

## New Features under the Industrial Emissions Directive

### Two page summary followed by a comprehensive analysis

There are around 52,000 large industrial installations in Europe. Five pollutants alone emitted from these installations are responsible for annual health costs of up to €164 billion - this is before we even consider environmental damage costs. The European Pollutants Release and Transfer Register (E-PRTR)<sup>1</sup> provides a good overview of the major 91 pollutants Europeans are exposed to every year through air, water and soil (such as heavy metals, pesticides, greenhouse gases and dioxins). Any citizen can therefore check on that database what types of pollutants, and in what amounts, are emitted by these large scale industrial installations located in an area of interest.

Europe is due to miss its air targets. According to the Thematic Strategy on Air Pollution, NO<sub>x</sub> emissions and SO<sub>2</sub> emissions, which are responsible for respiratory illnesses and eutrophication, need to be cut 60% and 82% respectively. Nitrate concentration limits are exceeded in 1/3 of groundwater bodies tested, which are in contradiction with the aims of the Water Framework Directive on achieving a good chemical and good ecological status in Europe's surface waters and groundwater. In addition, Europe's soils are not adequately protected and are continuing to degrade and industrial sites are contaminated with hazardous chemicals and are in need of remediation.

### Tackling harmful emissions: From IPPC...

Until 2010, the Integrated Pollution Prevention and Control Directive (IPPC) was the EU's main regulatory instruments to tackle harmful emissions into the environment. The IPPC Directive sets out environmental performance criteria for each activity which operators need to meet, fixed through permits delivered by the Member States. The regulatory framework is considered as the main driver for boosting the EU's eco-industry (i.e. pollution prevention, control and management).

Under this Directive so called "Best Available Techniques" are defined per sector in reference documents, or "BREFs", that serve as benchmarks for environmental performance (see section 1, page 4). These deal with resource use, energy efficiency, air pollution, soil and groundwater pollution, waste as well as odour and accident prevention. *For more information on the IPPC Directive please refer to the EU policy handbook Chapter V.3.2*

Although the existing framework has delivered significant pollution reduction, many Member States had fallen well behind schedule in delivering permits. Furthermore, sharp differences were evident in the strictness of implementation of the BREF benchmarks, while vague language left little scope for the Commission to pursue infringement procedures.

### ... to IED

The IPPC framework was replaced by the new Industrial Emission Directive (IED) on 24 November 2010, strengthening the legislation that implements IPPC and six other directives on industrial emissions. The IED has the potential to become the main emission prevention instrument the EU has in relation to large industrial activities. It would apply the "integrated approach" which aims to prevent and reduce pollution to all the environmental aspects such as air, soil, water, resources/energy use, and waste generation from the major industrial activities in the EU. The IED is one of the few legal instruments which recognise that environmental impacts should not be tackled in an isolated way.

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<sup>1</sup> <http://prtr.ec.europa.eu>

EEB was the only European environmental organisation active in the co-decision process of the IED to ensure improvements were made to the major shortcomings of the IPPC Directive and to counter deregulatory lobby attempts by industry. *For more information in relation to the review of that Directive please read ["A push for cleaner industrial production"](#)*

### **The IED in more detail**

The IED enables citizens to be involved in the permitting procedures, challenging the environmental performance benchmarks proposed and providing more transparency on environmental as well as health impacts linked to these activities (see section 6). It has tightened up requirements for industrial operators (see sections 4, 5.1, 7) as well as competent authorities (see sections 1.1.2 – 1.1.4, 1.2, 5.2, 6 - 8).

Another key improvement is that the role of the BAT benchmarks for environmental performance (BREF) have been strengthened (See sections 1.1 and 1.2). Operators need to operate in line with BAT (see section 1.1.3), whose content and review procedures have also been made more transparent and formalised where NGOs have a stronger say (see section 1.3).

Practical arrangements on procedures and content on the elaboration of the BREF are currently under discussion, which will impact the quality and ambition of the BREF for the decades to come (see section 1.3.2). The process is likely to become more politicised since the main parts of these rather technical benchmarks will undergo a formal vote by Member States, which will in turn also trigger clear deadlines for authorities to make sure existing permits are up to date with state of the art performance (see section 1.1).

On the downside the Member States have retained the flexibility to evade BAT based performance by providing specific derogations under certain conditions, which may be proposed during permitting procedures but need to be subject to public scrutiny, yet there is insufficiently clear criteria (see section 1.1.4).

That level of flexibility is however limited by the minimum binding requirements (called the European Safety Net) laid down on a too limited amount of pollutants of specific concern for certain highly polluting activities (Large Combustion Plants, Waste Incinerators etc). One of the key future challenges would be to extend the European Safety Net to other sectors and pollutants, and the IED provides for the explicit mandate upon the European Commission to do that as from 2013 (see sections 2 and 10.1).

The other key issue will be to close gaps built into the minimum binding requirements, in particular in relation to old Large (coal fired) Combustion Plants, which allows these operators to evade expensive pollution abatement techniques or forced closure by 2016. These specific derogations are "optional" to Member States, allowing them to require weaker standards for some types of industrial activities for a further decade (see section 3.2).

Much work needs to be done at national level on groundwater and soil protection, including establishing inventories of contamination by hazardous substances at industrial sites and periodic monitoring (see section 5). National systems of environmental inspection frameworks have to be set up where the full range of relevant environmental effects would have to be considered, including minimum frequency of on site visits by inspectors (see section 7). Political arguments are expected in upcoming reviews in relation to covering other activities such as intensive rearing of other types of animals, inclusion of 20-50 MW category of Large Combustion Plants and in general on the extension of the European Safety Net (see sections 9 and 10).

European Citizens involvement, supported by NGOs, will be crucial in shaping the new tools provided under the legal framework in order to deliver a high level of protection of the environment taken as a whole on the ground.

## **New features under the Industrial Emissions Directive**

- critical assessment of main provisions under the new IPPC framework -

### **Introduction:**

The Directive on Industrial Emissions (IED) has been adopted on 24<sup>th</sup> November 2010 and published in the Official Journal of the European Union on 17<sup>th</sup> December 2010<sup>2</sup>.

The negotiations of the proposal took almost 3 years. The Commission proposal was published on 21<sup>st</sup> December 2007, which was preceded by a 2 years review. The IED has been a recast of 7 sector legislations laying down minimum requirements for certain industry sectors (large combustion plants, waste incineration, activities using organic solvents as well as titanium dioxide production) with an amended version of the Integrated Pollution Prevention and Control (IPPC) Directive<sup>3</sup>.

The new provisions of the IED have entered into force on 6<sup>th</sup> January 2011 and the framework will have to be transposed by Member States by 7<sup>th</sup> January 2013.

This note intends to highlight only some of the main aspects arising from the IED, be it improvements or shortcomings, some provisions subject to discussion, and opportunities arising for NGOs.

*For an assessment of the IPPC Directive please refer to Chapter V.3.2 of the EEB EU Policy Handbook 2004<sup>4</sup>.*

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<sup>2</sup> [Directive 2010/75/EU](#) of 24 November 2010 on industrial emissions (integrated pollution prevention and control Recast), OJ L 334 of 17.12.2010, page 17

<sup>3</sup> Directive 2008/1/EC of 15 January 2008 concerning integrated pollution and control (codified version), OJ L 24 of 29.1.2008, page 8

<sup>4</sup> [EEB Policy Handbook](#)

## 1. STRONGER ROLE FOR BEST AVAILABLE TECHNIQUES (BAT)?

The IPPC Directive 2008/1/EC had the great ambitions to deliver “*a high level of environmental protection of the environment taken as a whole*” by laying down rules on integrated prevention and control of pollution arising from industrial activities. That goal remains valid and is reiterated in Art. 1 of the IED, which “*lays down rules designed to prevent or, where that is not practicable, to reduce emissions into the air, water and land and to prevent the generation of waste [...]*”.

The goal was intended to be achieved through permit conditions set by the national authorities, where permit writers should lay down performance levels that are achievable by using Best Available Techniques (BAT). BAT are defined as the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing the basis for emission limit values and other permit conditions designed to prevent (and where not practicable reduce) emissions and the impact on the environment as a whole. BAT is agreed by a multi-stakeholder process involving Member States, the industry concerned (operators as well as abatement technique providers) as well as the EEB. It is referred to as the “Sevilla Process” since it is hosted by the European IPPC Bureau located in Sevilla and results in technical documents, the so-called “BAT reference documents” (BREFs) *(for more information on the Sevilla process please refer to section 1.3)*.

The definition of BAT implies clear definitions of each of its three terms:

“**Best**” is related to the most effective way of achieving a “high general level of protection of the environment as a whole”. What this high general level may mean is not defined in this directive, but defined in several other EU legislation (e.g. Birds and Habitats Directive, Air Quality Framework Directive and the respective daughter directives, Water Framework Directive and daughter directives, Waste Framework Directive, chemicals legislation such as REACH etc). With regards to soil quality, the future EU Soil Framework Directive needs to be adopted.

The quality of “Best” depends on the quality of legislative work to be carried out in the course of the coming years and change in mentalities within the stakeholders who participate in the Sevilla process.

“**Available**” implies that several conditions be met: scale, economic viability, efficiency and accessibility. Available techniques are already developed in terms of scale; they are hence “ripe” techniques and capable of being applied widely across Europe. They must have proven the market test – that means they must have been applied under normal market conditions (“economically and technically viable conditions”). Establishing the external financial costs of pollution and hence the benefits of its reduction is still an ongoing methodological problem, which has produced many scientific controversies. In determining whether or not a technology is really “economically viable”, the crucial factor is the choice of methodology used to identify the external costs being defined. The Directive also states that the techniques need to be “reasonable accessible to the operator”, irrespective on whether produced or used in the Member State in question.

“**Techniques**” is not to be limited to “technology used”, it also refers to the way in which the installation is designed, built, maintained, operated and decommissioned. For some, this definition is a leap forward from end-of-pipe solutions to an integrated view on production processes, making the concept innovative and far-reaching. Others fear that the focus on “software”, on organisation and operation, may lead to a neglect of hardware, such as filters and other end-of-pipe technologies. If this interpretation becomes reality, the concept would narrow down rather than widen the range of actions to be considered.

Under the current framework, the operator needed to comply with general principles (see existing BREFs under section 2.2) and the role of the BREFs was weak since they were to be used as “a reference” for permitting only. The provision on setting of emission limit values (ELVs) in Art. 9.4 of the IPPC-Directive explicitly stated that the “local conditions” (derogations) needed to be considered. Therefore the approach of Member States was to rather focus on the “local conditions” of the installation i.e. technical characteristics, local environmental conditions and geographical location rather than what BAT performance should be.

Implementation practices varied largely within the Member States, and the inherent flexibility of the IPPC permitting system has been abused, leading to a situation where the innovative effects of BAT based permitting have not been fully realized. An evaluation on implementation of the IPPC Directive by the Commission found that half of the 30 permits assessed were not demonstrably based on BAT. In some cases significant differences between the permit conditions and the performance corresponding to BAT with a factor two up to 500 for certain pollutants were applied<sup>5</sup>.

The new framework will change the legal status of the BREFs, however it strongly depends on whether parts thereof have been subject to an adoption through comitology or not.

### **1.1 Stronger role for bat conclusions adopted through comitology**

Art. 13.5 provides that decisions on **BAT conclusions** shall be adopted in accordance with the regulatory committee procedure.

BAT conclusions are defined in Art. 3(12) as “a document containing the parts of a BAT reference documents laying down the conclusions on best available techniques, their description, information to assess their applicability, the emission levels associated with the best available techniques, associated monitoring, associated consumption levels and, where appropriate, relevant site remediation measures.” It is to be considered as a stand alone document that is largely based on the Chapter 5 on BAT of the BREFs -but not exclusively since it refers to “parts” of the BREF- which will need to be produced by the BREF author before it gets adopted / rejected through the comitology vote.

#### **1.1.1 Translation of BAT conclusions**

One of the immediate effects is that after the adoption in comitology, the Commission shall without delay make the BREF publicly available and make sure that the BAT conclusions are made available in all the official languages of the Union (Art 13.6). The translation obligation was one demand of the EEB in order to strengthen the use and status of the BREFs in certain Member States, where it was not considered as an “official document” to be invoked in courts due to absence of translation in the respective national language.

#### **1.1.2 Trigger of four year permit review time limit**

Another - probably most - important effect of adopting BAT conclusions through comitology is the permit review obligation for Member States. Within four years of the publication of the comitology decision the competent authority shall:

- reconsider, and if necessary, update the permit conditions so as to ensure the ELVs are in line with emission levels associated with the best available techniques (BATAEL);
- reconsider/update all existing derogations granted (i.e. Art. 15.4) ;
- ensure that the installation actually operates according to the new BAT conclusions within that deadline.

The permit review trigger however concerns BAT conclusions relating to the “main activity” of an installation. However, irrespective of BAT conclusions, the permit shall be reconsidered if there is

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<sup>5</sup> Commission Impact Assessment SEC (2007) 1679, page 17; “Assessment of the Implementation by the Member States of the IPPC Directive”, ENTEC 2007

“significant” pollution caused by the installation that would need a revision of the ELVs in the permit, if operational safety requires so or where it is necessary to comply with a new or revised environmental quality standard (EQS). The latter could for instance be the case if a new pollutant would be regulated under Annex X of the Environmental Quality Standards Directive<sup>6</sup> under the Water Framework Directive, which is currently under review.

Another new element under the IED is that General Binding Rules (GBR) need to be up to date with BAT (Art. 17), in order to ensure compliance with permit conditions. NGOs will need to check if that is indeed the case.

### **1.1.3 Setting of ELVs in line with BATAEL (Art. 15.3)**

Another important – and politically highly disputed - change in status of the BREF relates to how the competent authority needs to take BAT conclusions into account in permitting. According to Art. 15.3, the competent authority needs to set ELVs, ensuring that, under normal operating conditions, emissions do not exceed the emission levels associated with the best available techniques (BATAEL), as laid down in the BAT conclusions. The competent authority may achieve this by two means:

- Set ELVs that do not exceed the BATAEL.
- Set different ELVs not in line with BATAEL, but only in terms of values, periods of time and reference conditions. That could be the case for certain countries that prefer to set higher frequency ELVs (yearly) whereas the BATAEL is based on a daily/monthly averaging period. Where this approach is taken, the competent authority shall however demonstrate that emissions of the installation do not exceed the BATAEL through additional -and at least annual- emissions monitoring (cf. see enforcement chapter)

### **1.1.4 The derogation from BATAEL clause (Art 15.4)**

There is however still a way to get away with BAT based performance. The competent authority may use the derogation clause under Art. 15.4. The competent authority may as “*a derogation*” and “*in specific cases*” set less strict ELVs. It may apply only where an assessment shows that the achievement of a BATAEL would lead to “*disproportionately higher costs compared to the environmental benefits due to*”:

- The geographical location or the environmental conditions of the installations concerned;  
or
- The technical characteristics of the installation concerned.

The competent authority needs to document in an annex to the permit “*the reasons*” for the derogation, “*the result of the assessment as well as a justification for the conditions imposed*”. The derogation provision is limited by two environmental safeguard clauses:

- In no case may the ELVs set out in the Annexes to this Directive (the sector legislation minimum ELVs set out under Annexes V-VIII) be exceeded.
- The competent authority shall “*in any case*” ensure that “*no significant pollution is caused and that a high level of protection of the environment as a whole is achieved.*”

The derogation procedure is subject to public participation, to which NGOs are deemed to have an interest. The specific reasons (justification as well as conditions imposed) shall be made publicly available, including via the internet (cf. see public participation and information section 4). Member States will also have to report all derogations granted to the European Commission (cf. see enforcement section 5).

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<sup>6</sup> Directive 2008/105/EC of 16 December 2008 on environmental quality standards in the field of water policy, OL L348 of 24.12.2008, p. 84

The Commission “*may assess and further clarify, through guidance, the criteria to be taken into account*” for the application of the derogation from BATAEL clause.

## **1.2 Status of BREFs pending adoption of BAT conclusions (existing BREFs)**

For the existing BREFs that have not undergone a comitology decision, i.e. the conclusions on BAT from the BREFs adopted by the European Commission prior to 6<sup>th</sup> January 2011, these shall apply as BAT conclusions under the new IED provisions, except for Article 15.3 (ELVs not to exceed BATAEL) nor Article 15.4 (the derogation from BATAEL clause).

This means that for BAT considerations in the existing BREFs:

- the competent authority shall take the necessary measures to ensure that the basic pollution prevention principles are applied (Art. 11);
- the competent authority needs to make sure that BAT are applied (Art. 11 b);
- BAT conclusions “*shall be the*” reference for setting permit conditions (Art. 14.3) ;
- the competent authority may set stricter permit conditions that those achievable by the use of BAT described in the BAT conclusions;
- the ELVs and equivalent parameters/technical measures “*shall be based on BAT*” (Art 15.2);
- if an environmental quality standard requires stricter conditions that those achievable by the use of BAT, additional measures shall be included in the permit (Art. 18)

### ***Discussion:***

EEB strongly regretted the introduction of the “*derogation from BATAEL clause*” in the proposal, to be done through a secondary cost-benefit assessment. We have opposed it because this loophole will not bring the harmonisation to the top of environmental performance of industrial activities across the EU, but instead may lead to implementation difficulties and divergence which have led to the revision of the IPPC Directive in the first place. An economic assessment is already done by the TWG members when deciding on what BAT is. Secondly it will be a difficult - and nearly impossible - exercise to quantify eco-system damages in economic terms, the external costs of not applying an emission prevention/control technique may therefore be highly underestimated. The question on the level of (dis)proportionality also risks to become highly subjective and permit writers pressured to rather enable income and job opportunities for the local economy in detriment to environmental and health protection goals or other economic opportunities that are not local (abatement technique providers located abroad).

Therefore EEB has demanded strict and binding criteria to be written in the current text, should any derogation be allowed. In order to preserve the integrated approach of the IPPC we suggested limiting the derogation basis to demonstrating a significant cross-media impact in detriment to objectives that need to be safeguarded according to the IPPC general principles (Art. 11). We also proposed a 5 years validity time limit for each derogation and to clearly limit the derogation to existing installations only. The current text relates to local conditions of the “*installation concerned*”, but it is not explicit if this clearly means that it relates only to an existing installation.

On the positive side it is clear that the “*derogation clause*” based on local condition is not the usual procedure to set permit conditions. In order to be validated it needs to be clearly substantiated by thorough justifications. The public concerned, i.e. European NGOs, will have to exercise their important watchdog role and need to systematically challenge any intended use of the derogation provision, be it on formal or qualitative grounds.

The possibility for the Commission to eventually clarify the derogation criteria is an empty mandate, since that would need to happen through guidance, which are not legally binding. One important means to limit potential abuses from permitting authorities would be to provide binding minimum requirements for other IPPC sectors within the IED (see the remains of the European safety net section 2).

14<sup>th</sup> July 2011

In regards to the status of the existing BREF, the new wording (Art 14.3 and 15.2) indeed strengthens the status of the existing BREFs in permitting compared to the IPPC Directive. In fact Member States would need to make sure that all permits of existing installations comply with these provisions as from 7 January 2013. Under the previous IPPC regime, it was “*sufficient if Member States ensure that the competent authorities take account of the general principles [...] when they determine the conditions of the permit*” (Art. 3.2). Under the IED it is not sufficient to “*take account*” of these principles (now listed in Art. 10), which include setting measures on site remediation and explicitly refer to the obligation to apply BAT; these principles have to be applied and installations have to operate accordingly.

The power of these provisions should be tested in court, when NGOs deem these provisions are not fully reflected in the permit conditions they consider to challenge, because it does not set out the level of environmental ambition demanded under the IED framework.



## 1.2 ELABORATION OF BREFs (“SEVILLA PROCESS”)

### 1.2.1 Presentation and brief assessment of past involvement of eeb in the “Sevilla Process”

The development of BAT was organised through an information exchange established by the IPPC Directive. The EEB has participated since 1997 in the development of BREFs and encouraged its Members to play a role in the national implementation process that follows. EEB was “informally” a recognised stakeholder in the process, although the IPPC Directive stated in its Article 17.2 that this exchange of information shall be between Member States and the industries concerned only, which should cover developments in BAT and associated monitoring.

To date, 33 BREFs have been finalised through the information exchange process facilitated by the European IPPC Bureau (EIPPCB). The EIPPCB is located in Seville under the Sustainable Production and Consumption Unit, one of the seven scientific institutes of the European Commission’s Joint Research Centre (JRC). Each BREF is elaborated by Technical Working Groups – mainly dominated by industry representation – under the supervision of the EICCPB.

The finalised BREFs are adopted “under consensus” by the TWG members, if in the end the TWG does not reach consensus on an issue, the dissenting view and its rationale is reported as “split views”. A high number of split views (mainly from industry) may indicate to permit writers that some demands set out in the BREFs are not well supported by all the stakeholders and may thus undermine its “acceptability”.

The finalised BREFs as well as drafts on ongoing revisions can be found at the EIPPCB website<sup>7</sup>.

The BREFs development started with the “big” sectors - pulp and paper, steel and cements, chemicals, ceramics, waste incineration, Large Combustion Plants. In addition to the sector-specific BREFs, some “horizontal” BREFs have been developed such as Energy Efficiency, Common Waste Water and Waste Gas Treatment and Economic and cross-media BREF.

The EEB has participated in most of the finished BREFs, subject to limitations in resources to involve experts. Based on this experience, the following general process conclusion can be drawn:

**Industry bias:** There are not enough qualified experts (BREF authors) to steer the process from the EIPPCB and insufficient capacities from Member States (in many cases only Germany, Austria, Netherlands and France provide detailed and structured input). Participation from Member States has decreased over the years, leaving the majority of participants from industry. Also in some cases industry is directly sitting behind Member States flags (mainly small and new Member States, Poland as well as UK), pointing to a clear confusion of roles. There is also no independent recruitment process within the JRC to ensure that the BREFs authors are indeed the best suitable to do the job serving the objectives of the IED whilst avoiding any conflict with industry interests.

This situation allowed industry to commission the writing of the BREF on “Storage of bulk or dangerous materials” and to develop a “shadow” BREF for Large Combustion Plants where they did not like the official BREF. In other cases, industry just halts the process by not providing sufficient or high quality data. Even some Member States would also rather defend the interests of their national industry (by trying to keep the status quo) instead of recognising the dynamic nature of BATs and demanding their industry sectors to improve environmental performance.

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<sup>7</sup> <http://eippcb.jrc.ec.europa.eu/reference/>

**Lack of data to determine BAT and associated emission levels:** Compared to the knowledge that exists throughout Europe about specific types of industry, about their environmental effects and approaches to environmental legislation, the amount of information that is made available by participating industries and Member States is relatively poor. Even very basic information about numbers, size and types of installations is missing in most cases of the old BREFs.

Industry participants often claim business confidentiality on real life environmental performance data. If they are forced to provide data, they provide mostly aggregated data with a range of one or even two orders of magnitude, and sometimes of installations which are not the best performers according to the BAT definition. Sometimes, EEB experts find themselves in the situation of being the only TWG member in the process ready to bring in ambitious performance parameters from installations – either by screening independent studies or by utilising the knowledge of sector experts or interviews with sector suppliers and others.

**Political instead of technical debates:** the result of points 1 and 2 above is that lobby strategies dominate and hamper any rational exchange of information. In the case of the BREF on “Large Combustion Plants”, industry “experts” did not even try to argue on technical grounds but rather preferred to “negotiate” over the outcome, in order to dilute any strong statements about BAT associated emission levels based on economic arguments or other “local conditions” making their case an exception to the sector wide BAT assessment.

With the strengthened legal status of certain parts of the BREFs (BAT conclusions) it is very probable that the debates would be even more “political” in the future.

The outcome of this process - the BREFs - are publications of approximately 500 pages long, of mixed quality, which makes any overall assessment very difficult. The following general observations can be made:

- Good overall description of available installation techniques and technologies. This is undoubtedly valuable information for permitting or controlling authorities as well as for NGOs.
- Description of environmental performance is of low quality: often substantive tables with emission data are provided, but this on an erratic basis without further explanation as to why some aspects are left out and others clouded with detail. In particular referencing periods and measurement information on how the values have been derived is often missing making it difficult to derive ELVs for permit writers.
- In general only the “classic” air pollutants from point sources are well documented. Quantified emission data even within one single BREF is often not comparable because of the use of different measurement units (daily, yearly averages). Finally, emission data is presented in terms of concentration values, rather than as emission per production or input unit, which means that no comparison can be made of the real environmental performance of different installations.
- Emission or performance levels associated with the selected BATs are rare and often provided as ranges, employing a factor of up to ten. Also confusing statements in regards to “applicability” such as to consider the local situations or particular cases of existing installations seriously risk undermining the BATAEL set out.

As a result the value of the BREFs for competent authorities in writing permits is seriously hampered in many cases. The main objective of BREFs - to provide emission levels in relation to the overall performance of an installation associated with BAT – is therefore in major cases inadequate.

Three of the existing BREFs have been reviewed so far: cement, lime and magnesium oxide manufacturing industries, iron and steel, and glass manufacturing. These will be the first reviewed BREFs to be subject to BAT conclusions under the IED. Due to the extended scope of the IED,

two new BREFs will have to be elaborated: wood preservation with chemical products as well as the wood-based panel production BREF.

Currently EEB is involved in 7<sup>8</sup> BREF reviews.

### 1.2.2 Changes brought by the IED and outlook for future work

EEB ensured during the co-decision on the IED that European NGOs become officially recognised stakeholders in the exchange of information (IED Art. 13.1). The IED is more explicit on what should be addressed in the Sevilla Process: it shall include performance of installations and techniques in terms of emissions, associated reference conditions, consumption and nature of raw materials, water consumption, use of energy and generation of waste; techniques used and associated monitoring, cross-media effects, economic and technical viability and developments therein. Lastly BAT and emerging techniques need to consider the aforementioned issues.

In addition the IED contains a definition of BREF, according to Art. 3.11 it is *“a document [...] drawn up for defined activities and describing, in particular, applied techniques, present emissions and consumption levels, techniques considered for the determination of BAT as well as BAT conclusions and any emerging techniques, giving special consideration to the criteria listed in Annex III.”*

The criteria referred to in Annex III are basically the 12 criteria previously listed under Annex IV of the IPPC Directive, such as consideration of consumption and nature of raw materials (including water) used in the process and energy efficiency; need to prevent or reduce to a minimum the overall impact of the emissions on the environment and the risks to it; substitution of hazardous substances etc.

The IED also “institutionalised” current practice of the information exchange forum (IEF) which met twice a year to formally adopt the BREFs. This political forum is formally established under the IED as “the forum” and will meet for the first time at the end of September in 2011.

The IED Forum shall in particular give its opinion on the work programme of the EIPPCB, and control the guidance on the collection of data as well as the quality assurance of drawing up the BREF as well as suitability of their content and format (Art. 13.3). The IED Forum shall also provide its opinions on the proposed content of the BREF and decisions on BAT conclusions.

The EEB is member of the IED Forum and is involved in the elaboration of the guidance since it will set the framework of the elaboration of the new BREFs under the new IED framework. EEB provided written as well as oral input in relation to the **Guidance document concerning the practical arrangements for the exchange of information on BAT** as referred to in Article 13(3)c and (d) of the IED.

One of the main comments relate in particular on how the BREF could constitute a useful tool for permit writers to achieving the objectives of the IED. It should serve as an important benchmark towards sustainable production and consumption and other related policies (e.g. sustainable energy policy, eco-design etc). In particular EEB is promoting the following:

- (for revision of existing BREFs) the starting point of Chapter 3 on present emission and consumption levels should be based on performance achieved by using of BAT according to previous BREF only. In the same time EEB invites the Commission to make a systematic sector assessment of the current level of implementation of BAT and to

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<sup>8</sup> Chlor Alkali, Refineries, Large Combustion Plants, Large Volume Organic Chemical Industries, Non-ferrous metals Industries, Pulp and Paper Industries, Tanning of Hides and Skins, Intensive Rearing of pigs and poultry

- propose EU wide minimum requirements (see section 2 on the European Safety Net) if that assessment finds shortcomings or uneven implementation;
- BREFs needs to contain useful information for permitting authorities which are to be addressed in permit conditions pursuant to the general principles and measures on all the sub-points referred to under Art. 11 and 12 of the IED. That includes the waste hierarchy, energy efficiency, accidents prevention, soil/groundwater protection, emissions monitoring and site remediation;
  - fill the gap within the BREFs in relation to BAT considerations on safety and accidents prevention;
  - better consideration on outputs such as substances/products;
  - need for ranking criteria within the BAT determination in order to make sure this selection process is reflected in the BREF;
  - provide for clear preference of prevention measures compared to pollution reduction in the BAT determination;
  - establish objective rules on when a third TWG meeting shall be held;
  - on “applicability” precise data on space requirements and solutions should be given, the installations claiming applicability issues shall be explicitly identified and the justification provided. Any restrictions that may relate to installation specific cost-benefit considerations due to geographical location or the local environmental conditions or technical characteristics of an existing installation should be dealt with under the derogation clause (cf. Section 1.1.4) and not be used for the determination of BAT under the relevant chapter 4 of the BREF;
  - provide link to the relevant Environmental Quality Standards;
  - on economics include long term benefits, also for workers and wider health benefits;
  - clear definition of “emerging technique”;
  - a preference for emission ranges which reflect the true impact and enable a comparison of performance of different operators. In case of PBT or vPvB substances provide for absolute limits per desired output (not concentration limits only);
  - transparency in relation to authors of “split views”;
  - restrictive interpretation to be given on eventual confidentiality claims;
  - formal and transparent selection procedure (observer panel representing different interests) and continuity / better management of BREF authors.

[Detailed input of written contributions can be found here.](#) For an update of status please refer to the Commission presentation.

Discussion:

Despite having to struggle to find and finance experts to represent the EEB during these very technical – and in future probably more political - discussions, EEB considers it as very useful and necessary to be involved in the Sevilla process. The IED framework is unique in that it takes an “integrated approach” which aims to prevent and, where not feasible, reduce pollution to all the environmental aspects such as air, soil, water, resources/energy use, and waste generation from the major industrial activities in the EU. It is one of the few – if not the only- legal instruments which recognise that environmental impacts should not be tackled in an isolated way and strives for continuous improvement. The BREFs are therefore at least an important information source.

It is important to remain involved as we can make a difference in the discussions in which BAT are agreed and standards are set that aim to achieve a high level of protection of the environment as a whole for the EU. Since we managed to strengthen the role of the BREFs under the IED framework (binding nature of BAT conclusions), it is clear that BREFs will gain importance since these will have to be implemented by Member States.

NGOs will have to make sure that the future BREFs become indeed a useful tool for permit writers to ensure that the BREFs fulfil their role as serving as a driver towards improved environmental performance across the European Union.

## 2. THE REMAINS OF THE “EUROPEAN SAFETY NET”

The European Safety Net is to be understood as minimum binding requirements i.e. “*Union-wide minimum requirements for emission limit values and for rules on monitoring and compliance assessment*”. According to Art. 19 of the IPPC Directive on Community emission limit values “*where the need for community action has been identified, on the basis, in particular of the [Sevilla process], the European Parliament and the Council, acting on a proposal from the Commission, shall set emission limit values, in accordance with the procedures laid down in the Treaty*”. That was possible for the entire Annex I activities except landfills and relating to polluting substances referred to in Annex III of the IPPC Directive.

For some IPPC sectors these Union-wide minimum requirements have been integrated in the IED through the provisions mentioned under Chapter III-VI and Annexes (Annex V-VIII) which stem from existing sector legislation:

- Chapter III/Annex V relates to the minimum requirements for large combustion plants
- Chapter IV/Annex VI relates to minimum requirements for waste Incineration / co-Incineration plants
- Chapter V/Annex VII relates to minimum requirements for installations/activities using organic solvents
- Chapter VI Annex VIII relates to minimum requirements for installations producing titanium dioxide.

These relevant minimum provisions / ELVs may not be exceeded, even if the derogation clause under Art. 15.4 is applied. Therefore the Annexes V-VIII can be regarded as the “existing EU safety net(s)”.

However the existing safety nets only relate to certain pollutants e.g. only three for LCPs and other highly polluting IPPC sectors mentioned in Annex I are not subject to these minimum pollution prevention safeguards e.g. production and processing of metals, mineral and chemical industry etc.

EEB strongly supported the idea of the German Federal Ministry of the Environment to extend the European Safety Net to other IPPC sectors in a more systematic manner. We suggested during the IED revision that minimum requirements should be proposed for other IPPC sectors within 1 year of the publication of the revised BREF concerned and ELVs set should be within the BATAEL range, and that these should be adopted though delegated acts. That approach was supported by the European Parliament, but at the end dropped because of strong opposition in Council and lack of support from the European Commission.

The final text however retains that by 7<sup>th</sup> January 2016, and every three years thereafter, the Commission shall submit a report on the assessment of the need for Union wide minimum requirements for all industry sectors that have been subject of BAT conclusions. The first round shall concern industry sectors subject to BAT conclusions from **2013-2016** (Art 73.1).

The report shall be based on the following criteria:

- the impact of the activities on the environment as a whole;
- the state of the implementation of BAT for the activities concerned

If a need for action has been identified, the report should be accompanied by a legislative proposal (co-decision procedure).

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**Discussion:**

EEB regrets the final outcome. Action or inaction will again depend on Commission initiative and vision, which is seriously lacking (i.e. absence of proposing EU wide Mercury ELVs for LCPs although these are the largest point sources for mercury air emissions).

However it is now explicit in the legal text that the assessment for the need for extending the safety net needs to be done by the Commission, at the latest in the 2013-2016 period. There was no deadline in the previous legislation. EEB will further push the Commission to do that assessment as part of the BREF reviews (cf Sevilla process section 1.1.3), and as part of exercising their guardian of the treaty role.

Indeed recital 13 of the IED states that the BREF should limit imbalances in the Union as regards the level of emissions from industrial activities. The E-PRTR data can at this stage provide important insights on the first part of the assessment criteria, i.e. identifying the main IPPC contributors of specific pollutants.

On the positive side, the assessment for minimum requirements is not limited to pollutants mentioned under ANNEX III of the IED, nor in regards to certain activities as was previously the case.

However recital 41 specifies that the Commission should in particular address heavy metals and dioxins and furans for the future assessment, which is considered as a high priority by the EEB.

### 3. CHANGES IN MINIMUM REQUIREMENTS (LCPs)

One of the other major changes in the IED also relate to revisions of existing provisions set out under the Large Combustion Plants Directive<sup>9</sup>. In particular the minimum binding ELVs under the existing LCP Directive have been revised and updated, which was long overdue. These changes are to be found in Chapter III and Annex V, whilst the IED also introduced new definitions and provisions in regards to LCPs. The minimum provisions apply to LCPs with a rated thermal input equal or greater than 50MWth.

A distinction is being made between “existing plants” i.e. all plants subject to a permit granted before 7<sup>th</sup> January 2013 or subject to full permit application before that date and put in operation no later than 7<sup>th</sup> January 2014; and “new” plants i.e. permits granted as from 8<sup>th</sup> January 2013 or earlier but put in operation one year later. The most disappointing and condemnable changes relate to the existing LCPs, where the IED falls short in ambition.

There are common provisions which are either new or revised compared to the existing LCP-Directive, irrespective of the plant category (new/old):

#### Extension or change of LCP:

When a plant is extended, the stricter ELVs set out under Annex V part 2 need to be applied to the extended part. The Annex V part 2 ELVs relate to the less strict BATAEL range set out under the LCP BREF 2006 for the new plants (in that case the plants built after 2003 when the review of the LCP BREF started). That provision also applies if there is a change of a LCP “which may have consequences for the environment” and which affects a part of a plant with a rated thermal input of 50 MW or more.

#### Aggregation rule:

In order to calculate on whether the LCP falls under the scope of Chapter III (50 MWth input or more), the combination of individual plants with at thermal input of 15MWth or more shall be considered and added together if the waste gases are, or “could be” in the opinion of the competent authority, discharged through a common stack.

#### Emission monitoring:

Only slight changes have been introduced: concentration of CO in waste gases from LCPs > 100MWth firing gaseous fuels shall be measured continuously.

#### Desulphurisation rates:

Under the current LCP-D, LCPs were allowed to derogate from the SO<sub>2</sub> ELVs by applying instead desulphurisation rates ranging from 60% to 95%, depending on plant age / type.

The IED has kept that possibility but has increased the rates (see section 3.1 on requirements applicable to new/existing plants) and introduced a definition on what that may apply to as well as under what conditions.

EEB has pushed for a restrictive and time-limited use of that provision to end in 2018, subject to technical justifications. It may only be used for “indigenous solid fuel” which is clearly defined as a “*naturally occurring solid fuel fired in a combustion plant specifically designed for that fuel and extracted locally*”. It therefore excludes even more highly polluting fuels such as liquid fuels or not naturally occurring fuels (residues of industrial processes etc). The use of that derogation is subject to prior validation by the competent authority of a technical report that contains a technical justification of the non-feasibility of complying with the ELVs on SO<sub>2</sub> (Art. 72(4)a). By 31<sup>st</sup> December 2019 the Commission shall review the possibility of applying minimum rates of

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<sup>9</sup> Directive 2001/80/EC of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants, OJ L 309, 27.11.2001, p. 1

desulphurisation “*taking into account, in particular, the best available techniques and benefits obtained from reduced sulphur dioxide emissions.*”

Compliance assessment:

EEB has since the beginning pushed for a tightening of the compliance assessment rules when assessing compliance with the LCP ELVs. As it stands the current mechanism allows for loopholes and for “cheating” in real performance for the operators compared to what BAT based performance demands. The current mechanism set out in part 4 of Annex V is based on monthly “validated” average values, which may not exceed the relevant ELVs. For the “validated” daily averages, operators may exceed 10% of the relevant ELVs. However in the LCP BREF of 2006, the BATAEL set out therein are clearly based on daily averages, not monthly ones. On top of this the current emission monitoring rules (part 3 point 9 of Annex V) allow that 5% of all the measured results may exceed the ELVs for the different pollutants: by 10% for carbon monoxide, 20% SO<sub>2</sub> and NO<sub>x</sub>, and 30% for dust.

EEB has therefore proposed to make clear in the legal text that the compliance assessment should be based on validated daily averages only, which was supported by the European Parliament. The Commission evaluated that this approach would have reduced emissions of dust, NO<sub>x</sub>, and SO<sub>2</sub> from all LCPs in Europe by respectively 10%, irrespective on whether the LCP would use any derogations. However the Commission did not support this approach in the trialogue discussions, probably because of strong industry lobby and certain Member States pressure against stricter compliance requirements.

**3.1 requirements applicable to new LCPs**

“New” LCPs (granted a permit as from 7<sup>th</sup> January 2013 or put in operation as from 8<sup>th</sup> January 2014) shall be subject to ELVs that do not exceed the binding ELVs set out in part 2 of Annex V. These ELVs are mainly taken over from the existing LCP BREF of 2006, and based on the less strict BATAEL range for the LCPs considered as “new” during the review i.e. built after 2002. ELVs become stricter according to the size of the 3 rated thermal input categories (50-100, 100-300 or >300MW). These provisions will apply as from 7<sup>th</sup> January 2013.

Exceptions from NO<sub>x</sub> and CO ELVs are granted to gas turbines and engines for emergency use that operate less than 500 operating hours per year. These are not subject to any binding ELVs for dust or SO<sub>2</sub>. The minimum rates of desulphurisation for LCPs firing indigenous solid fuels have been increased to 93% for the 50-300MW category and to 97% for the >300 MWth category.

**3.2 requirements applicable to existing LCPs**

Existing plants (granted a permit before 7<sup>th</sup> January 2013 or put in operation no later than 7<sup>th</sup> January 2014) shall be subject to ELVs that do not exceed the binding ELVs set out in part 1 of Annex V. These ELVs are mainly taken over from the existing LCP BREF of 2006, and based on the less strict BATAEL range for the LCPs considered as “existing” i.e. built before 2002.

ELVs become stricter according to the size of the three rated thermal input categories (50-100, 100-300 or >300MW). ELVs have become stricter compared to the LCP-D for the 50-300 MW range.

The ELVs set out in Annex V part 1 will need to be complied with as from 1<sup>st</sup> January 2016.

However weaker ELVs may apply to a long list of LCPs operating at peak load (1.500 hours per year as a rolling average) or by using specific derogations listed below:

**3.2.1 Transitional National Plan (TNP) derogation (Art. 32):**

From 2016 until 30 June 2020 Member States may circumvent the site specific BAT based ELVs or the desulphurisation rates by applying instead a TNP, which is a time-limited continuation of the National Emissions Reduction Plan under the LCP-D. It may be used for existing plants that have received a first permit before 27 November 2002. The following plants are excluded:



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- those using the Limited Life Time derogation (cf. LLD section 3.2.2 below)
- LCPs in refineries firing residue fuels;
- District heating plants;
- LCPs that were subject to previous LLD derogation under Art 4.4 of the LCP-D.

The ceilings for 2016 shall be calculated on the basis of the relevant ELVs set out in the LCP-D, whilst the ceilings for the years 2019 and 2020 shall be calculated on the basis of the relevant ELVs set out under part 1 of Annex V (the updated ELVs for existing plants). The ceilings for the years 2017 and 2018 shall be set providing a linear decrease of the ceilings between 2016 and 2019. The ceilings shall define maximum total annual emissions for all the plants covered by the TNP, based on actual operating hours and its fuel use averaged from 2000 up to and including 2010.

The TNP is purely optional, and requires a Member State submission to the Commission by the 1<sup>st</sup> January 2013 deadline. The Commission shall evaluate the application on whether it is in accordance with the implementing rules and if it does not object within 12 months it is considered as accepted. The Commission may reject the plan if the implementing rules are not complied with. A first draft of these important rules (setting out requirements on emissions ceiling, monitoring and reporting) is expected by 7<sup>th</sup> July 2011.

### **3.2.2 Limited Life time derogation (LLD) –Art. 33)**

Another option for operators to circumvent the site specific BAT based ELVs or the desulphurisation rates is offered by the LLD, which is a copy of the previous LLD under Art. 4.4 of the LCP-D (which lasted for a 8 years period and for 20.000 hours).

It may be used for all plants except for those:

- that enter the TNP;
- LCPs that were subject to previous LLD derogation under Art 4.4 of the LCP-D.

Under the LLD an operator may choose not to apply the ELVs for existing plants set out under Annex V part 1, but instead remain under the existing and outdated ELVs set out under the LCP-D (i.e. ELVs applicable on 31 December 2015), provided the plant does not operate more than 17.500 operating hours, starting from 1<sup>st</sup> January 2016 and ending on 1<sup>st</sup> January 2024!

The operator simply needs to submit a written declaration to the competent authority by 2014. Once the operation hours have been used or at latest in 2024 irrespective on whether the hours have been used, the plant needs to shut down.

The number of operating hours is increased to 18.000 hours for LCPs being on 6<sup>th</sup> January 2011 part of a small isolated system and accounting at that date for at least 35% of the electricity supply with that system. The time period for that LLD is 2020-2024 (Art 33.3). This derogation was specifically designed for Cyprus (Art 33.3). The operator will have to choose on whether to make use of the specific derogation for small isolated systems (section 3.2.3) which ends in 2020 or to run the plant under the LLD for 500 hours more and close / or having to close latest in 2024.

The IED also contains a very specific derogation with an increase of the operating hours to 32.000 hours for a specific Greek plant firing indigenous solid fuel with low calorific value (Art. 33.4).

### **3.2.3 Derogation for small isolated systems:**

Until 2020, Member States may circumvent the site specific BAT based ELVs or the desulphurisation for LCPs being part of a small isolated system. A “small isolated system” is further defined under point two of Article 2 of Directive 2003/54/EC as a system with a consumption of less than 3000 GWh in the year 1996, where less than 5% of annual consumption is obtained through interconnection with other systems. For these systems that make use of the derogation, the existing ELVs under the current LCP-D need to be maintained.

### **3.2.4 Derogation for district heating plants:**

This derogation provision was hardly fought for by Poland and Slovakia, with the support of Finland. Until 2023 Member States may circumvent the site specific BAT based ELVs or the desulphurisation rates by applying instead the current ELVs set under the LCP-D for the following district plants under following cumulative conditions:

- the total thermal input of the combustion plant does not exceed 200MW;
- the LCP was granted a permit before 27 November 2002 / put in operation one year later;
- at least 50% of the useful heat production is delivered in the form of steam or hot water to a public network for district heating.

Special reporting obligations to the Commission apply when use is made of that derogation.

#### ***Discussion:***

EEB thinks that the provisions for existing LCPs clearly lack of ambition, in particular retaining a derogation list in a legal text that aims to achieve a high level of environmental protection is a clear contradiction in itself.

There is still an outstanding issue on how the LCP requirements (Chapter III and V) are to apply in relation to the IPPC specific components (Chapter II), which also apply to LCPs.

EEB has been involved in the “lex specialis” debate and we have warned the policy makers that we would prefer more clarity that indeed the Chapter III/Annex V provisions are to be understood as minimum requirements to apply without prejudice to the provisions set out under Chapter II, in particular Articles 14, 15(3) and 15(4).

We see contradictions in the setting of ELVs with the BAT based permitting approach, when either of the derogations mentioned above are used.

According to our reading it is clear that if BAT conclusions on the LCP BREF would be adopted under the IED, the competent authority would have to set ELVs according to Articles 15(3) / 15(4) AND Art. 30. Both Articles set out provisions on how to set ELVs and which levels they may not be exceeded. Art. 30 of Chapter III on “Special provisions for large Combustion plants” refers to maximum permissible ELVs set out under Annex V. This relates to 3 pollutants only (NO<sub>x</sub>, Dust, SO<sub>2</sub>), meaning that all the other pollutants would have to be looked at by referring to the BREF document.

The question simply relates on how to deal with the three pollutants covered under Annex V i.e. dust, NO<sub>x</sub>, and SO<sub>2</sub>. Can the competent authority simply refer to Annex V ELVs and ignore the BATAEL set out under the BAT conclusions, arguing that Chapter III would be “lex specialis” for these three pollutants?

Art. 15(3) makes it clear that the ELVs need to refer to the BATAEL as laid down in the BAT conclusions, and not Annex V. The “double ceiling” approach (BATAEL and Annex V ELVs) is also made clear under Art. 15(4). Should the competent authority want to set higher ELVs that would result in higher emissions compared to the BATAEL set out under the BAT conclusions of the LCP BREF, it would need to happen through the derogation clause (Art. 15.4).

In that article it is made clear that the minimum requirements, such as the ELVs on NO<sub>x</sub>, dust, and SO<sub>2</sub> set out under Annex V, shall not be exceeded: “*the emission limit values set in accordance with the first subparagraph shall, however, not exceed the emission limit values set out in the Annexes to this Directive, where applicable.*” If Chapter III / Annex V were to be “lex specialis” for setting permit conditions, there wouldn’t be any reference to this provision stating that Annex V ELVs would constitute a secondary ceiling.

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Secondly it is made crystal clear in subparagraph three of Article 73(1) that “Chapter III and Annex V of [the IED] shall be considered to represent the Union-wide minimum requirements in the case of large combustion plants”.

Thirdly it would not make sense to argue that Chapter III may be considered as “lex specialis” since Art. 14 on permit conditions refers to the need to set ELVs for at least all the polluting substances listed in Annex II, and it is the BAT conclusions which shall be the reference for setting permit conditions (Art. 14.3). Chapter II also contains other important measures that need to be set out under the permit, which are not mentioned under Annex V (i.e. energy efficiency, accidents prevention, soil and groundwater protection, site remediation requirements etc).

In conclusion any competent authority would need to use the derogation clause under Art 15.4 in order to use any of the listed LCP derogations proposed under Chapter III, if BAT conclusions would be adopted through comitology. That would need to be done at the latest 4 years after publication of that decision.

Also it needs to be seen how the derogations could be used in practice without breaching the Environmental Quality Standards. In particular, European NGOs will have to challenge any use made by the competent authorities aiming to evade BAT based controls in order to secure additional profits for operator at the societal cost for health and environmental pollution.

## 4. CHANGES IN MINIMUM REQUIREMENTS (Waste (co) Incineration)

Chapter IV and Annex VI are mainly a takeover of existing provisions laid down under the Waste Incineration Directive<sup>10</sup>. Some major changes relate the following:

The waste hierarchy set out under Art. 4 of the Waste Framework Directive 2008/98/EC<sup>11</sup> is explicitly to be considered under the “general principles governing the basic obligations of the operator”. According to Art 11(d) the generation of waste is to be prevented, if waste is generated the waste hierarchy has to be applied Art. 11(e). The last option is “disposal” (incineration or land-fill or other operations listed in Annex I of the Waste Framework Directive), however in the IED that final “disposal” option may only be used if it is technically and economically impossible to re-use, recycle or recover waste. It may therefore constitute a strengthening of the waste hierarchy since the technical and economic excuse may only be invoked for applying the disposal option, and burden of proof rests on the operator.

As under the existing Waste Incineration Directive the Council and European Parliament wanted to keep an explicit reference to pyrolysis, gasification or plasma process as waste (co) incineration plant.

### 4.1 Change in NOx Emission Limit Values for cement kilns:

The Commission proposal lowered the NOx ELVs for cement kilns co-incinerating waste from 800 mg/Nm<sup>3</sup> to 500 (Annex VI, part 4, point 2.2). EEB advocated an alignment to the regular Waste Incineration ELV of 200mg/Nm<sup>3</sup> that is achievable by applying the Selective Catalytic Reduction (SCR) techniques, in order not to divert waste streams in even more environmentally damaging incineration practices.

However due to Cement Industry lobby, not only the 500 mg/Nm<sup>3</sup> limit for NOx was kept, but a time-limited exemption was introduced through a footnote for long rotary kilns / Lepol kilns to apply an ELV of no more than 800 mg/Nm<sup>3</sup> until 1<sup>st</sup> January 2016 (Annex VI, part 4. point 2.2).

### 4.2 Monitoring of heavy metals, dioxins and furans:

The initial Commission proposal intended to allow competent authorities to require less than two measurements per year or no measurements for heavy metals and for dioxins and furans in specific cases, depending on reports from the operator of the quality of the waste incinerated.

It also enabled competent authorities to require no measurements for HCl, HF and SO<sub>2</sub> under certain conditions. It also introduced an exemption to require continuous measurements for NOx and periodic measurements instead, applicable for existing waste (co-)incineration plants with a capacity of less than 6 tonnes on the basis of information provided by the operator about the quality of the waste, technologies used and assessment of monitoring results that the emissions of NOx would in all circumstances be lower than the prescribed ELV (Annex VI part 6, point 2.5).

The European Parliament opposed this downgrading: it opposed “*no measurements*” but instead called for at least one measurement per year based on the criteria of the Commission proposal whilst adding another condition which was that the operator could prove that neither electric nor electronic waste, nor waste containing chlorinated compounds would be treated. In regards to the second derogation for continuous measurements for HCl, HF and SO<sub>2</sub> that would not be possible in the case of mixed waste from different sources. These amendments were introduced and supported by the EEB.

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<sup>10</sup> Directive 2000/76/EC of 4 December 2000 on the incineration of waste, OJ L 332, 28.12.2000, p. 91

<sup>11</sup> Directive 2008/98/EC of 19 November 2008 on waste and repealing certain Directives, OJ L 312, 22.11.2008, p. 3

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Member States and the Commission opposed. In regards to HCl, HF and SO<sub>2</sub> as well as NO<sub>x</sub>, the Commission proposal was kept. A compromise has been reached for heavy metals and dioxins and furans: competent authorities may require only one measurement every two years for heavy metals and one measurement per year for dioxins and furans according to the initial criteria proposed by the Commission.

However “*as soon as appropriate measurement techniques are available within the Union*”, the Commission shall set the date from which continuous measurements of emissions into the air of heavy metals and dioxins and furans would have to be carried out. That decision will be done under delegated acts (Art. 48.5)

## 5. SOIL AND GROUNDWATER PROTECTION AND SITE REMEDIATION

The IED introduced new provisions in regards to soil and groundwater protection which were opposed by many Member States (basically the same suspects that are opposed to a Framework Directive on Soil).

### 5.1 Obligation to produce a baseline report:

Operators will have to provide a baseline report with “*information on the state of soil and groundwater contamination by relevant hazardous substances*” (Art. 3(19)). It should enable competent authorities to “make a quantified comparison” with the state upon definitive cessation of activities (see section 5.3).

According to Art. 22.1, at least the following information should be part of the baseline report:

- present use / past uses of the site;
- existing information on soil and groundwater measurements that reflect the state at the time the report is drawn up / new measurements on those hazardous substances to be used, produced or released;
- (if available) other information generated by other national or Union law.

The Commission will have to establish guidance on the content of the baseline report.

Hazardous substances are those classified under the CLP Regulation<sup>12</sup>. The baseline report is required where hazardous substances are to be used or produced and is part of the permit conditions ((Art. 12 (e)). That obligation applies before operating a new installation as from 7<sup>th</sup> January 2013, or permits updated after that date.

### 5.2 Monitoring obligations:

Art. 14 (b) obliges Member States to make sure that appropriate requirements ensuring protection of the soil and groundwater are included in the permit. This also includes requirements for the regular maintenance and surveillance of measures taken for the prevention of emissions to soil and groundwater, in particular periodic monitoring on relevant hazardous substances likely to be found on the site and causing possible soil and groundwater contamination ((Art. 14 (e)). Although many Member States were opposed, the minimum frequency for monitoring frequency for soil is at least every 10 years, and groundwater every five years, unless it is based on a systematic appraisal of the risk of contamination ((Art 16(2)).

### 5.3 Site remediation obligations

The competent authority needs to take the necessary measures upon definitive cessation of activities to avoid any risk of pollution and to return the site to “*the satisfactory state as defined in accordance with Art. 22*”. That Article sets out provisions on site closure which apply without prejudice to other EU law.

Once the activity stops the operator needs to assess the state of soil and groundwater contamination by hazardous substances against the baseline report. Where comparison indicates “*significant*” pollution compared to the state established in the baseline report, the operator has to return the site to that state (as identified in the baseline report).

For activities permitted before the 7<sup>th</sup> January 2013 or for which no baseline report is required, if the contamination of soil and groundwater at the site poses a “*significant risk to human health or the environment*” the operator “*shall take the necessary actions aimed at the removal, control,*

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<sup>12</sup> Regulation No 1272/2008/EC of 16 December 2008 on the classification, labeling and packaging of substances and mixtures; OJ L 353, 31.12.2008

*containment or reduction of relevant hazardous substances, so that the site, taking into account its current or approved future use, ceases to pose such a risk*".

**Discussion:**

EEB strongly supported the setting up of a - high quality and extensive - inventory of the state of the soil and groundwater on where the industrial activity is carried out. A Commission report<sup>13</sup> found that about 3.5 million industrial sites in the EU are potentially contaminated, of which 500.000 are thought to be seriously contaminated and in need of remediation. The estimated annual cost of soil contamination is between 2.4 and 17.3 billion EUR, with most of these costs borne by tax payers. According to an EEA report<sup>14</sup>, the chemical and metal working industries, energy production and the oil industry are the greatest contributors.

IPPC installations are indeed the main source of groundwater/soil pollution. The main idea behind the baseline report is to allow the competent authorities to have a tool to enforce the polluter prevention and pays principle, in particular when it comes to the clean-up obligations of the industrial operator.

The new provisions will enable competent authorities and citizens to carry out a qualitative assessment of the state of the site when the operator ceases its activities, or obliges to act in case of risks to the environment or public health. It will also help different operators carrying out activities on the same site to identify their respective contribution and liability of pollution. In order to have that clear picture, it is essential that the baseline report is of a high quality, as comprehensive as possible and an independently verified document. It may be compared to an "état des lieux" under estate law.

Major shortcomings relate to the subjective interpretations by Member States on what may be a "significant risk" to human health or the environment or "significant pollution". It is worth stressing that, according to the IED, it is up to the operator to make the comparison of the baseline report with the state of the site upon site closure. If that task would not undergo a critical verification by the competent authorities, it is clear that the operators assessment would be biased since there is a clear interest the operator would not lay upon himself costly site remediation measures. That would mean that the good intentions of the site remediation provisions would get undermined.

It is therefore important that the baseline report is subject to independent and public scrutiny. Since it relates to hazardous substances it may also be of high value to the European Chemicals Agency (ECHA) and it should therefore be disseminated through the ECHA database.

Important questions remain: According to Art. 22(1) it is the task of the competent authorities to set permit conditions in order to ensure compliance with the site remediation provisions (Art. 22(3) and 22(4)). However it is not clearly stated that it will explicitly cover the task to carry out a qualitative assessments on the state of the site, the verification of the comparison with the baseline report done by the operator, and to define the nature and extend of the site remediation measures. Recital 25 points towards the interpretation that it is the task of the Member States to make that evaluation, however liability regarding pollution not caused by the operator is a matter for other relevant national law or the Liability Directive.

Another mayor shortcoming relates to the "risk-based" approach and different options offered to the operator when it comes to site remediation measures or actions. The operator needs to ensure that the site ceases to pose a "*significant risk to human health or the environment*" which may trigger obligations to remove, control, contain or reduce relevant hazardous substances, However the risk considerations shall take into account "*the current or approved future use*" of the site. In few words, if the competent authority decides to convert the site into a landfill or

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<sup>13</sup> SEC (2006) 620 "Impact Assessment of the Thematic Strategy on Soil Protection"

<sup>14</sup> EEA core-set indicator no 15, 2007 "Progress in the management of contaminated sites", European Environment Agency.

14<sup>th</sup> July 2011

hazardous substances storage ground, then the remediation obligations for the operator would be reduced.

The baseline report could provide an objective basis on what the minimum level of site remediation obligations should be, however the risk based approach based on future approved use of the site may seriously undermine the full implementation of the polluter pays principle.



## 6. PUBLIC PARTICIPATION AND INFORMATION REQUIREMENTS

### 6.1 Environmental NGOs as formally recognised stakeholders

The IED finally recognises NGOs promoting environmental protection as a formal stakeholder for the BREF reviews –Sevilla Process- (see section 1.3.2). Under the previous IPPC Framework the Commission had to organize an exchange of information solely between Member States and the industries concerned (IPPC Art. 17.2), however de facto EEB has been involved in the process since the beginning. In consequence NGOs promoting environmental protection are also member of the “forum”, which sets out the practical arrangements of the Sevilla Process and which is in charge of quality control of the BREF.

### 6.2 Improvements in relation to public participation and dissemination of information:

The public participation rights of NGOs in relation to permitting procedures have been largely kept unchanged, except for a specific reference to when derogation from BAT (Art. 15(4)) is proposed. In that case “the specific reasons’ for that derogation based on the criteria laid down in paragraph 15(4) “and the conditions imposed” shall be made available to the public, including via the internet.

Initially the Commission Proposal proposed to exclude public participation if the new installation would be subject to the Environmental Impact Assessment Directive, and covered by General Binding Rules, and there would be no need to impose stricter requirements in order to comply with an Environmental Quality Standard. EEB managed to early delete that provision in order to safeguard the legitimacy and accountability of the permitting process.

Some improvements have been made in relation to public dissemination of information via the internet, although EEB would have wished to require full transparency and active dissemination policy obligations upon the Member States to be explicitly laid down in the directive.

Some Member States like Poland, Germany and Austria argued that publication through the internet should be made voluntary only. As a result of reaching a compromise the IED only explicitly requires certain information to be made available through the internet as a minimum.

This includes at least:

- content of decision on granting, reconsideration or updating of a permit, including a copy of the permit and any subsequent updates (Art 24(2) a);
- the reasons on which the decision is based (Art 24(2) b);
- the specific reasons and the conditions imposed when granting a derogation under Art 15.4 (Art. 24(2) f);
- relevant information on the measures taken by the operator upon definitive cessation of activities (see section 5.3) (Art. 24(3) a).

Other information would have to be made available according to and subject to access to documents request under the Aarhus Framework.

### 6.3 Additional annual reporting requirement for operators:

The IED also introduced new provisions upon the operators to facilitate compliance assessment by the competent authorities. According to Art. 14 (d), the operator is required to supply regularly, and at least annually, with information such as emission monitoring and other required data that enables the competent authority to verify compliance with the permit conditions.

If ELVs are set in the permit that differ from the BATAEL in terms of values, periods of time and reference conditions, the operator has to also supply a summary of emission monitoring data which would allow the competent authority to make a comparison with the BATAEL.

**Discussion:**

EEB regrets the watering down by Member States and resulting fragmentation and compromise reached under the IED in regards to public dissemination through online databases of certain information. In particular it would have been very useful for the public concerned to also have the following information to be made available online:

- how the permit conditions, including the ELVs, have been determined in relation to BAT and BATAELs (Art. 24(e));
- the results of emission monitoring data held by the competent authority, or the summary of it that needs to be generated when Art. 15(3) (b) is applied (Art. 14 (d) ii);
- the environmental inspections report describing the relevant findings regarding compliance with permit conditions and conclusions on whether any further action is necessary (Art. 23(6)).

Requesting that information through the Aarhus provisions means unnecessary and additional administrative work for everyone (competent authorities as well as NGOs).

It is not clear from the current wording on what is meant through “via the internet”. Is it through “electronic databases” or upon “electronic request”? According to EEB the intention of the amendments introduced by the European Parliament was to provide for an active dissemination policy, i.e. to actively provide that information to the public through easily accessible online databases. It is also not clear from the legal text if the mere “reconsideration” of permit conditions triggers public participation obligations, in particular when the basis for that permit reconsideration is operational safety cases (Art 21(5) **b**) or necessity to comply with a new or revised environmental quality standard (Art. 21(5) **c**). Art. 24 (1) (d) on public participation explicitly refers to the case of “updating of a permit or permit conditions for an installation in accordance with Article 21 (5) (**a**)” only.

In addition to the above shortcomings, EEB feels that the public participation and access to information provisions do miss the mentioning of other important aspects:

- The **environmental inspection plan** to be set up by Member States at national, regional or local level (see section 7) is not explicitly covered under the public participation provisions of the IED (Art. 24). However this is to be considered as a “plan, programme and policy relating to the environment” according to Art. 7 of the Aarhus Convention and therefore subject to a transparent and fair public participation framework.
- The **transitional national plan** (see section 3.2.1) to be set up by Member States at national level and subject to evaluation by the Commission is not explicitly covered under the public participation provisions of the IED (Art. 24). However this is to be considered as a “plan, programme and policy relating to the environment” according to Art. 7 of the Aarhus Convention and therefore subject to a transparent and fair public participation framework.

This shortcomings need remediation through legal amendment of the Directive or clarification through the ECJ.

## 7. ENVIRONMENTAL INSPECTION FRAMEWORK

Art. 23 states that each installation is to be covered by an environmental inspection plan. These programmes are to be drawn up by Member States at national regional or local level.

These environmental inspection plans shall address “*the full range of relevant environmental effects*” from the installation concerned and should be reviewed regularly.

The IED sets out minimum elements to be covered in each environmental inspection plan:

- general assessment of “significant environmental issues”;
- geographical area;
- register of installations covered;
- procedures for routine inspections;
- procedures for non-routine inspections;
- provisions on cooperation between different inspection bodies.

The plan shall also set up the frequency for site visits for different types of installations, which is determined on the basis of risk appraisal. The criteria for that risk appraisal shall consider at least:

- “*potential and actual impacts*” of the installation on human health and the environment, “*taking into account the levels and types of emissions, the sensitivity of the local environment and the risk of accidents*” (Art. 23 (4) a);
- the record of compliance with permit conditions (Art. 23(4) b);
- participation to EMAS (Art. 23 (4) c).

An important improvement compared to the IPPC Directive is that the IED introduced a legally binding and minimum site visits frequency at every 12 months for the highest risk, and every 36 months for the lowest risk installations. A follow-up site visit needs to take place six months in case of an “*important case of non compliance with the permit conditions*”. Non-routine inspections shall also be carried out “as soon as possible” to investigate “serious” environmental complaints or accidents, incidents and occurrences of non-compliance. These shall also be carried out “where appropriate” before the granting, reconsideration or update of a permit. The inspections reports are to be made publicly available within four months after the site visit took place.

## 8. ENFORCEMENT ISSUES

According to Art. 23.6, competent authorities shall ensure that the operator takes all the necessary actions identified in the inspections report “within a reasonable period”. The provisions on compliance/non-compliance of the IPPC (former Art.14) have been strengthened but have been subject to long negotiations between Member States and the European Parliament.

The IED introduces a provision with explicit reference to the provisions of the environmental liability Directive<sup>15</sup> in relation to incidents and accidents. In the event of “*any incident or accident significantly affecting the environment*”, the operator has to immediately inform the competent authority and take the measures to limit the environmental consequences and to prevent further possible incidents or accidents. There is also a co-responsibility laid upon the competent authority to take any of these appropriate complementary measures.

The Commission proposal introduced an adapted form of provisions on non-compliance under Art 10 of the Directive on the limitation of emissions of VOC<sup>16</sup> and extended these provisions to all IPPC installations covered under Annex I. According to Article 8 of the IED, in the event of a breach of the permit conditions, Member States shall ensure that:

- the operator “**immediately**” informs the competent authority;
- the operator “**immediately**” takes the measures necessary to ensure compliance to ensure that compliance is restored “within the shortest possible time”;
- **the competent authority requires the operator to take any appropriate complementary measures that the competent authority considers necessary to restore compliance** (Art. 8 (c) ).

According to the second paragraph of Art. 8, where the breach of the permit conditions poses an immediate danger to human health or “**threatens to cause an immediate significant adverse effect upon the environment**”, the operation of the installation or relevant part thereof shall be suspended. The provisions highlighted in bold above have been added to those under the Directive on the limitation of emissions of VOC.

### **Discussion:**

It is certainly to be considered as a positive improvement that the IED makes an explicit cross-reference to the Environmental Liability Directive<sup>17</sup> whilst laying down concrete obligations upon the operators and competent authorities in regards to compliance / non-compliance.

The wording in relation to the breach of permit conditions have been subject to intense discussions between the European Institutions: whilst the Commission Proposal referred to a breach “*causing danger to human health or the environment*”, the European Parliament watered it down to “*significant danger to human health or the environment*”. The Member States (Council) position for the 3<sup>rd</sup> Trilogue went even a step further referring to “*an immediate significant danger to human health or the environment*”. As a compromise the wording of the first reading Council position was retained, which makes a distinction to danger to human health which needs to be “*immediate*”, and to the environment i.e. the breach “*threatens to cause an immediate significant adverse effect upon the environment*”. It remains to be seen how these provisions will be implemented.

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<sup>15</sup> Directive 2004/35/CE of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage; OJ L 143, 30.04.2004

<sup>16</sup> 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,p1

<sup>17</sup> Directive 2004/35/EC of 21 April 2004 on environmental liability with regard to prevention and remedying of environmental damage, OJ L 143, 30.4.2004, p. 56

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On one hand it may be less of a burden for NGOs to establish a “threat”, which is a potential one and therefore does not need to be materialised, enabling NGOs to act in a preventive manner, i.e. before the negative impact occurs. However there is a high burden on NGOs to make the case for the cause-effect relationship of the adverse effect, and that this would be of an immediate and significant nature.

On the positive side there is an obligation laid upon the operators and competent authorities to take any complementary measures in order to restore compliance. NGOs will have to play the watchdog role in order to ensure actions and results are indeed delivered within the shortest possible time, and that these are appropriate in relation to the high level of environmental protection objectives.

## 9. Adaptation to the installations covered under the IED

### 9.1 Industrial activities not included and lowering level of environmental protection

#### 9.1.1 Inclusion of LCPs below 50 MW delayed to future review

On the downside, the lowering of the threshold of LCPs from 50MWth to 20MWth, as proposed by the European Commission, has been rejected. That was mainly due to the opposition of most Member States and the farmers lobby because it would include some large greenhouses located in the Netherlands. In total 13 Member States were against: e.g. IT, LV, HU, PT, UK, NL, FIN, BU, POL. There were only a few actively supportive Member States such as Belgium, Sweden, Denmark and Germany. At the end the Commission will have to review the eventual inclusion of combustion of fuels in installation below 50MW at the latest by 31<sup>st</sup> December 2012.

#### 9.1.2 Differentiated thresholds for intensive rearing of animals delayed to future review

The Commission proposal aimed to introduce differentiated thresholds for different poultry species based on an excretion factor for nitrogen: 40.000 places for broilers, 30 000 places for laying hens or 24.000 places for ducks or 11.500 places for turkeys would trigger the application of Chapter II provisions (IPPC component). However the current threshold of 40.000 poultry has been kept without distinction of species, but a review shall be carried out by the Commission on the issue of differentiated thresholds for poultry by 2012, including the "*specific case of quails*". Some French EPP members (Grossetete, Souille, etc) even went that far to promote an amendment of the lobby organisation of quails producers that stated that "quails would not be considered as poultry for the purpose of the IED"! As incredible as this sounds, that amendment was carried in second reading which would have allowed France to circumvent and undermine a judgment from the European Court of Justice<sup>18</sup> that condemned France for a breach of transposition on that particular issue.

Another amendment aiming to include intensive **aquaculture** in the IPPC regime was rejected in an early stage, due to absence of Commission support.

On the positive side and thanks to the insistence of Denmark, the Commission shall carry out a review to include the intensive rearing of **cattle** and set capacity thresholds for the simultaneous rearing of **different types of animals** within the same installation.

### 9.2 New activities that have been included in the IPPC regime:

- In regards to energy industries, the gasification and liquefaction of fuels other than coal has been included, provided it exceeds 20MW;
- in regards to the chemicals industry the IED removes the distinction between "basic" or "non-basic " chemicals and makes clear it does also relate to biological processing of substances. It is also made clear that the production of chemicals for use as fuels or lubricants is explicitly included;
- the IED also explicitly includes **specific waste disposal and recovery activities** of non hazardous waste such as pre-treatment of waste for (co-) incineration, treatment of slags and ashes, as well as shredders of metal waste such as WEEE and end of life vehicles /components Annex I. point 5.3). If the waste treatment activity is anaerobic digestion, the capacity threshold is increased from 75 to 100 tonnes per day;
- for waste recovery, biological treatment is also included (Annex I point 5.3);
- wood panels production such as oriented strand board, particleboard or fibreboard with a production capacity exceeding 600m<sup>3</sup> per day is included (Annex 6.1 c);

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<sup>18</sup> ECJ judgment 473/07 of 22.01.2009

- the IED also covers the preservation of wood and wood products with chemicals with a production capacity exceeding 75 m3 per day other than exclusively treating against sapstain;
- the Capture of CO2 streams from installations for the purpose of geological storage pursuant to the CCS Directive<sup>19</sup> is also covered (Annex I point 6.9).

## 10. UPCOMING KEY REVIEWS AND IMPEMENTATION DATES

### 10.1 Reviews that will lead to a legislative proposal (co-decision)

The following reviews will have to be carried out by the Commission and may lead to a legislative proposal subject to the Co-decision procedure:

#### By 2012

- Establish differentiated capacity thresholds for intensive rearing of different poultry species (Art. 73(3) a) and
- simultaneous rearing of different type of animals within the same installation (Art. 73(3) b)

#### By 2013

- inclusion of LCPs below 50 MW (Art. 73(2) a)
- control of emissions from intensive rearing of cattle (Art. 73(2) b)
- control of emissions from spreading of manure (Art. 73(2) c)

#### By 2014

- review on the basis of BAT the need to establish Union –wide ELVs and to amend the ELVs in Annex V for the following LCPs: diesel engines, recovery boilers within installations for the production of pulp, refineries firing distillation and conversion residues, firing gases other than natural gas, chemical installations using liquid production residues (“non commercial fuels”) – (Art. 30(9))

#### By 2016:

- the Commission shall make an assessment of the need to establish or update Union-wide minimum requirements for emission limit values and for rules on monitoring and compliance (European Safety Net) for IPPC activities that have been subject to BAT conclusions during 2013-2016. That review shall be accompanied by a legislative proposal “where appropriate” (Art. 73)
- Every three years after 2016 (2019, 2022 etc) the Commission shall submit to the EP and Council a report on the implementation of the IED (Art.73(1))

#### By 2020:

- review possibility of applying minimum rates of desulphurisation, taking into account BAT and benefits obtained from reduced sulphur dioxide emissions (Art. 31(3) ).

### 10.2 Reviews that will lead to adoption of implementing rules:

By 1<sup>st</sup> July 2011: the Commission has to present a proposal on the determination of start up and shut down periods (Art 41 a). EEB is involved in the stakeholder consultation in relation to the draft implementing rules.

The Commission has not foreseen to conduct a stakeholder consultation on this crucial matter, but would want to base its proposal on the existing NERP guidelines set out under the LCP-D.

### 10.3 Reviews that may lead to adoption of guidance documents (non-binding)

Some guidance have to be established by the Commission whilst others are optional, subject to the Commission’s right of initiative.

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<sup>19</sup> Directive 2009/31/EC of 23 April 2009 on the geological storage of carbon dioxide [...], OJ L 140, 5.6.2009, p. 114

The Commission shall establish guidance:

- On the interpretation of the term “industrial scale” regarding the description of chemical industry activities in Annex I (no deadline);
- on the relationship between waste management activities and Annexes I and III of the Waste Framework Directive<sup>20</sup> 2008/98/EC (no deadline);
- on collection of data for the Sevilla Process (Art.13(3) c), which will have strengthened legal status since it will be adopted through committee procedure (ongoing);
- on the drawing up of BREFs and on their quality assurance including the suitability of their content and format (Art. 13(3) d), which will which will have strengthened legal status since it will be adopted through committee procedure (ongoing);
- on the content of the baseline report (Art. 22 (2)) (no deadline);
- that assist Member States in encouraging the development and application of emerging techniques (Art. 27 (2)) (no deadline).
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The Commission may establish guidance on the following:

- the criteria to be taken into account for the application of the derogation from BAT clause (Art 15.4), however this will only take place based on the information provided by Member States according to Art. 72(1);
- on the criteria for the appraisal of environmental risk for environmental inspections (Art 24(4)).

### 10.3 Implementing dates (for operators and Member States)

- At the latest **by 1<sup>st</sup> January 2013**, Member States shall communicate the optional TNP to the Commission. If no objection is raised within 12 months of receipt (at the latest on **1<sup>st</sup> January 2013**) it is considered as accepted. The objection period is reduced to six months upon reception of re-submission of TNP (Art. 32 (5)).
- Operators would need to communicate to the competent authority **by 1<sup>st</sup> January 2014** at the latest on whether they intend to make use of the Limited Life Time Derogation (Art. 33(1) a). In that case they would have to submit on an annual basis the record of operating hours **as from 1<sup>st</sup> January 2016**.
- Member States will have to communicate to the Commission **on 1<sup>st</sup> January 2016** the list of LCPs that made use of the LCP derogations, **except by 2012** for LCPs part of small isolated islands.
- Member States will have to:
  - Set up from **1<sup>st</sup> January 2016** an annual inventory on emissions of SO<sub>2</sub>, NO<sub>x</sub>, and dust emissions as well as energy input for all LCPs (Art. 72(3)). It shall also include a summary to be made available to the Commission every 3 years. The Commission will have to make available to the public a summary of the comparison and evaluation of these inventories within 24 months after that date.
  - a) Report **as from 1<sup>st</sup> January 2016** on an annual basis the combustion plants having made use of the desulphurisation provision, data on the sulphur content of the fuel and the desulphurisation rate, and a technical justification of the non-feasibility of complying with the regular ELV set out in Annex V (Art. 72(4) a)
  - b) Report **as from 1<sup>st</sup> January 2016** the number of operating hours for peak load plants (Art 72 (4) b)

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<sup>20</sup> Directive 2008/98/EC of 19 November 2008 on waste and repealing certain Directives, OJ L 312, 22.11.2008, p.3



## 11. CHRONOLOGICAL TIMETABLE FOR KEY IMPLEMENTATION DATES

| Issue  | Deadline   | Reference      |
|--|------------|----------------|
| Entry into force   | 07/01/2011 | Art. 83        |
| Implementing rules concerning the determination of the start-up and shut-down periods (Art. 3(26) and Annex V, Part 4, point 1) and TNP  | 07/07/2011 | Art. 41        |
| Review on animal rearing activities  | 31/12/2011 | Art. 73(3)     |
| Review on combustion plants below 50 MW, intensive rearing of cattle and spreading of manure   | 31/12/2012 | Art. 73(2)     |
| End of transposition deadline (implementation date for articles mentioned in Art. 80(1) unless mentioned otherwise in Art. 82)           | 07/01/2013 | Art. 80        |
| New emission limit values for <u>new</u> combustion plants which co-incinerate waste   | 07/01/2013 | Art. 82(6)(b)  |
| Report on the need to establish Union-wide emission limit values and/or to amend the ELVs of Annex V for certain LCPs                    | 31/12/2013 | Art. 30(9)     |
| Repeal of Directives 78/176/EEC, 82/883/EEC, 92/112/EEC, 1999/13/EC, 2000/76/EC, 2008/1/EC   | 07/01/2014 | Art. 81(1)     |
| Implementation date for articles mentioned in Art. 80(1) for installations <u>already falling under the scope</u> of Directive 2008/1/EC | 07/01/2014 | Art. 82(1)     |
| Implementation of articles 58 and 59(5) (use of organic solvents)  | 01/06/2015 | Art. 82(7)-(9) |
| Implementation date for Annex I activities <u>not covered</u> by Directive 2008/1/EC   | 07/07/2015 | Art. 82(2)     |
| Implementation date for combustion plants falling under Art. 30(2) (new emission limit values)   | 01/01/2016 | Art. 82(3)     |
| New emission limit values for <u>existing</u> combustion plants which co-incinerate waste  | 01/01/2016 | Art. 82(6)(a)  |
| Repeal of Directive 2001/80/EC   | 01/01/2016 | Art. 81(2)     |
| First report reviewing the implementation of the Directive   | 07/01/2016 | Art. 73(1)     |

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