

EUROGAS POSITION PAPER ON THE COMMISSION COMMUNICATION ON ENVIRONMENTAL AGREEMENTS

(COM(96)561 - 27.11.96)

1. Eurogas welcomes the Communication from the Commission on Environmental Agreements (COM(96)561). The Communication is a major step in recognising Environmental Agreements as a general policy tool and should promote the use of all types of Environmental Agreements including voluntary agreements and implementation agreements.

2. Eurogas believes that the use of Environmental Agreements has many advantages.

The degrees of freedom offered by the negotiated approach should allow each sector of activity to reach economically and technically realistic objectives in a well-defined realistic time schedule more easily than traditional regulation. In a such negotiated approach, each company will be in a position to share its own experience and to make the negotiation process more valuable. Considering that it is not fruitful to consider environmental protection from a general point of view, Eurogas welcomes the Commission's willingness to take into account the complex circumstances within which industry has to operate.

Environmental Agreements, being based on co-operation will result in improved dialogue between authorities and industry. For public authorities, Environmental Agreements offer opportunities of cost reduction and accelerated implementation compared to traditional regulation process. They also provide for long-term planning of environmental control measures and for an optimal allocation of responsibility. In the view of Eurogas anyway, regulation should only apply in limited cases e.g. in the event that Environmental Agreements reveal an environmental deficit or if safety or security are involved to the same extent as environmental protection.

3. Eurogas considers that Environmental Agreements are particularly suited to implement long-term and comprehensive objectives such as the objectives that can be defined at the European or national level after the Kyoto Conference on Climate Change. In this perspective, methane emissions from the gas industry might appear be an issue for agreements.
4. Eurogas favours all approaches based on voluntary industry action, confidence and partnership between the industry and the authorities.

Eurogas considers that voluntary agreements can meet environmental objectives while, at the same time, in so far as they represent balanced cost-effective obligations suited to companies' concerns, they should safeguard industrial competitiveness.

Eurogas believes that prior to each Environmental Agreement the authorities should consult with the relevant industries on the objectives to be achieved in order to assess their feasibility, which is certainly a pre-condition for the success of the agreement at stake. Openness by the authorities, to reassure the industry that it is taking a fair share of society's burden, is key to building the partnership, which is the essence of the Environmental Agreement approach.

5. Eurogas considers that Environmental Agreements should "bind" both contracting parties and not just one of them. It is very important that, in order to achieve long-term planning security, which is one of the major benefits of voluntary approaches, the signing governments or competent authorities commit themselves to respect the agreement within the relevant legislative bodies and to ensure that what is covered by the agreement will not be subject to more restrictive legislation (including fiscal measures) before the agreement has expired. Authorities should also undertake measures to implement the agreed provisions when drawing up future legislation. If governments or contracting authorities renege on their commitments, the companies should be released from their obligations.

On the other hand, Eurogas recognizes that an Environmental Agreement, despite the fact that in principle it cannot be enforceable, could contain provisions on sanctions if the industry concerned should fail to achieve its commitments. Eurogas believes that provisions on sanctions must be part of the negotiation process between authorities and industry.

6. Eurogas shares the view expressed in the Communication that the Commission does not have the legal competence to sign binding agreements. There will be considerable difficulties to obtain support from the companies concerned if a European agreement is only binding for industry. In any case, the legislative bodies of the EU - the Council and the Parliament - should oblige themselves to take into account existing agreements in a specific area of activity when issuing future legislation. Stronger involvement of the Council would also commit Member States to take into account agreements when introducing national measures in the same field.
7. Eurogas regrets that the Communication and the Recommendation to the Member States only allow for the use of Environmental Agreements for the implementation of a Directive when this has been explicitly foreseen in the concerned Directive. This reduces Environmental Agreements from a general environmental instrument to one that can only be used in some specific cases.

The Communication only allows Environmental Agreements that rely on explicitly quantified objectives, which, in a large number of cases, might be a possible approach. However, excluding other forms of commitments appears to be too restrictive as other forms of environmental legislation do not provide for quantified objectives, which does not make them necessarily useless.

8. Eurogas fully supports the Commission in its efforts to set up a general framework of criteria for Environmental Agreements as this avoids uncertainties about whether a specific Directive can be implemented via an agreement or not. Eurogas considers that future Directives at least should allow sufficient room for the conclusion of Environmental Agreements at national levels.

Eurogas agrees with the Commission that Environmental Agreements should also be available to avoid further legal measures, and regrets that this aspect has not been more deeply explored.

9. Eurogas had hoped that the Commission's Communication would give more incentives for the application of the instrument of Environmental Agreements in the Member States. Unfortunately, this potential contribution to a more widespread and effective use of Environmental Agreements is missing in the Communication. Furthermore, Eurogas regrets that the proposed framework does not provide for sufficient incentives for industry to sign agreements and/or to make commitments at European level.
10. Eurogas welcomes the fact that the Communication approves the use of a range of instruments including benefits for those companies entering into an agreement as a mean to avoid "free riding". The granting of exemptions from specific environmental legislation or fiscal measures for companies that have signed an Environmental Agreement can also be an effective tool but might not be applicable in some countries. An objective could be to investigate means to provide a legal safeguard to companies parties to an Environmental Agreement from being not disadvantaged vis-à-vis free riders.
11. Eurogas remains available at any time to discuss in more detail the points made above.

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