



European Economic and Social Committee

NAT/199

IPPC

Brussels, 10 December 2003

OPINION

of the European Economic and Social Committee

on the

Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - On the road to sustainable production: progress in implementing Council Directive 96/61/EC concerning integrated pollution prevention and control

COM(2003) 354 final

On 19 June 2003, the Commission decided to consult the European Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the

Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - On the Road to Sustainable Production: Progress in implementing Council Directive 96/61/EC concerning integrated pollution prevention and control
COM(2003) 354 final.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 13 November 2003. The rapporteur was **Mr Braghin**.

At its 404th plenary session held on 10 and 11 December 2003 (meeting of 10 December), the European Economic and Social Committee adopted the following opinion by 110 votes for, none against and one abstention.

1. Introduction

1.1 The Communication refers to the progress which has so far been made in the Member States and in the candidate countries on integrated pollution prevention and control. The Commission has a clear message: a high level of protection of the environment, which is the overriding objective of Directive 96/61/EC known as the IPPC Directive, can only be achieved if the authorities in charge of implementation make the efforts necessary for correct implementation and engage in constructive interaction with plant operators and other stakeholders, including trade unions in particular.

1.2 The directive already applies to new or substantially altered installations. The final deadline for existing installations to apply the best available techniques (BAT) and meet all other requirements laid down by the directive is October 2007. In the acceding countries, the actual implementation is at a very early stage or has yet to start, and transition periods have been negotiated for the application of the directive at new and/or existing installations. However, they will not need to meet emission limit values based on the best available techniques until 2008 – 2012.

1.3 Transposition and implementation have not been carried out in a timely fashion in all Member States in the case of this directive and the Commission has identified major suspected or confirmed shortcomings in the national legislation transposing Directive 96/61/EC. Particularly worrying is the fact that in some cases there are no provisions for ensuring that existing installations comply by October 2007 or for the subsequent periodical review of permits.

1.4 Authorities in charge of implementation and plant operators should discuss investment planning, bearing in mind the cycle of investments and weighing any economic or

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financial disadvantages, in view of the fact that conditions for authorisation for all plants must be established in accordance with the provisions of the Directive no later than 2007.

1.5 Ambiguities in the directive have caused difficulties in implementation, either as regards definitions (for example the threshold criteria whereby an installation is covered by the directive, the boundaries of an installation, when should a change be considered as "substantial", what is meant by "return the site to a satisfactory state") or in practical implementation (how should permit conditions be written for certain aspects, how often should inspections be carried out, when should companies that are not fulfilling requirements be prosecuted).

1.6 As regards application of the directive, systematic sector-by-sector benchmarking and comprehensive screening and assessment of the techniques applied is carried out: information exchange is co-ordinated and facilitated by the European IPPC Bureau, which is based in Seville, and has led to the drawing up of the so-called BREF documents (BAT Reference documents) with the collaboration of informal networks of experts in industry, Member States and non-governmental organisations. So far, 15 BREFs have been produced, another 11 are at the draft stage, four have been started and two more are to be started.

1.7 A study carried out on three major and technologically advanced sectors shows that the application of BAT does not prevent companies from remaining competitive, and plants that perform well on the environmental front are able to use this as a competitive strength, although this situation is not widespread.

1.8 The notion of BAT is not rigid, it can actually vary within a sector from one plant to another because costs and benefits can obviously vary. In the Commission's opinion, this is one of the most significant aspects since it allows a balance between different environmental impacts and associated costs. Therefore, the Commission believes that it is important to retain this approach, which entails dialogue between operator and authority.

1.9 The cross-cutting approach of the directive creates an interaction with a large number of EU environmental directives, regulations and other policies and measures, and it is important to ensure optimal consistency and to examine whether there are any obstacles to the creation of an effective mix of policy tools at EU or national level. There is a dilemma, however, between the setting of Community emission limit values by means of directives when "the need for Community action has been identified" and a decentralised approach (such as the IPPC Directive) which allows the competent authorities to make pragmatic choices, satisfying both environmental and economic issues.

1.10 The Commission believes that some amendments must be made to the directive, to take into account changes in legislation (in particular following the adoption of directives on public participation in the permit procedure which are required to ratify the Aarhus Convention of 1998), or to clarify relevant aspects (such as the above-mentioned problem of defining threshold criteria in **CCMI/008 - CESE 1596/2003 EN/o**

particular sectors, or the problem of application, as in the case of waste where it is difficult to make the distinction between recovery and disposal).

1.11 The Commission has already carried out a broad Europe-wide consultation on the current state of play and possible developments in those areas of environment policy which cover the impact of major industrial pollution sources on the environment, to ensure that there is full consistency between them and to explore the possibility of using new approaches providing incentives to companies to further improve their environmental performance.

1.12 Should the need for any amendments to the directive result from this consultation, a new phase of broader consultation will be necessary, in addition to an assessment of Member State implementation progress reports. The Committee would suggest that the Commission summary and the national reports should be made available to the public.

2. General considerations on the IPPC approach

2.1 The approach taken by the IPPC Directive was definitely innovative, anticipating the choice to adopt framework legislation or global thematic strategies. Discussions on emissions should consider the three environmental areas (air, water and land) since the impact of emissions on these areas is generally linked and inseparable. We also need to ensure flexibility in implementation, by identifying the best available techniques in specific local contexts and bearing in mind the cost and benefit ratio. The integrated approach to pollution, connected to local quality of the environment, required a cultural and scientific jump on the part of the supervisory authorities and the operators, assuming the collection and exchange of information and dialogue to prevent and correct the environmental impact of industrial and, sometimes, agricultural activity. In many opinions concerning these topics either directly or indirectly, the EESC has found all these issues to be positive.

2.2 The directive is designed to be an avant-garde tool in the strategy for sustainable development as part of the local agenda 21 programmes, as well as forming a legislative framework for a series of voluntary instruments that have been set up in the meantime, from EMAS registration to agreements on emissions trading. It involves comprehensive information gathering, resulting in better knowledge of the state of the environment, the impact of various types of pollution and their interaction, thus giving citizens an accessible picture with a view to improving public participation in the drawing up of environmental plans and programmes¹.

2.3 These innovative aspects explain, at least in part, the difficulties of transposition and application that have emerged, and the limited number of plants that the Commission has been able to

¹ CES 708/2001 – OJ C 221 of 7.8.2001 – COM(2000) 839 final – OJ C 154 of 29.5.2001 – still at the conciliation stage.

evaluate. The picture emerging from the Commission Communication is cause for concern, in particular bearing in mind the 2007 deadline, when even existing plants should have undergone the permit procedure laid down by the directive.

2.4 The imminent accession of ten new Member States, whose resources and know-how in this field seem to be even more limited, makes the situation even more critical. Therefore, it is urgent firstly to pinpoint problems in the system to date, and identify and incorporate existing good practices, and secondly, to plan inspections, information and training (including technical training) for administrative staff to enable them to cope adequately with this situation, and in particular with the difficult phase when existing plants will undergo the permit procedure laid down by the directive.

2.5 The distortions encountered in the application of the directive may result from intrinsic limitations (which must be corrected), vague definitions (which must be clarified as soon as possible) or varying traditions and approaches on the environment. The EESC shares the concern expressed in the Communication regarding the provision of measures to allow the 2007 deadline to be respected fully; the deadline cannot be avoided simply by postponing compliance at individual plant level.

2.6 It is plausible that SMEs make up a significant part of all IPPC installations in Europe, sometimes without knowing it, and for these enterprises, complying with environmental legislation is a major challenge. The authorities in charge of implementation and supervision will therefore need to give special assistance to operators and provide themselves with sufficient personnel and resources.

2.6.1 The EESC therefore hopes that the Commission will carry out a more detailed analysis of the difficulties in implementation which have been encountered, and if necessary, via a short guide and appropriate guidelines drawn up by the technical Community bodies which have already been set up, clarify the most important issues to date, such as the criteria for identifying the companies covered by the regulations, how to formulate the environmental permit, the technical and human resources needed by the administration in charge of implementation, the possibilities for voluntary agreements, interaction with other directives or regulations, etc. This would be especially useful for new Member States and SMEs.

2.7 Every action designed to facilitate the implementation of the IPPC Directive, even if aimed at large industrial plants, has an intrinsic effect on small business. They must cope with the resulting problems with economic means and human resources that are insufficient for the interpretation and execution of the procedure for requesting a permit and subsequently the investments required for their commitments. In the opinion of the EESC, the initiatives needed to support SMEs during the IPPC implementation process should be carried out at national or regional level rather than at Community level.

2.8 The directive includes a comprehensive definition of "best available techniques" that is supplemented by 12 specific considerations listed in an annex, so that they can be applied to specific sectors. It is necessary to assess the estimated net costs of implementing a technique in relation to the environmental benefits, i.e. carry out an accurate cost/benefit analysis.

2.9 By introducing the flexible concept of techniques rather than technologies and prescribing the need to bear in mind costs and benefits as well as local conditions, the IPPC Directive leaves to the national and local supervisory authorities the right and obligation of deciding what constitutes BAT for each plant, with due regard for the diversity and complexity of industrial processes, the innumerable inter-connections in every plant between machines, processes, purification systems and –no less important – the local conditions and methods of working.

2.10 The system may be effective, resulting in similar levels of environmental protection and supervision in plants throughout the EU, but only with a constant process of information exchange so that the statistical links between the techniques considered to be the best and the emission limit values resulting from them can be established.

2.11 The development and exchange of information at EU level on the best available techniques, especially resulting from the Information Exchange Forum (IEF) and the Member States' informal network of authorities responsible for implementation and enforcement of EU environmental law (IMPEL), has definitely been successful. However, much remains to be done to broaden this exchange to include all regional and local authorities, especially in the candidate countries, and stakeholders, particularly the sectoral associations that could be the principal instrument for the promotion and application of BAT in specific sectoral and local contexts.

2.12 The EESC believes that a linked and proactive approach should be adopted to promote implementation of the directive, including informing and training stakeholders (in particular the local and other authorities in charge of permits as well as operators), exchanging best practice and involving local employers' associations and trade unions, so as to have a consensus when planning the investments required.

2.13 A pre-condition for the realisation of this proactive policy is the reinforcement of the teams of experts and the organisational structure of the Seville JRC, which appears to be inadequate even for drawing up the BREF, which is its main task. The EESC hopes that its tasks will be extended to include disseminating information and active participation in training, seminars, conferences etc, in addition to evaluating the application and use of the BREF.

2.14 Local pilot projects have shown that cooperation between the responsible authorities and industrial associations may overcome entrenched resistance on sensitive issues such as information security and loss of competitiveness, and facilitate information dissemination and training procedures for operators, which are crucial issues bearing in mind the 2007 deadline.

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3. Specific comments

3.1 The definition of plant capacity as the rated capacity of the installation to operate 24 hours a day, provided that the equipment is capable of being operated in that way, is not appropriate for all sectors and for many smaller units which operate flexibly on the basis of current market demand and occasionally on a seasonal basis. In this case, there are no precise figures for the real output or the pollution potential of the installation. The EESC therefore believes that the criteria for applying the directive should be revised, with real output being examined over a given period of time, at least for a few sectors or types of plants, as indicated in point 7.3.1 of the Communication.

3.2 The EESC also believes that something should be done about finding a precise definition for "emission limit values" and deciding how to express, measure and monitor emissions. The definition of pollution is clear and precise: it involves the introduction of negative effects into the environment, in particular the introduction of pollutants. The methods for expressing this quantity differ among Member States. The lack of a single consistent method to express this basic data reduces, or even prevents, any possibility of obtaining a clear reading of the correlation between BAT in use and the associated pollution. The EESC takes note of the difficulties involved in rapid standardisation and harmonisation of the different methods that have been used for years in Member States, but hopes that the Information Exchange Forum will lead to an improvement in techniques for comparing data.

3.3 The EESC agrees that it is important to ensure a high level of environmental protection for waste management facilities, but the complexity of legislation in this field would suggest that any move to group these installations under the IPPC Directive should wait until it is time for the directive to be amended.

3.4 The EESC feels that it would be appropriate and realistic to revise and correct the list of activities covered by the directive, excluding all plants, especially small ones, which have a low polluting capacity or that in any case affect the environment in only one of the three environmental areas (air, water and land), since this situation can already be monitored through existing legislation.

3.5 The implementation of BAT and the ongoing BREF should be accelerated in view of the 2007 deadline, and particular attention should be given to the problem of distributing them to the competent authorities and economic operators (associations and individual operators). The decision not to publish the BREF in paper form nor to translate the documents into all Community languages is admirable in terms of practicality and cost, but having them available only in electronic form may cause problems as regards direct reading on the part of individual users or distribution to decentralised offices. Moreover, the EIPPCB (European Integrated Pollution Prevention and Control Bureau) regards the number of BREF documents downloaded from its site as satisfactory. The initiative to

translate the Executive Summaries into all languages is praiseworthy, although for the above reasons, it would be useful to make them available in non-electronic form as well.

3.6 It would be useful to examine the reception and evaluation of the BREF by the business community involved in drawing up the documents and the competent authorities in individual Member States (which would give their opinion in view of the specific tasks awaiting them: requesting and awarding a permit). If the evaluation were to be positive, one or more businesses and/or industrial associations from each sector might find that it would be in their interest to make an economic contribution towards the publication of the BREF in paper form, or even publish the BREF as Manuals of Applied Technology, in addition to being consultation and training tools for staff in the plants to which that BREF refers. Highly developed States and industrial sectors outside the European Union refer to the BREF, which indicates that these forms of distribution would increase the possibility of the BREF being hailed as an international frame of reference.

3.7 Since the BREF were published only recently and are not yet generally applied, the EESC believes that it would be premature to consider revising these documents in the short to medium term, since this could give rise to confusion and even uncertainty when applying the BREF.

4. **Questions raised for consultation**

4.1 In the Communication, the Commission lists a series of questions designed to steer the consultation process towards specific objectives and desirable outcomes. The EESC hopes that the following comments, summarising the points developed explicitly above, will contribute constructively to this process.

4.2 The first set of questions (**questions 1a and 1b, and 2**) concerns suggested or desirable action at Community or Member State level, in order to find solutions to the implementation difficulties that have been encountered. The following points are highlighted:

- steps must be taken regarding varying interpretations and difficulties in application (§ 2.5), especially if these are a result of ambiguous definitions or criteria (§ 3.2 and 3.3). Initially a solution could be to draw up guidelines (§ 2.6.1) rather than amending the directive;
- given the reluctance of the Member States to accept a precise and unambiguous definition of the term "emission limit values", the EESC suggests that the problem should be dealt with and resolved by the appropriate technical mechanisms with the coordination of the Commission (§ 3.2);
- steps must be taken to inform and train stakeholders (§ 2.12): Community action should encourage this type of activity, which should mostly be carried out at national and local level

under the direct supervision of Member States. Appropriate Community action would include strengthening the structure and extending the tasks of the Seville JRC (§ 2.13), as well as promoting and coordinating seminars and conferences to train staff working in the area of obtaining and granting permits, management and related controls.

4.2.1 The EESC would also recommend several easily applied instruments at Community level, such as:

- monitoring data on emissions and the application of BAT, using the European Pollutant Emission Register, and distributing such data to decentralised units, whether public authorities or economic operators;
- drawing up user-friendly manuals to guide stakeholders in the application of the directive;
- using the public participation measures adopted to comply with the Aarhus Convention, to secure greater involvement of all stakeholders.

4.2.2 The EESC is aware of the importance of the 2007 deadline, which must not become a pretext for questioning the IPPC approach, but feels that it would be reasonable to allow for an appropriate period of time for the implementation of measures agreed on between plant managers and public authorities, if justified by force majeure or by the length of the investment cycle.

4.2.3 The EESC is aware of the length of the legislative process, but does not exclude the possibility of modifying the directive for particularly delicate issues, in particular the list of activities covered by the directive, the threshold criteria for determining whether a business falls within its scope (§ 3.4), and the definition of "installation" and "substantial change".

4.2.4 The problems of SMEs have been considered in many earlier paragraphs (in particular 2.7 and 2.14), and the EESC suggests the following SME support measures:

- identifying instruments and indicators to check the applicability of the directive to the specific situation of any given business, which could well differ significantly from one Member State to another;
- forming groups of experts on a voluntary and local basis to help in the application of BAT, who could take advantage of the Community coordination described above;
- incentives for the training of technical staff, either financially or in the form of a guide or training manuals drawn up at Community level;

- incentives for innovated investments in plant that enable compliance with the directive.

4.3 **Questions 3 and 4** on BAT and the value and importance of the BREF and their distribution at international level have already been fully answered in the preceding paragraphs (§ 2.11, 3.5, 3.6 and 3.7). The EESC recognises the value of these documents, and calls for specific initiatives to distribute them, including internationally either as an instrument for encouraging sustainable production outside the EU, or as part of the stakeholder training efforts undertaken by the JRC, which will need back-up and funding to cope with this new task (§ 2.13 and 4.2).

4.3.1 Information exchange, which is currently performed mainly vertically, must be extended to the horizontal dimension, i.e. the distribution of the information itself. This could form the basis of the training processes described above as important.

4.3.2 The EESC calls for an initiative again coordinated by the JRC, to promote a process of dissemination and exchange which would involve Member States and local authorities in each Member State, and the various industrial sectors, and have the aim of carrying out studies, translating into local languages and drawing up and distributing simplified summaries (the BREF or parts of the BREF for each State or industrial sector).

4.4 Experience thus far and the as yet limited practical application would suggest that the scope of the directive should not yet be modified (**question 5**). Were the directive to be modified, bearing in mind the relatively lengthy procedure involved, the EESC would reiterate the comments made in points 2.6.1, 3.1, 3.2 and 4.2.2 – 4.2.3.

4.5 **Question 6** is extremely complex and should be broken down into smaller parts. In the Committee's opinion, setting Community emission limit values (minimum requirements) is a tool that has proven its usefulness, if limited to contexts when it is truly necessary and if specific to particular fields. These limitations do not imply any negation of the approach taken by the IPPC, which is certainly preferable but which may take into consideration specific thresholds that may be seen as parameters for applying BAT and analysing the local conditions for application. The two approaches are not contradictory, provided the authorities in charge of implementation succeed in understanding and managing the process with sufficient sensitivity for the economic and social interests at stake, and plant operators understand the need to carry out checks so as to comply with all the standards imposed, with pragmatic mechanisms which do not make the operation unprofitable. In any case, there is an evident need for dialogue with sector companies, together with incentives to accelerate practical implementation.

4.6 The various environmental laws (**question 7**) must be consistent if they are to be credible and put into action. A greater effort is asked of the legislator and of the authorities in charge of application, and it is hoped that a summary document will be prepared clarifying all the existing

links between the IPPC and all remaining environmental legislation, thus allowing operators an overall view. European directives may take on differing structures and forms when they are transposed into national legislation, but operators and authorities seek principles and connections in Community legislation; in this case, connections between legislation applying to large plant, chemical substances, air, water, soil and waste, and the IPPC Directive. The EESC therefore suggests that a detailed and in-depth study of the interaction between the IPPC and other European directives on the environment and environmental impact should be carried out as soon as possible, starting with the evaluation of the reports by Member States on the application of the IPPC Directive, and giving examples of individual States or sectors.

4.6.1 The Committee hopes to be able to cooperate pro-actively in this study, exploiting its experience and links with organised civil society at various levels, including the national level, if necessary involving its own system of groups and a hand-picked group of experts which would not be limited to its own members.

4.7 As regards **question 7b**, the EESC believes that the IPPC and the associated process of information exchange already contain the elements for the correct application of those principles of law which have been introduced, but they are sufficiently complicated without adding any further tools, even voluntary tools. As regards emission trading, it would seem premature to enter into a discussion on that subject at this stage. It is vital to ensure that the monitoring and control system is watertight and to avoid any major impact on the environment at local level.

Brussels, 10 December 2003.

The President
of the
European Economic and Social Committee

The Secretary-General
of the
European Economic and Social Committee

Roger Briesch

Patrick Venturini

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N.B.: Supplementary opinion overleaf.

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European Economic and Social Committee

CCMI/008
IPPC

Brussels, 27 November 2003

SUPPLEMENTARY OPINION

of the Consultative Commission on Industrial Change

to the main opinion of the Section for Agriculture, Rural Development and the Environment
on the

**Road to Sustainable Production – Progress in implementing Council Directive 96/61/EC
concerning integrated pollution prevention and control**

COM(2003) 354 final

Rapporteur: **Mrs Sharma**

Co-rapporteur: **Mr Mainguy**

On 15 July 2003, the Bureau of the European Economic and Social Committee decided to instruct the Consultative Commission on Industrial Change, under Rule 32(2) of its Rules of Procedure, to draw up a supplementary opinion to the opinion of the Section for Agriculture, Rural Development and the Environment on

Progress in implementing Council Directive 96/61/EC concerning integrated pollution prevention and control
(COM(2003) 354 final).

The Consultative Commission on Industrial Change adopted its supplementary opinion on 17 November 2003... The rapporteur was **Ms Sharma** and the co-rapporteur was **Mr Mainguy**.

Summary

In order to provide Europe with an integrated pollution prevention and control policy, as part of the drive for sustainable development, which does not present an obstacle to competitiveness and employment in Europe, the CCIC proposes four lines of action and puts forward replies to the Commission's questions:

- a) targeted action focusing on implementing these provisions in businesses (support for research, exchange of information, definition and harmonisation of pollution standards and rights, databank);
- b) restoring competition vis-à-vis the rest of the world, which may not adopt our environmental constraints (tax on products, imported or not, which fail to comply with environmental and employment standards);
- c) consideration for the balance of regulation and the additional burden on industry, with a view to harmonising existing legislation;
- d) enabling consumers and citizens to make informed choices (establishment and authorisation by the Commission of eco-logos covering entire products or their life-cycle from manufacture to recycling, indicating pollutants and recycling rates).

Introduction

The CCIC supports the Commission document and has recognised that IPPC must be adopted by industry with a positive attitude, demonstrating its commitment to sustainable development and a cleaner environment. It should not be seen as a short-term burden, but a long-term opportunity, and a responsibility. The CCIC believes it is the Commission's intention to foster a proactive and dynamic attitude amongst industry.

However, the CCIC expresses its concern over the likelihood of double, or even triple regulation facing industry with the EU ETS² for CO₂, the proposed horizontal BREF documents³ and a directive on establishing a framework for setting of ECO design requirements of Energy Using Products. The accumulation impact of all these new regulations will raise the cost and administration burden of industries to a level where it becomes an impossible task to implement.

The Commission has asked for answers to seven key questions in its Communication and the CCIC opinion responds in the same format, emphasising the particular matters of concern to the group. An eighth question which appears on the consultation web-site asks for more general comment of relevance to IPPC and the CCIC has taken the opportunity to comment on some of the wider issues of relevance to the group with reference to the Commission's longer term regulatory strategy.

This opinion is supplementary to the response of the Section for Agriculture, Rural Development and the Environment, and emphasises additional aspects.

1. Is there a need for any additional action at EU level to address implementation difficulties or should current and future Member States deal with them individually? If there is such a need, what type of action would be appropriate?

1.1 Clearly there are differences in implementation between Member States – the principle of subsidiarity allows for this so that specific national or regional differences can be taken into account. However it must not give undue disadvantage to, or allow undue gain by particular Member States, or areas. The CCIC is aware that a questionnaire-based audit of implementation by Member States is undertaken periodically by the Commission and also that IMPEL⁴ had its own review initiative, albeit wider than IPPC. The CCIC realises the difficulties in collecting objective and meaningful data to support such an exercise but suggests that industry and other stakeholders could work with the Commission, or perhaps IMPEL, in determining the scope and feasibility of such work.

1.2 The CCIC appreciates that in the spirit of the Directive most BATs⁵, especially those of low cost, should be put in place as promptly as possible. In the case of heavy investments or equipment renewal, a certain deal of flexibility should be shown with regard to the 2007 date to allow for normal investment cycles.

Accession States and Candidate Countries are also expected to comply by 2007, with a few exceptions who have been given until 2012. The CCIC is interested to know if there will be any

² Emission Trading Schemes

³ BAT Reference documents, BAT being the "Best Available Techniques"

⁴ The Member States' informal network of authorities responsible for implementation and enforcement of EU environmental law

⁵ Best Available Techniques

additional special measures. The Commission pointed out that there may be more money for training of regulators. An escalation in the on-going exchange of regulators between Member States and Accession Countries - for example via the PHARE Project - would be of value, and practical, to bring Accession States up to regulatory speed as quickly as possible, and to facilitate more consistent implementation across the EU.

1.3 The CCIC recognises that there is a lack of clarity in some of the definitions in the Directive (for example “installation” and “substantial change”). Clear terminology is vital for successful implementation, good communication and integration across Member States and other DGs and for organisations reviewing pollution control measures. Lack of clarity inevitably leads to uncertainty for industry and difficulties in planning for investment.

1.4 Whilst the difficulties of reaching consensus view or resolving issues which involve all Member States are recognised, the CCIC proposes that IMPEL could support a forum for information exchange on issues relating to interpretation and implementation (but non policy-making) to inform Member States in coming to decisions on their own national implementation issues. This would aid consistency across Europe. The CCIC believes that industry and other stakeholders could usefully be involved in such a process.

1.5 The CCIC believes that within and across Member States better communication is required. Effective and appropriate consultation and exchange of relevant information on IPPC and, indeed, on the environment in its widest sense is a stimulus for participation amongst all stakeholders – industry and business, NGOs, the public, employees and unions – and key to success. The involvement of all stakeholders is vital in the communication of the right information and to maintain momentum in working towards a more sustainable environment. The Commission could act as an advisory force to publish and the distribution and exchange of information.

2. What support measures should be taken at EU, national, regional or local level to facilitate compliance by installations, in particular SMEs?

2.1 The CCIC believes that more effective dissemination of relevant information is essential for successful compliance; this is particularly relevant for SMEs. There needs to be a better understanding of what is required, this could be facilitated by more effective dialogue between industry and regulators. IPPC requires competent authorities with expertise and integrity who are able to cooperate with industry and who understand its needs. The CCIC believes that this latter point is a key to successful compliance and improving environmental performance, and not just for SMEs⁶.

There are a number of activities which are of lesser environmental impact and/or of very small scale which are nevertheless listed for control in the IPPC Directive. It appears to be disproportionate that these activities should be subject to the full weight of IPPC, in terms of the depth

⁶ Ref EESC Opinion on: "The role of micro and small enterprises in Europe's economic life and productive fabric", rapporteur **Mr Pezzini** – CESE 754/2003

of information required for an application, or in subsequent regulatory requirements for monitoring and reporting. In view of the lesser potential for environmental impact, it is suggested that a streamlined system of “registration” might be appropriate for these activities. This would lower the cost of regulation for both the operator and the regulator whilst still delivering the requirements of the Directive.

2.2 Structural Funds must be available to provide specific support in order to help companies comply with environmental legislation through subsidies, loans, soft credit etc. In the past the ECSC Treaty made it possible to grant loans to improve competitiveness and these have had positive results in the coal and steel sectors. Such economic support measures should be supplemented by National Funds from Member States and be compatible with the internal market.

2.3 The synergies between research and development work related to BAT and associated environmental issues, including the Environmental Technology Action Plan (ETAP), which is funded and/or undertaken at a national or EU level and that undertaken at a more localised level with private funding need to be optimised. Pooling of resources and knowledge will result in greater overall gains. Could the collation and dissemination of such information be a wider role for the IPPC Bureau?

3. **What role can the Directive and its exchange of information on best available techniques play in the international arena to promote sustainable production?**

3.1 The Best available techniques (BAT) Reference Documents (BREF) process is unique and the CCIC is already aware that BREF Notes are being used to some extent by regulators and by industry in USA and Australia to drive improvements in environmental performance.

3.2 The CCIC suggests that global participation in reducing emissions associated with manufacture could be further encouraged by extending the existing legislation governing the conduct of tendering to make it a requirement that suppliers should be required to show that they are acting in a way that demonstrates their corporate global responsibility. The Commission could engage more closely with the WTO in encouraging it to consider the environmental impact of all products. Where imports are not affected by the WTO, it is the Member State responsibility to review the products manufacturing processes. This will help to encourage adherence to higher standards of environmental protection worldwide. The CCIC would suggest a follow-up own initiative be taken up to investigate the feasibility of this proposition.

3.3 The CCIC advocates a system of environmental levies on goods, whether imported or not, which do not comply with environmental and work-related (social) standards. This levy could be invested in Structural Funds for research, development and innovation in pollution control and cleaner technologies.

3.4 The CCIC recognises that BREFs have the potential to influence environmental improvement beyond Europe and notes the potential opportunity for the EU to sell expertise and promote best practice outside of Europe.

4. Is the information exchange on best available techniques optimal and are the BREF documents an effective implementation tool?

4.1 BREFs represent a unique and generally successful cooperative exercise between the regulators and industry. That said, the CCIC believes that production, translation and dissemination would benefit from them being more concise. It is suggested that, for each BREF, the IPPC Bureau might consider producing a summary document, or separating the supporting data out into a supplementary document. Industry faces particular difficulties when BREFs are not completed on time, or are not available in the required language, as the drafting of applications, as well as the subsequent determination of permits by the regulator, becomes more difficult and costly.

5. Is the scope of the Directive, in terms of activities and thresholds, appropriate to address the most significant environmental impacts of production processes?

5.1 There are interpretational uncertainties associated with both activities and thresholds which leads to a lack of clarity, and potentially additional cost, for industry as well as regulators. As mentioned in 2.2 above, CCIC believe a low impact approach to permitting is essential to avoid over-regulation where impacts are not significant.

5.2 The Commission has indicated that the inclusion under the Directive of additional sectors is being considered. However, the CCIC believes that there needs to be a proper impact assessment before new sectors are included to ensure that they actually need to be regulated in this way. Any new sectors brought in must have time to prepare, and the relevant thresholds for inclusion should be carefully and clearly defined. Whilst there is advantage in having as much regulation as possible under the same legislative umbrella, if the proposed additions are of lower risk then more flexibility will be needed in the Directive to allow a cost effective approach (see point 2.2 above concerning low impact).

6. In which cases do Community-wide emission limit values (ELVs) as minimum requirements help achieve a high level of environmental protection and prevent distortions of the Internal Market?

6.1 The application of fixed ELVs for particular substances across a sector or specific activity may appear to prevent distortions and provide a level playing field but in many cases they can have the opposite effect and cut across the very purpose of the Directive of encouraging competitiveness and sustainable development. In theory, the costs, the impact on employment and competitiveness and the benefits should have been taken into account, when setting an ELV, but in practice all the situations cannot be foreseen and a disproportionate burden will fall on a sector or a particular type or size of operation.

6.2 The CCIC believes the EU should instead be looking for opportunities to reduce pollutants in the most cost-effective manner, offering the largest emitters flexible ways to cut the mass release in the most cost-effective manner by trading or negotiated agreements. Flexibility is the key to sustainability whilst maintaining competitiveness and employment levels in Europe. The use of ELVs should be considered carefully; the impact on all sectors and the size of operation to which a particular proposed ELV would apply should be evaluated and, where ELV are considered appropriate, they should be used in a balanced way alongside more flexible regulatory tools.

7. **In order to achieve EU environmental objectives for large industrial and agricultural installations, is any action needed to ensure optimal consistency between this Directive and other existing or potential instruments used at EU or national level? In particular, how can the EU further promote complementary use of market-based instruments, including national emissions trading, and voluntary instruments?**

7.1 The lack of consistency between IPPC and other instruments is a considerable problem and a driver for inconsistency between Member States where competent authorities are forced to take a “best fit” approach. A more strategic approach, rather than an apparent piecemeal approach, would be a great advantage. Currently there is confusion amongst regulators and industry alike. As a partial solution in the short to medium term, reviews of current Directives could be coordinated, for example this review of IPPC could be tied into the current review of the Waste Framework Directive to drive better consistency between the two. In the longer term there should be a move to tie all environmental directives, and ETAP, together in terms of “protecting and enhancing the environment in a manner which balances costs and benefits”. The CCIC calls upon the Commission to recognise its responsibilities to minimise the burdens on industry by putting in place an overarching group tasked with recommending changes to future and existing legislation to deliver consistency and efficiency in this area, whilst taking due account of the subsidiarity principle vis-à-vis Member States.

7.2 The CCIC generally supports the use of market-based instruments within or alongside the IPPC framework where they would deliver incentives to invest and would not unduly increase legislative complexity.

7.3 Before emissions trading starts, there is a scope to provide a more flexible way of meeting requirements to reduce emissions of specific pollutants, potentially allowing a more cost-effective approach. However such approaches must be well defined, transparent and deliver benefits to both industry and the environment. It is essential that there is wide consultation with all stakeholders before such schemes are implemented and application must be consistent across all Member States in accordance with subsidiarity, with consideration that there is not distortion of competition as a result.

7.4 Flexibility could be introduced into the Directive so that the prescriptive imposition of BAT at every site could be waived where a sector or Member State can show that equivalent or

greater environmental benefits will be gained more cost effectively by targeting reductions. This may be done in perhaps a voluntary sector agreement or by trading. As above, industry must be given the opportunity to explore any proposals fully before implementation.

8. Do you have any other comments or suggestions of relevance to the subject of the Communication?

8.1 In order for industry to remain competitive there has to be a level playing field across Europe and also opportunities to influence the global attitude to sustainability. The IPPC BAT approach allows an opportunity to achieve this within Europe, provided that it is applied consistently. IPPC will present a challenge to organisations across the range of activities covered by the Directive. Competitiveness in the global marketplace is dependent upon economies of scale; EU industries need to be large to compete successfully. Size brings challenges in meeting pollution control limits and other positive environmental outcomes. Industry needs the flexibility of a range of appropriate incentives/economic instruments, applied across the EU, and the flexibility to combine significant investment on pollution control with existing upgrade timetables and investment cycles. As discussed under question 3 there may be scope for additional support from other trading mechanisms to help maintain EU competitiveness in global marketplace. There will need to be cooperation and negotiation between industry, regulators and other stakeholders both locally and at national and EU level to achieve the best outcomes.

8.2 The Commission should consider putting measures in place to analyse the economic impact of IPPC within the Community, i.e. European production and trade data should be analysed to ascertain whether IPPC results in a shift of production away from Europe to other countries.

8.3 Information relating to sustainable development, including improvements made by industry, reduced emissions and a cleaner environment, should be widely disseminated in such a way that it encourages consumers to make environmentally sound choices which support European industry. Whilst there is opportunity for European industry to exert pressure on other nations by example and via dissemination of relevant information, there must also be political and economic pressure for improved environmental performance at an international level.

8.4 The CCIC proposes that the Commission should consider setting up an "Environmental Certification Office" which could design a characteristic European logo –highlighting the recycling rate and energetic balance-sheet– and certify companies (and/or the products) complying with environmental standards, perhaps as part of an Integrated Products Policy. It is recognised that this would need to be wider in scope than IPPC

8.5 IPPC is one element in the wider issue of pollution associated with production, use and disposal. Whilst it is too early and burdensome to consider imposing the requirement for full life cycle analysis (LCA) on individual IPPC applicants, it is suggested that LCA could be carried out as part of a wider Integrated Products Policy and perhaps feed back into IPPC (possibly by way of the BREF notes) to indicate changes which could be made to improve upstream and downstream

pollution, i.e. to allow informed choices to be made by companies regarding aspects of their operations which are covered by IPPC. Further, as a part of this, the global environmental impact of BAT-inspired decisions could be examined on a sectoral basis.

8.6 The CCIC requests the Commission to use the expertise of the CCIC to investigate the "re-use of the waste". The use of industrial by-products as new materials or fuels has great potential. The CCIC strongly recommends the EU and the Member States to consult with industry and the producers of waste to determine its application in the market. Reduction in the high costs of removal or destruction of waste, together with the potential value of the by-products as raw materials or fuels will increase the competitiveness of the industry, whilst decreasing pollution and environmental harm.

8.7 It is recognised that Europe can set an example in terms of sustainable production and there are opportunities in developing and selling new pollution control techniques – but additional funding for research, development and innovation as well as incentives to invest in cleaner technologies will be needed in some areas. There is potential for a win-win outcome, but industry will need support to enable this to be achieved.

Brussels, 17 November 2003.

The President of the
Consultative Commission on
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The Secretary-General
of the
European Economic and Social Committee

Josly Piette

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