



Ombudsman for Future Generations,  
Office of the Commissioner for Fundamental Rights  
Hungary

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Erika

Budapest, 23 November 2017

*Input to the Strategic initiative SI/7/2017/JN concerning the implementation of Article 28 of Regulation 1005/2009 on substances that deplete the ozone layer*

Dear Ms O'Reilly,

This is in response to your letter dated 25 July 2017 concerning the implementation of Article 28 of Regulation 1005/2009 on substances that deplete the ozone layer ("Ozone Regulation"). In this letter you informed me that that you intend to examine and evaluate the adequacy of the implementation of Article 28 of the Ozone Regulation and asked me to inform you of my views on this matter. For this end, I forwarded your questions sent to the President of the European Commission to the competent Hungarian authorities, with necessary amendments to make them compatible with the national system. Hereby I would like to provide you with a summary on the answers received to the questionnaire.

First, I will briefly summarize the Hungarian system and list the competent Hungarian authorities, then I will present the answers received from the Hungarian authorities. Finally, I will draw some conclusions regarding the state and structure of the national implementation of Article 28 of Ozone Regulation in Hungary, with which I seek to further your valuable strategic initiative.

1. The Hungarian system regulating ozone depleting substances

Government Decree No. 14/2015 ("Government Decree") sets forth the necessary legal provisions to implement the Ozone Regulation in Hungary. Besides ozone depleting substances, the Government Decree also regulates fluorinated greenhouse gases, implementing Regulation No. 517/2014 on fluorinated greenhouse gases. The two substances (the ozone depleting substances and the fluorinated greenhouse gases) are uniformly called 'climate gases' in the Hungarian legislation. Therefore, the scope of the Decree includes the elements regulated both in the Ozone Regulation and the 517/2014 Regulation.

In Hungary, six authorities are tasked with inspection responsibilities regarding the compliance of the undertakings as provided under Article 28 of the Ozone Regulation. These are the National Climate Protection Agency, the Ministry of Defence, the Transportation Authority, the National Directorate General for Disaster Management and the National Tax and Customs Administration of Hungary.

Further to these, the Ministry of Agriculture also has an important role, although not directly related to inspections. The Ministry of Agriculture is the only Hungarian authority that appears in the international relations on the EU level as explained in more detail below.

2. The competent Hungarian authorities and the inspections carried out by them

National Climate Protection Agency

Based on the Government Decree, the National Climate Protection Agency plays the most significant role in regulating the ozone depleting substances. Its inspection authority is of general scope, while the other authorities have responsibilities in special, particular cases based on the subject matter or the controlled entity. The Agency operates within the Ministry of National Development, as an autonomous department. Its competencies include the operation of the registry for undertakings that operate with products and equipment containing or relying on controlled substances, organizing the qualification of personnel, supplying of data, providing information, and also imposes payment obligations when necessary. The other five authorities (the Ministry of Defence, the Transportation Authority, the National Directorate General for Disaster Management and the National Tax and Customs Administration of Hungary) are obliged to report any unlawful activity regarding ozone depleting substances detected directly to the Agency.

The National Climate Protection Agency is responsible for carrying out inspections set forth in Article 28 of the Ozone Regulation. According to the Agency's answer provided to our questionnaire, the inspections are carried out based on their yearly inspection plan. The inspection plan is public and it can be viewed on their website. After reviewing their inspection plan, it can be stated that the Agency primarily focuses on fluorinated greenhouse gases, and not on ozone depleting substances. Out of eight items on their inspection plan, six are clearly only relating to fluorinated greenhouse gases, and only the remaining two can be interpreted as relating to ozone depleting substances as well (controlling the data registry obligation on the one hand and conducting inspections based on public notification on the other hand).

The Agency has not informed us on the number of irregularities that have been found by them until now. Reviewing their publicly available Official Report for the year of 2016, the number of irregularities relating to ozone depleting substances cannot be determined. Although, it is stated in the Official Report that the Agency applied the provisions of the Ozone Regulation during its inspections, the exact breakdown of the total number of inspections carried out in 2016 relates only to Regulation 517/2014. Therefore, it can be deduced that the majority (if not all) of the irregularities detected relate to fluorinated greenhouse gases and not to ODSs.

#### Transportation authority

The transportation authority has inspection powers in the mobile vehicle sector. As of January 1, 2017, this competence was transferred to the District Offices of the Central Governmental Administrative Agency, which is present in 20 major cities throughout the country. Therefore there are altogether 20 transportation authorities that may carry out inspections in Hungary. Given the large number of such authorities, we did not request information from each of them. Nevertheless, we were informed by the National Development Ministry that transportation authorities carried out eleven inspections in the year of 2016 at various motor vehicle service-stations, and no irregularities were found. On the other hand, the National Climate Change Agency informed us that since 1 January 2017, seven irregularities were reported to them by the transportation authorities.

#### The Ministry of Defence

The Hungarian Minister of Defence is competent to inspect the activities of the organizations that are under the direct control of the Hungarian Defence Forces or of the Minister himself. The Ministry of Defence carries out the inspections based on its yearly inspection plan, and in addition, upon issuing permits for establishing new facilities. The nature of activity of the Defence Forces and the strict rules that apply to their activities ensure that all inspections, including those relating to ozone depleting substances, are carried out thoroughly and regularly. According to their answer to our questionnaire, the Ministry of Defence has never found any irregularities regarding ozone depleting substances.

#### National Directorate General for Disaster Management

National Directorate General for Disaster Management operates within the Ministry of Interior. It is responsible to issue permits for establishing build-in fire protection systems and extinguishers. According to the Directorate General's report, there are no fire protection systems, nor extinguishers in Hungary that contain ozone depleting substances. Furthermore, according to their answer to our questionnaire report, the Directorate General has never detected any unlawful activity regarding ozone depleting substances.

#### National Tax and Customs Administration

The National Tax and Customs Administration controls the import of equipment containing controlled substances. I have no information on the outcome of their inspections. Any cases of illegal trade or import should have been reported to the European Commission in Hungary's yearly reports.

#### Ministry of Agriculture

As already mentioned, the Ministry of Agriculture has an important role, although not directly related to inspections. The Ministry of Agriculture is the only Hungarian authority that appears in the international relations on the EU level. The Ministry delegates the only Hungarian member of the EU ODS working group, and it has sole access to the mailing list and to the EU ODS information in the EU CIRCA database, as well as to ODS licensing and labODS systems.

The Ministry of Agriculture provides the yearly national report to the Commission pursuant to Article 26 of the Ozone Regulation. The report informs the Commission of the quantities of methyl bromide authorised, the quantities of halons installed, used and stored for critical uses, and the cases of illegal trade. The necessary information for these reports are provided directly by the competent authorities (the Ministry of Defence, the National Directorate General for Disaster Management and the National Tax and Customs Administration of Hungary) to the Ministry and not by the National Climate Protection Agency.

We were informed that in the near future the Ministry of Agriculture's competency will be transferred to the Ministry of National Development and negotiations to that effect are currently ongoing, as explained in more detail below. The exact date of which the transfer will be effective is not yet known.

### 3. Role of the European Commission and exchange of information

According to Article 28 (1)-(2) the „competent authorities of the Member States shall carry out the investigations which the Commission considers necessary” and „the officials of the Commission shall assist the officials of that authority in the performance of their duties”.

According to the Hungarian authorities' report, the Commission has not played any active role in the inspections conducted by the authorities. It has not used its power to request the Hungarian authorities to carry out a particular inspection, nor has its officials attended inspections.

The exchange of information between the Commission and the member states is secured by email, mailing list and in working groups that are organized a number of times per year.

Although the National Climate Protection Agency is the most important authority regarding the regulation and inspection of ozone depleting substances, it has a very limited role in international relations, including communications with the European Commission. As noted above, the Ministry of Agriculture and not the Agency is the member of the EU ODS working group, mailing list, have access to the EU ODS information in the EU CIRCA database, and have access to ODS licensing and labODS systems. Therefore, the National Climate Protection Agency does not have direct access to the necessary information and database on the EU level. Mitigating this problem, we were informed by the Ministry of Agriculture that the international activity regarding ozone depleting substances is being transferred from the Ministry of Agriculture to the Ministry of National Development and negotiations to that effect are currently ongoing. According to the plan, the reporting responsibility would also be transferred to the Ministry of National Development, therefore all activity regarding ozone depleting substances would be

uniformly handled by the Ministry of National Development, which would contribute to transparency and efficiency.

#### 4. Concluding remarks

We find that the Hungarian system is very fragmented: six different authorities are responsible for carrying out inspections. Within the six authorities the competencies are further delegated to local offices, for example in the case of the transportation authority. Therefore, it is very difficult to get a solid, uniform picture of the different procedures and regulations.

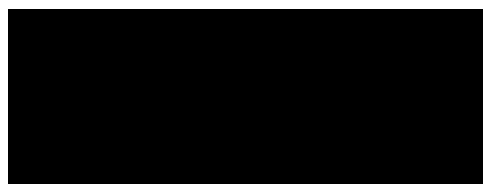
As was mentioned above, the most important authority with the widest scope of responsibility is the National Climate Protection Agency, although it does not have any direct contact with the European Commission regarding ozone depleting substances. As of today, the Ministry of Agriculture is the member of the EU ODS working group, mailing list, has access to the EU ODS information in the EU CIRCA database, and has access to ODS licensing and labODS systems. It would be desirable to transfer the competencies of the Ministry of Agriculture to the Agency. We were informed that negotiations were recently initiated to do so and transfer these competencies to the Ministry of National Development. Even if the transfer of responsibilities takes pace, it would be further important that these tasks would be delegated directly to the Agency and not to any other departments within the Ministry of National Development.

As a result of the rigorous and long-standing regulation of ozone depleting substances on the international and the EU level, the use of the ODSs has been significantly reduced. The emphasis has been shifted towards using fluorinated greenhouse gases and this trend can be detected in the Hungarian regulatory system as well. Reviewing the Government Decree and the activity of the National Climate Protection Agency, one may conclude that the emphasis is on the fluorinated greenhouse gases regulated by Regulation 517/2014 and not on ozone depleting substances regulated by the Ozone Regulation. Also, the responses received from the other five authorities tell us that ozone depleting substances are rarely used in Hungary and irregularities are rarely found, and even if there are, they are related to administrative matters.

Therefore, in my view after the completion of the present examination and evaluation of the implementation of Article 28 of the Ozone Regulation, it would be worthwhile to initiate another strategic examination targeting the implementation of Regulation 517/2014 on fluorinated greenhouse gases.

Should you require any further information or clarification concerning this letter, please do not hesitate to contact me.

Yours sincerely,



Gyula Báncsi  
Ombudsman for Future Generations