

'CHANGING THE CULTURE OF REGULATING INDUSTRIAL ACTIVITIES'

Member States and environmental NGOs exchange on permitting and enforcement under the EU Industrial Emissions Directive



EEB

European
Environmental
Bureau

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SESSION I: THE SETTING OF PERMIT CONDITIONS

THE SETTING OF PERMIT CONDITIONS

Concerns of environmental NGOs

- Setting pollutant ELVs on the basis of the upper end of the range of the BAT-AELs doesn't provide for a high level of environmental protection and becomes barrier to innovation (UK DEFRA guidance, DE and CZ implementation of revised LCP BREF, PL and other MS; FR sets ELVs within the range regarding pollutant emissions to water)
- Leaving the choice of techniques exclusively on the discretion of the operator, and only focusing on the emission levels achieved (UK DEFRA guidance, CZ, PL and other MS)
- Granting permits many years (!) before the construction of the installation (Ostrołęka C power plant, PL); newly built installations are treated as 'existing' under the IED / BAT conclusions framework
- EQS compliance not well considered (CZ approach setting 'annual emission caps' to the overall source emissions, rather than setting lower ELVs)
- Some MS and industry regard BAT-AEPLs as non-binding

THE SETTING OF PERMIT CONDITIONS

Possible solutions and recommendations by environmental NGOs

- Setting ELVs on the basis of the lower end of (or within) the BAT-AELs range – unless not feasible due to technical applicability restrictions
- Evaluating the choice of techniques made by the operator to ensure the most effective ones are employed – independently of the emission levels achieved and if these do not exceed the BAT-AELs
- Establish reward mechanisms for operators who invest in BAT and improve their env. performance beyond legal requirements
- Review of the definitions: 'new' / 'existing' installations and related provisions to ensure that the law encourages the uptake of the most innovative BAT for newly built installations
- Review of the EU 'safety net'
- Review of Article 15 to include a reference to BAT-AEPLs
- Promote compliance with EQS through additional permit conditions, that would be automatically triggered, in case of non-compliance

SESSION II:

THE USE OF ARTICLE 15.4 DEROGATIONS

THE USE OF ARTICLE 15.4 DEROGATIONS

Concerns of environmental NGOs

- Considerable abuses by MS permitting authorities (time winning exercise to the benefit of the polluters, lack of any justification for lax approach, biased cost-benefit assumptions, absence of appropriate public participation procedure etc.) have been faced in relation to the implementation of the LCP BREF on lignite power plants (BG, CZ, PL)
- Studies on Iron and Steel and Glass production, and the AMEC study on Art 15.4 derogations show a considerable bias and different approaches as to the scope boundaries and calculation basis to derive cost-benefit assumptions
- Due to lack of clarity as to how to evaluate the proportionality of the costs versus the benefits each Member State takes its own approach, meaning no level playing field for industry and differentiated protection levels for EU citizens
- Because ecosystem valuation is lacking, environmental protection and public interest benefits are underestimated
- The absence of clear framework conditions and criteria such as no time limit for any derogation
- The absence of clear procedures and general lack of transparency and public involvement in the decision-making
- The derogation procedure is too restrictive. It only applies to the upper end of the BAT-AEL range, not to the deviation from the true BAT level (the lower end of the BAT-AEL range).

THE USE OF ARTICLE 15.4 DEROGATIONS

Possible solutions and recommendations by environmental NGOs

- **Option A: deletion of Art 15(4)**
- **Option B: fundamental overhaul of Art 15(4) according to the following suggestions:**
 - **Require a derogation procedure for any deviation from the stricter BAT-AE(P)Ls set for “new plants”;**
 - Use the EEA VSL method adapted to the US EPA price levels (6 Million € - converted from 7.4 Million\$) method when quantifying air pollution costs (currently the EU range is either VOLY (52-120K€) or VSL (980K€-2.2Million€). The OECD recommends using the VSL level of the US EPA, VOLY was rejected a decade ago in the US on equity grounds, because biased against the elderly);
 - **Mandatory quantification of likely impacts of various compliance scenarios against compliance with Environmental Quality Standards (effectiveness ratings);**
 - Cost benefit assessments should be based on the effectiveness of the abatement efficiencies of the techniques, only cross-media impacts should be considered to allow derogations;
 - Automatic rejection if BAT / performance level is achieved in 3 or more installations, not necessarily operating in the EU;
 - Full trans-boundary impact assessment and pre-consultation with at least 3 independent techniques providers on the cost scenarios put forward by the applicant;
 - Mandatory public participation when all options for decisions are still open and full transparency on the justifications provided;
 - **Maximum 5 years validity date of any derogation.**

SESSION III:

**ACCESS TO INFORMATION
AND
PUBLIC PARTICIPATION
IN THE PERMIT PROCEDURE**

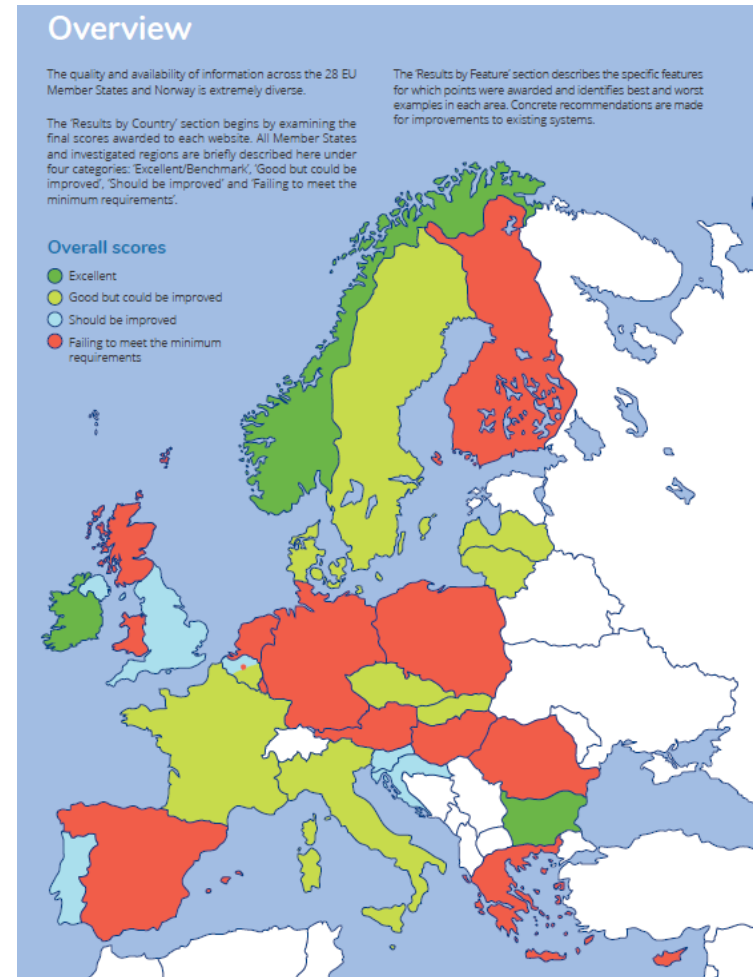
ACCESS TO INFORMATION

Concerns of environmental NGOs

'Burning the evidence' investigation results:

- Attempts to locate permits for plants in fifteen countries (!) were unsuccessful because:
 - **Belgium (Brussels) and Luxembourg** → websites did not exist that allowed for permits to be directly downloaded;
 - **Cyprus, Finland, Hungary and Poland** → no permits to download;
 - **Austria, France, Greece and Romania** → certain information was missing;
 - **Germany, the Netherlands, Spain and the United Kingdom** → sub-national responsibility made it unclear if and where the data was available

- The websites of the **Czech Republic, Denmark, Italy, Latvia, Lithuania, Malta, Portugal, Slovakia, Slovenia, Sweden and Belgium (Flanders and Wallonia)**, all met the minimum requirements set in EU law but didn't go beyond



ACCESS TO INFORMATION 1/2

Possible solutions and recommendations by environmental NGOs

- **BAT / best practices on access to information to be included in the IED and BREFs**
 - EEB proposal for a dedicated section in the revised WI BREF
[Link: BATIS Forum > Waste Incineration > Review of the Waste Incineration BREF 2014 > 09 Final Draft > 02 TWG comments to the pre-final draft](#)
 - EEB proposal for a dedicated section in the ROM REF
- Real-time publication of emissions data on a publicly accessible website (at least for the major emitters)
 - Waste incineration plants in Bavaria (Germany), ILVA steel plant (Italy)
- China 'Blue Sky' map: <http://wwwen.ipe.org.cn/>

ACCESS TO INFORMATION 2/2

Possible solutions and recommendations by environmental NGOs

- **Align to the Norwegian PRTR model**

- **The following information should be available as a minimum:**
 - a .pdf or (working) weblink to currently in force **consolidated permit**;
 - a .pdf or (working) weblink to latest **inspection report(s)**;
 - a .pdf or (working) weblink to latest **compliance report(s)**;
 - release data combined with information on **flow rates** (to air/water);
 - **production outputs** data;
 - **the ELVs set in plant permits should be integrated in the data reporting**, next to releases, based on **common reporting IED Electronic Permit Template (EPT)**;
 - **Permit review status** (RSS feeds, email notifications);
 - **Derogation from Best Available Techniques standards** applied/approved/pending? Justification to be provided if granted;
 - upload option **raw continuous monitoring data** (air) or other measurements data

BEST PRACTICE EXAMPLES

(1/2)

IRELAND www.epa.ie/terminalfour/ippc/index.jsp?

- User-friendly website, useful search function
- Each IED plant has a “homepage” where various kinds of information can be located, including: consolidated permits, correspondence regarding the permit application procedure and inspection and other reports
- Option to subscribe to RSS feeds linked to permit numbers
- Option to ask to be contacted by email should any new applications or updates be made to particular installation permits

BEST PRACTICE EXAMPLES (2/2)

NORWAY www.miljodirektoratet.no/en/Useful-Sites1/The-Norwegian-PRTR/

- Combines permitting and inspection information with emissions monitoring data as part of the Norwegian Pollution Release and Transfer Register (PRTR), *includes diffuse emissions (products)*
- essential plant-specific information such as production outputs (energy generated, production volumes specified by types) and flow rates to air and water for releases, displayed next to the permit limit in a single graph and downloadable as electronic files
- Plant-specific pages also publish the latest consolidated permits, annual compliance reports and the full inspection report

PUBLIC PARTICIPATION

Concerns of environmental NGOs

- The cases on when public participation is required in permit reviews is too restrictive and not in line with the Aarhus requirements
- Certain countries also inform the public concerned after a derogation decision has been granted or refrain from providing that information on time, when all options for decision-making are still open
- Some MS also consider that no public participation is required when the ELV setting is within the BAT-AEL ranges, yet there is a fundamental difference on whether the lower BAT-AEL or upper BAT-AEL ranges are implemented. This means that effective public involvement to promote BAT based permitting is severely restricted

PUBLIC PARTICIPATION

Possible solutions and recommendations by environmental NGOs

- Amend Articles 24(1) and 21 to oblige public participation when all options are still open, with minimal deadlines prior to reviewing the permit
- Require public participation whenever a deviation from the stricter BAT-AE(P)L / “new” plants BAT levels is proposed
- All details relating to the CBA and decision-making steps relating to any Art 15(4) derogation should be made publicly available on a timely manner, meaning before a decision is actually taken e.g. at least 2 months prior to the decision

SESSION IV: ENFORCEMENT

ENFORCEMENT

Concerns of environmental NGOs

- Major weaknesses regarding enforcement powers in some Jurisdictions
 - Romania (non-dissuasive fines):
 - Insubstantial fines (few thousand euros) for the violation of key permit conditions or even for LCPs operating without a permit (!) – 2M euros fines could be imposed in such cases in Spain and Greece
- Limited resources of competent authorities

ENFORCEMENT

Possible solutions and recommendations by environmental NGOs

- Review of Article 79 - the penalties and non-compliance provisions should be strengthened to have a meaningful effect. Under EU competition law, fines of up to e.g. 10% of the undertaking's global turnover may be imposed
- Increase of the competent authorities' resources for enforcement
- An EU level inspection authority e.g. IMPEL should be able to order immediate suspension of a given activity where the national authorities fail to take timely action
- A mechanism should be put in place to ensure that installations operating in non-compliance with the EU-standards shall be fully liable to the cost recovery principles due to the excess pollution caused



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