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Technical comments on the Commission proposal for an Industrial Emissions Directive

The Environment Council will hold a policy debate on 2 March 2009 on the Commission proposal for an Industrial Emissions Directive (recast Integrated Pollution Prevention and Control IPPC Directive). BUSINESSEUROPE would like to provide comments on the following issues which give rise to considerable concerns.

- **BREFs (reference documents on best available techniques) should not become binding**

The Commission cites excessive use of the flexibility of the present Directive as justification for the revision. It proposes to improve implementation the IPPC Directive by making emission levels associated with Best Available Techniques (BATs) binding as emission limit values (ELVs) except by derogation in specific cases only (Art. 16, §3). Such severe restriction of flexibility to take account of the specifics of the installation and the local environmental needs will, in particular where it concerns existing installations, lead to many cases where ELVs require costly measures that are not proportionate to the environmental improvements they will bring.

In order to achieve an integrated approach and a high level of environmental protection as a whole, the competent authorities must retain the ability to deviate from emission levels associated with BATs when this is justified, considering the specifics of the installation concerned, the geographical location, the local environmental needs and cross-media effects. The approach of the Directive should not be to “grant derogations” in a limited number of “specific cases”. The competent authorities should be allowed to deviate from emission levels associated with BATs, subject to a clearly documented justification.

It should be recognised that the IPPC Directive covers a very wide range of industrial and agricultural installations, as well as a wide variety of emissions associated with these facilities. In many sectors, the process technologies applied are very diverse. The emission levels associated with BATs – as defined in the reference documents on best available techniques (‘BREFs’) – do not always address and take into consideration this heterogeneity. It is therefore not always possible to derive ELVs from the BREFs directly. For this reason, BREFs should remain guidance documents, allowing competent authorities to ensure that a high level of environmental protection is achieved in an economically acceptable way, thus respecting the subsidiarity and proportionality principles enshrined in the EU treaty.

- **Unnecessary burden and cost by extending the scope should be avoided**

The IPPC Directive seeks to cover industrial activities which are of particular relevance to the environment. 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 with a thermal capacity of less than 50 MW would cause unnecessary bureaucratic burden and costs.

- **Updating permits should give due consideration to investment cycles**

The Commission proposes that when a new or updated BREF is adopted, Member States would, within four years of publication, where necessary, reconsider and update permit conditions.

The proposed time period of four years does not take into consideration that investments made to comply with IPPC permits are often depreciated over periods of ten or twenty years depending on the sector. Operators of industrial installations need regulatory stability in line with their investment cycles. The time period should therefore be defined, by competent authorities, taking account of investment cycles in case-by-case decisions.

- **Conflicting double regulation on soil protection should be avoided**

Groundwater protection is subject to Community legislation. Soil protection may become subject to Community legislation, but is currently subject to national legislation. Provisions for groundwater and soil in the IPPC Directive, as proposed, would lead to undesirable and potentially conflicting double regulation. The Directive covers already measures to prevent, reduce and eliminate pollution at source (thus soil and groundwater contamination prevention measures are already covered), and its main focus is and should remain the continued operation of industrial installations.

In addition, the current IPPC Directive already includes the requirement to define provisions relating to the cessation of activities, allowing Member States to define prevention and eventual remediation measures in line with Community or MS legislation. There is no need to establish more detailed requirements at EU level related to soil protection within the Directive.