



EUROPEAN PARLIAMENT

2009 - 2014

Session document

A7-0145/2010

6.5.2010

*****II**

RECOMMENDATION FOR SECOND READING

on the Council position at first reading for adopting a directive of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (recast)
(11962/2009 – C7-0034/2010 – 2007/0286(COD))

Committee on the Environment, Public Health and Food Safety

Rapporteur: Holger Krahmer

Symbols for procedures

*Consultation procedure

*** Consent procedure

***I Ordinary legislative procedure (first reading)

***II Ordinary legislative procedure (second reading)

***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* alerts the relevant departments to parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act which the draft act seeks to amend includes a third and fourth line identifying respectively the existing act and the provision in that act affected by the amendment. Passages in a provision of an existing act that Parliament wishes to amend, but the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the Council position at first reading for adopting a directive of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (recast)

(11962/2009 – C7-0034/2010 – 2007/0286(COD))

(Ordinary legislative procedure: second reading - recast)

The European Parliament,

- having regard to the Council position at first reading (11962/2009 – C7-0034/2010),
 - having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0844),
 - having regard to Article 251(2) and Article 175(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0002/2008),
 - having regard to the Communication from the Commission to the European Parliament and the Council entitled "Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures" (COM(2009)0665),
 - having regard to Article 294(7) and Article 192(1) of the Treaty on the Functioning of the EU,
 - having regard to its position at first reading¹,
 - having regard to the opinion of the European Economic and Social Committee²,
 - having regard to the opinion of the Committee of the Regions³,
 - having regard to Rule 66 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on the Environment, Public Health and Food Safety (A7-0145/2010),
1. Adopts its position at second reading hereinafter set out;
 2. Instructs its President to forward its position to the Council, to the Commission and to the national parliaments.

¹ OJ C 87 E, 1.4.2010, p. 191.

² Not yet published in the Official Journal.

³ Not yet published in the Official Journal.

Amendment 1

Council position Recital 2

Council position

(2) In order to prevent, reduce and as far as possible eliminate pollution arising from industrial activities in compliance with the "polluter pays" principle and the principle of pollution prevention, it is necessary to establish a general framework for the control of the main industrial activities, giving priority to intervention at source **and** ensuring prudent management of natural resources.

Amendment

(2) In order to prevent, reduce and as far as possible eliminate pollution arising from industrial activities in compliance with the "polluter pays" principle and the principle of pollution prevention, it is necessary to establish a general framework for the control of the main industrial activities, giving priority to intervention at source, ensuring prudent management of natural resources **and taking into account, when necessary, the socio-economic situation and specific local characteristics of the place in which the activity is taking place.**

Justification

The aim of this amendment is to consolidate the support for the establishment of justified exceptions already included in the Council's position.

Amendment 2

Council position Recital 3

Council position

(3) Different approaches to controlling emissions into air, water or soil separately may encourage the shifting of pollution from one environmental medium to another rather than protecting the environment as a whole. It is therefore appropriate to provide for an integrated approach to prevention and control of emissions into air, water and soil, to waste management, to energy efficiency and to accident prevention.

Amendment

(3) Different approaches to controlling emissions into air, water or soil separately may encourage the shifting of pollution from one environmental medium to another rather than protecting the environment as a whole. It is therefore appropriate to provide for an integrated approach to prevention and control of emissions into air, water and soil, to waste management, to energy efficiency and to accident prevention, **and to create a level playing field in the European Union by aligning environmental performance requirements for industrial plants.**

Justification

It is only once all industrial plants throughout the EU meet the BAT-based environmental standards that a higher level of environmental protection can be achieved without creating distortions of competition within the EU.

Amendment 3

Council position

Recital 9

Council position

(9) In order to avoid duplication of regulation, the permit for an installation covered by Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community ***should not*** include an emission limit value for direct emissions of the greenhouse gases specified in Annex I to that Directive except where it is necessary to ensure that no significant local pollution is caused or where an installation is excluded from that scheme.

Amendment

(9) In order to avoid duplication of regulation, the permit for an installation covered by Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community ***is not required to*** include an emission limit value for direct emissions of the greenhouse gases specified in Annex I to that Directive except where it is necessary to ensure that no significant local pollution is caused or where an installation is excluded from that scheme.

Justification

Amendment based on Rule 66.2d (i) for legal clarity as in accordance with Article 193 TFEU, Union laws do not preclude member states from applying more stringent national greenhouse gas requirements, and (ii) to enable those member states that choose to apply such requirements to do so within the integrated permit issued under this directive. Since EP first reading, UK, NL and Commission have indicated different legal interpretations of the Article 9.1 provision.

Amendment 4

Council position

Recital 9 a (new)

Council position

Amendment

(9a) In accordance with Article 193 of the Treaty on the Functioning of the European Union, nothing in this

Directive prevents Member States from maintaining or introducing more stringent protective measures, for example greenhouse gas emission requirements for installations that are covered by Annex I of Directive 2003/87/EC, provided that such measures are compatible with the Treaties and the Commission has been notified.

Justification

Since the first reading, public debates have emerged in several Member States about adopting rules on CO2 emissions from new thermal power plants. Diverging views have been expressed on the compatibility of such measures with EU law. An amendment to clarify this is therefore justified under Parliament's Rule of Procedure 66.2(d) "to take account of a new fact or legal situation which has arisen since first reading.

Amendment 5

Council position Recital 14

Council position

(14) It is important to provide sufficient flexibility to competent authorities to set emission limit values that ensure that, under normal operating conditions, emissions do not exceed the emission levels associated with the best available techniques. To this end, the competent authority may set emission limits that differ from the emission levels associated with the best available techniques in terms of the values, periods of time and reference conditions applied, so long as it can be demonstrated, through the results of emission monitoring, that emissions have not exceeded the emission levels associated with the best available techniques.

Amendment

(14) It is important to provide sufficient flexibility to competent authorities to set emission limit values that ensure that, under normal operating conditions, emissions do not exceed the emission levels associated with the best available techniques. ***Compliance with the emission limit values that are set in permits results in operational levels below those emission limit values.*** To this end, the competent authority may set emission limits that differ from the emission levels associated with the best available techniques in terms of the values, periods of time and reference conditions applied, so long as it can be demonstrated, through the results of emission monitoring, that emissions have not exceeded the emission levels associated with the best available techniques.

Amendment 6

Council position Recital 37

Council position

(37) In order to prevent, reduce and, as far as possible, eliminate pollution arising from industrial activities in the most cost-effective way while ensuring a high level of protection of the environment as a whole, in particular through the implementation of best available techniques, the possibilities for market-based instruments such as trading in nitrogen oxides and sulphur dioxide emissions could be explored.

Amendment

deleted

Justification

Introducing marked based instruments would further complicate the legislation. Furthermore nitrogen oxides and sulphur dioxide emissions have local and/or regional impacts and can therefore not be subject to trading at an EU scale. Deletion of new text by the Council.

Amendment 7

Council position Recital 38

Council position

(38) The measures necessary for the implementation of this Directive should be ***adopted*** in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.

Amendment

(38) According to Article 291 TFEU, rules and general principles concerning mechanisms for control, by Member States, of the Commission's exercise of implementing powers shall be laid down in advance by a regulation adopted in accordance with the ordinary legislative procedure. Pending the adoption of that new regulation, and given the necessity to adopt and implement this Directive as soon as possible, control by the Member States should be exercised in accordance with the provisions of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the

Commission, *insofar as those provisions remain compatible with the amended Treaties. References to those provisions should nevertheless be replaced with references to the rules and principles set out in the new regulation as soon as that regulation enters into force.*

Amendment 8

Council position Recital 39

Council position

(39) In order to allow the provisions of this Directive to be adapted to scientific and technical progress on the basis of best available techniques, the Commission should be empowered to adopt delegated acts in accordance with Article 290 *of the Treaty* in respect of *the adaptation of certain parts of Annexes V, VI and VII to such scientific and technical progress*. In the case of waste incineration plants and waste co-incineration plants, this may include the establishment of criteria to allow derogations from continuous monitoring of total dust emissions. It is of particular importance that the Commission *consult experts* during its preparatory work, *in accordance with the commitments made in the Commission Communication of 9 December 2009 on the implementation of Article 290 of the Treaty on the Functioning of the European Union*.

Amendment

(39) In order to allow the provisions of this Directive to be adapted to scientific and technical progress on the basis of best available techniques, the Commission should be empowered to adopt delegated acts in accordance with Article 290 *TFEU* in respect of *adopting the BAT conclusions and supplementing or amending the emission limit values and rules on monitoring and compliance already established under this Directive*. In the case of waste incineration plants and waste co-incineration plants, this may *inter alia* include the establishment of criteria to allow derogations from continuous monitoring of total dust emissions. It is of particular importance that the Commission *carry out appropriate consultations* during its preparatory work, *including at expert level*.

Justification

Apart from derogations from monitoring requirements of dust for waste incineration plants other derogations should be considered as long as adequate in terms of environmental protection. This may lead to a further reduction of unnecessary administrative burden notably for SMEs, which are strongly affected by the provisions of Chapter IV as that chapter is not subject to a de-minimis-threshold. During the preparatory phase of the adoption of delegated acts it is essential that the Commission ensures the broad involvement of experts from the

Member States, industry, NGOs as outlined inter alia in chapter 3.1 of COM (2007) 844 final.

Amendment 9

Council position
Recital 39 a (new)

Council position

Amendment

(39a) In addition, in order to allow the provisions of this Directive to be supplemented or amended with a view to ensuring consistent implementation across the Union of the best available techniques as described in the BAT reference documents, the Commission should, where necessary, be empowered to adopt delegated acts in accordance with Article 290 TFEU to further clarify the criteria that have to be taken into account by competent authorities when setting, in a limited number of specific cases, less strict emission values for installations taking into account the results of assessments on the geographical location or local environmental conditions of an installation or its technical characteristics. Those emission values should, however, not exceed the Union-wide minimum requirements for emission limit values and rules on monitoring and compliance.

Justification

Part of compromise package

Amendment 10

Council position
Recital 39 b (new)

Council position

Amendment

(39b) Furthermore, in order to allow the provisions of this Directive to be

supplemented or amended with a view to ensuring consistent implementation across the Union of best available techniques and systematic appraisal of the environmental risks of the installations concerned, the Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU in respect of rules concerning the determination of the start-up and shut-down periods, the date from which continuous measurements of emissions into the air of heavy metals, dioxins and furans are to be carried out, the type, format and frequency of information to be made available by the Member States to the Commission, and further criteria on the appraisal of the environmental risks.

Amendment 11

Council position Recital 39 c (new)

Council position

Amendment

(39c) In order to address distortions of competition within the internal market or significant environmental issues the Commission should, based on an assessment of the implementation of the best available techniques by certain activities or of the impact of those activities on the environment as a whole, present proposals for Union-wide minimum requirements for emission limit values or rules on monitoring and compliance.

Justification

Part of compromise package

Amendment 12

Council position

Article 3 – point 14

Council position

(14) "operator" means 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;

Amendment

(14) "operator" means any natural or legal person who operates or controls 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;

Justification

Deletion of a new term introduced by Council.

Amendment 13

Council position

Article 3 – point 18

Council position

(18) "baseline report" means information on the state of soil and groundwater contamination by relevant hazardous substances;

Amendment

(18) "baseline report" means ***quantified*** information on the state of soil and groundwater contamination by relevant hazardous substances;

Justification

Reinstating first reading Amendment 15.

Amendment 14

Council position

Article 3 – point 22

Council position

(22) "poultry" means poultry as defined in point 1 of Article 2 of Council Directive 90/539/EEC of 15 October 1990 on animal

Amendment

(22) "poultry" means poultry as defined in point 1 of Article 2 of Council Directive 90/539/EEC of 15 October 1990 on animal

health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs¹;

health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs¹, ***excluding poultry of the quail species***;

Justification

The Directive includes quail (0.25 kg) in the poultry category, likening quail farming to farming chickens (2 kg) or turkeys (10 kg), when in fact its environmental impact is far lower. It is therefore vital that we take into account the special nature of quail farming as compared to other kinds of poultry farming. Applying the Directive to quail farming is disproportionate and cannot be justified on environmental grounds. If these distinctions are ignored, there is a risk that quail farming in Europe will disappear, with the loss of hundreds of jobs.

Amendment 15

Council position
Article 3 – point 26

Council position

(26) "operating hours" means the time, expressed in hours, during which a combustion plant, in whole or in part, is operating and discharging emissions into the air, ***excluding*** start-up and shut-down periods;

Amendment

(26) "operating hours" means the time, expressed in hours, during which a combustion plant, in whole or in part, is operating and discharging emissions into the air, ***including*** start-up and shut-down periods;

Justification

*Amendment to a new definition introduced by Council.
Significant emissions occur during the start-up and shut down.*

Amendment 16

Council position
Article 3 – point 46 a (new)

Council position

Amendment

(46a) "general binding rules" means emission limit values or other conditions, defined in environmental legislation, at least at sector level, that are laid down with the intention of being used directly to

set permit conditions.

Justification

A clear definition of ‘general binding rules’ is necessary. Reinstatement of first reading Amendment 17.

Amendment 17

Council position

Article 8 – paragraph 2 – subparagraph 2

Council position

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, and until compliance is restored in accordance with points (b) and (c) of the first subparagraph, the operation of the installation, combustion plant, waste incineration plant, waste co-incineration plant or relevant part thereof shall be suspended.

Amendment

Where the breach of the permit conditions poses ***a significant*** danger to human health or the environment, and until compliance is restored in accordance with points (b) and (c) of the first subparagraph, the operation of the installation, combustion plant, waste incineration plant, waste co-incineration plant or relevant part thereof shall be suspended.

Justification

Partial reinstatement of first reading Amendment 21.

Amendment 18

Council position

Article 9 – paragraph 1

Council position

1. Where emissions of a greenhouse gas from an installation are specified in Annex I to Directive 2003/87/EC in relation to an activity carried out in that installation, ***the permit shall not include*** an emission limit value for direct emissions of that gas, unless necessary to ensure that no significant local pollution is caused.

Amendment

1. Where emissions of a greenhouse gas from an installation are specified in Annex I to Directive 2003/87/EC in relation to an activity carried out in that installation, ***Member States may choose not to impose*** an emission limit value for direct emissions of that gas, unless necessary to ensure that no significant local pollution is caused.

Justification

Amendment based on Rule 66.2d (i) for legal clarity as in accordance with Article 193 TFEU, Union laws do not preclude member states from applying more stringent national greenhouse gas requirements, and (ii) to enable those member states that choose to apply such requirements to do so within the integrated permit issued under this directive. Since EP first reading, UK, NL and Commission have indicated different legal interpretations of the Article 9.1 provision.

Amendment 19

Council position

Article 13 – paragraph 3 – subparagraph 3

Council position

Taking into account the opinion of the forum, the guidance referred to in point (c) and (d) of the second subparagraph shall be adopted in accordance with the regulatory procedure referred to in Article 75(2).

Amendment

Taking into account the opinion of the forum, the guidance referred to in point (c) and (d) of the second subparagraph shall ***consistently*** be adopted in accordance with the regulatory procedure referred to in Article 75(2) ***and shall be consistent with the opinion of the forum.***

Justification

There is a need to strengthen that the decision making in the regulatory committee will be consistent with the opinion of the Forum.

Amendment 20

Council position

Article 13 – paragraph 4

Council position

4. The Commission shall obtain the opinion of the forum on the proposed content of the BAT reference documents and shall take into account this opinion for the procedures laid down in paragraph 5.

Amendment

4. The Commission shall obtain ***and make publicly available*** the opinion of the forum on the proposed content of the BAT reference documents and shall take into account this opinion for the procedures laid down in paragraph 5.

Amendment 21

Council position

Article 13 – paragraph 5

Council position

5. Decisions on the BAT conclusions *shall be adopted in accordance with the regulatory procedure referred to in Article 75(2).*

Amendment

5. *The Commission shall adopt, by means of delegated acts in accordance with Article 76,* decisions on the BAT conclusions.

Justification

Part of compromise package

Amendment 22

Council position

Article 13 – paragraph 5 a (new)

Council position

Amendment

5a. Following the adoption of a decision on the BAT conclusions pursuant to paragraph 5, the Commission shall assess the need for Union action through the establishment of Union-wide minimum requirements for emission limit values and rules on monitoring and compliance for activities within the scope of the BAT conclusions concerned, on the basis of the following criteria:

(a) the impact of the activities concerned on the environment as a whole; and

(b) the state of implementation of best available techniques for the activities concerned.

Chapter III of and Annex V to this Directive shall be taken to deliver the Union-wide minimum requirements in the case of large combustion plants.

Having obtained the opinion of the forum referred to in paragraph 3, and not later than 18 months after the adoption of a

decision on the BAT conclusions, the Commission shall submit a report on the findings of the assessment to the European Parliament and to the Council.

Justification

Part of compromise package

Amendment 23

Council position

Article 13 – paragraph 5 b (new)

Council position

Amendment

5b. Where the report referred to in paragraph 5a identifies the need for Union-wide minimum requirements for emission limit values or rules on monitoring and compliance assessment, the Commission shall assess the options for setting such requirements. Where appropriate, the Commission shall present a legislative proposal for minimum requirements within 18 months of the submission of the report referred to in paragraph 5a.

Justification

Part of compromise package

Amendment 24

Council position

Article 13 – paragraph 6

Council position

Amendment

6. After the adoption of a decision in accordance with paragraph 5, the Commission shall without delay make the BAT reference document publicly available.

6. After the adoption of a decision in accordance with paragraph 5, the Commission shall without delay make the BAT reference document publicly available *and ensure that the BAT*

conclusions of the BAT reference document are made available in the official languages of the Member States. On request of a Member State, the Commission shall make available the entire BAT reference document in the requested language. The updating of BAT reference documents shall be finalised not later than eight years after the publication of the previous version.

Justification

Part of compromise package

Amendment 25

Council position

Article 14 – paragraph 1 – subparagraph 2 – point c – point i

Council position

(i) measurement methodology, frequency and evaluation procedure; and

Amendment

(i) measurement methodology, frequency and evaluation procedure **or equivalent methods**; and

Justification

Article 14(1) states that the permit should include all necessary measurements. These are made clearer in Paragraph 1 point c(i). It should be added for the purpose of clarification that other well-established methods which meet the required high environmental standards can also continue to be applied. This amendment could also make alternative methods permissible, so that the German system (no measurements at livestock holdings, fixed animal counting method used instead) could remain in place.

Amendment 26

Council position

Article 14 – paragraph 1 – subparagraph 2 – point d

Council position

(d) an obligation to supply the competent authority regularly, and at least annually, with:
(i) information on the basis of results of emission monitoring referred to in point (c)

Amendment

(d) an obligation to supply the competent authority regularly, and at least annually, with:
(i) information on the basis of results of emission monitoring referred to in point (c)

and other data that enables the competent authority to verify compliance with the permit conditions; and

(ii) where point (b) of Article 15(3) is applied, a summary of the results of emission monitoring which allows a comparison with the emission levels associated with the best available techniques;

and other **required** data that enables the competent authority to verify compliance with the permit conditions; and

(ii) where point (b) of Article 15(3) is applied, a summary of the results of emission monitoring which allows a comparison with the emission levels associated with the best available techniques;

The competent authority may request the information referred to in point (i) only every 24 months, provided that no serious breach of permit conditions was identified whilst carrying out an inspection.

Justification

This Amendment seeks a compromise in terms of the recurring reporting obligation for operators to the competent authority. It takes into account Amendment 20 of the Parliament's first reading position (reporting at least every second year – having regard to inspection results) and clarifies that the permit conditions should only prescribe the submission of data that are actually needed by the competent authorities to check the compliance.

Amendment 27

Council position

Article 14 - paragraph 1 - subparagraph 2 - point f

Council position

(f) measures relating to conditions other than normal operating conditions such as start-up, leaks, malfunctions, momentary stoppages and definitive cessation of operations;

Amendment

(f) measures relating to conditions other than normal operating conditions such as start-up **and shut-down operations**, leaks, malfunctions, momentary stoppages and definitive cessation of operations;

Amendment 28

Council position

Article 14 – paragraph 4

Council position

4. Without prejudice to Article 18, the competent authority may ***be allowed to*** set

Amendment

4. Without prejudice to Article 18, the competent authority may set stricter permit

stricter permit conditions than those achievable by the use of the best available techniques as described in the BAT conclusions.

conditions than those achievable by the use of the best available techniques as described in the BAT conclusions.

Member States may set rules under which the competent authority may set such stricter conditions.

Amendment 29

Council position

Article 14 – paragraph 6

Council position

6. Where an activity or a type of production process carried out within an installation is not covered by any of the BAT conclusions or where those conclusions do not address all the potential environmental effects of the activity or process, the competent authority shall set the permit conditions on the basis of the best available techniques that it has determined for the activities or processes concerned, by giving special consideration to the criteria listed in Annex III.

Amendment

6. Where an activity or a type of production process carried out within an installation is not covered by any of the BAT conclusions or where those conclusions do not address all the potential environmental effects of the activity or process, the competent authority shall, ***in consultation with the operator***, set the permit conditions on the basis of the best available techniques that it has determined for the activities or processes concerned, by giving special consideration to the criteria listed in Annex III.

Justification

It is the operator who knows his process the best, and he should be involved in determining the permit conditions which can be achieved using the best available techniques. Partial reinstatement of first reading Amendment 30.

Amendment 30

Council position

Article 15 – paragraph 4

Council position

4. By way of derogation from paragraph 3 the competent authority may, in specific cases, ***on the basis of an assessment of the environmental and economic costs and***

Amendment

4 . By way of derogation from paragraph 3 ***and without prejudice to Article 18***, the competent authority may, in ***a limited number of*** specific cases set ***less strict***

benefits taking into account the technical characteristics of the installation concerned, its geographical location and the local environmental conditions, set emission limit values deviating from those set by the application of paragraph 3.

emission limit values. Such a derogation may apply only where an assessment demonstrates that:

a) the geographical location or the local environmental conditions of the installation concerned prevent the implementation in all, or part, of that installation of best available techniques described in the BAT reference document or;

b) for installations existing at the time of the adoption of the BAT conclusions the technical characteristics of the installation concerned prevent the implementation in all, or part, of that installation of best available techniques described in the BAT reference document and;

c) the implementation of best available techniques as described in the BAT reference document would lead to disproportionately high costs for that installation compared to the environmental benefits. Those disproportionately high costs must be costs that were not taken into consideration in the exchange of information on the best available techniques referred to in Article 13.

The competent authority shall **provide** the reasons for the application of the first subparagraph including the result of the assessment and the justification for the conditions imposed.

Emission limit values shall, however, not exceed the emission limit values set out in Annexes **V to VIII**, *where applicable*.

The competent authority shall **document in an annex to the permit conditions** the reasons for the application of the first subparagraph including the result of the assessment and the justification for the conditions imposed **and notify this information to the Commission**. *Those* emission limit values shall, however, not exceed the **minimum requirements for** emission limit values set out **in accordance with Article 13(5b) or, where applicable, in Annexes to this Directive**.

Competent authorities shall not apply this paragraph where environmental quality standards risk not being met and shall in any case ensure that any deviation does not result in significant impact on the local environment.

Member States shall ensure that the members of the public concerned are given early and effective opportunities to participate in the decision-making process relating to the granting of the derogation referred to in this paragraph.

The Commission may *establish guidance specifying* the criteria to be taken into account for the application of this paragraph.

The Commission may, *where necessary, further clarify* the criteria to be taken into account for the application of this paragraph, *by means of adopting delegated acts in accordance with Article 76, on the basis of the reports referred to in Article 72(1) and in particular on the application of this paragraph.*

The competent authorities shall re-assess the application of the first subparagraph as part of each reconsideration of the permit conditions pursuant to Article 21.

The competent authorities shall re-assess the application of the first subparagraph as part of each reconsideration of the permit conditions pursuant to Article 21.

Justification

Part of compromise package

Amendment 31

Council position

Article 15 – paragraph 4 a (new)

Council position

Amendment

4a. Paragraphs 2, 3 and 4 shall apply to the spreading of livestock manure and slurry outside the site of the installation referred to in point 6.6 of Annex I, with the exception of areas included within the scope of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural

sources¹.

¹ OJ L 375, 31.12.1991, p. 1.

Justification

Reinstatement of first reading Amendment 114.

Amendment 32

Council position
Article 17

Council position

When adopting general binding rules ***as referred to in Article 6***, Member States shall ensure an integrated approach and a high level of environmental protection equivalent to that achievable with individual permit conditions. ***Member States shall ensure that those general binding rules are updated in accordance with developments in best available techniques.***

Amendment

1. When adopting general binding rules, Member States shall ensure an integrated approach and a high level of environmental protection equivalent to that achievable with individual permit conditions.

Justification

Deletion of addition introduced by Council. Linked to Amendment on Article 17, paragraph 3a (new).

Amendment 33

Council position
Article 17 – paragraph 1 a (new)

Council position

Amendment

1a. General binding rules shall be based on the best available techniques, without prescribing the use of any technique or specific technology in order to ensure compliance with Articles 14 and 15.

Justification

Reinstating first reading Amendment 34.

Amendment 34

Council position

Article 17 – paragraph 1 b (new)

Council position

Amendment

1b. Member States shall ensure that general binding rules are kept up to date with developments in the best available techniques in order to ensure compliance with Article 21.

Justification

Reinstating first reading Amendment 35.

Amendment 35

Council position

Article 17 – paragraph 1 c (new)

Council position

Amendment

1c. General binding rules adopted in accordance with paragraphs 1 to 1b shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication.

Justification

Reinstating Commission proposal text.

Amendment 36

Council position

Article 19

Council position

Amendment

Member States shall ensure that the competent authority follows or is informed of developments in best available techniques and of the publication of any

Member States shall ensure that the competent authority follows or is informed of developments in best available techniques and of the publication of any

new or updated BAT conclusions.

new or updated BAT conclusions, ***also informing the members of the public concerned.***

Justification

It is useful that the Member States inform the public concerned about developments of the BAT conclusions. Reinstating first reading Amendment 36.

Amendment 37

Council position

Article 21 – paragraph 3 – subparagraph 1 – introductory part

Council position

3. Within ***five*** years of publication of decisions on BAT conclusions in accordance with Article 13(5) ***relating to the main activity of an installation***, the competent authority shall ensure that:

Amendment

3. Within ***four*** years of publication of decisions on BAT conclusions in accordance with Article 13(5), the competent authority shall ensure that:

(Partial reinstating of first reading Amendment 37.)

Justification

The BREF are the result of a long process and once a decision on the BAT conclusions is taken it needs to be put in practice more swiftly in order to ensure that the drive for environmental innovation is kept. Therefore the 4 years proposed after publication represents a good compromise between the Commission and Council proposal. The Council text risks to lead to diverting implementation by Member States since competent authorities can have diverging interpretation of what is a 'main activity', leading to different treatment of industry and unlevel playing field.

Amendment 38

Council position

Article 22 – paragraph 2 – subparagraph 1

Council position

2. Where the activity involves the use, production or release of relevant hazardous substances and having regard to the possibility of soil and groundwater contamination at the site of the installation,

Amendment

2. Where the activity involves the use, production or release of ***significant amounts of*** relevant hazardous substances and having regard to the possibility of soil and groundwater contamination at the site

the operator shall prepare and submit to the competent authority a baseline report before starting operation of an installation or before a permit for an installation is updated for the first time after ...*.

of the installation, the operator shall prepare and submit to the competent authority a baseline report before starting operation of an installation or before a permit for an installation is updated for the first time after ...*.

In cases where provisions regarding water and soil protection are already being implemented at national level, Member States shall not draft a baseline report.

Amendment 39

Council position

Article 22 – paragraph 3– subparagraph 1

Council position

3. Upon definitive cessation of the activities, the operator shall assess the state of soil and groundwater contamination by relevant hazardous substances used, produced or released by the installation. Where the installation has caused **significant** pollution of soil or groundwater by relevant hazardous substances compared to the state established in the baseline report referred to in paragraph 2, the operator shall take the necessary measures to address that pollution so as to return the site to that state. For that purpose, the technical feasibility of such measures may be taken into account.

Amendment

3. Upon definitive cessation of the activities, the operator shall assess the state of soil and groundwater contamination by relevant hazardous substances used, produced or released by the installation. Where the installation has caused pollution of soil or groundwater by relevant hazardous substances compared to the state established in the baseline report referred to in paragraph 2, the operator shall take the necessary measures to address that pollution so as to return the site to that state. For that purpose, the technical feasibility of such measures may be taken into account.

Justification

Amending text introduced by Council.

Amendment 40

Council position

Article 22 – paragraph 3 – subparagraph 1 a (new)

Council position

Amendment

In cases where provisions regarding water and soil protection are already being implemented at national level, Member States shall not oblige the operator to assess the state of soil and groundwater contaminated by the relevant hazardous substances used, produced or released by the installation.

Justification

The additional bureaucratic administrative and monitoring responsibilities involved in writing a report on soil condition would result in a great deal of administrative work and very high costs for both farmers and national authorities. This bears no relation to the intended added value for environmental protection or to the aim of reducing the amount red tape contained in the entire IPPC Directive. It is foreseen that the report on soil condition should ensure the protection of water and soil. However, the requirements for the protection of water are regulated at European level, whereas soil protection is regulated at national level on the basis of the subsidiarity principle. Double regulation should be avoided in this case.

Amendment 41

Council position

Article 22 – paragraph 4 a (new)

Council position

Amendment

4a. This Article shall be interpreted according to the principles established in Article 191(2) TFEU. Moreover, Member States shall ensure that the general public is duly informed taking all the necessary measures to fulfil the content established herein.

Amendment 42

Council position

Article 23 – paragraph 4

Council position

4. Based on the inspection plans, the competent authority shall regularly draw up programmes ***for routine environmental inspections, including*** the frequency of site visits for different types of installations.

The period between two site visits shall be based on a systematic appraisal of the environmental risks of the installations concerned and shall not exceed one year for installations posing the highest risks and three years for installations posing the lowest risks.

The systematic appraisal of the environmental risks shall be based on ***at least the following*** criteria:

(a) the potential and actual impacts of the installations concerned 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;

(b) the record of compliance with permit conditions;

(c) participation in the Union eco-management and audit scheme

Amendment

4. Based on the inspection plans, the competent authority shall regularly draw up ***inspection*** programmes, ***determining*** the frequency of site visits for different types of installations.

Member States shall ensure that a sufficient number of appropriately qualified persons are available to carry out the inspections.

Those programmes shall include at least one random site visit every 18 months, for each installation. This frequency shall be increased to at least every 6 months if an inspection has identified a case of non-compliance with the permit conditions.

Where those programmes are based on a systematic appraisal of the environmental risks of the installations concerned, the frequency of site visits may be lowered to a minimum of one every 24 months.

The systematic appraisal of the environmental risks shall be based on ***objective*** criteria ***such as***:

(a) the record of the operator's compliance with the permit conditions;

(b) the impacts of the installation on the environment and human health; or

(c) the participation of the operator in the Union eco-management and audit scheme

(EMAS).

(EMAS), *pursuant to Regulation (EC) No 1221/2009¹, ISO 14 001, or the implementation of equivalent eco-management systems.*

The Commission may adopt, by means of delegated acts in accordance with Article 76, further criteria on the appraisal of the environmental risks.

¹ *Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) (OJ L 342, 22.12.2009, p. 1).*

Justification

Reinstating first reading Amendment 44

Amendment 43

Council position

Article 23 – paragraph 6 – subparagraph 2

Council position

The *draft* report shall be *sent* to the operator concerned *and the final* report shall be made publicly available *in accordance with Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information¹* within *three months* of the site visit taking place.

Amendment

The report shall be *notified* to the operator concerned *within two months*. *The* report shall be made publicly available *on the Internet by the competent authority* within *four months* of the site visit taking place.

Justification

Partial reinstating first reading Amendment 46.

Amendment 44

Council position

Article 24 – paragraph 1 – subparagraph 1 – point c a (new)

Council position

Amendment

(ca) updating of a permit or permit conditions for an installation where a derogation is to be granted in accordance with Article 15(4).

Justification

Part of compromise package

Amendment 45

Council position

Article 24 – paragraph 2 – introductory part

Council position

Amendment

2. When a decision on granting, reconsideration or updating of a permit has been taken, the competent authority shall make available to the public, including via the internet in relation to points (a) ***and (b)***, the following information:

2. When a decision on granting, reconsideration or updating of a permit has been taken, the competent authority shall make available to the public, including via the internet in relation to points (a) ***to (f) and paragraph 3***, the following information:

Justification

Partial reinstatement of amendment 54 of first reading.

In order to make this information public it should all be available via the internet.

Amendment 46

Council position

Article 24 – paragraph 2 – point e

Council position

Amendment

(e) how the permit conditions, ***including the emission limit values*** have been determined in relation to the best available

(e) how the permit conditions ***referred to in Article 14*** have been determined in relation to the best available techniques

techniques and associated emission levels;

and associated emission levels *as described in the BAT reference documents*;

Justification

Reinstating first reading Amendment 51.

Amendment 47

Council position

Article 24 – paragraph 2 – point f

Council position

(f) where Article 15(4) *is applied*, the reasons for that *application as referred to in the second subparagraph of Article 15(4)*.

Amendment

(f) where *a derogation is granted in accordance with* Article 15(4), the *specific* reasons for that *derogation based on the criteria laid down in that paragraph and the conditions imposed*;

Justification

Part of compromise package

Amendment 48

Council position

Article 24 – paragraph 2 – point f a (new)

Council position

Amendment

(fa) the result of the reconsideration of permit conditions as referred to in Article 21.

Justification

Reinstating first reading Amendment 53.

Amendment 49

Council position

Article 28 – subparagraph 2 – point i

Council position

(i) gas turbines used on offshore platforms;

Amendment

(i) gas turbines **and gas engines** used on offshore platforms;

Justification

Gas turbines and gas engines are competing technologies in the market segment of offshore platforms. In order to achieve a level playing field between these two technologies gas engine used on offshore platforms also need to be excluded from the scope of this directive.

Amendment 50

Council position

Article 30 – paragraph 2 – subparagraph 2

Council position

All permits for installations containing combustion plants which had been granted an exemption as referred to in Article 4(4) of Directive 2001/80/EC and which are in operation after 1 January 2016, shall include conditions ensuring that emissions into the air from these plants do not exceed the emission limit values laid down in Part 2 of Annex V.

Amendment

All permits for installations containing combustion plants which had been granted an exemption as referred to in Article 4(4) of Directive 2001/80/EC and which are in operation after 1 January 2016, shall include conditions ensuring that emissions into the air from these plants do not exceed the emission limit values laid down in Part **I** of Annex V.

Justification

Given that these are existing plants, the applicable emission limit values are those for existing plants (Annex V, part 1), not new plants (Annex V, part 2).

Amendment 51

Council position

Article 30 – paragraph 9

Council position

9. For the following combustion plants, on the basis of the best available

Amendment

deleted

techniques, the Commission shall review the need to establish Union-wide emission limit values and to amend the emission limit values set out in Annex V:

(a) the combustion plants referred to in paragraph 8;

(b) combustion plants within refineries firing the distillation and conversion residues from the refining of crude-oil for own consumption, alone or with other fuels, taking into account the specificity of the energy systems of refineries;

(c) combustion plants firing gases other than natural gas;

(d) combustion plants in chemical installations using liquid production residues as non-commercial fuel for own consumption.

The Commission shall, by 31 December 2013, report the results of this review to the European Parliament and to the Council accompanied, if appropriate, by a legislative proposal.

Justification

Deletes a review introduced by Council. It is not appropriate to foresee excluding refineries or chemical industry from the scope of the limit values under Chapter III.

Amendment 52

Council position Article 31

Council position

For combustion plants firing indigenous solid fuel, which cannot comply with the emission limit values for sulphur dioxide referred to in Article 30(2) and (3) due to the characteristics of this fuel, Member States may apply *instead* the minimum rates of desulphurisation set out in Part 5 of Annex V, in accordance with the compliance rules set out in Part 6 of that

Amendment

For combustion plants firing indigenous solid fuel, which cannot comply with the emission limit values for sulphur dioxide referred to in Article 30(2) and (3) due to the characteristics of this fuel, Member States may *instead* apply, *until 31 December 2017 at the latest*, the minimum rates of desulphurisation set out in Part 5 of Annex V, in accordance with the

Annex.

compliance rules set out in Part 6 of that Annex *and with prior validation by the competent authority of the technical report referred to in Article 72(4)(a).*

The Commission shall evaluate by 31 December 2013 whether an extension of the minimum rates of desulphurisation set out in Part 5 of Annex V may be granted, taking into account in particular the best available techniques and benefits obtained from reduced SO₂ emissions.

Justification

Amendment to new derogations introduced by Council.

Those Member States which do have plants that apply the special desulphurisation rate need to provide a technical justification of a non feasibility of complying with the regular Emission Limit Values.

Amendment 53

Council position Article 32

Council position

1. During the period from 1 January 2016 to **31 December 2020**, Member States may draw up and implement a transitional national plan covering combustion plants which were granted the first permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003. For each of the combustion plants covered by the plan, the plan shall cover emissions of one or more of the following pollutants: nitrogen oxides, sulphur dioxide and dust. For gas turbines, only nitrogen oxides emissions shall be covered by the plan.

The transitional national plan shall not include any of the following combustion

Amendment

1. During the period from 1 January 2016 to **30 June 2019** Member States may draw up and implement a transitional national plan covering combustion plants which were granted the first permit before 27 November 2002 or the operators of which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003. For each of the combustion plants covered by the plan, the plan shall cover emissions of one or more of the following pollutants: nitrogen oxides, sulphur dioxide and dust. For gas turbines, only nitrogen oxides emissions shall be covered by the plan.

The transitional national plan shall not include any of the following combustion

plants:

- (a) those to which Article 33(1) applies;
- (b) those within refineries firing low calorific gases from the gasification of refinery residues or the distillation and conversion residues from the refining of crude oil for own consumption, alone or with other fuels;
- (c) those to which Article 35 applies.

2. Combustion plants covered by the plan may be exempted from compliance with the emission limit values referred to in Article 30(2) for the pollutants which are subject to the plan or, where applicable, with the rates of desulphurisation referred to in Article 31.

The emission limit values for sulphur dioxide, nitrogen oxides and dust laid down in the permit for the combustion plant applicable on 31 December 2015, pursuant in particular to the requirements of Directives 2001/80/EC and 2008/1/EC, shall at least be maintained.

Combustion plants with a total rated thermal input of more than 500 MW firing solid fuels, which were granted the first permit after 1 July 1987, shall comply with the emission limit values for nitrogen oxides set out in Part 1 of Annex V.

3. For each of the pollutants it covers, the transitional national plan shall set a ceiling defining the maximum total annual emissions for all of the plants covered by the plan on the basis of each plant's total rated thermal input on 31 December 2010, its actual annual operating hours and its fuel use, averaged over the last ten years of operation up to and including 2010.

The ceiling for the year 2016 shall be calculated on the basis of the relevant emission limit values set out in Annexes III

plants:

- (a) those to which Article 33(1) applies;
- (b) those within refineries firing low calorific gases from the gasification of refinery residues or the distillation and conversion residues from the refining of crude oil for own consumption, alone or with other fuels;
- (c) those to which Article 35 applies.

(d) those which are granted an exemption as referred to in Article 4(4) of Directive 2001/80/EC.

2. Combustion plants covered by the plan may be exempted from compliance with the emission limit values referred to in Article 30(2) for the pollutants which are subject to the plan or, where applicable, with the rates of desulphurisation referred to in Article 31.

The emission limit values for sulphur dioxide, nitrogen oxides and dust laid down in the permit for the combustion plant applicable on 31 December 2015, pursuant in particular to the requirements of Directives 2001/80/EC and 2008/1/EC, shall at least be maintained.

Combustion plants with a total rated thermal input of more than 500 MW firing solid fuels, which were granted the first permit after 1 July 1987, shall comply with the emission limit values for nitrogen oxides set out in Part 1 of Annex V.

3. For each of the pollutants it covers, the transitional national plan shall set a ceiling defining the maximum total annual emissions for all of the plants covered by the plan on the basis of each plant's total rated thermal input on 31 December 2010, its actual annual operating hours and its fuel use, averaged over the last ten years of operation up to and including 2010.

The ceiling for the year 2016 shall be calculated on the basis of the relevant emission limit values set out in Annexes III

to VII to Directive 2001/80/EC or, where applicable, on the basis of the rates of desulphurisation set out in Annex III to Directive 2001/80/EC. In the case of gas turbines, the emission limit values for nitrogen oxides set out for such plants in Part B of Annex VI to Directive 2001/80/EC shall be used. The **ceilings** for the **years 2019 and 2020** shall be calculated on the basis of the relevant emission limit values set out in Part 1 of Annex V to this Directive or, where applicable, the relevant rates of desulphurisation set out in Part 5 of Annex V to this Directive. The ceilings for the years 2017 and 2018 shall be set providing a linear decrease of the ceilings between 2016 and 2019.

Where a plant included in the transitional national plan is closed or no longer falls within the scope of Chapter III, this shall not result in an increase in total annual emissions from the remaining plants covered by the plan.

4. The transitional national plan shall also contain provisions on monitoring and reporting that comply with the implementing rules established in accordance with point (b) of Article 41, as well as the measures foreseen for each of the plants in order to ensure timely compliance with the emission limit values that will apply from **1 January 2021**.

5. Not later than 1 January 2013, Member States shall communicate their transitional national plans to the Commission.

The Commission shall evaluate the plans and, where the Commission has raised no objections within 12 months of receipt of a plan, the Member State concerned shall consider its plan to be accepted.

When the Commission considers a plan not to be in accordance with the implementing

to VII to Directive 2001/80/EC or, where applicable, on the basis of the rates of desulphurisation set out in Annex III to Directive 2001/80/EC. In the case of gas turbines, the emission limit values for nitrogen oxides set out for such plants in Part B of Annex VI to Directive 2001/80/EC shall be used. The **ceiling** for the **year 2019** shall be calculated on the basis of the relevant emission limit values set out in Part 1 of Annex V to this Directive or, where applicable, the relevant rates of desulphurisation set out in Part 5 of Annex V to this Directive. The ceilings for the years 2017 and 2018 shall be set providing a linear decrease of the ceilings between 2016 and 2019.

Where a plant included in the transitional national plan is closed or no longer falls within the scope of Chapter III, this shall not result in an increase in total annual emissions from the remaining plants covered by the plan.

4. The transitional national plan shall also contain provisions on monitoring and reporting that comply with the implementing rules established in accordance with point (b) of Article 41, as well as the measures foreseen for each of the plants in order to ensure timely compliance with the emission limit values that will apply from **1 July 2019**.

5. Not later than 1 January 2013, Member States shall communicate their transitional national plans to the Commission.

The Commission shall evaluate the plans **as regards EU air quality objectives and potential discrimination in the internal market in electricity** and, where the Commission has raised no objections within 12 months of receipt of a plan, the Member State concerned shall consider its plan to be accepted.

When the Commission considers a plan not to be in accordance with the implementing

rules established in accordance with point (b) of Article 41, it shall inform the Member State concerned that its plan cannot be accepted. In relation to the evaluation of a new version of a plan which a Member State communicates to the Commission, the time period referred to in the second subparagraph shall be six months.

6. Member States shall inform the Commission of any subsequent changes to the plan.

rules established in accordance with point (b) of Article 41, it shall inform the Member State concerned that its plan cannot be accepted. In relation to the evaluation of a new version of a plan which a Member State communicates to the Commission, the time period referred to in the second subparagraph shall be six months.

6. Member States shall inform the Commission of any subsequent changes to the plan.

Justification

Part of compromise package

Amendment 54

Council position Article 33

Council position

1. During the period from 1 January 2016 to 31 December **2023**, combustion plants may be exempted from compliance with the emission limit values referred to in Article 30(2) and with the rates of desulphurisation referred to in Article 31, where applicable, and from their inclusion in the transitional national plan referred to in Article 32 provided that the following conditions are fulfilled:

(a) the operator of the combustion plant undertakes, in a written declaration submitted by 1 January 2014 at the latest to the competent authority, not to operate the plant for more than **20 000** operating hours, starting from 1 January 2016 and ending no later than 31 December **2023**;

(b) the operator is required to submit each

Amendment

1. During the period from 1 January 2016 to 31 December **2020**, combustion plants may be exempted from compliance with the emission limit values referred to in Article 30(2) and with the rates of desulphurisation referred to in Article 31, where applicable, and from their inclusion in the transitional national plan referred to in Article 32 provided that the following conditions are fulfilled:

(a) the operator of the combustion plant undertakes, in a written declaration submitted by 1 January 2014 at the latest to the competent authority, not to operate the plant for more than **12 500** operating hours, starting from 1 January 2016 and ending no later than 31 December **2020**;

(b) the operator is required to submit each

year to the competent authority a record of the number of operating hours since 1 January 2016;

(c) the emission limit values for sulphur dioxides, nitrogen oxides and dust laid down in the permit for the combustion plant applicable on 31 December 2015, pursuant in particular to the requirements of Directives 2001/80/EC and 2008/1/EC, shall at least be maintained during the remaining operational life of the combustion plant. Combustion plants with a total rated thermal input of more than 500 MW firing solid fuels, which were granted the first permit after 1 July 1987, shall comply with the emission limit values for nitrogen oxides set out in Part 1 of Annex V; and

(d) the combustion plant has not been granted an exemption as referred to in Article 4(4) of Directive 2001/80/EC.

2. At the latest on 1 January 2016, each Member State shall communicate to the Commission a list of any combustion plants to which paragraph 1 applies, including their total rated thermal input, the fuel types used and the applicable emission limit values for sulphur dioxide, nitrogen oxides and dust. For plants subject to paragraph 1, Member States shall communicate annually to the Commission a record of the number of operating hours since 1 January 2016.

3. In case of a combustion plant being, on ...*, part of a small isolated system and accounting at that date for at least 35 % of the electricity supply within that system, which is unable, due to its technical characteristics, to comply with the emission limit values referred to in Article 30(2), the number of operating hours referred to in point (a) of paragraph 1 of this Article shall be 18 000, starting from 1 January 2020 and ending no later than 31 December 2023, and the date referred to in point (b) of paragraph 1 and paragraph 2

year to the competent authority a record of the number of operating hours since 1 January 2016;

(c) the emission limit values for sulphur dioxides, nitrogen oxides and dust laid down in the permit for the combustion plant applicable on 31 December 2015, pursuant in particular to the requirements of Directives 2001/80/EC and 2008/1/EC, shall at least be maintained during the remaining operational life of the combustion plant. Combustion plants with a total rated thermal input of more than 500 MW firing solid fuels, which were granted the first permit after 1 July 1987, shall comply with the emission limit values for nitrogen oxides set out in Part 1 of Annex V; and

(d) the combustion plant has not been granted an exemption as referred to in Article 4(4) of Directive 2001/80/EC.

2. At the latest on 1 January 2016, each Member State shall communicate to the Commission a list of any combustion plants to which paragraph 1 applies, including their total rated thermal input, the fuel types used and the applicable emission limit values for sulphur dioxide, nitrogen oxides and dust. For plants subject to paragraph 1, Member States shall communicate annually to the Commission a record of the number of operating hours since 1 January 2016.

3. In case of a combustion plant being, on ...*, part of a small isolated system and accounting at that date for at least 35 % of the electricity supply within that system, which is unable, due to its technical characteristics, to comply with the emission limit values referred to in Article 30(2), the number of operating hours referred to in point (a) of paragraph 1 of this Article shall be 18 000, starting from 1 January 2020 and ending no later than 31 December 2023, and the date referred to in point (b) of paragraph 1 and paragraph 2

of this Article shall be 1 January 2020.

4. In case of a combustion plant with a total rated thermal input of more than 1 500 MW which started operating before 31 December 1986 and fires indigenous solid fuel with a net calorific value of less than 5 800 kJ/kg, a moisture content greater than 45 % by weight, a combined moisture and ash content greater than 60 % by weight and a calcium oxide content in ash greater than 10 %, the number of operating hours referred to in point (a) of paragraph 1 shall be 32 000.

of this Article shall be 1 January 2020.

4. In case of a combustion plant with a total rated thermal input of more than 1 500 MW which started operating before 31 December 1986 and fires indigenous solid fuel with a net calorific value of less than 5 800 kJ/kg, a moisture content greater than 45 % by weight, a combined moisture and ash content greater than 60 % by weight and a calcium oxide content in ash greater than 10 %, the number of operating hours referred to in point (a) of paragraph 1 shall be 32 000.

Justification

Part of compromise package

Amendment 55

Council position

Article 35 – paragraph 1 – introductory part

Council position

1. Until 31 December **2023**, a combustion plant may be exempted from compliance with the emission limit values referred to in Article 30(2) and the rates of desulphurisation referred to in Article 31 provided that the following conditions are fulfilled:

Amendment

1. Until 31 December **2019**, a combustion plant may be exempted from compliance with the emission limit values referred to in Article 30(2) and the rates of desulphurisation referred to in Article 31 provided that the following conditions are fulfilled:

Justification

Part of compromise package

Amendment 56

Council position

Article 46 – paragraph 2 – subparagraph 1 a (new)

Council position

Amendment

For waste co-incineration combustion plants that fire indigenous solid fuel and

cannot comply with the emission limit values for sulphur dioxide referred to in Part 4 of Annex VI due to the characteristics of this fuel, Member States may apply instead the minimum rates of desulphurisation set out in Part 5 of Annex V, in accordance with the compliance rules set out in Part 6 of that Annex.

Justification

Under Directives 2000/76/EC and 2001/80/EC, the co-incineration of waste is also permitted in combustion plants that use indigenous high-sulphur fuels. The Council's common position also provides for the possibility of using high-sulphur indigenous coal, albeit not in co-incineration plants. On the grounds of saving resources and equal treatment, it should also be possible to use high-sulphur indigenous coal in co-incineration plants, in compliance with the conditions on desulphurisation set out in Annex V.

Amendment 57

Council position

Article 48 – paragraph 5

Council position

5. As soon as appropriate measurement techniques are available within the Union, the date from which continuous measurements of emissions into the air of heavy metals and dioxins and furans are to be carried out ***shall be set in accordance with the regulatory procedure referred to in Article 75(2).***

Amendment

5. As soon as appropriate measurement techniques are available within the Union, ***the Commission shall, by means of delegated acts in accordance with Article 76, set*** the date from which continuous measurements of emissions into the air of heavy metals and dioxins and furans are to be carried out.

Amendment 58

Council position

Article 72 – paragraph 1

Council position

1. Member States shall ensure that information is made available to the Commission on the implementation of this Directive, on representative data on

Amendment

1. Member States shall ensure that information is made available to the Commission on the implementation of this Directive, on representative data on

emissions and other forms of pollution, on emission limit values, on the application of best available techniques in accordance with Articles 14 and 15 and on progress made concerning the development and application of emerging techniques in accordance with Article 27. Member States shall make the information available in an electronic format.

emissions and other forms of pollution, on emission limit values, on the application of best available techniques in accordance with Articles 14 and 15, ***in particular on the granting of exemptions in accordance with Article 15(4)***, and on progress made concerning the development and application of emerging techniques in accordance with Article 27. Member States shall make the information available in an electronic format.

Justification

Part of compromise package

Amendment 59

Council position

Article 72 – paragraph 2

Council position

2. The type, format and frequency of information to be made available pursuant to paragraph 1 ***shall be established in accordance with the regulatory procedure referred to in Article 75(2)***. This shall include the determination of the specific activities and pollutants for which data referred to in paragraph 1 shall be made available.

Amendment

2. The ***Commission shall adopt, by means of delegated acts in accordance with Article 76, requirements for the*** type, format and frequency of information to be made available pursuant to paragraph 1. This shall include the determination of the specific activities and pollutants for which data referred to in paragraph 1 shall be made available.

Amendment 60

Council position

Article 72 – paragraph 4 – point a

Council position

(a) for combustion plants to which Article 31 applies, the sulphur content of the indigenous solid fuel used and the rate of desulphurisation achieved, averaged over each month; and

Amendment

(a) for combustion plants to which Article 31 applies, ***the technical justification of non-feasibility of complying with the emission limit values referred to in Article 30(2) and (3)***, the sulphur content of the indigenous solid fuel used and the rate of

desulphurisation achieved, averaged over each month; and

Justification

Amendment to new derogations introduced by Council. Those Member States which do have plants that apply the special desulphurisation rate need to provide a technical justification of a non feasibility of complying with the regular Emission Limit Values.

Amendment 61

Council position

Article 73 – paragraph 2 – point a – point ii

Council position

Amendment

(ii) the intensive rearing of cattle; and deleted

Justification

Deletion of new text by the Council.

Amendment 62

Council position

Article 73 – paragraph 2 – point a – point iii

Council position

Amendment

(iii) the spreading of manure; and deleted

Justification

This new text by the Council is now covered by Amendment on Article 15, paragraph 4a (new). Deletion of new text by the Council.

Amendment 63

Council position

Article 73 – paragraph 2 – point a – points iii a - iii d (new)

Council position

Amendment

(iiia) installations carrying out the activities referred to in points 2.1 and 2.2

of Annex I, in particular dioxins and furans;
(iiib) installations carrying out the activities referred to in points 1.1 and 1.2 of Annex I, in particular mercury;
(iiic) installations carrying out the activities referred to in points 2.1, 2.2, 2.3, 2.4 of Annex I, in particular heavy metals and their compounds such as arsenic, cadmium, chromium, cyanides, lead, nickel, copper; dioxin and furans, perfluorocarbons, phenols, polycyclic aromatic hydrocarbons, and sulphur hexafluoride; and
(iiid) all other installations covered by Annex I where it was established in the European PRTR 2007 reporting year, that a given Annex I activity contributes to at least 20% of the total emissions from Annex I activities.

Justification

Amendment to new text introduced by Council. The European Safety net provides for an important minimal safeguard against continuing poor implementation of BAT. It is essential that the Commission assesses the total emissions caused by Annex I activities and proposes legislative proposals in order to control emissions from those sectors that contribute most to total emissions, in accordance with the pollution prevention principle.

Amendment 64

Council position Article 74

Council position

In order to allow the provisions of this Directive to be adapted to scientific and technical progress on the basis of best available techniques, the Commission shall ***adopt*** delegated acts in accordance with Article 76 ***as regards the adaptation of Parts 3 and 4 of Annex V, Parts 2, 6, 7 and 8 of Annex VI and Parts 5, 6, 7 and 8 of Annex VII to such scientific and technical progress.***

Amendment

1. In order to allow the provisions of this Directive to be adapted to scientific and technical progress on the basis of best available techniques ***as described in the BAT reference documents concerned,*** the Commission shall, ***not later than 12 months after the publication of the BAT conclusions in accordance with Article 13, supplement or amend the minimum requirements for emission limit values and rules on monitoring and compliance as already established under***

this Directive by means of delegated acts
in accordance with Article 76.

Justification

Part of compromise package

Amendment 65

Council position

Article 74 – paragraph 1 a (new)

Council position

Amendment

1a. Before the adoption of the measures referred to in paragraph 1, the Commission shall consult the relevant industry and non-governmental organisations promoting environmental protection and shall report on the outcome of the consultations and how they have been taken into account.

Justification

Part of compromise package

Amendment 66

Council position

Article 76 – paragraph 1

Council position

Amendment

1. The power to adopt the delegated acts referred to in **Article 74** shall be conferred on the Commission for a period of five years following the entry into force of this Directive. The Commission shall make a report in respect of the delegated *powers* at the latest six months before the end of the five year period. The delegation of power

1. The power to adopt the delegated acts referred to in **Articles 13(5), 15(4), 23(4), 41, 48(5), 72(2) and 74** shall be conferred on the Commission for a period of five years following the entry into force of this Directive. The Commission shall make a report in respect of the delegated *power* at the latest six months before the end of the

shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 77.

five year period. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 77.

Amendment 67

Council position

Article 77 – paragraph 1

Council position

1. The delegation of power referred to in **Article** 74 may be revoked by the European Parliament or by the Council.

Amendment

1. The delegation of power referred to in **Articles 13(5), 15(4), 23(4), 41, 48(5), 72(2) and** 74 may be revoked **at any time** by the European Parliament or by the Council.

Amendment 68

Council position

Article 77 – paragraph 2

Council position

2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall inform the other institution and the Commission **at the latest one month** before the final decision is taken, **stating** the delegated *powers* which could be subject to revocation and *the* reasons for a revocation.

Amendment

2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall **endeavour to** inform the other institution and the Commission **within a reasonable time** before the final decision is taken, **indicating** the delegated *power* which could be subject to revocation and **possible** reasons for a revocation.

Amendment 69

Council position

Article 77 – paragraph 3

Council position

3. The decision of revocation shall put an end to the delegation of the *powers*

Amendment

3. The decision of revocation shall **state the reasons for the revocation and shall**

specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the *Official Journal of the European Union*.

put an end to the delegation of the *power* specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the *Official Journal of the European Union*.

Amendment 70

Council position Article 78

Council position

1. The European Parliament or the Council may object to ***the*** delegated act within a period of ***three*** months from the date of notification.

2. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, ***or if, before that date, the European Parliament and the Council have both informed the Commission that they have decided not to raise objections, the delegated*** act shall enter into force at the date stated therein.

3. If the European Parliament or the Council objects to ***the*** delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.

Amendment

1. The European Parliament or the Council may object to ***a*** delegated act within a period of ***two*** months from the date of notification. ***At the initiative of the European Parliament or the Council this period shall be extended by two months.***

2. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act, ***it shall be published in the Official Journal of the European Union and*** shall enter into force at the date stated therein.

3. If the European Parliament or the Council objects to ***a*** delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.

Amendment 71

Council position Annex I – introductory part – paragraph 1 a (new)

Council position

Amendment

When calculating the total rated thermal input of installations referred to in point 1.1 for combustion plants used in healthcare facilities, only the normal

running capacity shall be included for the purposes of that calculation.

Justification

This amendment was adopted by the EP at first reading. It recognises the need for significant standby capacity in hospitals which is vital to ensure the continuity of patient care in the event of a technical failure. It also avoids penalising hospitals for their potential for emissions rather than actual emissions.

Amendment 72

Council position

Annex I – introductory part – paragraph 1 b (new)

Council position

Amendment

When calculating the total rated input of installations referred to in point 1.1, combustion plants with a thermal rated input below 50 MW and operating no more than 500 hours per year shall not be included for the purposes of that calculation.

Justification

This amendment re-introduces the Commission's original text and EP AM 63 from first reading intended to address standby capacity issues for emergency generators, such as those used by hospitals. These installations are not a source of significant emissions as in principle they only operate in the event of a major power failure and/or for testing purposes a few hours per year. The amendment also excludes very small installations under 3 MW where the cost and administrative burden of including them by far outweigh the benefits.

Amendment 73

Council position

Annex I – point 3.5

Council position

Amendment

3.5. Manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain with a production capacity exceeding 75 tonnes per day **and/or** with a

3.5. Manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain with a production capacity exceeding 75 tonnes per day **and** with a

kiln capacity exceeding 4m³ and with a setting density per kiln exceeding 300 kg/m³

kiln capacity exceeding 4m³ and with a setting density per kiln exceeding 300 kg/m³

Justification

This Amendment reinstates partly Amendment 117 of the first reading and intends to remove an unclarity by changing the term “and/or” to “and”.

Amendment 74

Council position

Annex I – point 5.3 – point b – paragraph 2

Council position

When the only waste treatment activity carried out is anaerobic digestion, the capacity threshold for this activity shall be 100 tonnes per day.

Amendment

deleted

Amendment 75

Council position

Annex V – Part 4 – point 1

Council position

1. In the case of continuous measurements, the emission limit values set out in Parts 1 and 2 shall be regarded as having been complied with if the evaluation of the measurement results indicates, for operating hours within a calendar year, that all of the following conditions have been met:

(a) no validated ***monthly*** average value exceeds the relevant emission limit values set out in Parts 1 and 2;

(b) no validated daily average value exceeds 110 % of the relevant emission limit values set out in Parts 1 and 2;

(c) in cases of combustion plants

Amendment

1. In the case of continuous measurements, the emission limit values set out in Parts 1 and 2 shall be regarded as having been complied with if the evaluation of the measurement results indicates, for operating hours within a calendar year, that all of the following conditions have been met:

(a) no validated ***daily*** average value exceeds the relevant emission limit values set out in Parts 1 and 2;

composed only of boilers using coal with a total rated thermal input below 50 MW, no validated daily average value exceeds 150 % of the relevant emission limit values set out in Parts 1 and 2,

(d) 95 % of all the validated hourly average values over the year do not exceed 200 % of the relevant emission limit values set out in Parts 1 and 2.

The validated average values are determined as set out in point 10 of Part 3.

For the purpose of the calculation of the average emission values, the values measured during the periods referred to in Article 30(5) and (6) and Article 37 as well as during the start-up and shut-down periods shall be disregarded.

(b) 95 % of all the validated hourly average values over the year do not exceed 200 % of the relevant emission limit values set out in Parts 1 and 2.

The validated average values are determined as set out in point 10 of Part 3.

Justification

Reinstating first reading Amendment 77. Whereas the BREF BAT levels reflect daily averages, Annex V requires the ELVs to be met on a monthly basis. In addition, daily average values cannot exceed 110% of the ELV and 95% of hourly averages over 1 year shall not exceed more than twice the ELVs. The Commission proposal makes no distinction between pre-2016 and post-2016 plants. While keeping the same compliance rules for new and existing plants, it is necessary to align them with the BAT conclusions of the BREF which are based on daily averages and not monthly averages.

Amendment 76

Council position

Annex VI – Part 6 – point 2.6 – introductory part

Council position

2.6. The competent authority may decide to require one measurement *every two years* for heavy metals and *one measurement per year* for dioxins and furans in the following cases:

Amendment

2.6. The competent authority may decide to require *only* one measurement *per year* for heavy metals and for dioxins and furans in the following cases:

Justification

Reinstatement of first reading amendment 78. It is unacceptable that the proposal lends

competent authorities the right to allow no measurements to be taken of heavy metals, dioxins and furan emissions to air based on reports from operators on the quality of wastes. Once monitoring ceases, two of the conditions become irrelevant as monitoring information is not available to assess emissions. We need continuous monitoring system for heavy metal since continuous monitoring of all heavy metals is the only way to ensure that emissions of these highly toxic, persistent and bioaccumulative substances are below the mandatory ELVs.

EXPLANATORY STATEMENT

I. BACKGROUND

The objective of the 1996 Integrated Pollution Prevention and Control (IPPC) Directive is to prevent and control emissions to air, water and soil from industrial installations across the European Union. To achieve this objective the IPPC Directive aims at promoting the implementation of *Best Available Techniques (BAT)*, i.e. those economically and technically viable techniques which are most effective in achieving a high level of environmental protection. The best available techniques are defined in the so-called *BAT reference (BREF) documents*. These are technical documents drawn up through an information exchange involving the Commission, Member State authorities and other stakeholders (the 'Seville Process').

The IPPC Directive covers some 52 000 industrial installations, which account for a large share of total air pollution in the EU. Under the IPPC Directive, Member State authorities are required to take the BREF documents into account when granting permits for individual industrial installations and setting *emission limit values (ELVs)* for particular installations. In addition to polluting the air, industrial activities may also pollute water and soil or create waste, therefore requiring an integrated approach in order to consider the overall impact on the environment. In 2005 the Commission undertook a review of the IPPC Directive, resulting in a proposal for a Directive on industrial emissions that revised and merged into a single Directive seven separate existing Directives relating to industrial emissions. The proposal aimed at ensuring better implementation and enforcement of the legislation by national authorities so as to achieve a high level of environmental protection, while at the same time simplifying the legislation and reducing unnecessary administrative burdens. Your Rapporteur in general supported the Commission's strategy, while focusing on:

- bringing to an end the different implementation and enforcement in the Member States. Disparities in the transposition of the existing legislation puts environmental protection at risk and results in distortion of competition;
- safeguarding as much as possible the valuable information exchange through the 'Seville Process';
- reducing unnecessary red tape.

II. FIRST READING IN EP

The European Parliament adopted its first reading position in plenary on the 10th of March 2009 with a broad majority: 402 votes in favour and 189 against.

An important issue at first reading stage was the proposal by the Commission to determine emission limit values directly on the basis of the BAT reference documents. In the view of the European Parliament, this was not workable in practice. It would result in undesirable political influence being exerted on the Seville Process. Therefore, the European Parliament proposed a fundamental change, providing for the setting-up of a comitology committee subject to parliamentary scrutiny, which would have the task of laying down measures to limit emissions in the form of minimum requirements. The minimum requirements would form a

European safety network whose rules could not be breached by any installation. At the level of the competent authorities on the spot, measures to limit emissions are laid down for individual installations which are designed to result in emission levels which on average meet the requirements laid down in the BAT reference documents, with some leeway so that proper account can be taken of local circumstances. This provision is intended to deal with the problem that spikes in emission values which may exceed the levels associated with the descriptions of the best available techniques may occur during normal operations, for example when an installation starts up. On no account, however, may the ceilings imposed by the European Safety Network be exceeded. This proposal strikes a balance between the introduction of European standards relating to the issuing of permits for industrial installations and allowing Member States vitally needed leeway to take account of the technical characteristics of a given installation, its geographical location and local environmental conditions.

III. SECOND READING

The position of the Council at first reading on the Directive on industrial emissions was adopted on 15 February 2010. While the first reading position of the European Parliament was aiming at better implementation of the IPPC Directive and preventing distortion of competition, in the view of the Rapporteur some new provisions in the Council position goes in the other direction. The Council position did not take up the idea of a European Safety Network for emission limit values, but introduced more flexibility for *Large Combustion Plants (LCPs)* to comply with the emission limit values set out in Annexes V to VIII.

Your Rapporteur respects the first reading position of the European Parliament as much as possible in his second reading report, as the first reading position was adopted by a broad majority. Many of the amendments adopted in the first reading have been reinstated. With respect to the European Safety Network, your Rapporteur made a new proposal, maintaining the objective to ensure high level environmental protection and to remedy distortions of competition in the Union, caused by disparities in the transposition of existing legislation. Your Rapporteur proposes to lay down Union wide minimum requirements for emission limit values and rules on monitoring and compliance based on the BAT conclusions, but only for those activities where Union action is needed based on the following criteria:

- (a) The impact of the sector concerned on the environment as a whole;
- (b) The state of implementation of BAT in the sector concerned.

In return, your Rapporteur reduces the many new derogation provisions in the Council position. Derogations should only be possible in exceptional cases. The so-called *Transitional National Plan (TNP)*, which Member States can implement to give LCPs five years additional time to implement the emission limit values laid down in Annex V provides too much flexibility. It can provoke distortions of competition in the Union as some combustion plants have already made investments in order to comply with the emission limit values concerned. Furthermore not all Member States will implement a transitional national plan. Also the 'limited life time derogation' can provoke distortions of competition in the Union. Combustion plants with a limited lifetime of 20 000 operating hours do not have to invest in best available techniques in order to comply with the emission limit values laid down in Annex V. Moreover

the *limited life time derogation* will jeopardise the Commission's 'Thematic Strategy on Air Pollution' that aims among other things to reduce SO₂ emissions by 82% and NO_x emissions by 60% by 2020 compared to 2000 levels. For this reason your Rapporteur also proposes to limit the end date for the *district heating plants* provision, which should not be later than 2020.

Your Rapporteur is not in favour of further complicating the legislation by introducing market based instruments to achieve the objectives of the Directive. The implementation of market-based instruments such as trading, in addition to the setting of emission limit values, will only result in a limited further reduction of emissions at disproportionate costs.

PROCEDURE

Title	Industrial emissions (integrated pollution prevention and control) (recast version)
References	11962/3/2009 – C7-0034/2010 – 2007/0286(COD)
Date of Parliament's first reading – P number	10.3.2009 T6-0093/2009
Commission proposal	COM(2007)0844 - C6-0002/2008
Date receipt of common position announced in plenary	11.3.2010
Committee responsible Date announced in plenary	ENVI 11.3.2010
Rapporteur(s) Date appointed	Holger Krahmer 21.2.2008
Discussed in committee	17.3.2010
Date adopted	4.5.2010
Result of final vote	+: 40 –: 13 0: 4
Members present for the final vote	János Áder, Elena Oana Antonescu, Kriton Arsenis, Pilar Ayuso, Paolo Bartolozzi, Sandrine Bélier, Sergio Berlato, Martin Callanan, Nessa Childers, Chris Davies, Esther de Lange, Bas Eickhout, Karl-Heinz Florenz, Elisabetta Gardini, Françoise Grossetête, Cristina Gutiérrez-Cortines, Satu Hassi, Jolanta Emilia Hibner, Karin Kadenbach, Christa Kläß, Holger Krahmer, Jo Leinen, Corinne Lepage, Peter Liese, Kartika Tamara Liotard, Radvilė Morkūnaitė-Mikulėnienė, Miroslav Ouzký, Vladko Todorov Panayotov, Gilles Pargneaux, Andres Perello Rodriguez, Sirpa Pietikäinen, Mario Pirillo, Pavel Poc, Vittorio Prodi, Frédérique Ries, Anna Rosbach, Oreste Rossi, Daciana Octavia Sârbu, Richard Seeber, Theodoros Skylakakis, Catherine Soullie, Salvatore Tatarella, Anja Weisgerber, Glenis Willmott, Sabine Wils
Substitute(s) present for the final vote	Tadeusz Cymański, Matthias Groote, Jiří Maštálka, Miroslav Mikolášik, Bill Newton Dunn, Renate Sommer, Bart Staes, Michail Tremopoulos, Marita Ulvskog, Elżbieta Katarzyna Łukacijewska
Substitute(s) under Rule 187(2) present for the final vote	George Sabin Cutaş, Francesco Enrico Speroni