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<Commission>{PETI}Committee on Petitions</Commission>

<Date>{28/02/2018}28.2.2018</Date>

<TitreType>NOTICE TO MEMBERS</TitreType>

Subject: <TITRE>Petition No 0884/2016 by B. A. (Polish) on behalf of the West Pomeranian University of Technology in Szczecin, and seven other signatories on supplementing Directive 2008/50/EC as regards air quality and preparing a directive on assessing and managing odour levels in the environment</TITRE>

**1. Summary of petition**

The petitioner and a group of academics representing the air quality odour laboratory of the West Pomeranian University of Technology in Szczecin are calling on the Commission to prepare draft legislation to regulate the presence of odours in the environment. In this connection, the petitioner calls on the European Parliament to ask the Commission to present such draft legislation.

The petitioner points out that the levels of odorous substances can be measured (e.g. pursuant to technical standard EN 13725:2003) and stresses the impact that odours can have on the wellbeing of local communities, as well as the need to include odorous substances among the pollutants regulated by Directive 2008/50/EC (the CAFE Directive). Requirements concerning the level of odour nuisance would have an impact on the locations of new installations emitting odours in the vicinity of residential buildings or would require installations deodorising emitted gases to be efficient.

**2. Admissibility**

Declared admissible on 22 December 2016. Information requested from Commission under Rule 216(6).

**3. Commission reply**, received on 28 February 2017

Whilst at EU level there is not a specific piece of legislation addressing odour nuisance and it is not specifically addressed in Directive 2008/50/EC[[1]](#footnote-1), the problem is already addressed in the environmental acquis through a source specific approach - in particular, in sectoral legislation on waste and industrial emissions.

With regard to waste, Council Directive 1999/31/EC of 26 April 1999[[2]](#footnote-2) on the landfill of waste clearly requires Member States to take measures to minimise nuisances and hazards arising from landfill through the emissions of odours.

Concerning industrial emissions, Directive 2010/75/EU on industrial emissions (IED)[[3]](#footnote-3) requires the competent Member State authorities to address pollutant emissions in the conditions for permits of large industrial installations. Odorous emissions are covered by the definition of emissions in article 3(4) of the IED.

Odour emissions are also covered in BREFs[[4]](#footnote-4) [Best Available Techniques (BAT) reference documents], which are established in Commission Decisions for the various sectors of industrial activities covered by the IED.

Conclusion

The Commission does not intend to propose any specific legislation or to amend Directive 2008/50/EC to regulate or prevent odour nuisance, as the problem is already addressed in sectoral legislation.

As odour is primarily a local issue, it is best addressed at local level. Therefore, the Commission encourages Poland and other Member States to take measures at local and/or national level to verify specific situations of non-compliance and to address the problem if the concerns are found justified.

**4. Commission reply (REV)**, received on 28 February 2018

Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control)[[5]](#footnote-5) – hereinafter referred to as the Industrial Emissions Directive or IED – applies to activities listed in Annex I, including to the intensive rearing of poultry and pigs above the thresholds provided therein. Installations subject to the IED cannot operate without a permit which must be based on the application of Best Available Techniques (BAT) addressing emission to the environment, including odorous emissions as appropriate. The Commission adopts conclusions on BAT for the various sectors covered by the IED. These have to be used as a reference by the national competent authorities when setting permit conditions. The Commission has recently adopted BAT conclusions for the intensive rearing of poultry and pigs (Decision 2017/302[[6]](#footnote-6)). In the absence of a definition of odorous emissions in the IED or its implementing decisions, it is for the national competent authorities to establish what odorous emissions are and how these should be reduced. This could be done by referring to relevant EN or international or national standards, such as EN 13725:2003 in order to determine the odour concentration. For determination of the odour exposure a reference to EN 16841-1 or -2 can be used.

Concerning the alleged avoidance by farmers of applying for an integrated permit by dividing big farms into separate legal entities, it must be noted that, according to Article 3(3) IED, *"Installation means a stationary technical unit within which one or more activities listed in Annex I or in Part 1 of Annex VII are carried out, and any other directly associated activities on the same site which have a technical connection with the activities listed in those Annexes and which could have an effect on emissions and pollution”*. Article 3(15) IED further defines "operator" as: *"any natural or legal person who operates or controls in whole or in part the installation or combustion plant, waste incineration plant or waste co-incineration plant or, where this is provided for in national law, to whom decisive economic power over the technical functioning of the installation or plant has been delegated"*.

For granting an IED permit and ensuring compliance with resulting obligations, it is important to identify the boundaries of an installation. The wording “in whole or in part” in Article 3(15) clearly indicates that a single installation could be operated by two or more persons or companies. This also follows from Article 4(3) which allows Member States to provide that a permit cover several parts of an installation operated by different operators. Poland has made use of this option in its transposition of the IED (Art. 183b of the Environmental Protection Law Act, in Polish: *ustawa - Prawo ochrony środowiska*). In such cases, the permit shall specify the responsibilities of each operator.

These elements have to be taken into consideration when assessing whether several adjacent farms operated by different members of a family should be considered as a single installation. In this respect, it should be noted that the Industrial Emissions Directive includes important provisions on access to information, public participation in permitting procedures and access to justice, enabling citizens to ask for administrative or judicial review to challenge decisions, acts and omissions.

Further, it should be noted that, even if the adjacent facilities should not be considered to be one installation requiring a permit under the IED, their cumulative impact on the environment has to be taken into account in an assessment under Directive 2011/92/EU of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment.[[7]](#footnote-7)

Finally, according to the information available to the Commission, there is no evidence confirming a systemic practice in Poland concerning dividing facilities between family members in order to circumvent the requirements of the Industrial Emissions Directive.

Conclusion

The Commission maintains that odour is primarily a local issue and should best be addressed at local level by the competent authorities of the Member States. Therefore, it does not intend to propose any additional specific requirements regulating odour nuisances.

With regard to the alleged breach of the Industrial Emissions Directive, the national administrative and/or judicial bodies in charge of the implementation of the IED are primarily responsible for verifying specific situations and have the appropriate means to address a problem if the concerns are found justified. In the absence of evidence related to a practice which is applied consistently or a systematic breach, the Commission will not intervene further. The petitioner is encouraged to seek judicial or administrative review at national level.

1. OJ L 152, 11.6.2008, p. 1–44. [↑](#footnote-ref-1)
2. OJ L 182, 16.7.1999, p. 1–19. [↑](#footnote-ref-2)
3. OJ L 334, 17.12.2010, p. 17–119. [↑](#footnote-ref-3)
4. <http://eippcb.jrc.ec.europa.eu/reference/> [↑](#footnote-ref-4)
5. OJ L 334, 17.12.2010, p. 17. Available at:

 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32010L0075>. [↑](#footnote-ref-5)
6. OJ L 43, 21.2.2017, p. 231. Available at:

 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2017.043.01.0231.01.ENG>. [↑](#footnote-ref-6)
7. OJ L 26, 28.1.2012, p. 1. Available at:

 <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1515590202714&uri=CELEX:02011L0092-20140515> [↑](#footnote-ref-7)