

Opinion of the Committee of the Regions on 'Industrial emissions'

(2008/C 325/10)

THE COMMITTEE OF THE REGIONS

- emphasises that the reduction of industrial emissions is most important in the case of air pollution; the Industrial Emissions Directive is an important European measure enabling member states to meet their emissions targets by 2020;
- believes that with respect to air pollution the Directive is not ambitious enough and is disappointed with the weak emissions limit value (see Appendix I) for large combustion plants; the Committee would also like to point out that there is still a significant difference between the emission limit values contained in the proposal and those set out in the corresponding BREF (Best Available Technique Reference) document for large combustion plants; these values should be brought into line and strengthened;
- strongly advises the inclusion of a practical revision system which enables the partial revision of the Directive (e.g. the technical chapters and emission limit values) via the co-decision procedure; is furthermore concerned with future adaptations of legislation that will be carried out according to the Seville process (see Appendix I), which is not a legal procedure provided for in the Treaty and is not subject to democratic scrutiny;
- strongly disagrees with the Commission's proposal to establish criteria for granting derogations on the basis of local conditions under the comitology procedure;
 - the criteria for granting derogations should have been defined in the Directive itself (and thus decided by a co-decision procedure) and should not be defined in the future at the EU level via the comitology procedure, in which Committee of the Regions and other representatives of local and regional authorities are not consulted;
 - with reference to the subsidiarity principle, the weighing of local environmental conditions against environmental costs and benefits as well as technical feasibility should be defined by local and regional authorities via local and regional democratic processes.

Rapporteur: Mr Cor LAMERS (NL/EPP), Mayor of Houten

Reference documents

Communication from the Commission: Towards an improved policy on industrial emissions

COM(2007) 843 final

and the

Proposal for a Directive of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control)

COM(2007) 844 final — 2007/0286/COD

I. POLICY RECOMMENDATIONS

THE COMMITTEE OF THE REGIONS

General recommendations

1. notes that local and regional authorities in various EU Member States play a critical role in implementing environmental and industrial policies, and have wide competences in prevention policies and enforcement of pollution control.

2. strongly supports pollution prevention and the polluter pays principle, and therefore appreciates this aim of the Industrial Emissions Directive.

3. emphasises the importance of source-based measures. It is essential that the causes of pollution be identified and emissions dealt with at source, in the most economically and environmentally friendly manner.

4. notes that in both urban and rural areas, the quality of air, water and soil are issues directly affecting citizens' daily lives. Large industrial installations in the EU still account for the release of a considerable proportion of key pollutants.

5. notes that clean air and water policies have a cross-border dimension and therefore require action at EU level. It therefore welcomes the Industrial Emissions Directive because it is a European instrument to decrease industrial emissions at source.

Environmental benefits

6. strongly believes that the proposal includes measures which are necessary and have a considerable potential for achieving environmental benefits. In this perspective, it appreciates the improved use of the BREF documents (Best Available Technique Reference Documents, see Appendix 1) as proposed by the Directive, since this will result in increased environmental benefits.

7. emphasises that the reduction of industrial emissions is mostly important in the case of air pollution. The Industrial Emissions Directive is an important European measure enabling member states to meet their emissions targets by 2020. The inclusion of a lower category of large combustion plants, from 20 to 50 megawatts (MW). is therefore an important aspect of the new Directive.

8. believes that with respect to air pollution the Directive is not ambitious enough:

— it is disappointed with the weak emissions limit value (see Appendix 1) of the large combustion plants. Also we would like to point out that there is still a significant difference between the emission limit value of the proposal and that of the corresponding LCP BREF document (Best Available Technique Reference Document of large combustion plants, see Appendix 1). These values should be synchronised and strengthened;

— it disagrees with the five-year implementation period for large combustion plants and proposes an implementation period of three years which is similar to the other chapters of the Directive.

9. is therefore concerned that the Directive might lead to mostly short-term benefits. It is very much concerned about the possible limited long-term benefits (see paragraph 17).

The current IPPC system

10. stresses that the IPPC (Integrated Pollution Prevention and Control) permits (see Appendix 1) should remain based on an integral approach taking into consideration the environment, production, technical feasibility, cost effectiveness and equally important, local conditions.

11. agrees with the European Commission that the IPPC Directive is currently not properly implemented in all Member States. The IPPC Directive has been rather difficult to implement and the BREF documents have not always been used, also due to their rather technical and difficult nature.

12. has noticed that permits reflect more the centralized and homogenized stated standards and requirements. Even though this seems positive, it is therefore becoming more difficult to detect what companies do, produce, treat or optimize by looking at the permits.

13. holds the opinion that the Industrial Emissions Directive (which includes a review of the IPPC Directive) was presented only weeks after the implementation deadline of the current IPPC legislation, which was set at 31 October 2007. The review therefore occurs before the present IPPC legislation has had a chance to demonstrate its workability and efficiency, and more important, before its effect in terms of emission reductions could be fully assessed.

The consolidation of seven Directives into one

14. believes that the consolidation of seven Directives into one Directive is a very ambitious approach, a step-by-step approach or a framework Directive with daughter Directives might have been preferable. A framework Directive would also present an opportunity for other, directly linked Directives, like the Suburban Wastewater Directive, to be included, without jeopardizing future revisions of the framework Directive.

15. is in favour of the principle of Better Regulation. The Commission's proposal to consolidate seven Directives seems to correspond with this principle. To a certain extent, the new Directive simplifies permit issuing procedures. It believes, however, that the different parts of the Directive have not been consolidated completely and, because there are still considerable differences between the Directive and the BREF documents, not all practical difficulties will be solved.

16. questions whether current inconsistencies and ambiguities in definitions are solved within this proposal. For example, it is unclear what effect the new definition of BAT (from best available technology to best available technique) will have. Taking into account the wider perspective of a technology instead of the sole technique, will connect better to business investment, will benefit a fair level playing field and thus will lead to more creative solutions for environmental challenges.

17. is seriously concerned the consequences that consolidation might have on future revisions. The proposal now includes several different areas of technical expertise. The length and especially the complexity will make it very difficult, if not impossible to revise the Directive in the future, and to adapt legislation to future needs and to technological developments by setting more stringent operational requirements e.g. emission limit values.

18. understands that the Commission proposes to deal with the problem of difficult future revisions via the linkage between the Directive and the BREF documents. The Directive sets minimum standards which have to be met and the BREF documents, which can easily be revised, will keep the system up to date according to technological developments and stricter associated emissions limit levels (BAT-AEL, see Appendix I). It has serious concerns about future differences which might arise between the BAT-AELs (in revisable BREF documents) and the emission limit values (in the Directive). There is a significant risk that the system might become outdated and thus might contribute little to future environmental developments.

19. strongly advises the inclusion of a practical revision system which enables the partial revision of the Directive (e.g. the technical chapters and emission limit values) via the co-decision procedure. It is furthermore concerned with future adaptations of legislation that will be carried out according to the Seville process (see Appendix I), which is not a legal procedure foreseen by the Treaty and is not subject to democratic scrutiny.

The new status of the BREF documents

20. is satisfied with the recent improvements of the BREF documents and values them as useful reference documents. The main part of the BREF documents is however only available in English, which might cause difficulties for regional and local supervisory and permit issuing authorities. It therefore requests translation of the essential chapters of the BREF documents (for example those which establish the best available technique (BAT, see Appendix 1) for a specific industry) in all EU languages.

21. finds it unjustified that the BREF documents are not used more often in the EU, and recommends an improved use of them. We therefore agree with the new status of the BREF documents, and the further obligation to use them in the permit procedure. It interprets the new status of the BREF documents as more binding, since these documents (which are at present solely reference documents, which have to be consulted, but are not obligated) shall be in all practical terms now obligatory.

22. perceives that there are possibilities for improvements in the BREF documents. Innovations and improvement according to the production process are sometimes lacking. For example, monitoring variations in sampling are presently used to penalize companies, whereas they could also be used to improve techniques. Another example miss-match between the volatile organic compounds chapter in the Directive and the corresponding BREF document. As a result, it is feared that the cleanest approach might not always be prioritised. Innovations to improve the local environment should always be promoted by local authorities if possible and the quality of the BREF documents should be sufficient enough to aid competent authorities.

23. believes the new status of the BREF documents will enhance policy consistency with a view to issuing pollution permits and in turn will contribute to establishing a level playing field for competing European companies.

24. finds the Seville process (see Annex 1) a necessary and well-established process. In Seville BREF documents are created and updated on the basis of meetings between European Commission officials and experts from the Member States, industries and NGOs. The cooperation between these parties is vital to establish new best available techniques and to create new or revised BREF documents. Therefore this process should be further extended in the Directive as is presently the case.

25. has noted that representatives of the local and regional authorities are not part of the Seville process and requests an invitation for these representatives to the Seville process. As permitting authorities and/or bodies in charge of inspections, regional and local authorities have important knowledge about best available techniques, and consequently the Seville process can be improved through the participation of representatives of local and regional authorities.

26. would like to indicate that the new status of the BREF documents might have a negative impact on the Seville process (see Appendix I). Reaching consensus on best available techniques will be more challenging due to the new character of the

BREF documents, as Member States, industries and NGOs might adopt a more strategic behaviour when determining a BREF. Due to production costs, industries would benefit from less innovating standards in the BREF documents. In this case, the Seville process might become a slow and opaque political process instead of a search for the best technical solutions.

27. believes this situation might result in weaker documents. As a result, we will be left with an outdated and weak instrument, which does not stimulate innovation and would not improve environmental quality, but actually weakens the implementation of the new Industrial Emissions Directive.

Policy making: Flexibility and local environmental conditions

28. agrees with the aims of the new Industrial Emissions Directive to enhance policy consistency with a view to issuing pollution permits.

29. would like to point out that local and regional authorities have competences in issuing permits that vary from Member State to Member State. For example, in Denmark both local authorities and the national government are responsible for issuing permits. In the Netherlands, municipalities and provinces issue licenses to the polluters, whereas in the United Kingdom, air pollution from major sources is dealt with by the central government. The dominant pattern of the involvement of local and regional authorities in this policy throughout the EU is that standard-setting takes place at the national level and enforcement at the sub-national level.

30. points out that the innovation of cleaner production occurs in local communities. The development of cleaner production takes place between several parties, such as NGOs, companies and competent authorities. At present local authorities often only monitor. The Directive should also offer possibilities for the cooperation between the different parties (local administrations and companies) which would enable them to stimulate innovation. Good examples of this can be found both in the Netherlands and Denmark, as well as in East European countries like Romania.

31. emphasises the need for some flexibility. Local circumstances vary and installations, even when producing similar products, operate differently throughout the EU due to differences in local conditions. Local and regional authorities create tailor made solutions for their geographical area. On the regional and local level there is always a concern for a balance between the adequate protection of the environment and economic motivations. Even if the improvement of the environment is the general policy objective, in every day life regional and local authorities decide between different environment parameters and often make trade-offs between the environmental impacts of different measures. When issuing permits the granting of derogations from emission values associated with best available technologies (BAT-AEL) is especially important for regions in those Member States where there has been a tradition of voluntary agreements with the industry and where the administrative discretion has not been drastically circumscribed by legislation.

32. strongly believes, however, that flexibility should be limited; there should be a balance between maintaining a fair level playing field and local decision-making. Therefore it is pleased with the incorporation of emission limit values in the Directive itself, which will lead to a general environmental protection throughout the EU. Flexibility might lead to misuse, and therefore it is very pleased that the local consideration procedure comprises sufficient guarantees to prevent this, as permit issuers can only derogate on the basis of an impact assessment (Article 16(3)) and are obliged to make the justification available to the public (Article 26(3f)).

33. strongly disagrees with the Commission's proposal to establish criteria for the granting of derogation based on local conditions in accordance with the comitology procedure (Article 16(3)) for the following reasons:

- Criteria for granting derogations should have been defined in the Directive itself (and thus decided by a co-decision procedure) and should not be defined in the future at the EU level via the comitology procedure in which Committee of the Regions and other representatives of local and regional authorities are not consulted.
- Due to the wide variety of local and regional conditions it is very difficult if not impossible to establish uniform criteria on the EU level.
- It strongly believes that the derogation procedure, as mentioned in paragraph 29 comprises sufficient guarantees to prevent misuse.
- With reference to the subsidiarity principle, the weighing of local environmental conditions against environmental costs and benefits as well as technical feasibility should be defined by local and regional authorities via local and regional democratic processes.

Innovation and cleaner technologies

34. supports the idea of stimulating innovation, but questions whether the new Directive lays down solid foundations for such a development.

35. welcomes the fact that permits will have to be reviewed often. A rolling adaptation of permit requirements will contribute to the uptake of cleaner technologies and thus reduce the environmental impacts of industrial emissions. To ensure that innovation really takes place, two conditions will have to be met. The first condition is legal certainty to ensure that investment capital is available. Business cycles will have to be respected and common practice in Member States is to maintain permit conditions for an eight-year period. The provisions regarding the adaptation of permit conditions to new or updated BREF documents (Article 22(3)) will have to reflect this. The second condition will be to ensure derogation opportunities that allow for adequate testing of emerging or new technologies. It is its view that the time constraint imposed in Article 16(5) may be too rigid in some cases, at least within four years after a new BREF document has been made available.

36. is concerned that the new status of the BREF documents might hamper industrial innovation, due to the limited rewards for sustainability. European industries will not be encouraged to become or remain the world's forerunners in new, clean technologies and it will be harder to address the still existing environmental problems within the EU.

37. prefers that the Directive be implemented in a way which would not indirectly motivate significant relocations of existing industry towards 'pollution havens' abroad.

38. would like to point out that although the inclusion of a lower category of large combustion plants, from 20 to 50 megawatts (MW) is an important aspect of the new Directive, with respect to farms however it is questionable whether the inclusion of more small livestock farms will lead to sufficient environmental benefits in order to justify the administrative burden.

Administrative costs

39. holds the opinion that Better Regulation, in addition to streamlining legislation, also requires cost efficiency and a reduction of administrative burden. It questions whether the present proposal meets these latter requirements.

40. is concerned with the numerous requirements applying to inspections, monitoring, review of permit conditions and reporting of compliance.

41. sees inspections as an important part of proper implementation of the Directive. It welcomes that this is acknowledged in this Directive. It is however questionable to what extent this should be elaborated within the Directive itself, instead of in the Recommendation for Minimum Criteria for Environmental Inspections, the RMCEI. This would also limit possible deviations between the Directive and the (presently under revision) RMCEI.

42. believes that the proposal indicates that the yearly reporting on compliance with best available techniques (Article 8) should include a comparison with the best available techniques (Article 24). This seems to be an unnecessary admin-

istrative burden. Since all permit requirements must be based on best available techniques, reporting on compliance with the permit requirements would be sufficient. Most monitoring data are filed up with uncertainties, reporting on these data will this not lead to constructive improvements in the used techniques. Therefore it is questionable whether this would contribute to Better Regulation.

43. notes that Member States report every three years on compliance with the Directive. Even though this is done only every three years, this is a significant administrative burden on local and regional authorities. We therefore strongly suggest that Member States keep an internal data file with all relevant data which the Commission consult at all times. This should replace a reporting system and will be in line with Better Regulation.

44. notes that upon definitive cessation of the activities, the operator shall return the site to its initial state as described in the baseline report (Article 23). It interprets this as a cleaner state of the soil in comparison to before the start of the activity. It also considers that soil contaminations should be remediated in accordance with the next level of the future functional use of the site. This would be more in line with the 'polluter pays principle'.

45. believes that the proposal demands regular soil and ground water monitoring before and during the time the installation is operating. However, a permit will already be based on a sufficient soil and groundwater protection. In particular cases there can and should be reasoning for additional monitoring, but this should not be obligatory for all cases.

46. agrees that the public should be given sufficient information about IPPC installations. It stresses that the information should always be accessible, but only upon request.

47. cannot endorse the proposed use of comitology to establish several criteria, such as soil and ground monitoring and criteria for risk-based analyses. It holds the views that these criteria should be established in the Directive itself and debated now in relation with the on-going legislative procedure.

II. RECOMMENDATIONS FOR AMENDMENTS

Amendment 1

Article 6

Granting of a permit

Text proposed by the Commission	Amendment
The competent authority shall grant a permit if the installation complies with the requirements of this directive.	The competent authority shall grant a permit if the installation complies with the requirements of this Directive Regardless of other requirements flowing from national or Community regulations, the competent authorities shall grant a permit with conditions stipulating that the installation should comply with the requirements of this Directive.

Reason

The approach adopted in the proposal for amending the IPPC Directive runs counter to the objectives of the Water Framework Directive and is therefore inconsistent with existing Community legislation. The rules and regulations set out in Article 11(3) of the WFD for achieving the management goals are based on a comprehensive national management requirement.

Amendment 2

Article 16(3)

Emission limit values, equivalent parameters and technical measures

Text proposed by the Commission	CoR amendment
<p>By derogation from the second subparagraph of paragraph 2, the competent authority may, in specific cases, on the basis of 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, set emission limit values that exceed the emission levels associated with the best available techniques as described in the BAT reference documents.</p> <p>Those emission limit values shall however not exceed the emission limit values set out in Annexes V to VIII, where applicable.</p> <p>The Commission may establish criteria for the granting of the derogation referred to in this paragraph.</p> <p>Those measures, designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 69(2).</p>	<p>By derogation from the second subparagraph of paragraph 2, the competent authority may, in specific cases, on the basis of 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, set emission limit values that exceed the emission levels associated with the best available techniques as described in the BAT reference documents.</p> <p>Those emission limit values shall however not exceed the emission limit values set out in Annexes V to VIII, where applicable.</p> <p>The Commission may establish criteria for the granting of the derogation referred to in this paragraph.</p> <p>Those measures, designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 69(2).</p>

Reason

The Committee of the Regions strongly disagrees with the Commission's proposal to establish criteria for the granting of derogation based on local conditions in accordance with the comitology procedure (Article 16(3)). Criteria for granting derogations should have been defined in the Directive itself (and thus decided by a co-decision procedure) and should not be defined in the future at the EU level via the comitology procedure in which the CoR and other representatives of local and regional authorities are not consulted. Due to a large variety in local and regional conditions it is very difficult if not impossible to establish uniform criteria on the EU level. The derogation procedure comprises sufficient guarantees to prevent misuse, as permit issuing authorities can only derogate on the basis of an impact assessment (Article 16(3)) and are obliged to make the justification available to the public (Article 26(3f)). With reference to the subsidiarity principle, the weighing of local environmental conditions against environmental costs and benefits as well as technical feasibility should be defined by local and regional authorities via local and regional democratic processes.

Brussels, 9 October 2008

The President
of the Committee of the Regions
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