



**COUNCIL OF
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STATEMENT OF THE COUNCIL'S REASONS

Subject: Position of the Council at first reading with a view to the adoption of a Directive of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (Recast)
- Adopted by the Council on 15 February 2010

STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

The Commission adopted its proposal¹ for a Directive on industrial emissions (integrated pollution prevention and control) in December 2007. The proposal uses the recast technique.²

The Committee of the Regions adopted its opinion in October 2008³ while the Economic and Social Committee adopted its opinion in January 2009.⁴

The European Parliament adopted its first-reading opinion in March 2009.⁵

The Council adopted its position at first reading on 15 February 2010.

II. OBJECTIVE

The aim of the proposal is to revise and merge seven separate existing directives concerning industrial emissions in order to achieve a high level of environmental protection while simplifying the legal framework and avoiding unnecessary administrative burdens. The use of the recast technique makes it possible to combine in a single text substantive amendments and provisions which remain unchanged.

¹ doc. 5088/08 - COM(2007) 844 final

² cf. the Institutional Agreement of 28 November 2001 on a more structured use of the recasting technique (OJ C 77, 28.3.2002, p. 1.)

³ OJ C 325, 19.12.2008, p.60.

⁴ OJ C 182, 4.8.2009, p. 46.

⁵ doc. 7391/09

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

1. General

The European Parliament adopted 85 amendments to the Commission proposal. More than half (44) are acceptable to the Council and it has therefore included them in its position at first reading (wholly, in part, or in principle).

The Council did not accept the other 41 amendments because their added value was unclear or because they were not consistent with other parts of the Council's position at first reading.

The Council's position at first reading also includes a number of changes other than those envisaged in the European Parliament's first-reading opinion. Section 4 below describes the principal changes of substance. In addition, there are drafting changes to reflect the entry into force of the Treaty on the Functioning of the EU, to clarify the text and to ensure the overall coherence of the proposed Directive.

2. EP amendments included in the Council's position at first reading

The Council's position at first reading incorporates the following amendments, either fully or partly, or text with the same or partly the same objective: **7, 12, 13, 14, 15, 16, 18, 19, 21, 22, 23, 27, 29, 31, 32, 33, 34, 35, 36, 37, 40, 41, 44, 47, 49, 50, 51, 52, 53, 54, 55, 59, 64, 65, 66, 68, 71, 72, 73, 75, 79, 93 and 115, 97 and 117.**

Recital 26 includes a reference to the Århus Convention consistent with the aim of amendment 7.

The definition of "emission levels associated with the best available techniques" (BAT-AELs) in Article 3(12) is, in substance, the same as the one proposed in amendment 12.

Article 3(16) defines "the public concerned" in a manner fully consistent with amendment **13**.

The definition of "emerging technique" in Article 3(13) is consistent with the second part of amendment **14**.

The Council's position at first reading refers, in Article 3(18) and throughout the text, to "relevant hazardous substances" rather than to "dangerous substances", which is partly consistent with amendments **15, 29** and **41**.

The definition of "environmental inspections" in Article 3(21) is partly consistent with amendment **16**.

The Council's modifications to Articles 3(14), 4(2) and 4(3) have the same aim as those proposed in amendments **18** and **19** (clarifying that permits applying to more than one installation or more than one operator are an option).

Articles 8(2) and 11(h) add clarification that is consistent with the aim of amendment **21** and partly consistent with that of amendment **22**.

The cross-reference to Article 22(2) added to Article 12(1)(e) has partly the same aim as amendment **23**.

Article 13 on BAT reference documents (BREFs) and exchange of information largely reflects amendments **27** and **55**.

Articles 14(2) and 15(3)(b) contain provisions on the setting of emission limit values similar to those proposed in amendment **31**.

Instead of making a reference to "exceptional cases" to limit derogations from BAT-AELs (amendment **32**), the Council's position at first reading would require the competent authority to make public the reasons for any derogation (Articles 15(4) and 24(2)(f)).

Article 16 fully incorporates amendment **33** on monitoring of soil and groundwater.

Article 17 is partly consistent with amendments **34** and **35** on general binding rules.

The Council's position at first reading is also partly consistent with amendment **36** in that Article 13 provides for BREFs to be made available to the public.

Article 21(3) includes clarification on the updating of permit conditions equivalent to that proposed in amendment **37**.

By referring to the groundwater directive, Article 22(1) reflects part of amendment **40**.

Article 23 is partly consistent with amendment **44**, in that it lists criteria permitting a systematic appraisal of installations' environmental risks. However, while in the amendment this would have provided the option of less frequent inspections, in the Council's position at first reading the interval between inspections would be risk-based in all cases.

Article 24 reflects amendment **47** in part (the deletion of the reference to general binding rules, but not the substitution of a reference to derogations granted under Article 15(4), for which information to the public is appropriate). The Council's position at first reading also incorporates the deletions proposed in amendments **49**, **50** and **53** and text similar to that proposed in amendments **51** and **52**. It partly incorporates amendment **54**, by requiring the publication on the internet of the most important information.

Amendment **59** is acceptable in principle, but the Council considers that there is no need to amend Article 72(1), which already requires Member States to report to the Commission on the application of BAT. Moreover, the Council's position at first reading would require the competent authority to make public the reasons for any derogation from BAT-AELs (Articles 15(4) and 24(2)(f)).

Annex I (scope) is broadly consistent with amendments **64**, **65**, **66**, **68**, **93** and **115** and **117**.

Annex V (combustion plants) is consistent with the part of amendment **71** concerning the derogation for plants using liquid fuels. The Council's position at first reading also includes a derogation for solid fuels, but other than as proposed in the amendment.

Annex V is also broadly consistent with amendments **72**, **73**, **75** and **97**.

Annex VI (waste incineration plants and waste co-incineration plants) is partly consistent with amendment **79**, but the Council's position at first reading retains a two-year interval for the monitoring of emissions of heavy metals.

3. EP Amendments not included in the Council's position at first reading

The following amendments were not acceptable for the Council: **1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 17, 20, 24, 25, 26, 28, 30, 38, 39, 42, 43, 45, 46, 48, 56, 57, 58, 60, 61, 62, 63, 67, 69, 70, 76, 77, 78, 80, 114, 129/rev and 133/rev.**

They were not acceptable for the following reasons.

- Amendments **1, 2, 3, 4, 5, 6, 8, 9, 10** and **11** are not consistent with the purpose of recitals agreed interinstitutionally (to justify the body of the legal act) or with the wording of standard recitals.
- Amendments **30, 43, 57, 63, 67, 69, 70, 76, 77, 78, 80, 114, 129/rev** and **133/rev** are not consistent with some of the changes that the Council has introduced, as set out in section 4 below.
- Amendments **24, 25, 26, 28, 38, 39, 45, 48** and **58** are, in the Council's view, superfluous or could create legal confusion.
- Amendments **17, 42** and **60** would not, in the Council's view, provide clarification or added-value.

In addition, the Council did not accept amendment **20**, because it would, in certain cases, delay annual reporting by operators; amendment **46**, considering the period of four months for making an inspection report publicly available is too long; and amendment **56**, since the Council considers Commission guidance more appropriate than binding criteria for the development and application of emerging techniques.

The Council could not accept amendment **61**, considering that only technical provisions in the annexes should be amended by means of delegated acts and, in particular, that the ordinary legislative procedure is the appropriate procedure for the amendment of emission limit values.

The Council could not accept amendment 62 for similar reasons, since it would have provided for the setting of legally-binding emission limit values through comitology. It was also concerned that this could lead to excessive reliance on the values so set, rather than the application of BAT, as well as to an increased administrative burden.

4. Other changes included in the Council's position at first reading

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

(a) Scope

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

(b) Adoption of BREFs and BAT conclusions

The Council's position at first reading provides for the adoption of decisions (through the regulatory procedure) on BAT conclusions containing the key elements of BREFs. This would ensure the involvement of all Member States in the adoption procedure. It would also result in the crucial parts of BREFs being translated into all official EU languages, while avoiding the undue administrative burden of translating all parts of BREFs (which are lengthy and technical documents).

(c) Combustion plants

The Council's position at first reading differs from the Commission's initial proposal in three main ways.

First, the date of application of the standards to new combustion plants would be 2 years after entry into force rather than 1 January 2016, since new plants should have no problem immediately applying the current BAT established in 2006.

Second, to take account of certain local conditions, costs in certain specific circumstances, and risks regarding the security of energy supply, the Council added a number of derogations for combustion plants in Articles 31 to 35 to provide flexibility:

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

Third, the Council's position at first reading also introduces a review clause (Article 30(9)) regarding certain specific combustion plants and provides for the existing emission limit values under Directive 2001/80/EC to continue to apply pending the possible adoption of new standards through ordinary legislative procedure.

(d) Other changes

Competent authorities would have 5 years to reconsider permits (instead of 4) after publication of a decision on BAT conclusions (Article 21(3)).

Article 22 includes some additional requirements to prevent soil and groundwater pollution, but also provides greater flexibility regarding baseline reports and site closure.

To ensure proportionality and a high level of environmental protection, Article 23 on environmental inspections provides for the period between site visits to reflect a systematic appraisal of environmental risks, while also defining a minimum frequency.

IV. CONCLUSION

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

