

# **Assessing integration and speeding up of permit procedures for installations and infrastructure projects: the EU contribution**

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Ludwig Krämer / presented by Nicolas de Sadeleer

[kramer.ludwig@skynet.be](mailto:kramer.ludwig@skynet.be)

# Structure

I looked at three aspects:

**(a) Industrial installations**

**(b) Infrastructure projects**

**(c) Refit issues**

# Industrial installations

**Directive 2010/75 on industrial emissions**

**Directive 2015/2193 on medium combustion plants**

**Directive 2014/52 on environmental impact assessment**

**The EIA directive provides in 2(1) to 2(3) for integrated EIA and permitting processes. See however Article 2(2) of Directive 2011/92 which contained the same in a nutshell. Be aware that this is an option, not an obligation.**

**The two directives on industrial installations do not contain provisions on speeding up the permitting procedure and integrating.**

**Mind, though, that Directive 2010/75 aims at an integrated prevention and pollution control.**

**Overall, there is no tendency in EU law to require Member States to speed up permitting procedures for industrial installations and to integrate the permit Procedure with other procedures (water, EIA)**

# Infrastructure projects

**Regulation 347/2013 on energy infrastructure projects**

**[Regulation 1315/2013 on transport infrastructure projects]**

**Both regulations (only) apply to Trans-European Network (TEN) projects, which means that they are of common interest and that EU funds are, in principle, made available for them**

- 1. Projects shall be given the status of highest public interest, including 6(4) of Habitats Directive**
- 2. One national authority is the sole point of contact; it coordinates and integrates the different decisions and opinions of national authorities**
- 3. The project promoter must make at least one public consultation on his project, before he introduces his application (EIA); thus, the assessment of the public's opinion is partly transferred to him.**
- 4. A decision on the application must be taken within a specific time-span. From begin of planning till the end not more than 3.6 years.**
- 5. A cost-benefit analysis according to an EU-agreed method must be made.**

**In the TEN-sector, there are clear efforts to accelerate the permit procedure and to integrate EIA and the permitting as well as other permit requirements. Several instruments are taken to achieve this objective, including time-tables, EU coordinators.**

# Better regulation and REFIT - timetable

Commission COM(2001)248: White Paper on European Governance

Openness, Participation, Accountability, Effectiveness, Coherence

Mandelkern Report on Better Regulation, 13-11-2001

Ex ante evaluation, ex post evaluation, impact assessment, consultation, simplification, access to regulation, effective structure and culture of better regulation

COM(2005)97: Better Regulation for growth and jobs

COM(2009) 544: Action programme to reduce administrative burdens

COM(2010)543: From better regulation to smart regulation

COM(2012) 746: EU regulatory fitness checks

COM(2013) 685: REFIT programme

COM(2014) 368: REFIT, state of play and outlook

# Origins and reorientations

The original idea from the Prodi Commission was, to have a modern governance system at EU level (White Paper). The Mandelkern report went into the same direction.

This orientation was changed with the Barroso (Day) Commission. This Commission gave large room to the UK pressure that EU was too technocratic, adopted too burdensome provisions and disadvantaged (UK) SMEs and other companies.

Progressively, better regulation became an instrument to support growth and jobs.

REFIT finally, was a place, where every company could complain that EU law was too burdensome and declench thereby the scrutiny of the Commission. Never mind that texts had been agreed by EP and Council: a company could declench the REFIT mechanism.

The results accommodated the Commission and the UK: the „savings“ made looked impressive on paper, the Commission could show that it was responsive to the UK and an active body, and the UK was flattered that it succeeded to obtain changes at EU level.



## ***A narrative of change***

*'Be big on big things, small on small things'*

### **Better regulation package** (19 May 2015)

Principles underpinning the package

- a) openness
- b) participation
- c) evidence-based policymaking

# Two-pronged Approach

## *Ex ante*

- Consultation on road maps
- Consultation on Inception Impact Assessment
- Consultation on non-legislative acts

Round-the-clock consultation scenario

## *Ex post*

‘Political commitments must be judged not only on new political initiatives but on **benefits and burdens of existing legislation**’

# ***Regulatory Scrutiny Board***

- A chairperson + 6 members (3 EC officials and 3 outsiders)
- In sharp contrast to past practices, the RSB shall be involved in *ex post* legislative review.

# REFIT

More targeted, quantitative and inclusive REFIT evaluation

Establishment of a REFIT platform chaired by the RSB chairperson

- - **MSt group** (high-level national experts)
- - **Stakeholders group** (civil society business, social partners, etc.)

*working on 'how to reduce regulatory and administrative burdens'*

# REFIT

- Greater emphasis on the **prevention of gold-plating**
- EU burden reduction exercise must be fleshed out at national level.
- MS are called on to assess additional measures, by providing a statement of reasons regarding their introduction.

# What's at stake?

- The REFIT platform's mission is inherently biased towards the reduction of regulatory and administrative burdens.
- Is there a risk that the public interest being subject to the corporate one, thus impairing the pursuit of EU Treaty-sanctioned objectives?

- ‘Designing EU policies and laws so that they can achieve their objectives **at minimum costs**’

# REFIT and environmental law

Commission (2012): We succeeded the following savings (SWD(2012) 423) :

Simplifying procedures for contracting waste shipments		3.6 mio euro
Symplifying the IPPC system	x	32.0 mio euro
Streamling obligations on ozone-depleting substances	x	0.5 mio euro
Information obligations under WEEE directive	x	66.0 mio euro
Simplifying biocidal permits	x	140.0 mio euro
Website to notify presence of dangerous substances		1.5 mio euro
Coordination between SEVESO dir. and 2010/75	x	1.1 mio euro
Coordinating inspections between SEVESO and 2010/75	x	8.0 mio euro
Updating rather than renewing IPPC permits	x	5.0 mio euro
Notification system for shipments of waste		44.0 mio euro
Vehicle destruction permits granted privately		9.0 mio euro
		<b>310.7 mio euro</b>



# Comments

- (1) The items marked with an “x” were agreed during Council/EP discussions on legislative texts**
- (2) Until now, the substance of environmental law was not really touched.**
- (3) This might change, though, at any moment (habitats, birds), as the procedure is neither transparent nor rational**
- (4) Environmental reporting is the next target area. National administrations do not like to have to report at regular intervals.**
- (5) The whole undertaking has the result that there is much greater centralisation within the Commission on (environmental) policy. The UK unit for preventing BREXIT within the Secretariat General almost has a veto right on existing and future action (example: environmental inspectors).**

**(6) The whole REFIT programme looks like an attempt to accommodate the Murdoch press in the UK (UK-NL). The REFIT programme does not tackle really sensitive issues of EU policy such as social aspects of transport, of agriculture or of fisheries, labelling of products, EU subventions.**

**A number of aspects mentioned as „success“ by the Commission are faked, such as the updating instead of renewing of permits in 2010/75: it is law in Germany since 1975 that a permit for an installation is not limited in time. Another example is that of biocides: the replacement of Directive 98/8 by Regulation 528/12 saved money, as national legislation became superfluous. However this has nothing to do with REFIT, but is an expression of progressive integration in the EU: the economy needs uniform EU standards.**

# IIA of April 2016 on Better Law-Making

## Simplification

- **REFIT** §22 'evaluations of existing legislation should provide the basis for impact assessment of options for further actions ... while avoiding overregulation and administrative burdens...'
- **RECASTING** §48 'simplify legislation and avoid overregulation and administrative burdens...'

# IIA of April 2016 on Better Law-Making

## Evidence-based Policymaking

- EP & Council will take full account of the EC's impact assessment (§14).
- Prior to any substantial amendment at any stage to the EC's proposal, EP & Council will, when appropriate and necessary, carry out an IA (§15).
- What about diverging impact assessments among EU institutions (eg Glyphosate case)?

# IIA of April 2016 on Better Law-Making

## Evidence-based Policymaking

### How to limit the risk of divergence?

**Device** : Commission's right to provide assistance to EP & Council in complementing its own IA (§16).

**Objective**: Ensure the continuity between the original Impact Assessment and the legislative work.

# Principle of Institutional Balance

EU legislature's **broad discretion** applies:

- to the nature and the scope of the measures to be taken
- but also to the finding of the basic facts.

Commission's IA is not binding upon the co-legislator.

Case C-343/09, *Afton* (2010)

# Conclusions: Better for whom?

- Strengthening of the EC's regulatory powers (consultations on its proposal, greater control on legislative changes).
- Risk that the EU legislative process would be subjugated to burdensome technocratic procedures and cost-benefits criteria.
- Paralysis by analysis.