

**IMPLEMENTATION OF EUROPEAN ENVIRONMENTAL LAW**  
**SUMMARY OF QUESTIONS AND ANSWERS FROM SESSION WITH THE COMMISSION**  
**IN THE ENVIRONMENT COMMITTEE MEETING ON 27 NOVEMBER 2006**

***HORIZONTAL QUESTIONS***

**1. Member States' compliance with the Emissions Trading Scheme (ETS) (John Bowis)**

Eight Member States have failed to give details of their plans for the second phase of the Emissions Trading Scheme (ETS), and several of the remaining Member States' plans lack an ambitious target for reducing carbon emissions. In light of the fact that the ETS is the European Union's main strategy for reducing Carbon emissions, what steps is the Commission taking to ensure full compliance with the system?

**Reply**

The Commission pointed out that the deadline for the submission of National Allocation Plans (NAPs) for the second trading period covering the years 2008-2012 expired on 30 June 2006. Since then, 19 Member States have submitted their NAPs. To date, six Member States have failed to submit their NAP (Austria, Czech Republic, Denmark, Hungary, Italy and Spain). The Commission said several among these six Member States were already well advanced in their national processes and the Commission was confident that new NAPs would be submitted in the coming days or weeks.

In October of 2006 the Commission decided to launch infringement proceedings and to send letters of formal notice to the eight Member States, which at that time had not notified their NAPs. If there were Member States that will have not send their NAPs in December 2006, the Commission would in all probability decide to send a reasoned opinion according to Art. 226 of the Treaty.

The Commission services were already assessing the NAPs. That question would be addressed at the 29 November 2006. The Commission could not disclose details to the Committee about what might be the outcome of the deliberations by the College.

The Commission pursued two main objectives in the assessment of the NAPs: First, to ensure that the Emissions Trading System for the second period is fully operational at the beginning of 2008 and second, to ensure that the NAPs are consistent with the Emissions Trading Directive and with the EU's commitments under the Kyoto Protocol.

Mr Bowis said the Commission should be more angry that the deadline of 30 June 2006 has been missed by so many months and Portugal and Slovenia only slipped into compliance. The Commission had the power and the duty to take legal action against these Member States. Mr Bowis wanted to know what processes were in place to carry that through. Several of the NAPs were likely to be rejected because Member States had supplied figures that were higher than actual emission levels for the first year of the scheme. The first seventeen plans proposed a cap of 15 per cent above the actual emission of 2005. This demonstrated the high risk of the whole

scheme collapsing and losing credibility, effectiveness and accountability. Thus, Mr Bowis wanted to know about the assessment of the NAPs by the Commission and how the Commission would reject and amend the NAPs to ensure Member States comply.

The Commission said it had used all its powers under the Treaties to ensure that the NAPs are submitted. In October the Commission send letters of formal notice, the Member States were given a shortened deadline for their replies (i.e. one month instead of two months). This allowed the Commission to go ahead with the proceedings and to decide to send reasoned opinions to those Member States that would not submit their NAPs in December.

Concerning the assessment of the submitted NAPs, the Commission could not disclose information to the Committee about the deliberations that were going to take place on 29 November 2006. The deliberation taking place only a few months after the expiry of the deadline for submitting the NAPs indicates that the Commission was very serious about exercising its powers under the Emissions Trading Directive.

Mr Florenz asked the Commission to what extent the decreasing staff number of the Commission influenced the ability of the Commission to control the transposition of Community directives into national law. The Commission answered that there were many staff shortages in many areas and that the workload for the units dealing with climate change was particularly heavy. There was a re-organisation agreed earlier this year. One of the objectives of this re-organisation was to strengthen the units of the DGs in charge of climate change and emissions trading.

Ms Lienemann pointed out that Member States have over-evaluated their emissions quotas so that the final target will not be achieved and greenhouse emissions were not going to be reduced. She asked the Commission whether it thought it had the necessary tools to challenge Member States that have been given too many quotas in order to adhere to the law and also to achieve the Kyoto targets.

The Commission answered that apart from the legal enforcement powers which are already used there are other powers which are of a bigger impact. If the Commission did not approve a NAP then the companies in the Member State concerned would not be able to participate in emissions trading and might thus even be obliged to purchase all allowances needed in the market as of 2008. This means that there is a strong economic incentive for the Member States to have their NAPs adopted. The Commission considered this as its most powerful tool.

## ***SPECIFIC QUESTIONS***

### **2. Implementation and Enforcement of the RoHS Directive (*Carl Schlyter*)**

As of 1 July 2006, Member States are obliged to apply the provisions of Directive 2002/95/EC on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS). On 21 June 2006, the Commission clarified that the use of the commercial mixture of DecaBDE in electrical and electronic equipment would not be compliant with RoHS due to its high content of NonaBDE. Since February 2005, the Commission held three roundtable meetings on the implementation of WEEE and RoHS with the different industry sectors concerned. On 22 November 2006, the Commission will meet the Member States to receive their reports on the application of Article 4(1) of RoHS and the enforcement activities put in place.

On the basis of the roundtable discussions with industry and the reporting by Member States about the application and enforcement of Article 4(1) of RoHS, does the Commission consider that all electrical and electronic equipment put on the market after 1 July 2006 is fully RoHS-compliant, including with regard to the prohibition of the use of the commercial mixture of DecaBDE? If not, could the Commission specify a) what electrical and electronic equipment is not RoHS-compliant, in which way and for what reasons, and b) in which Member States it sees unsatisfactory application and enforcement of Article 4(1) of RoHS? In case of unsatisfactory application and enforcement of Article 4(1) of RoHS in general, and with regard to the commercial mixture of DecaBDE in particular, what does the Commission intend to do to ensure full RoHS-compliance before the 2006 Christmas sales?

### **Reply**

The Commission confirmed that the RoHS Directive is fully applicable since 1 July 2006. The information received by the Commission services indicated that all Member States have transposed the RoHS Directive. As a result all Member States now have to ensure that all products put on the market after 1 July 2006 comply with the requirements as laid out in the Directive. However, the Directive does not apply to products put on the market before 1 July 2006. These products can still be legally sold in the EU even if they do not comply with the RoHS Directive. The commercial use of DecaBDE as such is not prohibited by the Directive. However, the use of DecaBDE containing levels of NonaBDE higher than 0.1% for manufacturing purposes is prohibited. The Commission is not aware of any product put on the market after 1 July 2006 that would not respect this requirement. If evidence of any breach of this requirement would be known to the Commission, the Commission services would not hesitate to propose the launching of legal enforcement action according to Art. 226 of the Treaty.

Ms Auken asked how the Commission ensures that the requirements are complied with. Products that were placed on the market after 1 July 2006, there might still be problems with controls and, moreover, people might feel that all substances have been withdrawn from the market even if this was not necessarily the case. The Commission stated that the obligation to carry out its actions is an obligation mainly for Member States. The Commission said it was aware that Member States have already been setting up inspection systems. If the Commission receives any complaint indicating that the provisions in the RoHS Directive are not effectively applied, the Commission would launch an investigation and if necessary take legal action.

The Directive is addressed to the Member States. The Member States have to ensure that as of 1 July 2006 the products put on the market comply with the Directive. The Member States have focused on information campaigns for the economic operators and the importers. As a result the Commission was informed by the Member States that many operators have voluntarily withdrawn some products from the market that were non-compliant. The Member States have not started systematic inspections but have done spot inspections. In order to carry out systematic inspections on the market in the most effective way they are setting up strategies in order to identify the most problematic products to be inspected, i.e. the mass products and the well-identified products for which it is most likely that hazardous substances are present.

Mr Holm wanted to know which products the Commission was talking about when mentioning products that are manufactured before 1 July 2006 and that could still be marketed and second, which Member States were marketing large volumes of those products. The Commission suggested that there might be a misunderstanding on the notion of "to put on the market". Products which have been put on the market before the deadline defined in the Directive can be

sold even after that date<sup>1</sup>. There is some guidance issued by the Commission on this notion "to put on the market" and the Commission said it would be glad to make this document available<sup>2</sup>.

### **3. Via Baltica** (*Margrete Auken, Satu Hassi and Bart Staes*)

Does the Commission follow the planning of the Via Baltica road in Bialostockie Voivodship, in particular as regards the Augustow city bypass through Rospuda Valley wetlands? The Polish government has said it intends to begin work on the section by the end of 2006 with the logging of primeval forest for access roads. Any such construction will cause habitat loss and fragmentation, as well as noise and other adverse effects in a Natura2000 site. Has a Strategic Environmental Assessment been completed for the road, and have alternative routes been rigorously examined? How will the Commission ensure that non-reversible damage is not done to the protected area in question in breach of EU environmental legislation?

#### **Reply**

The Commission services are currently investigating several complaints concerning road construction projects in the Northeast of Poland. One of them is the abovementioned Augustow city bypass. The main issue at stake is whether such projects comply with Community legislation on Environmental Impact Assessment, the Birds Directive and the Habitats Directive. The information the Commission has received indicated that these road projects including the Augustow city bypass might affect areas which should be designated under the Birds and the Habitat Directive. The complaints are being investigated and the Commission might take a decision in the coming weeks. For the Commission it was not clear whether the Augustow city bypass and the other projects which are being investigated are part of the Via Baltica project as being indicated in the text of the question. The information received from Polish authorities indicates that in fact no decision has been taken on the location of Via Baltica and several alternatives are being considered in the framework of the strategic assessment.

### **4. Possible violation of the Water Framework Directive and the Habitats Directive in Andalusia, Spain** (*Johannes Blokland*)

In order to increase the water supply to the city of Málaga, the Spanish authorities intend to dam the Río Grande, a tributary of the Río Guadalhorce, and construct a pipeline with a diameter of 1.6 metres to divert a quarter of the water of the Río Grande and use it to supply water to Málaga.

Is the Commission aware of this plan, and if so, does it not consider that the plan violates European law, particularly the Water Framework Directive (2000/60/EC), which requires surface waters to be maintained in an ecologically acceptable state, and the Habitats Directive (92/43/EEC)?

If the plan does not comply with the requirements of these directives, what measures will the Commission take?

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<sup>1</sup> This sentence has been corrected in agreement with the Commission so that the text reflects the actual legal situation.

<sup>2</sup> [http://ec.europa.eu/environment/waste/pdf/faq\\_weee.pdf](http://ec.europa.eu/environment/waste/pdf/faq_weee.pdf)

## **Reply**

The Commission said it did not have any information concerning the proposal to build a dam in the Rio Grande in order to divert water to the city of Málaga. The first information the Commission received was in form of this question itself. The Commission added that currently the case is rather difficult to fit in the Water Framework Directive. The key obligation under the Water Framework Directive is to avoid the deterioration of the ecological quality of water. That would not apply to that type of project. Relating to the Habitat Directive the Commission pointed out that the Rio Grande is not part of any area which is identified under the Habitats Directive. However, this might have an indirect impact on the designated area where the Fabalas, Pereilas and Guadalhorce rivers are located. Art. 6 of the Habitat Directive states an obligation to carry out an impact assessment. This would trigger any measures which would alleviate or compensate negative impacts on the habitat. At any rate, the information the Commission had available at present, does not enable the Commission to identify any specific breach of community legislation, in particular the Habitats Directive. But if the Commission ever was to discover a possible infringement, the Commission would carry out the relevant investigation.