European Union Network for
the Implementation and Enforcement
of Environmental Law

IMPEL Project
"Practicability and Enforceability of the IPPC Recast Proposal"

VROM Inspectorate

Inspectie Verkeer en Waterstaat

Institute for European Environmental Policy

Introduction to IMPEL

The European Union Network for the Implementation and Enforcement of Environmental Law is an informal network of the environmental authorities of EU Member States, acceding and candidate countries, and Norway. The European Commission is also a member of IMPEL and shares the chairmanship of its Plenary Meetings.

The network is commonly known as the IMPEL Network

The expertise and experience of the participants within IMPEL make the network uniquely qualified to work on certain of the technical and regulatory aspects of EU environmental legislation. The Network's objective is to create the necessary impetus in the European Community to make progress on ensuring a more effective application of environmental legislation. It promotes the exchange of information and experience and the development of environmental legislation, with special emphasis on Community environmental legislation. It provides a framework for policy makers, environmental inspectors and enforcement officers to exchange ideas, and encourages the development of enforcement structures and best practices.

Information on the IMPEL Network is also available through its website at:
http://europa.eu.int/comm/environment/impel

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Executive summary:

IMPEL has previously developed a checklist to examine the practicability and enforceability (P&E) issues of proposed and existing environmental law. The Network of Heads of European Environmental Protection Agencies (NHEEPA) has also produced a similar checklist in their report '*Barriers to Good Environmental Regulation*'. In December 2007 the Commission adopted a Recast Proposal for IPPC and six industrial emissions Directives. This report describes an assessment of the P&E issues arising from the proposal and is the first use of the IMPEL and NHEEPA checklist.

IMPEL members were asked to identify P&E issues on the Recast Proposal through a questionnaire which adapted the checklist questions to the specific elements of the Recast Proposal. The comments from IMPEL members were then further discussed at a two day workshop. Overall comments were received from 29 IMPEL members from 17 Member States (BG, CZ, DK, DE, ES, FI, FR, HU, IT, LT, LV, NL, PL, PT, SE, SK and UK). The report presents a synthesis of the results of the questionnaire responses and workshop discussions.

The report highlights a wide range of P&E issues. The project has been careful to avoid issues of a more political nature (also of interest to IMPEL members) which should be addressed through the usual procedure of the legislators in the co-decision process.

Most IMPEL members generally stressed their positive views on the changes in the Recast Proposal affecting P&E, recognizing the work that had been undertaken to achieve this leading to the streamlining of the current pieces of legislation into a more consistent and practical legal framework on the permitting and control of industrial installations.

However, some members raised concerns over the clarity and consistency of certain new and changed terms and definitions in the Recast Proposal. The proposed change to the status of the BAT Reference Documents raised diverging views on the way the proposed status and adoption process of the BREFs could influence the practicability and enforceability of the legislation. Some members also noted concerns on other aspects, such as the proposed requirements concerning permit reviews, monitoring and inspection, while at the same time recognizing the need for effective compliance assessment.

The report contains a discussion of a range of issues raised in the Recast Proposal as well as Annexes containing a number of individual specific comments on items in the text.

The findings in this report should be considered by all of those involved in the debate on the Recast Proposal, including IMPEL, the Commission and the co-legislators, the Council and European Parliament, in order to assist in ensuring a revised regulatory regime that is practicable and enforceable.

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I. Introduction

In order to encourage policymakers, legislators and stakeholders to devote more attention to likely problems of practicability in implementation and enforceability throughout the legislative process, IMPEL produced a practical checklist to assess the practicability and enforceability of existing and new legislation. The aim of the checklist is to improve the overall implementation of EU environmental law in the Member States. The checklist was adopted by the IMPEL Plenary Meeting in December 2006, and published on the IMPEL website:

http://ec.europa.eu/environment/impel/cluster_3.htm

In parallel to the work of IMPEL the Network of Heads of European Environmental Protection Agencies published a report '*Barriers to Good Environmental Regulation*'. This also identifies a series of questions that need to be considered in assessing the development and implementation of legislative measures to address issues such as practicability. These issues are currently being developed by the Network of Heads of European Environmental Protection Agencies into a report on '*Improving the Effectiveness of EU Environmental Regulation – A Future Vision*'.

In December 2007 the Commission adopted a proposal to amend the IPPC Directive and six other industrial emissions Directives[1]. These Directives define a major part of the work of many IMPEL members and affect all parts of the regulatory cycle. It is important, therefore, for the practicability and enforceability of the proposal to be assessed.

This IMPEL project uses questions identified in the practicability and enforceability checklist and the '*Barriers to Good Environmental Regulation*' report to examine key aspects of the Commission proposal. The project **does not intend to interfere with the normal European legislative procedure**, rather it seeks to provide guidance to the co-legislators on the **areas which need particular attention during the legislative process** with regard to the **objectives of practicability and enforceability** based on the **practical experiences** of experts from IMPEL member countries. The Project report aims to highlight the key practicability and enforceability questions and areas which, in the opinion of the IMPEL experts, will need particular attention. By this the project report aims at informing and supporting the legislative process. The project terms of reference are provided in Annex IX to this report.

[1] Proposal for a Directive of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (Recast). COM(2007) 844. 21.12.2007.

II. Introduction to the proposed revision to IPPC

The proposed revision to IPPC and the six other industrial emissions Directives is a **recast proposal**. This means that it contains three types of text:

- Text from one or more of the original Directives that is not amended (in the proposal document this text is 'white').
- Text that is amended as minor changes (double struck through or double underlined) or a 'technical adaptation' (in the proposal document this text is marked with ⌦ and ⌫ at the end of the relevant text).
- Substantive amendments. In the proposal document this text is grey shaded.

These differences are important in that only the substantive amendments (grey shaded) are being considered in co-decision by the Council and European Parliament. Thus emphasis in this project is given to this text. This includes both new and deleted text. Guidance on recast has been published by the Commission (http://ec.europa.eu/environment/ippc/pdf/recast/guidance.pdf). The key elements of the proposal are:

- Recasting of seven existing Directives into a single Directive on industrial emissions to improve clarity and coherence and reduce unnecessary administrative burdens.
- Improving and clarifying the concept of best available techniques and requiring decisions that set permit conditions outside BAT to be justified and documented.
- Introducing minimum provisions with regard to inspection, review of permit conditions and reporting of compliance.
- Extending the scope of the IPPC Directive to cover certain activities (e.g. combustion plants between 20 and 50 MW) and clarifying the scope for some sectors.
- To amend non-essential elements of the Directive, the Commission will be supported by a Comitology Committee and ensure broad involvement of stakeholders.

The proposal is structured in seven chapters. Chapter I is the general umbrella part setting common provisions applying to all activities covered by this Directive. Chapter II covers activities set out in Annex I (based on Annex I of the IPPC Directive, with some clarifications and extensions) and lays down special provisions for those activities by amending the current requirements of the IPPC Directive. Chapters III to VI contain minimum technical requirements for large combustion plants, waste incineration plants, solvents installations and titanium dioxide installations, respectively. Chapter VII contains provisions on competent authorities, reporting by Member States, committee, penalties and the standard closing provisions.

The proposal is accompanied by an Impact Assessment which examines the costs and benefits of different options considered by the Commission in developing the proposal and presents the justification for the amendments that are proposed.

Information about the proposal, including the full text, accompanying Communication and Impact Assessment and a paper explaining the process of recasting EU law can be found at:

http://ec.europa.eu/environment/ippc/proposal.htm

III. Methodology

Information on the practicability and enforceability of the Recast Proposal from IMPEL members was initially obtained using a questionnaire distributed to IMPEL co-ordinators. The questionnaire was devised and agreed by a Review Group overseeing the progress of the project. The membership of the Review Group is provided in Annex X. A copy of the questionnaire is provided in Annex XI.

The questionnaire was structured according to major themes in the Commission proposal. Each theme was briefly introduced identifying the Articles in the proposal to which it refers. For each theme key questions from the Checklist and '*Barriers to Good Environmental Regulation*' report were used as the basis to develop questions specific to the detailed provisions of the legislation.

The questionnaire addressed the full range of regulatory processes involved in the implementation of the proposal from initiatory processes, permitting, monitoring, inspection and enforcement. It was considered important to obtain views from those involved in all of these different parts of the regulatory cycle. IMPEL co-ordinators were, therefore, encouraged to obtain a range of views. Members were also encouraged to base their answers on practical experience and illustrate their answers with practical examples.

Responses to the questionnaire were received from 29 IMPEL members from 17 Member States (Bulgaria, Czech Republic, Denmark, Germany, Finland, France, Hungary, Italy, Latvia, Lithuania, the Netherlands, Poland, Portugal, Slovakia, Spain, Sweden and the United Kingdom). A list of those who responded is provided in Annex X. The responses were collated and synthesised into a working document to facilitate further discussion.

A workshop was organised in The Hague from 10-11 April 2008 to discuss the findings from the questionnaire responses and other issues arising from the practicability and enforceability of the IPPC recast proposal. The workshop was attended by 25 participants from 16 Member States and the European Commission. The list of participants is provided in Annex X.

The workshop allowed for detailed discussion on particular issues that arose from the questionnaire responses. It was also agreed that it was important for the project report, as stated in the project terms of reference, to focus on issues of practicability and enforceability and not on issues of a more political nature that would be addressed through other channels in the co-decision process.

This report, therefore, presents a synthesis of the issues raised and conclusions reached from the responses to the questionnaire and workshop discussions.

The comments presented in this report (arising from the questionnaires or workshop) are presented largely in an unattributed manner. This is because some comments arise from more than one source or bring together views from different sources around a common theme. The exceptions to this are the presentation of some practical examples in the report and occasional comments in the body of the text where a member has drawn from specific experience or circumstances in the Member State.

Using the Practicability and Enforceability Checklist

This project is the first undertaken by IMPEL which uses the practicability and enforceability checklist. It is, therefore, important to comment on the utility of the checklist derived from the IMPEL Practicability and Enforceability project and the NHEEPA Barriers to '*Good Environmental Regulation Report'* in this project which might inform its use on subsequent occasions. Some key conclusions are:

- The checklists contains a large number of questions. The Practicability and Enforceability checklist itself states that a number would not be relevant in every situation and this, indeed, was the case in this project.
- The checklist questions generally needed modification in order to focus on the specific detail of the IPPC Recast Proposal. This was particularly the case in using a questionnaire approach where it is important for questions to be focused to ensure members address the key issues of concern.
- In this project it was found more useful in a questionnaire approach to identify key practicability and enforceability issues from the checklists for each section of the IPPC Recast Proposal (e.g. inspection) rather than structuring the approach according to different aspects of practicability and enforceability (e.g. consistency).
- Although the questions (in the checklists themselves or subsequently modified) focus on issues of practicability and enforceability, the issues they address can also raise concerns which are more political than practical. This seems unavoidable. A good dialogue between IMPEL members and the Commission is likely to lead to a common understanding and agreement on how precisely to delimit the practicability and enforceability assessment, as was proven during this project.
- In addition, the timing of the assessment should be noted. In this project it concerned an official proposal presented by the Commission to Council and European Parliament, which however had not yet been discussed in the Council Working group. It seems that there are both advantages as well as disadvantages connected to this timing, compared to for instance an assessment undertaken during the development of proposed legislation. It would be worthwhile for IMPEL and the Commission to evaluate the way the project was carried out and in particular its timing.
- The responses to the questionnaire demonstrated that the issues of practicability and enforceability in relation to the IPPC Recast Proposal are of considerable interest to IMPEL members.

In conclusion, the practicability and enforceability checklist and the NHEEPA checklist have proven to be useful tools in assessing important elements of the IPPC Recast Proposal. They are sufficiently comprehensive to address all relevant issues

and specific enough to ensure detailed points are raised. IMPEL members are, therefore, recommended to use the checklists for the future examination of proposals and existing legislation as appropriate.

IV. Main findings of the project

1. Main findings and follow-up of the report

The report highlights a wide range of practicability and enforceability issues. The project has been careful to avoid issues of a more political nature (also of interest to IMPEL members) which should be addressed through the usual debate of the legislators in the co-decision process.

IMPEL members stressed their positive views on the changes in the Recast Proposal affecting practicability and enforceability, recognizing the work that had been undertaken to achieve this as well as the need to ensure more effective implementation of IPPC across the EU.

The report contains a discussion of a range of issues raised in the Recast Proposal in the following sections. A number of individual specific comments on items in the text are incorporated in the Annexes I to VIII. The responses to the questionnaire identified a number of topics as the most important. The project workshop focussed in particular on these topics and related subject matters, namely:

- The changing status of the BREFs (section 5),
- Permit Review (section 8),
- Site closure and remediation (section 9)
- Monitoring (emissions, soil) and compliance reporting for operators (section 10)
- Inspection and compliance assessment by competent authorities (section 11)

Views on these topics varied since both the legal situation and practical implementation varies in the Member States varies. Further information on the detailed conclusions is presented in the appropriate sections of this report.

The findings in this report should be considered by all of those involved in the debate on the Recast Proposal. IMPEL members are invited to consider its conclusions with regard to their specific experience and communicate their findings to official governmental channels involved in the Council discussions. The Commission is also invited to consider the conclusions as are the co-legislators, the Council and European Parliament, in order to assist in ensuring a revised regulatory regime that is practicable and enforceable.

2. Scope of the proposal

The Recast Proposal clarifies and extends the range of activities to be regulated, such as on combustion plants, waste processes, etc (Annex 1).

Questions from questionnaire

- Is the extension in scope of the legislation clear in defining the activities which are covered?
- Do you have experience in permitting activities covered by the extension in scope of the Directive? If so, are there any practicability and enforceability issues related to extending the scope of the Directive to cover these activities?
- Could certain thresholds and other determinands of activities in Annex I, whether amended or not, be further clarified? If so, please provide specific suggestions?

Many members considered that the extension in the scope of the legislation is clear. However, some members raised concerns over the clarity of some of the activities in Annex I. The responses concerned details of individual definitions and these are included in Annex I of this report.

One member noted that there was a great effort made by the Commission aided by the IEG Annex I subgroup on how to interpret some definitions and wording of the present IPPC Directive. Based on that work a series of guidance was produced and published by the Commission in April 2007 (Guidance on Interpretation and Implementation of the IPPC Directive). Those issues that could not be dealt with were agreed to be taken into account during the revision of the Directive. The member concluded that further guidance and amendment of the present guidance will be needed to take account of the proposed changes in the Recast Proposal in order to ensure that interpretation problems do not arise.

The Recast Proposal presents an amended list of the general principles applying to the regulation of IPPC activities (new Article 12 and old Article 3). It was noted that in the existing Directive the first principle is that "all appropriate preventative measures are taken against pollution, in particular through application of the best available techniques". This is then followed by other principles, such as waste avoidance and efficient use of energy. The Recast Proposal places the application of BAT as a separate principle. It was noted that at least one Member State had interpreted the original text as meaning that BAT is to be applied to preventative measures against pollution, but not to the other issues listed in the Article, but the Recast Proposal places it as a general principle to be applied in the operation of installations. It was not clear if this change has any practical consequences, but these will be examined in the Member State(s) concerned.

The practicability and enforceability issues related to extending the scope of the Directive

Currently, a number of Member States already regulate activities which would be included in the extension to IPPC, such as through integrated permits, individual media permits, via EIA or through other measures (e.g. relating to manure). For new

sectors to Annex I there will, in some cases, be limited experience of permitting depending on whether they are already addressed by existing Member State legislation. This may lead to difficulties in permitting due to lack of previous regulatory input or particular problems with taking account of particular definitions of capacity thresholds compared to existing practice. It will, therefore, be important in the future for IMPEL members to exchange experience on implementation on these issues. IMPEL members should also take account of the guidance on interpretation of capacity under the IPPC Directive published by the Commission following extensive consultation with Member States.

However, one member identified a case where regulation of such activities had been specifically excluded at a national level in order to reduce administrative burdens (i.e. particle board processes in Sweden).

In some cases the extension in scope clarifies what is required, for example in relation to intensive animal units. However, in other cases some members considered that this is not clear, such as with respect to waste water treatment and sewage sludge, so that the practicability is uncertain. This issue is addressed further in the following section. Some members also noted that the proposed inclusion of combustion plants between 20 and 50 MW will have practical consequences for their work (such as where aspects of their operation are already regulated at a Member State level, e.g. for air emissions, and IPPC extends the issues to be addressed) and members should assess what these will be.

The nature of the thresholds and other determinands of activities in Annex I

A number of members considered that the thresholds and other determinands were sufficiently clear, had been adequately clarified and did not require any amendment. Others expressed concern or sought clarification in a number of areas. These specific comments are provided in Annex II. Ensuring the correct thresholds is important where there are activities operating above and below those thresholds in a Member State and, therefore, different obligations might apply, with different consequences for business operation. The basic definition of threshold is problematic and could follow COM(2003) 354 final.

Some members considered the need for exclusions or taking into account concerns over very small installations with little or no impact (i.e. the need for minimum thresholds in cases where no minimum presently exists). This has proved an issue of practical concern in the implementation of the existing Directive and has been raised through IMPEL on previous occasions. This is an issue of proportionate regulation, a central concept of the practicability and enforceability checklist. Box 2.1 provides one example of the practical consequences of not having a minimum threshold or other exclusion provision available to competent authorities.

Box 2.1. Example of practical problems arising from the lack of a lower thresholds or other exclusion provision

In **England and Wales** there is a small company producing mass spectrometry equipment which carries out chemical processes that meet the Chapter 4 category. The work is carried out in a completely contained workshop with no possibility of causing pollution. The regulatory requirements of IPPC seem, therefore, disproportionate to the desired outcomes.

3. Definitions

Aiming at improving clarity and streamline existing definitions, the proposal revises some definitions from the existing Directives such as those of 'installation' and 'permit'. New definitions are also added, such as for 'emerging technique', 'baseline report', 'routine'/'non-routine inspection' as well as cross-referencing to the waste framework Directive.

Questions from questionnaire

- Are all the key terms in the proposal properly and clearly defined? Is there experience of other definitions from other sources that provide greater clarity than those in the proposal?
- Do the changes to the existing definitions in the proposal provide greater clarity and consistency than in the existing legislation? Where new definitions are added, are these clear and consistent with the existing legislation?
- Are the requirements relating to what activities **must** be included within a permit and those that **may** be included within a permit clear? Are these practicable?
- Are the requirements relating to whom the permit should/could apply clear? Are these practicable?
- Are there any definitions which are not consistent with those in related legislation?

Clarity and consistency of the key terms defined in the proposal

Some members considered that the key terms were clearly defined and, indeed, consistent with interpretations in national law. However, a number of concerns were raised by some members on the clarity of individual terms. These specific comments are provided in Annex III. However, it was noted that it is difficult to define a term in a way that is workable in all Member States. One member stressed that in seeking clarity it is important to look at consistency with other legislation to reduce confusion in implementation. This issue is addressed in the following section.

Members were generally positive concerning the change in the definitions in the proposal, although noting their concerns over individual definitions. Comments on particular changes are provided in Annex III and Box 3.1 provides some examples of practical implications of changes to the definitions.

Box 3.1. Examples of the practical implications of changes to definitions.

The definition of "installation" introduces the words "on the same site". In practice this will have issues of enforceability and may have unintended consequences. There are examples where directly associated or technically connected activities may be on another site. These will be lost as a result of this amendment. One example is where a water treatment plant is on a separate site some distance from the main site. In the **UK** this issue was taken to the UK High Court where the regulator won the case that these issues should fall within the scope of IPPC. Another example is where installations are split by a main road, where in the UK the operator will refer to these as separate "sites", but they are considered to be the same installation.

In the text the **Italian** translation of "installation" and "plant" are the same. This introduces confusion (e.g. the definition of substantial change). It is probably clearer to translate "waste (co-) incineration plan" as "(co-) incinerator" and avoid any unnecessary reference to combustion plants to avoid confusion with what is an "installation".

Clarity of what a permit consists of

Most, though not all, members considered that the requirements for what must or could be included in a permit were clear and practicable. One member particularly considered that the increased flexibility to allow one permit to cover the operation of a number of similar activities across a Member State increased the practicability of implementation of IPPC. However, some of the practicability issues arising from this are not known, such as whether a competent authority could use this to extend the scope of a permit to include activities in other locations that would not otherwise fall under the scope of the Directive.

The main issue raised by members concerned the provision that Member States could issue a single permit to two or more natural or legal persons. This raises the question of who is legally responsible for an installation. This issue is considered in more detail in the following section.

Article 6 states that the competent authority shall grant a permit if the installation complies with the requirements of this Directive. One member considered that this wording and deleting the former half sentence "Without prejudice to other requirements laid down in national or Community legislation…" gives the impression that compliance with this legislation in itself would be sufficient, and other requirements set out in other legislation do not need to be taken into account. This provision should be clarified.

Another member considered that in Annex II the proposed title "List of polluting substances" gives the impression that there are no other polluting substances except those listed here. It would be better to keep some more parts of the old title, like "Indicative list of the main polluting substances", or "Polluting substances referred to in Article 15 a)".

The clarity and practicability of requirements relating to whom the permit should apply

Most members considered that the proposal is clear and practical with regard to these obligations. Some members were positive about the clarification of flexibility in the Directive. The addition of Article 5(2) ('operators') was welcomed by one member as it provides increased practical flexibility (e.g. allowing one permit to cover the operation of a number of similar activities across a Member State) and also the possibility to issue one permit for more than one operator.

In Art. 4. when a permit is no longer location-restricted, various authorities can issue that permit. When a business has locations in different countries (refineries, for example), one member noted that it could be unclear which authority would then have to issue the permit when such installations occur within the locations of different competent authorities (see Box 3.2).

The issue of allowing joint operators raised a larger number of concerns. Such an approach is not allowed in some Member States, e.g. the German Constitution requires that there is clear legal responsibility for an installation. Even where joint operators are allowed there is still the practical question of who the permit holder is and who is liable for the activities that are carried out. There might also be difficulties in charging schemes for multiple operators of an installation. Inspections and enforcement may also lack clarity where multiple operators exist. One member concluded that these problems should not be insurmountable, but their regulatory impact is unknown as yet. Thus the practicability of having permits covering multiple operators (even on different sites) is unknown and the Commission intention here would benefit from clarity. One member thought that it would be helpful to add a provision that will, in such cases, lay down an obligation in the application (Art. 13) and in the terms and conditions stipulated in the permit (Art. 15) to address all conditions, obligations and requirements to a specific natural and/or legal person, who is the joint operator of the installation.

However, it is important to note that the Recast Proposal states that Member States "may" issue single permits where there is more than one location or for joint operators, so that where this would cause practical or legal problems, Member States would not be obliged to follow such an approach. The provision allows flexibility to the Member States only where they can and wish to take advantage of it to enhance the practicability of implementation.

Box 3.2. Example of single permitting for more than one installation

Article 4 – In the **Czech Republic**, the permitting process takes place at a regional level. Issuing a single permit for facilities having, for example, two installations, each in a different region, would be complicated. A problem would be to divide the responsibilities between different regional permitting bodies.

Definitions which are not consistent with those in related legislation

Members generally considered that definitions were consistent with those in related legislation and did not raise enforceability and practical issues.

However, a few members identified definitions which, according to their experiences, would not be consistent with those in related EU law and could lead to enforceability and practicability problems. The following were noted for E-PRTR, EIA and the Paints Directive and in relation to biomass and animal carcasses.

There are differences between Annex I of the Recast Proposal and Regulation 166/2006/EC on E-PRTR. Some are existing inconsistencies, some new:

- Differences created by the new definitions: all the amendments, where "and" was changed to "or" in the IPPC Annex I; the word "basic" was deleted from the chemical industry sector in the IPPC Annex I (category 4); at 3.5 the "kiln capacity exceeding 4 m^3" was deleted; addition of new food industry activity at 6.4 b) (iii) — it would be practical later to follow these changes in the E-PRTR as well.
- There is a new activity under 6.1. (c) wood-based panels, with the exception of plywood, with a production capacity exceeding 600 m^3 per day. The E-PRTR also contains a similar activity, but there is no exception (plywood is also covered).

There are differences between the definitions of activities under EIA and IPPC. EIA and IPPC activities are similar. EIA covers a wider range of activities and IPPC applies capacity threshold for many activities. Chemical installations are covered in both Directives, without capacity limits and with different definitions.

The definition of VOC does not correspond to the wording of the VOC definition of the paints Directive 2004/42/EC, i.e.: "any organic compound having an initial boiling point less than or equal to 250 °C measured at a standard pressure of 101.3 kPa.". Also the definition of biomass (which is unchanged from the pre-existing legislation) is not consistent with definitions used in other EU legislation, such as Directive 2001/77/EC and Decision 2004/156/EC (guidelines for the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC). It will be important for members to consider whether these have any practicability and enforceability consequences.

4. Coherence and consistency of legislation

The Recast Proposal brings together the requirements of seven existing Directives. In doing so, one aim is to enhance coherence and consistency between them.

Questions from questionnaire

- Are the various provisions of the proposal coherent and consistent? In particular, are the requirements of Chapter 2 (IPPC) consistent with Chapters 3-6? In cases where both Chapter 2 and one or more of the Chapters 3-6 may apply to an installation, do you foresee any practical issues that may arise in implementing the proposal? Have in your opinion possibilities for integration of the seven Directives sufficiently been considered in this proposal?
- Is the legislation consistent with other existing legislation (other than with respect to definitions considered in question 8), such as Directives on Waste, Water and EIA? Are any references to other texts precise?

Integration of existing legislation

Members were generally supportive of bringing together the existing Directives into a single legislative document, improving the opportunities for practical implementation. This process provides an opportunity to resolve some of the conflicts between the Directives. Specific comments relating to the individual Chapters 3-6 are provided in Annex VIII.

However, in contrast, some members did question the practicability and therefore the effectiveness of the integration. The BAT-approach in IPPC and the prescriptive emission limit approach in the sectoral Directives have, in the past, caused some practical problems due to the unclear interaction between the different pieces of legislation. For example, in the Netherlands the existence of the two regulatory approaches has led to confusion and discussion over the need for a full BAT appraisal between competent authorities, industry and NGO's, resulting in lengthy permitting and court procedures and, hence, practicability problems for the competent authorities. It was stressed by certain members that it would be beneficial if the Recitals of the Directive state more clearly the purpose of the retention of the sectoral emission limit values to ease future implementation.

While the inclusion of five of the sectoral Directives was not questioned, one member questioned the full inclusion of the solvent emissions Directive where this includes activities not subject to IPPC. This member suggested that only including IPPC regulated activities would produce a more coherent and practical Directive. Also the six sectoral Directives are largely (but not exclusively) concerned with emissions to air and one member considered that this might emphasize air emissions more than, for example, other emissions or waste arisings.

Specific concern was raised by one member over the fact that Chapter 2 covers combustion installations >20MW, while Chapter 3 covers large combustion plants >50 MW. Thus, in Annex V on technical provisions relating to combustion plants there are no emission limit values for combustion plants between 20 and 50 MW.

Thus it is not clear whether there might be cases where combustion plants between 20 and 50 MW and those greater than 50MW might be treated differently in setting emission limit values in permits and whether this would have practical implications for such installations. Members stressed at the workshop that it will be important, therefore, for the relevant BREF covering smaller combustion installations to be developed at the earliest opportunity.

The proposal also amends the large combustion plant Directive to remove the provision for a national emission reduction plan from 1 January 2016. This means that all plants would have to meet the concentration-based ELVs, with no account taken of the annual mass emissions and no scope for trading annual mass emission allowances. One member considered that this will reduce the flexibility available to regulators to make cost-effective regulatory decisions and that the change is, therefore, less practicable.

Consistency with EU law

Members were unable to identify inconsistencies or only noted ones concerning definitions, etc., noted earlier.

5. BAT Reference Documents (BREFs)

The Recast Proposal introduces a new Article (14) on BREFs. It requires that the Commission shall adopt BREFs based on the results of the information exchange (Art. 29). The following Article (15) describes the processes for permit determination. It requires that 'BAT reference documents shall be the reference for setting the permit conditions' and that permit conditions shall be based on BAT. Permits should also contain ELVs that do not exceed the emission levels associated with BAT as described in the BREFs. The Recast Proposal would also allow derogation from this in specific and justified cases based on the existing local criteria, along with an assessment of costs and benefits that has been added within the text of the proposal. Articles 8 requires operators to report on compliance with permit conditions, with Article 24 requiring a comparison between the operation of the installation and level of emissions associated with BAT as described in the BREFs to be included in this report for Annex I activities only.

Questions from questionnaire

- Is the proposal clear on how BREFs are to be used in implementing the legislation?
- What are the (practical or legal) implications of the new requirements relating to BREFs, taking into account the form and content of the present BREFs?
- With the clarification and strengthening of the role of BREFs, do you foresee that the BREF development and revision process will (have to) change?

Clarity of the provisions

Members expressed different views on whether the provisions for the role of BREFs were clear or not. Most members generally welcomed the moves to enhance the application of BAT and ensure better performance from installations which would improve the enforceability and practicability of the legislation. In addition, some members considered that the proposed new stronger role of the BREFs would clarify the way competent authorities should use the BREFs and would enhance the enforceability and practicability of the legislation while ensuring a more consistent permitting of IPPC installations between competent authorities and between Member States.

Other members considered that the changed role of BREFs will not be fully clarified until all the associated guidance on their use and the application is provided. Also, in Art.15.4 one member welcomed the clarification that if there is no BREF available, then the general points of departure will be looked at in order to determine BAT.

Art 15.3 reads that BREFs "shall be the reference for setting the permit conditions". According to one member, it is not clear if this means that nothing else shall be used regardless of whether or not better information on BAT is available. This interpretation is supported by Art 15.4. On the other hand, the BREFs can be supplemented by other sources. In the view of this member, if so it would be clearer if it read "shall, together will other relevant sources, be a reference for setting the permit conditions". Without this an operator might argue that the BREFs "shall be the reference for setting permit conditions" and thus lower emission limit values (ELVs) than the ones which follow from the upper ends of BAT associated emission levels (BATAELs) cannot be prescribed. In practice, there might be a risk that the BATAELs will be misused in the same way as the ELVs in the current large combustion plant (LCP) Directive sometimes have been. One member also noted that the phrase "shall be the reference" could cause problems in practical legal application with differing views of what the interpretation of this means. It was noted that this would, however, provide clearer status than under the current legislation where the legal interpretations are even wider.

It is also important to note that different Member States have different traditions when setting ELVs. There can be a different time basis (hour, day, month and year) and different ways of expressing them (concentration, and mass per time or production) and also different consequences when they are violated. This can mean a quite different interpretation of which levels should be set given that the BATAELs are the starting point. It is recognised however that the BREFs (should) specify the reference conditions for such BATAELs.

Art 16.2 and Art 73 state that all existing installations are to meet the new requirements 3 years after publication in OJ (around January 2014?). It is not clear if this means that by that date all ELVs in all permits shall be not higher than the BATAELs. It is also unclear if possible derogations are only related to the emission limit values and not to other issues, such as equivalent parameters and technical measures as BATAELs are only one part of the content of BREFs. It is also unclear if local conditions, etc., should be taken into account only in setting emission limit values but not in setting other permit conditions.

The practical and legal implications of the new requirements relating to BREFs

Some members welcomed the clarification of the proposed status of the BREFs. Some other members raised some issues on the practical and legal implications of the new requirements and role of the BREFs. Note that the issue of the link to the review of permits is addressed in section 10.

Practical constraints in using the current BREFs

Members considered the issue of whether the BREFs as currently drafted are suitable for the new proposed role, including the way that BATAELs are presented. If they are not suitable for this purpose, this could significantly undermine the practicability and enforceability of the revised regulatory regime and reduce the credibility of its implementation. There were some concerns that in certain cases the BREFs as currently drafted may be insufficient in this role and that where necessary revision of their structure and content may be required.

The BREFs currently do not cover new sectors to Annex I. There will be a need to extend the scope of BREFs or write new BREFs for the newly included activities.

Problems of interpreting the BREFs

The BREFs consider an industry sector, whereas the Directive requires the determination of BAT at the installation level. Currently, competent authorities address this interaction in determining individual permits taking account of issues such as the local environment that is retained within the Recast Proposal. However, the Recast Proposal places the BREF industry sector conclusions in a different context in permit determination and it is not clear what the practical consequences of this changed status will be in relation to considering operating conditions of individual installations, for example where some aspects of BAT receive greater attention than others in a BREF (such as emissions to water compared to general obligations on energy consumption).

A number of members considered that the focus should be on overall cleaner technology rather than on specific provisions related to ELVs. According to certain members, to base BAT on BATAELs is not necessarily the best technique taking all environmental impacts into account, for example, the consumption on energy, water, production of waste etc. Some other members stressed that cross-media issues were taken into account for determining BAT as part of the BREFs process.

BATAELs are often given as a range in the BREFs rather than a specific number. This was viewed by some as a potential hindrance in practice when determining at what point within the range an ELV should be set. The ranges in BREFs may, therefore, lead to considerable debate amongst stakeholders during the permit decision process under the proposal. It was noted that the proposal only sets a requirement to not exceed the range, and that determination of the emission limit values would continue to be undertaken by the competent authorities concerned.

Practical interpretation

It was commented that if a BREF itself is not legally binding, it is not clear what the implications are for a legal obligation in national law on a Competent Authority to base a legal decision (permit conditions) on a non-legally binding document. Currently Competent Authorities can make reference to guidance, but the BREFs themselves are not currently referred to in the national law.

Language is an important issue for some members. Since the BREFs are written in English, with only the Executive Summaries translated into official languages, some of the subtle requirements of BREFs may be lost to non-English speaking operators and officers in competent authorities. While this is currently the case with the use of the BREFs, the problem is brought into sharper focus by the proposed change in the status of the BREFs. It was noted that a number of Member States have translated the BREFs into their own language or have published guidance documents from the BREFs. Importantly, some members stated that it was inappropriate to set legal obligations in national law referring to documents not in the national language. Furthermore if companies have to compare themselves with the BREFs, such as in an annual report, they will only be able to do so against the translated executive summaries.

Some members considered that it is important to consider how BREF outcomes are addressed with regard to other factors, such as regional differences, specificity of single technologies, innovative cycles and setting remedies to ensure practical implementation. In this regard, it is important to note that the proposal retains the need to address local environmental issues in setting permit conditions in Article 16(3).

Other issues

One member noted that it could be beneficial to use the Share Environmental Information System (SEIS) to publish information on line. The member also considered that the Commission could publish one electronic list of BATs in relation to the BREFs.

The effect of the changing provisions on the BREF development process

All members considered that the changing status of the BREFs within the implementation of IPPC would have implications for how BREFs are developed, reviewed and approved. There will need to be a change in the scope of the BREFs (taking account of changes in the scope of the Directive), the structure of the BREFs (to aid their use), the type of information that the BREFs contain and the need to strengthen the BREF development process itself to ensure a high quality product. These issues are being taken forward with a guidance document currently under discussion on the improvement of data collection under the BAT information exchange. Detailed comments on these issues are provided in Annex IV.

6. Innovation and emerging techniques

"Emerging technique" is defined as "a novel technique for an industrial activity that, if commercially developed, could provide a higher general level of protection of the environment or higher cost savings than existing best available techniques". Competent authorities can grant derogations from meeting emission limit values based on BAT as described in the BREFs for the temporary testing and use of emerging techniques (Art. 16(5)). The Recast Proposal also introduces new provisions requiring Member States to establish incentives for operators to develop and apply emerging techniques.

Questions from questionnaire

- Is it clear what is expected/required from competent authorities and Member States under the provisions relating to innovation and emerging techniques?
- Is the provision with respect to temporarily allowing higher emission limit values for a trial period for testing new techniques practicable?

A large number of members considered that the provisions relating to innovation and emerging techniques were clear. However, a number of others were unclear about particular aspects.

One member was concerned about Art. 16 more fundamentally, in that it might allow too much flexibility and, therefore, the text in Art. 16 para. 5 and Art. 30 should be more restrictive.

A concern of a number of members was what is meant by "incentives". Guidance on what kind of incentives should be included, or exchange of best practices, if such measures are already used in some Member States, would be helpful. Developing emerging techniques in individual installations is not practicable in all cases, e.g. SMEs do not have the necessary financial background to do this. It is not clear if permits can simply say that the operator shall look into the possibilities of developing a certain emerging technology. Research and development is already supported by different means. Clarity is also required on the terms "novel technique" and "commercially developed".

It was noted that a number of Member States already have similar provisions as that in the Recast Proposal with respect to temporarily allowing higher emission limit values for a trial period for testing new techniques in national law (e.g. Czech Republic, Hungary, Netherlands and Sweden), although three (Bulgaria, France and Germany) stated that national law did not currently allow this. However, it was noted that the six month provision in Hungarian law is focused on getting the operation of a process adjusted rather than experimenting with new techniques.

It is important for the practical aspects of this provision to be considered. If the intention is that these tests shall not require a permit modification, a notification from the operator may be enough for the authority to grant the derogation and, therefore, reduce the financial burden, but this could reduce scrutiny over environmental

impacts. From a permitting perspective one member thought that this should not present significant problems but would potentially require more frequent review of the permit and increased associated workload with regulating the site (routine and non-routine inspections, etc.).

The length of time allowed for the trial period raised a number of comments on practicability. Some considered that six months was about right for the practical testing of new techniques, while others considered that more practical periods would be a year, 18 months or two years. It is also not clear whether the derogation could be applied only once to an installation or more than once and, therefore, how frequently.

7. General binding rules (GBRs)

The provision for GBRs is retained (Article 7). Article 18 repeats the requirement from Directive 2008/1/EC that use of GBRs shall ensure an integrated approach and a high level of environmental protection and adds that this is equivalent to that achievable with individual permit conditions. The Recast Proposal adds that GBRs shall be based on BAT, without prescribing the use of any technique or specific technology. GBRs must also be kept up to date with developments in BAT (they must be, where necessary, reconsidered and updated within four years of publication of a new or revised BREF).

Question from questionnaire

- Are the changed requirements and conditions relating to the definition and application of GBRs clear and practicable?

Use of GBRs by the Member States varies – some use them extensively, some occasionally and some not at all. This experience was reflected in the responses received. Indeed, it was clear that there is not a common understanding of what is meant by a GBR. It is also important to note that the nature of GBRs in the Member States varies. For example, they need not simply be a 'standardisation' of conditions that would otherwise be applied on an individual basis in permits. In the Netherlands, for example, techniques might be prescribed in GBRs, but techniques are not prescribed in individual IPPC permits.

Most members considered that the provisions relating to GBRs are clear. However, one considered that the lack of a definition of the term "general binding rules" is itself a significant omission.

The requirement to update GBRs within four years of an updated BREF was viewed by a number of members as not practicable in every case. For example, in Germany a GBR can cover different categories of installation and therefore could be affected frequently by updates to different BREFs. Also the permit in such cases can be given for an unlimited period, but there could then be issues of conflict with the requirements for updating permits (see following section).

It would also be beneficial to exchange experience and information on GBRs and their updates using the Shared Environmental Information System (SEIS).

8. Permit review

The Recast Proposal (Article 22) introduces a requirement for permit conditions to be reconsidered and, *where necessary*, updated within four years after a new or updated BREF is adopted in order to take account of developments in BAT or other changes regarding the operation of an installation.

Question from questionnaire

- Are the requirements relating to the review of permits clear? Are they practicable?

Many members considered that the requirements relating to permits reviews are clear and practicable. However, a number of others raised concerns.

The workshop noted that permit revision is only required "as necessary" and only following adoption of a new or updated BREF (not a minor revision), so that this would minimise the regulatory burden. One member stressed that if there is to be a formal linkage between the permit review dates and BREF publication then, for business planning within competent authorities, the BREF review programme needs to be clear. This can also be taken account of "as necessary", linking reviews to business cycles, etc. Another suggested that it is practically more important to link the permit review to substantial changes in the installation, environment or technology rather than with the adoption of a new BREF.

It is important to note that a permit review does not mean that an operator would need to comply immediately with new emission limit values. However, it follows from the proposal (Art. 16.3) that when new (more stringent) emission limit values derived from an updated BREF are prescribed and an operator (in the revised permit) is granted some time to adjust the installation to these new requirements, the competent authority would in each case have to regard and identify this as a derogation from the requirements of Article 16(2). It was also noted that extensive use of such derogations could raise concerns from NGOs.

It was also noted by one member that the requirement for the consideration of permit revision would be transposed into national law. Therefore, a decision by a competent authority not to revise a permit would be a legal decision and, therefore, open to legal challenge in the courts, with consequent practical implications for the competent authorities.

Some other members considered that the exact requirements of the permit review are not clear. In particular if new BATAELs are described in a revised BREF, is it clear if this means that new ELVs should be prescribed in a revised permit?

There is also uncertainty about the need to review a permit for a complex installation where more than one BREF applies (e.g. a chemical site with organic and inorganic processes, incinerator and combustion plant). Is it to be reviewed when all the relevant BREFs have been revised or is a partial review undertaken when each updated BREF is adopted? It is also not clear what would happen when a horizontal

BREF is updated as this could potentially affect all permits. The provision would, therefore, seem to be better phrased as applying only to vertical BREFs.

Some Member States already have a permit review process in place (e.g. following a set timetable based on the date of first permit issue). There could, therefore, be practicability issues to align these with provisions for permit review in the Recast Proposal in those Member States concerned.

Further specific comments are provided in Annex V.

9. Site closure and remediation

The Recast Proposal introduces (Article 23) more detailed obligations relating to site closure and remediation. Where an activity involves the use, production or release of dangerous substances that might contaminate soil or groundwater at the site of the installation "the operator shall prepare a baseline report before starting operation of an installation or before a permit for an installation is updated" with information on the initial state of the soil and the groundwater. The Commission shall establish criteria on the content of the baseline report. When the activity ceases, the operator shall assess the state of the soil and groundwater contamination, compare this to the baseline report and remediate the site and return it to that initial state.

Question from questionnaire

- Are the provisions relating to the production of a baseline report and the provisions with respect to site closure and remediation clear? Are they practical?

A number of members considered that the provisions on site closure and remediation were clear and practicable and a number reported that similar provisions are already required in national law.

However, some members considered that the Recast Proposal contains very prescriptive requirements on site closure and remediation (e.g. the requirement for a baseline report with quantified information) which are not practicable. For example, one member suggested that a risk-based approach to what is required would be more practicable and follow practice in some Member Sates, so that it would be more appropriate for the Recast Proposal to require quantification "as necessary". Another noted that its national law requires restoration to the initial state and this has proved costly and impractical. Indeed, this may be impossible if the landscape has changed. Return to a "satisfactory" state is more practical and ensures that the soil is not seen as a place to deposit pollutants that are otherwise controlled with respect to discharges to air and water. It would, therefore, be useful for IMPEL members to provide further experience on the interpretation of targets used at national level for site restoration. It was noted that the proposal on "baseline report" relates to the prevention of contamination during the operation of the installations concerned and not to the remediation of historical contamination.

At the workshop members strongly felt that the approach of requiring quantification in all cases is not always practicable. The Recast Proposal changes the concept of

returning the site to a satisfactory state to one of returning it to its "initial state", i.e. that at the time the permit was granted. Satisfactory state was not defined in the original Directive, however it seems that nearly all Member States interpreted this to be "fit for purpose" in line with the contaminated land risk based approach that already exist in many states. England and Wales was an exception that decided to employ the objective of returning the site to its initial state. Initial state limits the conditions to be applied to the operator to only pollution caused by the IPPC activity. However, an operator may have liabilities under other legislation for previous contamination, so that if there is pre-existing contamination "initial state" may be a weaker objective than that applying to the operator when taking account of all legal requirements. There needs to be discussion on whether the appropriate objective is "initial state" or "fit for purpose" or whether it should be left to Member States to decide as at present.

Some members considered that the "definitions of "possibility", "significant risk" and "definitive cessation" need to be clarified either in the proposal or in guidance. Also the requirement for restoration without an initial baseline report could be difficult if the site is subject to historic contamination.

The proposed approach is better suited to new activities (where the baseline is established before starting operations) than to existing activities (where the baseline is established before updating the permit). If the site has been contaminated before the operation starts (new activities) or before the baseline report is established, the operator shall remediate "only" to the state established in the baseline report. This clarifies liabilities. There might however be difficulties in distinguishing old and new contamination. There might also be some problems in situations, where activities have been operating (and polluting) long before the baseline report is established. In order to improve the practicability and enforceability of the proposal it was suggested that the article could be worded in a way to ensure that no significant added contamination is allowed.

Some members considered that greater clarity on the contents of a baseline report is needed. In particular, waiting for the Commission to develop criteria raised some concern and one member considered that it is important that such criteria are specified formally at an early stage to assist practical implementation. What kind of activities are meant or which parameters must be reported is not clear. Also as the purpose of this baseline report is to provide reference information for the remediation required after ceasing the activity and it, therefore, seems to be unnecessary to prepare it each time that the permit is updated.

One member noted that the definition in the proposal is stricter than that found in Annex II of Directive 2004/35/EC referred to in the proposal. It was noted that Directive 2004/35/EC and the Recast Proposal have different subject matter: the issue of significant damage leading to liability issues for the former and the prevention of risks of soil and groundwater contamination for the latter. Some members considered that consistency should be sought.

To ensure practical application on the production of a baseline report, there needs to be a reference to a date (date of first IPPC application, date of creation of the

installation or date of the first settlement in the site) so that it is clear from when contamination should be assessed.

According to some members, the process of monitoring of soils as required in the proposal could be very expensive for little environmental benefit. Box 9.1 describes a case where such an approach similar to that in the Recast Proposal has been rejected from Member State practice for practicability reasons. It can lead to a lack of clarity for regulators over how much monitoring to do. For example, should they call for a wide array of borehole samples, or just one, to satisfy the requirements of the Directive? It is not clear because in many cases there is no clear logic for monitoring. According to a member a change in the proposal that required a baseline report to be quantified "as necessary" would overcome this practicability problem. It was noted that such a provision could lead to other problems such as inconsistency of implementation and problems of enforceability due to its vagueness, although the term "as necessary" is used elsewhere in the Recast Proposal.

With regard to the requirements for the monitoring of emissions to land, a number of members noted that regulators will in any case ensure that new permits will include provisions that will ensure protection of the land including concrete surfaces, bunds for tanks, separated drainage etc. Thus an IPPC plant should normally not result in pollution of the land by any dangerous substances. The knowledge that the site has been protected in this way is much more valuable than carrying out monitoring. As with baseline monitoring, it is not clear where on the site the seven year monitoring would be carried out and at what cost. It was noted that these types of decisions would be left to the discretion of the competent authorities and could not be specified in EU legislation. Given the concerns over the practicability of the initial monitoring requirements, it is not clear what practical benefit would result from a requirement for monitoring every seven years. It would be more practicable to require the operator to keep an ongoing record of the state of the site, report any accidents or spills to the regulator and to provide information in the annual report of anything that could have had an impact on the land or soil. This is required already by at least one Member State with penalties for failure to report.

Box 9.1 Practical example of use of a baseline report and changes to monitoring requirements for practicability reasons

England and Wales introduced the concept of a baseline report to understand the state of the site at the start of the permit. The regulator initially required this report to be quantified. It was soon realised that this was not practicable in that most of the information gained had limited environmental value and was very expensive for operators. Costs of monitoring from €7,000 – €40,000 were incurred by operators. This would still not buy a comprehensive survey of the site so the data were of limited value. With a "green field" site there will be no pollutants to quantify, thus there was no purpose in monitoring. The policy was, therefore, changed only to require quantification where there is pre-existing contamination of the same type as could be released by the proposed installation.

10. Monitoring (emissions, soil) and compliance reporting for operators

The Recast Proposal introduces more explicit requirements for monitoring (Article 17) to be set out in the permit conditions to be based on the conclusions on monitoring in the BREFs. A new provision (Article 8) is introduced to require operators to report on compliance with permit conditions at least every 12 months. In addition Article 24 requires that operators of Annex I activities (IPPC activities) include in the report on compliance a comparison of the operation of the installation with the BAT in the BREFs.

Questions from questionnaire

- Are the monitoring requirements clear? Are they practicable?
- Are the reporting requirements clear? Are they practicable? Are they consistent with other legal obligations such as with respect to E-PRTR?
- Are there particular practical issues concerning the need to ensure that the information obtained is complete, consistent and credible?

The clarity and practicability of the monitoring and reporting requirements

Members generally recognized the importance of effective monitoring for compliance assessment and reporting to demonstrate compliance to competent authorities. Monitoring is also important for early warning. There was also a recognition for improved comparability across the EU. The workshop also stressed the importance of self-monitoring by industry in this context. Thus it is recognized that with Art. 17 the Commission is attempting to bring consistency to monitoring.

A number of members considered that the requirements for monitoring and reporting were clear and practicable. Indeed, the proposed reporting obligation for an annual compliance report was noted as current practice in some Member States (e.g. England and Wales and Sweden). However, others thought they were clear, but not practicable and still others did not find the requirements clear. One considered that the Article should more clearly state who monitors, what is monitored, what quality is required and to whom reports are to be sent.

One member considered that there should be greater flexibility and that monitoring and reporting need to be linked to compliance assessment needs, rather than a standard provision. In some cases, for example, reporting might be best linked to provisions for permit reviews.

The requirement for operators to report on their performance in relation to BAT in the BREFs raised a number of comments. This could pose practical problems if the BREFs are not routinely used by operators, such as where Member States have their own guidance or where GBRs are used, unless the operator can report performance in comparison with the relevant guidance/GBR rather than directly with the BREF. It was also not clear that if the permit conditions are established to be consistent with BAT, then would a report by the operator that they are compliant with their permit

conditions be sufficient to comply with this requirement in the Recast Proposal. Where a BREF has been revised, then potentially the operator could report simultaneously that they are not operating according to (the latest) BAT, but they are compliant with permit conditions, which could be confusing to stakeholders. It would be more practical to require the operator to compare performance against BAT in a BREF when the permit is to be subject to review.

BREFs do not contain BATAELs for all substances to be reported according to the E-PRTR. However, it should be noted that IPPC and E-PRTR have different objectives. E-PRTR concerns the quantification of total emissions and IPPC monitoring is focused on compliance assessment. It is, though, important to ensure as much harmonisation in reporting as possible to enhance practical implementation. Development of a single reporting framework would enhance practical application of all requirements and this is an issue that should be addressed in Comitology with development of the format of reporting by the Member States. However, this should not be prescriptive, but allow flexibility to the Member States. Improved coherence of reporting within Member States will also enhance the credibility of the regulatory requirements and enable regulators to identify compliance issues more quickly.

Members noted that linking reporting to the BREFs raises the issue again of the development and adoption of the BREFs (see section 7). In particular, the conclusions in the BREFs will need to be clearer with regard to monitoring, including greater clarity of the methods/standards for the monitoring of each parameter.

Finally, it was noted that under Art. 17(2) the Commission can establish criteria for periodic monitoring of soil and groundwater and these should be developed quickly.

Further specific comments are provided in Annex VI.

Box 10.1. Practical examples related to monitoring and reporting

In **Denmark** the operators for a large number of activities are obliged to prepare a green account describing the environmental impacts such as compliance with the conditions in the environmental permit, water, energy and other raw materials consumption, emissions, waste production etc. The proposed supplementary information, such as comparison of the operation of the installation with BAT, could easily be incorporated in the green accounting.

The reporting instrument in the Basque Country of **Spain** is called the electronic environmental declaration (e-DMA) and its structure permits its translation from any information system (XML format). The system is in one instrument for all annual obligation data reporting, once, electronic and from any source, including IPPC monitoring and would include monitoring requirements arising from implementation of a revised Directive. The system is held by the Basque Government Environmental Department.

Issues concerning the quality of data obtained

Some members considered that obtaining accurate information is sometimes a problem, but others do not find this a problem. Completeness, consistency and credibility are the responsibility of the operator. There could be sanctions to be applied where the operator fails to meet these requirements. The Directive could establish general provisions about how to use the "specifications" and "rules" of the European Committee for Standardisation and/or the International Standardisation Organisation regarding "monitoring" to achieve a greater level of credibility and consistency. Improvement in data quality could also be achieved by linking reporting requirements to:

- The monitoring requirements in BREFs, as is stated in the Recast Proposal.
- The E-PRTR methodology.
- EMAS verification.
- Greenhouse gas reporting.
- Use of electronic data transfer to reduce inadvertent errors.

11. Inspection and compliance assessment by competent authorities

Article 25 would require Member States to set up a system of inspections of (IPPC) installations, including on-site inspections. This builds on the requirements of the Recommendation on minimum criteria for environmental inspections (RMCEI), but, by placing them in a Directive, would make them binding on the Member States. The Recast Proposal requires at least one site visit per year, unless the inspection programmes "are based on a systematic appraisal of the environmental risks of the particular installations concerned". The Commission "shall establish criteria on the appraisal of the environmental risks".

Questions from questionnaire

- Is the choice of including inspection requirements in a Directive justified in view of its contents and purpose?
- Are the requirements relating to inspection clear? Are they practicable? How will the introduction of the proposed inspection regime for IPPC installations, including specific criteria for risk appraisal, interact with the Recommendation on minimum criteria for environmental inspections or specific legislation containing inspection requirements? Will the proposed inspection requirements help to improve compliance?

Many, but not all, members were supportive of the inclusion of a minimum level of inspections in the Directive. A general requirement obliging Member States to ensure that these activities are carried out would according to some members, therefore, aid practicability if included in the Directive. The reasons given include the need for ensuring practical compliance and that inclusion in the Directive will lead to greater harmonization of the inspection regimes across the Member States. In this context one member considered that the Recast Proposal should describe the aim of inspection in a clear way while the requirements of how inspection should be fulfilled have to keep

in mind the different legal systems and traditions of the Member States. Placing inspection requirements within the Directive should ensure that Member States are required to fulfil at least basic minimum requirements. Many welcomed this along with the allowance for flexibility where a system of risk-based regulation is already applied. It was also discussed whether having requirements for inspection in EU law can help inspectorates argue for sufficient resources to undertake their work and, therefore, ensure the necessary capacity for practical implementation or not. Imposing an inspection regime will have little impact on Member States with a mature inspection regime in place (see Box 11.1). However, one member noted that where no such inspection regime exists, the Directive should assist in ensuring a greater degree of compliance. Indeed another comment questioned whether the periodicity of inspections required is sufficient to have much impact. It is important to note that the RMCEI provides a wider framework for addressing environmental inspections, whereas Article 25 only concerns IPPC installations.

Carrying out inspections and other activities to check and promote compliance of operators with their permit requirements is regarded as very important by members. Indeed, it was suggested that the proposal should be clearer with regard to the purpose of inspections in order to ensure that activity was correctly targeted at compliance assessment. The point was further elaborated as it was noted that inspections are only one (important) tool for the assessment of compliance and, therefore, a risk-based approach in this area ought to address the 'total compliance effort' of a competent authority rather than inspection activity alone. It was recognized that this was linked to the general requirement to ensure compliance under Article 9(1).

A number of members stated that inspection requirements are acceptable as long as they do not require authorities to treat all IPPC installations in the same way. Thus the requirement for annual inspection plans raised concerns. Flexibility is important, such in the periodicity and type of inspections. Thus, it is important that there is an opportunity to differentiate the frequency of the inspections by using defined criteria for a systematic appraisal of the environmental risks of the installations as is allowed for in the Recast Proposal. Some IPPC activities are very small and with no essential environmental impacts. It is waste of resources to inspect such industries once a year. This would impose not only a major burden to the inspectorate, but also to the operator. Thus the annual requirement is undesirable and a risk-based approach is needed as allowed for in the Recast Proposal. Thus one view was that the criteria to be developed by the Commission must be flexible and avoid 'over inspection'. It was also noted by some members that the annual inspection can be seen as a useful minimum 'safety net' for those Member States that do not yet have a risk appraisal system in place.

An extensive EU wide exchange of experiences on planning and performing of environmental inspections within the framework of a number of IMPEL projects have demonstrated that competent authorities often have to perform a wide range of inspection and enforcement tasks. Moreover, they are under strong pressure from their stakeholders to perform their numerous tasks in a fair, effective, transparent and accountable way, without causing unnecessary burdens for those who are inspected. The RMCEI was and is considered by members as an important cross-sectoral tool, providing an integrated, practical approach for environmental inspections against different pieces of legislation, leaving sufficient flexibility to take into account

national, regional and local circumstances. There is concern from some members that a sectoral, piecemeal approach introducing specific and detailed inspection regimes in different Directives could hinder the competent authority in making the optimal choices if there were inconsistencies and inappropriate overlap between these sectoral requirements. This could thus affect practical implementation.

Also the day to day practices with regard to compliance checking are far more diverse and sophisticated then a Directive could prescribe. According to some Members, the suggested minimum frequency of one site visit a year for IPPC installations as such would have little practical meaning or added value and could be counter productive when it is complied with in a purely mechanical or formal way. In the view of these Members, the alternative risk appraisal in the Recast proposal is a much better solution, but is also extremely difficult to prescribe in detail on an EU level through Comitology in a way which makes practical sense. An overall general framework, like the RMCEI, outlining the key minimum criteria for risk based environmental inspections is considered much more practical for these members. However, it was noted by some other Members that the RMCEI is a non-binding instrument.

Members considered that the RMCEI has functioned as a starting point for more elaborate guidance on several of its criteria, which is sufficiently flexible to accommodate the different needs of the inspection authorities. A good example of this guidance is the "Doing the Right Things II"[2], a step-by-step guidance book for planning of environmental inspections. Many of the insights on planning of inspections coming out of this project, were used as input to the IMPEL project Input to the further development of the RMCEI[3]. The concern is that the inspection requirements in the IPPC Recast Proposal were derived from the current text of the RMCEI, which has led to some misunderstandings. The IMPEL input to the further development of the RMCEI report contains concrete text suggestions for improving the current RMCEI. For instance the report addressed the current distinction between inspection plans and programmes (also in the Recast Proposal), which has proven to lead to much confusion. Some members, therefore, suggested that this IMPEL report is taken into account for the further discussions on the provisions related to inspection in the recast proposal.

The most commonly raised issue was that of the criteria for appraisal of the environmental risks. One member argued that the Commission should publish such criteria before the Directive is adopted and another argued that such criteria should be contained in the Directive itself. Another sought clarification on what is meant by "criteria on the appraisal of the environmental risks". The foundation for evaluation of such risks varies between the Member States. In some (e.g. the Czech Republic) they are set in national law, while in others (e.g. the UK) they are detailed policy frameworks developed by the competent authorities. In some cases, inspectors simply direct resources for inspection based on their expert knowledge of how operators perform and this is difficult to set out in formal risk-based criteria.

Finally, other specific comments are included in Annex VII.

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[2] IMPEL report 2007/1: http://ec.europa.eu/environment/impel/pdf/final_report_step_by_step_guidancebook.pdf

[3] IMPEL report 2007/7, http://ec.europa.eu/environment/impel/pdf/final_report_input_rmcei.pdf

Box 11.1. Examples of inspection regimes

Denmark has guidance concerning differentiated inspection. This is based on the compliance history of the company (number of environmental enforcement actions) and on the level and quality of the environmental management system in the company.

In **France** inspections are planned according to different frequencies (annually, every three or five years, etc. The frequency is determined by assessing the installations against factors such as the sensitivity of the local environment, quantity of pollutants emitted, etc. However, compliance history is not a factor in determining inspection frequency.

Hungary's IPPC law already has a provision requiring that each IPPC installation should be inspected at least once a year by a site visit. The environmental inspectorates (permitting and inspecting authorities) draw up inspection plans and carry out routine and non-routine inspection (although not fully in accordance with the RMCEI).

In **Scotland** the Scottish Environmental Protection Agency has developed for some years a detailed system for carrying out inspections and determining inspection frequencies. The publishing of inspection reports is not currently standard for IPPC installations and meeting the two month deadline may prove challenging as systems will have to be developed for this. However, inspection reports, actions, etc. are routinely produced, currently for internal use.

12. Penalties

The Recast Proposal introduces a new provision for penalties (Article 70), building on requirements in Directives 2000/76 and 2001/80. These penalties shall be effective, proportionate and dissuasive. This is now a standard closing provision in many Directives.

Questions from questionnaire

- What are the key requirements in the legislation which in your opinion should where necessary be enforced with the use of penalties?
- Are there obvious ways for operators to avoid complying with the various rules in the legislation (e.g. permits, GBRs, monitoring, reporting, etc)?

Most members who commented stressed that the primary issue to be considered in imposing penalties is whether permit requirements have been complied with (or indeed, operating without a permit), although it was also stressed that they should be available for all cases of non-compliance. Indeed penalties are used in many Member States (see Box 12.1), although administrative penalties are often more timely in their effect than criminal penalties. In considering the issue of whether there are obvious ways for operators to avoid compliance, most members thought that there were none.

However, some did note that a minority of operators will try to avoid compliance, but that inspection is undertaken to uncover this.

Members noted that the use of penalties is often a last resort and that, in practical terms, it is important to focus on effective inspection to discourage non-compliance. This approach can also create a positive (persuasive) regulatory atmosphere rather than a punitive (dissuasive) one.

Some key points were stressed:

- There should be clarity on whom penalties would fall.
- The use of penalties needs to be flexible, taking account of different types of non-compliance.
- The penalties themselves should be determined by the Member States.
- Where the penalty involves prosecuting operators, the determination of the size of a penalty is made by the court rather than the competent authority.
- The level of penalties will vary depending on the economic situation in a country.

It was noted that the wording of the proposal currently allows these points to be met.

Box 12.1. Examples of penalties

In **Germany** the law on permitting and supervision of IPPC installations (Federal Immission Control Act) contains sufficient tools for the competent authority to bring the operator into compliance with the permit conditions and to apply for a permit if he/she is not willing to do so (i.e. subsequent order, revocation of the licence, prohibition, closure and dismantling of the installation).

In **Hungary** the IPPC Decree (Governmental Decree 314/2005. (XII.25.)) has a number of sanctions:
"26. § (1) The Inspectorate may partially or wholly a) restrict, b) suspend or c) prohibit an activity to operate without an integrated permit for the use of the environment after the deadline determined by this Decree or by a decision of an authority, depending on the significance of the effect on the environment.
(3) Together with the sanctions in Paragraph (1) … the Inspectorate shall compel the user of the environment to pay a fine ranging from 50 000 HUF to 100 000 HUF per day for the period of operating the activity without a permit … depending of the level of danger of the activity to the environment.
(4) In case of an activity being operated differently from the permit conditions the Inspectorate shall compel the user of the environment to pay a fine ranging from 200 000 HUF to 500 000 HUF, to comply with the conditions determined in the permit and to prepare an action plan by a deadline not later than six months or in the case of Article 20, Paragraph (9) Point a) to carry out an environmental audit procedure.
(5) In case of endangerment or pollution of the environment the sanctions described in Paragraph (1) can be used. If the user of the environment does not comply with the requirements of the decision, the Inspectorate can use the sanctions of Paragraph (1) or can revoke … the integrated permit for the use of the environment and compels the operator to pay a fine according to Paragraph (3)."

13. Access to information

The Recast Proposal (Article 26) retains the 2003/35/EC amendment that a competent authority should inform the public of the content and reasons for permit decisions, although this is clarified to include 'granting, reconsideration or updating of a permit, or on the adoption or updating of general binding rules', and the results of monitoring as in Directive 96/61. The proposal introduces further requirements on competent authorities for public information on consultations before permit decisions, references to BREFs in permits, the relationship between permits ELVs and the relevant BREFs, use of derogations, etc.

Question from questionnaire

- Are the provisions relating to access to information and participation clear in relation to the different Articles to which they apply? Are they practicable?

Most members thought that the proposal text was clear, except in relation to Article 26.3.c on "consultation":

- The term "consultations" should be clarified as it will not be clear if the authority has complied with this Article or not given the range of types of consultations possible.
- The Article specifically states "the results of the consultations held before the decision was taken", but it is not clear if this includes consultations that take place before an application is made.

A number of members had comments over the practicability of the requirements, with some noting that extensive public consultation already occurs. Comments included:

- The proposal will place a greater burden on competent authorities to make information available; however this should build upon procedures already in place and present no significant problems and could lead to a greater degree of public engagement.
- Some members were concerned that the authorities would have to provide much more information to the public than under the current practice. It was, however, noted by some other members that such practice would be fully justified to provide more transparency in the way decisions are made and that this is already a common practice in many Member States.
- The full minutes of the consultation held with the operator before the decision was taken cannot be made public in Hungary according to the Act on State Administration. But reference to this consultation and its findings can be (and is) included in the justification part of the permit. Thus some members called for more clarity over what is and is not required to be disclosed.
- Inspection reports are notified to operators, but, in certain Member States, they are not public since they could contain confidential information. It should be noted that this issue would be addressed through the application of the provisions of Directive 2003/4 on public access to environmental information which set the EU-wide rules on issues which can be considered confidential.

- Explaining to the public how emission limit values have been determined might be complicated given the complexity of the BREFs.

14. Comitology

Article 69 establishes the provision for Comitology. The cases in which implementing powers have been kept or assigned are specifically listed in each relevant Article of the Recast Proposal.

Questions from questionnaire

- Are the provisions related to Comitology clear? Do you think that it is useful that on the subject matters listed above further requirements are developed through Comitology, or would you prefer other ways of supporting the implementation like providing guidance or exchange of good practices? Do you have suggestions on what kind of rules and level of detail should be adopted by the Committee? Are there other aspects of the Directive that would benefit from the use of Comitology?

Most members replied that the Comitology requirements are clear, although one stated that the relationship between Art. 69 para. 1 and para. 2 is not clear.

Comitology was viewed by some as important in ensuring more consistent implementation in the Member States as the results are binding legal documents, which was not viewed as the case with guidance. One member questioned the use of Comitology in three specific areas:

- It is not clear what is included in the non-essential elements on Article 37 concerning multi-fired combustion plants which would be addressed under Comitology.
- The criteria for the content of the baseline report (Article 23) could be dealt with by providing guidance or exchange of good practices.
- The criteria for the evaluation of environmental risks to support risk-based inspection plans (Article 25) could be dealt with by providing guidance or exchange of good practices (e.g. following the IMPEL project proposed on this subject).

One member highlighted the importance of the Committee having sufficient and accurate information on which to base its decisions and that there could be a burden on the Member States to supply such information if not handled correctly. Thus one member stressed the importance of involving the permitting authorities in this process. They can deliver valuable input on practicability, enforceability and level of detail of the rules.

A number of members stressed the importance of the Committee acting in a timely manner. Comitology can take time and in many cases the conclusions that will be reached will be required at an early stage to assist in implementation (e.g. criteria for granting of derogations, soil monitoring, reporting, baseline report content, etc.). Thus this is a challenge to the Committee's work. However, one member questioned the implications of the Committee not reaching a decision, i.e. what is the status of the

provisions in the Directive for which no rules have been set and how are Member States to move forward without such rules?

Only one member identified any other parts of the Directive that would benefit from Comitology and this was the suggestion that, given the more formal role of the BREFs, they might be adopted in the Committee.

15. Deadlines

Article 71 requires that Member States should transpose the Directive within 1.5 years from adoption. Most requirements would need to be implemented within 3 years from adoption, with the exception of new categories of installation added to Annex I (4.5 years from adoption), and specific emission obligations on combustion plants and new obligations on co-incinerators (from 1 January 2016).

Questions from questionnaire

- Are the deadlines contained in the proposal clear?
- Does the date by which the Directive is to be transposed leave Member States sufficient time to properly prepare their implementing bodies for the practical aspects of implementation?

Almost all members considered that the deadline requirements in the Recast Proposal are clear. The main issues raised by some members were:

- The Recast Proposal no longer refers to new and existing installations. It is, therefore, not clear whether any obligations fall on installations which are proposed after adoption/transposition but before the implementation deadline (as with Directive 96/61). This could lead to some practical confusion and should be clarified.
- It is not clear why some parts, e.g. definitions, are not required to be transposed into national law.
- If the provisions about BREFs and BAT are adopted, the deadlines are not clear with respect to applying requirements to existing installations.
- The exceptions laid down in the Chapters 3-6 of the proposal mean that identifying the exact date in every single case is not easy given the cross-referencing.

While some members considered that the implementation dates in the Recast Proposal were practicable, others saw problems with them. This particularly relates to practical implementation, but the short transposition time will cause problems in some instances, such as in Federal Member States (although others also expressed concern at the transposition deadline). The timetable may also be a problem where Member States may be obliged to undertake their own detailed Impact Assessments with stakeholder consultation in preparing national legislation. Particular comments from individual members were:

- The extension in scope and other new obligations pose practical challenges to competent authorities and it will be important to examine the resource issues,

building on the analysis already made in the Commission's Impact Assessment.

- Art. 73 – The Article states that existing IPPC installations must comply with the Directive within three years following its coming into force and new installations to Annex I will have to comply within four and a half years. Those are very short time periods, considering the fact that a number of Member States have failed to implement the current IPPC Directive according to the required deadlines. An alternative approach could be that the timetable be linked to the adoption cycle of the revised BREFs.
- The deadlines for application of BAT for existing installations newly brought under the scope of the Directive are not clear.

16. Technical requirements of Chapters 3-6

These chapters include amended requirements for provisions derived from the large combustion plant, waste incineration, solvent emissions and titanium dioxide Directives, supported by relevant annexes containing emission limit values, etc.

Questions from questionnaire

- Are the technical standards laid down in Chapters 3-6 clear with respect to implementation and enforcement clear? Are they practicable?

Most members considered that the requirements were clear and practicable. One member stated that the emission limits should, however, be consistent with the BREFs. Three specific further issues were raised by individual members.

Regarding combustion plants the definition of a "combustion plant" (LCP) has caused problems over recent years. Some improvement is now to be seen but is still not fully clear for some members.

In Annex I under "Energy industries 1.1 Combustion of fuels in installation with a total rated thermal input of 20 MW or more" the former range (of 50 MW or more) is extended. In Chapter III on Special provisions for combustion plants the scope covers only combustion plants the rated thermal input of which is equal to or greater than 50 MW. Thus, in Annex V on technical provisions relating to combustion plants there are no emission limit values for combustion plants between 20 and 50 MW.

Annex VIII contains further specific comments on individual items in Chapters 3-6.

17. Non-legally binding provisions and delivering the objectives

Questions from questionnaire

- Does the legislation contain any provisions without legislative character (e.g. wishes, political statements) which may confuse the addressees or seem to contradict the actual normative provisions?

Almost all members stated that they could not identify any such provisions. However, there was some concern expressed over the wording of Art. 30 (emerging techniques) in terms of what it will mean in practice.

18. Arrangements to support the implementation process

The Recast Proposal outlines some support processes, such as through exchange of information (Article 29), as well as areas where the Commission will establish criteria to assist implementation (e.g. on developing a baseline report and for risk-based inspection). It is important to note that the Commission's IPPC Action Plan includes the need to develop guidance to support specific aspects of implementation.

Question from questionnaire

- Should there be support at the EU level for national competent authorities to assist implementation (e.g. through guidance materials or other practical measures)?

Generally, most members supported (some strongly) the development of guidance at the EU level to support implementation, although a couple of members did not support this. One stressed that legally binding obligations were preferable.

It was stressed that guidance should build upon what has already been produced at EU and Member State level. Exchange of information, such as via IMPEL was also supported. It was also commented that translation of guidance into Member State languages would be useful.

The following examples of issues that could be supported by guidance were noted by one or more members:

- Further guidance on Annex I activity definitions.
- Guidance on the form and content of the annual BAT compliance report (minimum content requirements, to make it more structured and unified, more easily compiled by the operator and checked by the authority, and to avoid either too little or too much information in the report). Another member stated that this should develop one electronic format (XML) and one web service to report this information to the Commission annually by national competent authorities. This information could include IPPC and PRTR annual reports and could include the information about greenhouse gases.

- For Chapter 5 (VOC) guidance materials for the environmental inspectors are necessary. Therefore it would be important for the development of guidance for each VOC activity, as is currently being undertaken by the Commission.
- Guidance for criteria on the appraisal of the environmental risks.
- Guidance for criteria on the content of the baseline report
- General guidance on the use of installations, substances and techniques which have the least potential effects on air, water, soil, ecosystems and human health.

19. Other issues

It was considered important to ensure that IMPEL members could address any issues of concern arising from the Checklist and NHEEPA questions concerning practicability and enforceability.

Questions from questionnaire

- Are there any other points relating to from the Checklist and NHEEPA questions that you wish to raise?
- Do you have other views or suggestions for other important actions at EU level to increase the practicability and enforceability of the proposal?

One member stressed the importance of adopting a single reporting framework not only for IPPC, but also for EPRTR and other requirements in order to limit costs and maximise the value of the information to users. It would also be useful to extend exchange of information on implementation into a more interactive web-based process.

Another member noted that the Recast Proposal addresses requirements for stationary technical units, but asked what requirements should be in place for mobile units (e.g. mobile combustion plants of 10 MW).

Annex I: Specific comments on the clarity of activities included in Annex I of the Recast Proposal

Some comments welcomed the improved clarity in the proposal in relation to certain activities. The following comments were made, generally by one or a few Members. No detailed discussions on most of these comments could take place at the workshop itself:

- A general comment made is that it would, in principle, be more practicable if thresholds were given as production levels per year rather than capacity levels per day as this would be more clear, environmentally relevant and more practical from an inspector's viewpoint.

- For activities 1.4, 2.6, 3.2, 4.4, 6.1.b, 6.5 changing the word "and" to "or" has clarified the text.

- Deleting/changing the word "plants" to "installations" has clarified the text.

- Dealing with peak and reserve combustion plants is unclear. Perhaps there should be an article just dealing with this issue.

- It is also unclear which combustion plants should be included and aggregated together. There are different thresholds, 3 MW, 20 MW, 50 MW.

- Competent authority is struck out in many places in the Directive. It is now not clear e.g. in Article 32, who makes decisions.

- It is not clear if the extension to gasification/liquefaction of every fuel applies to liquefied natural gas expansion terminals too.

- In Chapter 4 the introduction of biological production and the elimination of the reference to basic products could lead to a very broad extension of the scope (to the food industry, for example), unless there is a more specific definition of chemical products.

- **2.4.** For ferrous foundries the TWG agreed that daily production capacity is defined as the production of "Good Castings". This should be clarified, as with other conclusions from the TWGs. Capacity is defined in terms of output of the installation, whereas the environmental impact is better considered in terms of total capacity of the activity.

- **2.5 b** and **c** – it is not clear what the difference between these is.

- **4**. The word "basic" was deleted in the definition of the previous terms of "basic organic chemicals" and "basic inorganic chemicals". It is not clear if this is a change in scope or not. The term was explained in guidance, which should therefore be modified, if there this is a change.

- **4.1.h)** It is important to clarify the meaning "basic" by "basic plastic materials", such as whether polyurethane foam production is included, comparing the definition with the TWG on polymers ("Other processing techniques such as the production of fibres or compounding will be included only if they have a technical connection with the production of a polymer carried out on the same site and if they could have an effect on emissions and pollution").

- **4.5** Deleting the word "basic" suggests that dedicated installations producing the product itself would also fall under the directive, i.e. installation solely for formulation of pills, capsule etc. This needs to clarified.

- **4.7** Introduces a new activity (production of chemicals for use as fuels or lubricants). It is not clear if this covers biofuels (covered in Chapter 4) and lubricants (covered by activity 1.2). It is not clear if this includes substances that *might* be used as lubricants.

- The directive includes non-IPPC and IPPC installations. It is unclear how waste management should be dealt with. There are different thresholds for different purposes (incineration, disposal, recovery) and for different types of waste (hazardous, non-hazardous waste, biomass). It is not clear how these match together.

- **5.1** It is not clear which installations are covered, such as those which sort hazardous waste from other waste without treating it. An example is installations which dismantle cars, removing hazardous components without treating them, but passing them on to others. Also the wording "involving the following activities" gives the impression that all of the listed activities should be included for the installation to come under the Directive. The wording "involving any/one or more of the following activities" would be more unambiguous.

- **5.1** The definition of "blending or mixing" is not clear. Another member considered that the definition is now clearer.

- **5.2** It is not clear if non hazardous waste includes inert waste such as building waste. Another member considered that the definition is now clearer.

- **5.3(c)** It is not clear what is meant by "pre-treatment of waste". Another member considered that the definition is now clearer.

- **5.3** It is not clear if the "biological treatment" definition covers the "compost" production by source-selected material too.

- **5.3 e)** "treatment of scrap metal" does this relate both to disposal and/or to recover?

- **5.4** Should there not be an explicit exclusion of part of the landfills, which are no longer receiving waste in accordance with PRTR?

- **6.1 (c)** – the definition is unclear.

- **6.5** "Animal carcasses" – the term is not defined here or in other EU legislation. According to Regulation 1774/2002/EC, "animal carcasses" are animal by-products. It is also not clear how capacity should be calculated if bodies at a certain stage of processing are involved.

- **6.6** This amendment raised a number of comments. The definition of "poultry" is not clear (i.e. which species). For example, are ostriches included? Should game birds be excluded? The issue was discussed in the IEG Annex I. subgroup, at the January 2006 meeting. The minutes stated: *"In relation to the term "poultry", the Commission indicated that a normal understanding would include chickens, ducks, turkeys and guinea fowl (all covered by the BREF) plus quail and geese."* However, this was not included in guidance. It would be much more clear and practicable to have subheadings by poultry species with precisely defined number of places than having a

definition including a calculation and only few well defined species and places, which may lead to misinterpretation.

- The definition including "the threshold shall be calculated on the basis of equivalent nitrogen excretion factors compared to the thresholds set above" raised concerns and would require guidance on their use, not least to ensure comparability between Member States.
- For example, is it really clear that clear that one pig produces nitrogen excretion equivalent to 20 broilers, or 15 laying hens, or 12 ducks, or 5.5 turkeys? Otherwise the proposed method could lead to ambiguous results.
- Also Art 16(4) includes the spreading of manure and it is not clear if it is included if undertaken at another location.

- **6.9** The definition of preservation of wood covers many different activities and it is not clear what the scope is.

- **6.10** It is not clear exactly what the off site treatment of waste water is intended to cover, such as with reference to Directive 91/271/EEC.

Annex II: Specific comments on the clarity of the thresholds and other determinands of activities in Annex I

The following comments were made, generally by one or a few Members. No detailed discussions on most of these comments could take place at the workshop itself:

- Interpretation of "rated thermal input". Measured or according to the manufacturer of the installation?

- Category 4 h - the term "basic" might still cause confusion and misinterpretation.

- 4.7 – it is not clear why type of product is being considered.

- Under 5.1 a capacity is given, but this is difficult to interpret, even though guidance on this has been issued by the Commission. It could be what is permitted (and thus stated in the permit) or the capacity that the installation actually has. Often these two are different. What is permitted depends on operating hours, the actual capacity depends on the installation itself. It would be very helpful to define the term "capacity" better.

- 5.1 f. Storage is always part of a process and therefore does not need to be mentioned separately. How does the capacity of storage relate to the capacity of the installation? For example does an activity with a capacity of 5 tonnes per day and a storage capacity of more than 10 tonnes fall in this category? And what about storage of asbestos (more than 10 tonnes), only awaiting transport to a landfill?

- In determining capacity long term production levels are more practical from an inspector's point of view as long term production levels are not as complicated to inspect and enforce as temporary capacity parameters. Thus for wood-based panels, with a production capacity exceeding 600 m^3/day, this would be better described in terms of production per year.

- 6.4. (b) ii — Deleting the "average value on a quarterly basis" from the definition means that all installations producing food products from vegetable raw materials with a finished product production capacity greater than 300 tonnes per day implies that the seasonal characteristics of some vegetable processing industries cannot be taken into consideration. It is not clear if an installation producing products above this capacity threshold for even for one day, it would fall under the Directive.

- 6.4 (iii) mix of animal and vegetable raw materials – it would be better to set a regular level of production capacity, independent from percent of animal/vegetable. The methods for capacity calculation requires further clarification.

- 6.6 One member considered that in some cases (e.g. poultry units) the proposed thresholds are too complicated, which may cause a problem especially for small operators to classify their installations.

- Sewage treatment works. It is not clear what is included (a threshold such as from the EPRTR could be useful).

- Which animals are included in category 6.6 and how are nitrogen excretion factors to be determined?

Annex III: Specific comments on the clarity of the key terms defined in the Recast Proposal

The following comments were made, generally by one or a few Members. No detailed discussions on most of these comments could take place at the workshop itself:

On the clarity of the definitions:

- "Existing installation". This definition is deleted, except for solvent emission activities (Article 52(1)), but the term is used in the proposal (Annex 3.7). It would be useful to keep this definition.
- "General binding rules" – exactly what this is needs to be clarified.
- "Site" is not defined.
- "Alternative fuel" - a definition would assist in practical implementation.
- On inspections it would be useful to define the terms used in Art. 25, such as "inspection plans" and "inspection programmes".
- "Emerging technique" – what is meant by 'novel' and 'commercially developed'?
- The definition of "biomass" is not the same as in the RES-proposal but remains unchanged from the existing Directive's forming the recast. The definition should be the same in all Directives, such as also in the MRG Decision following Directive 2003/87/EC. Another issue is that inside the concept of biomass there may be different categories and qualities which require different approaches.
- "Fine particulate matter" (Annex II) – does this include PM10, PM2.5, or both? Cross-referencing with the air framework Directive might be useful.
- It would be useful to extract terms from the BREF on monitoring, such as "monitoring", "validation", "comparability", "calibration", "certification" and "verify".

On the clarity and consistency to changes in definitions in the proposal:

- In the definition of "installation" the change of the words "carried out on that site" to "on the same site" makes it clearer which activities should be taken into account. However, Box 5.1 gives a practical example of where this would be a problem.
- One member questioned the inclusion of "on the same site" in defining "directly associated activities" as potentially causing practicability problems (as illustrated by the example in Box 3.1).
- "Competent authority" – it is unclear why this definition is removed.
- "Substantial change" – the role of the competent authority to evaluate the substantial change is removed and the reasons for this are unclear.
- The nature of the word "routine" in setting obligations for inspection is unclear.

- "Combustion plant" - the use of the term in Chapter I could be problematic, unless the definition includes Art. 31. For example, any "technical apparatus in which fuel are oxidised" has to have a permit to operate, regardless of its thermal capacity.

- The concepts of "techniques" and "technology" have quite different meanings under IPPC. Is the new concept "emerging technique" used on purpose or is it rather "emerging *technology"* (see definition of T, techniques, in BAT where the word technology appears), that should be used? However, in Art 30 "techniques" is used, while one could argue that "technologies" perhaps would be more appropriate.

Annex IV: Specific comments on the implications of the Recast Proposal for the BREF development process

On the scope of coverage of the BREFs, the following points were raised by one or some members:

- BREFs should cover those activities that are new in Annex I, so extension of the present BREFs or development of new ones would be necessary.
- If BREFs play such an essential role in permitting, all new and extended BREFs should be available by the time the new Directive comes into force.

On the structure of the BREFs, the following points were raised by one or some members:

- The presentation of the information in the BREF should be more user-friendly, so that operators, for example, are not inhibited by the size of the BREFs.
- The present structure of the BREFs might need a change to accommodate the amount of new information.
- It would be useful for BREFs to be developed more clearly according to the headings or subheadings of Annex 1. This would allow the inclusion of more sector-specific information and BATAELs.
- There should be some indication of changes made in the revised BREFs (amendment record) so that it would be easier to determine what texts have changed. It was noted that the BREFs presently being revised make such changes clear within the text.

On the nature of the information BREFs contain, the following points were raised by one or some members:

- BREFs have to be developed to a form where they more precisely conclude what is BAT and not only focus on the ELVs.
- BATAELs also can be given in a range, while an ELV is a concrete value. This could lead to legal debates why a certain value from the range is set out as a permit ELV, thus affecting the work of competent authorities.
- It is not clear how the BATAELs should be understood and used in cases there was no consensus in the TWG and there is a split view concerning the BATAELs.
- Distinction should be made in BATAELs for new and existing installations in the BREFs which do not already do this where significant variation in BAT is expected.
- It would be useful if the Commission publishes one electronic list of BATs in relation to the BREFs.

On the implications for how the BREF development process itself will be affected, the following points were raised by one or some members:

- The process for development will definitely have to be strengthened and the EIPPCB proposals on improved data gathering were supported in this regard.
- One member considered that the BREFs should be formally adopted in the Comitology procedure.
- The possibility for the public to influence the decision making when the proposed use of the BREFs in permitting implies greater standardization at an EU level needs to be clarified as is the overall openness of the information exchange and the strictness of BATAELs in the BREFs when the outcome will have direct legal consequences.
- Also, importantly, the type of expertise needed in the BREF-TWGs should be reviewed.

Annex V: Specific comments relating to permit reviews

The following comments were made, generally by one or a few Members. No detailed discussions on most of these comments could take place at the workshop itself:

- Art. 22.4.b. This change seems problematic, as substantial changes seem more applicable to triggering a review than "developments", especially as "without imposing excessive costs" is deleted.
- Art.22.4.b – "developments in the BAT allow for the significant reduction of emissions" is full of concepts which have multi-interpretations and is thus difficult to realize and maintain. It is not clear what is meant by "developments" in the area of BAT, what is a "significant" reduction and how costs are to be considered.
- Art 22.4.d – it is not clear what is exactly required when a new EU environmental quality standard is adopted in relation to changes in permit conditions.
- If a change to permit conditions is found not to be necessary, it will be important for competent authorities to decide how this legal decision is to be documented.

Annex VI: Specific comments relating to monitoring and reporting

The following comments were made, generally by one or a few Members. No detailed discussions on most of these comments could take place at the workshop itself:

- Art. 17 or Art.15 could usefully refer to the importance of self-monitoring of the operator to aid practicability.
- Art. 8 has the same title as Art. 24. This could be confusing.
- Art.8, part 1. It is not clear what should be included in the report as regards compliance.

Annex VII: Specific comments relating to inspection requirements

The following comments were made, generally by one or a few Members. No detailed discussions on most of these comments could take place at the workshop itself:

- Article 25-5 seems to suggest that each routine inspection should cover the full range of environmental effects. This is not practical. Selective, targeted, programmed inspections are often much more effective.

- Art. 25-5: "Routine inspections shall ensure that the operator complies with the permit conditions." This provision can lead to misunderstandings. Routine inspections as such very often do not, and can not, necessarily result in (improved) compliance. Other ways of compliance checking and promotion may be needed and or other conditions may have to be met.

- What is the difference between "permit conditions" and "permit requirements"?

- Art. 25-7: "requirements of this Directive" should be replaced by "permit conditions".

- Another member considered that a period of two months for publishing inspections reports has proven to be unrealistic for many inspecting authorities. The IMPEL Input to the further development of the RMCEI report suggested to use the more practical "as soon as possible" clause.

- The Recast Proposal says "The report shall be notified to the operator concerned and made publicly available within two months after the inspection takes place". This could be a problem in relation to privacy and confidentiality of commercial and industrial information. Thus the limits of disclosure should be clearly specified.

Annex VIII: Specific comments relating to Chapters 3-6 of the Recast Proposal

The following comments were made, generally by one or a few Members. No detailed discussions on most of these comments could take place at the workshop itself:

Specific technical remarks and comments concerning Chapter 3:

- There will be practical challenges adjusting the requirements for existing installations which as from 1 January 2008 have been implementing the national emission reduction plan, as the Recast Proposal removes the provision for such a national plan and replaces it by specific emission limits as a minimum standard.

- According to the Recast Proposal, the combustion plants permitted after 1 January 2016 are to be added up, while plants permitted before that date are not. The proposed provision is not consistent with Directive 2001/80/EC, according to which plants permitted after 1 July 1987 are to be added up. The practical implications of this difference need to be considered, including the different scope of Directive 2001/80/EC (plants >20MW) and that of the Chapter 3 of the Recast Proposal (plants >50MW).

- It is not clear what approach will be taken as regards the combustion of wastes in cement works and limekilns.

Specific technical remarks and comments on Chapter 4:

- "Old" Art 3.2 is deleted. It is not clear of the effect on old Art 7.2.

- "Old" Art 7.4 is deleted, but it is not clear if this is intended.

Specific technical remarks and comments on Chapter 5:

- The definition of volatile organic substances in Directive 1999/13/EC differs from that specified in Directive 2004/42/EC, which deals with the content of volatile organic substances in certain products. The two Directives, however, are entwined and the definition of volatile organic substances should therefore be unified. The revision of the IPPC Directive would make this change possible. However, it was recognised that the definition used is consistent with the existing definition under the solvent emissions Directive.

Annex IX: Project Terms of Reference

No	Name of project
	Using the IMPEL Practicability and Enforceability Checklist to assess the Commission proposals resulting from the IPPC Review

1. Scope

1.1. Background	The Checklist In order to encourage policymakers, legislators and stakeholders to devote more attention to likely problems of practicability in implementation and enforceability throughout the legislative process, with a view to anticipating and remedying practicability and enforceability problems through a pro-active approach, IMPEL has produced a practical checklist to assess the practicability and enforceability of existing and new legislation with the aim of improving the overall implementation of EU environmental law in the Member States. The checklist is designed to enable actors and stakeholders in the legislative process to assess EU environmental legislation (and associated national legislation and implementation efforts) on various aspects of practicability and enforceability, both ex ante and ex post. The checklist was adopted by the IMPEL Plenary Meeting of Espoo, Finland, December 2006, and published on the IMPEL website. The report on the checklist contained the following recommendations: 1. All actors at the different stages of the EU legislative and implementation process should take Practicability and Enforceability (P&E) issues into account. Relevant stages are: • During the pre-legislative (pre-proposal) phase: when drafting proposals and organising Impact Assessment (IA) and consultative processes on draft proposals for legislation; • During the formal EU legislative procedure: when negotiating legislative proposals; • After adoption of EU legislation: when transposing the adopted legislation or establishing complementary legislation at Member State level; • During implementation of legislation: when securing sound implementation conditions; • After implementation of legislation: when carrying out ex post assessments and review processes. Actors are: European Commission, Council, European Parliament, Member States (through Council and at transposition/implementation stage).

	2. Stakeholders - parties who have an interest in practical and enforceable legislation and who can give insights on how to achieve this – should be consulted in a timely manner to ensure that relevant experience on practicability and enforceability is taken on board. Stakeholders are: national authorities competent for implementation and enforcement, the judiciary, IMPEL and other Implementation and Enforcement Networks. 3. In order to get involved and to time efforts, stakeholders need a clear, accurate and up-to-date timetable of the Commission legislative agenda (roadmaps), including information on what issues are involved. 4. Actors and stakeholders are recommended to use the P&E Checklist to ensure that all relevant P&E issues are taken into consideration and that P&E issues are assessed and addressed in a structured way. 5. IMPEL members recommended to use the Checklist in national fora and to exchange experiences on its use, for example in the IMPEL cluster 3. IMPEL is recommended to provide for translations of the Checklist in the IMPEL country languages so as to get the broadest uptake possible. 6. IMPEL and its members are recommended to promote the Checklist, contacting all relevant actors and stakeholders in the EU legislative process both on a national and EU level and using a proper communication strategy. **The IPPC Review** The IPPC review contributes to achieving the objectives of the EAP6, and in particular the European Thematic Strategies on air, soil and waste. The IPPC review is also part of the European Better Regulation approach as well as part of the (eco-efficient) innovation stimulation impulse from the Lisbon Agenda. It is expected that the IPPC review will focus on three main issues: 1) streamlining existing legislation concerning industrial emissions while improving the application of BAT; 2) possibly fitting in market and other instruments, like emission trading; 3) improving the enforcement and compliance of the legislation, 4) extending the range/scope of the IPPC directive, aiming for reducing the environmental pressure by industrial emissions.
1.2. Link to MAWP and IMPEL's role and scope	<u>Strategic goal V</u>: ❖ Providing feedback to policy makers on the practicability and enforceability of environmental legislation; ❖ Contribute in the process of drafting new or revising existing legislation ❖ Ensure activities and fulfill projects necessary for the contribution in reviewing of existing legislation. On the basis of the project results identify recommendations, suggestion for changes and provide feedback to the Commission services. ❖ Communicate the projects and other result to decision makers both at European and national level.

	Strategic goal VI: Strengthening dissemination of results of IMPEL activities and look back by ex-post verification to ensure that the good practices are effectively spread.
1.3. Objective(s)	Extend IMPEL's contribution in the IPPC review process by providing expertise on the Practicability and Enforceability issues linked to the Commission proposal for a revised IPPC-directive, resulting from the IPPC-review. This project will be carried out by experts from IMPEL Member Countries using the IMPEL P&E checklist and the "Barriers to Good Environmental Regulation" Report, produced by the Network of Heads of European Environmental Protection Agencies. The project by no means intends to interfere with the normal European legislative procedure. With this project IMPEL only seeks to provide guidance to the co-legislators on the areas which need particular attention during the legislative process with regard to the objectives of practicability and enforceability based on the practical experiences of experts from IMPEL member countries. The Project report will highlight the key P&E questions and areas which, in the opinion of the experts, will need particular attention. By this the project aims at informing and supporting the legislative process. Further objectives: • To contribute to better implementation and enforcement of the reviewed IPPC directive; • To contribute to better performance of environmental inspections in the Member States; • To offer the EC advice on the enforceability and practicability of new legislation
1.4. Definition	The project will be undertaken through the use of a questionnaire and by holding a single workshop.
1.5. Product(s)	❖ a report gathering the Information from IMPEL reps. of Member States on the Practicability and Enforceability issues linked with the revision of the IPPC directive ❖

2. Structure of the project

2.1. Participants	❖ Better Regulation Cluster Members, together with representative(s) from Cluster 1 and other interested parties from within IMPEL ❖ COM
2.2. Project team	Project team will consist of experts of Dutch Competent authorities Inspectorates and Ministry for the Environment. International Review Group: preferably 3 to 4 MS
2.3. Manager Executor	NL : to be decided upon
2.4. Reporting arrangements	❖ draft report will be submitted to Cluster Better Regulation and Cluster 1 in March 2008 ❖ Final report will be submitted to the IMPEL Plenary Meeting in Slovenia mid 2008….

2.5 Dissemination of results/main target groups	Commission, IMPEL, Member States The project will be disseminated through the IMPEL web site after its adoption. The result of this project will be sent as an IMPEL advice to COM

3. Resources required

3.1 Project costs	Travel and accomodation for the workshop participants (12 people coming to the Netherlands for the workshop in (venue to be agreed upon) is estimated at 15700 € on the following costs: - Apex flights - € 750 - Hotel accommodation - € 150 per person per night for 2 nights - Lunch – 25 € per person for two days Additional costs for meeting rooms and associated facilities are estimated at € 2,500 External consultant: 30,000 € to be financed from NL
3.2. Fin. from Com.	❖ Contribution sought from COM is € 15700
3.3. Fin. from MS (and any other)	Staff time for preparation, attending, etc. 60 days Host country 10 days
3.4. Human from Com.	4

4. Quality review mechanisms

The quality of the final product will be reviewed Clusters 1 and 3.

5. Legal base

5.1. Directive/Regulation/ Decision	IPPC Directive (96/61/EC)
5.2. Article and description	
5.3 Link to the 6th EAP	

6. Project planning

6.1. Approval	Draft in cluster 3: Tor in plenary meeting LISBON 2007:
(6.2. Fin. Contributions)	
6.3. Start	January 2008
6.4 Milestones	December 2007: COM adoption of proposal on IPPC revision January 2008: 1st meeting Review Group

	February 2008: preparing questionnaire and distribution to IMPEL member countries March 2008: analysing and synthesising returned questionnaire as input to 2nd Review Group meeting April 2008: workshop + discussing results in clusters 1 and 3 May: approval report by IMPEL Plenary Meeting of Ljubljana
6.5 Product	Draft report will be submitted to cluster 1 and 3 in April 2008 Final Report will be submitted to the IMPEL plenary in May 2008
6.6 Adoption	

Annex X: Participants in the Project

This Annex provides a list of those who responded to the project questionnaire, those who participated in the project workshop, the membership of the Project Group and the membership of the Review Group.

List of Members to the Project Questionnaire

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Annex XI: The Questionnaire used in the Project

Scope

The proposal clarifies and extends the range of activities to be regulated, such as on combustion plants, waste processes, etc (Annex 1).

1. Is the extension in scope of the legislation clear in defining the activities which are covered?

2. Do you have experience in permitting activities covered by the extension in scope of the Directive? If so, are there any practicability and enforceability issues related to extending the scope of the Directive to cover these activities?

3. Could certain thresholds and other determinands of activities in Annex I, whether amended or not, be further clarified? If so, please provide specific suggestions?

Definitions

Aiming at improving clarify and streamline existing definitions, the proposal revises some definitions from the existing Directives such as those of 'installation' and 'permit'. New definitions are also added, such as for 'emerging technique', 'baseline report', 'routine'/'non-routine inspection' as well as cross-referencing to the waste framework Directive. Examples include:

'Installation' is defined as 'a stationary technical unit within which one or more activities listed in Annex I or in Part 1 of Annex VII are carried out, and any other directly associated activities on the same site which have a technical connection with the activities listed in those Annexes and which could have an effect on emissions and pollution'. This clarifies the geographic scope of 'directly associated activities' compared to Directive 96/61.

The definition of 'permit' is changed to 'a written authorisation to operate all or part of an installation or combustion plant, waste incineration plant or waste co-incineration plant'. The original clarification of this definition is now continued in Article 4 which states that 'a permit may cover two or more installations or parts of installations operated by the same operator on the same site or on different sites' and that 'where a permit covers two or more installations, each installation shall comply with the requirements of this Directive'.

The definition of 'operator' remains largely unchanged as 'any natural or legal person who operates or controls the installation or combustion plant, waste incineration plant or waste co-incineration plant or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of the installation or plant has been delegated', but Article 5 on 'operators' is introduced which states that 'two or more natural or legal persons may be the joint operator of an installation or combustion plant, waste incineration plant or waste co-incineration plant, or may be the operators of different parts of an installation or plant'.

4. Are all the key terms in the proposal properly and clearly defined? Is there experience of other definitions from other sources that provide greater clarity than those in the proposal?

5. Do the changes to the existing definitions in the proposal provide greater clarity and consistency than in the existing legislation? Where new definitions are added, are these clear and consistent with the existing legislation?

6. Are the requirements relating to what activities **must** be included within a permit and those that **may** be included within a permit clear? Are these practicable?

7. Are the requirements relating to whom the permit should/could apply clear? Are these practicable?

8. Are there any definitions which are not consistent with those in related legislation?

Coherence and consistency of legislation

The proposal brings together the requirements of seven existing Directives. In doing so, one aim is to enhance coherence and consistency between them.

9. Are the various provisions of the proposal coherent and consistent? In particular, are the requirements of Chapter 2 (IPPC) consistent with Chapters 3-6? In cases where both Chapter 2 and one or more of the Chapters 3-6 may apply to an installation, do you foresee any practical issues that may arise in implementing the proposal? Have in your opinion possibilities for integration of the seven Directives sufficiently been considered in this proposal?

10. Is the legislation consistent with other existing legislation (other than with respect to definitions considered in question 8), such as Directives on Waste, Water and EIA? Are any references to other texts precise?

BAT Reference Documents (BREFs)

The proposal introduces a new Article (14) on BREFs. It requires that the Commission shall adopt BREFs based on the results of the information exchange (Article 29). The following Article (15) describes the processes for permit determination. It requires that 'BAT reference documents shall be the reference for setting the permit conditions' and that permit conditions shall be based on BAT. Permits should also contain ELVs that do not exceed the emission levels associated with BAT as described in the BREFs. However, the proposal would also allow some derogation from this in specific and justified cases. Also Articles 8 and 24 require operators of Annex I activities to report on compliance with permit conditions including a comparison between the operation of the installation and level of emissions with BAT as described in the BREFs. Thus the proposal places the BREFs in a new legal setting compared to Directive 96/61.

11. Is the proposal clear on how BREFs are to be used in implementing the legislation?

12. What are the (practical or legal) implications of the new requirements relating to BREFs, taking into account the form and content of the present BREFs?

13. With the clarification and strengthening of the role of BREFs, do you foresee that the BREF development and revision process will (have to) change?

Innovation and emerging techniques

'Emerging technique' is defined as 'a novel technique for an industrial activity that, if commercially developed, could provide a higher general level of protection of the environment or higher cost savings than existing best available techniques'. Competent authorities can grant derogations from meeting emission limit values based on BAT as described in the BREFs for the temporary testing and use of emerging techniques (Article15). The proposal also introduces new provisions requiring Member States to establish incentives for operators to develop and apply emerging techniques. Article 30 states that the Commission can adopt through Comitology measures to determine the type of industrial activities for prioritised development and application of emerging techniques; indicative targets for Member States regarding the development and application of emerging techniques; and the tools to assess the progress made in developing and applying emerging techniques.

14. Is it clear what is expected/required from competent authorities and Member States under the provisions relating to innovation and emerging techniques?

15. Is the provision with respect to temporarily allowing higher emission limit values for a trial period for testing new techniques practicable?

General binding rules (GBRs)

The provision for GBRs is retained (Article 7). In Directive 96/61 requirements for installations can be included in GBRs 'instead of including them in individual permits'. This is further specified by a requirement that 'where general binding rules are adopted, the permit may simply include a reference to such rules'. Article 18 repeats the requirement from Directive 96/61 that use of GBRs shall ensure 'an integrated approach' and 'a high level of environmental protection' and adds that this is 'equivalent to that achievable with individual permit conditions'. The proposal adds further information on what GBRs consist of. GBRs shall be based on BAT, without prescribing the use of any technique or specific technology. Member States shall ensure that GBRs contain ELVs, or equivalent parameters or technical measures, that do not exceed the emission levels associated with' BAT as described in the BREFs. GBRs must also be kept up to date with developments in BAT (they must be, where necessary, reconsidered and updated within four years of publication of a new or revised BREF).

16. Are the changed requirements and conditions relating to the definition and application of GBRs clear and practicable?

Permit review

The proposal (Article 22) introduces a requirement for permit conditions to be reconsidered and, where necessary, updated within four years after a new or updated BREF is adopted in order to take account of developments in BAT or other changes regarding the operation of an installation.

17. Are the requirements relating to the review of permits clear? Are they practicable?

Site closure and remediation

The proposal introduces (Article 23) more detailed obligations relating to site closure and remediation than in Directive 96/61. Where an activity involves the use, production or release of dangerous substances that might contaminate soil or groundwater at the site of the

installation 'the operator shall prepare a baseline report before starting operation of an installation or before a permit for an installation is updated' with information on the initial state of the soil and the groundwater. The Commission shall establish criteria on the content of the baseline report. When the activity ceases, the operator shall assess the state of the soil and groundwater contamination, compare this to the baseline report and remediate the site and return it to that initial state. If a baseline report is not required, the operator shall ensure that the site does not pose any significant risk to human health and the environment. In setting out these provisions, the proposal makes explicit reference to the proposed soils Directive.

18. Are the provisions relating to the production of a baseline report and the provisions with respect to site closure and remediation clear? Are they practical?

Monitoring (emissions, soil) and compliance reporting for operators

The proposal introduces more explicit requirements for monitoring (Article 17) to be set out in the permit conditions. The monitoring requirements shall, where applicable, be based on the conclusions on monitoring in the BREFs. A new provision (Article 8) is introduced to require operators to report on compliance with permit conditions at least every 12 months. This replaces the requirement in Directive 96/61 to report 'regularly' on the 'monitoring of releases'.

In addition Article 24 requires that operators of Annex I activities (IPPC activities) include in the report on compliance a comparison of the operation of the installation with the BAT in the BREF's.

19. Are the monitoring requirements clear? Are they practicable?

20. Are the reporting requirements clear? Are they practicable? Are they consistent with other legal obligations such as with respect to E-PRTR?

21. Are there particular practical issues concerning the need to ensure that the information obtained is complete, consistent and credible?

Inspection and compliance assessment by competent authorities

Article 25 would require Member States to set up a system of inspections of installations, including on-site inspections. This builds on the requirements of the Recommendation on minimum criteria for environmental inspections, but, by placing them in a Directive, would make them binding on the Member States. The requirements include routine inspections to examine environmental effects from the installations and ensure compliance with permit conditions and non-routine inspections to investigate serious environmental complaints, accidents, incidents and occurrences of non-compliance. This would include the development of an inspection plan covering all installations. Inspections shall be followed up with the production of a report, to be made public, indicating, if necessary, further action to achieve compliance. The proposal requires at least one site visit per year, unless the inspection programmes 'are based on a systematic appraisal of the environmental risks of the particular installations concerned'. The Commission 'shall establish criteria on the appraisal of the environmental risks'.

22. Is the choice of including inspection requirements in a Directive justified in view of its contents and purpose?

23. Are the requirements relating to inspection clear? Are they practicable? How will the introduction of the proposed inspection regime for IPPC installations, including specific criteria for risk appraisal, interact with the Recommendation on

minimum criteria for environmental inspections or specific legislation containing inspection requirements? Will the proposed inspection requirements help to improve compliance?

Penalties

The proposal introduces a new provision for penalties (Article 70), building on requirements in Directive 2000/76 and 2001/80. These penalties shall be effective, proportionate and dissuasive.

24. What are the key requirements in the legislation which in your opinion should where necessary be enforced with the use of penalties?

25. Are there obvious ways for operators to avoid complying with the various rules in the legislation (e.g. permits, GBRs, monitoring, reporting, etc)?

Access to information

The proposal (Article 26) retains the 2003/35 amendment that a competent authority should inform the public of the content and reasons for permit decisions, although this is clarified to include 'granting, reconsideration or updating of a permit, or on the adoption or updating of general binding rules', and the results of monitoring as in Directive 96/61. The proposal introduces further requirements on competent authorities for public information on:

- *the results of the consultations held before the decision was taken and an explanation of how they were taken into account;*
- *the title of the BREFs relevant to the installation or activity concerned;*
- *how the ELVs in the permit or the GBRs have been determined in relation to BAT as described in the BREFs;*
- *where a derogation is granted in accordance with Article 16(3) (permit ELVs exceed BAT associated emission levels set in the BREF), the reasons for it and the conditions imposed;*
- *the result of the reconsideration of general binding rules and of permits.*

26. Are the provisions relating to access to information and participation clear in relation to the different Articles to which they apply? Are they practicable?

Comitology

Article 69 establishes the provision for Comitology as previously required by Article 19 of Directive 96/61. Comitology is the process whereby representatives of the Member States work together in a Committee to agree, on the basis of a Proposal by the Commission ,specific (technical)requirements in implementing the Directive (note that this does not limit the ability of the Commission to issue guidance on any issue, which it can do whenever it considers that there is such a need). The cases in which implementing powers have been kept or assigned are specifically listed in each relevant Article of the proposal. These are:

- *Criteria for granting derogations on setting emission limit values not based on BAT (Article 16);*
- *Criteria for frequency of soil monitoring (Article 17);*
- *Criteria for the content of the baseline report (Article 23);*
- *Criteria for the evaluation of environmental risks to support risk-based inspection plans (Article 25);*
- *Measures relating to emerging techniques, prioritising industrial sectors, setting indicative targets and developing tools to assess progress in developing and applying those techniques (Article 30);*

- *Emission limit values for multi-fired combustion plants (Article 37);*
- *Techniques for monitoring of incinerators (Article 43);*
- *Type and format of reporting on the Directive by Member States (Article 67);*
- *Adoption of some aspects of Annexes V, VI, VII and VIII (Article 68).*

27. Are the provisions related to comitology clear? Do you think that it is useful that on the subjectmattters listed above further requirements are developed through commitology, or would you prefer other ways of supporting the implementation like providing guidance or exchange of good practices? Do you have suggestions on what kind of rules and level of detail should be adopted by the Committee? Are there other aspects of the Directive that would benefit from the use of comitology?

Deadlines

Article 71 requires that Member States should transpose the Directive within 1.5 years from adoption. Most requirements would need to be implemented within 3 years from adoption, with the exception of new categories of installation added to Annex I (4.5 years from adoption), and specific emission obligations on combustion plants and new obligations on co-incinerators (from 1 January 2016).

28. Are the deadlines contained in the proposal clear?

29. Does the date by which the Directive is to be transposed leave Member States sufficient time to properly prepare their implementing bodies for the practical aspects of implementation?

Technical requirements of Chapters 3-6

These chapters include amended requirements for provisions derived from the large combustion plant, waste incineration, solvent emissions and titanium dioxide Directives, supported by relevant annexes containing emission limit values, etc.

30. Are the technical standards laid down in Chapters 3-6 clear with respect to implementation and enforcement clear? Are they practicable?

Non-legally binding provisions and delivering the objectives

The proposal largely consists of legally binding obligations. However, there might be elements which do not bind the Member States to action and these may or may not be appropriate in a legal instrument.

31. Does the legislation contain any provisions without legislative character (e.g. wishes, political statements) which may confuse the addressees or seem to contradict the actual normative provisions?

Arrangements to support the implementation process

The proposal outlines some support processes, such as through exchange of information (Article 29), as well as areas where the Commission will establish criteria to assist implementation (e.g. on developing a baseline report and for risk-based inspection). However, other support systems such as through development of guidance might be needed.

32. Should there be support at the EU level for national competent authorities to assist implementation (e.g. through guidance materials or other practical measures)?

Any other issues

The questions above have focused on the major themes of the proposal. However, there may be other issues that you think are important to highlight.

33. Are there any other points relating to from the Checklist and NHEEPA questions that you wish to raise?

34. Do you have other views or suggestions for other important actions at EU level to increase the practicability and enforceability of the proposal?