



31 October 2007

### STATEMENT ON THE DRAFT IPPC DIRECTIVE PROPOSAL IN INTER SERVICE CONSULTATION

BUSINESSEUROPE, the Confederation of European Business, is the voice of more than 20 million small, medium and large companies. BUSINESSEUROPE's members are 39 central industrial and employers' federations from 33 countries, working together to achieve growth and competitiveness in Europe.

BUSINESSEUROPE has been made aware of the draft proposal for a revised Integrated Pollution and Prevention Control (IPPC) Directive now circulating in the inter service consultation and has identified changes in the draft proposal of great concern: the changes proposed by the European Commission would dismantle the current IPPC system. The new system, rather than encouraging investment in cleaner technologies, would lead to cutting down production in the EU.

From a procedural point of view, BUSINESSEUROPE notes that none of the inputs by industry during the year long discussion about the revision of the IPPC Directive was taken into account in the present draft. For example, the draft Directive does not leave the fundamentals of the IPPC Directive intact and goes beyond the announced streamlining exercise of the sectoral Directives.

In particular, BUSINESSEUROPE strongly objects to the following changes:

*(Due to a very short period of time for preparing the present statement, it covers a selection of key concerns only. Additional comments will follow if seen as necessary).*

- **BAT strictly binding** – The draft proposal makes the Best Available Techniques reference documents (BREFs) strictly binding (Art. 9.3) and the Directive no longer contains the flexibility principle (Art. 9.3 and 9.4). This means that fundamental principles of the IPPC process are abandoned.

*Although BUSINESSEUROPE supports a clarification of the role of BREFs and making sure they are in practice used properly, these documents should remain guidance documents.*

*BUSINESSEUROPE believes that it is essential to take into account the technical characteristics of the installation, its geographical location and the local environmental conditions when setting-up Emission Limit Values (ELVs). Industrial installations are different from each other even in the same sector and are situated with varying conditions. This fundamental principle of the IPPC Directive was the basis for the cooperation between Commission, Member States and industry and needs to be preserved and cannot be the exception.*



- **ELVs based on BATAELs** - in the draft proposal (Art. 9.3, 9.4 and 10.2) ELVs cannot exceed Best Available Techniques Associated Emission Levels (BATAELs). *BATAELs are prepared for individual sectors, integrating economic conditions. They represent emission levels expressed as averages achievable during a substantial period of time in normal operating conditions. This is fundamentally different from the ELVs set in the permits of individual installations which are intended to take account of short term fluctuations and should never be exceeded. An ELV that would be set within the range of BATAELs would be impossible to respect at all times.*
- **Emission trading** – the draft proposal contains the option for emission trading for pollutants other than greenhouse gases (Art. 12).<sup>1</sup>

*As stated in BUSINESSEUROPE' position paper on 17 July 2007, we have strong reservations against an ETS for NOx and SO2:*

*"In general, BUSINESSEUROPE welcomes market-based instruments that permit a reduction of the cost of achieving our environmental objectives. However, we do not see the role of an Emissions Trading Scheme (ETS) for NOx and SO2 but strongly believe that NOx and SO2 should be regulated under the IPPC directive, using tools which are already available.*

*Because of the regional effect that these pollutants produce, a hypothetical ETS for NOx and SO2 would not solve the environmental problems that they may create. Furthermore, the conditions for a free and fair NOx and SO2 market are not met."*

- **Soil protection** – the draft proposal introduces new soil reporting and monitoring requirements and obligation to return the site to the initial state defined in a baseline report (Art. 3(17), 4(f), 6(d), 9(7) and 17).

*BUSINESSEUROPE questions the rationality for introducing such stringent requirements (no risk based approach) without demonstrated benefits for environment.*

*Additionally, BUSINESSEUROPE believes that very detailed descriptions of measures (baseline report) jeopardise the subsidiarity principle. As the soil framework directive is currently under discussion, BUSINESSEUROPE recommends to return to the baseline of the IPPC Directive and delete art. 17 of the draft.*

- **Stricter requirements than BAT** - the draft proposal extends the possibility to impose stricter conditions than those achievable by BAT (Art. 13) to include National Emissions Ceilings (NEC).

*Industry is not solely responsible for achieving the National Emissions Ceilings. The cases of Air Quality Limit Values and National Emission Ceilings are very different. Whereas a limit value expressed in concentration is a local problem that in some cases may be attributable to a specific IPPC installation, many sources other than*

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<sup>1</sup> VNO-NCW would like to point to the specific situation in The Netherlands. Recently it has been proven that the existing Dutch NOx emission trading system is severely hampered by the restrictions deriving from the IPPC regime. This problematic situation of double regulation can be avoided by the option that the draft IPPC directive proposal now opens. Therefore VNO-NCW welcomes this aspect of the draft proposal.



*IPPC installations contribute to the total national emissions. BUSINESSEUROPE fears that the consequence of the reference to NEC in art 13 could be that industry would have to bear a disproportionate responsibility for the compliance with the NECD.*

- **Reconsideration and up-date of permits** - the draft proposal doesn't take into account the duration of investment cycles (Art. 5, 16 and 10.4).

*The time schedule in art 5.2 for meeting the requirements of the directive is not realistic. In the worst case (likely for several sectors revising their BREFs at the moment) it could in practical terms mean that the installations would have to have a new or revised permit complying with the revised directive only days after it has come into force. To avoid such situations and to bring consistency with the requirement for LCP, the relevant text should be changed to "not later than 2016", which would be more in line with the actual investment cycles of industry.*

- **Use of Comitology** - the draft proposal introduces issues, which will be covered by Comitology such as criteria to deviate from BREFs (art 9.4), minimum requirements (art. 11.2), guidelines on emerging techniques, on-line reporting and inspections, etc.

*BUSINESSEUROPE takes the view that independently from what procedure, either comitology or other, would apply for the implementation of any such proposals, the structured and continued dialogue with stakeholders that is imminent to the IPPC directive today must not be upset. If comitology procedure were the route chosen by the institutions, European industry calls for an explicit consultation mechanism of stakeholders to be introduced in the proposal following the principles of Better Regulation and Simplification.*

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