

Appliances burning gaseous fuels

Impact Assessment (SWD (2014) 151, (SWD (2014) 150 (summary) of a Commission proposal for a Regulation of the European Parliament and of the Council on appliances burning gaseous fuels (COM (2014) 258).

Background

This note seeks to provide an initial analysis of the strengths and weaknesses of the European Commission's Impact Assessment (IA) accompanying the above proposal. This is a proposal to replace the Gas Appliances Directive 2009/142/EC (GAD) of 30 November 2009, which aims to permit the free movement of appliances and fittings burning gaseous fuels within the EU market while ensuring a high level of protection for their users against risks. The Directive is an example of Union harmonisation legislation, and is said to have contributed considerably to the completion and operation of the single market¹.

The Gas Appliances Directive (GAD) covers 'appliances burning gaseous fuels that are used for cooking, heating, hot water production, refrigeration, lighting or washing, [...] forced draft burners and heating bodies to be equipped with such burners', as well as 'fittings' such as safety, controlling or regulating devices². It covers, where applicable, those appliances with a normal water temperature not exceeding 105°C. There are three categories of essential requirements listed in Annex I to the GAD: general conditions, requirements for materials and design, and construction requirements.

Although the GAD has been functioning well, experience with its implementation, as well as technical progress and innovation, suggested that it was appropriate to examine whether certain provisions needed to be reviewed. As a result, it has been deemed necessary to update and clarify some of its provisions, without however modifying its scope.

There is also unanimity on the need to align the current legislation with the **New Legislative Framework (NLF)**. This is a common framework for EU product harmonization legislation which sets out general principles and reference provisions commonly used in EU product legislation (e.g. definitions, obligations of economic operators and notified bodies, safeguard mechanisms, etc.). It aims to address overall problems by removing inconsistencies in sectorial legislation so as to ensure its correct interpretation and application by the economic operators and authorities. Two parallel proposals³, on cableways and personal protective equipment, have also recently been submitted in this context and the corresponding impact assessments are the subject of separate appraisals⁴.

¹ Explanatory Memorandum, p. 2

² IA, p. 8

³ Proposal for a Regulation of the European Parliament and of the Council on cableway installations (COM(2014) 187) and Proposal for a Regulation of the European Parliament and of the Council on personal protective equipment (COM(2014) 186)

⁴ [Initial Appraisal of a European Commission Impact Assessment on cableway installations](#) (PE 528.803) and [Initial Appraisal of a European Commission Impact Assessment on personal protective equipment](#) (PE 528.806)

Problem definition

The IA explains that, despite successful functioning of the GAD, there is a broad consensus that it needs some improvements (IA, p. 15). However, it is at pains to stress that the external study⁵ on which it is based, did not actually identify any real problems which might require major changes, such as health and safety issues, unfair competition or complex regulatory environment, but pointed rather to issues of clarification and simplification of existing provisions, and alignment. Consequently, the IA report explains that such questions have been referred to as 'problem issues', rather than 'problems', claiming that this has been done 'in order to stress that no real problems were identified' (IA, p. 16). If this was the intention, then a more suitable alternative terminology could perhaps have been chosen.

'Problem issues'

1. Alignment with the New Legislative Framework

Alignment of Directives with the NLF is a legal and political commitment to remove inconsistencies and prevent non-compliant products reaching the market. Although non-compliance is not a problem that has been identified in the context of the implementation of the GAD, many of the other general problems identified by the NLF have been observed (IA, p. 17). As alignment requires amendment of the legal text, the opportunity is used to address those GAD-specific aspects deemed to be justified.

Although it is initially included as one of the problem issues, alignment is later treated separately from the other points, notably in Annex VIII, the IA explaining that potential impacts of alignment with the NLF have already been addressed in the impact assessment accompanying that procedure.

2. Scope - Product coverage

The current GAD excludes certain products that may present gas risks, and the IA recognises that there was a strong consensus amongst stakeholders to widen the scope. However, it explains that after careful examination the external study found no justification, such as health and safety grounds, for bringing new products under the scope of the GAD. The main aspect requiring clarification with regard to the scope, is the current exclusion of appliances with a normal water temperature that exceeds 105°C. This is no longer considered to serve any useful purpose, since hazards due to pressure are now covered under EU harmonization legislation, and the original risk of conflict with national legislation therefore no longer exists. Without clarification on this issue, the IA claims that the current potentially unsatisfactory situation for manufacturers, notified bodies and Member State authorities will remain.

3. Sector specific terminology and definitions

According to the IA, the current wording of the definition of the scope is not precise, and no definitions for the terminology used are provided. This leads to the need for interpretation, therefore not providing the legal certainty and stability requested by stakeholders. For example, there are no adequate definitions for the terms 'combustion', 'combustion products' or 'fittings'. As definitions are unclear, it was necessary in the past to draw up several GAD Guidance Sheets to clarify. No long-term legal certainty can be achieved, however, as long as the terms used in the legal text can be subject to interpretation.

4. Communication of the types of gas and the corresponding supply pressures

According to Article 2(2) of the GAD, Member States must communicate the types of gas and corresponding gas pressures used on their territories and any changes in their gas supply conditions. Most of the respondents to the public consultation indicated that the current information available on gas supply conditions is not sufficient, and there is a need to better determine the parameters⁶ to ensure adequate and comparable information. In addition, this should take account of the increase in the use of biogas. It is important to ensure that manufacturers have adequate information about the types of gas and supply pressures available, as inadequate information could lead to safety problems.

⁵ [IA study on the review of the GAD, Final Report, Risk & Policy Analysts Ltd, Oct. 2012:](#)

⁶ IA, p. 23

5. Rational use of energy

The wording of GAD Essential Requirement 3.5 is very general in this respect, and could lead to different interpretations, while the requirements under the Ecodesign Directive and its implementing measures are very detailed⁷. The risk is that the legislation will not be interpreted in a comprehensive and coherent way.

6. Requirements

No problems have been found with the current Articles, but the IA indicates that the Essential Requirements could be clarified. There is an issue relating to the absence of the principles of the safety integration, and this can only be resolved by amending the GAD.

There is a lack of consistency between the way the problem issues are presented in the IA report and in its Executive Summary. In the Executive Summary, some of the issues to be addressed are formulated as possible solutions rather than problems, e.g. 'removal of the 105°C temperature limit from the definition of the scope'; 'introduction of the currently missing definitions'; 'clarification of the relationship between the GAD and the EU legislation on energy efficiency', and 'clarity of the provisions of the GAD'⁸.

A problem tree is presented⁹ in the IA which links the causes of the problem issues, the problem issues themselves and the general, specific and operational objectives.

The presentation of the problem tree, however, is rather confusing, in that the 'problem issues' detailed in the IA are not reproduced individually in the diagram, but are instead summarised under the following headings:

- Room to improve the level of protection of health and safety of citizens, and of the energy efficiency;
- Uneven level playing field for the gas appliances sector's economic operators;
- Ambiguous legal requirements and framework requires interpretation.

Objectives of the legislative proposal

The *general* objectives¹⁰ of the initiative are to:

1. Better protect health and safety of users of gas appliances and fittings as well as to ensure the appropriate performance of these products;
2. Improve the fair playing field for the gas appliance sector's economic operators;
3. Simplify the European regulation environment in the field of gas appliances and fittings.

These are translated into several *specific* and *operational* objectives.

Range of options considered

The IA examines a limited range of 3 main options, including the option of retention of the status quo.

Option 1. 'Do nothing'. This option would leave the existing situation unchanged.

Option 2. 'Soft law'. This option is based on the 'do nothing' option, with the addition of the elaboration of new GAD Guidance Sheets, according to need.

⁷ IA, p. 26

⁸ Executive Summary, p. 2-3

⁹ IA, p. 31

¹⁰ IA, p. 32

It is not clear why the introduction of further guidance sheets (Option 2) could not be considered as part of the baseline scenario (Option 1). The distinction between these options therefore seems a little artificial. This point was also made by the Impact Assessment Board in its opinion.

Option 3. 'Legislative measure'. This option is undertaken by amending the legal text itself and is the preferred option.

Scope of the Impact Assessment

The IA presents what the Commission considers to be the most relevant social and economic impacts. The environmental dimension was not thought relevant for consideration due to the nature of the measures involved. As it claims that the scope and provisions of the existing legislation would remain largely unchanged, it concludes that 'the proposal does not have significant economic, social or environmental impacts, except those minor impacts of proposed clarifications which will yet highly facilitate the application of the GAD' (IA, p.16). Because of their limited extent, the IA explains that it has been impossible to derive specific quantitative data on any specific impacts¹¹. It does, however, consider that the simplification and clarification of the existing legal provisions is 'likely to contribute to reducing the costs to manufacturers, notified bodies and authorities'¹². In relation to the external IA study, however, it says that '[w]here quantifying a particular impact was not possible, qualitative information was combined with quantitative data' (IA, p. 13). Yet no figures at all are provided in the IA report itself. The IA stresses that the expected marginal benefits were dealt with in a proportionate way by carrying out a qualitative analysis in order to select the preferred option. This assesses each option on the basis of effectiveness, efficiency and coherence.

Marginal social impacts consist of benefits to the health and safety of the installers and users of gas appliances. The improved legal clarity and availability of data may also have a slight positive impact on employment, and achieving objectives such as the Europe 2020 target of a 20 per cent increase in energy efficiency¹³. Due to the removal of the 105°C normal temperature limit, manufacturers of gas appliances with a normal water temperature close to that limit could be affected by the changes. However, as such products could not be identified on the market, no or only a few manufacturers are expected to be affected¹⁴.

Subsidiarity / proportionality

The proposal is based on Article 114 of the TFEU and refers to the proper functioning of the internal market for gas appliances and fittings. It is suggested that actions that could be taken at national level to address the problems might infringe the free movement of gas appliances and fittings. The IA concludes that 'any changes to the scope, procedures or requirements must be carried out at the EU level to avoid distortions in the EU market'¹⁵. No reasoned opinions were received from national parliaments.

Budgetary or public finance implications

The Explanatory Memorandum of the proposal indicates that there are no implications for the EU budget and the IA executive summary sheet states that it will not have important impacts on national budgets and administrations.

¹¹ IA, p. 37

¹² IA, p. 30

¹³ Executive Summary, p. 5

¹⁴ IA, p. 20

¹⁵ IA, p. 30

SME test / Competitiveness

In the in-depth analysis, the IA concludes that there will be no additional costs or additional burdens for SMEs, compared to the current situation, that they will not be disproportionately affected and that no mitigation measures need to be provided¹⁶. The ex-post evaluation of the GAD did however suggest that the GAD in itself was considered by some to have had a negative impact on innovation, and that this had affected SMEs in particular. It also identified that compliance costs were most significant for SMEs and those with lower production volumes¹⁷. These aspects do not seem to have been raised during the stakeholder consultations, although SMEs were represented, or to have been taken up for further examination by the external study as one of the possible problem issues to be addressed.

In response to the comments of the IAB, the IA states that 'the IA Report will also be amended by an assessment of the compliance costs and impacts on SMEs'¹⁸. The IAB in fact made explicit reference to the impact on SMEs of the modification of legal requirements and the introduction of general design principles. While the extent of potential impacts on SMEs is certainly systematically, if briefly, referred to through the assessment section in Annex XI, the conclusion is that none of the proposed changes imply specific impacts for SMEs. There does not appear to be any explicit quantified assessment of compliance costs, other than a reference in Annex V to the estimates used in the context of the ex-post evaluation¹⁹.

Simplification and other regulatory implications

The purpose of this proposal for legislation is simplification and clarification of the existing legal provisions. Alignment to the New Legislative Framework is said to be a major step towards simplification of legislation as harmonized solutions can be applied across the sector.

The IA explains that the change from a directive to a regulation is in line with the Commission's general objective to simplify the regulatory environment and the need for a uniform implementation throughout the Union of the proposed legislation.²⁰ It argues that a Regulation does not conflict with the subsidiarity principle and that the GAD is a total harmonization directive. In the words of the IA, 'Member States are not allowed to impose more stringent or additional requirements in their national legislation for the placing on the market of gas appliances. [...] Given this level of harmonisation, which is necessary to avoid obstacles to the free movement of gas appliances, Member States have almost no flexibility in transposing the Directive into their national law and its content is in many cases reproduced word for word in the national transposition legislation. The same applies to the new provisions that will be integrated into the text following the alignment to the NLF decision'. In addition, the IA argues that the change to a Regulation will not bring any changes in the regulatory approach. Moreover, it claims that, on a general level, this approach seems to be preferred by industry associations because it avoids the risk of 'gold plating' and 'allows manufacturers to work directly with the Regulation text instead of needing to identify and examine 28 transposition laws'²¹.

According to the IA, not all Member States seem to share the view about the change in the legal instrument. While some do see benefits from saving transposition costs, others indicate that, despite direct applicability of a regulation, some national implementation measures and modifications of national legislation would still be necessary. The IA does not make any assessments of any negative impacts which such a change might cause, concluding that a regulation is the best solution for the sector as it saves transposition costs for the Member States, allows a more rapid and coherent application and establishes a clearer regulatory environment for economic operators.

¹⁶ IA, p. 44

¹⁷ IA, p. 70, 72

¹⁸ IA, p. 8

¹⁹ IA, p. 72

²⁰ IA, p. 32

²¹ IA, p. 49

The above arguments are identical to those presented in the context of the Personal Protective Equipment proposal.

Quality of data, research and analysis

The IA draws on a substantial amount of research and analysis, including the 2011 ex-post evaluation of the operation of the GAD itself. The external IA study on which this IA report is based was launched in December 2011 and stakeholders appear to have been consulted extensively - including through targeted re-consultation in some cases - throughout the assessment process. A number of expert working groups also contributed actively to the revision process. Apart from alignment, the issues identified for further consideration by the external study seem to have come directly from the outcome of the stakeholder consultation, which is a positive approach. However, some of the issues identified in the context of the ex-post evaluation, such as compliance costs, concerns relating to fittings in relation to the scope of the directive, and impacts on the most innovative product categories²², do not appear to have been addressed. The IA report could have benefited from a more consistent presentation of the problem areas identified and possibly a better description of the root causes which could be more logically linked to the objectives and the presented options.

With regard to assessment of impacts, more direct reference to the analysis carried out in the context of the external study could have been helpful. The way that the Commission presents the policy options (examining all three options for each problem individually) suggests that combinations of options (e.g. do nothing on one problem, propose voluntary measures for another and adopt legislative measures for others) might be a possibility, although this is presumably not the intention. It would have been clearer if the IA had presented the analysis of impacts for every option, this being the more comprehensible and usual approach adopted, instead of considering all options for every problem individually. It is surprising that in some cases the assessment of the impact of option 2 is seen to be more negative than the 'do nothing' option 1. More emphasis could have been placed when comparing options 2 and 3 on the fact that Guidance Sheets are not legally binding. As mentioned above, the assessments made are purely qualitative and do not provide any quantitative analysis.

Stakeholder consultation

Stakeholder consultation appears to have been exceptionally extensive and thorough and the areas considered by the external study seem to have been largely dictated by the outcome of the consultation, which is an unusual and positive aspect.

Member States and stakeholders, including manufacturer's federations, notified bodies and representatives of standardisation bodies, consumers and citizens, were involved in the IA process from the beginning. The Member States Working Group Gas Appliances (WG-GA), the Working Group GAD Revision (WG GAD Rev) and the Gas Appliances Directive Advisory Committee (GAD-AC) also contributed actively to the revision process.

A public consultation was held between December 2011 and March 2012 to collect views and opinions of stakeholders. All the parties concerned were widely consulted on the proposed policy options, and 90 responses were received overall.

Due to the limited impact of the changes, the economic operators and other stakeholders affected remain the same as currently. There was a broad consensus amongst stakeholders that, despite the successful functioning of the GAD, it would benefit from some improvements in terms of clarification and updating²³. A broad majority of respondents to the Public Consultation did not consider the definition of the scope in the current GAD to be clear, favouring in particular the inclusion of certain other products that may present

²² IA, p. 70

²³ IA, p.15

gas risks. This question was analysed in detail by the external study, including by targeted re-consultation, which concluded that there was no evidence to justify extending the GAD's scope to cover new products.

Monitoring and evaluation

The IA explains that feedback received through the various existing co-operation mechanisms will inform the monitoring and evaluation of the effectiveness of the Regulation. It states that, in line with its Smart Regulation policy, the Commission will evaluate the effectiveness of the revised legislation within a period of five to ten years, but this is not reflected in the legislative proposal. Specific indicators are suggested for the monitoring of the reduction of non-compliant products²⁴. No reference is made to possible action required to improve the quality of data collection with a view to future evaluation exercises, although difficulties in this respect were mentioned in the external study.

Commission Impact Assessment Board

The IA Board issued a positive opinion on a draft version of the IA on 15 May 2013, but nevertheless making the following recommendations for improvement:

- Better define the problems and explain on what basis certain recommendations made in the ex-post evaluation have been excluded from the scope of the initiative;
- Better present the content and impacts of options, including a more comprehensive assessment of compliance costs and impacts on SMEs;
- Better present stakeholder views;
- Improve the presentation and better explain the procedure of collecting missing data.

Coherence between the Commission's legislative proposal and IA

The legislative proposal of the Commission seems to follow the recommendations expressed in the IA. However, the declared intention in the IA to evaluate the effectiveness of the Gas Appliances Regulation after five to ten years of application does not seem to be explicitly mentioned.

Conclusions

As far as the form is concerned, the drafting and editing quality of the IA is poor in places and there is a great deal of repetition. Some of the information contained in the Annexes could usefully have been included in the body of the report, and more direct reference to the work of the external study would have been helpful. The assessment of the options by individual problem issue is not the clearest way to proceed and makes it difficult to gain an overview.

As far as the substance is concerned, the IA report seems to suggest that there is a limit to how much analysis can realistically and usefully be made of what it repeatedly recalls are unlikely to be significant impacts. The assessment of those potential impacts is therefore equally limited. The choice of options is also very restricted. The external IA study apparently already carried out an in-depth analysis of the various suggestions coming out of the consultation process. As a result, any additional options which might have implied more far-reaching impacts, such as extension of the scope of the legislation, for example, had already been discarded, and are therefore not included in the assessment within the IA report itself. Both the external study and the IA report could perhaps usefully have considered addressing in more depth some of the impacts of the original directive identified by the ex-post evaluation.

²⁴ IA, p. 49-50

This note, prepared by the Ex-Ante Impact Assessment Unit for the Committee Internal Market and Consumer Protection (IMCO) of the European Parliament, analyses whether the principal criteria laid down in the Commission's own Impact Assessment Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal. It is drafted for informational and background purposes to assist the relevant parliamentary committee(s) and Members more widely in their work.

This document is also available on the internet at: www.europarl.europa.eu/committees/en/studies.html

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