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EUROPEAN ASSOCIATION OF CRAFT, SMALL AND MEDIUM-SIZED ENTERPRISES
UNIONE EUROPEA DELL' ARTIGIANATO E DELLE PICCOLE E MEDIE IMPRESE

UEAPME's position paper on the proposal for a Directive on Industrial Emissions

COM (2007) 843 final

SEK (2007) 1679

N.B.: Cited Articles without a reference to a certain piece of legislation refer to the Commission's proposal COM (2007) 843 final.

Introduction

The EU legislation on industrial emissions affects many small and medium sized enterprises (SMEs). Due to no or low application thresholds, the Waste Incineration Directive and the Solvents Directive may even cover very small installations and incineration plants. The same regards some of the activities falling under the scope of the IPPC Directive, which concerns e.g. businesses carrying out surface treatment activities of metals or other products with or without the use of organic solvents.

Compliance with the corresponding legal provisions is in many cases a heavier burden for SMEs than for larger businesses. This regards in particular binding requirements to demonstrate compliance with permit conditions such as extensive and costly monitoring obligations. When falling under the scope of the IPPC Directive 2008/1/EC, SMEs regularly face an even wider range of related information obligations. Many requirements are contained in other legal acts linked to the IPPC Directive such as the Ambient Noise Directive. Even if obligations to collect certain information are addressed to the Member States they are often shifted to the operators.

The renewed Lisbon agenda calls for "Better Regulation", which inter alia aims at the reduction of existing and the avoidance of new unnecessary administrative burden. At the 2007 Spring European Council Member States agreed on a target to cut down information obligations for businesses until 2012 by 25%. This year the Spring Council reaffirmed this target and stresses that "exemptions for SMEs from the administrative requirements of EU legislation" should be found and, where justified, implemented.

In October 2007 the Commission came forward with an Environmental Compliance Assistance Programme (ECAP) indicating "Better Legislation" in the field of environment as one of the key measures for improving compliance and environmental performance in general for SMEs.

Recently the European Commission adopted a "Small Business Act", which states clearly the principle "Think small first" and committed itself to consider "specific measures for SMEs, such as derogations, transition periods and exemptions, in particular from information or reporting requirements, and tailor-made approaches, wherever appropriate."

General position on the proposed Directive on Industrial Emissions

UEAPME welcomes the Commission's intention to contribute to the simplification of EC environmental law by merging the existing core pieces of the industrial emissions regulations and

recasting their provisions. UEAPME stresses once again the need of SMEs for better understandable and easier enforceable provisions.

UEAPME notes with appreciation the proposed monitoring relief for smaller waste incineration installations, which is a very important signal of the European Commission's will to stick to the objectives of ECAP and to cut unnecessary administrative burdens. However, it stresses that such exemptions rules must be applicable in practice. Nevertheless, UEAPME believes that further simplifications for such activities without lowering the current level of protection of human health or the environment would be possible in the Chapter IV provisions.

Unfortunately, the European Commission has not proposed any decisive amendments to the existing provisions on the use of organic solvents in stationary sources, now contained in Chapter V of the tabled proposal. Pursuant to its thresholds those provisions affect also many small-sized enterprises. In the near future the Commission should therefore consult all the relevant SME organisations, with a view to simplify their application for SME.

UEAPME reiterates that the current regime of Directive 2008/1/EC imposes still a much heavier administrative onus on SMEs. UEAPME recalls that the ECAP identifies the EU industrial emissions' legislation as an area where improvements for SMEs should be considered.

However, UEAPME notes several additional information obligations in Chapter I and II, which would also apply to numerous SMEs within the European Union. The proposal contains in particular an annual compliance reporting requirement. It also aims at the introduction of the establishment of soil status reports and periodic soil and groundwater monitoring for various IPPC activities. By keeping the current activity thresholds for "Chapter II"-installations untouched and even widening it many additional SMEs would be confronted with additional burdens. In many cases such as the costs for the soil status report or the proposed annual compliance report the accompanying Impact Assessment provides only very vague estimates. Thus the likely actual costs for the new information obligations remain unclear.

Given the lack of more background data, UEAPME believes that the additional administrative burdens for operators largely outweigh the benefits of the proposed simplifications and cost reductions. Chances to reduce the costs further, such as the idea of exemptions from monitoring and reporting requirements for those operators using Environmental Management Systems (EMS), in particular the Community eco-management and audit scheme (EMAS), are mentioned in the Impact Assessment but regrettably not provided for in the text of the proposal. However, UEAPME recognizes the intention of the Commission, outlined in the Action Plan accompanying the legal package, to encourage Member States to simplify their national regulations in the field of industrial emissions by offering specific assistance to them. This should be done in close cooperation with the national SME federations.

Therefore, UEAPME asks the European Parliament and the Council to use the opportunity of this proposal to realise a more appropriate approach for SMEs in EU industrial emissions legislation.

UEAPME's suggestions to make the new directive more SMEs friendly

New aggregation rule in Annex I

The proposal contains a new aggregation rule in Annex I without a connection to a single operator. Despite the fact that the rule shall not be applied anymore to activities on the whole site it could, subject to Article 5, significantly widen the scope compared to the current legislation. Having regard to the provision that an installation also consist of "directly associated" activities, many smaller parts of an installation could be covered by the provisions of Chapter II. Such parts are often operated by SMEs which would now have to comply with the onerous provisions of Chapter II.

Thus UEAPME demands to maintain the current aggregation rule in Annex I of Directive 2008/1/EC.

Cuts in monitoring requirements for smaller waste incineration plants (Annex VI)

As described above UEAPME is in favour of the proposed monitoring facilitations for smaller waste incineration plants often operated by SMEs. However the exemption provisions proposed in Annex VI part 6 Nr. 2.5. and 2.6. concern only existing plants, would be quite difficult to enforce and leave a high burden of proof to the operator. Therefore it is doubtful if it would lead to the desired results in practice.

The proposed exemption rule should therefore be further improved.

Less administrative burden for SME - Introduce exemptions for EMS

The Commission has proposed to introduce an annual obligation for operators of installations and plants falling under the new directive to provide the competent authority (CA) with a compliance report. However it remains partly unclear which content such a report requires. Thus it was complicate for UEAPME to assess thoroughly the actual administrative burden for SMEs.

For installations in which Annex I activities are carried out this report has to contain a comparison between the operation of the installation and the BAT described in the BREF-documents. For the latter requirement a significant additional administrative burden for SMEs falling under Chapter II can be expected. UEAPME takes the view that such an annual requirement is excessive compared to the expected benefits for the environment. In that context we refer to the existing requirement for nearly all Annex I activities, as proposed by the Commission, to report annually their emissions of significant amounts of pollutants into the air and water according to Regulation (EC) No. 166/2006 (PRTR). This data should provide sufficient information for the comparison of emission levels and the BAT as described in the BREF documents.

As outlined above, UEAPME stresses the need for clear exemptions from the reporting provisions for businesses using an EMS, in particular those registered to EMAS.

In conclusion, UEAPME suggests:

- to clarify the proposed Article 8 in a way that the compliance report requires only the information which has to be gathered by the operator as prescribed in an IPPC permit or which has to be reported under the current Article 12 of Directive 2000/76/EC (plants with a capacity above two tonnes or more per hour) or Article 57. The minimum reporting frequency should be fixed at every third year.
- to make the relationship between the general reporting requirement in Article 8 and the specific requirements, in particular in Chapter IV and V affecting many SMEs, more clearly. The reporting threshold for Chapter IV plants should be kept.
- that the obligation in Article 24 to provide a comparison between the operation of the installation and the BAT for Annex I activities should only apply on request of the CA for the purpose of reconsidering the permit conditions (Article 22 para 2).
- to lay down a clear exemption from the requirement in Article 8 to provide a compliance report in case the operator has an Environmental Management System, such as EMAS. We doubt that Article 10 para 2 of Regulation (EC) No 761/2001, as amended, already allows such simplifications.

A more targeted approach for soil protection measures

UEAPME is concerned about the wide scope of additional soil protection measures and its likely heavy administrative burden. The proposal contains a requirement that operators of Annex I activities possibly using “dangerous substances” have to carry out one measurement at least every seven years. In case of a new permit or the reconsideration of a permit such operators would also have to prepare a baseline report. The range of such dangerous substances according to Article 3 para 14 is very broad,

while not distinguishing between those substances being dangerous for the groundwater or soil. For UEAPME also the maximum timeframe of seven years for conducting at least one measurement activity seems to be too tight.

Regarding the proposed alteration of the restoration approach, for certain activities from the “satisfactory state” to the “initial state” UEAPME urges to await the likely resumption of the discussions for a soil framework directive in the near future. UEAPME stresses that the initial-state report could, depending on the principles for its establishment, be another heavy administrative burden.

Therefore UEAPME suggests

- to apply the obligation for the operator to carry out groundwater and soil monitoring only when it is likely that dangerous substances which pose a threat to groundwater and soil are used
- to extend the maximum timeframe in Article 17 para 2 to ten years.
- to await the resumption of the political discussions for a soil framework directive before deciding upon the restoration approach.

Brussels, July 2008.