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## **REPORT**

on environmental agreements at Community level within the framework of the Action Plan 'Simplifying and Improving the Regulatory Environment' (COM(2002) 412 - 2002/2278(INI))

Committee on the Environment, Public Health and Consumer Policy

Rapporteur: Guido Sacconi



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## PROCEDURAL PAGE

By letter of 18 July 2002 the Commission forwarded to Parliament the communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on environmental agreements at Community level within the framework of the Action Plan 'Simplifying and Improving the Regulatory Environment' (COM(2002) 412), which had been referred to the Committee on the Environment, Public Health and Consumer Policy for information.

At the sitting of 16 January 2003 the President of Parliament announced that the Committee on the Environment, Public Health and Consumer Policy had been authorised to draw up an own-initiative report on the subject under Rules 47(2) and 163.

The Committee on the Environment, Public Health and Consumer Policy had appointed Guido Sacconi rapporteur at its meeting of 5 November 2002.

It considered the draft report at its meetings of 19 March and 23 April 2003.

At the latter meeting it adopted the motion for a resolution by 35 votes to 11, with no abstentions.

The following were present for the vote: Caroline F. Jackson, chairman; Alexander de Roo, vice-chairman; Guido Sacconi, vice-chairman and rapporteur; María del Pilar Ayuso González, Jean-Louis Bernié, Hans Blokland, David Robert Bowe, John Bowis, Martin Callanan, Carmen Cerdeira Morterero (for Elena Valenciano Martínez-Orozco), Dorette Corbey, Anne Ferreira, Christel Fiebiger (for Pernille Frahm), Marialiese Flemming, Karl-Heinz Florenz, Cristina García-Orcoyen Tormo, Neena Gill (for Rosemarie Müller), Laura González Álvarez, Robert Goodwill, Jutta D. Haug (for María Sornosa Martínez), Marie Anne Isler Béguin, Hedwig Keppelhoff-Wiechert (for Raffaele Costa), Christa Klaß, Eija-Riitta Anneli Korhola, Bernd Lange, Peter Liese, Caroline Lucas (for Hiltrud Breyer), Minerva Melpomeni Malliori, Emilia Franziska Müller, Riitta Myller, Giuseppe Nisticò, Ria G.H.C. Oomen-Ruijten, Béatrice Patrie, Marit Paulsen, Fernando Pérez Royo (for Torben Lund), Dagmar Roth-Behrendt, Yvonne Sandberg-Fries, Karin Scheele, Horst Schnellhardt, Bart Staes (for Patricia McKenna), Catherine Stihler, Astrid Thors, Antonios Trakatellis, Kathleen Van Brempt, Peder Wachtmeister and Phillip Whitehead.

The report was tabled on 24 April 2003.

## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

**on environmental agreements at Community level within the framework of the Action Plan ‘Simplifying and Improving the Regulatory Environment’ (COM(2002) 412 - 2002/2278(INI))**

*The European Parliament,*

- having regard to the Commission communication on environmental agreements at Community level within the framework of the Action Plan ‘Simplifying and Improving the Regulatory Environment’ (COM(2002) 412 - C5-0622/2002)<sup>1</sup>,
  - having regard to Articles 174 and 175 of the EC Treaty,
  - having regard to its resolution of 17 July 1997<sup>2</sup> on the Commission communication to the Council and the European Parliament on environmental agreements,
  - having regard to its resolution of 3 April 2001<sup>3</sup> on the Commission Green Paper on the environmental issues of PVC,
  - having regard to its resolution of 13 June 2002<sup>4</sup> on the Commission communication to the Council and the European Parliament ‘Pedestrian protection: commitment by the European automobile industry’,
  - having regard to Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme<sup>5</sup>,
  - having regard to the Commission Action Plan ‘Simplifying and Improving the Regulatory Environment’<sup>6</sup>,
  - having regard to the conclusions of the Lisbon, Stockholm, Laeken, Barcelona and Seville European Councils,
  - having regard to the negotiations currently underway on the conclusion of an interinstitutional agreement on improving the quality of Community legislation,
  - having regard to Rules 47(2) and 163 of its Rules of Procedure,
  - having regard to the report of the Committee on the Environment, Public Health and Consumer Policy (A5-0123/2003),
- A. whereas the Commission is calling on the European Parliament to contribute to the debate on simplifying and improving the regulatory environment and, in particular, the possibility

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<sup>1</sup> Not yet published in OJ.

<sup>2</sup> OJ C 286, 22.9.1997, p. 254.

<sup>3</sup> OJ C 21, 24.01.2002, p. 112.

<sup>4</sup> P5-TAPROV(2002)0323.

<sup>5</sup> OJ L 242, 10.9.2002, p. 15.

<sup>6</sup> COM(2002) 278, not yet published in OJ.

of using voluntary instruments to achieve environmental objectives,

- B. whereas in its role as co-legislator in the sphere of environmental protection the European Parliament is morally obliged to play a constructive and ambitious part in this debate,
  - C. whereas Article 175 of the EC Treaty assigns the legislator the role of adopting the measures necessary to achieve environmental policy objectives and whereas such measures take the form of binding legislative acts,
  - D. whereas the final indent of Article 3(5) of the Sixth Community Environment Action Programme calls for the encouragement of voluntary commitments or agreements to achieve clear environmental objectives, including setting out procedures in the event of non-compliance,
  - E. whereas voluntary instruments may, for operators in the sector, constitute a stimulus for innovation and research and, if accompanied by appropriate incentives and disincentives, an encouragement to achieve ambitious environmental objectives and consider environmental quality as a primary parameter of competitiveness,
  - F. whereas the European Parliament has repeatedly called on the Commission to present a proposal for a legislative framework on environmental agreements<sup>1</sup>,
  - G. whereas the use of voluntary regulatory instruments (self-regulation and co-regulation) should always be incorporated in a broader reference framework and whereas the sectors which might be the subject of environmental agreements should therefore be clearly identified by the Commission and communicated to the legislator before the launch of any kind of negotiations with operators in the sector or the recognition of any kind of agreement between them,
  - H. whereas, in order to ensure the transparency and effectiveness of voluntary instruments, their conditions of application, control mechanisms and any penalties in the event of the agreed objectives not being achieved or being inadequately achieved should be precisely defined,
  - I. whereas under no circumstances may the existence of environmental agreements in a particular sector prejudice the possibility of the legislator regulating the same sector by means of a binding legislative act,
  - J. whereas it is appropriate to identify from the outset a number of sectors in which voluntary instruments might usefully be tried in the pursuit of some of the Community's environmental objectives,
1. Welcomes the Commission's initiative to present the terms on which environmental agreements at Community level should be drawn up and tried out but deplores that this

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<sup>1</sup> EP resolution of 3 April 2001 on the Commission Green Paper on the environmental issues of PVC (OJ C 21, 24.1.2002, p. 112.); EP resolution of 17 July 1997 on the Commission communication to the Council and the European Parliament on environmental agreements (OJ C 286, 22.9.1997, p. 254.); Opinion of the Committee on the Environment, Public Health and Consumer Policy of 19 February 2002 on the Commission communication 'Pedestrian protection: commitment by the European automobile industry'.

has taken the form of a non-binding communication instead of a proposal for a general legislative framework on environmental agreements, as repeatedly called for by the European Parliament;

2. Stresses that traditional legislative instruments must continue to be the normal means of achieving the environmental policy objectives laid down in the Treaties;
3. Considers that the use of environmental agreements may be a useful complement to legislative measures where they bring improvements of equivalent or broader scope than those achievable by means of traditional legislative instruments;
4. Emphasises that the sources of environmental pollution are no longer concentrated in industrial facilities but lie in manifold economic activities and consumer behaviour and that this limits the scope for solving them through simple command-and-control;
5. Agrees with the distinction made by the Commission between two types of environmental agreement (self-regulation and co-regulation) but calls on the Commission to define a clear set of criteria for determining the choice between those two instruments;
6. When environmental agreements are chosen as a supplement to legislative measures, expresses a preference for co-regulation, since this would allow the European Parliament and Council to be involved in the adoption of the objectives and ensure open and transparent processes with consultation of business and consumers<sup>1</sup>;
7. Considers that the results of spontaneous agreements initiated by stakeholders who have chosen to commit themselves to reaching an environmental objective in line with Article 174 of the Treaty, in areas in which the Commission has neither proposed legislation nor expressed an intention to do so, should be systematically closely monitored in order to take into account acquired experience in this matter;
8. Calls on the Commission to identify clearly beforehand, in its horizontal or vertical planning documents, the objectives which might be pursued by means of environmental agreements and the sectors that might be concerned and to notify this to the legislator before the launch of any kind of negotiations with operators in the sector or the recognition of any kind of agreement between them;
9. Requests that whenever the legislator expresses an unfavourable opinion on the conclusion of environmental agreements (self-regulation or coregulation), the Commission should refrain from concluding or recognising such agreements;
10. Emphasises the need to define a series of essential prerequisites for the conclusion of an environmental agreement which would be valid irrespective of the specific sector to which the agreement is applied, and for this purpose suggests the following elements:
  - (a) environmental impact assessment: the decision to make use of a voluntary instrument rather than a legislative act should be based on a comparative analysis of the potential impact of the two instruments in environmental, economic and social terms and in

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<sup>1</sup> EP resolution of 13 March 2003 on the implications of the Commission Green Paper on European Union Consumer Protection for the future of EU consumer policy.

terms of administrative costs;

- (b) definition of the objectives: every voluntary instrument should indicate clear, quantified and measurable objectives, as well as the deadline for achieving them. Whenever possible, and in any event when the agreement covers a long period, the intermediate objectives and the relevant deadlines must be specified;
  - (c) representativeness: the use of a voluntary instrument presupposes participation in and commitment to honouring the agreement on the part of a vast and representative majority of operators in the sector, so as to rule out the risk of *'free riding'*;
  - (d) consultation and involvement of civil society: all the parties involved should be informed of the intention to make use of a voluntary instrument and should be able to formulate observations at any stage in the procedure. They should also be told about the conclusion of the agreement and the results of the monitoring thereof. For this purpose all the information concerning the agreement and monitoring should be available via Internet and possibly also be distributed on paper;
  - (e) mechanisms for monitoring, assessment and penalties: monitoring and assessment mechanisms and possible penalties in the event of the agreement being a failure should be clearly defined. Achievement of the objectives set and, where relevant, intermediate objectives must be verified at regular intervals, for example by means of *'environmental verifiers'*. Parliament and the Council should be kept informed by the Commission about the application of the agreement. If the results achieved do not meet the agreed objectives the legislator may ask the Commission to submit a legislative proposal to replace or supplement the environmental agreement;
11. Considers that these prerequisites should be clearly set out in the basic legislative act in the case of coregulation; in the case of self-regulation they should be set out in a specific Commission communication and subsequently be incorporated in the Commission recommendation or the exchange of letters;
  12. Agrees with the proposed case-by-case assessment of the sectors in which voluntary instruments could be used and notes the Commission's willingness to start experimenting with voluntary instruments in the sectors of PVC, integrated product policy, waste management and climate change in addition to legislative proposals, especially in connection with its future thematic strategies;
  13. Suggests that the sectors defined in the Action Plan approved by the World Summit on Sustainable Development held in Johannesburg be added to this list, in particular as regards the new sustainable production and consumption methods;
  14. Instructs its President to forward this resolution to the Council and Commission.



## EXPLANATORY STATEMENT

### INTRODUCTION

Last July, in accordance with the mandate issued by the European Council in Lisbon and confirmed at the Stockholm, Laeken and Barcelona summits, the Commission adopted an Action Plan 'simplifying and improving the regulatory environment by means of new co-ordinated action'. The Communication points out that it is possible to make appropriate use of alternatives to legislation without undermining the provisions of the Treaty or interfering with the legislator's prerogatives. In accordance with the Action Plan simplifying and improving legislation the Commission published its Communication on environmental agreements at Community level, which is the subject of this report.

Back in 1996 the Commission published a Communication on environmental agreements - understood as strategic instruments to complement regulatory measures - but it did not treat the drawing up of agreements at Community level as a priority. In the 1996 Communication the Commission gave these agreements a non-binding form and considered them as an instrument for encouraging a positive approach on the part of industry and an incentive for intervention in the environmental field, to be used on a case-by-case basis after careful consideration by the Commission.

In its new Communication the Commission envisages making use of different kinds of instruments in order to simplify legislative work and legislation itself. In particular it proposes using two kinds of voluntary agreement in the environmental sphere: self-regulation and coregulation.

Self-regulation consists in voluntary agreements which operators conclude on their own initiative, on a voluntary basis, in order to organise their own work. This kind of voluntary agreement does not presuppose the use of legislative acts, whereas voluntary agreements concluded in the context of a formal and binding legislative act come under the heading of coregulation.

Your rapporteur takes the view that, although the Commission has endeavoured to take account of the debate held on the subject and Parliament's positions<sup>1</sup>, a number of clarifications and specifications still need to be made, particularly as regards transparency, the possibility of monitoring and proper integration with legislation - which is still the best method for defining the EU's environmental policies - before the instruments mentioned in the Communication can be considered practicable.

For this purpose five main points or, more precisely, five binding preliminary conditions are identified.

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<sup>1</sup> resolution on environmental agreements (OJ C 286, 22.9.1997, p. 254)  
resolution on environmental issues of PVC (OJ C 21, 24.01.2002, p. 112)  
resolution on pedestrian protection (P5-TAPROV(2002)0323)

## ***1. Voluntary agreements as instruments for integrating Community legislation***

The EC Treaty does not contain any specific provision concerning environmental agreements. Such instruments must therefore be used in full compliance with all the provisions of the Treaty and the Community's international commitments. According to Article 175 it is for the Council and the European Parliament, in the context of the codecision procedure, to decide on the environmental policy initiatives to be taken by the Community in order to achieve the objectives set out in Article 174.

The basic structure of Community policy on the environment has always been legislative provisions, which in only a few specific cases may be combined with voluntary agreements. A voluntary agreement should therefore be defined as a strategic instrument to supplement regulatory measures, to be used only with a view to making improvements in the environmental field with a scope equal to or broader than those to be obtained by means of traditional legislative procedures. The added value in terms of a high level of environmental protection must be formally recognised by all the institutions involved in the legislative process.

Voluntary agreements, as dynamic and flexible instruments to be integrated in Community legislation should, in the main, be open to all industrial sectors willing to take on board in advance future legislative provisions or go beyond the current environmental legislation. The instruments should stimulate industry in terms of innovation and research and encourage it to adopt innovative behaviour capable of achieving ambitious environmental objectives strictly laid down by the legislator.

It is perhaps regrettable that there is a limit on the coordination of economic policies in the Union. This limit has so far prevented proper harmonisation of fiscal policies and, more particularly, the possibility of adopting a modern system of incentives and disincentives to promote best practice, more dynamic development of environmental technologies, to encourage a responsible attitude on the part of businesses and, ultimately, the acceptance of environmental quality as a prime parameter for competitiveness.

## ***2. Upstream definition of the sectors which might be the subject of voluntary agreements***

New regulatory instruments (whether self-regulation or coregulation) should be used on the basis of a common reference framework showing, from the outset, the intention to use voluntary agreements in that specific sector.

As envisaged in the context of the 6th Environmental Action Programme, which refers explicitly to voluntary agreements among the strategic approaches for achieving environmental objectives, the specific intention to use a voluntary agreement should be mentioned in the Commission's annual work programme, or in documents with a broad scope, such as White Papers or Thematic Strategies. In actual fact, the Commission, in paragraph 7.1 of the Communication, considers this possibility. But, precisely, it is still a possibility and not an obligation, the preliminary nature of which is not made at all clear.

If this preliminary verification is consolidated and made obligatory Parliament and the Council, as well as all the interested parties, will be able to express an opinion on the compatibility of such an option and, if appropriate, authorise the Commission to negotiate the

agreements envisaged. This is absolutely necessary, not least for the essential legal reason given in the preceding paragraph.

### ***3. Conditions of applicability of the voluntary agreements***

Your rapporteur agrees absolutely with the Commission's analysis about the assessment criteria needed for correct use of environmental agreements and considers that, in order to guarantee the transparency and effectiveness of voluntary instruments, it is necessary, once the guidelines for effective application of environmental agreements in a specific sector have been laid down, to define the conditions of application and verify the implementing procedures.

#### ***3.1 Impact assessment***

Voluntary agreements may constitute a useful instrument, inter alia for solving environmental problems for which a legislative provision is less appropriate and flexible. This analysis, in terms of European added value, should entail use of the integrated method of impact assessment, as defined in the Action Plan 'Simplifying and Improving the Regulatory Environment'<sup>1</sup>. The environmental impact procedure is designed to ensure that the decision to use a voluntary instrument is based on a pertinent analysis of the potential impact on society<sup>2</sup>. In particular, agreements should be assessed in relation not only to their environmental, but also their economic and social sustainability, as well as in the light of the comparative administrative costs for the Community institutions.

#### ***3.2 Definition of objectives***

As stressed earlier, voluntary instruments should achieve environmental policy objectives. These objectives, whether defined within a legislative reference framework or set out in a Commission recommendation, must be binding on the parties involved and be quantified and subdivided into various phases if the agreement covers a long period of time.

The use of indicators will make it possible to measure clearly and reliably the compatibility of the agreements with intermediate and final objectives, but it should be specified at what stage and in what circumstances the authorities intend to take legislative initiatives to supplement or replace the agreement.

#### ***3.3 Representativeness of the agreement***

Another important assessment criterion is the unconditional commitment on the part of all the entities involved to respect the objectives laid down in the agreements. The agreements must cover exhaustively the sector to which they refer and the operators must represent a vast majority of the sector concerned. The use of voluntary instruments would therefore be discouraged if the sectors concerned are represented to only a small degree or there are *free*

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<sup>1</sup> Not yet published in OJ.

<sup>2</sup> In her opinion on improving the regulatory environment Mrs Jackson says 'The idea of setting up a separate Regulatory Impact Assessment Unit in the Commission, on the model of the US President Office of Management and Budgets is therefore to be strongly supported. Such a unit would deal with major proposals, leaving minor issues to individual DGs.

*riders* (operators who take undue advantage of not participating in the agreement).

### *3.4 Consultation and involvement of civil society*

In order to ensure transparency of procedures and full participation of the section of the population concerned, industries in the sector, environmental groups and local authorities should be informed and be given the opportunity to express their views on the draft agreement. Their observations should be taken into consideration both during the negotiations and in the final phase<sup>1</sup>. All the parties involved should also be informed of the outcome of the agreement, by means of intermediate and final monitoring reports. For informing the public the use of the Internet is to be encouraged, but the possibility of using traditional distribution systems is not to be overlooked.

### *3.5 Monitoring, assessment and sanction mechanisms*

As stressed earlier, the objectives of the agreement - defined within a legislative reference framework or set out in a Commission recommendation - must entail obligations for the parties concerned. Failure to respect or achieve the objectives laid down would trigger recourse to supplementary legislative mechanisms or the replacement of the agreement.

In the context of coregulation agreements, the framework provision defining the objectives should contain provisions regarding monitoring mechanisms. In the context of self-regulation, the provisions concerning monitoring would be set out in either the recommendation or the exchange of letters with the sectors concerned.

Your rapporteur backs the Commission's proposal to adopt a system of 'environmental verifiers' envisaged in the EMAS Regulation. In any event, the institutions should ensure that monitoring units operate completely independently and impartially. On the basis of the results produced during the monitoring phases, Parliament and the Council would decide whether to extend the agreement - if the results obtained correspond fully to the objectives agreed - or to impose possible sanctions - in the event of the objectives not being achieved.

## ***4. Coregulation: use of the legislative procedure in defining objectives, enforcement and monitoring systems***

Whilst agreeing completely about the process of improving and simplifying Community regulations, your rapporteur recognises the need, for the benefit of the public, to adapt European legislation in view of the challenges of the forthcoming enlargement and the specific characteristics of local situations. Thus the aim is not to 'usurp' the role of the Community institutions or to deregulate or limit the Community's capacity for action; the object is, on the contrary, to maintain the legal certainty of law on the territory of the Union by means of greater involvement and dynamism on the part of economic and social operators. The choice of alternative legislative instruments should therefore be incorporated in an approach aimed at simplifying Community legislation, in order to improve implementation by the Member States and the operators concerned.

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<sup>1</sup> Participation by the entities concerned in the negotiation of voluntary agreements is not very clearly stated in Chapter 6, point 4 of the Communication (page 11), whereas it is acknowledged in the 1996 Communication on voluntary agreements.

The use of the dynamic and flexible instrument of coregulation agreements does not undermine the typical legal guarantees of the legislative approach. In this context, in fact, Parliament and the Council would, on a proposal from the Commission and using the codecision procedure, adopt a framework directive establishing a specific, clear, transparent and feasible environmental objective. The framework directive would also set the final deadlines for achieving the objectives, as well as for the intermediate stages, and would contain provisions regarding methods for checking application and any penalties in the event of failure to comply. Finally, it would make specific provision for the use of legislative solutions (*call-back* mechanisms) if the actors in the sector have not managed to achieve the objectives set within the time limits laid down, by means of voluntary commitments.

### ***5. Self-regulation***

In the context of the self-regulation procedure, use of a voluntary instrument by operators (notwithstanding what we said under point 2 above) does not depend on the adoption of a legislative act. In such a case, the interested parties take the initiative towards self-regulation. The Commission's role may be to stimulate or encourage, by means of a recommendation, or to recognise, by means of an exchange of letters with the representatives of the sectors concerned.

However, in this case too Parliament and the Council must retain their power to scrutinise the results achieved and the possibility of using typical legislative instruments at any time. More specifically, Parliament and the Council must - and not 'may' (cf. paragraph 4.1.2.) - be involved in the monitoring of environmental agreements by means of the decision on monitoring combined with a Commission recommendation.

### ***Conclusions***

Your rapporteur agrees with the Commission's approach to assessing the use of voluntary agreements in advance and selectively and the choice of the sectors of PVC, integrated product policy, waste management and climate change as the initial 'testbench' for the conclusion of coregulation agreements.

Your rapporteur would like to add to this indicative list the conclusion of voluntary agreements in the sectors defined in the 'Action Plan' adopted by the World Summit on Sustainable Development held last year in Johannesburg. The objectives on which the Action Plan focuses could also be achieved by means of multilateralism and partnership, in a context of total involvement by all sectors and institutions in cooperation and sustainability projects.