Commission.

Among the derogations extended were several relating to fuel used for private air navigation (the Commission had proposed these be abolished) and concessions relating to duty on fuels used in public transport, particularly liquid petroleum gas and methane, and on waste oils which are recycled to be used as fuel. A number of States were allowed to vary the duties they impose on unleaded petrol, according to environmental criteria. Reduced rates on heavy fuel oil to encourage the use of more environmentally friendly fuels were also permitted in several Member States.

Exemptions of unlimited duration contrary to EU law

The Commission, frustrated by the Council's approach, made a number of declarations which were annexed to the Council's Decision. One pointed out that exemptions of unlimited duration are contrary to EU law. In another, the Commission said some of the arrangements should last only until the introduction of new provisions within the framework for the taxation of energy products.

Refinements to original harmonisation Directives

There have been other changes to the original rules. Although not affecting the minimum rates, the Council did approve a Directive at the end of 1994 designed to streamline the functioning of the excise tax legislation. The measures included the simplification of procedures for warehouse administration, exemptions from payment of a guarantee for intra-Community movement, amendments to classifications, and a procedure to provide tighter control on "sensitive products" (i.e. those with lower duties but likely to be used as motor or heating fuel), while excluding products not intended for fuel use from the movement arrangements. The terms of this amending Directive were to be implemented by 1 July 1995.

Rules for use of a Euromarker

In November 1995, the Council adopted a Directive for the mandatory use of a Euromarker in any gasoil and kerosene not taxed at the rate for vehicle fuel. Although diesel and heating gasoil are essentially the same product, the differing tax regimes across the EU had led Member States to use chemical dyes to differentiate the products and combat fraud. States were also allowed to maintain their own markers. Because of a specific problem with regard to illegal trade across the border with Northern Ireland, Dublin won the right to prohibit the use of the Euromarker on Irish territory if the UK were to stop using its own marker and if the conditions (i.e. price differential) which created the need for the prohibition still existed at the time.

Rapid rise in duties on petrol

In a report on the Single Market approximation of excise duties, presented in September 1995, the Commission signalled that it was time to embrace wider policy objectives, particularly environmental considerations, into the excise tax framework. It noted that, since the start of the Single Market, the duties on petrol had increased 30% in most States and at least 20% in all States, with increases outstripping inflation. Because of a wide difference between domestic rates, there was a need to consider ways of bringing the tax rates closer together, it said.

By contrast, between January 1993 and January 1995, more than half the Member States did not adjust their heating rates at all. The Commission laid the blame partly on the fact that directly competing products, notably gas and coal, were outside the scope of the excise tax system. It asked: "*What should be the appropriate competitive relationship between the various heating fuels and how can the minimum rates be adjusted without 'inadvertently' influencing the competitive situation?*" There are strong arguments, the report said, for increasing the minimum rates on heating fuels; but, while in principle "it may be valid to apply an excise duty to natural gas, it may equally be valid, nonetheless, to give it some fiscal advantage over other fuels".

Ambitious proposal to incorporate environmental objectives

Then, in March 1997, the Commission put forward a highly ambitious plan to revise the excise tax framework to include all energy products. This was partly in response to the legal requirement of the original Directives to review the system, and partly in response to the failure of the Council of Ministers to make any progress towards a Community CO2/energy tax (Chapter Four B). The Directive, if adopted, would replace the two existing Directives which apply to mineral oils (a third law on general excise tax arrangements would then have to be adapted to apply to all the products covered by the new law).

The Commission proposed to broaden the scope of taxation beyond mineral oils to include natural gas, solid fuels, electricity and renewables. All the products should be taxed provided they were used for fuel or heating, the proposal said, but they should be compulsorily exempted if used for

raw material or chemical reduction. Electricity would be taxed at the level of output, according to the draft Directive, although States would be allowed to apply additional taxes, for environmental reasons, to input fuels (but these would not contribute towards compliance with the minimum levels). The Directive would provide support for renewables by allowing Member States to refund the tax on electricity output paid by the consumer to the producer.

Because many different taxes are applied to energy, the Commission suggested that the minimum level for each product should be applied to the total charge levied in respect of all indirect taxes (excluding VAT). This way of defining minimum levels would, therefore, include traditional excise taxes, taxes on energy, indirect taxes on emissions and parafiscal charges; it would, though, exclude direct taxes on emissions themselves. Those products for which no specific minimum level was proposed, the Commission said, should be taxed at a level not lower than the level applicable to the equivalent heating or motor fuel (calculated by energy value).

Commission proposes three tax strands

The draft Directive set out three strands for minimum taxation levels: energy products used as motor fuels; energy products used as fuel for certain industrial and commercial purposes; and energy products used as heating fuels. It also provided for some derogations to encourage certain modes of transport (commercial navigation within EC waters, rail and navigation on inland waters), thus echoing suggestions in its earlier proposal on exemptions. Other derogations were proposed for States to grant tax refunds when firms incurred investment expenditure designed to improve the efficient use of energy, and for the preferential treatment of pilot environmental projects, small hydro and renewables plants, and for heat generation where associated with electricity.

By March 1998, the Council (which must act unanimously on taxation proposals) had made little progress with the proposal. Soon after the Commission put it forward, the Member States asked for more analysis; then, during the second half of 1997, the Luxembourg Presidency focused discussions on the technical aspects of the proposal, without forcing negotiations on the political issues. In the first half of 1998, the UK Presidency looked unlikely to make a breakthrough.

Majority of Members States support the use of energy taxes

However, support for energy tax reform is growing. In the mid-1990s, around half the Member States were strongly in favour of the Commission's CO_2/energy tax proposals (Chapter Four B). More recently, in September 1997, nine Member States (Austria, Belgium, Denmark, Germany, Finland, France, Luxembourg, the Netherlands and Sweden) met in Berlin, at the invitation of Germany, and agreed on substantial parts of the Commission's excise tax proposal.

They said the revision should allow for the excise tax basis to be expanded to include all energy products "taking into consideration their different pollutions" (although the French, with their nuclear energy concerns, insisted that the word "pollutions" meant "polluting emissions"). They agreed there should be increases and "dynamisation" of the minimum tax rates; and that there

Proposed minimum taxation levels

	January 1998	January 2000	January 2002
Motor fuels			
Petrol (Ecu per 1,000 litres)	417	450	500
Gasoil (Ecu per 1,000 litres)	310	343	393
Kerosene (Ecu per 1,000 litres)	310	343	393
LPG (Ecu per 1,000kg)	141	174	224
Natural gas (Ecu per GJ)	2.9	3.5	4.5
Fuels for certain industrial and commercial purposes			
Gasoil (Ecu per 1,000 litres)	32	37	41
Kerosene (Ecu per 1,000 litres)	30	35	39
LPG (Ecu per 1,000kg)	41	48	53
Natural gas (Ecu per GJ)	0.3	0.6	1.1
Energy products used for heating or electricity			
Heating gasoil (Ecu per 1,000 litres)	21	23	26
Low sulphur HFO (Ecu per 1,000kg)	18	23	28
Other HFO (Ecu per 1,000kg)	22	28	34
Kerosene (Ecu per 1,000 litres)	7	16	25
LPG (Ecu per 1,000kg)	10	22	34
Natural gas (Ecu per GJ)	0.2	0.45	0.7
Solid energy (Ecu per GJ)	0.2	0.45	0.7
Electricity (Ecu per MWh)	1	2	3

Source: COM/97/30

should be adequate consideration to particularly "climate-friendly" and resources-conserving types of energy, and to recognising special efforts by industry. All nine agreed that the Commission's approach for a moderate increase in the minimum tax rates was suitable.

Encouraging the use of environmental taxes

Apart from harmonising the excise tax network, the Commission has also tried to encourage a framework within which Member States can utilise national environmental taxes and charges. In a Communication, put forward in early 1997, the Commission explained that there was an increasing use of such levies and that they were not always compatible with the provisions of the Single Market or with the Community's international obligations.

Guidelines for use of environmental charges

The Communication analysed in some detail the legal obligations which constrain the Member States but also defined the possibilities for implementing environmental charges. Member States, for example, must inform the European Commission of their activities when such charges include state aid, when fiscal measures are related to technical standards and regulations, and when national measures are taken to transpose Community Directives into national law. The framework guidelines can be summarised very briefly as follows:

- if a levy has a clearly positive effect on the environment, 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;
- exemption from paying the levy, and the way the revenues from environmental levies are used, should fulfil rules in the field of state aid.

Environment-related charges used by Member States

	Au	Be	De	Fi	Fr	Ge	Gr	Ir	It	Lu	Ne	Po	Sp	Sw	UK
Motor fuels															
Unleaded	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√
Diesel			√	√										√	
Gasoline				√										√	
Carbon/energy			√	√							√			√	
Sulphur														√	
Other (not VAT)	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√
Other energy															
Carbon/energy			√	√							√			√	
Sulphur			√		√									√	
NOx					√									√	
Other excise	√	√	√	√	√	√	√	√	√	√	√		√	√	√

NB: Information correct as of October 1996, according to the Commission.

Source: COM/97/9

Finally, it is worth noting that the Community does have a harmonised system for the application of Value Added Tax (VAT/TVA). There is a standard minimum rate of 15% to be levied on all goods, but the legislation allows reductions for specific categories, such as electricity and gas, so long as there is no risk of distorting competition.

ASSESSMENT

The Single Market has been a driving force behind the success and growth of the European Community throughout the 1990s, indeed it has underpinned the ability of the Community to transform itself into a real Union of Member States. The very fact that 15 separate and sovereign countries have signed up voluntarily to a vast number of politically sensitive and technically detailed legal measures is without precedent in history; they must have done so for good reason. It is worth stating the obvious too, that there has never been a hint of any Member State wishing to leave the Community. Even the list of countries waiting to join the EU testifies to its ongoing success.

The Commission itself has tried to define the benefits of the Single Market: sharper competition between businesses, accelerated industrial restructuring, improved services following on from liberalisation, enhanced mobility of workers and more jobs, lower inflation rates, increased GDP,

and economic convergence between regions. These are significant developments. And the Member States are quite convinced there are substantial benefits to come - not only are they trying to beef up the Single Market, but they are also intent on economic and monetary union.

Within this overall picture of achievement (which can be so easy to overlook), there have been, of course, hold-ups, flaws, and inconsistencies. Energy has certainly been one of the least progressive areas within the Single Market. The internal energy market got off to a bad start when it was left out of the Commission's original 1985 white paper, and, as later chapters document, it was subject to endless delays of one sort or another.

Two horizontal areas of policy, evident more or less from the start of the Single Market, have promised to be of significance to the energy sector, although in very different ways. The original public procurement regime proved a disappointment, though, as the Commission's 1996 green paper and 1998 Communication clearly showed. The Member States were slow to implement the legislation, and the expected benefits did not materialise. A more determined effort is now under way, although it may be that the liberalisation of the sectoral markets themselves will have more of an impact on the procurement habits of the main players within those markets than the procurement legislation.

Procurement rules less than completely effective

Although the EU won significant concessions on paper from the US with the conclusion (under the GATT framework) of the Government Procurement Agreement, the Commission ran into serious difficulties (especially with the European Parliament) when it tried to amend the Utilities Directive to take account of the GPA. It is worth quoting an unusually direct analysis of the situation by a Commission official found on DGXVII's website: "*The most important item to remember is that the balance between private and public undertakings in the excluded sectors has been safeguarded in accordance with the commitments undertaken by the Commission vis-a-vis the Council when the GATT Agreements were signed. This is an important milestone in the absence of a comparable situation with our trading partners. On the other hand, it has to be acknowledged that the Commission has partially failed in its attempt to impose uniform rules on all the sectors. The sheer density of the texts has finally produced an effect contrary to the simplicity sought. As for industry and in particular the electricity industry, we may well wonder whether, at the end of the day, the constant questioning of the legitimacy of Directive 93/38 [the Utilities Directive] and of the GPA and even the intentions ascribed to the US with regard to its will to carry out its obligations have not also culminated in producing the opposite effect from that desired.*"

Harmonisation, or rather approximation of excise taxes, is the other Single Market horizontal policy with a potentially important impact on energy. However, this area suffers from a twin handicap: a few Member States continue to maintain a hard nationalistic line on both energy and taxation policy. The 1992 legislation only put in place minimum levels for oil excise taxes, based on then extant rates, but allowed a plethora of exceptions. Since then, the Commission has, at least, tried to cut down on the exceptions, but has failed miserably.

Plan to revise excise taxes should be supported

Finally, after fiddling around with a CO_2/energy tax for years, the Commission has done the sensible thing and proposed a radical revision of the excise tax regime, taking environmental imperatives into account. The proposal does three things. It fulfils the Single Market objective by improving the harmonisation of excise taxes across all energy products; it raises the levels at which the minimum rates are set, thereby discouraging the use of natural resources; and, by benefiting renewable energies, it makes environmental policy judgements about the relative benefits of certain fuels. All these are progressive aims, and deserve to be supported.