

Brussels, 21 May 2008

Proposal for a Directive on Industrial Emissions (COM 2007 844 final)

Orgalime industries are committed to apply manufacturing processes that are environmentally sound, protecting the health of employed workers so as cost effective and innovative. Our industries been actively involved in the implementation of Directive 96/61 on IPPC through the so-called Seville Process. We particularly participate in the development of the following BAT-Reference documents: Foundries, Ferrous Metals processing, Non ferrous metals production and processing, Iron & steel, large Combustion Plants, Surface Treatment of metals, Polymers, Waste Treatment (previously/disposal activities), Energy Efficiency, Waste Incineration, Surface Treatment using solvents, Paper/pulp, Cooling system;

Orgalime was also engaged in the consultation process held by the European Commission on the review of the IPPC directive and concludes that in many areas the existing experience is limited and therefore is often insufficient to justify many of the conclusions drawn in the different review studies.

Against this background, we provide our comments on the recent Commission proposal for an industrial emissions directive:

EXECUTIVE SUMMARY

Orgalime supports the fundamental pillars of the existing Directive 96/61/EC, which are:

- **an integrated approach** that addresses industrial installation emissions affecting the different environmental media (air, water, land);
- **permitting conditions** that are established according to the performance that can be achieved by best available techniques (BATs) generally specified in BAT-Reference Documents developed through the Seville experts process; and
- **sufficient flexibility** to accommodate at national level technical characteristics, geographical location and local environmental conditions in the permitting process considering that this directive addresses emissions that have a local effect.

Orgalime, the European Engineering Industries Association, speaks for 35 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 23 European countries. The industry employs some 10.9 million people in the EU and in 2007 accounted for some €1,813 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.

We call upon legislators to ensure that the recast of the directive fully ties in with these principles thereby avoiding hampering the still very recent implementation of the directive and that the recast indeed simplifies EU legislation as envisaged in the EC's Simplification Rolling Programme in the context of Better Regulation.

In a number of areas, however, the Commission's proposal conflicts with these principles or introduces, at an in our view too early moment, fundamental changes. We request the support of the European Parliament and Council to particularly remedy these in the further proceedings. This would in our view be necessary in the following areas:

- The proposal for lower Emission Limit Values or an extension of the scope of the directive under the umbrella of a "merge" of seven sectoral directives
- The proposal to set Emission Limit Values that do not exceed the emission levels associated with BAT (BAT-AELs) as described in BREFs and thereby change the guiding character of BAT Reference documents
- The proposal to remove the present experts involvement in developing BAT-Reference documents and to mandate the Commission to select BAT instead
- The proposal to establish criteria for deviations from BAT and to do so via comitology and without involvement of experts
- The proposal for extended powers for competent authorities in member states to determine BAT where an installation would not be sufficiently covered by a BREF without experts involvement
- The proposal to extend the scope of the directive to installations with a thermal input from 50 MW to 20 MW (annex I)
- The proposal to introduce periodic monitoring requirements in relation to soil and groundwater
- The proposal to modify the present focus of waste management activities

Orgalime hopes that the institutions will see fit to address these areas in a way that will re-establish the spirit of the initial IPPC directive and provide the necessary level playing field and legal certainty for European manufacturing industries in line with the reality of their investment and innovation cycles. We are committed to constructively contribute to the further debate.

INTRODUCTION

Orgalime believes that EU legislation concerning emissions from industrial installations should continue to cover all main environmental impacts of such installations in an integrated way and supports the environmental objectives of the EU in terms of protection of health and environment. Nevertheless, these objectives will only be valid if the proposed legal instruments continue guaranteeing a level playing field for companies running industrial installations in Europe while at the same time respecting the national particularities that exist in the different member states given their different geographical locations, local conditions or technical characteristics. The Commission's proposal for recasting the existing IPPC directive that suggests integrating seven sectoral directives related to industrial pollution into one single piece of legislation could have an added value in the Better regulation process only if this exercise were undertaken in full transparency and without imposing unnecessary constraints for industrial installations. The European Commission has continuously stated that the fundamental principles of the current IPPC directive would not be altered in any proposal for a recasted IPPC directive. However, we note with concern that neither of these is respected in the current proposal. In particular, the current IPPC directive is far from being fully implemented in all the Member States and there are not yet sufficient results and experiences available that would in our view justify and sufficiently evidence the necessity of as broad a review as suggested in the Commission's proposal on the grounds of better protection of environment and human health.

PARTICULAR REQUESTS

- **Scope of the directive**

The proposed extension of the scope for installations with a thermal input from 50 MW to 20 MW is of particular concern for Orgalime members. Orgalime's network of installations is mainly composed of small and medium sized enterprises, some of which are not falling under the scope of the current IPPC due to their small size and their limited emissions to the environment. This extension of the scope would mean that many small installations will have to comply with the new rules of the proposal and would have to face unnecessary bureaucratic and administrative burden, hampering their competitiveness in a global economy. Furthermore, benefits to the environment and health are far from being proven if such a proposal is chosen.

Orgalime considers that the proposed extension of the scope is too broad and asks the European Parliament and the Council to reconsider the level of thermal input referred to in Annex I of the proposal in order not to discriminate or unnecessarily overburden small and medium sized installations with administrative tasks.

- **Flexibility mechanism**

It is vital for industrial installations in Europe that the flexibility mechanism, which is one of the fundamental principles of the current IPPC directive, is maintained in order to enable permitting authorities to take into account the geographical location and technical characteristics of the site. The current approach that enables local authorities to grant a permit analysing the local and technical conditions based on BAT should be maintained as BREFs cannot describe each and every situation. Orgalime agrees that there is a need for clarification how emission limit values (ELVs) are set when granting permits, but it is also necessary and important that local authorities have the opportunity to justify deviation to their knowledge of the local conditions.

As the IPPC directive related to emissions pollutants that have a local effect to the environment, Orgalime takes the position to maintain the necessary flexibility in the revised proposal. In particular, deviation from BAT (where justified by local conditions) should still be possible as a general rule rather than an exception.

The European Engineering Industries Association

ORGALIME aisbl | Diamant Building | Boulevard A Reyers 80 | B1030 | Brussels | Belgium
Tel: +32 2 706 82 35 | Fax: +32 2 706 82 50 | e-mail: secretariat@orgalime.org
Ass. Intern. A.R. 12.7.74 | VAT BE 414341438

- **Merge of 7 sectoral directives into one single piece of legislation**

Contrary to what has been announced by the Commission during the preparatory process of the IPPC review, the merging of 7 directives into one single piece of legislation has not been a simple merging exercise. The current proposal has lowered the emissions limit values currently described in the Large Combustion Plants Directive and requirements to have a permit are now proposed to be extended to all installations falling under the application of the Solvents Directive, which we feel is overburdening the system and imply substantial additional costs and administrative burden, which is contrary to the philosophy of the better regulation process launched by the European Commission.

Orgalime therefore calls upon the European Parliament and the Council to reconsider this approach. As an alternative, we propose to adjust the merge of the seven directives by introducing a new provision that would spell out that emission limit values should be discussed in technical working groups (including for large combustion plants) before being imposed.

- **Emission limit values and BATAELS**

So far, the IPPC directive has enabled permitting authorities to grant permits with Emission Limit Values based on Best Available Techniques taking into account the technical characteristics of the installation or its geographical location. The present proposal, however, would impose installations to comply with permits in which ELVs cannot exceed BATAELS, which is challenging without knowing the real benefits on the environment. It is furthermore important not to confuse Emission Limit Values, which take into account short term fluctuations and should never be exceeded with BATAELS, which represent average emission levels achievable during a substantial period of time. In the same way, the current proposal does not allow ELVs to be higher than BATAELS, which would impose homogenous ELVs around the EU without taking into account the geographical location of the installation. In other terms, the BAT Reference Documents (BREDS) would therefore have a more legally binding nature, which is contrary to their original philosophy as they are called guidance documents in the current IPPC Directive and they have been drafted to guide local authorities when granting permits to industrial operators.

Orgalime proposes to maintain the current dialogue that exists in the framework of the Seville process and which enables all experts, including industry or other stakeholders, to contribute and provide expertise to the technical content of a BREF, including Best Available Techniques and Best Available Techniques Associated Emission Levels.

- **Monitoring of soil and groundwater**

The proposal to introduce periodic monitoring requirements in relation to the contamination of the soil and the groundwater at the site of the installation is in our view creating bureaucratic burden and conflicting with the subsidiarity principle. It is indeed up to national authorities to decide and to ensure that a site is appropriate or not for the purpose it becoming operative.

Instead of monitoring mechanisms as described in the current proposal, Orgalime would prefer the option of adopting a prevention process, which would be in line with the fundamental principles of the directive.

- **Comitology procedure**

The proposed use of comitology procedure for justifying deviations from BAT, as well as monitoring, site closure and remediation is not supported by our industry. The proposed deviation

from BAT should be asked by the operator to the local authorities prior submitting a cost/benefit report of the installation.

We call upon the EP and Council that a mechanism to consult industry when determining whether or not a certain BAT is applicable on a specific installation. We do not support that the Commission should set criteria to deviate from it. It is important that the current dialogue between regulators and experts that has been established during the current IPPC implementation is maintained.

If regulators supported the proposal to apply the Comitology procedure, Orgalime would urge the European Parliament and Council to propose that criteria for deviations are developed in full consultation of the existing IPPC Information and Exchange Forum before being adopted by the Commission.

- **Installations not covered by BAT**

In case an industrial installation would not be sufficiently covered by a BAT, the present proposal is that competent authorities are granted extended powers to determine best available techniques. This in our view risks arbitrary discrimination and negative impacts on the EU internal market. Also, for the moment being, no consultation of industry experts is foreseen.

It is of utmost importance that operators cooperate with the competent authorities to determine the emission level, which corresponds to the BAT.

We therefore propose that the competent national authorities in such cases should be involving the operator to identify any emission limit values corresponding to BAT to ensure its workability and technical feasibility.

- **The proposal to modify the present focus of waste management activities**

As far as waste management activities are concerned, Orgalime supports the development of standards that aim at the definition of environmental quality standards on the outcome of a recycling process, however, we do not support detailed and descriptive requirements on specific tasks of treatment of waste (e.g.: manual dismantling or removal of certain components/substances). This kind of standard should not hamper innovation of treatment and recycling processes, nor overlap or contradict with the existing treatment requirements given in directive 2002/96/EC on Waste Electrical and Electronic Equipment.

We therefore suggest reintroducing the term “installations” in annex I, articles 5.1., 5.2 and 5.3. of the Commission’s proposal for a recast industrial emissions directive.



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