

Chilling Intent: The F-gas industry plot to subvert EU climate legislation

Corporate Europe Observatory, October 2005

(Summary attached at the end)

When before have refrigerants been a hot item? An important EU initiative which seeks to regulate the use of some highly potent green house gases has been under attack from its inception by F-gas industry lobbying, who seek to weaken its impact on their business activities. The Brussels front for this lobby, which consists of mainly US based multinationals, is the 'European Partnership for Energy and the Environment' (EPEE). It is now working hard to influence the European Parliament so that current Parliament proposals do not undermine industry's initial lobbying success by introducing tougher regulation after all. Internal EPEE documents reveal the exact details of the lobbying strategy laid out by Hill & Knowlton.

The EU is one of the main contributors to global climate change. In order to meet even its own Kyoto commitments¹, generally considered not nearly enough, EU countries have to take serious action. High on the to-do list is reducing the emissions of the 'F-gases'. These industrial fluorinated gases (hydro fluorocarbons or HFCs, perfluorocarbons or PFCs and sulphur hexafluoride or SF₆), have extremely high Global Warming Potentials (GWP).² With their growing production, F-gases will count for an increasing share of global greenhouse emissions. Unique among pollutants that cause climate change, is that F-gases are not a by-product, but deliberately produced and promoted substances.³

Use of F-gases

F-gases are used in many appliances such as refrigerators, air conditioning, foam blowers and car tyres. They replaced ozone-depleting gases such as chlorofluorocarbon (CFCs), which are being phased out globally as part of the 1990 Montreal Protocol. F-gases are therefore often portrayed by their manufacturers as 'environmentally friendly'. However, they are highly potent greenhouse gases and therefore have become an important element of the European Climate Change Programme (ECCP), which since 2001 has been the EU's main forum for discussing and developing policies to combat climate change and meet Kyoto demands.⁴

In most appliances, natural alternatives with negligible GWP compared to F-gases are either already available and widely used, or are in development.⁵ For example, Greenpeace and German company DKK Scharfenstein introduced 'Greenfreeze' hydrocarbon refrigerators into the European market in the 1990s.⁶ Now, fridges made by major European companies such as Siemens and Bosch are nearly all F-gas free. Big food corporations are switching to F-gas free commercial refrigeration.⁷

Despite this and to the disappointment of many, in 2003 the European Commission's initial proposal⁸ for regulating F-gases focused on containment rather than out-right bans. This meant a focus on how the substance is handled, preventing leakage, instead of limiting the use of it. Furthermore, internal market law was chosen as the legal base for the proposal instead of EU environmental law.⁹ This effectively prevents individual Member States from imposing their own bans or introducing stricter rules. This is significant because countries such as Denmark and Austria, have been pursuing national F-gas bans and are supporting the switch to alternatives.

After two and a half years of discussions, the F-gas Regulation is nearly finalised. At the end of October 2005, a crucial European Parliament vote may bring fundamental improvements to the current proposal.

¹ For EU-15, that is cutting greenhouse gases to 8% below 1990 levels by 2008-2012.

² A commonly used refrigerant for example, HFC134-a, contributes 1,300 times more to global warming than CO₂ and stays in the atmosphere for over 14 years. Other HFC's reach levels of 6,000 to 10,000 GWP, while SF₆ has a GWP of nearly 24,000! Information of the US Environmental Protection Agency (EPA), <http://www.epa.gov/methane/pdfs/highglobalwarm.pdf>

³ 'Briefing on the climate threat posed by F-gases', MIPIGGS, September 2005.

⁴ European Climate Change Programme, Report June 2001, http://europa.eu.int/comm/environment/climat/pdf/eccp_report_0106.pdf

⁵ Examples are ammonia, CO₂ and hydrocarbons. Propane, a hydrocarbon, for example has a direct GWP of less than 3 compared with HFC-134a 13,000 (over 100 years) and an atmospheric lifetime of months as opposed to 15 years.

⁶ <http://archive.greenpeace.org/ozone/greenfreeze>

⁷ www.refrigerantsnaturally.com

⁸ 2003/1089 (COM), http://europa.eu.int/eur-lex/en/com/pdf/2003/com2003_0492en01.pdf

⁹ Art. 95, Internal Market, instead of art. 175, Environment.

F-gas lobby: Who is the 'European Partnership for Energy and the Environment'?

While the makers of products using F-gases in many cases have the option to switch to alternatives, F-gas producers have a great interest in sustaining their use. DuPont's Annual Review in 2004 states that: "With global patent rights for three critical HFC refrigerant blends, DuPont is poised to benefit from implementation of the Montreal Protocol <...>". DuPont is expanding its F-gas activities in China, a fast-growing air conditioning and refrigeration market.¹⁰ Honeywell and Arkema (part of oil giant Total) are doing the same. Clearly, patent portfolio's and investment strategies are at the core of the industry's current offensive and their battle against any F-gas phase outs. In 2002, new F-gas factories were proposed or under construction in European countries like the UK, France and Spain.¹¹

The failure of the US government to take meaningful action against global warming is well known. US producers of alternative refrigerants such as hydrocarbons, argue that the absence of US action against F-gases is due to political pressure of pro-F-gas groups "that are closely linked to DuPont".¹² As a non-signatory to the Kyoto Protocol, the US government and US industries often characterise European initiatives that seek to take action against global warming as barriers to trade "under the guise of environmental protection".¹³ However, it became apparent that in the EU, F-gases were going to be subject to some kind of regulation. So the F-gas industry devised a more European and 'green' façade, in order to take action to keep any impending regime as weak as possible. To this end, in 2000, the 'European Partnership for Energy and the Environment' (EPEE) was founded.

The EPEE presents itself as the 'voice of the European refrigeration and air-conditioning sector'. However, the 23 members on the 'European' member list are mostly American or Japanese multinationals with plants in Europe (DuPont, Honeywell, Lennox, Baltimore Aircoil, Copeland, Carrier, Daikin, Hitachi, Mitsubishi and others). The absence of most European refrigerator manufacturers, including Siemens, Bosch, Miele, DeLonghi, AEG and Liebherr,¹⁴ is highly significant, as they have all largely switched to alternatives to F-gases.

Lobby on F-gas

The most vocal lobby on the F-gas regulation has undoubtedly come from the F-gas producers themselves, either through EPEE or the European Fluorocarbon Technical Committee (EFCTC)¹⁵, part of the chemical industry lobby organisation CEFIC. All five members of EFCTC are also members of EPEE. Other industry sectors lobbying on the F-gas regulation represent the variety of uses of F-gases: producers of foam, cars, fire fighting equipment and food companies. All are worried about the costs of transition to alternatives. Large food companies like McDonald's got involved in hope of subsidies for their switch to F-gas free refrigerators. The CIAA (food and drink industry federation) recently got involved to oppose bans that would affect other companies that have not yet switched. Opposing the pro-F-gas lobby, green NGOs like Greenpeace and Climate Action Network Europe, along with producers of alternative refrigerants, have fought for the EU to adopt a much more far-reaching approach to reduce F-gas emissions.

There are significant gaps in the membership list which is available on the EPEE website¹⁶, such as EPEE founding member: the US Airconditioning and Refrigeration Institute (ARI).¹⁷ The ARI is closely related to the 'Alliance for Responsible Atmospheric Policy' (ARAP). Both are based in Arlington, Virginia, near Washington. The EPEE and ARAP are closely linked, with largely overlapping memberships.¹⁸ The only two companies listed as "US" members of the EPEE (Rheem Manufacturing and Lennox International), are very involved in both lobby groups. Dave Lewis of Lennox International is chairman of ARAP. All the other US companies are listed with their European offices. The names of the two organisations include typical terms such as 'Alliance' and 'Partnership', 'Responsible' and 'Environ-

¹⁰ 'DuPont and Zhonghao Finalise HFC Refrigerant Joint Venture', March 2004, <http://www.azom.com/news.asp?newsID=1125>

¹¹ 'Briefing on the climate threat posed by F-gases', MIPIGGS, September 2004.

¹² 'The age of hydrocarbon refrigerants has arrived', Idaho Observer, April 2002, <http://proliberty.com/observer/20020406.htm>

¹³ "It appears that the European Parliament is willing to enact discriminatory non-tariff trade barriers to US products under the guise of environmental protection", Dave Lewis, ARAP press release March 2004 <http://www.arap.org/pr/hfcs-eu.html>

¹⁴ Some European associations like AREA (an association representing refrigeration and air conditioning installers) declare to be EPEE member, although they are not on the EPEE membership list.

¹⁵ Members are: DuPont, Ineos Fluor, Arkema, Solvay Fluor and Honeywell.

¹⁶ www.epeeglobal.org

¹⁷ The ARI is not only a 'founding member' of EPEE, but also EPEE newsletters can be found on the ARI site, as well as dates of EPEE meetings in Brussels. The ARI members are encouraged to become member of EPEE.

¹⁸ The ARAP board of directors includes people from DuPont, Honeywell, Lennox, Carrier, Copeland, Maytag, INEOS, Solvay, York International, General Electric and ATOFINA.

ment', and reflect a decade-long tradition of industry front groups working against progressive social and environmental legislation.¹⁹

For many years, US and EU multinationals had the 'Trans Atlantic Business Dialogue' (TABD) at their disposal for co-ordinated transatlantic lobbying.²⁰ The TABD was founded in 1995 as an initiative of the European Commission and the US government. This controversial body grants these companies privileged access to high level policy makers. When refrigerants became an issue, a 'Refrigerants Group' was set up within the TABD, on the US side, headed by the Air conditioning and Refrigeration Institute (ARI).

Following a 1994 EU proposal to unilaterally ban certain ozone depleting HCFCs²¹, the European Commission was criticised by the TABD Refrigerants Group and accused of being "unresponsive to industry input and facts".²² A few years later, the TABD focus shifted to the F-gases. Responding to a Danish government plan to ban certain F-gases by 2006²³, industry took action directly to the European Commission. Reporting on the Cincinnati TABD summit in December 2000, the ARI newsletter states that: "The Refrigerants Group briefed Peter Horrocks, the EU's Environment Head of Sector, and Gerhard Lohan, the EU's Enterprise Head of Unit, for nearly two hours on the merits of long-term HFC use".²⁴ Refrigerants remained a major issue at later TABD meetings.

As demonstrated later, the privileged access that the TABD offered to the F-gas industry influenced key concepts in the first Commission F-gas proposal. The TABD also played an important role in paving the way for a European twin organisation to ARAP to establish itself as a 'credible stakeholder'. From its inception, the EPEE has served as a platform from which the European decision makers, media and public are supplied with the 'green' F-gas message.

Cloudy role of PR firms

In Brussels, public relations (PR) firms play a key, but opaque role in assisting corporate lobbying. The EPEE is an example of this. The EPEE website (www.epeeglobal.org) does not reveal that the group's Brussels operations are by and large run by public affairs giant Hill & Knowlton, located on 118 Avenue de Cortenbergh, one of Brussels' lobbying hotspots.²⁵ The EPEE has the maximum permitted number of four (previously six) lobbyists accredited with fulltime access passes to the European Parliament on its behalf²⁶. All but one are Hill & Knowlton employees, registered as 'EPEE'.

Hill & Knowlton consultants designed EPEE's lobbying strategy, do the organisational work, and conduct most of the lobbying of EU officials and parliamentarians. While the content and approach of ARAP's arguments have evidently been copied to EPEE, the EPEE website is more stylish and has a distinctively more 'green' flavour to it. Hill & Knowlton claim that thanks to its work, "EPEE has become a legitimate and credible stakeholder in the refrigeration policy debate".²⁷ In a very similar manner, the ARAP is established and run by PR firm Alcalde & Fay in Washington.²⁸

Greenwashing F-gases

The EPEE lobbying strategy is clearly focused on greening the image of F-gases. To the United Nations, the EPEE claims a commitment to "contribute to the development of effective European policies to reduce greenhouse gases from the use of refrigerants".²⁹ Meanwhile to industry, ARI president William Sutton talks about how: "<...> the EPEE <...> is fighting against the possible phase-out of HFC refrigerants in Europe".³⁰

¹⁹ Many example can be found on the website of SourceWatch, http://www.sourcewatch.org/index.php?title=Industry-funded_organizations

²⁰ See also CEO report on TABD: 'TABD in Troubled Water', <http://www.corporateeurope.org/tabd/troubled.html>

²¹ EU directive 3093/94.

²² TABD Special Issue, October 1999, <http://www.eabc.org/abstracts/TABDspecial.htm>

²³ Website of the Multisectorial Initiative on Potent Industrial Greenhouse gases, http://www.mipiggs.org/g_action.html

²⁴ ARI newsletter Koldfax of 2000, see also <http://www.corporateeurope.org/tabd/troubled.html>

²⁵ This location is also home to PR/PA company Burson Marsteller, see also

<http://www.corporateeurope.org/lobbycracy/houseofmirrors.html>

²⁶ If you look at it from the Hill & Knowlton perspective, running EPEE brings the additional benefit of having three extra lobbyists (Philipp Bruchert, Marc Limon, Mary B. Walsh) accredited at the European Parliament on top of the five currently registered as Hill & Knowlton lobbyists.

²⁷ <http://www.hillandknowlton.be/HK/clients/clients>

²⁸ www.alcalde-fay.com; David Stirpe of Alcalde & Fay serves as the Executive Director of the Alliance for Responsible Atmospheric Policy. Kevin Fay is 'special counsel' to the ARAP, and ran the former 'Alliance for Responsible CFC Policy'.

²⁹ EPEE submission to the UN Framework Convention on Climate Change, www.unfccc.int

³⁰ <http://www.ari.org/consumer/speeches/2003/0503suttonoslo.html>

ARAP/EPEE claim that the environmental benefits of F-gases are (1) they replace ozone depleting CFCs, (2) their potential energy efficiency compared to alternatives in some appliances, generating less CO2 emissions. It is argued that (3) with maximum containment, leakage into the atmosphere can be prevented. Diverse arguments are used to discredit the alternatives like hydrocarbons (4).

(1) The very first impression about the EPEE, given by the website's flashy introductory film, is its concern with the hole in the ozone layer. However, it fails to say that the alternatives to F-gases are equally non-ozone depleting. Moreover, EPEE members like DuPont, Solvay and Daikin have made a fortune out of ozone-destroying CFC's in the past, and were initially opposed to their phase-outs.³¹

Genuinely concerned about ozone?

The founders of the EPEE were actively engaged in the fight against the phase-out of CFC's. According to internet sources, Hill & Knowlton has in the past assisted in the defense of CFC's by downplaying its role in the destruction of the ozone layer. Dr. J. Masters, meteorologist, notes how in 1975, when scientists first discovered the ozone hole, Hill & Knowlton was hired by the CFC industry to organise a month long speakers tour around the US for an ozone-skeptic scientist to discredit the discovery as just a 'number of theories'.³²

Later, the CFC industry took control of the situation and supported CFC phase-outs, as they saw benefits from the opening market for their replacements, F-gases. Meanwhile, their lobbying continued to slow down the speed of CFC phase-out. For this initial purpose, the 'Alliance for Responsible CFC Policy' was founded. This Alliance was later renamed the 'Alliance for Responsible Atmospheric Policy'. Kevin Fay (of PR company Alcalde & Fay), then director of the Alliance for Responsible CFC Policy, was quoted commenting on the Montreal Protocol as: "it goes much further than anything we think is necessary".³³ Mr. Fay is still active in the Alliance for Responsible Atmospheric Policy as a special counsel.³⁴

The companies behind ARAP and EPEE, former producers and promoters of CFCs, should not be given any credit for the global move towards CFC phase-out. Furthermore, the fact that F-gases are non-ozone depleting does not make them 'environmentally benign' as F-gas companies often claim, as they are still highly potent greenhouse gases.

(2) For many appliances, alternatives to F-gases are not less energy efficient. Hydrocarbons are used on mass scale and are very energy efficient in home fridges. The energy efficiency of a product tends to depend on the design of the system used. More investments would speed up the development of energy efficient appliances using alternatives to F-gases, like hydrocarbons, ammonia or CO2.

(3) The total greenhouse emissions of an F-gas product depends on how much F-gas ends up in the atmosphere. There is still no agreement on actual leakage rates. The Institute for European Environmental Policy (IEEP) has recently published a report that questions the leakage percentages under the Dutch containment model that the draft EU F-gas regulation is based on. According to IEEP, percentages may be allowing far higher emissions than the often quoted 4.8%.³⁵

(4) The F-gas lobby constantly refers to the alternatives as 'flammables' (especially hydrocarbons), despite the fact that hydrocarbon fridges have proved completely safe. The TABD Refrigerants Group even requested that "the EU Commission and Member States recognise the need for the management and containment of all refrigerants, regardless of the type"³⁶. This would mean that CO2 as a refrigerator would have to be contained and recycled after use, despite its negligible global warming potential compared to F-gases. This 'request' was clearly meant to reduce the attraction of more cost effective alternatives to F-gases.

³¹ The phase out of CFCs was never a major problem to these companies, even a benefit. Investments in more specialised, higher cost HCFCs had already been made, and the Montreal Protocol forced consumers into those substitutes.

³² 'The Skeptics vs. the Ozone Hole', J. Masters, http://www.wunderground.com/education/ozone_skeptics.asp

³³ 'The Hole in the Sky', John Gribbin, 1988.

³⁴ www.arap.org, see 'about us'.

³⁵ 'Is STEK as good as reported?', Institute for European Environmental Policy, June 2005, <http://www.environmentdaily.com/docs/50615b.pdf>

³⁶ 'Transatlantic Business Dialogue concerned about trade barriers', May 2001, <http://www.epeeglobal.org/English/main.html>

Standard abuse?

In a variety of different ways, the F-gas industry is able to achieve political influence, thereby putting competing alternatives at a disadvantage. For example, in the UK, last year a report³⁷ was published based on documents provided by Calor Gas, a hydrocarbon producer, demonstrating how alternatives to F-gases were treated unfairly in UK standard setting procedures. The F-gas interests were consistently over-represented in numerical terms during technical committees setting standards for air conditioning and refrigeration. According to the report, the UK government largely left the standard setting process to industry, resulting in negligible external oversight. "This then perpetuates the status quo". Since participation in standard setting working groups is very costly and time consuming, "<...> it is rare for any contribution <...> to come from any source other than well-financed interested parties within industry", says the report. Calor Gas referred the matter to the UK Office of Fair Trading.

The Commission Proposal

In 2000, the European Commission started work on a legislative proposal to address F-gases, as part of the EU's efforts to meet its Kyoto commitments. A special Commission 'working group on fluorinated gases' was formed. DG Environment was given prime responsibility for the issue, in close cooperation with DG Enterprise. The participants' list of this working group is not available on the European Commission website. At CEO's request, DG Environment responded the list could not be found.³⁸ As the list shows, there was a clear lack of representation of the non-F-gas refrigerant industry, as well as of public interest NGOs. The F-gas industry, on the contrary, was well represented by both individual companies, the EPEE and the EFCTC. Working group members were principally invited, but could also apply themselves. The uneven composition of the working group may be because of a biased invitation policy. However capacity issues among NGOs and the non-F-gas industry, combined with a lack of awareness of the political process may have also contributed. However, such working groups have an advisory role, and it should be stressed that it is up to the Commission to decide to what extent their advice is reflected in legislative proposals.

Jason Anderson of Climate Action Network (CAN) Europe, the only NGO representative on the working group³⁹, reports that

"the fluorocarbon manufacturers, with a vested interest in F-gases, were most vocal, as well as several industry groups with long working relationships with the F-gas industry. Producers of alternatives were represented by only one or two people."⁴⁰

In relation to the content of the proposed regulation, there are two key issues. First, its legal base – Art. 175 (Environment) allows member states to impose stricter rules than EU law demands, whereas art. 95 (Internal Market) does not allow this flexibility. Second whether the focus should be on bans or on containment. The Commission proposal of August 2003 largely reflected the wishes of the F-gas lobby on these two key issues:

- Article 95 (Internal Market) was decided to be the legal base.
- The focus of the proposal was on containment, using a Dutch model for handling F-gases, rather than on phase outs of F-gases (except for some uses that are emissive by nature, and HFC134a in car air conditioning)

According to Anderson, the working group did not really discuss the legal base. "Industry always advocated the legal base to be art. 95, while NGOs at first focused on getting ambitious legislation – but the resulting weak ambition and art. 95 was the combination industry was aiming for". The Commission's choice for art. 95 seems illogical as primary aim of the F-gas regulation is to combat climate change. Peter Horrocks of the European Commission's Directorate-General Environment described the choice of art. 95 as a "political compromise".⁴¹ According to a parliamentary advisor of the Greens, other sources in the Environment Directorate suggested that the demand for art. 175 as the legal base was the result of horse-trading with DG Enterprise. Greenpeace reports that former Environment Commissioner Wallström was forced by the rest of the Commission to accept the art. 95 as a legal base; "or else she would get no legislation at all".⁴²

³⁷ 'The capture of standards by the F-gas industry', Chris Rose for MIPIGGS, 2002.

³⁸ CEO finally obtained the working group participants list from CAN Europe. Parliament staff confirms that the Parliament is not informed in a structural manner of the composition or deliberations of such Commission working groups, that have the opportunity to greatly influence new proposals.

³⁹ Then called Climate Network Europe, CNE.

⁴⁰ Telephone conversation with Jason Anderson, formerly working for CAN (then CNE).

⁴¹ Telephone conversation with Peter Horrocks, September 2005.

⁴² Personal conversation with Mahi Sideridou, Greenpeace, June 2005.

On the bans vs. containment debate, Anderson sums up the result from the working group as: “NGOs wanted containment and phase-outs. Industry wanted containment. So the Commission said ‘everyone agrees on containment, that’s enough,’ even though that was clearly the minor part of the NGO agenda.”

He believes that during the period between Spring 2001, the end of the working group discussions, and Summer 2003, the adoption of the Commission proposal, “[the] industry probably did an effective lobby”. Anderson published an extensive critique of the final report of the working group, arguing that the report not always “accurately reflected all the views expressed” and “characterises consensus where no consensus was reached”. He points to a clear lack of data in some cases, where in other cases “reliable data was ignored by opposing industries”. On alternatives, he notes that, “Alternatives have not only been too little considered, the language referring to them is consistently biased in a negative way”.⁴³

Once the Commission finalised its proposal, the EU Council of Ministers and the European Parliament took over the process. The first reading at the Parliament ended in March 2004 and brought no fundamental changes to the Commission proposal. However, in October 2004, the Environment Council of Ministers (the Member States) reached a political agreement, which decided to split the proposal into two: a Directive on emissions from mobile air conditioning, and a Regulation which covers the rest. The Council decided on a *dual legal base* for the Regulation: Internal Market *and* Environment. In another area, to EPEE’s great relief, the list of possible bans was not extended, despite requests by the governments of Austria and Denmark for such bans.

Parliament: New threats, new allies and closed lunches

After the summer break of 2005, Parliament is once again holding the playing cards. Following 2004’s Parliamentary elections, and the enlargement of the EU with ten new Member States, the political landscape has changed and new positions have been taken. To the surprise of many, the new rapporteur on this issue, Liberal MEP Avril Doyle (UK) is proposing art. 175 (Environment) as the *single* legal base for the F-gas Regulation. She has also tabled an amendment to include an additional ban on F-gases in home refrigerators. The single legal base art. 175 is supported by shadow rapporteur Liberal Chris Davies (UK).

Since the F-gas proposal has been split in two, the Parliament Legal Service has insisted that art. 175 should be the legal base for the F-gas Regulation. Yet, the European Commission’s DG Environment has not changed its position.⁴⁴

Doyle’s proposals are a serious threat to EPEE’s ambitions. It has stepped up its lobbying activity directed at MEPs and designed to ensure they refrain from fundamentally amending the proposal. As the EPEE newsletter states, the group aims to “ensure that the achievements made at first reading are not jeopardised during second reading”.⁴⁵

With such positions taken by both the new rapporteur and shadow rapporteur, the EPEE has worked hard to find other allies. Liberal MEP Holger Kraemer (ALDE) was prepared to host a closed lunch lobby meeting for the EPEE on September 14 2005, following the F-gas discussion in the EP’s Environment Committee. The lunch was attended by a number of MEPs⁴⁶ and commission officials from DG Environment and DG Enterprise. Despite Kraemer’s enthusiastic personal slogan ‘To make Europe more Transparent’⁴⁷, a Greenpeace representative was at first refused to attend. Only after another MEP intervened, Greenpeace was grudgingly allowed in. Mahi Sideridou (Greenpeace): “Again, the industry gentlemen there were saying ‘no’ to absolutely everything – no to art. 175, no to additional bans. They used the case of the Ozone Depleting Substance Regulation, which is based on art. 175, as a disastrous example of allowing for flexibility in Member States.” Her point of view, on the contrary, is that the right for Member States to take stronger measures to combat ozone depleting substances has delivered vital results in the EU fight against ozone depletion, and has had a global market knock-on effect. The fact that MEPs attending the EPEE lobby lunch were served this specific example, could not contrast more with EPEE’s self created pro ozone protection image.

⁴³ NGO comments on the draft final report of the ECCP Industry sub-working group on Fluorinated gases, 25 April 2001, published by CAN Europe.

⁴⁴ Telephone conversation with Mahi Sideridou, September 2005.

⁴⁵ EPEE news, June 2004.

⁴⁶ Doyle, Davies, Florenz, Prodi, Jackson, Drčar Murko, Brepoels, Weisgerber, Kraemer.

⁴⁷ www.holger-kraemer.de

Lobbyists filling the information void?

Members of the European Parliament often complain about the lack of time and resources to collect the information necessary to make good judgements about highly technical issues. Quoted recently in the 'European Voice', MEP Hartmut Nassauer, points out that at EU level, in contrast to the national level, "there is no government or administrative body linked to the European Parliament so when there is an important directive such as the REACH chemicals legislation, it is important that there are lobbyists who have relevant knowledge". MEP Chris Davies, shadow rapporteur on the F-gas regulation, confirms that much of the information that comes to him is provided by lobbyists. In his view, the producers of alternatives to F-gases have not been lobbying nearly as strongly. However, the Parliament Environment Committee has rightly not been influenced by this imbalance of information. In its last vote, demands for additional bans were accepted, as well as for a single legal base Art. 175.

The grand finale

On 11 October 2005, members of the Parliament's Environment Committee proved unconvinced by persistent industry lobbying against F-gas phase-outs. Support was given to phase-outs in domestic refrigeration (four years after the entry into force), in commercial refrigeration (by 2010), in air conditioning (by 2010), in all foams (by 2009), aerosols (by 2006), as well as in trace gases (by 2006). There is a proposal to ban SF6 – the most potent of all F-gases – in all but one appliance (by 2008). Moreover, the Committee chose for a single legal base 'Environment' (art. 175), which would allow Denmark and Austria to keep their existing bans and allow other countries to do the same in the future.⁴⁸ Before the vote, rapporteur Doyle dismissed complaints that a single legal base art. 175 would disturb the internal market. "With respect, industry's protests are nonsense. We employ a legal opinion and we should listen to our legal opinion", she said.⁴⁹ The Parliament Committee also agreed to support fiscal incentives for producers of alternatives.

In an internal note, Hill & Knowlton consultant Mary. B. Walsh reports to the EPEE members that

*"<...> the overall result is **not good for EPEE** with the Committee having accepted a single environmental legal base as well as a the full range of use bans affecting the Various RAC appliances as proposed". And: "This means we have our work cut out for us to **get the wider Membership of the parliament to move against the position as adopted by the environment committee.**"⁵⁰*

DG Enterprise last minute attempt to undermine F-gas regulation?

In its final stages, the F-gas Regulation has become a target of the "better regulation" campaign of Commissioners Verheugen (DG Enterprise) and Barroso (President). This means that the F-gas directive has been put on the list of legislative proposals, published 27 September 2005, for which a reassessment on the economic impact on business is required. Given the advanced stage that the F-gas Regulation has reached in terms of a decision point, even DG Environment is left wondering what motivation has included it in this list.⁵¹

Ironically, the double No vote to the EU Constitution in France and the Netherlands, is being used in support of this deregulation drive. It is claimed that the populations in both countries would have rejected the Constitution foremost because they want 'less Brussels bureaucracy'. Despite clear messages that many people, instead, want a green and social Europe, Barroso and Verheugen presented a list of 'absurd' laws to be slashed, and reassessment demands for other regulatory initiatives that might bring additional costs to industry.

Corporate Europe Observatory filed an 'access to information' request to DG Enterprise, asking access to all communication and meetings between Commissioner Verheugen and DG Enterprise on the one hand, and business groups on the other, in the context of the establishment of this 'better regulation' list. The European Commission replied that no such communication or meetings had taken place.⁵²

After some weeks of uncertainty, it is now clear that the legislative process of the F-gas regulation will not be delayed because of the economic assessment.⁵³

In the days before the decisive European Parliament vote, Hill & Knowlton is co-ordinating the EPEE fight back. An internal EPEE document describes in detail which lobbying action is to be taken by which

⁴⁸ E-mail from Mahi Sideridou, 11 October 2005.

⁴⁹ MEPs ratchet up planned EU curbs on f-gases, Environment Daily 1959, 11/10/05.

⁵⁰ Internal EPEE note by Mary Walsh (Hill & Knowlton / EPEE), 11 October 2005.

⁵¹ Telephone conversation with Peter Horrocks, DG Environment, 6 October 2005.

⁵² E-mail from Mrs. Viviane Andre, DG Enterprise, 6 October 2005.

⁵³ Fluorinated gases and climate change, Euractiv dossier,

<http://www.euractiv.com/Article?tcmmuri=tcm:29-117491-16&type=LinksDossier>

EPEE representatives, towards MEPs, the Commission and the Member States.⁵⁴ Mary Walsh of Hill & Knowlton writes:

“<we> need to do all in our power to ensure the negative amendment don’t get a majority of 367”

The leaked document gives a unique insight into the multi-faceted lobbying offensive orchestrated by Hill & Knowlton on behalf of its corporate clients.⁵⁵

Leaked EPEE strategy

- Towards the ‘Triologue’ meeting between the European Commission, Parliament and Council, Hill & Knowlton will compile a list with “input against each ban”, that will be the basis of all lobbying by EPEE members.
- Hill & Knowlton will set up meetings with ‘critical MEPs’ to “to influence the voting list across the political group and national delegations positions.”
- In the Environment Committee, the aim is “finding friends who can put doubt on results on critical bans and legal base amendments and carry the message to wider parliament”⁵⁶ Chairman Florenz (EPP, Germany) will be targeted specifically by CEFIC.
- The Parliament Industry Committee on the other hand, is labelled as a ‘natural ally’, and key players from this Committee are to be mobilised to “advocate to wider membership”.
- Also in the Internal Market and Legal Affairs Committees, Trade Committee and EU-US delegation, MEPs are selected to be contacted⁵⁷.
- There is still consideration to try and “get a political group or group of MEPs to table any plenary amendments.”
- To influence the Commission, Hill & Knowlton will contact the Cabinets of Dimas (Environment) and Barroso (President) to “ensure steady on legal base”.
- ‘NC’ (CEO: most likely referring to Nick Campbell, of Atofina Total, EFCTC, and CEFIC) will talk more to DG Environment, and there is “ongoing contact with DG Enterprise”.
- As for the Member States, the EPEE says: “Calm panic ahead of COREPER (CEO: *Permanent Representatives Committee*) meeting. Ensure favourable national governments more active in briefing”. The ‘favourable’ national governments will be “pushed” to “brief national MEPs ahead of plenary vote to ensure fully informed and well thought out vote”.
- Notably, the last minute strategy of EPEE should include an “overarching consideration to push SMEs argumentations as part of EPEE approach – important these and SMS member are brought to the fore in the lobbying”; despite the nearly complete absence of SMEs in EPEE membership.
- The broad message will “call into doubt the Committee approach as a whole” (CEO: *Committee must mean the EP Environment Committee*), argumentation on each ban will be developed, and the legal base argumentation will be “reworked to short crisp statement”. Daikin suggests an emphasis that varying positions of Member States will “slow down the development of ecologically sound alternatives”⁵⁸.

The fact that the F-gas lobby succeeded in effectively gaining control of the initial phases of EU decision-making is a stark and concerning example of policy capture by vested interests. The lack of clear rules for the establishment of European Commission working groups and advisory committees has contributed to this situation. Balanced representation of all stakeholders should be ensured, as well as safeguards against policy capture. Improving transparency is no less crucial. As it is now, democratic scrutiny of the Commission’s decision-making processes is impossible.

These two steps, rules for a fair political process and transparency, are imperative in order give decision-makers and the public a real chance to judge to what extent the Commission fulfills its role of making proposals in the common European interest.

⁵⁴ Internal EPEE note composed by Mary Walsh, Hill & Knowlton, seen by CEO.

⁵⁵ This document confirms the active participation in EPEE of the ARI, the ARAP, and the JRAIA (the Japan Refrigeration and Air Conditioning Industry Association).

⁵⁶ Contacts to be followed up are listed as follows: “Doyle/ Davies (?)/ Florenz/ Blokland/ Aylward /Sacconi/ Bowis/ Brepoels/ Grosstête/ Jackson/ Sonik/ Trakatellis/ Wijkman/ Roth Behrendt/McAvan/ Linemann/ Tzampazi/Sormosa Martinez / Whitehead/ Maaten /Prodi”.

⁵⁷ For Internal Market: Whitehead, Newton Dunn, Rizzo; for Legal Affairs: Garganis, Lehne, Lopez-Isturiez, Wallis.

⁵⁸ However, a stronger national regulatory approach, especially in combination with economic incentives, can create a very beneficial environment for SMEs.

More generally, EU decision-making around the regulation of F-gases has suffered due to the hidden nature of lobbying activities. Mandatory registration and disclosure of lobbying expenditure – as proposed by the Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU) – would reveal who is lobbying whom, on what issue and with what budgets.⁵⁹

In the case of F-gases, this would have given MEPs some insight into the financial resources pushing competing technical viewpoints. It would also clarify the financial interests and the role of PR/PA firms in lobbying platforms like the EPEE. And it would have revealed just how much money the F-gas producers have invested in preventing a phase-out of their climate-destroying products, compared to the far smaller amounts at the disposal of pro-environment lobbyists as well as the producers of less harmful refrigerating gases. The annual turnover of corporate lobbying in Brussels is estimated to be between 750 million euro and one billion euro.⁶⁰ This far outweighs the budgets available to public interest NGOs, trade unions, small businesses and others trying to prevent commercial interests from capturing and dominating the EU decision-making.

CSR claims versus lobbying strategies

The lobbying battle around the EU's F-gas regulation is an example of industry being divided. On the one side major F-gas producers teamed up to prevent any phase-outs. They had the most to lose. On the other side, only a few of the producers of alternative refrigerants were actively involved. Users of F-gases are often able to switch, but are looking at economic benefits for switching to balance the costs.

Those corporations wanting to prevent a phase-out of their products and a fast transition to environmentally friendly alternatives for refrigerating gases, invested far more resources in a lobbying effort to shape EU regulations in their interest. Indeed for a while, it looked as though they would be successful. The coming weeks will show whether these companies will get away with this attempt to subvert the EU's decision-making process. Regardless of the outcome, however, the companies involved should be held accountable to the role they have played in this lobbying offensive.

Some EPEE members are corporations with a carefully nurtured green image. Solvay and Dupont continuously claim to be committed to 'corporate social responsibility' (CSR). Visitors to the Solvay websites, will find a site dedicated to Sustainable Development⁶¹, and can read about how the company is a "responsible citizen that pays taxes, contributes added value and sustainability to the community and shares its expertise and skills"⁶². They will not, however, find any mention of the company's engagement in the EPEE and the attempt to prevent a phase-out of F-gases. Dupont is even more eager to portray itself as a frontrunner in 'corporate social responsibility' and has for instance joined the Global Compact, the UN's voluntary initiative "to promote good corporate citizenship".⁶³

The financial and other support of these companies for the EPEE's lobbying to weaken the EU's F-gas regulation is a clear case of a mismatch between CSR claims and lobbying strategies. Lobbying transparency obligations would help increase the public scrutiny of the CSR images designed by these corporations and discourage inconsistent lobbying.

⁵⁹ See www.alter-eu.org

⁶⁰ 'A spoonful of sugar makes the message go down', European Voice Vol. 11 No. 33 : 22 September 2005.

⁶¹ www.solvayhse.com

⁶² "Towards sustainable development 2004-2008", <http://www.solvayhse.com/static/wma/pdf/3/4/2/1/Rapport%20GB.pdf>

⁶³ www.unglobalcompact.org

Summary

Fluorinated gases (F-gases, HFCs) were pushed onto the market as replacements for CFCs, which caused ozone depletion and were in the process of being banned. However, F-gases are highly potent greenhouse gases. F-gases are, and increasingly will be, in most cases replaceable by environmentally friendly alternatives like hydrocarbons. But multinationals like DuPont and Honeywell are determined not to give up their globally expanding F-gas business. Their lobby groups in Washington, the Air conditioning and Refrigeration Institute (ARI) and the 'Alliance for Responsible Atmospheric Policy' (ARAP) effectively used the Trans Atlantic Business Dialogue (TABD) as a platform to oppose F-gas bans by individual EU member states, and to influence the currently debated F-gas Regulation from the very start of the drafting process.

To make it look like a genuine 'European' lobby with an environmental focus, ARI founded the 'European Partnership for Energy and the Environment' (EPEE). Public Affairs company Hill & Knowlton was hired to run the EPEE lobbying campaign. The EPEE is the European version of the ARAP. The ARAP was founded to defend the interests of CFC producers like DuPont, that at first strongly opposed the ban of CFCs. Now, the ARAP and EPEE alike, fiercely promote F-gases for their non-ozone depleting qualities, while downplaying their global warming impact.

The original European Commission proposal reflected the privileged access that the F-gas industry had to the Commission before the drafting process started, and industry's dominating voice within the Commission's working group on fluorinated gases. Producers of alternatives to F-gases and environmental NGOs were highly under-represented. The F-gas Regulation is now in the final phase of the second reading at the European Parliament. The EPEE is targeting Members of European Parliament (MEPs), but also the Commission and the Member States, in an ultimate attempt to prevent important changes that would allow for more bans on F-gases and have been proposed by the Environment Committee of the Parliament. These changes threaten much of the F-gas industry's earlier lobbying achievements. Internal EPEE documents reveal the exact details of the lobbying strategy laid out by Hill & Knowlton.

At EU level, there is a great need for transparency rules for lobbying, in order to facilitate public scrutiny over important decision making processes. At this moment, such transparency is virtually non-existent.