



10 November 2009

INDUSTRIAL EMISSIONS DIRECTIVE (COM 2007 (844)): SECURING A WORKABLE SECOND READING AGREEMENT

Executive Summary

The Integrated Pollution Prevention and Control (IPPC) Directive is already widely implemented and is delivering. The European business community believes that the European institutions should keep changes to the directive proportionate in order not to upset the functioning of a well established and promising system. Therefore, BUSINESSEUROPE calls upon the institutions to:

Reach better implementation through appropriate regulatory adjustments

BUSINESSEUROPE believes that the best way forward to stimulate implementation is the obligation for the competent authorities to justify derogations from IPPC permit conditions. The overwhelming majority of BUSINESSEUROPE members think that additional measures such as the introduction of the "European Safety Net" would be disproportionate.

Ensure a risk-based approach for soil remediation at cessation of activities

BUSINESSEUROPE questions the rationale for introducing new provisions on soil remediation and believes that very detailed descriptions of measures (baseline report) jeopardise the subsidiarity and proportionality principles. In addition, liability for remediation should be determined according to national regimes.

Adopt transition periods for Large Combustion Plants (LCPs)

With a view to avoid negative impacts on the generation capacity all over Europe, BUSINESSEUROPE supports the transition periods for applying new Emission Limit Values to existing LCPs, in particular until the end of 2020.

On those three issues, the Council has reached a well crafted compromise on which institutions should build.



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Best Available Techniques (BATs) is key for ensuring that Europe spreads the technology it needs to fight environmental challenges such as air, water and land pollution or generation of waste.

BATs are at the heart of the Integrated Pollution Prevention and Control (IPPC) Directive. For more than ten years, the IPPC Directive has been contributing to the spread of these “environmental technologies” across Europe. And will continue to do so.

From the start, BUSINESSEUROPE has questioned the need to revise the Directive and, if so, to what extent. Indeed, due to the recent deadline for full implementation of the directive (October 2007), it is reasonable to believe that it has not yet demonstrated its full potential. The EU should not fall into the trap of over-regulation and should therefore think carefully before introducing any substantial changes to the directive at such an early stage.

Ahead of the second reading, BUSINESSEUROPE would like to emphasise its priorities and recommendations with a view to ensuring a workable outcome. Before that, it is important to recall some key context elements illustrating that the directive is already widely implemented and is delivering.

IPPC is implemented and is delivering

IPPC is a complex “learning by doing” system, which requires time and extensive collaboration between all stakeholders at European and national level. Since its entry into force in 1996, it has been delivering. Some of the achievements include:

→ IPPC is a dynamic process

The notion of BATs is dynamic by nature due to developments in scientific knowledge, in technology and in methods of operation. BAT reference documents (BREFs) are updated in order to take these new technological developments into consideration. BREFs in nine EU manufacturing sectors are currently under revision.

→ Continued progress in IPPC permitting

About 43,000 installations are covered by the IPPC Directive. Against this total of installations, approximately 91% of permits have been issued, reconsidered or updated so far (European Commission, March 2009).

→ BATs are spread across Europe and industrial emissions are reduced

The deployment of the IPPC regime and BATs has contributed to the decrease in industrial emissions witnessed in Europe since the 1990's. For example, SO₂ and NO_x emissions in 2007 were respectively 72% and 36% lower than in 1990's (European Environment Agency, 2009).

Both industries and national competent authorities have now acquired experience with its implementation. It is foreseen that it will result in boosting implementation in the future.



BUSINESSEUROPE's priorities for the second reading

Looking ahead to the second reading, BUSINESSEUROPE thinks that streamlining should be the driving element. European institutions should keep changes to the directive proportionate in order not to upset the functioning of a well established and promising system. This principle must apply to the following three priority issues:

1. Reach better implementation through appropriate regulatory adjustments:

BUSINESSEUROPE members have discussed how best to continue improving implementation of the IPPC Directive, paying particular attention to the need to prevent the risk that some companies could gain undue competitive advantages.

BUSINESSEUROPE believes that the best way forward is the obligation for the licensing authorities to justify derogations allowing emissions for a specific plant above the range of Best Available Techniques Associated Emission Levels (BATAELs). This proposal was introduced by the European Parliament in first reading and backed by the Council in June 2009. BUSINESSEUROPE believes that this call to provide justifications already constitutes a significant change compared with the existing situation where authorities have no obligations to justify such derogations.

Additional measures such as the introduction of the “European Safety Net” or a severe restriction of the possibility for derogation as proposed by the European Parliament in first reading would be disproportionate.

The “European Safety Net” is a “one-size-fits-all” regulatory model, which ignores the three pillars of the IPPC Directive, namely integrated approach, BATs and consideration of local circumstances. It could impose unjustified costs on industry due to the fact that Emission Limit Values (ELVs) could be set below what is necessary to ensure comparable quality of environment media across the EU¹.

Similarly, a severe restriction of the possibility for derogation, especially for existing installations, could lead to many cases where ELVs would require very costly measures that are not proportionate to the environmental improvements they will engender. Deviations from BATAELs should not be considered as requiring an exceptional derogation but should be applied where justified.

The decision by the licensing authority to apply a derogation will be based on “... *an assessment of the environmental and economic costs and benefits taking into account the technical characteristics of the installation concerned, its geographical location and the local environmental conditions...*” (COM 2007 (844), art. 16(3)). Therefore, there is no need to adopt, through Comitology, further criteria for such a derogation.

BUSINESSEUROPE calls upon the European institutions to confirm article 15(4) of the Council first reading Common Position (document 11962/09 dated 25 August 2009) and to reject amendments 32 and 62 of the European Parliament first reading position (amendments adopted on 10 March 2009).

¹ IV, BDI and DI support the concept of “European Safety Net” as a way to improve environmental protection and at the same time to eliminate distortions of competition. The three federations believe that the Council Common Position in first reading does not reach this objective.



Lastly, the Council has agreed in first reading to propose an adoption of ‘BAT conclusions’ through Comitology. Since ‘BAT conclusions’ could have a significant impact on the industries concerned, the Comitology decision must be consistent with the outcome of the Sevilla process. An impact assessment should be conducted as soon as the Comitology decision seeks to deviate from what has been concluded in the Sevilla process. Legal certainty of the on-going and future BREF revisions needs therefore to be further considered and safeguarded.

BUSINESSEUROPE calls upon the European institutions to adapt article 13(5) of the Council first reading Common Position (document 11962/09 dated 25 August 2009) in order to ensure that an impact assessment will be conducted as soon as the Comitology decision on ‘BAT conclusions’ seeks to deviate from the outcome of the Sevilla process.

2. Ensure a risk-based approach for soil remediation at cessation of activities:

Soil protection is very local and site-specific and must be managed by competent authorities in accordance with Community and national environmental liability laws. The Environmental Liability Directive for instance already introduces a pan-European liability scheme covering, amongst other things, soil pollution on IPPC sites.

BUSINESSEUROPE therefore questions the rationale for introducing new provisions on soil remediation and monitoring and believes that very detailed descriptions of measures (baseline report) jeopardise the subsidiarity and proportionality principles.

The decision to remediate should be based on risk considerations and not on a quantification approach which has inherent technical problems and cannot provide for the necessary legal and financial certainty for the current operator. Economic feasibility should also be considered alongside technical feasibility when the necessary measures are taken to remediate the site.

In addition, determining who is liable for remediation of contamination that occurred prior to the established permit conditions is an issue for soil regulation at national and, where relevant, EU level. In order not to contradict applicable soil regulation and sensitive liability regimes, it should be stipulated that necessary actions in this regard should be taken according to national regimes.

BUSINESSEUROPE calls upon the European institutions to adapt the soil-relevant provisions to ensure a risk-based approach for soil remediation and to determine liability according to national regimes.

3. Adopt transition periods for Large Combustion Plants:

BUSINESSEUROPE supports the transition periods for applying new ELVs to existing Large Combustion Plants (LCPs), in particular the Transitional National Plan until the end of 2020. This is essential to avoid negative impacts on the generation capacity all



over Europe and on the security of supply. Similarly, some specific installations using non-commercial fuels have been excluded from the new provisions for LCPs, pending a review in 2013.

BUSINESSEUROPE calls upon the European institutions to retain provisions on transition periods for LCPs from the Council first reading Common Position (document 11962/09 dated 25 August 2009).

Shifting from law-making to implementation and enforcement

As a conclusion, BUSINESSEUROPE strongly believes that efforts would be better spent in reinforcing implementation and enforcement of the existing directive rather than changing it substantially.

Back in 2007, the Commission adopted an Action Plan on implementation of IPPC for the period of 2008-2010. The Action Plan rightly identifies a number of actions to boost its implementation and enforcement. Due to the complexity of the IPPC process as noted before, priority should be given to training and capacity-building. National, regional and/or European training programmes should be put in place to enhance the exchange of information and of best practices. Licensing authorities and industry have to learn from the experiences gained in other EU countries.

It is hoped that these recommendations will help to strike the difficult balance: stimulate implementation of IPPC while preserving its key principles and cost-effectiveness.

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