



Brussels, 26 November 2019

Stakeholder consultation on the evaluation of the Ozone Regulation

Summary report

1 Introduction

This document summarises¹ the responses submitted to the 2018 public consultation on the evaluation of Regulation (EC) No 1005/2009 on substances that deplete the ozone layer (the Ozone Regulation), and other stakeholder feedback. The data collected served to support the assessment of relevance, effectiveness, efficiency, coherence and EU added value of the Regulation, as described in the Staff Working Document (SWD) 406/2019.

2 Feedback on the Roadmap

In July 2017, the European Commission published a Roadmap for the Evaluation of the Ozone Regulation.² It was open for feedback from 14 July 2017 to 11 August 2017. Replies came from 2 business associations representing the refrigeration industry and the maritime cruise industry, 2 competent authorities of Member States (Cyprus and Germany), and the Austrian Chamber of Commerce.

The maritime cruise industry suggested that the consequences of EU legislation going beyond international legislation should be considered in their impacts on the maritime cruise industry. The Environment Department of Cyprus pointed out that the treatment of equipment containing ozone-depleting substances (ODS) and particularly chlorodifluoromethane under the Regulation was not providing sufficient options to Member States, as it led to imports solely for the destruction of the equipment without allowing reuse of the equipment with other substances. The German Environment

¹ For an extended overview of the consultation results, see Annex II of the Staff Working Document on the evaluation of the Ozone Regulation (SWD 406/2019)

² https://ec.europa.eu/info/law/better-regulation/initiative/1448/publication/35878/attachment/090166e5b3c022a8_en

Agency recommended the consistent strict ban of ODS and suggested including in the scope of the Regulation the refrigerant 1233zd and very short-lived substances due to their ozone-depleting potential; however, the refrigeration industry contested that these substances were a risk to the recovery of the ozone layer. The Austrian Chamber of Commerce suggested that the ozone layer was regenerating and that there was no need for changes to the Regulation, except the adaptation of minor elements such as exemption regimes.

3 Survey of Undertakings

A survey of undertakings was carried out in the period April-May 2018. The survey was distributed to all relevant undertakings in the EU ODS Licensing System. It comprised 34 open and closed questions. The consultation received 363 responses from unique respondents. Of these, 72% represented private enterprises, 15% fell under the category “other”, and 13% were representatives of research organisations and academia. The largest proportion of undertakings were large enterprises (43%) and the geographical regions in which they operated were the EU (98%), North America (15%), and Asia (15%).³ The most represented industrial sectors were laboratories, aviation, and the chemical industry which reflects the most relevant groups affected by the Regulation.

Effectiveness

Overall, a large majority of undertakings (80%) was aware of the requirements of the Regulation and indicated that the information sources they used were EU manuals and guidance documents (60%), the Regulation itself (53%) and national institutions (31%). A third of the undertakings reported reducing the amount of ODS involved in their activities in 2010-2017. This was due to (i) the introduction of substitutes, (ii) process changes or disposal of stocks and waste, (iii) a lower demand for and supply of ODS, and (iv) a better general awareness and compliance with the Regulation. Reasons given by those that had not reduced ODS in this period (38%) included (i) the small quantities of ODS involved in their activities (e.g. laboratories), (ii) the need to meet customer demands, and (iii) the lack of alternatives that met their needs (the latter for undertakings involved in aviation). The majority of respondents either strongly agreed or agreed that each measure of the Regulation contributed to a better control of the use of ODS. Many of the respondents agreed that there was progress in finding alternatives (48%).

Costs

The costliest measures under the Regulation named by undertakings in the period of 2010-2017 were “phasing-out halons in firefighting equipment”, “technical requirements during reclamation and destruction” and “phasing-out HCFCs for refrigeration”. Even for these measures, however, only 23-36% of respondents identified them as high to very high. Additionally, only 8% of undertakings reported that there were other substantial costs unrelated to the Regulation, linked e.g. to changes in processes and practices. The respondents reported several requirements of the Regulation, which they considered to be unnecessarily complicated, burdensome or costly, e.g. “registration related to essential laboratory and analytical uses”. A few undertakings identified economic benefits for themselves, in particular new market opportunities.

³ N.b.: more than one choice possible, e.g. for internationally active companies

Quality of the Regulation

Very few respondents stated that they were aware of overlaps, contradictions or gaps between the Regulation and related EU laws (3%) or international legal instruments (1%). 66% of undertakings expressed that they were (very) satisfied with the ODS Licensing System, while 43% were (very) satisfied with Business Data Repository (BDR) tool of the European Environment Agency (EEA) for annual reporting (In the latter case another 22% were (very) unsatisfied).

Added value of regulating at EU-level

Overall, 54% of undertakings either strongly agreed or agreed that regulating ODS at EU level was more efficient than at national level due to the advantages of operating in a market with uniform rules and the associated lower administrative and enforcement costs (Only 4% disagreed or strongly disagreed). Additionally, 67% of undertakings agreed that it is an advantage that industries across the EU have the same obligations as regards ODS (4% disagreed or strongly disagreed).

4 Survey of Competent Authorities of the Member States

A questionnaire was sent to the relevant authorities in each Member State in May 2018. 23 responses were obtained by the agreed deadline of 20 June 2018. The survey consisted of 28 open and closed questions.

Effectiveness

The majority of competent authorities agreed that the Regulation had ensured a reduced production and consumption of ODS (96%) and that it had led to appropriate management of the remaining stock (77%). All measures of the Regulation were seen as contributing to the reduction of consumption and production by 60% or more of the authorities. Some respondents (43%) indicated that there were also factors other than the Regulation that led to a reduction of the consumption of ODS in the EU, e.g. research. More than half (56%) stated that more needed to be done in the EU on regulating ODS, e.g. more custom controls.

Authorities agreed overwhelmingly that undertakings that dealt with ODS in their respective countries were aware of the requirements of the Regulation. The majority of competent authorities (69%) also agreed or strongly agreed that the five additional chemicals, called “new chemicals”, should be monitored under the Regulation. They suggested including in the monitoring several additional substances, e.g. very short-lived substances.

When asked to specify the kind of inspection activities they had been carrying out in their respective countries to enforce the Regulation, the competent authorities listed custom controls, environmental inspections on entities handling ODS, and inspections of undertakings in relation to illegal activities. The majority (86%) reported that there had been cases of non-compliance with the Regulation in their countries, e.g. illegal import/export. The competent authorities emphasised that the main challenges they encountered were related to a lack of resources to carry out the necessary number of inspections.

All competent authorities agreed or strongly agreed that there was a progress in finding alternatives because the ODS were controlled by the Regulation. Similarly, 87% of them agreed or strongly agreed that alternatives had become available as a result. A large proportion of the competent authorities (44%) indicated that they agreed that the

possibility to apply for derogations was still needed in their respective countries while 28% disagreed. Most respondents (71%) had not received any applications from undertakings for derogations in 2010 - 2017.

Costs

The activities with the highest cost for the competent authorities were “conducting inspections”, “custom controls”, “promoting the recovery, recycling, reclamation and destruction” and “determining minimum qualification requirements” for service technicians. Most respondents did not think that there were unnecessarily costly requirements in the Regulation but for a few minor points.

Quality of the Regulation

A minority (<25%) of respondents could identify contradictions, overlaps or gaps between the Regulation and related international legal instruments, related EU legal instruments or within the Regulation itself (e.g. the interpretation of some articles was left to competent authority). There was very high approval of the EU ODS Licensing System and the EEA’s BDR for company reporting.

Added value of regulating at EU level

Most competent authorities agreed or strongly agreed that regulating ODS at EU level was more effective (92%) and efficient (92%) than it would have been if it was regulated at national level. Most respondents (93%) appreciated the fact that industries across the EU had the same obligations; they considered that it was an advantage because it provided for consistency between Member States. Authorities also highlighted the existence of the single market where EU Member States cannot operate in a vacuum and that Information Technology (IT) systems administered at EU level are less costly than separate national system.

5 Public consultation

A public consultation was held on the European Commission survey platform, "EU Survey", from 1 June 2018 to 24 August 2018. The questionnaire consisted of 62 open and closed questions and was available in 23 EU languages (https://ec.europa.eu/clima/sites/clima/files/consultations/docs/0037/questionnaire_en.pdf). 46 responses from unique respondents were received. Of the respondents, 59% indicated that they responded to the consultation in their professional capacity, or on behalf of an organisation, and 41% indicated that they responded in their individual capacity. Overall, the largest number of organisations had headquarters in Germany (22%), followed by Belgium (11%) and Italy (11%). As for the individuals, 26% of respondents originated from Germany, 21% from Italy, 16% from Poland and 11% from France, with other respondents also from Bulgaria, Greece, Netherlands, Spain and UK.

Effectiveness

Most respondents (82%) indicated to be well aware of the requirements of the Regulation and agreed or strongly agreed that it had contributed to the reduction of the consumption of ODS (87%). The majority of respondents (71%) also agreed that the larger number of requirements imposed by the Regulation compared to the Montreal Protocol had led to a more effective reduction in the consumption of ODS. Other contributing factors beside the Regulation that could be identified by the respondents were the timely availability of

non-ODS alternatives in the EU, increased public awareness, other legislation including at international level and national initiatives. The Ozone Secretariat, in responding to this consultation, expressed a positive view towards the Regulation.

A majority of respondents (72%) was not aware of any unintended consequences of the Regulation. A minority (22%) mentioned the following issues as undesirable consequences: a) a conversion to less energy-efficient technologies in refrigerators due to the quick phase-out; b) halon replacing agents did not meet the safety criteria for aircraft certification and operation, and c) illegal trade.

The respondents were more divided on the question of whether more needed to be done in the EU on regulating ODS. While 51% of them agreed or strongly agreed that more should be done, 35% disagreed or strongly disagreed. Those in the former group mentioned the need for more emphasis on illegal trade and controlling the remaining uses, while respondents that disagreed thought that the Regulation was sufficient in its current form and that emphasis should be placed on the global approach.

The majority of respondents (61%) also agreed or strongly agreed that alternatives became available because ODS were controlled by the Regulation (as opposed to 4% who disagreed) and agreed or strongly agreed that there was progress in finding alternatives because ozone-depleting substances were controlled by the Regulation (54%) (as opposed to 7% who disagreed).

Quality of the Regulation

A small proportion of respondents (11%) stated that they were aware of some gaps, contradictions or overlaps between the Regulation and related international or EU legal instruments. This included aviation stakeholders who did not like stricter EU rules compared to the International Civil Aviation Organization (ICAO) standards, and others who wanted to more strictly control the use of permitted substances. Lastly, only 4% of respondents were aware of any gaps or contradictions within the Regulation, respectively. A majority of respondents (68% or higher in all cases) thought that none of the measures were unnecessarily complicated, burdensome or costly. The most burdensome identified by a small minority of undertakings (laboratories, some aviation/chemicals), in this order were “annual reports”, “halon phase-out”, “national inspections”, “registering for laboratory use” and “quota applications”.⁴

Added value of regulating at EU-level

With regards to the added value of regulating at EU-level, the majority (87%) either agreed or strongly agreed that the harmonisation of the obligations of industries across the EU was advantageous thanks to the creation of a level playing field for undertakings and the prevention of illegal cross-border activities. Moreover, 76% of respondents shared the opinion that regulating ODS at EU-level was more efficient than if it was regulated at national level. Some respondents also pointed out that without the Regulation phased-out ODS would still be in use in some EU countries, with consequences on the environment and public health.

6 Targeted stakeholder consultations

A number of selected stakeholders were interviewed or asked to provide written feedback on certain topics of interest following the company and authority surveys in order to

⁴ 23-32% of respondents thought that these were burdensome

obtain more detailed information. For the outcomes of these consultations, see the Staff Working Document.

7 Stakeholder workshop

In order to validate the preliminary results of the evaluation, the European Commission organised a final stakeholder workshop (Brussels, 7 November 2018). 30 representatives of national authorities and industry organisations participated.

In general, the participants did not challenge the assertions made by the consultants of the Commission on effectiveness, relevance, efficiency (including on benefits and costs), coherence and EU added value of the Regulation⁵, which have been later included in the Staff Working Document. Several Member States indicated that leakage control measures are very important and increase the awareness of users, but good enforcement is key. One Member State pointed out that it is hard to quantify the impact of this type of measures. On end-of-life treatment one non-governmental organisation emphasised that the differences between waste management regulations in Member States complicated enforcement. One Member State also indicated that it considered the quota allocation system to be inefficient, ineffective, and time-consuming and, with respect to coherence, believed that several provisions of the Regulation were obsolete and should be removed. There was a general agreement by participating Member States that the phase-out of some ODS as a result of the Regulation, had led to a shift towards the use of alternatives, e.g. to replace some process agents.

Based on the presentations and the discussion among participants, the Commission as chair concluded that the Regulation appears to work pretty well in general terms, has huge benefits for the environment at very moderate costs and will clearly continue to be needed at EU level, not least to fulfil the EU's international obligations. However, there also appears to be some room for improvement in relation to simplification and coherence.

⁵ Participants were directly asked to comment on these issues.