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Committee on the Environment, Public Health and Food Safety

2007/0286(COD)

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*****II**

DRAFT 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 Kraemer

(Recast - Rule 87 of the Rules of Procedure)

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: [...].

CONTENTS

| | Page |
|---|-------------|
| DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION..... | 5 |
| EXPLANATORY STATEMENT..... | 40 |

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 its position at first reading¹,
 - 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 the opinion of the Economic and Social Committee,
 - having regard to the opinion of the Committee of the Regions,
 - 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 (A7-0000/2010),
1. Adopts the 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 Texts adopted, 10.3.2009, P6_TA(2009)0093.

Amendment 1

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.

Or. en

Amendment 2

Council position

Recital 18

Council position

(18) The spreading of manure contributes significantly to emissions of pollutants into air and water. With a view to meeting the objectives set out in the Thematic Strategy on Air Pollution and Union law on water protection, it is necessary for the Commission to review the need to establish the most suitable controls of these emissions through the application of best available techniques.

Amendment

deleted

Justification

Linked to Amendment to Article 73, paragraph 2, subparagraph a, indent iii. Deletion of Council text.

Amendment 3**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

Or. en

Justification

Introducing market 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 4**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

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 are to be laid down in advance by a regulation adopted in

on the Commission.

accordance with the ordinary legislative procedure. Pending the adoption of that new regulation, and given the necessity to adopt and implement as soon as possible this Directive, control by 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.

Or. en

Amendment 5

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*

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 include the establishment of criteria to allow derogations from continuous monitoring of total dust emissions.

the implementation of Article 290 of the Treaty on the Functioning of the European Union.

Or. en

Justification

Amendment of a new recital introduced by Council. Linked to amendment to Article 74, paragraph 1.

Amendment 6

Council position
Recital 39 a (new)

Council position

Amendment

(39a) In order to allow the provisions of this Directive to be adapted to the results of assessments by the Commission on the need for Union-wide minimum requirements for emission limit values and rules on monitoring and compliance for certain activities within the scope of the BAT conclusions concerned, the Commission should, on the basis of the impact of those activities on the environment as a whole, or the state of implementation of best available techniques for these activities, be empowered to adopt delegated acts in accordance with Article 290 TFEU in respect of 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.

Or. en

Amendment 7

Council position Recital 39 b (new)

Council position

Amendment

(39b) 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 be empowered to adopt delegated acts in accordance with Article 290 TFEU in respect of laying down specific criteria for the setting, in exceptional cases, of less strict emission values by competent authorities 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 shall, however, not exceed the Union-wide minimum requirements for emission limit values and rules on monitoring and compliance.

Or. en

Amendment 8

Council position Recital 39 c (new)

Council position

Amendment

(39c) 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.

Or. en

Amendment 9

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;

Or. en

Justification

Deletion of a new term introduced by Council.

Amendment 10

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 ***significant amounts of*** relevant hazardous substances;

Or. en

Justification

Reinstating first reading Amendment 15.

Amendment 11

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 to be used directly to set permit conditions.

Or. en

Justification

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

Amendment 12

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 point (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.

Or. en

Justification

Partial reinstatement of first reading Amendment 21.

Amendment 13

Council position

Article 12 - paragraph 1 - point e

Council position

(e) ***where applicable***, a baseline report ***in accordance with Article 22(2)***;

Amendment

(e) ***where the activity involves significant amounts of relevant hazardous substances***, a baseline report ***providing information on those substances***;

Or. en

Justification

Reinstatement of first reading Amendment 23.

Amendment 14

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.

Or. en

Amendment 15

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.

Or. en

Amendment 16

Council position

Article 13 - paragraph 5 a (new)

Council position

Amendment

5a. Following the adoption of a decision on BAT conclusions under 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.

Having obtained the opinion of the forum referred to in paragraph 3, and not later than 12 months after the adoption of a decision on BAT conclusions, the Commission shall submit a report on the findings of the assessment to the European Parliament and to the Council.

Or. en

Amendment 17

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 and rules on monitoring and compliance, the Commission may adopt, by means of delegated acts in accordance with Article 76, minimum requirements for emission limit values and rules on monitoring and compliance for the activities concerned.

Or. en

Amendment 18

Council position

Article 13 - paragraph 6

Council position

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

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 ***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 8 years after the publication of the previous version.***

Or. en

Justification

Partial reinstatement of amendment 27 of first reading.

Amendment 19

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;

Or. en

Amendment 20

Council position

Article 14 - paragraph 4

Council position

4. Without prejudice to Article 18, the competent authority may **be allowed to** set stricter permit conditions than those achievable by the use of the best available techniques as described in the BAT conclusions.

Amendment

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

Or. en

Amendment 21

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.

Or. en

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 22

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 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*.

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*.

Amendment

4. By way of derogation from paragraph 3 *and without prejudice to Article 18*, the competent authority may, in *exceptional* cases, set *less strict* 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 the whole, or part, of that installation of best available techniques described in the BAT reference document or;

b) the technical characteristics of the installation concerned prevent the implementation in the whole, or part, of that installation of best available techniques described in the BAT reference document or;

c) the implementation of best available techniques as described in the BAT reference document would lead to an obvious disparity between economic costs and environmental advantages, which give reason to consider proportionality anew.

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.

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 V to VIII.

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 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 Commission may ***adopt, by means of delegated acts in accordance with Article 76, specific criteria for the granting of the derogation referred to in 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.

Or. en

Justification

Partial reinstatement of amendment 32 of first reading.

Amendment 23

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.

Or. en

Justification

Reinstatement of first reading Amendment 114.

Amendment 24

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.

Or. en

Justification

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

Amendment 25

Council position

Article 17 - paragraph 1 a (new)

Council position

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.***

Amendment

Or. en

Justification

Reinstating first reading Amendment 34.

Amendment 26

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.

Or. en

Justification

Reinstating first reading Amendment 35.

Amendment 27

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.

Or. en

Justification

Reinstating Commission proposal text.

Amendment 28

Council position

Article 19

Council position

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.

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

Or. en

Justification

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

Amendment 29

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, 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 ...*

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 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 ...*

Or. en

Justification

Partial reinstatement of first reading Amendment 41

Amendment 30

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), pursuant to Regulation (EC) No

(EMAS).

1221/2009¹, 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).

Or. en

Justification

Reinstating first reading Amendment 44

Amendment 31

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.

Or. en

Justification

Partial reinstating first reading Amendment 46.

Amendment 32

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).

Or. en

Justification

Reinstating first reading Amendment 47

Amendment 33

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 techniques and associated emission levels;

(e) how the permit conditions ***referred to in Article 14*** have been determined in relation to the best available techniques and associated emission levels ***as described in the BAT reference documents;***

Or. en

Justification

Reinstating first reading Amendment 51.

Amendment 34

Council position

Article 24 - paragraph 2 - point f

Council position

Amendment

(f) where Article 15(4) ***is applied***, the reasons for that ***application as referred to***

(f) where ***a derogation is granted in accordance with*** Article 15(4), the ***specific***

in the second subparagraph of Article 15(4).

reasons for that *derogation based on the criteria laid down in that paragraph and the conditions imposed;*

Or. en

Justification

Reinstating first reading Amendment 52.

Amendment 35

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.

Or. en

Justification

Reinstating first reading Amendment 53.

Amendment 36

Council position

Article 28 - subparagraph 2 - point i

Council position

Amendment

(i) gas turbines used on offshore platforms;

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

Or. en

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 37

Council position

Article 32

Council position

Amendment

Article 32

deleted

Transitional National Plan

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 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 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 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.

Or. en

Justification

The implementation of the Transitional National Plan will result in increased emissions. Furthermore, this provision can provoke distortions of competition in the Community as some combustion plants already made investments in order to comply with the emission limit values concerned and also because not all Member States will implement a transitional national plan. Deletion of new text by the Council.

Amendment 38

Council position

Article 33

Council position

Amendment

Article 33

deleted

Limited life time derogation

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 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.

Or. en

Justification

This provision can provoke distortions of competition in the Community as combustion plants that are covered by this provision do not have to invest in best available techniques in order to comply with the emission limit values concerned. Furthermore this article will jeopardise EU environmental goals set for 2020 (the 'Thematic Strategy on Air Pollution' of the Commission aims to reduce SO₂ emissions by 82% and NO_x emissions by 60% by 2020 compared to 2000 levels). Deletion of new text by the Council.

Amendment 39

Council position

Article 35 - paragraph 1 - subparagraph 1

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:

Or. en

Justification

It is not desirable that the end date of this provision lies far beyond the 2020 target date foreseen in the 'Thematic Strategy on Air Pollution' of the Commission, to reduce among others SO₂ emissions by 82% and NO_x emissions by 60% compared to 2000 levels. Amends a new article introduced by Council.

Amendment 40

Council position

Article 41

Council position

Implementing rules

Implementing rules shall be established concerning:

Amendment

Start-up and shut-down periods

The Commission shall adopt, by means of delegated acts in accordance with Article 76, rules concerning the determination of the start-up and shut-down periods referred to in point 26 of Article 3 and in point 1 of

(a) the determination of the start-up and shut-down periods referred to in point 26 of Article 3 and in point 1 of Part 4 of Annex V; *and*

(b) *the transitional national plans referred to in Article 32 and, in particular, the setting of emission ceilings and related monitoring and reporting.*

*Those implementing rules shall be adopted in accordance with the regulatory procedure referred to in Article 75(2). The Commission shall make appropriate proposals not later than ...**

** OJ: 6 months after the date of entry into force of this Directive.*

Or. en

Justification

In accordance with amendment on Article 32. Deletion of new Council text .

Amendment 41

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.

Or. en

Amendment 42

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 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.***

Amendment

1. Member States shall ensure that information is made available to the Commission on the implementation of this Directive, on representative data on the emissions and other ***environmental effects***, on emission limit values, on the application of best available techniques in accordance with Articles 14 and 15 and on ***the derogations granted in accordance with Article 15(4)***.

Member States shall develop and regularly upgrade national information systems to make available to the Commission in an electronic format the information referred to in the first subparagraph. Member States shall make available to the public a summary of the information provided.

Or. en

Justification

Reinstating first reading Amendment 59 and 60.

Amendment 43

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

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.***

include the determination of the specific activities and pollutants for which data referred to in paragraph 1 shall be made available.

This shall include the determination of the specific activities and pollutants for which data referred to in paragraph 1 shall be made available.

Or. en

Amendment 44

Council position

Article 73 - paragraph 2 - point a - point ii

Council position

Amendment

(ii) the intensive rearing of cattle; and

deleted

Or. en

Justification

Deletion of new text by the Council.

Amendment 45

Council position

Article 73 - paragraph 2 - point a - point iii

Council position

Amendment

(iii) the spreading of manure; and

deleted

Or. en

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 46

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.

Or. en

Justification

Partial reinstatement of amendment 61 of first reading.

Amendment 47

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.**

Or. en

Justification

Partial reinstatement of amendment 61 of first reading.

Amendment 48

Council position

Article 76 - paragraph 1

Council position

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 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

1. The power to adopt the delegated acts referred to in **Articles 13, 15, 23, 41, 48, 72 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 powers at the latest six months before the end of the 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.

Or. en

Amendment 49

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, 15, 23, 41, 48, 72 and 74** may be revoked by the European Parliament or by the Council.

Or. en

Amendment 50

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 powers which could be subject to revocation and the **possible** reasons for a revocation.

Or. en

Amendment 51

Council position

Article 77 - paragraph 3

Council position

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

3. The decision of revocation shall **state the reasons for the revocation and shall** put an end to the delegation of the powers 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*.

Or. en

Amendment 52

Council position

Article 78

Council position

1. The European Parliament or the Council may object to **the** delegated act within a

Amendment

1. The European Parliament or the Council may object to **a** 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.

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 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.

Or. en

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.