FIFTH REPORT OF THE HIGH LEVEL GROUP ON COMPETITIVENESS, ENERGY AND THE ENVIRONMENT

CONTRIBUTING TO AN INTEGRATED APPROACH TO COMPETITIVENESS, ENERGY AND ENVIRONMENT POLICIES

Addressing both international action on climate change and better regulation

I) Introduction

1. This is the fifth and final report of the High Level Group (HLG) on Competitiveness, Energy and Environment. It addresses two very different but important issues at the forefront of the policy agenda:

   - International **action on climate change**, with a focus on business engagement and action in order to seek out competitive opportunities, mitigate the costs of addressing climate change, and accelerate innovation and deployment of low carbon technologies;

   - **Better regulation** looking at where opportunities lie to further improve regulatory framework to deliver needs at the interface of competitiveness, energy and environment policies.

II) International action

2. In March 2007, EU Heads of State and Government agreed upon an integrated EU climate change and energy strategy. This consisted of a firm independent **commitment** for the EU to achieve a 20% reduction of green house gases (GHG) emission by 2020 compared to 1990, increased to 30% in light of concluding a comprehensive post-2012 agreement. This international agreement is central to placing the world on track to **stabilising climate change** at no more than a 2°C temperature increase requiring carbon to be around 450 ppm CO_2eq, in the global atmosphere as this is considered consistent with avoiding both environmental and economic loss.

3. Policy makers over the world face the challenge of ensuring continued economic growth needed to improve living standards, while reducing GHG emissions. This shift towards a **global low carbon prosperous economy**, demands huge changes in energy, transport and industry patterns particularly from industrialised nations. The HLG on Competitiveness, Energy and Environment, recognise the scale of the challenge and that it is desirable with climate policy as it is with trade policy to avoid competitive distortions as much as possible and to encourage **international cooperation** for business globally. In this context addressing the climate change challenge cannot be compartmentalised as an environmental issue; **dialogue should be broadened** to address among other issues trade and competitiveness concerns as well as opportunities and to engage business in the solution. **Engaging business**, as with other actors, is critical for both environmental and economic success as businesses will be tasked to deliver. Business contribution may consist either in providing direct emissions reduction in their operations, developing and delivering sustainable and safe low carbon technology solutions to market or as financiers behind the changes, or in instances all three. This is why the HLG stress the importance of ensuring that integrated policies create opportunities to mitigate the cost for all in tackling climate change.

4. The UNFCCC Secretariat report on **financial and investment flows** needed to address the climate change challenge, stating that investment and financial flows need to be scaled up to meet the climate challenge and in particular allow for the necessary **deployment of low carbon technologies**. There are already signs of risk capital moving into clean technologies, of all kinds, in Europe, Japan and the United States in particular. Faced with severe environmental challenges, this investment is also starting in developing countries like China, which has around 80% of the world's cleaner, supercritical boilers in new coal-fired power stations. Just as there is no technological 'silver bullet'; no policy panacea exists. A range of policies will be needed addressing actions such as development of carbon market, technology deployment and avoided deforestation. The Stern Report stated that the **carbon market and international cooperation** to develop and deploy low carbon technologies will be essential. The HLG has expressed the view that deployment of current and continued development of future technology and the carbon market will play a key role in addressing sustainability issues. The right regulatory framework, a well functioning carbon market and adequately targeted support where market failures exist, are important to accelerate technology deployment and development. The HLG would like to reaffirm this point and stress that a variety of actions, solutions and commitments will need to form part of the post-2012 climate change efforts. A successful 2012 agreement will therefore demand a **common approach** from developed nations that focuses on achieving economy wide reductions in emissions and will encourage commitments from emerging economies consistent with their differentiated responsibilities.

5. Consequently it is an imperative that solutions enable emerging economies and in particular their carbon-intensive sectors to further their climate mitigation action without damaging their economic development. One of the tools to achieve this could be via so-called sectoral approaches. The benefits and challenges of **sectoral approaches** have been outlined by the International Energy Agency (IEA) and suggest that when built around carbon or performance benchmarks and/or indicators may provide an equitable way to engage such countries in action especially as this action supports energy security. If such approaches are applied to carbon or energy intensive sectors globally this could deliver fair competition and a more level playing field for business and could provide suitable milestone on way to developing a global emissions trading scheme.

6. Some business sectors have been proactive in developing sectoral approaches and there has been a healthy discussion on sectoral approaches within the climate change arena; however, to date, the conversation has been very broad including ideas such as: the benchmark approach which aims to set global emission intensity targets; the sectoral crediting or "no lose targets" approach, through which emission reduction credits can be generated for emission reductions beyond a defined baseline; the sectoral emission trading approach where a cap-and-trade system is defined for a specific sector. It is now time to add momentum with targeted investigation and analysis in order to have a debate on the most practical actions to take forward longer term.

7. For sectoral approaches to be **effective**, they need to

    a. be **bottom up**, initiated by business together with public authorities; they must focus on understanding current and potential performance; this work should be supported by international cooperation, with exchanges of best practice/technical visits within authorities and industry;
    b. incorporate an **ambitious baseline** definition;
    c. aim to encourage **sector wide actions worldwide**, that are compatible with global agreements through the UNFCCC;
    d. consider sub-sectoral actions within complex industry sectors.

Sectoral approaches have to be compatible with generally accepted principles of **competition rules**. Policy makers must consider the appropriate framework conditions in terms of ambition and credibility, to ensure action and success. A **roadmap** is needed to set out the route to operationalise sectoral approaches.

8. One of the most important tools to enable international action on climate change is the use of the carbon market. A recent report of the UNFCCC Secretariat concluded that to reduce 2030 emission levels to 2000 levels would require $200bn a year; to achieve this, an effective larger carbon market will form a large part of the solution. The clean development mechanism (CDM) has demonstrated large financial sums could be mobilised to mitigate emissions in developing countries, but a **step change** is needed to make this flow of capital commensurate with the scale of the task. Strengthening of absolute emissions reductions in developed countries through global sharing of efforts will help, through a carbon market, finance developing countries' decarbonisation. The level playing field for carbon and/or energy intensive industries needs to be ensured, taking due account of the principle of common but differentiated responsibilities and respective capabilities. Sectoral approaches again may offer a solution here, enabling capital to be mobilised for emission reductions beyond an agreed target, thereby incentivising some **autonomous action by developing nations** and not simply displacing emissions to cheaper location. This would offer additionality over the current system, without placing a cap on developing nations.

9. Besides sectoral approaches and the use of the carbon market, bilateral partnerships are a way forward as well. The EU has energy and climate change partnerships with China, India, Japan, Russia and the US, new partnerships are being set up with Mexico, South Africa and GCC countries. These bilateral partnerships enabled complementary dialogue outside the formal UN negotiations and as such are very useful in building confidence. **Bilateral partnerships** have also resulted in a number of concrete cooperation initiatives, such as the Near Zero Emissions Coal (NZEC) project with China (carbon capture and storage demonstration plant), strengthened cooperation on the CDM. It is important that these partnerships on climate and energy security be intensified, while addressing trade and competitiveness concerns. Such dialogues should be broadened to address energy and carbon intensive industries related issues.

1. In light of limited time to reach post-2012 agreement and with a view to progressively developing a global carbon market **the HLG recommends the development of sectoral approaches as part of a post-2012 solution through the following roadmap**,
   a) Relevant data gaps should be identified and, where appropriate, **data definition and collection** by industry must begin without delay, based on transparent best practice methodology, cost-effective processes and taking into account confidentiality issues.
   b) Business organisations together with regulators and public authorities should begin to put in place **monitoring, reporting and verification** processes and attempt to develop key performance **indicators** with a view to identifying quantifiable sectoral contributions to potential global emissions pathways. The European Commission should support such multi-stakeholder capacity building through **pilot projects**.
   c) The EU should **explore sectoral approaches** as part of post 2012 climate solution; in particular taking forward proposals on performance-based approaches and sectoral CDM[1] as a means to provide a way to further develop the carbon market. This move **beyond the current CDM model** could form part of common but differentiated commitments and contribute to a level playing-field for globally competing companies.
   d) The EU as part of its bilateral partnerships should explain benefits and **encourage convergence** in action towards development of sectoral approaches.

[1] Emission reduction credits can be generated for emission reductions beyond a sector-specific baseline

e) The EU should consider, in the further development of emissions trading, the possible advent of global sectoral approaches as a pathway to **move to** an increasingly **global carbon market**.

f) The Commission should set up and manage an **international stakeholders' group** to progress the development of sectoral approaches and to aid convergence between different systems.

2. There is a clear need to get **investment conditions** right for global low carbon technology deployment. This demands a clear articulation of risks and returns associated with accelerated technology deployment in order to facilitate risk sharing as part of **public private partnerships**. This can be delivered by creating a larger global carbon market, which should be better designed to aid technology deployment.
3. The EU should **build on existing international fora** in which EU industry can work with industry in other countries, including emerging economies through a series of concrete and practical actions around research, technology deployment and experience to address climate change.
4. The Commission and Member States should encourage business organisations and NGOs to hold meetings in key countries to discuss how to change the local, national, regional, international enabling environment with a view to scaling up investment in low carbon solutions and **deploying technologies at scale**. These multi-stakeholder processes should focus on specific objectives and result in concrete initiatives. It should also be integrated into existing relevant initiatives from the Commission. The EU should also make more use of its bilateral summits, in particular business summits to build consensus among industries on ways to take action.
5. The Commission should provide **support for business**, in particular, first-line specialist advice on IPR questions related to investment in or business with the new markets involved (e.g., China, India, etc). This support should be complemented by sector-specific or market-specific **training** where appropriate and in conjunction with member states own intellectual property offices/agencies, recognising that the solutions needed are often specific to the country or sector.

III) Better regulation

10. Effective regulation is essential to **ensuring competitiveness in a global economy**. This explains why Member States and the EU Institutions have embarked on programmes to improve the regulatory framework, through ensuring that European policy goals are delivered in the least burdensome and most cost effective way possible and that policies in different areas are mutually supportive and coherent. The HLG for Competitiveness, Energy and Environment has reflected on the better regulation agenda and offers its thoughts on how this agenda can be furthered in its aims of facilitating growth and job creation, while achieving higher levels of social inclusion and environmental protection.

11. Better Regulation principles and tools should enable achieving the policy objectives whilst promoting fair competition and an EU level playing field for business to prosper; wide consensus exists on what the **key principles** are;

    a. **Proportionality**, intervening when necessary and, having considered alternative regulatory solutions available, using the most appropriate to the size and importance of the perceived problem or risk addressed;
    b. **Accountability**, decisions should be open for public scrutiny and appeal procedures set in place;
    c. **Consistency**, ensure consistency of objectives at political level and that rules and approaches in areas which are inter-connected are implemented in coherent ways;

d. **Transparency**, policy objectives should be as clear and simple as possible, giving flexibility to industry in how to achieve the policy goal. Obligations of public services and target groups should be clearly defined, made explicit and communicated (e.g. explanatory guidelines);
e. **Targeting**, to the issues or problems to be addressed thus minimising side-effects and unintended consequences;
f. These principles need to be considered along with the principles of **predictability** and **effectiveness –** whether the legislation meets the desired goals in a cost-effective way.

The application of Better Regulation principles has to be entirely **consistent with** the application of **EU principles**, notably, prevention, subsidiarity, precautionary, and polluter pays principles, which are enshrined in the Treaty.

12. **Impact assessment** and **stakeholders' consultation** are key tools in delivering better regulation; they are being applied by the European Commission, the European Parliament, the European Council and the Member States notably in the design phase of the legislative process. Better Regulation serves Sustainable Development through balancing of different policy objectives and consideration of the long-term. The result of the application of Better Regulation principles should be a more effective, clear and consistent regulatory framework; enforcement being a key element in this process. Better Regulation principles and tools have the potential to lead to **integrated and performance-based legislation**, which also allows for flexibility in implementation and that the regulation is proportionate to risks and impacts. Nevertheless there is room for improvement and it is important that the Commission continue to pursue the better regulation agenda.

13. These tools are also of key importance in the application of European and national legislation in the areas of energy and environment, including by energy regulators. The European Regulators' Group for Electricity and Gas (ERGEG) has recently published detailed guidelines on its **public consultation practices** that are explicitly designed to be consistent with the principles of Better Regulation. At national level regulators commonly engage in extensive consultation. Some national regulators regularly produce impact assessments, and have engaged in major simplification exercises. National energy regulators are also increasingly coordinated at regional level (including via the possibility for regional consultations), in particular in the context of the Regional Energy Markets (REM) Initiatives, so as to achieve better harmonised outcomes as a staging post in the full development of the internal energy market.

14. Better Regulation will be key in delivering the "third Energy Package" recently proposed by the European Commission. In particular, the new legislation should require national energy regulators and the proposed Agency for the Cooperation of Energy Regulators to follow Better Regulation principles, notably concerning consultation.

15. **Simplifying and streamlining** legislation - The complexity of the regulatory framework as well as administrative burdens must be reduced. Currently the cumulative effect of various legislative instruments, particularly on small and medium-sized enterprises (SMEs), e.g. keeping records is estimated to account for some 40 % of the total administrative burden. **Reducing unnecessary administrative burdens** will lead to significant savings both to businesses and public administrations. It will also lead to better policy outcomes by concentrating resources on implementation and enforcement issues of most concern.

16. Further **harmonising EU legislation –** There is a real tension between the desire to harmonise and generate predictability and the need to be flexible. This can be seen by comparing the calls of multinational businesses for harmonisation to **ensure a level playing field** and the calls of some Member States for Regulations and predictability with the calls of other Member States for

Framework Directives and flexibility. **Legislative predictability** is highly valued – reviews should be timely, avoid change to successful parts of legislation and balance the costs of change against the benefits of reviewing existing legislation.

17. This could be achieved by setting **clear procedures and realistic deadlines** for business and administrations and by reducing the complexity and delays e.g. related to permitting and licensing of infrastructure including cross border inter-connections between networks (electricity, gas, etc.). In particular, clarifying and harmonising definitions across legislative instruments, especially concerning industrial emissions legislation such as the IPPC and related Directives (e.g. regulated unit, plant versus installation) would further **facilitate implementation**. Also further clarifying the issue of when waste ceases to be waste and ensuring consistency of definitions of waste, recycling and recovery across legislative instruments where it can enable higher environmental and economic gains.

18. **Better implementation** - There is considerable flexibility open to Member States over how to implement Directives, this is of course important; nevertheless there is a lot to be gained from cooperation between Member States. Lessons learnt are usually of benefit to both Member States authorities and businesses as they enable more **effective enforcement** while minimising burdens to those businesses demonstrating good management of their environmental risks. There are now several approaches to the One Stop Shop in place. This provides a focus for industry whilst integrating the activities and sharing of data by two or more competent authorities. Several Member States have developed environmental control mechanisms that suit specific activities and the degree of control required. These range from formal permitting subject to conditions, use of general binding rules and exemptions providing the freedom to concentrate efforts where it is most required for environmental protection. Experience with the Environmental Impact Assessment (EIA) Directive shows that whilst it provides flexibility, in its implementation there may be difficulties with delays and unnecessary costs due to choices made at the Member State or regional level. In addition, the review of the IPPC Directive has shown potential for significant savings from cutting administrative burden which could be achieved through implementation action at Member State level.

19. Competitiveness, social and environmental impacts should be analysed in a balanced way against the policy objective - Impact assessments of proposed legislation should be supplemented **by ex-post impact assessment**, covering issues of effectiveness and consistency of goals regarding competitiveness, social and environmental issues in a balanced way. Attention should be paid to the **international dimensions** of competitiveness and environmental impacts, properly accounting for cost of compliance and reducing ‘environmental leakage’. Less prescriptive legislation may facilitate implementation of good practice tools such as those identified by the BEST procedure project that would lead to better regulation. Building upon existing better regulation web tools consideration should be given to other means (e.g. a forum) for business and stakeholders to suggest ways in which regulations could be improved in order to better achieve the policy objective at least detrimental impact on competitiveness

Welcoming the wide range of on-going Better Regulation related initiatives and recognising the progress made so far on simplification, the High Level Group calls for

6. The EU, the Members States and the regulatory authorities to **pursue efforts to simplifying, streamlining and reducing administrative burdens** on EU business while **maintaining the level of environmental protection** through
   a) Applying the standard-cost model to **measuring** administrative costs;
   b) The **rationalisation of requirements** (e.g. harmonisation of inconsistent/incompatible definitions across different regulations, relevant information to be given only once);

c) Making it easier to **exchange information** between businesses and regulatory authorities (e.g. using one-stop-shop electronic/Web-based systems);

d) **Management procedures** should be improved to address multiple requests for permits, authorisations and notifications; where appropriate use general environmental rules applicable to specific activities, giving more responsibility to enterprises and making them accountable;

e) Risk-based regulatory approaches should be considered, including use of a **'de minimis' rule for low-risk activities**, in particular when SMEs are involved, where notifications are less costly than permitting procedures;

f) The assessment of legislative proposals and **ex-post impact assessments** should contribute to reduction of the cost of compliance while maintaining the level of ambition and effectiveness of legislation.

7. Impact assessment procedures should consider **international aspects** of social, environmental and competitiveness issues in a balanced, integrated and quantifiable way. Policy options should be evaluated taking into account consistency of specific goals with the general objectives of sustainable development on a global scale. Impact assessments should consider the impacts on different sectors as well as the cumulative effects of legislative proposals, in particular on SMEs.
8. National Regulatory Authorities and the European Regulators Group for Electricity and Gas (ERGEG) should continue to **deepen the commitment** already shown to the principles of Better Regulation, for example through the exchange of best practice. The HLG considers that during the legislative process on the 3rd Energy Package, the closest attention should be paid to ensure that national energy regulators and the new Agency for the Cooperation of Energy Regulators (ACER) shall comply fully and effectively with the principles of Better Regulation, most notably in relation to their formal consultations on any ACER Guidelines and Decisions, and on the European TSOs' proposed codes and standards.
9. Member States governments, regulators and regional authorities should **join efforts** to ensure that implementation of applicable legislation, e.g. the EIA Directive, is improved across the EU and, in reaching its environmental objectives, does not add undue delays but instead supports a well functioning energy market and security of supply.
10. The EU and Member States should aim to create a European market for waste for recovery, including recycling, taking into account the necessary provisions safeguarding environmental protection in EU waste legislation. Therefore, unjustified and disproportionate obstacles to EU cross-border flows of waste for recovery should be removed. This should be accompanied by **improved enforcement** of EU waste legislation; ensuring consistency of definitions of waste, recycling and recovery across different EU legislative instruments; taking into account the need for creating a better regulatory environment for recycling activities. **Best practice** in this area should be encouraged across the EU.

IV) Outlook

20. As stated at the beginning, this is the final report of the HLG; it will be followed by a **closing conference** on the 27th November. At the conference, a document will be available summarising the work done by the Members of HLG and consolidating the HLG reports; it will be a unique source of information about key messages, actions and recommendations from the Group.

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