

Brussels, 17 February 2010

Proposal for an Industrial Emissions Directive: Priorities of European engineering industries for second reading

EXECUTIVE SUMMARY

Notwithstanding that some adaptations following the entry into force of the new Lisbon Treaty, and especially changes related to the new comitology procedure, still have to be clarified before the Council will adopt its final position at first reading, Orgalime would like to provide its comments and proposals on the Council Common Position (document 11962/09) of August 2009 with a view to the upcoming second reading in the European institutions.

Our industries fully support the environmental objectives of the existing IPPC directive, its integrated approach to address emissions occurring from industrial installations at local level and are committed to a proper implementation of the directive in member states.

In general, Orgalime feels that the **Common Position of August 2009 strikes a balanced compromise** between the initial Commission proposal, the European Parliament's first reading report and the different views of member states delegations in the Council in a number of areas that are of key relevance for an improved implementation of the directive.

In particular, the appropriate level of flexibility for emission limit values, the maintaining of the Seville process with the indispensable involvement of technical experts for the development of BAT-BREF documents and the re-setting of the scope of the directive are ways forward to guarantee both, a high level of protection of the environment and human health and the necessary level playing field for our industries that have to face ever changing legislations in a variety of sectors.

However, **we invite the European institutions to settle some remaining aspects** concerning publication of information, the criteria for determining the frequency of site inspections, the necessity to carry out an impact assessment if the Commission wishes to depart from technical evidence for the adoption of BAT decisions and the introduction of a risk based approach for site remediation.

We very much hope that the European institutions will see fit to take our comments into account in the further proceedings, which we detail hereafter:

Orgalime, the European Engineering Industries Association, speaks for 33 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 22 European countries. The industry employs some 11.1 million people in the EU and in 2008 accounted for some €1,885 billion of annual output. The industry not only represents more than one quarter of the output of manufactured products but also a third of the manufactured exports of the European Union.

1. Adjusting the scope of the directive to environment relevance as well as technical and economic feasibility (annex I, 1.1)

Orgalime believes that the Council has correctly adjusted the scope to include installations with a thermal input of 50 MW and above. This in our view reflects the “think small principle” as it takes properly account of the fact that the environmental gains to be derived from an inclusion of small installations below 50 MW would be inappropriate and disproportionate in comparison to the economic consequences and the extended additional bureaucratic burden that would result from such a proposal.

This way forward also properly reflects the fact that companies operating outside Europe are not subject to the obligations of the Directive.

If we want to keep our industries growing on the territory of the European Union, we need to help those small industries and not oblige them to make strategic choices which may have consequences at all levels.

We therefore ask the European Parliament to support the Common Position of the Council.

2. Maintaining the necessary level of flexibility for the application of Best Available Techniques Associated Emission Limit Values (BATAELs) while preventing misinterpretations (article 15)

The European Parliament has endorsed the proposal of the European Commission to strengthen the application of Best Available Techniques (BAT) compared to the current IPPC directive and therefore create minimum requirements that should apply to each site around the EU, with the possibility to derogate in exceptional cases only. The reason behind this concept was invoked at various times by the Commission and the Parliament, stating that the current IPPC directive would undergo too many derogations without clear justification in some cases.

We generally support the objective of improving and increasing the effectiveness of the application of Best Available Techniques (BATs) throughout member states, given certain cases of shortcomings and undesired implementation scenarios in the past.

However, given that geographical and local conditions play an important factor for granting permits at national level in a given case and considering that the Industrial Emissions Directive targets pollutants that have environmental effects at local level, we believe that it must remain possible to grant derogations from BATAELs if this is justified on objective grounds.

We are therefore satisfied to see that the Council has come forward with a proposal that appears to us, to be both sensible and ambitious, and which, in our view, takes into account the European Parliament’s call for stricter rules in this area. In particular, the Common Position clearly introduces the need for licensing authorities to justify derogations for a specific plant above the range of Best Available Techniques Associated Emission Levels (BATAELs).

This represents a major change in comparison to today’s scenario where no justifications for derogations need to be given.

Any further tightening of the requirements in this area (apart from a possible obligation on member states to report on the single greatest derogations granted as part of their reporting to the Commission on the implementation of the Directive), however, risk creating an artificial level playing field which could easily infringe the above mentioned elements of proportionality but also subsidiarity.

We therefore call upon the European institutions to support article 15(4) of the Common Position.

3. Site closure (article 22)

Orgalime is concerned with, what are in our view, far-reaching obligations related to the soil remediation and site closure outlined in article 22 of the Common Position. In particular, one proposes to impose on operators to submit a baseline report to the competent authority and that the Commission shall establish the guidance for drafting the content of the baseline report. Similar requirements have also been proposed in the European Parliament's first reading report.

We feel that site closure and the relative cessation of activity must be carried out by national competent authorities in line with Community and national legislation to ensure the site is adequate for the use concerned.

This issue of soil remediation has raised strong concerns within our organisation for the following reasons:

- The European legislator has already adopted an Environment Liability Directive, which covers, among others, soil pollution in IPPC sites together with a directive on the protection of Environment through criminal law.
- The essence itself of the IPPC directive is about prevention of pollution and there are already measures within the directive to prevent and reduce also soil pollution at source.
- In order to meet the principles of subsidiarity and proportionality, soil remediation and monitoring should remain a national issue.
- Furthermore, the current provisions neither foresee risk considerations nor considerations on the economic and technical feasibility when deciding on remediation of a site.

Requirements on soil and groundwater are immediately linked to national law and should, in our view, remain a national competence.

We urge the legislator to introduce a risk based approach to soil related provisions in article 22 of the Common Position and to determine liability according to national regimes.

4. Environmental inspection (article 23)

Article 23 of the Common Position rules that member states shall set up a system of environmental inspections and an environmental inspection plan that should cover all installations. In order to determine the frequency of inspections of an installation, a number of criteria shall apply, including the criterion whether or not the installation participates in the Community eco management and audit scheme (EMAS).

We support that companies generally establish an Environmental Management System, which would certainly also be helpful for site remediation and control of pollutants. However, the European Community Management Scheme EMAS is not the only environment system that exists. Actually, considering that Orgalime industries act on highly competitive global markets with complex global supply chains, the reality in our industry shows that European engineering companies today mainly opt for international management systems, and ISO standards in particular, rather than management systems that apply at regional or local levels only, such as EMAS.

The main hurdles for taking up EMAS at a broader scale within our industries are:

- The significant administrative burden and costs related to introducing EMAS in a company;
- The unsatisfactory recognition of EMAS at international level, and
- The burdensome and complex mandatory third party certification that EMAS certification requires is a time consuming as well as costly process, which is not necessarily beneficial for the improvement of companies' ecological profile.

We therefore ask the European Parliament to modify article 23.4.c as follows: “participation in the Community eco management and audit scheme (EMAS) or similar international environment management systems, such as ISO standards.”

5. BAT Reference documents and exchange of information (article 13)

The exchange of information and the relative Seville process is one of the core elements of the current IPPC directive and experience over the years has shown that both Member States and industry are committed to this important tool of the directive.

It is of utmost importance that decisions taken on BAT conclusions are discussed within technical working groups, involving industry experts in the preparatory process.

Therefore, we appreciate the ***improved clause on exchange of information under Article 13 of the Common Position*** based on the European Parliament amendment 27, which takes into consideration the opinion of the forum concerning the drawing up, the review and the update of BREFs as well as the guidance and the content of the BREFs. ***This should be maintained.***

We ask, however, to reintroduce amendment 54 of the first reading of the European Parliament regarding information to be made available to the public via the Internet without delay.

In addition, the Council has also suggested the adoption of “BAT conclusions” through Comitology procedure, which could essentially affect the industries concerned.

We are concerned that such a procedure would mandate the Commission to leave aside the commonly established technical evidence, guidance and recommendations given by the expert process of Seville. Departing from the Seville technical recommendations would in our view require a thorough analysis of the consequences and a sound justification by the Commission.

This is in our view all the more relevant since it appears likely that future comitology decisions in this area should take the form of “delegated acts” in the understanding of the Lisbon Treaty, which would give the Commission a high level of autonomy in taking decisions.

We therefore ask the European Parliament to adapt article 13(5) of the Council Common Position so that an impact assessment will have to be carried out should the Commission intend to deviate from the recommendations of the Seville process through its Comitology decision on “BAT conclusions”.

6. Conclusions

Considering that the existing IPPC Directive is still in the early days of its implementation and given the considerable investments made by industry to comply with its requirements, we call upon the European institutions to strive for a second reading agreement that is proportionate and avoids unnecessary disturbance of the functioning of the existing and, in our view, promising system.

We appreciate the progress achieved in first reading by the European Parliament and Council, and particularly feel that the Common Position of August 2009 reconciles the initial shortcomings of the Commission proposal with practical realities and needs and pays due consideration to the European Parliament's first reading report. We are particularly pleased to see that the wording and/or spirit of the EP's first reading amendments 27, 66, 195, 196, 201/202 and 204 to 207 have been maintained.

We ask the European institutions to support the Common Position in the areas of scope, the necessary level of flexibility for the application of Best Available Techniques Associated Emission Limit Values (BATAELs) and the involvement of technical experts and stakeholders in the establishment of BREF documents.

However, we ask the European Parliament to reintroduce its first reading amendment 54 concerning publication of information, and to propose some adjustments to the Common Position regarding the issues of the criteria for determining the frequency of site inspections, the necessity to carry out an impact assessment if the Commission wishes to depart from technical evidence for the adoption of BAT decisions and the introduction of a risk based approach for site remediation.

Orgalime hopes that the European institutions will take these comments into account and remains available for further contribution as second reading progresses.



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