

Industrial emissions - Integrated pollution prevention and control. Recast

2007/0286(COD) - 15/02/2010 - Council position

The European Parliament adopted 85 amendments to the Commission proposal. More than half (44) are acceptable to the Council and it has therefore included them in its common position (wholly, in part, or in principle). The Council did not accept the other 41 amendments because their added value was unclear or because they were not consistent with other parts of the common position. The common position also includes a number of changes other than those envisaged in the European Parliament's first-reading opinion.

Parliamentary amendments included in the common position: these include the following:

- a reference to the Århus Convention in the recitals;
- clarification of the definition of "emission levels associated with the best available techniques" (BAT-AELs);
- clarification of the definitions of "the public concerned" and of "emerging technique";
- the common position refers throughout the text, to "relevant hazardous substances" rather than to "dangerous substances";
- clarification of the definition of "environmental inspections";
- permits applying to more than one installation or more than one operator are an option;
- clarification of the organisation of the information exchange on BAT;
- the common position reflects the requirements to ensure that emission levels associated with BAT are not exceeded;
- instead of making a reference to "exceptional cases" to limit derogations from BAT-AELs as Parliament wanted, the common position would require the competent authority to make public the reasons for any derogation;
- incorporation in full of the amendment on monitoring of soil and groundwater;
- simplification of the provisions relating to the use of general binding rules;
- provision for BREFs to be made available to the public;
- clarification on the updating of permit conditions;
- reference to the Groundwater Directive in the text;
- the common position lists criteria permitting a systematic appraisal of installations' environmental risks. However, Parliament provided for the option of less frequent inspections, and the Council requires that the interval between inspections is risk-based in all cases;
- consistency with obligations under the Århus Convention;
- clarification on information to the public is appropriate. The common position also requires the publication on the internet of the most important information;
- amendment on reporting by Member States to the Commission on the setting of emission limit values;
- clarification of the scope in relation to non-ferrous metal foundries;
- Annex I (scope) is broadly consistent with some of the amendments made by the European Parliament;
- Annex V (combustion plants) is consistent with the amendment concerning the derogation for plants using liquid fuels. The common position also includes a derogation for solid fuels, but other than as proposed in the amendment. Annex V is also broadly consistent with Parliament's amendments.
- Annex VI (waste incineration plants and waste co-incineration plants) is partly consistent with Parliament's amendment but the common position retains a two-year interval for the monitoring of emissions of heavy metals.

Amendments not included in the common position: 41 amendments were not included in the common position for the following reasons:

- certain amendments are not consistent with the purpose of recitals agreed interinstitutionally (to justify the body of the legal act) or with the wording of standard recitals;
- others are not consistent with some of the changes that the Council has introduced, as set out below;
- some amendments are, in the Council's view, superfluous or could create legal confusion and others do not provide clarification or added-value. The common position does not reflect Parliamentary amendments which would, in certain cases, delay annual reporting by operators. In addition, the Council considers that a period of four months for making an inspection report publicly available is too long. It also considers Commission guidance more appropriate than binding criteria for the development and application of emerging techniques.

The Council feels that the **amendment of the annexes through comitology** should be restricted to technical provisions and, in particular, that co-decision is the appropriate procedure for the amendment of emission limit values. It did not accept amendments providing for the setting of legally binding emission limit values through Comitology. It was also concerned that this could lead to excessive reliance on the values so set, rather than the application of BAT, as well as to an increased administrative burden.

Other changes included in the common position: the changes of substance compared to the Commission's initial proposal concern principally: (a) the scope of the Directive; (b) the BREF adoption procedure; and (c) combustion plants.

Scope: the initial Commission proposal would have widened the scope of the Directive by lowering some thresholds and including in Annex I some activities previously not covered by the IPPC regime. The Council has reversed this in cases where it did not share the Commission's view that the environmental benefits would justify the costs of widening the scope. This concerns in particular the thresholds for combustion plants and for intensive farming and the requirement for manure spreading to be based on BAT. The Council has instead inserted a review clause (Article 73). It has also included a de minimis threshold of 15 MW for the calculation of the total rated thermal input of combustion plants subject to Chapter III, considering it disproportionate to include in the scope small plants with limited environmental impact.

Adoption of BREFs and BAT conclusions: the common position provides for the adoption of decisions (through the regulatory procedure with scrutiny) on BAT conclusions containing the key elements of BREFs. This ensures the involvement of all Member States in the adoption procedure and provides for scrutiny by the European Parliament and the Council and ensures that the crucial parts of BREFs are translated into all official EU languages, while avoiding the undue administrative burden of translating all parts of BREFs (which are lengthy and technical documents).

Combustion plants: the common position differs from the Commission's initial proposal in three main ways:

- (i) the date of application of the standards to new combustion plants would be 2 years after entry into force rather than 1 January 2016, since new plants should have no problem immediately applying the current BAT established in 2006;
- (ii) to take account of certain local conditions, costs in certain specific circumstances, and risks regarding the security of energy supply, the Council added a number of derogations for combustion plants in Articles 31 to 35 to provide flexibility:

- in the case of combustion plants firing indigenous solid fuels, the possibility of applying a desulphurisation rate rather than emission limit values for SO₂;
- to allow Member States to implement a 'transitional national plan' for certain combustion plants by applying decreasing annual ceilings for total emissions from participating plants between 2016 and 2020 instead of individual emission limit values;
- until 2023, for plants which will operate for a limited time before closure and for certain district heating plants; and
- until 2019, for plants which are part of small isolated systems;

(iii) the common position also introduces a review clause regarding certain specific combustion plants and provides for the existing emission limit values under Directive 2001/80/EC to continue to apply pending the possible adoption of new standards through co-decision.

Other changes: competent authorities would have 5 years to reconsider permits (instead of 4) after publication of a decision on BAT conclusions. The text includes some additional requirements to prevent soil and groundwater pollution, but also provides greater flexibility regarding baseline reports and site closure. To ensure proportionality and a high level of environmental protection, the article on environmental inspections provides for the period between site visits to reflect a systematic appraisal of environmental risks, while also defining a minimum frequency.

The Council believes that the common position represents a balanced package. It looks forward to constructive discussions with the European Parliament with a view to the early adoption of the Directive.