

Opinion of the European Economic and Social Committee on the 'Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — On the road to sustainable production: progress in implementing Council Directive 96/61/EC concerning integrated pollution prevention and control'

(COM(2003) 354 final)

(2004/C 80/09)

On 19 June 2003, the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned communication.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 13 November 2003. The rapporteur was Mr Braghin.

At its 404th plenary session held on 10 and 11 December 2003 (meeting of 10 December), the European Economic and Social Committee adopted the following opinion by 110 votes for, none against and one abstention.

1. Introduction

1.1. The Communication refers to the progress which has so far been made in the Member States and in the candidate countries on integrated pollution prevention and control. The Commission has a clear message: a high level of protection of the environment, which is the overriding objective of Directive 96/61/EC known as the IPPC Directive, can only be achieved if the authorities in charge of implementation make the efforts necessary for correct implementation and engage in constructive interaction with plant operators and other stakeholders, including trade unions in particular.

1.2. The directive already applies to new or substantially altered installations. The final deadline for existing installations to apply the best available techniques (BAT) and meet all other requirements laid down by the directive is October 2007. In the acceding countries, the actual implementation is at a very early stage or has yet to start, and transition periods have been negotiated for the application of the directive at new and/or existing installations. However, they will not need to meet emission limit values based on the best available techniques until 2008-2012.

1.3. Transposition and implementation have not been carried out in a timely fashion in all Member States in the case of this directive and the Commission has identified major suspected or confirmed shortcomings in the national legislation transposing Directive 96/61/EC. Particularly worrying is the fact that in some cases there are no provisions for ensuring that existing installations comply by October 2007 or for the subsequent periodical review of permits.

1.4. Authorities in charge of implementation and plant operators should discuss investment planning, bearing in mind the cycle of investments and weighing any economic or financial disadvantages, in view of the fact that conditions for authorisation for all plants must be established in accordance with the provisions of the Directive no later than 2007.

1.5. Ambiguities in the directive have caused difficulties in implementation, either as regards definitions (for example the threshold criteria whereby an installation is covered by the directive, the boundaries of an installation, when should a change be considered as 'substantial', what is meant by 'return the site to a satisfactory state') or in practical implementation (how should permit conditions be written for certain aspects, how often should inspections be carried out, when should companies that are not fulfilling requirements be prosecuted).

1.6. As regards application of the directive, systematic sector-by-sector benchmarking and comprehensive screening and assessment of the techniques applied is carried out: information exchange is co-ordinated and facilitated by the European IPPC Bureau, which is based in Seville, and has led to the drawing up of the so-called BREF documents (BAT Reference documents) with the collaboration of informal networks of experts in industry, Member States and non-governmental organisations. So far, 15 BREFs have been produced, another 11 are at the draft stage, four have been started and two more are to be started.

1.7. A study carried out on three major and technologically advanced sectors shows that the application of BAT does not prevent companies from remaining competitive, and plants that perform well on the environmental front are able to use this as a competitive strength, although this situation is not widespread.

1.8. The notion of BAT is not rigid, it can actually vary within a sector from one plant to another because costs and benefits can obviously vary. In the Commission's opinion, this is one of the most significant aspects since it allows a balance between different environmental impacts and associated costs. Therefore, the Commission believes that it is important to retain this approach, which entails dialogue between operator and authority.

1.9. The cross-cutting approach of the directive creates an interaction with a large number of EU environmental directives, regulations and other policies and measures, and it is important to ensure optimal consistency and to examine whether there are any obstacles to the creation of an effective mix of policy tools at EU or national level. There is a dilemma, however, between the setting of Community emission limit values by means of directives when 'the need for Community action has been identified' and a decentralised approach (such as the IPPC Directive) which allows the competent authorities to make pragmatic choices, satisfying both environmental and economic issues.

1.10. The Commission believes that some amendments must be made to the directive, to take into account changes in legislation (in particular following the adoption of directives on public participation in the permit procedure which are required to ratify the Aarhus Convention of 1998), or to clarify relevant aspects (such as the above-mentioned problem of defining threshold criteria in particular sectors, or the problem of application, as in the case of waste where it is difficult to make the distinction between recovery and disposal).

1.11. The Commission has already carried out a broad Europe-wide consultation on the current state of play and possible developments in those areas of environment policy which cover the impact of major industrial pollution sources on the environment, to ensure that there is full consistency between them and to explore the possibility of using new approaches providing incentives to companies to further improve their environmental performance.

1.12. Should the need for any amendments to the directive result from this consultation, a new phase of broader consultation will be necessary, in addition to an assessment of Member State implementation progress reports. The Committee would suggest that the Commission summary and the national reports should be made available to the public.

2. General considerations on the IPPC approach

2.1. The approach taken by the IPPC Directive was definitely innovative, anticipating the choice to adopt framework legislation or global thematic strategies. Discussions on emissions should consider the three environmental areas (air, water and land) since the impact of emissions on these areas is generally linked and inseparable. We also need to ensure flexibility in implementation, by identifying the best available techniques in specific local contexts and bearing in mind the cost and benefit ratio. The integrated approach to pollution, connected to local quality of the environment, required a cultural and scientific jump on the part of the supervisory authorities and the operators, assuming the collection and exchange of information and dialogue to prevent and correct the environmental impact of industrial and, sometimes, agricultural activity. In many opinions concerning these topics either directly or indirectly, the EESC has found all these issues to be positive.

2.2. The directive is designed to be an avant-garde tool in the strategy for sustainable development as part of the local agenda 21 programmes, as well as forming a legislative framework for a series of voluntary instruments that have been set up in the meantime, from EMAS registration to agreements on emissions trading. It involves comprehensive information gathering, resulting in better knowledge of the state of the environment, the impact of various types of pollution and their interaction, thus giving citizens an accessible picture with a view to improving public participation in the drawing up of environmental plans and programmes ⁽¹⁾.

2.3. These innovative aspects explain, at least in part, the difficulties of transposition and application that have emerged, and the limited number of plants that the Commission has been able to evaluate. The picture emerging from the Commission Communication is cause for concern, in particular bearing in mind the 2007 deadline, when even existing plants should have undergone the permit procedure laid down by the directive.

2.4. The imminent accession of ten new Member States, whose resources and know-how in this field seem to be even more limited, makes the situation even more critical. Therefore, it is urgent firstly to pinpoint problems in the system to date, and identify and incorporate existing good practices, and secondly, to plan inspections, information and training (including technical training) for administrative staff to enable them to cope adequately with this situation, and in particular with the difficult phase when existing plants will undergo the permit procedure laid down by the directive.

⁽¹⁾ OJ C 221, 7.8.2001 — COM(2000) 839 final — OJ C 154, 29.5.2001.

2.5. The distortions encountered in the application of the directive may result from intrinsic limitations (which must be corrected), vague definitions (which must be clarified as soon as possible) or varying traditions and approaches on the environment. The EESC shares the concern expressed in the Communication regarding the provision of measures to allow the 2007 deadline to be respected fully; the deadline cannot be avoided simply by postponing compliance at individual plant level.

2.6. It is plausible that SMEs make up a significant part of all IPPC installations in Europe, sometimes without knowing it, and for these enterprises, complying with environmental legislation is a major challenge. The authorities in charge of implementation and supervision will therefore need to give special assistance to operators and provide themselves with sufficient personnel and resources.

2.6.1. The EESC therefore hopes that the Commission will carry out a more detailed analysis of the difficulties in implementation which have been encountered, and if necessary, via a short guide and appropriate guidelines drawn up by the technical Community bodies which have already been set up, clarify the most important issues to date, such as the criteria for identifying the companies covered by the regulations, how to formulate the environmental permit, the technical and human resources needed by the administration in charge of implementation, the possibilities for voluntary agreements, interaction with other directives or regulations, etc. This would be especially useful for new Member States and SMEs.

2.7. Every action designed to facilitate the implementation of the IPPC Directive, even if aimed at large industrial plants, has an intrinsic effect on small business. They must cope with the resulting problems with economic means and human resources that are insufficient for the interpretation and execution of the procedure for requesting a permit and subsequently the investments required for their commitments. In the opinion of the EESC, the initiatives needed to support SMEs during the IPPC implementation process should be carried out at national or regional level rather than at Community level.

2.8. The directive includes a comprehensive definition of 'best available techniques' that is supplemented by 12 specific considerations listed in an annex, so that they can be applied to specific sectors. It is necessary to assess the estimated net costs of implementing a technique in relation to the environmental benefits, i.e. carry out an accurate cost/benefit analysis.

2.9. By introducing the flexible concept of techniques rather than technologies and prescribing the need to bear in mind costs and benefits as well as local conditions, the IPPC Directive leaves to the national and local supervisory authorities the right and obligation of deciding what constitutes BAT for each plant, with due regard for the diversity and complexity of industrial processes, the innumerable inter-connections in every plant between machines, processes, purification systems and — no less important — the local conditions and methods of working.

2.10. The system may be effective, resulting in similar levels of environmental protection and supervision in plants throughout the EU, but only with a constant process of information exchange so that the statistical links between the techniques considered to be the best and the emission limit values resulting from them can be established.

2.11. The development and exchange of information at EU level on the best available techniques, especially resulting from the Information Exchange Forum (IEF) and the Member States' informal network of authorities responsible for implementation and enforcement of EU environmental law (IMPEL), has definitely been successful. However, much remains to be done to broaden this exchange to include all regional and local authorities, especially in the candidate countries, and stakeholders, particularly the sectoral associations that could be the principal instrument for the promotion and application of BAT in specific sectoral and local contexts.

2.12. The EESC believes that a linked and proactive approach should be adopted to promote implementation of the directive, including informing and training stakeholders (in particular the local and other authorities in charge of permits as well as operators), exchanging best practice and involving local employers' associations and trade unions, so as to have a consensus when planning the investments required.

2.13. A pre-condition for the realisation of this proactive policy is the reinforcement of the teams of experts and the organisational structure of the Seville JRC, which appears to be inadequate even for drawing up the BREF, which is its main task. The EESC hopes that its tasks will be extended to include disseminating information and active participation in training, seminars, conferences etc, in addition to evaluating the application and use of the BREF.

2.14. Local pilot projects have shown that cooperation between the responsible authorities and industrial associations may overcome entrenched resistance on sensitive issues such as information security and loss of competitiveness, and facilitate information dissemination and training procedures for operators, which are crucial issues bearing in mind the 2007 deadline.

3. Specific comments

3.1. The definition of plant capacity as the rated capacity of the installation to operate 24 hours a day, provided that the equipment is capable of being operated in that way, is not appropriate for all sectors and for many smaller units which operate flexibly on the basis of current market demand and occasionally on a seasonal basis. In this case, there are no precise figures for the real output or the pollution potential of the installation. The EESC therefore believes that the criteria for applying the directive should be revised, with real output being examined over a given period of time, at least for a few sectors or types of plants, as indicated in point 7.3.1 of the Communication.

3.2. The EESC also believes that something should be done about finding a precise definition for 'emission limit values' and deciding how to express, measure and monitor emissions. The definition of pollution is clear and precise: it involves the introduction of negative effects into the environment, in particular the introduction of pollutants. The methods for expressing this quantity differ among Member States. The lack of a single consistent method to express this basic data reduces, or even prevents, any possibility of obtaining a clear reading of the correlation between BAT in use and the associated pollution. The EESC takes note of the difficulties involved in rapid standardisation and harmonisation of the different methods that have been used for years in Member States, but hopes that the Information Exchange Forum will lead to an improvement in techniques for comparing data.

3.3. The EESC agrees that it is important to ensure a high level of environmental protection for waste management facilities, but the complexity of legislation in this field would suggest that any move to group these installations under the IPPC Directive should wait until it is time for the directive to be amended.

3.4. The EESC feels that it would be appropriate and realistic to revise and correct the list of activities covered by the directive, excluding all plants, especially small ones, which have a low polluting capacity or that in any case affect the environment in only one of the three environmental areas (air, water and land), since this situation can already be monitored through existing legislation.

3.5. The implementation of BAT and the ongoing BREF should be accelerated in view of the 2007 deadline, and particular attention should be given to the problem of distributing them to the competent authorities and economic operators (associations and individual operators). The decision not to publish the BREF in paper form nor to translate the documents into all Community languages is admirable in terms of practicality and cost, but having them available only in electronic form may cause problems as regards direct reading on the part of individual users or distribution to decentralised offices. Moreover, the EIPPCB (European Integrated Pollution Prevention and Control Bureau) regards the number of BREF documents downloaded from its site as satisfactory. The initiative to translate the Executive Summaries into all languages is praiseworthy, although for the above reasons, it would be useful to make them available in non-electronic form as well.

3.6. It would be useful to examine the reception and evaluation of the BREF by the business community involved in drawing up the documents and the competent authorities in individual Member States (which would give their opinion in view of the specific tasks awaiting them: requesting and awarding a permit). If the evaluation were to be positive, one or more businesses and/or industrial associations from each sector might find that it would be in their interest to make an economic contribution towards the publication of the BREF in paper form, or even publish the BREF as Manuals of Applied Technology, in addition to being consultation and training tools for staff in the plants to which that BREF refers. Highly developed States and industrial sectors outside the European Union refer to the BREF, which indicates that these forms of distribution would increase the possibility of the BREF being hailed as an international frame of reference.

3.7. Since the BREF were published only recently and are not yet generally applied, the EESC believes that it would be premature to consider revising these documents in the short to medium term, since this could give rise to confusion and even uncertainty when applying the BREF.

4. Questions raised for consultation

4.1. In the Communication, the Commission lists a series of questions designed to steer the consultation process towards specific objectives and desirable outcomes. The EESC hopes that the following comments, summarising the points developed explicitly above, will contribute constructively to this process.

4.2. The first set of questions (questions 1a and 1b, and 2) concerns suggested or desirable action at Community or Member State level, in order to find solutions to the implementation difficulties that have been encountered. The following points are highlighted:

- steps must be taken regarding varying interpretations and difficulties in application (§ 2.5), especially if these are a result of ambiguous definitions or criteria (§ 3.2 and 3.3). Initially a solution could be to draw up guidelines (§ 2.6.1) rather than amending the directive;
- given the reluctance of the Member States to accept a precise and unambiguous definition of the term 'emission limit values', the EESC suggests that the problem should be dealt with and resolved by the appropriate technical mechanisms with the coordination of the Commission (§ 3.2);
- steps must be taken to inform and train stakeholders (§ 2.12): Community action should encourage this type of activity, which should mostly be carried out at national and local level under the direct supervision of Member States. Appropriate Community action would include strengthening the structure and extending the tasks of the Seville JRC (§ 2.13), as well as promoting and coordinating seminars and conferences to train staff working in the area of obtaining and granting permits, management and related controls.

4.2.1. The EESC would also recommend several easily applied instruments at Community level, such as:

- monitoring data on emissions and the application of BAT, using the European Pollutant Emission Register, and distributing such data to decentralised units, whether public authorities or economic operators;
- drawing up user-friendly manuals to guide stakeholders in the application of the directive;
- using the public participation measures adopted to comply with the Aarhus Convention, to secure greater involvement of all stakeholders.

4.2.2. The EESC is aware of the importance of the 2007 deadline, which must not become a pretext for questioning the IPPC approach, but feels that it would be reasonable to allow for an appropriate period of time for the implementation of measures agreed on between plant managers and public authorities, if justified by force majeure or by the length of the investment cycle.

4.2.3. The EESC is aware of the length of the legislative process, but does not exclude the possibility of modifying the directive for particularly delicate issues, in particular the list of activities covered by the directive, the threshold criteria for determining whether a business falls within its scope (§ 3.4), and the definition of 'installation' and 'substantial change'.

4.2.4. The problems of SMEs have been considered in many earlier paragraphs (in particular 2.7 and 2.14), and the EESC suggests the following SME support measures:

- identifying instruments and indicators to check the applicability of the directive to the specific situation of any given business, which could well differ significantly from one Member State to another;
- forming groups of experts on a voluntary and local basis to help in the application of BAT, who could take advantage of the Community coordination described above;
- incentives for the training of technical staff, either financially or in the form of a guide or training manuals drawn up at Community level;
- incentives for innovated investments in plant that enable compliance with the directive.

4.3. Questions 3 and 4 on BAT and the value and importance of the BREF and their distribution at international level have already been fully answered in the preceding paragraphs (§ 2.11, 3.5, 3.6 and 3.7). The EESC recognises the value of these documents, and calls for specific initiatives to distribute them, including internationally either as an instrument for encouraging sustainable production outside the EU, or as part of the stakeholder training efforts undertaken by the JRC, which will need back-up and funding to cope with this new task (§ 2.13 and 4.2).

4.3.1. Information exchange, which is currently performed mainly vertically, must be extended to the horizontal dimension, i.e. the distribution of the information itself. This could form the basis of the training processes described above as important.

4.3.2. The EESC calls for an initiative again coordinated by the JRC, to promote a process of dissemination and exchange which would involve Member States and local authorities in each Member State, and the various industrial sectors, and have the aim of carrying out studies, translating into local languages and drawing up and distributing simplified summaries (the BREF or parts of the BREF for each State or industrial sector).

4.4. Experience thus far and the as yet limited practical application would suggest that the scope of the directive should not yet be modified (question 5). Were the directive to be modified, bearing in mind the relatively lengthy procedure involved, the EESC would reiterate the comments made in points 2.6.1, 3.1, 3.2 and 4.2.2-4.2.3.

4.5. Question 6 is extremely complex and should be broken down into smaller parts. In the Committee's opinion, setting Community emission limit values (minimum requirements) is a tool that has proven its usefulness, if limited to contexts when it is truly necessary and if specific to particular fields. These limitations do not imply any negation of the approach taken by the IPPC, which is certainly preferable but which may take into consideration specific thresholds that may be seen as parameters for applying BAT and analysing the local conditions for application. The two approaches are not contradictory, provided the authorities in charge of implementation succeed in understanding and managing the process with sufficient sensitivity for the economic and social interests at stake, and plant operators understand the need to carry out checks so as to comply with all the standards imposed, with pragmatic mechanisms which do not make the operation unprofitable. In any case, there is an evident need for dialogue with sector companies, together with incentives to accelerate practical implementation.

Brussels, 10 December 2003.

4.6. The various environmental laws (question 7) must be consistent if they are to be credible and put into action. A greater effort is asked of the legislator and of the authorities in charge of application, and it is hoped that a summary document will be prepared clarifying all the existing links between the IPPC and all remaining environmental legislation, thus allowing operators an overall view. European directives may take on differing structures and forms when they are transposed into national legislation, but operators and authorities seek principles and connections in Community legislation; in this case, connections between legislation applying to large plant, chemical substances, air, water, soil and waste, and the IPPC Directive. The EESC therefore suggests that a detailed and in-depth study of the interaction between the IPPC and other European directives on the environment and environmental impact should be carried out as soon as possible, starting with the evaluation of the reports by Member States on the application of the IPPC Directive, and giving examples of individual States or sectors.

4.6.1. The Committee hopes to be able to cooperate proactively in this study, exploiting its experience and links with organised civil society at various levels, including the national level, if necessary involving its own system of groups and a hand-picked group of experts which would not be limited to its own members.

4.7. As regards question 7b, the EESC believes that the IPPC and the associated process of information exchange already contain the elements for the correct application of those principles of law which have been introduced, but they are sufficiently complicated without adding any further tools, even voluntary tools. As regards emission trading, it would seem premature to enter into a discussion on that subject at this stage. It is vital to ensure that the monitoring and control system is watertight and to avoid any major impact on the environment at local level.

The President

of the European Economic and Social Committee

Roger BRIESCH
