



COMMISSION OF THE EUROPEAN COMMUNITIES

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

**Report of the Commission on the implementation of Directive 96/61/EC concerning
integrated pollution prevention and control**

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(Text with EEA relevance)

1. INTRODUCTION

This report has been prepared under Article 16 (3) of Council Directive 96/61/EC concerning integrated pollution prevention and control¹ (the IPPC Directive). The report concentrates on the years 2000 to 2002 and is therefore limited to 15 Member States. This is the first such report on the implementation of the Directive since its entry into effect in October 1999.

The IPPC Directive aims at achieving integrated prevention and control of pollution arising from about 45.000 large industrial installations across the EU 15. It is thereby addressing, through a system to determine permit conditions based on Best Available Techniques (BAT), the most significant emissions to water, air and soil, as well as other environmental impacts.

This report summarises the information transmitted by Member States on the basis of a questionnaire adopted by the Commission². All Member States replied to the questionnaire. Most Member States replied with delay. The Commission has not checked all the information reported by the Member States in this context, although an analysis of the responses has been provided by an external study³ carried out for the Commission. In parallel, and as presented in this report, the Commission has carried out its own analysis on the conformity of national legislation with the IPPC Directive.

A number of key implementation issues were already raised by the Commission in its Communication “On the Road to Sustainable Production” adopted in June 2003⁴. This Communication additionally launched a consultation on the implementation and possible further development of the IPPC Directive, the findings of which are also taken into account in this report.

¹ OJ L 257, 10.10.1996, p. 26

² Commission Decision of 31 May 1999 concerning the questionnaire relating to Council Directive 96/61/EC concerning integrated pollution prevention and control, OJ L 148, 15.6.1999, p. 39

³ “Analysis of Member States’ first implementation reports on the IPPC Directive”, LDK-ECO, June 2004, see

http://europa.eu.int/comm/environment/ippc/ippc_ms_implementation.htm#ImplementationReps

⁴ COM(2003) 354 final, On the Road to Sustainable Production, Progress in implementing Council Directive 96/61/EC concerning integrated pollution prevention and control

2. GENERAL PROGRESS IN IMPLEMENTATION

The IPPC Directive has applied to new installations since 30 October 1999, which was the deadline for transposition. For existing installations, the final deadline to achieve full compliance with the Directive is 30 October 2007, unless an installation is subject to a “substantial change” before that date.

Delays in transposition

Generally, the IPPC Directive has been transposed with considerable delays. At the end of 2004, all EU 15 Member States had finally transposed the Directive, but with some remaining gaps in the legislation of some Member States.

The Commission has checked the transposition of all old Member States. The legislation of new Member States is being checked. A number of shortcomings have been identified in the large majority of Member States. Several Member States (Finland, Sweden and Austria) have modified their legislation according to the points made by the Commission but infringement cases are on-going against Belgium, Denmark, France, Germany, Greece, the Netherlands, Luxembourg and Spain. The European Court of Justice ruled in 2004 for the first time on incomplete transposition of the IPPC Directive in the case of the Austrian legislation⁵.

Different approaches to transposition

A number of different approaches have been used by the various Member States in order to transpose the Directive.

A considerable number of Member States already had integrated permitting systems in place. Some Member States (for instance France and Sweden) only made relatively small changes to their pre-existing national legislation. This has also led to a considerable diversity in the exact approaches used to transpose the IPPC Directive. In many of these Member States some elements of the pre-existing systems still dominate.

Other Member States (such as Portugal, Spain and Greece) without a pre-existing integrated permitting system in place usually developed new legislation as well as new integrated permitting systems and procedures, following the provisions of the Directive more precisely. Some of them, however, appear to be late in establishing a fully operational permitting system.

Limited number of IPPC permits issued

Member States reported (for the period until the end of 2002) around 45.000 installations falling under the scope of the IPPC Directive. During the first reporting period, 5545 installations were granted permits for substantial changes (4750) or as new (795) installations. This represents approximately 13 % of all installations.

These numbers do not however reflect the total numbers of IPPC permits issued since the reporting questionnaire did not require figures on new, updated or

⁵ C-78/04 Commission / Austria (Judgment of 18.11.2004, OJ C 6 of 08.01.2005 p.18)

reconsidered permits for existing installations to be reported. As a result, only a partial picture of the implementation situation can be painted at this stage. Member States have started permitting existing installations as well, or reconsidering the conditions of existing permits, but no aggregated data for the EU are available at this stage.

Nevertheless, the limited data available point to significant variations between Member States concerning the numbers of permits issued. For example, Italy, Spain and Portugal each reported less than 10 permits granted for “substantial changes” in existing installations, whereas several other Member States reported much higher permitting levels for such types of installations. Greece did not provide data on the number of permits issued.

Need to accelerate progress to ensure full implementation by October 2007

Generally, as noted in the Communication of June 2003, a number of Member States appear to have made only limited progress in the Directive’s practical implementation.

There is therefore a concern that a disproportionate number of permit applications will be filed immediately prior to the deadline of October 2007. This may result in a disproportionate load on the competent authorities, which may not be able to cope. The end result could be failure to meet the deadline for the issue or updating of permits, or reduced regulatory attention not meeting the full requirements of the Directive.

In addition, it is not sufficient to simply issue a permit by 30 October 2007. Installations should be given sufficient time to fully comply with the requirements of the Directive by this date. In particular, as laid down in Article 9(4) of the Directive, all installations should operate according to conditions fixed in a permit based on BAT, taking into account the technical characteristics of the installation concerned, its geographical location and the local environmental conditions.

The Commission therefore continues to urge Member States to take a planned and proactive approach towards meeting the Directive’s full requirements by 30 October 2007.

3. SPECIFIC TRANSPOSITION AND IMPLEMENTATION ISSUES

General obligations of operators and permit applications

These provisions of the Directive have generally been properly transposed by the Member States.

Coordination between authorities during the permitting procedure

Member States have developed different systems to ensure coordination between authorities. Some Member States designate a single authority, while others rely on different competent authorities (for instance Portugal where several authorities have been designated and are each responsible for part for the procedure: coordination, consultation and issuing of permits). The coordination between these authorities can

be more complex in certain Member States, e.g. Germany and the Netherlands, which continue, in certain circumstances, to have separate water permits.

Determination of permit conditions based on BAT

The situation varies considerably among Member States. Certain Member have developed guidance documents to assist competent authorities, while others have not published such specific documents. Certain Member States have established sectoral legislation based on BAT.

The large majority of Member States indicate that the BAT Reference Documents (BREFs) published by the Commission pursuant to Article 16(2) of the Directive on the exchange of information on BAT) are taken into account generally and in specific cases when determining BAT. However, this is not systematically addressed in all of the relevant legislation. It should be noted that the European Court of Justice has used the information published in a BREF in the context of an order⁶ on the definition of waste.

Permit conditions and changes to installations

The majority of Member States have integrated the requirements of the Directive as regards the subjects to be covered by permit conditions and the regulation of changes made by operators to existing installations. Only the United Kingdom reported that specific guidance had been issued to assist competent authorities in the interpretation of the notion of “substantial changes” in operation.

Several Member States (at least 8) have used the possibility laid down in the Directive to set up general binding rules, generally in the form of legislation, instead of setting certain requirements in individual permit conditions. In many cases, these rules were in force prior to the IPPC Directive.

Reconsideration and review of permits

Periodic reconsideration and review of permits are key elements to ensure a dynamic regulatory system. All Member States refer to legislative provisions for the reconsideration and updating of permits. However, a number of Member States have not established clear reconsideration procedures including, for instance, specific reconsideration frequencies.

Environmental quality standards

All Member States have indicated that national or regional legal acts transpose the obligation to require additional conditions in IPPC permits where an environmental quality standard requires stricter conditions than those achievable by the use of BAT. However, in most of the Member States, no such cases were reported as having arisen. This could be explained either by incomplete implementation of this provision or by the fact that BAT conditions are sufficient to meet environmental quality standards in specific cases. In the former case, however, the obligation for the

⁶ C-235/02 Prejudicial ruling (Order of 25.01.2004, OJ C 94 of 17.04.04 p. 13)

Member States to comply with an environmental quality standard remains under the other Community instrument which sets that standard.

Compliance with permit conditions

Most Member States have established procedures to check compliance with permit conditions, generally through on-site inspections. The frequency for such inspections, as well as the use of “self-monitoring” carried out by the operators or by non-administrative bodies (e.g. accredited laboratories), vary among Member States. The requirement for operators to regularly inform the competent authorities of the results of the monitoring of releases has been introduced in most Member States. Procedures for regular inspections are still being developed in certain Member States.

Procedures and frequencies vary considerably among Member States. For instance, inspections are carried out in Sweden on average every two years for each installation, France has developed an annual programme of inspections, and, in Spain, competent authorities carry out inspections on their own initiative.

The number of enforcement actions (administrative or criminal) varies considerably across the Member States. For instance, the Netherlands reported 310 enforcement actions and France 148 successful prosecutions, while a number of Member States did not provide the number or the type of enforcement actions carried out during the reporting period.

Information and public participation

All Member States reported legal provisions to ensure the availability of information to and participation of the public in the permit procedure. A period of approximately one month is typically allowed for public consultation on permit applications.

Few Member States (e.g. Ireland) indicated that steps were taken to actively inform the public of its right (for instance through publications, booklets, general information campaigns or information on the internet) to information and participation. Generally, the public is informed through permit-specific notices (for instance in newspapers or on official notice boards).

Member States did not report a significant influence of the restrictions laid down in Directive 90/313/EC on the freedom of access to information on the environment⁷, for instance as regards commercial and industrial confidentiality.

Transboundary effects

Member States reported a very limited number of cases where cross-border cooperation has taken place. This may reflect incomplete implementation of the obligation to cooperate between competent authorities of the Member States concerned in cases of possible transboundary effects. Most of the Member States did not report procedures to ensure adequate public access to information and participation in the permit procedures of other Member States.

⁷ L 158 , 23/06/1990, p. 56

Reporting of emission limits values

Compared with the data on representative emission limit values reported previously by Member States, it is difficult to draw firm conclusions on increasing or decreasing trends in these values. The comparison of reported emission limit values, with the objective of verifying their expected convergence, is in most cases not possible due to the different ways used by Member States to express these limit values in permits (e.g. over different time periods or with different statistical requirements for compliance). In view of the limited use of these data, the Commission will therefore seek to make this exercise better adapted to the potential benefits in the context of the review of the Directive.

4. COMMENTS RECEIVED ON THE IPPC DIRECTIVE

A general positive assessment of the Directive

Although a number of Member States stressed their limited practical experience in the implementation of the IPPC Directive over the reporting period, the general view among Member States is that this Directive is an effective tool in combating pollution from industrial installations, bringing a number of benefits, in particular as regards the integrated and preventive approach, the implementation of permit conditions based on BAT, the updating of permits, improved monitoring and access to information and public participation in the permit procedure. Some Member States underlined that the implementation of the Directive has brought about administrative simplification and enhanced dialogue between competent authorities and operators. BREFs published by the Commission pursuant to Article 16(2) of the Directive are considered as useful tools for the determination and dissemination of BAT.

Some Member States expressed their wish for greater technical coherence of the IPPC Directive with other Community legislation on industrial emissions, in particular Directive 2001/80/EC on the limitation of emissions of certain pollutants into the air from large combustion plants⁸ and Directive 2000/76/EC on the incineration of waste⁹.

Other comments

The Commission received around 100 replies to its 2003 Communication on the IPPC Directive¹⁰. The very large majority of stakeholders do not call for radical changes in the Directive but ask for regulatory stability. However, a number of replies suggest technical amendments to improve the Directive.

In addition, several Member States (in particular the United Kingdom and the Netherlands) and some industry associations call for a more significant amendment of the Directive to provide greater scope for emissions trading, principally for NO_x and SO₂, as an alternative to the current BAT-based permitting process. There is also

⁸ OJ L 309, 27.11.2001, p. 1

⁹ OJ L 332, 28.12.2000, p. 91

¹⁰ For more information on the consultation, see http://europa.eu.int/comm/environment/ippc/ippc_ms_implementation.htm#CommCommunication

virtually a unanimous call for the development of guidance documents on key implementation issues of the Directive.

In its Resolution of 28 February 2004, the European Parliament gave an overall positive view towards the Directive and calls on the Member States to devote all necessary efforts to implement the Directive. Furthermore, the European Parliament is concerned by the “remarkable variations in implementation” and calls for more efforts to monitor the implementation of the Directive and develop guidance documents.

5. NEXT STEPS - ACTION PLAN AND REVIEW OF THE DIRECTIVE

In light of the major challenges and issues raised by the implementation of the Directive, the Commission is concerned about the pace of implementation of the Directive in a number of Member States and has therefore decided to intensify its actions as presented below with a view to best ensure that full compliance will be achieved smoothly and in due time.

Action 1. Ensure full transposition of the Directive

A number of Member States still have not properly transposed the IPPC Directive. This has led to several infringement cases. The Commission will pursue these infringement cases diligently to ensure full transposition.

Action 2. Enhanced monitoring of the progress made towards the full implementation of the IPPC Directive by 30 October 2007

The full implementation of the IPPC Directive by October 2007 remains a challenge in the large majority of Member States. This requires rapid progress and stronger political support and administrative resources from national administrations and competent authorities to ensure a timely implementation of the Directive.

The Commission is therefore setting up indicators to monitor regularly the progress made by Member States towards meeting this deadline of 30 October 2007. The indicators will in particular include information on the number of installations identified and the number of permits issued or updated by Member States. This information will be made available to the public including via the internet.

The Commission will also visit the authorities of the Member States where significant additional efforts are required to fully implement the Directive.

Action 3. Compliance checks

The Commission has so far received very few complaints on possible inadequate application of the IPPC Directive in specific installations.

However, in view of the risks of possible abuse of the inherent flexibility of the Directive, the Commission has launched several actions to check the application of the Directive:

- The Commission will intensify the use of the European Pollutant Emission Register (EPER)¹¹ to identify the main industrial emitters and scrutinise the application of the IPPC Directive to these installations. In particular, the Commission has identified installations which were responsible for important emissions of a specific pollutant¹² and will monitor the measures taken by Member States to ensure that these installations fully comply with the IPPC Directive by 30 October 2007.
- The Commission has also launched a project to further review progress in implementing the Directive in the Member States and, in respect of 30 specific IPPC installations to be selected from across the EU, to assess the extent to which the permits and the performance of the installations comply with the requirements of the Directive.
- In 2006, the Commission will launch a project to study the extent to which the general binding rules set up in certain Member States meet the requirements of the Directive.

If the Commission identifies cases of inadequate application of the Directive, it will pursue all necessary actions, including through infringement procedures where necessary. In this context, a recent ruling of the European Court of Justice¹³ against Greece may have important consequences for potential implementation cases concerning the IPPC Directive. According to the ECJ, Greece has failed to fulfil its obligations under Directive 84/360/EEC on the combating of air pollution from industrial plants¹⁴ by not defining the policies or strategies for progressively adapting, in line with the best available technology, a power plant situated in Linoperamata.

Action 4. Finalisation of the first round of BREFs and start of their review

BREFs are important tools for the implementation of the Directive. All efforts are being made by the Commission to ensure that the first round of BREFs (comprising 32 BREFs) is finalised around the end of 2005. In addition, the review process of certain existing BREFs, where key new information and knowledge resulting from research is available, is being discussed with Member States and the industries concerned and will start in 2005.

Action 5. Need to clarify certain legal issues and to technically review the Directive

Recent consultation with the Member States have found that the interpretation of the activity descriptions in Annex I of the Directive and the term “installation” are the main areas where further guidance to support implementation is most requested. The Commission is therefore working in close cooperation with Member States to support the preparation of such guidance, to be finalised in 2006 and published via

¹¹ Decision 2000/479/EC; OJ L 192, 28.07.2000, see www.eper.cec.eu.int

¹² See EPER Review Report
<http://www.eper.cec.eu.int/eper/documents/EPER%20Review%20report,%20final.pdf>

¹³ C-364/03 Commission / Greece (Judgement of 07.07.2005, OJ C 217 of 03.09.05 p. 9)

¹⁴ OJ 1984 L 188, p. 20

the internet. These guidance documents are inter alia based on existing interpretative views provided by the Commission since the adoption of the Directive.

The Commission has also identified the need to technically review the IPPC Directive to clarify certain ambiguities and ensure better regulation. In addition, the development of Thematic Strategies as part of the Sixth Environmental Action Programme¹⁵ has highlighted that the IPPC Directive represents an important potential contribution to these initiatives, and possible amendments to the Directive (in particular as regards its scope) are also being considered in this context.

Action 6. Assessment of ways to streamline existing legislation on industrial emissions in the context of Better Regulation

The consultation launched in 2003 through the Communication on implementation of the IPPC Directive, as well as discussions in the Council (in particular in the context of the Legislative Simplification Exercise¹⁶) and the recent Commission Communication “Better Regulation for Growth and Jobs in the European Union”¹⁷, all point to a need to review the interaction of the IPPC Directive with other pieces of legislation. This issue was also specifically addressed in reports published by the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL)¹⁸.

In the context of the review of the IPPC Directive, the Commission is therefore assessing ways to streamlining existing legislation on industrial emissions (the IPPC Directive and relevant sectoral legislation, such as the Directives on large combustion plants, waste incineration and the use of organic solvents¹⁹).

Action 7. Assessment of the use of possible market-based instruments and other incentives

The IPPC Directive is based on a dynamic concept in view of the definition of BAT. However, in practice, once an IPPC permit has been issued, and depending on the approach taken by the relevant competent authority, operators may take a minimal and static approach to ensuring that the conditions of the permit are complied with in a strict sense.

The Commission is therefore assessing, in the context of the review of the IPPC Directive, the development of incentives, for example through market-based instruments (e.g. emission trading schemes, taxes and charges), to encourage operators to go beyond regulatory requirements imposed under the IPPC Directive and to support innovative environmental technologies.

¹⁵ Decision 1600/2002/EC laying down the Sixth Community Environment Action Programme; OJ L 242, 10.09.2002, p. 1

¹⁶ See for example the conclusions of the European Council of 23 March 2005, http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/cc/84335.pdf

¹⁷ COM (2005) 97 final, 16.3.2005

¹⁸ See <http://europa.eu.int/comm/environment/impel/>

¹⁹ Council Directive 1999/13/EC of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations; OJ L 85, 29.3.1999, p. 1.

6. CONCLUDING REMARKS

The IPPC review will proceed through 2006 and will be concluded in 2007 by a Commission Communication accompanied by a legislative proposal if appropriate. The Commission is creating an Advisory Group on the IPPC Review to ensure a consultation and close dialogue with Member States and other stakeholders. A Public Hearing will also be organised in 2006.

The review will evaluate the scope to improve the functioning of the Directive, together with other industrial emissions-related legislation, while not altering its main underlying principles and level of ambition. However, this should not distract Member States from a proper and timely implementation of the Directive. In particular, Member States' first priority should remain the full implementation of the Directive by 30 October 2007.