

Industrial emissions - Integrated pollution prevention and control. Recast

2007/0286(COD) - 23/02/2010 - Commission communication on Council's position

The Commission accepted in full, in part or in principle 47 of the 85 amendments adopted by Parliament in its first reading. **32 of these 47 amendments are reflected, at least in part**, in the Council's position at first reading. The Commission accepted amendments, either fully or in principle or in part, which would clarify the context of the proposal and are consistent with the general objective of the proposal. These include changes to improve the provision of information to the public in line with the approach taken in the Commission's proposal to increase transparency in permitting, enforcement and compliance.

The Commission rejected amendments which would alter the nature of the proposal, such as amendments that would reduce the scope of the provisions setting minimum requirements for large combustion plants. It also rejected amendments that would create legal confusion, would lead to difficulties in implementation or would be inconsistent with the core elements of the proposal.

The Commission details the **32 amendments which have been incorporated to varying degrees in the Council's position** at first reading. It notes that **12 amendments were rejected by the Commission but have been incorporated in full, in part or in principle in the Council's position at first reading**. These include provisions on soil protection and on the monitoring of soil and groundwater. The Commission also notes that it rejected the amendment on the setting of emission limit values on the basis of it being inconsistent with one of the core principles of the Commission's proposal, significantly weakening the level of environmental protection. The amendment is incorporated in part and in principle in the common position with regard to the requirements to ensure that emission levels associated with BAT are not exceeded, and the Commission accepts this. It further notes that it rejected an amendment concerning an increase of the limit values for NO_x emissions for certain large combustion plants as this would lower the environmental ambition of the proposal but this has been included in principle in the Council's position at first reading in a way that is acceptable.

15 amendments were accepted in full, in part or in principle by the Commission but not incorporated in the Council's common position. These amendments relate to language in the recitals, reporting on compliance, informing the competent authority following the cessation of activities, inspection reporting, definition of the public concerned, emerging techniques, monitoring, provision of information to the public, amendment of Annexes, establishment of new additional minimum requirements through regulatory committee procedure and establishment of guidance concerning intensive rearing of poultry.

Lastly, **26 amendments were rejected by both institutions.**

The Council proposed the following main changes to the Commission's proposal:

Information exchange on Best Available Techniques (BAT): the Council's common position maintains the principle and content of the information exchange proposed by the Commission but adds provisions on the role of the forum while providing more details on the drawing up process and content of the BAT reference documents. The Commission agrees with the inclusion of these additional provisions, which are consistent with the current BAT reference document drawing up process. However, the Commission regrets that the Council provides for the adoption of non-binding guidance via regulatory committee procedure since the Commission has its own autonomous right under the Treaty to do so. The Council's common position cannot affect this right, and a declaration is annexed to the Communication.

Procedure for adopting BAT conclusions:the Council provides for the adoption of the BAT conclusions (parts of the BAT reference documents laying down in particular the BAT-associated emission levels) via a regulatory procedure. However, in the Council political agreement, the regulatory procedure with scrutiny had been proposed. The Commission does not share the views of the Council that Article 291 TFEU is the most appropriate legal basis for the adoption of the measures regarding decisions on the BAT conclusions. Those measures are of general application and seek to supplement the basic act with certain new non-essential elements. As a result, their adoption should fall under the procedure of delegated acts (Article 290 TFEU) and a declaration is annexed to this document.

The Commission also notes that the changes introduced by the Council will require additional tasks to be carried out by the Commission, increasing the resources to be allocated by the Commission for the procedure for drawing up and adopting the BAT reference documents.

Emission limit values in relation to emission levels associated with the BAT: the Council provides greater flexibility for competent authorities to set emission limit values while ensuring that emissions do not exceed the emission levels associated with the BAT as described in the BAT conclusions. The Commission regrets these changes but can accept this approach since the necessary safeguards have been introduced through monitoring and reporting requirements to ensure compliance with the expected environmental objectives. The derogation, in specific cases, from the application of Article 15(3) based on certain criteria is maintained but the Commission regrets that the possibility of specifying these criteria through regulatory committee procedure is replaced by the establishment of guidance. However, in order to reach an agreement, the Commission can accept this approach.

Assessment of powers to be conferred on the Commission in relation to Article 41 (rules for combustion plants) and Article 48(5) (monitoring of certain emissions from waste incineration plants): the Commission does not share the views of the Council that Article 291 TFEU is the most appropriate legal basis for the adoption of the measures prescribed in Articles 41 and 48(5). Those measures are of general application and seek to supplement the basic act with certain new non-essential elements. As a result, their adoption should fall under the procedure of delegated acts (Article 290 TFEU) and a declaration is annexed to this Communication.

Reconsideration of permits:the Council maintains the proposed obligation for competent authorities to reconsider and, where necessary, update permit conditions after the publication of a decision on BAT conclusions. However, the Council extends the time period from four to five years after such publication. The Commission regrets this change but can accept it since the time extension is limited and the actual frequency of permit reconsideration will remain unchanged.

Soil protection:the Council's common position contains additional requirements on the prevention of soil and groundwater contamination to be included in permit conditions. The approach of setting minimum frequencies for the monitoring of soil and groundwater is retained but less frequent monitoring may be set by competent authorities based on a systematic appraisal of the risk of contamination. The Council maintains the provisions relating to the establishment of baseline reports and the requirements upon cessation of activities while introducing some flexibility for implementation of the provisions. While the Commission would prefer its original proposal, the changes are considered acceptable since they do not jeopardise the key principles of the proposal.

Inspections:the Council retains the approach of the proposal with the certain changes. The determination of the period between two site visits to an installation has to be set on the basis of a systematic appraisal of the environmental risks (in the proposal, the appraisal of the risks was required only to derogate from the obligation of an annual site visit). This period cannot be longer than one or three years for installations posing respectively the highest and the lowest risks. The Commission considers that this requirement is useful as it provides safeguards for the setting of frequency for site visits. Although the Commission

regrets the removal of the regulatory committee procedure for setting the criteria on the appraisal of the risks, it considers that the criteria laid down in the Council's common position are appropriate.

Start date for new large combustion plants: the Council brings forward the date of application of the standards for new large combustion plants from 2016 to two years after the date of entry into force of the Directive. The Commission agrees with this date since the new standards have been considered BAT for new plants since 2006 and these plants can technically and economically comply with these new limits.

Temporary flexibilities for existing large combustion plants: the Council introduces the following temporary flexibilities:

- while the date of entry into effect of the revised emission limit values remains 1 January 2016, Member States may implement until the end of 2020 a transitional national plan on condition that the total emissions of the plants covered by the plan do not exceed annual ceilings decreasing in a straight line between 2016 and 2019. From 2019 the ceiling remains the same until the end of 2020;
- possible exemption from compliance with the revised emission limit values for the following types of plants: until the end of 2023, for plants with a limited lifetime (not more than 20 000 operating hours);
- until the end of 2019, for plants being part of small isolated systems; until the end of 2023, for district heating plants fulfilling certain specific conditions.

While the Commission would prefer these derogations not to be included, it can accept these provisions introduced to reach an agreement since the derogations are transitional and the environmental integrity of the proposal is maintained while facilitating Member States' efforts to bring large combustion plants into line with BAT as soon as possible.

Specific requirements for certain large combustion plants: the Council lays down different emission limit values for plants operating a limited number of hours (not more than 1 500 hours annually) and introduces minimum desulphurisation rates for plants which are not able to meet the emission limit values for SO₂, even when BAT is applied, due to the specific characteristic of the indigenous solid fuels being used. The Commission considers that these provisions are useful and justified to address the specific technical issues raised while maintaining the environmental integrity of the proposal.

Aggregation rules for combustion plants: the Council introduces a 'de minimis' threshold of 15 MW for the application of the aggregation rules. As a result, small individual units will be excluded from the determination of the total capacity of a combustion plant composed of several units discharging through a common stack. The Commission regrets that the Council is thus weakening the application of the aggregation rules but can accept a 'de minimis' threshold of 15 MW since it would concern small plants with limited environmental impacts.

Review clause for certain large combustion plants: the Council introduces a clause for the Commission to review the need to amend and establish limit values

for certain specific combustion plants which are not subject to minimum standards or for which the minimum requirements of the current legislation could not be revised due to the lack of updated information on BAT and, if appropriate, to make a legislative proposal by the end of 2013. The Commission supports this review clause since the outcome of the revision of the relevant BAT reference documents could be taken into account as part of the review process.

Scope: the Commission proposed extending the scope of the current legislation in relation to certain activities. The Council's position at first reading does not include the proposed extension in relation to the combustion of fuels in installations with a total thermal input between 20 and 50 MW and to intensive livestock rearing. Furthermore, the Council modifies the proposed scope with regard to waste

management activities and the manufacturing of ceramic products. It also removes the proposed requirement for the spreading of manure to be based on BAT. While the Commission would prefer its original proposal for the extension of the scope and its proposed provision on manure management, the changes are acceptable in view of the introduction of a review clause on these specific issues.

Trading in NO_x and SO₂ emissions: the Council introduces a recital on the exploration of the possibilities for market-based instruments such as trading in NO_x and SO₂ emissions. This reflects the assessment being undertaken by the Commission without prejudging its outcome.

Exercise of the delegation and objection to delegated acts (Articles 76 and 78): in line with its Communication on the implementation of Article 290 TFEU, the Commission favours the delegation of powers for an indeterminate period of time but can accept the approach of the Council (5-year period with tacit renewal). Furthermore, the Commission regrets that the Council introduces a time limit of three months for the Council and the European Parliament to object to the delegated act. The Commission favours a time limit of two months which can be extended by one month on the initiative of the European Parliament or the Council. This would help to increase the efficiency of the procedures without undermining the principle of a total period of three months.

Consultation of experts in the preparatory work for the adoption of delegated acts: the Commission does not support the recital on the consultation of experts in the preparatory phase of delegated acts. The Commission considers that expert groups cannot have a formal institutional role. Therefore provisions as regards the involvement of experts in the preparation of delegated acts cannot be included in the basic acts.

The Commission concludes that the changes introduced by the Council are acceptable, since they are consistent and build upon the Commission's proposal, except certain assessments made by the Council regarding the conferral of powers on the Commission, as provided by Articles 290 and 291 (TFEU). Thus, the **Commission objects to the Council's position at first reading** which was adopted unanimously on 15 February 2010.