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Subject : Proposal for a directive of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (Recast)

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**I. INTRODUCTION**

1. The Commission adopted the above-mentioned proposal in December 2007.
2. The aim of the proposal is to revise and merge seven separate existing directives concerning industrial emissions in order to achieve a high level of environmental protection while simplifying the legal framework and avoiding unnecessary administrative burdens. The use of the recast technique makes it possible to combine in a single text substantive amendments and provisions which remain unchanged.

3. The Working Party on the Environment began examining the proposal in May 2008 and has continued examining it on a regular basis ever since. Document 5381/4/09 REV 4 contains a consolidated text incorporating Presidency suggestions and editorial corrections.

The Council (Environment) held a policy debate on the proposed directive on 2 March 2009.

The European Parliament adopted its first-reading opinion on the proposal on 10 March 2009.

## II. KEY OUTSTANDING ISSUES

4. While there are a number of other issues that remain to be resolved, both of a political and technical nature, two key outstanding issues concern the specific provisions for large combustion plants (LCPs) and the role of Best Available Techniques Reference Documents.

### Large combustion plants

5. In order further to reduce emissions of pollutants from LCPs (SO<sub>2</sub>, NO<sub>x</sub> and dust), the Commission proposal would strengthen the existing minimum requirements applying to these plants. New minimum requirements, aligned with the BAT emission levels described in the BREF for LCPs, would apply from 1 January 2016 for new and existing LCPs.
6. All delegations agree with the Commission proposal in relation to **new LCPs**. There is also agreement that some **flexibility** is necessary to allow certain existing plants more time to comply with the proposed new emission limit values (ELVs). However, views differ on the appropriate level of flexibility. When the Working Party on the Environment last discussed the Presidency's suggested compromise package on 28 April 2009, delegations particularly stressed the following points:
  - BE/DK/DE/NL/AT/SE were concerned that the Presidency's suggestions would significantly reduce the **environmental ambition** of the directive compared to the Commission's proposal; while

- BG/ES/IT/LV/LT/CY/PL/RO/SI/SK/FI/UK considered those suggestions an important step in the right direction compared to the Commission's proposal, but that they did not go far enough on certain issues and could have an undue **economic impact** on the sector which, in certain cases, could endanger the security of energy supply.

Other delegations are broadly content with the Presidency's suggestions, although some have concerns on certain specific issues.

7. With a view to arriving at a balanced overall compromise package, and taking account of the positions expressed by delegations, the Presidency suggests further changes to the Commission's proposal. **Annex A** to this note contains the revised Presidency compromise package for the specific provisions concerning LCPs. The main changes compared to the previous Presidency suggestions are:

- the extension of the scope of the **transitional national plan** to all plants granted a permit before 27 November 2002;
- the widening of the **temporary derogation** (for plants which will continue to operate only for a short period of time before being shut down) to those plants operating for less than 20 000 hours between 1 January 2016 and 31 December 2023;
- clarifying that the references to **operating hours** do not include start-up and shut-down periods;
- the reintroduction of provisions of the current LCP directive concerning ELVs for LCPs firing non-commercial fuels within refineries (including the so-called "**bubble**" concept for SO<sub>2</sub> emissions) and for iron and steel plants; and the introduction of a **review clause** requiring the Commission to consider, by the end of 2013 and on the basis of BAT, the need to amend or to establish ELVs for these plants;
- bringing forward the date on which the minimum requirements for **new plants** would be aligned with the current BREF to two years after entry into force of the directive (i.e., around the end of 2012, in the event of agreement at second reading, rather than on 1 January 2016 as in the Commission's proposal).

The text in Annex A also includes some more minor changes to improve the legal clarity and consistency of the proposed directive.

## The role of BAT Reference documents

8. Another core element of the Commission's proposal is to strengthen the application of best available techniques (BAT) compared to current legislation. BREFs would have an enhanced role in order to improve the implementation of BAT, to achieve greater consistency in permitting across the Community and, therefore, to create a level playing field.
9. To address certain delegations' concerns, particularly about Member States' role in the BREF adoption process and the availability of translations, the Presidency had suggested (Article 14) the adoption through comitology (regulatory procedure with scrutiny) of the key elements of BREFs (BAT and the emission levels associated with BAT, known as BAT-AELs). The Presidency also suggested maintaining the general principle that competent authorities should set emission limit values that ensure that BAT-AELs are met (Article 16(3)), but with the possibility for competent authorities to decide to deviate from this approach, in specific cases, where transparently justified (Article 16(4)).

Most delegations support or can accept this approach. Indeed, the last discussion within the Working Party on the Environment on 28 April 2009 indicated that the Presidency suggestions represented a balanced package on which there was broad agreement.

10. In the light of that discussion, the Presidency suggests the slightly revised compromise package set out in **Annex B**. This includes changes providing for:
  - the adoption through comitology of **guidance** on the elaboration of BREFs;
  - the comitology decision to lay down only **BAT-AELs** and not whole of the BAT conclusions;
  - the BAT conclusions, including BAT-AELs, to be **translated** into all official Community languages.

11. The Presidency does not suggest any change to the text concerning the **role of BREFs in permitting** (Article 16(4)), considering that this represents a balance between the different positions, as reflected by the fact that:

- BE/DK/DE/AT/SE consider that the text would give competent authorities too much flexibility to deviate from BAT-AELs; while
- IT/MT/PL/FI are of the view that competent authorities would have too little flexibility, particularly because the provision is framed as a derogation.

### III. CONCLUSION

12. Coreper should discuss the key outstanding issues summarised above with a view to providing guidance to the Working Party on the Environment so that it can prepare an overall compromise package. Coreper will consider this overall package at one of its forthcoming meetings, with a view to the Council (Environment) reaching political agreement on 25 June 2009.

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REVISED PRESIDENCY COMPROMISE PACKAGE ON LARGE COMBUSTION

PLANTS<sup>\*</sup>

*Article 3*

**Definitions**

...

(19) 'combustion plant' means any technical apparatus in which fuels are oxidised in order to use the heat thus generated;

(19a) 'stack' means a structure containing one or more flues providing conduit for waste gases in order to discharge them into the air;

(19b) 'operating hours' means the time, expressed in hours, during which a combustion plant, in whole or in part, is operating and discharging emissions into the air, **excluding start-up and shut-down periods;**

(19c) 'rate of desulphurisation' means the ratio over a given period of time of the quantity of sulphur which is not emitted into air by a combustion plant to the quantity of sulphur contained in the solid fuel which is introduced into the combustion plant facilities and which is used in the plant over the same period of time;

...

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\* N.B. In the interest of readability, the text in Annexes A and B to this note is not in the recast format (except for the use of shading to indicate changes of substance). Document 5381/4/09 REV 4 contains a consolidated text of the draft directive in the recast format. In this note, additions to the Commission's proposal are underlined and "[...]" indicates a deletion without replacement. New Presidency suggestions are in bold text. The Presidency is not suggesting any additional changes to the text that does not appear in this note.

(22a) 'gas engine' means an internal combustion engine which operates according to the Otto cycle and uses spark ignition or, in case of dual fuel engines, compression ignition to burn fuel;

(22b) 'diesel engine' means an internal combustion engine which operates according to the diesel cycle and uses compression ignition to burn fuel;

(22c) 'small isolated system' means a small isolated system as defined in Article 2(26) of Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC\*;

...

### *Article 32*

#### **Aggregation rules**

1. Where the waste gases of two or more separate combustion plants are discharged through a common stack, the combination formed by such plants shall be considered as a single combustion plant and their capacities added for the purpose of calculating the total rated thermal input.

2. Where two or more separate combustion plants which have been granted a permit for the first time or have submitted a complete application for such a permit on or after 1 July 1987 are installed in such a way that, taking technical and economic factors into account, their waste gases could, in the judgement of the competent authority, be discharged through a common stack, the combination formed by such plants shall be considered as a single combustion plant and their capacities added for the purpose of calculating the total rated thermal input.

3. For the purpose of calculating the total rated thermal input of a combination of combustion plants referred to in paragraphs 1 and 2, individual combustion plants with a rated thermal input below **3 MW<sub>th</sub>** shall not be considered.

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\* OJ L 176, 15.7.2003, p. 37.

*Article 33*

**Emission limit values**

1. Waste gases from combustion plants shall be discharged in a controlled way by means of a stack, containing one or more flues, the height of which is calculated in such a way as to safeguard human health and the environment.
2. All permits for installations containing combustion plants which have been granted a permit or have submitted a complete application before the date referred to in Article **71(1)** provided that such plant is put into operation no later than one year after that date shall include conditions ensuring that emissions to air from these plants do not exceed the emission limit values laid down in Part 1 of Annex V.
3. All permits for installations containing combustion plants not covered by paragraph 2 shall include conditions ensuring that emissions to the air from these plants do not exceed the emission limit values laid down in Part 2 of Annex V.

**All permits for installations containing combustion plants which have been granted an exemption as referred to in Article 4(4) of Directive 2001/80/EC and which are operated after 1 January 2016, shall include conditions ensuring that emissions to the air from these plants do not exceed the emission limit values laid down in Part 2 of Annex V.**

**3a. The emission limit values set out in Annex V shall apply to the emissions of each common stack in relation to the total rated thermal input of the entire combustion plant. Where Annex V provides that emission limit values may be applied for a part of a combustion plant with a limited number of operating hours, those limit values shall apply to the emissions of that part of the plant, but in relation to the total rated thermal input of the entire combustion plant.**

...

6. Where a combustion plant is extended, the emission limit values specified in Part 2 of Annex V shall apply to the **extended** part of the plant and shall be set in relation to the **total** rated thermal input of the entire combustion plant.

**In case of a change of a combustion plant which may have consequences for the environment and which affects a part of the plant with a rated thermal input of 50 MWth or more, the emission limit values set out in Part 2 of Annex V shall apply to the part of the plant which has changed in relation to the total rated thermal input of the entire combustion plant.**

7. The emission limit values set out in Part 1 and Part 2 of Annex V shall not apply to the following combustion plants:

(a) diesel engines;

(b) recovery boilers within installations for the production of pulp.

8. **For the following combustion plants, on the basis of the best available techniques, the Commission shall, by 31 December 2013, review the need to amend the emission limit values set out in Annex V and to establish Community-wide emission limit values:**

(a) the combustion plants referred to in paragraph 7;

**(b) combustion plants within refineries firing low calorific gases from the gasification of refinery residues and the distillation and conversion residues from the refining of crude-oil for own consumption, alone or with other fuels;**

**(c) combustion plants firing blast furnace gas, coke oven gas or other gases produced by iron and steel plants.**

The Commission shall report the results of this review to the European Parliament and to the Council accompanied, if appropriate, by a legislative proposal.

### Article 33a

#### **Desulphurisation rate**

For combustion plants firing indigenous solid fuel, which cannot comply with the emission limit values for sulphur dioxide, referred to in Article 33(2) and (3), due to the characteristics of this fuel, Member States may apply instead the minimum rates of desulphurisation set out in Part 5 of Annex V, in accordance with the compliance rules set out in Part 6 of that Annex.

### Article 33b

#### **Transitional National Plan**

1. During the period from 1 January 2016 to 31 December 2019, Member States may define and implement a transitional national plan covering combustion plants which were granted a permit before **27 November 2002 or which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003.** For each of the combustion plants covered by the plan, the plan shall cover emissions of one or more of the following pollutants: nitrogen oxides (NO<sub>x</sub>), sulphur dioxide (SO<sub>2</sub>) and dust. For gas turbines, only NO<sub>x</sub> emissions can be covered by the plan.
2. Combustion plants covered by the plan may be exempted from compliance with the emission limit values referred to in Article 33(2) for the pollutants which are subject to the plan or, where applicable, with the rates of desulphurisation referred to in Article 33a.
3. For each of the pollutants it covers, the transitional national plan shall set a ceiling defining the maximum total yearly emissions for all of the plants covered by the plan on the basis of each plant's total rated thermal input on 31 December 2010, its annual operating hours and its fuel use, averaged over the last ten years of operation up to and including 2010.

The ceiling for the year 2016 shall be calculated on the basis of the relevant emission limit values set out in Annexes III to VII of Directive 2001/80/EC. In the case of gas turbines, the emission limit values for NO<sub>x</sub> set out for such plants in Part B of Annex VI of Directive 2001/80/EC shall be used. The ceiling for the year 2019 shall be calculated on the basis of the emission limit values set out in Part 1 of Annex V or, where applicable, on the basis of the rates of desulphurisation set out in Part 5 of Annex V. The ceilings for the years 2017 and 2018 shall be set providing a linear decrease of the ceilings between 2016 and 2019.

Where a plant included in the transitional national plan is closed or no longer falls within the scope of Chapter III, this shall not result in an increase in total annual emissions from the remaining plants covered by the plan.

4. The transitional national plan shall also contain provisions on monitoring and reporting that comply with the implementing rules established in accordance with paragraph 5, as well as the measures foreseen for each of the plants in order to ensure timely compliance with the emission limit values that will apply after 1 January 2020.

5. Implementing rules for the transitional national plans shall be established concerning the setting of emission ceilings in accordance with paragraph 3 and on monitoring and reporting. That measure, designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 69(2). The Commission shall make an appropriate proposal not later than 6 months after the date referred to in Article 74.

6. Not later than 1 January 2013, Member States shall communicate their transitional national plans to the Commission.

Within twelve months of receiving a plan, the Commission shall evaluate it. When the Commission considers a plan not to be in accordance with the rules referred to in paragraph 5, it shall inform the Member State concerned that its plan cannot be accepted. Where the Commission has raised no objections within twelve months of receipt of a plan, the Member State concerned shall consider its plan to be accepted.

7. Member States shall inform the Commission of any subsequent changes to the plan.

### *Article 33c*

#### **Limited life time derogation**

1. During the period from 1 January 2016 to 31 December 2023, combustion plants may be exempted from compliance with the emission limit values referred to in Article 33(2) and with the rates of desulphurisation referred to in Article 33a, where applicable, and from their inclusion in the transitional national plan referred to in Article 33b on the following conditions:

(a) the operator of the combustion plant undertakes, in a written declaration submitted by 1 January 2014 at the latest to the competent authority, not to operate the plant for more than 20 000 operating hours, starting from 1 January 2016 and ending no later than 31 December 2023;

(b) the operator is required to submit each year to the competent authority a record of the number of operating hours since 1 January 2016;

(c) the emission limit values for SO<sub>2</sub>, NO<sub>x</sub> and dust laid down in the combustion plant's permit, pursuant in particular to the requirements of Directives 2008/1/EC and 2001/80/EC, shall at least be maintained during the remaining operational life of the combustion plant;

(d) the combustion plant has not been granted an exemption as referred to in Article 4(4) of Directive 2001/80/EC.

2. At the latest on 1 January 2016, each Member State shall communicate to the Commission a list of any combustion plants to which the first paragraph applies, including their rated thermal input, the fuel types used and the applicable emission limit values for SO<sub>2</sub>, NO<sub>x</sub> and dust. For plants subject to the first paragraph Member States shall communicate annually to the Commission a record of the number of operating hours since 1 January 2016.

*Article 33d*

**Small isolated systems**

Until 31 December 2019, combustion plants being at the date referred to in Article 74 part of small isolated system may be exempted from compliance with the emission limit values referred to in Article 33(2) and the rates of desulphurisation referred to in Article 33a, where applicable. Before that date, the emission limit values laid down in the permits of these combustion plants, pursuant in particular to the requirements of Directives 2008/1/EC and 2001/80/EC, shall at least be maintained.

*Article 37*

**Multi-fuel firing combustion plants**

1. In the case of a multi- fuel firing combustion plant involving the simultaneous use of two or more fuels, the competent authority shall set the emission limit values in accordance with the following steps:

(a) take the emission limit value relevant for each individual fuel and pollutant corresponding to the rated thermal input of the entire combustion plant as set out in Parts 1 and 2 of Annex V,

(b) determine fuel-weighted emission limit values, which are obtained by multiplying the individual emission limit value referred to in point (a) by the thermal input delivered by each fuel, and dividing the product of multiplication by the sum of the thermal inputs delivered by all fuels,

(c) aggregate the fuel-weighted emissions limit values.

2. In the case of multi-fuel firing combustion plants referred to in Article 33(2), which are using the distillation and conversion residues from the refining of crude-oil for own consumption, alone or with other fuels, the average emission limit values for sulphur dioxide set out in Part 7 of Annex V may be applied instead of the emission limit values set according to paragraph 1.

*Article 73*

**Transitional provisions**

...

3. In relation to combustion plants referred to in Article 33(2), Member States shall apply from 1 January 2016 the laws, regulations and administrative provisions adopted in accordance with Article 71(1) to comply with the provisions of Chapter III and Annex V [...].

**3a. In relation to combustion plants referred to in Article 33(3), Member States shall no longer apply the provisions of Directive 2001/80/EC following the date referred to in Article 71(1).**

...

## ANNEX V

### Technical provisions relating to combustion plants

#### Part 1

##### Emission limit values for combustion plants referred to in Article 33(2)

1. All emission limit values shall be calculated at a temperature of 273,15 K, a pressure of 101,3 kPa and after correction for the water vapour content of the waste gases and at a standardized O<sub>2</sub> content of 6% for solid fuels, 3% for combustion plants, other than gas turbines and gas engines using liquid and gaseous fuels and 15% for gas turbines and gas engines.

[...]

2. Emission limit values (mg/Nm<sup>3</sup>) for SO<sub>2</sub> for combustion plants using solid or liquid fuels with the exception of gas turbines and gas engines

[...]

Combustion plants using solid fuels which were granted a permit before 27 November 2002 **or which had submitted a complete application for a permit before that date, provided that the plant is put into operation no later than 27 November 2003**, and which do not operate more than 1 500 operating hours per year as a rolling average over a period of five years, shall be subject to an emission limit value for SO<sub>2</sub> of 800 mg/Nm<sup>3</sup>.

Combustion plants using liquid fuels, which were granted a permit before 27 November 2002 or which had submitted a complete application for a permit before that date provided that the plant was put into operation no later than 27 November 2003, and which do not operate more than 1 500 operating hours per year as a rolling average over a period of five years, shall be subject to an emission limit value for SO<sub>2</sub> of 850 mg/Nm<sup>3</sup> in case of plants with a rated thermal input not exceeding 300 MWth and of 400 mg/Nm<sup>3</sup> in case of plants with a rated thermal input greater than 300 MWth.

A part of a combustion plant discharging its waste gases through one or more separate flues within a common stack, and which does not operate more than 1 500 operating hours per year as a rolling average over a period of five years, may be subject to the emission limit values set out in the preceding two paragraphs in relation to the total rated thermal input of the entire combustion plant. In such cases the emissions through each of those flues shall be monitored separately.

3. Emission limit values (mg/Nm<sup>3</sup>) for SO<sub>2</sub> for combustion plants using gaseous fuels with the exception of gas turbines and gas engines

[...]

**Combustion plants, firing low calorific gases from gasification of refinery residues, which were granted a permit before 27 November 2002 or which had submitted a complete application for a permit before that date provided that the plant was put into operation no later than 27 November 2003, shall be subject to an emission limit value for SO<sub>2</sub> of 800 mg/Nm<sup>3</sup>.**

4. Emission limit values (mg/Nm<sup>3</sup>) for NO<sub>x</sub> for combustion plants using solid or liquid fuels with the exception of gas turbines and gas engines

[...]

Combustion plants using solid or liquid fuels with a rated thermal input not exceeding 500 MWth which were granted a permit before 27 November 2002 **or which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003,** and which do not operate more than 1 500 operating hours per year as a rolling average over a period of five years, shall be subject to an emission limit value for NO<sub>x</sub> of 450 mg/Nm<sup>3</sup>.

Combustion plants using solid fuels with a rated thermal input greater than 500 MWth, which were granted a permit before 1 July 1987 and which do not operate more than 1500 operating hours per year as a rolling average over a period of five years, shall be subject to an emission limit value for NO<sub>x</sub> of 450 mg/Nm<sup>3</sup>.

Combustion plants using liquid fuels, with a total rated thermal input greater than 500 MWth which were granted a permit before 27 November 2002 or which had submitted a complete application for a permit before that date, provided that the plant was put into operation no later than 27 November 2003, and which do not operate more than 1 500 operating hours per year as a rolling average over a period of five years, shall be subject to an emission limit value for NO<sub>x</sub> of 400 mg/Nm<sup>3</sup>.

A part of a combustion plant discharging its waste gases through one or more separate flues within a common stack, and which does not operate more than 1 500 operating hours per year as a rolling average over a period of five years, may be subject to the emission limit values set out in the preceding three paragraphs in relation to the total rated thermal input of the entire combustion plant. In such cases the emissions through each of those flues shall be monitored separately.

5. Emission limit values (mg/Nm<sup>3</sup>) for NO<sub>x</sub> and CO for gas fired combustion plants

	⇒ NO <sub>x</sub> ⇐	⇒ CO ⇐
<u>Combustion plants firing natural gas with the exception of gas turbines and gas engines</u>	⇒ 100 ⇐	⇒ 100 ⇐
<u>Combustion plants firing blast furnace gas, coke oven gas or low calorific gases from gasification of refinery residues, with the exception of gas turbines and gas engines</u>	<b><u>200</u></b> <sup>(5)</sup>	=
Gas turbines (including CCGT), using natural gas <sup>(1)</sup> as fuel	50 <sup>(2)(3)</sup>	100
<b><u>Gas turbines (including CCGT), using blast furnace gas, coke oven gas or low calorific gases from gasification of refinery residues</u></b>	<b><u>120</u></b>	=
Gas turbines (including CCGT), using <b>other gases</b> as fuel <sup>(4)</sup>	90	100
Gas engines	100	100

Notes:

(1) Natural gas is naturally occurring methane with not more than 20 % (by volume) of inerts and other constituents.

(2) 75 mg/Nm<sup>3</sup> in the following cases, where the efficiency of the gas turbine is determined at ISO base load conditions:

(i) gas turbines, used in combined heat and power systems having an overall efficiency greater than 75 %;

(ii) gas turbines used in combined cycle plants having an annual average overall electrical efficiency greater than 55 %;

(iii) gas turbines for mechanical drives.

(3) For single cycle gas turbines not falling into any of the categories mentioned under note (2), but having an efficiency greater than 35 % - determined at ISO base load conditions - the emission limit value for NO<sub>x</sub> shall be  $50 \times \eta / 35$  where  $\eta$  is the gas turbine efficiency at ISO base load conditions expressed as a percentage.

(4) These emission limit values also apply to gas turbines using light and middle distillates as liquid fuels.

**(5) 300 mg/Nm<sup>3</sup> for combustion plants with a total rated thermal input not exceeding 500 MWth firing blast furnace gas, coke oven gas or low calorific gases which were granted a permit before 27 November 2002 or which had submitted a complete application for a permit before that date provided that the plant was put into operation no later than 27 November 2003, and with the exception of gas turbines and gas engines.**

For gas turbines (including CCGT) which were granted a permit before 27 November 2002 or which had submitted a complete application for a permit before that date provided that the plant was put into operation no later than 27 November 2003, and which do not operate more than 1 500 operating hours per year as a rolling average over a period of five years, the emission limit value for NO<sub>x</sub> is 150 mg/Nm<sup>3</sup> when firing natural gas and 200 mg/Nm<sup>3</sup> when firing other gases or liquid fuels.

A part of a combustion plant discharging its waste gases through one or more separate flues within a common stack, and which does not operate more than 1 500 operating hours per year as a rolling average over a period of five years, may be subject to the emission limit values set out in the preceding paragraph in relation to the total rated thermal input of the entire combustion plant. In such cases the emissions through each of those flues shall be monitored separately.

Gas turbines and gas engines for emergency use that operate less than 500 operating hours per year are not covered by the emission limit values set out in this point. The operator of such plants shall record the used operating hours.

...

## Part 2

### Emission limit values for combustion plants referred to in Article 33(3)

1. All emission limit values shall be calculated at a temperature of 273,15 K, a pressure of 101,3 kPa and after correction for the water vapour content of the waste gases and at a standardized O<sub>2</sub> content of 6% for solid fuels, 3% for combustion plants other than gas turbines and gas engines using liquid and gaseous fuels and 15% for gas turbines and gas engines.

...

### Part 3

#### Emission monitoring

...

11. In the case of plants which must comply with the rates of desulphurisation referred to in Article 33a, also the sulphur content of the fuel which is fired in the combustion plant shall be regularly monitored. The competent authorities shall be informed of substantial changes in the type of fuel used.

...

## Part 5

### Minimum rate of desulphurisation

#### 1. Minimum rate of desulphurisation for combustion plants referred to in Article 33(2)

<u>Rated thermal input (MW<sub>th</sub>)</u>	<u>Minimum rate of desulphurisation</u>	
	<u>Plants which were granted a permit before 27 November 2002 or which had submitted a complete application for a permit before that date provided that the plant was put into operation no later than 27 November 2003</u>	<u>Other plants</u>
<u>50-100</u>	<u>80 %</u>	<u>92 %</u>
<u>100-300</u>	<u>90 %</u>	<u>92 %</u>
<u>&gt; 300</u>	<u>96 %</u>	<u>96 %</u>

#### 2. Minimum rate of desulphurisation for combustion plants referred to in Article 33(3)

<u>Rated thermal input (MW<sub>th</sub>)</u>	<u>Minimum rate of desulphurisation</u>
<u>50-100</u>	<u>93 %</u>
<u>100-300</u>	<u>93%</u>
<u>&gt; 300</u>	<u>98 %</u>

## Part 6

### Compliance with rate of desulphurisation

The minimum rates of desulphurisation set out in Part 5 of this Annex shall apply as a monthly average limit value.

## Part 7

### Average emission limit values for multi-fuel firing combustion plants within a refinery

Average emission limit values (mg/Nm<sup>3</sup>) for SO<sub>2</sub> for multi-fuel firing combustion plants within a refinery, with the exception of gas turbines and gas engines, which are using the distillation and conversion residues from the refining of crude-oil for own consumption, alone or with other fuels:

(a) for combustion plants which were granted a permit before 27 November 2002 or which had submitted a complete application for a permit before that date provided that the plant was put into operation no later than 27 November 2003: 1000 mg/Nm<sup>3</sup>;

(b) for other combustion plants: 600 mg/Nm<sup>3</sup>.

These emission limit values shall be calculated at a temperature of 273,15 K, a pressure of 101,3 kPa and after correction for the water vapour content of the waste gases and at a standardized O<sub>2</sub> content of 6% for solid fuels and 3% for liquid and gaseous fuels.

**REVISED PRESIDENCY SUGGESTIONS ON THE ROLE OF BREFS***Recitals*

(10a) In order to ensure an effective and active exchange of information resulting in high quality BAT reference documents, the Commission should establish a forum that functions in a transparent manner. Practical arrangements for the exchange of information **and the accessibility of BAT reference documents** should be laid down, in particular to ensure that Member States and stakeholders provide data of sufficient quality and quantity based on established guidance to enable the determination of best available techniques and emerging techniques.

(15a) In specific cases where permit reconsideration and updating identifies that a longer period than four years after the publication of a BAT reference document might be needed to introduce new best available techniques, competent authorities may set a longer time period in permit conditions where this is justified on the basis of the criteria laid down in this Directive.

*Article 14***BAT reference documents and exchange of information**

1. The Commission shall organise an exchange of information between Member States, the industries concerned, non-governmental organisations promoting environmental protection and the Commission in order to draw up, review and where necessary update BAT reference documents.

2. The exchange of information shall in particular address the following:

(a) the performance of installations and techniques in terms of emissions, expressed as short and long term averages, where appropriate, and the associated reference conditions, [...] consumption and nature of raw materials, water consumption, use of energy and generation of waste;

(b) the techniques used, associated monitoring, cross-media effects, economic and technical viability and developments in them;

(c) the best available techniques and the emerging techniques identified after considering the issues mentioned in points (a) and (b).

3. The BAT reference documents shall in particular describe [...] best available techniques, the emission levels associated with the best available techniques, associated monitoring, associated consumption levels, relevant site remediation measures where appropriate and any emerging techniques, giving special consideration to the criteria listed in Annex III.

4. The Commission shall establish and regularly convene a forum composed of representatives of Member States, the industries concerned and non-governmental organisations promoting environmental protection.

The Commission shall obtain the opinion of the forum on the content of the BAT reference documents and on the practical arrangements for the exchange of information and in particular on the following:

(a) the rules of procedure of the forum;

(b) the work programme for the exchange of information;

(c) [...] guidance on the collection of data;

(d) [...] **guidance on the** elaboration of BAT reference documents and **on** their quality assurance including the suitability of their content and format.

**Taking into account the opinion of the forum, the guidance referred to in point (c) and (d) of the preceding subparagraph shall be adopted in accordance with the regulatory procedure referred to in Article 69(1a).**

5. Based on the results of the information exchange referred to in paragraph 1 and taking into account the opinion of the forum, decisions shall be adopted on the [...] emission levels associated with the best available techniques. Those measures, designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 69(2).

6. After the adoption of a decision in accordance with paragraph 5 and **having taken** into account the opinion of the forum, the Commission shall, without delay, make **publicly** available the BAT reference document.

**The Commission shall make the conclusions on best available techniques and the emission levels associated with the best available techniques publicly available as soon as possible in the languages specified in Article 1 of Regulation No 1 determining the languages to be used by the European Economic Community.\***

7. Pending the adoption of a relevant decision in accordance with paragraph 5, BAT reference documents adopted by the Commission prior to the date referred to in Article 74 shall apply for the purposes of this Chapter except for Article 16(3) and (4).

[...]

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\* OJ L 17, 6.10.1958, p. 385.

*Article 15*

**Permit conditions**

1. Member States shall ensure that the permit includes all measures necessary for compliance with the requirements of Articles 12 and 19.

Those measures shall include at least the following:

(a) emission limit values for polluting substances listed in Annex II and for other polluting substances, which are likely to be emitted from the installation concerned in significant quantities, having regard to their nature and their potential to transfer pollution from one medium to another;

(b) appropriate requirements ensuring protection of the soil and groundwater and measures concerning the monitoring and management of waste generated by the installation;

(c) suitable emission monitoring requirements specifying:

(i) measurement methodology, [...] frequency [...] and evaluation procedure; and

(ii) where Article 16(3)(b) is applied, that results of emission monitoring are available for the same periods of time and reference conditions as for the emission levels associated with the best available techniques;

(d) an obligation to supply the competent authority regularly, and at least annually, with [...]:

(i) information on the basis of the results of emission monitoring [...] and other data that enables the competent authority to verify compliance with the permit conditions; and

(ii) where Article 16(3)(b) is applied, a summary of the results of emission monitoring which allows a comparison with the emission levels associated with the best available techniques;

(e) appropriate requirements for the regular surveillance of measures taken to prevent emissions to soil and groundwater pursuant to point b and requirements concerning the periodic monitoring of soil and groundwater in relation to hazardous substances likely to be found on site and having regard to the possibility of soil and groundwater contamination at the site of the installation;

(f) measures relating to conditions other than normal operating conditions such as start-up, leaks, malfunctions, momentary stoppages and definitive cessation of operations;

(g) provisions on the minimisation of long distance or transboundary pollution;

(h) [...] conditions for assessing compliance with the emission limit values or a reference to the applicable [...] requirements specified elsewhere.

2. For the purpose of point (a) of the first paragraph, emission limit values may be supplemented or replaced by equivalent parameters or technical measures ensuring an equivalent level of environmental protection.

3. BAT reference documents shall be the reference for setting the permit conditions.

4. Without prejudice to Article 19, the competent authority may set stricter permit conditions than those achievable by the use of the best available techniques as described in the BAT reference documents.

5. Where an activity or a type of production process carried out within an installation is not covered by **any of the** BAT reference documents or where those documents do not address all the potential environmental effects of an activity or process, the competent authority shall set the permit conditions on the basis of the best available techniques that it has determined for the [...] activities or processes concerned, by giving special consideration to the criteria listed in Annex III.

6. For installations referred to in point 6.6 of Annex I, paragraphs 1 to 4 shall apply without prejudice to the legislation related to animal welfare.

### *Article 16*

#### **Emission limit values, equivalent parameters and technical measures**

1. The emission limit values for polluting substances shall apply at the point where the emissions leave the installation, and any dilution prior to that point shall be disregarded when determining those values.

With regard to indirect releases of polluting substances into water, the effect of a water treatment plant may be taken into account when determining the emission limit values of the installation concerned, provided that an equivalent level of protection of the environment as a whole is guaranteed and provided this does not lead to higher levels of pollution in the environment.

2. Without prejudice to Article 19, the emission limit values and the equivalent parameters and technical measures referred to in paragraphs 1 and 2 of Article 15 shall be based on the best available techniques, without prescribing the use of any technique or specific technology.

3. [...] The competent authority shall set emission limit values that ensure that, under normal operating conditions, emissions do not exceed the emission levels associated with the best available techniques as described in the BAT reference documents through either of the following:

(a) [...] setting emission limit values that do not exceed the emission levels associated with the best available techniques [...]. Those emission limit values shall be expressed for the same or shorter periods of time and the same reference conditions as those emission levels associated with the best available techniques; or

(b) [...] setting different emission limit values than those referred to under point (a).

Where point (b) is applied [...] the competent authority shall, at least annually, assess [...] the results of emission monitoring in order to ensure that emissions under normal operating conditions have not exceeded the emission levels associated with the best available techniques.

4. By derogation from paragraph 3, the competent authority may, in specific cases, on the basis of an assessment of the environmental and economic costs and benefits taking into account the technical characteristics of the installation concerned, its geographical location and the local environmental conditions, set emission limit values deviating from those set by the application of paragraph 3.

The competent authority shall provide the reasons for the application of the preceding subparagraph [...] including the result of the assessment and the justification for the conditions imposed.

Emission limit values shall however not exceed the emission limit values set out in Annexes V to VIII, where applicable.

The Commission may establish guidance specifying the criteria to be taken into account for the application of this paragraph.

The competent authorities shall re-assess the application of the first subparagraph as part of each reconsideration of the permit conditions pursuant to Article 22.

[...]

5. The competent authority may grant temporary derogations from the requirements of paragraph 2 and 3 and from points (1) and (2) of [...] Article 12 for [...] the testing and use of emerging techniques for a total period of time not exceeding nine months, provided that [...] after the period specified, either the technique is stopped or the activity achieves at least the emission levels associated with the best available techniques.

### Reconsideration and updating of permit conditions by the competent authority

1. Member States shall take the necessary measures to ensure that the competent authority periodically reconsiders, in accordance with paragraphs 2 to 5 below, all permit conditions and, where necessary to ensure compliance with this Directive, updates those conditions.

2. On request of the competent authority the operator shall submit all the information necessary for the purpose of reconsidering the permit conditions, including in particular [...] results of emission monitoring and other data that enables a comparison of the operation of the installation with the best available techniques and [...] with the emission levels associated with the best available techniques described in the applicable BAT reference documents.

When reconsidering permit conditions the competent authority shall use any information resulting from monitoring or inspections.

3. Within four years of publication of a decision [...] adopted in accordance with Article 14(5) relating to the main activity of an installation, the competent authority shall ensure that:

(a) all the permit conditions for the installation concerned are reconsidered and, if necessary, updated to ensure compliance with this Directive, *inter alia* with Article 16(3) and (4), where applicable;

(b) the installation complies with the updated permit conditions.

The reconsideration shall take into account all the new or revised BAT reference documents applicable to the installation and **made available in accordance with Article 14(6)** since the permit was issued or last reconsidered.

4. Where an installation is not covered by any of the BAT reference documents, the permit conditions shall be reconsidered and, if necessary, updated where developments in the best available techniques allow for the significant reduction of emissions.

5. The permit conditions shall be reconsidered and, where necessary, updated at least in the following cases:

(a) the pollution caused by the installation is of such significance that the existing emission limit values of the permit need to be revised or new such values need to be included in the permit;

(b) the operational safety requires other techniques to be used;

(c) where it is necessary to comply with a new or revised environmental quality standard in accordance with Article 19.

*Article 69*

**Committee**

1. The Commission shall be assisted by a committee.

**1a. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.**

**The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.**

2. Where reference is made to this paragraph, Articles 5a (1) to (4), and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.