

April 2008

Position paper on the Commission proposal for an Industrial Emissions Directive (recast of the Integrated Pollution Prevention and Control (IPPC) Directive)

Executive Summary

BUSINESSEUROPE acknowledges the important task of reducing environmental pollution. However, we are seriously concerned that the Commission proposal would dismantle the current IPPC system and threaten EU productivity and competitiveness, with no conclusive evidence that additional benefits will accrue to environment and health.

Due to the very recent implementation of the existing IPPC Directive, BUSINESSEUROPE believes that it has not yet demonstrated its full potential in terms of emission reductions and therefore supports initiatives to stimulate its full implementation rather than changing it radically at such an early stage. In addition, we have the following remarks:

- No industrial installation is identical to any other since local conditions are always different. Therefore, the flexibility enshrined in the IPPC Directive for the grant of installation permits and setting of Emission Limit Values needs to be safeguarded and it cannot become the exception.
- We are concerned about new fundamental requirements, such as lower Emission Limit Values, which have been introduced as part of the proposal to merge sectoral Directives into the IPPC Directive.
- If comitology were the route chosen for defining essential aspects of the Directive, BUSINESSEUROPE calls for an explicit mechanism for consultation of stakeholders.
- An extension of the scope of the Directive from installations with a total rated thermal input exceeding 50 MW to installations exceeding 20 MW would cause bureaucratic burden and costs, with fairly limited benefits for the environment.
- Experts from various stakeholder groups must continue to define Best Available Techniques (BAT).
- We are critical of the new provisions for soil and groundwater protection.
- BUSINESSEUROPE underlines the need to take into account the duration of investment cycles when reconsidering and updating the general binding rules and permit conditions for installations.

1. Introduction

On 21 December the European Commission published its proposal for a revision of the Integrated Pollution Prevention and Control (IPPC) Directive. While fully acknowledging the important task of reducing environmental pollution, BUSINESSEUROPE is seriously concerned that this proposal would dismantle the current IPPC system and threaten EU productivity and competitiveness, whereas additional benefits to environment and health are not fully substantiated. The IPPC approach is and must remain based on an integrated approach to environmental protection as a whole, technical feasibility, cross-media effects and cost-effectiveness.

What follows is an outline of BUSINESSEUROPE's view on the most important issues raised by the Commission proposal. BUSINESSEUROPE would be pleased to provide more detail on these as well as views on other matters under consideration.

2. Stimulating implementation of the existing IPPC system

Due to the very recent implementation of the existing IPPC Directive 96/61/EC, the European business community is of the opinion that it has not yet demonstrated its full potential in terms of emission reductions and believes it essential to have more experience before significant conclusions are drawn about its workability, consistency and efficiency.

BUSINESSEUROPE therefore supports initiatives to stimulate full implementation of the existing IPPC system rather than changing it radically at such an early stage. The Commission 2008-2010 Action Plan on implementation of legislation on industrial emissions is such an initiative.

3. Use of “Best Available Techniques Reference documents” and “Best Available Techniques Associated Emission Levels” with a much more binding character

BUSINESSEUROPE agrees with the objective set out in the Commission proposal to achieve better and harmonised implementation of the Directive with a view to avoiding distortion of competition. However, the proposal drastically undermines the current key principle of the IPPC Directive, where permits are granted and Emission Limit Values (ELVs) are set based on Best Available Techniques (BAT) taking into account the technical characteristics of the industrial installation, geographical conditions and local environmental needs. The proposal would oblige installations to comply with permits, where ELVs would not exceed the Best Available Techniques Associated Emission Levels (BATAELs). This gives rise to considerable concern relating to the following in particular:

- It is essential to preserve flexibility when granting permits and setting up ELVs. No installation is identical to any other, even when producing the same product, since local conditions e.g. raw materials are always different. Even the single objective of ensuring a high level of protection for the environment as a whole will often involve making trade-offs between different types of environmental impacts, and these judgements will often be influenced by local considerations. Removing this element of flexibility would also be in complete contradiction with the philosophy of the Commission's Thematic Strategy on Air Pollution and would even result in

increasing the cost of the air quality policy dramatically without improving it commensurately. This cannot be in accordance with the proportionality principle. Therefore, the flexibility principle of the IPPC Directive needs to be safeguarded and it cannot become the exception.

- The obligation to prescribe ELVs within the BATAELs range would have a detrimental effect on the well-established Sevilla process. Reaching consensus on ELVs will be very much more challenging than for BATAELs as it works in real time. When ELVs are discussed, every exception and every special case in industry will have to be catered for. As a consequence it will be very difficult to reach consensus, and companies could become reluctant to provide information on which a BATAELs range/ELV may be based.
- BATAELs are prepared for individual sectors. 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 set within the range of BATAELs would be impossible to meet at all times. BUSINESSEUROPE asks for ELVs to be expressed in such a way that peak emissions of shorter duration do not affect compliance with such values.
- BATAELs-based permitting with a legally binding character and without enough consideration of local conditions would impose a massive cost burden on industry – in particular for small and medium-sized enterprises (SMEs) – which might lead to production cuts rather than encouraging investment in cleaner technologies, and without a commensurate benefit for the environment as a whole.

While supporting a clarification of the role of Best Available Techniques Reference documents (BREFs) and BATAELs when permits are granted and making sure they are used properly in practice, European companies are very worried about the above consequences resulting from the Commission's proposal. BUSINESSEUROPE calls for Member States to be able to set ELVs that exceed values determined in relation to the BATAELs as described in the BREFs on the basis of an assessment of the environmental and economic costs and benefits taking into account the technical characteristics of the installation, its geographical location and the local environmental conditions. BUSINESSEUROPE cannot accept that such derogations are granted only under strict conditions with the criteria developed through comitology procedures.

4. Merging with sectoral Directives

The proposal recasts in one "single industrial emissions framework Directive" the IPPC Directive with six sectoral Directives: the Large Combustion Plants (LCPs) Directive, the Waste Incineration Directive, the Solvents Emissions Directive and three Directives on titanium dioxide.

BUSINESSEUROPE has always supported a streamlining of these Directives with minimal substantive changes only. The proposed changes are far from being minimal since they constitute a complete change in the philosophy of the respective Directives and introduce new fundamental requirements such as lower Emission Limit Values (ELVs) or an extension of the scope of the legislation.

The proposal unilaterally lowers the permissible emission levels, not only for new plants, but also for existing ones. BUSINESSEUROPE proposes that the original ELVs, definitions, clarifications and guidance of the sectoral Directives should be maintained.

5. Comitology procedure

The proposal introduces issues, which will be covered by comitology such as criteria for derogations when prescribing ELVs not within BATAELs range, measures related to monitoring requirements, site closure and remediation, inspections, emerging techniques and adaptation of Annex V to VIII.

BUSINESSEUROPE takes the view that, irrespective of the procedure applied for the implementation of any such technical proposals – comitology or other – the structured and continuous dialogue with stakeholders that is so important for the IPPC Directive today must not be disrupted. If comitology were the route chosen by the European institutions, industry calls for an explicit mechanism for consultation of stakeholders to be introduced in the proposal following the principles of better regulation and simplification. In addition, decisions taken by comitology committees should be made subject to an impact assessment.

6. Other points to consider

BUSINESSEUROPE welcomes some positive changes to the Commission draft proposal such as withdrawal of provisions for an emission trading scheme (ETS) for substances other than greenhouse gases. However, we are still much concerned by the fact that the Commission is still working on a possible future legal instrument laying down EU-wide rules on NO_x/SO₂ trading. As already reiterated on several occasions, BUSINESSEUROPE has strong reservations against an ETS for NO_x and SO₂ and strongly believes that those pollutants should be regulated under the IPPC Directive, using tools which are already available¹.

In addition, the final proposal keeps provisions which cause major concerns:

- It introduces a significant extension of the scope of the Directive from installations with a total rated thermal input exceeding 50 MW to installations exceeding 20 MW. Considering that small combustion plants and operators (including hospitals and universities) account for a fairly limited percentage of environmental impacts, the inclusion of such plants would cause unnecessary bureaucratic burden and costs.
- Best Available Techniques (BAT) would only be defined by the Commission, which is not acceptable for industry. The Commission Technical Working Group comprising experts from various stakeholder groups must continue to define BAT.
- The proposal introduces new soil and groundwater reporting and monitoring requirements and the obligation to return the site to an initial state defined in a baseline report. BUSINESSEUROPE questions the rationale for introducing such requirements (no risk-based approach) without benefits for the environment and

¹ Due to the specific situation in The Netherlands, VNO-NCW would welcome a solution which avoids the Dutch industry to face a double national regulation (IPPC and NO_x emission trading).

believes that very detailed descriptions of measures (baseline report) jeopardise the subsidiarity principle.

- When a new or updated BREF is adopted, Member States would, within four years of publication, where necessary, have to reconsider and update the general binding rules and permit conditions for the installations concerned. The proposed time period of four years does not take into account the duration of investment cycles and service life of equipment and will therefore lead to legal uncertainty that will trigger disinvestments and possible plant closures. The time period should be defined on a case-by-case basis.

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