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**REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN
PARLIAMENT**

Report from the Commission on the implementation of Directive 2008/1/EC concerning integrated pollution prevention and control and Directive 1999/13/EC on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations

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Report from the Commission on the implementation of Directive 2008/1/EC concerning integrated pollution prevention and control and Directive 1999/13/EC on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations (Text with EEA relevance)

1. INTRODUCTION

This report has been prepared pursuant to Article 17(3) of Directive 2008/1/EC concerning integrated pollution prevention and control (IPPCD) and Article 11 of Directive 1999/13/EC on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations (SED).

The report deals with the third reporting period of the IPPCD (2006-2008), building on the analysis carried out in previous reports on the implementation of this Directive¹. For the SED, it relates to the implementation period 2003-2007, during which two reports were submitted by Member States. The reports for the years 2003-2004 covered the EU-15 Member States, and those for 2005-2007 covered the EU-27 Member States. The information collected therefore mainly covers the period prior to the final deadline of 31 October 2007 for the implementation of the SED².

The report summarises the information transmitted by Member States using the relevant questionnaires adopted by the Commission³ and the Electronic Reporting Tools hosted by the ReportNet infrastructure⁴, which have reduced the burden on the Member States. Furthermore, to ensure full public access to the information reported, the Commission has developed the "Industrial Emissions Reporting Information System" website⁵.

Member States generally complied with their obligations to report under both Directives, although many of them were late in replying. Greece, however, did not provide the required information under the IPPCD and Luxembourg only did it recently, not allowing the Commission to properly assess the information for the purpose of this report. The Commission issued a warning to the Member States concerned and, in view of the lack of results, initiated an infringement procedure in May 2010 (to be closed for Luxembourg due to the recent submission of the information). Consequently, this report provides findings for 27 Member States under the SED and 25 Member States under the IPPCD.

¹ References: COM (2003)354, COM (2005)540, COM (2007)843.

² This information has been summarized and analysed in more detail in two technical reports: http://circa.europa.eu/Public/irc/env/voc/library?l=/2006_reportspdf/EN_1.0_&a=d and http://circa.europa.eu/Public/irc/env/voc/library?l=/implementation_2005-07/final12_marchpdf/EN_1.0_&a=d

³ IPPC: Decision 2006/194/EC, SED: Decision 2002/529/EC

⁴ To learn more about ReportNet: <http://www.eionet.europa.eu/reportnet>

⁵ To learn more about the Industrial Reporting Information System: <http://iris.eionet.europa.eu/>.

Meanwhile, both Directives, together with five other pieces of legislation⁶, have been merged and recast in the Industrial Emissions Directive (IED). The new IED has been agreed in principle between the Council and the European Parliament and it is expected to be formally adopted by the co-legislators⁷ by the end of 2010. Shortcomings identified in previous reports or during the current reporting period have largely been tackled by the IED.

2. IPPCD

The aim of the IPPC Directive is to achieve integrated prevention and control of pollution arising from about 50.000 large industrial installations across the EU 27. It requires installations to operate in accordance with permits which include emission limit values or other technical measures based on the use of Best Available Techniques (BAT) to prevent or reduce emissions to water, air and soil, as well as to tackle other environmental impacts.

The original IPPCD was adopted in 1996 and has applied since October 1999 both to new installations and to existing installations where the operator has carried out substantial changes. Since 31 October 2007 the Directive has also applied to existing installations.

2.1 Transposition of the IPPCD

The Commission assessed the transposition of the IPPCD into national legislation in the context of previous reporting cycles. As a result, it opened infringement cases for incorrect transposition against 16 Member States. The efforts of Member States to remedy the issues have resulted in a significant improvement over time, and now only two such cases remain open (Estonia and Lithuania).

The national legal provisions transposing the IPPCD were subject to changes in 19 Member States during the period 2006-2008, mainly in order to adapt national and regional laws to the Directive, to improve some aspects related to public participation and to implement changes in the sharing of competences between different authorities.

2.2 Implementation of the IPPCD

Issuing and quality of permits

The Commission supervised and supported Member States in the task of issuing permits in order to meet the Directive's deadline of 30 October 2007. However, many Member States did not comply with this obligation.

As a result of the lack of progress in the granting and reconsidering of permits, the Commission opened infringement cases against Belgium, Denmark, Greece, Spain, Italy, Malta, Portugal, Slovenia, Austria, France, Ireland and Sweden. So far, all but four of these cases have been referred to the European Court of Justice, which ruled on the first case in 2010 against Belgium for failing to meet the Directive's deadline.

⁶ The recast of the IPPC Directive comprises, beside the SED and the IPPC, the LCPD (2001/80/EC), the WID (2000/76/EC) and the 3 Directives on Titanium Dioxide (78/176/EEC, 82/883/EEC and 92/112/EEC)

⁷ European Parliament agreed on a position at second reading on 7th July 2010: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0267+0+DOC+XML+V0//EN&language=EN#top>

The Commission has also focussed efforts on ensuring the quality of the permits issued. A total of 61 IPPC installations across 16 Member States and 12 sectors covered have been examined in detail as case studies. The final reports of these studies are available on the Commission's website⁸. The main problem identified by the Commission is the low proportion of permits reflecting the implementation of BAT, as indicated in the relevant BAT Reference documents (BREFs). In particular, no justification could be found for the significant differences between the BREFs and permit conditions set for more than 50 percent of the installations examined. A further study which is currently in progress will cover a further 50 installations in 10 Member States.

Under the IED, greater emphasis will be placed on the use of the BAT conclusions derived from the BREFs for the setting of permit conditions. These BAT conclusions will be adopted as implementing acts and will have legal effect. Thus, the Commission expects that the implementation of BAT will be more clearly reflected in the IPPC permits.

Review of permits

Article 13 of the IPPCD requires permits to be periodically reconsidered and, where necessary, updated. This is necessary, in particular, when substantial changes in BAT allow emissions to be reduced significantly without imposing excessive costs.

Many Member States lay down specific rules for the reconsideration and updating of permits in their legal systems, although these rules vary substantially. Some Member States have established a time span for the IPPC permits, after which renewal is mandatory. For example, permits are valid for 10 years in Austria and Romania, and 8 years in the Czech Republic, Slovakia and Spain. Slovakia extends this period to 10 years if the installation implements an Environmental Management Scheme. Some other countries, such as Poland or the United Kingdom, have introduced a general requirement to review the permits on a periodic basis which is specified in the individual permit.

BAT is a dynamic concept which evolves over time, and the permits need to be updated in order to foster ongoing environmental improvement by the industry. The IED lays down more detailed rules on the review of permits and, in particular, provides for the compulsory reconsideration of permits within four years of publication of decisions on BAT conclusions.

Transitional periods granted to new Member States

Certain installations in a number of new Member States are subject to specific derogations under their Accession Treaty and related Acts. Such derogations concern the requirement to operate these installations in accordance with emission limit values, equivalent parameters or technical measures based on the best available techniques according to Article 9(3) and (4). Compliance with derogations under the Accession Treaty is closely monitored by the Commission. These derogations will all have expired by 31 December 2015.

Coordination between authorities during the permitting procedure

Where different environmental authorities are involved during the permitting procedure, the IPPCD requires internal coordination in order to ensure an effective integrated approach.

⁸ http://circa.europa.eu/Public/irc/env/ippc_rev/library. The third report of this exercise will be posted on the same webpage in the course of 2011.

However, the degree of coordination and the administrative bodies involved vary from one Member State to another, largely owing to differences in their internal administrative organisation. For example, Spain has nominated a main responsible authority which receives contributions from other authorities (e.g. municipalities, River Basin Authorities), whilst Austria has established an authority responsible for the overall permitting procedure and for appointing relevant experts for specific subject areas.

Information Exchange on BAT

Article 17(2) of the IPPCD requires the Commission to organise an exchange of information on BAT. To that end, the multi-stakeholder Information Exchange Forum (IEF) brings together representatives from all Member States, as well as representatives from relevant industry sectors and environmental Non-Governmental Organisations (NGOs). The IEF discusses general issues relating to the BAT information exchange and provides its opinion on individual BREFs before they are adopted by the Commission.

The exchange of information takes place through sector-specific technical working groups which bring together the Member States, industry and NGO experts, and it is managed by the Commission's European IPPC Bureau⁹ (EIPPCB). The EIPPCB is responsible for drafting the BREFs.

To date, the Commission has adopted a total of 33 BREFs, covering both individual sectors (27) and horizontal issues (6). BREFs need to be regularly revised, and the Commission is aiming at a time interval for revision of about 8 years. The first revised BREF (Cement, Lime and Magnesium Oxide manufacturing) was adopted in June 2010 and nine others are currently under review.

Member States have acknowledged the usefulness of the BREFs in the implementation of the Directive and expressed general satisfaction with their content. Some Member States, such as France, Germany, Italy, Poland and Spain, translate all or parts of the BREFs.

Under the IED both the legal status of the BREFs and the role of the various actors in the information exchange have been clarified. This will ensure a high quality outcome of the process and enhance the use of the BAT conclusions in the implementation of the Directive.

Inspection and enforcement activities

Article 14 of the IPPCD requires operators to regularly inform the competent authorities of the results of emission monitoring and afford the representatives of competent authorities all necessary assistance to carry out on-site inspections. The actual practices of compliance monitoring and enforcement vary widely between, and even within, Member States. Most Member States have developed on-line databases and/or e-mail submission of monitoring reports. The Commission encourages the use of such tools, which facilitate the dataflow between operators and authorities and reduce administrative burden.

Several Member States have established a minimum on-site inspection frequency, which is typically once a year (for example in Slovenia, UK, Hungary, Estonia, Lithuania, France, Malta or Cyprus). However, in some cases a lower frequency is set.

⁹ To learn more about the IPPC Bureau: <http://eippcb.jrc.es/>

Under the IED, compliance monitoring provisions have been further developed. It aims to adopt a risk based approach to inspections, but also includes minimum frequencies for site visits. This will make it the most advanced environmental Directive as regards enforcement and inspection activities.

Information and public participation

During the most recent reporting period, many Member States have improved both the provision of information to the public and participation by the public. Improvements include more frequent updating of information, additions to public databases or websites, and the possibility for other Member States to access information. Furthermore, the use of new technologies for accessing information is being promoted by all Member States, and online availability of permits is becoming more common.

Some Member States are integrating information on industrial emissions into a single information system, for example by presenting together the data compiled through their Pollutant Release and Transfer Registers (PRTRs) and the information on IPPC installations. The Commission welcomes these initiatives and invites all Member States to promote this integration process.

At the EU level, the European PRTR (<http://prtr.ec.europa.eu/>) provides information for some 25.000 industrial facilities, the vast majority of which are IPPC installations. Furthermore, the Commission provides access to the information reported by Member States on the IPPCD as well as several other directives regulating industrial emissions through the "Industrial Emissions Reporting Information System", which is accessible at <http://iris.eionet.europa.eu/>.

The IED increases citizens' rights regarding access to information and, in particular, the need to make publicly available those decisions which involve a deviation from BAT conclusions in the permitting process or the use of Internet to guarantee these rights.

Environmental Quality Standards

The IPPCD requires that competent authorities include additional measures in IPPC permits where an environmental quality standard requires stricter conditions than those which can be achieved through the use of BAT. This requirement is present in national law in all Member States. However, only six Member States have reported a need to apply those provisions.

Examples of additional measures that have been taken include requirements regarding discharges of waste water in sensitive (drinking) water areas in Denmark, Ireland, Italy and Belgium.

Transboundary co-operation

For situations where a Member State is aware that the operation of an installation is likely to have significant adverse effects on the environment of another Member State, the IPPCD requires the operator to forward to the Member State authority concerned all the information which is made available under its Annex V. This includes the permit application and the details of the competent authority responsible for making the permitting decision. As in previous reporting cycles, Member States have indicated that cross-border co-operation has been limited. Eight Member States (Germany, Belgium, Italy, Romania, Slovenia, Slovakia, France and the Netherlands) report the use of these provisions, which concerned a small number of permits.

2.3 The Commission's IPPC implementation action plan

In its Communication 'Towards an improved policy on industrial emissions'¹⁰ the Commission outlined an implementation plan addressing a number of key issues, including transposition and implementation by Member States and improving the BREF elaboration process. The summary table in Annex I shows that the action plan has now been almost fully implemented, largely through the IED.

With the coming into effect of the IED the Commission will devote its attention to supporting Member States in their efforts to fully transpose and implement that Directive. Some of the actions listed in Annex I will therefore continue in the context of the IED.

3. SED

The aim of the SED is to prevent or reduce the effects on human health and the environment of emissions of volatile organic compounds (VOC) into the air. In particular, it promotes the replacement of those solvents having the most serious health effects with potentially less harmful substitutes. The SED covers various activities involving the use of organic solvents, such as coating, degreasing, printing and ink manufacturing, and all installations falling within its scope were required to be authorised or registered by the end of October 2007.

The IED incorporates the provisions of this Directive.

3.1 Transposition of SED

Generally, Member States have transposed the Directive into their national legislation, although some problems were identified during the recent conformity checking exercise, in particular as regards the transposition of certain definitions, the monitoring requirements, the scope of the Directive and the emission limit values. The Commission will take into account the findings of this exercise when assisting Member States in the transposition phase of the IED.

3.2 Implementation of SED (2003-2007)

General implementation issues

The information provided by Member States gives no indication of any problems with the implementation of SED. Overall, Member States have implemented the provisions, measures and practices necessary to ensure compliance with the various aspects of the Directive. Compliance is ensured through monitoring and reporting obligations, as well as inspections and enforcement actions – in the form of both document checks and site visits – and further improved by supporting measures, such as training and the drafting of guidance for the competent authorities.

Some Member States have reported that implementation of SED in the dry cleaning sector is presenting some problems. The use of the solvent management plan, which is the key tool for assessing installation level compliance, is regarded by some competent authorities as too complicated for this sector and very hard to enforce, given the small size of most of the

¹⁰ COM(2007) 843 final

companies involved and the large number of installations. Several Member States have developed simplified approaches to implementation and compliance checking in line with the SED provisions, and the Commission is engaged in further discussions on this issue.

Installations covered

By the end of 2007, about 53,000 existing installations covered by the SED were operated in the EU-27 Member States. Following the amendment of the SED by Directive 2004/42/EC¹¹ (Deco-Paints Directive), which largely excluded vehicle refinishing from the scope of the SED, the number of existing installations in the Member States has decreased significantly. At the end of 2004 the majority of installations under the SED (within the EU-15 Member States) belonged to the vehicle refinishing sector (54%) and the dry cleaning sector (16%); however, at the end of 2007, dry-cleaning became the largest sector (with 39% of installations). Several Member States continued reporting on vehicle coating and refinishing under SED (27% of all installations reported), although this activity had been largely removed from its scope.

According to the data provided, only a small proportion of all existing installations were authorised or registered after 2003. This suggests that, prior to that date, many Member States already had legislation in place under which these installations had to be registered or authorised.

Use of the options for achieving emission reductions

The SED offers Member States two main possibilities for individual installations to achieve the required VOC emission reduction - they must comply either with emission limit values or with equivalent targets defined under a reduction scheme.

The information reported shows that in many Member States very few installations, if any, apply the reduction scheme option. In addition, several competent authorities seem to prefer the application of the emission limit values, because of the difficulties of assessing the equivalence between reduction schemes and the application of the limit values. This has been the case particularly in Member States where installations were regulated by emission limit values prior to the implementation of the SED.

The SED offers Member States a third option for compliance through the drawing up of a National Action Plan designed to achieve an overall reduction of VOC emissions equivalent to what would be achieved by applying the installation level approach. No Member State has implemented such a National Plan.

Derogations from emission limit values

The SED allows derogations from certain limit values where abatement measures are shown not to be economically and technically feasible. This can be an issue for activities such as shipbuilding and aircraft construction, which cannot be operated under contained conditions. Derogations were reported by about half of the Member States, but they accounted for less than 0.01% of the total number of installations. On the basis of the information received, it was not possible to assess the criteria used or the alternative conditions required.

¹¹ OJ L 143, 30.4.2004, p. 87–96

Commission initiatives to promote implementation

Article 7 of the SED requires the Commission to ensure that an information exchange takes place on the use and substitution of organic solvents. To this end, the Commission has developed a web site providing access to guidance documents and good practices on the substitution of solvents¹², as well as activity-specific guidance documents¹³. The Commission has also worked in close co-operation with the Member States on providing answers to questions raised in relation to the implementation of the SED, in particular concerning the scope and the application of the reduction scheme.

Interaction with other EU legislation

The Deco-Paints Directive sets limit values for the VOC content of certain decorative paints and vehicle refinishing products. Several of those products are used within installations regulated under the SED. Consequently, the SED was amended to exclude this activity from its scope. As indicated above, this change has led to a drastic reduction in the number of installations covered by the SED. However, some Member States have chosen to maintain the SED requirements for this sector, as is explicitly allowed under the Deco-Paints Directive. The Deco-Paints Directive also exempts certain products from complying with the VOC limit values if these products are sold for exclusive use in an installation regulated under the SED.

The overlap between the two Directives has raised some concerns on the part of stakeholders and competent authorities. The Commission has attempted to clarify the situation and this issue has also been considered in the context of the review of the Deco-Paints Directive, on which the Commission will report in a separate Communication.

Some of the larger installations operating surface treatment activities are covered by both the SED and the IPPCD. These installations therefore have to be permitted, with the emission limit values to be set in the permits being based on BAT. In these cases, the limit values set in the SED will apply as minimum requirements. The interaction between the SED and the IPPCD has been given detailed consideration through the IED.

4. CONCLUDING REMARKS

IPPCD

The reports of the Member States on the implementation of the IPPCD have revealed a need for some countries to finalise the issuing of permits in order to ensure compliance with the Directive. In addition, case studies undertaken by the Commission have shown that permits are not based sufficiently on BAT. Furthermore, a number of other issues are also identified, such as the need for a more coherent inspection mechanism, the need to reduce administrative burden and the inability of the IPPCD to meet certain key policy objectives. These issues should for the most part be tackled through the IED.

¹² <http://ec.europa.eu/environment/air/pollutants/stationary/solvents/index.htm>

¹³ http://circa.europa.eu/Public/irc/env/voc/library?!=/guidance_documents/final_versions&vm=detailed&sb=Title.

SED

The reporting by Member States on the implementation of the SED prior to the final implementation deadline for existing installations revealed no major horizontal issues. Implementation of SED in the dry cleaning sector has presented some problems due to the specific features of the sector, but useful simplified approaches are being developed.

Future Directive on Industrial Emissions

The IED which is awaiting final adoption will merge seven Directives, including the IPPCD and the SED, into a single legal instrument. This will clarify the interaction between all these legal instruments and streamline many important provisions, including those related to monitoring and reporting.

The IED greatly strengthens the importance of BAT in the permitting procedure and addresses certain shortcomings of the IPPCD, in particular with regard to permit reviews and inspections. It is expected that implementation by Member States will become more effective once the IED enters into force.

Future action

There are still plans for another reporting cycle for the SED (2008-2010) and for the IPPCD (2009-2011) before the IED enters into force, and the Commission will continue to follow up the implementation of these two pieces of legislation. At the same time, the Commission will also prepare the ground for supporting and promoting the transposition and implementation of the IED by the Member States.

Annex I: Assessment of progress in implementing the Commission's 2007 IPPC Action Plan

| <i>Action</i> | <i>Assessment of progress</i> |
|--|--|
| 1. Ensure full transposition of the Directive | IPPCD correctly transposed in 25 Member States. Cases against EE and LT remain open. |
| 2. Support Member States in cutting unnecessary administrative burdens | IED will reduce unnecessary burdens by €32 million per year. Continuation of work with the High Level Group of Independent Stakeholders on Administrative Burdens and with Member States to reduce national burdens. |
| 3. Support Member States in their implementation of the legislation | The Commission continued to communicate with those Member States that have problems in terms of issuing permits. Sharing of information on the implementation of IPPC across the EU and workshops held with Member States. |
| 4. Enhanced monitoring and compliance checks of the application of the legislation on industrial emissions | Ongoing Commission review of both total permits issued and the number of individual permits issued across a majority of Member States. Continued review of implementation in response to complaints from citizens and questions from the European Parliament. E-PRTR used to monitor and identify potential implementation issues. |
| 5. Improve data collection for review of BREFs and create stronger links with the Research Framework Programme | Publication of guidance on improving the collection and submission of data for the review of BREFs. Work with DG RTD with regard to links between BREFs and the Research Framework Programme. Enhanced status of emerging techniques in the context of IED. |