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First Position Paper to the IPPC Review process

EU version

A. INTRODUCTION

1. Meaning of the IPPC Directive for Austria

The Directive 96/61/EC from the Council on the Integrated Pollution Prevention and Control (hereinafter named as "IPPC-Directive" or "IPPCD") has, as one of the central pieces of EU environment legislation, a high impact for the business location Austria. Due to current estimations, more than 400 installations are concerned under federal IPPC law and possibly a few more under the IPPC laws of the nine counties. Austria's economy and above all the operators of large industrial installations are aware of their responsibility on environment protection.

A reliable assessment of the effective economic impact of the IPPC law will only be possible after the implementation deadline in 2007. Nevertheless since the transposition of the IPPCD into national law, permission or change procedures for the installations concerned demonstrate additional financial and organisational efforts for operators and administration compared to Non-IPPC-procedures.

The implementation of the IPPC objectives (requirements) can lead to a certain degree of harmonisation of the needs of environmental protection and help avoiding competition distortion as a result of different protection levels.

But one must not ignore the costs for operators as well as for the national administrations. In Austria, national law determines a review of the permit (Article 10 IPPCD) every ten years to the current Best Available Technology (BAT). The qualification of an installation as an IPPC-installation often implicates other requirements based on community law (e.g. environmental liability, application of the ambient noise directive).

Before the scope of the IPPC directive is extended or new instruments for installations are introduced a detailed and comprehensive impact assessment has to show, which benefits for the environment and which consequences for operators are to be expected.

2. Implementation of the current IPPC requirements for existing installations in the year 2007 as a test for the reduction of competition distortion

The adaptation of every existing IPPC installation is the first important test for this directive. Despite all flexibility in implementation the IPPC directive should be able to harmonise the requirements for the concerned installations in Europe. The European Commission is obliged to enforce the adaptation of existing installations with effective tools.

B. FIRST POSITIONS TO CERTAIN POSSIBLE REVISION TOPICS

1. Extension of the IPPC scope

We decline the extension of the IPPC scope for smaller combustion installations (larger than 20 Megawatt up to 50 Megawatt), which was suggested to be considered by the Thematic Strategy on Air Pollution¹.

¹ COM (2005) 446 final.

Lowering the IPPC threshold from 50 MW down to 20 MW means integrating a large number of smaller combustion installations (e.g. biomass utilisation, industrial production with boilers that size) into the IPPC system. These installations would not only have to be adapted to the IPPC requirements once, but to repeat this adaptation periodically (in Austria every ten years). Additionally all IPPC-linked duties must be applied to them (see above A.1). What is still feasible for larger installations, it is not appropriate for smaller ones compared to the environmental benefits to be achieved.

We refer to the evident implementation troubles in all Member States with the Emissions Trading Directive², which includes combustion installations larger than 20 MW. A year after the beginning of the Emissions Trading there are a lot of singular cases left, where it is not clear which installations or which parts of an installation fall under the requirements of this directive. Hence we support the call to raise the ETS threshold up to 50 MW.

But also alternative solutions for smaller combustion installations may only be considered very carefully. A unification of standards can have positive effects on harmonising local business conditions (see below under 3.). However we strictly oppose mandatory regulations for certain technologies or even fuels, which eliminate the free choice of resources.

Because of these reasons we favour the approach of the directives 2001/81/EC³ and 2000/76/EC⁴. Both instruments determine certain Europe-wide minimum standards (above all emission limit values) as a "safety net". But they do not contain the rest of the IPPC-requirements. For further positions to the "safety-net approach" see below under 3.

The situation with smaller waste treatment installations is similar. A full integration of these installations, mentioned to be evaluated in the Thematic Strategy on the prevention and recycling of waste⁵, into the IPPC regime is, as it is for smaller combustion installations, disproportional compared to the positive effects on environment and the expected additional administrative burden.

We prefer the approach chosen by the Commission's proposal for a new directive on waste⁶: flexible minimum standards (requirements) for smaller installations are to be determined through a specific procedure. The advantage of this instrument can be a harmonisation of local conditions without enforcing the adaptation to the full list of IPPC requirements. It is important that such a document considers specifications of different installation sizes.

This approach could also be chosen for smaller combustion installations (alternative to the "safety-net approach").

2. Introduction of new Instruments on Community level for further reduction of emissions from industrial installations

Recent discussions at European level about the introduction of Emission Trading Schemes (ETS) for other air pollutants besides CO₂ were going on.

² Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC.

³ Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants.

⁴ Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste.

⁵ COM (2005) 666 final from 21.12.2005, 17.

⁶ See Art 21 in COM (2005) 667 final.

In its preparatory works for a review of the IPPC directive the European Commission has mentioned this instrument, which has also been considered in the Thematic Strategy on Air Pollution, with regard to industrial installations in two aspects⁷:

- In general as an instrument for further reductions of emissions from industrial installations especially to attain the targets of the National Emissions Ceilings directive and as an alternative to the permit of an installation by BAT
- As an incentive going beyond BAT in an installation

In both cases we reject an ETS for other pollutants than CO₂. The ETS for this substance has been introduced in 2005 and nobody can already say, how the effective burden for monitoring, allocation procedure and the impact on competition for the economy concerned are acting with environmental benefits. Only a reliable evaluation of this ETS based on real data should be the origin of considerations for other ETS in Europe.

Undertakings (operators), which have already exploited their reduction potential may again be discriminated ("early action"). The running discussions about the effective installed capacity (often used as reserve capacity) and emissions load, show the difficulty in defining the scope for the Emissions Trading.

The ETS for NO_x and SO₂ must differ from the current ETS for CO₂ to avoid problems with ambient air quality ("hotspots"). Installations in zones, where ambient air quality limit values⁸ are already exceeded or there is the danger of an exceedance, might be exempted from an ETS or could only participate restricted. This fact could again have negative effects on Austria, which has problems with ambient air quality due to topographic conditions. The BAT-based approach, mandatory for all installations, determines stringent requirements on a level playing field.

Thus we reject a mandatory as well as an alternative/voluntary introduction of an ETS for NO_x and SO₂ and all other changes at European level with impacts to the current BAT-system (e.g. to cancel the requirement for installations to adapt their installations to BAT in member states, when they introduce an ETS or the possibility for installations to opt into an ETS). We support a continuation of the current system requiring installations applying BAT according to the specific regulations of the IPPCD therefore (see article 9).

We also oppose the **introduction of eco-taxes (charges)**. In most cases these instruments have just a limited steering function, cause high administrative burden and hit large emitters of pollutants, not necessarily inefficient installations independent of the size of the installation itself. Hence the efforts applying eco-taxes is not proportionable to the environmental benefits.

In the same manner **sector-specific emission ceilings** will not improve the environmental situation. Currently member states have their emission ceilings under the NEC-Directive. The decision, how much of the total amount is allocated to the sectors themselves (or how much the sectors must reduce) should be left to the Member States. Specifics at Member State level, e.g. the concentration of a NO_x intensive production at one site/region serving the markets of a couple of Member States, can be illustrated only this way.

⁷ See the Communication from the Commission to the Council and the European Parliament, COM (2005) 540 final, p. 11.

⁸ E.g. those from the daughter directives of directive 1996/62/EC.

3. Harmonisation of regional business conditions for industrial installations

First the EU environmental law must prove its ability to establish a certain harmonisation of local business conditions by an effective implementation of the IPPC directive for existing installations, demonstrated above under B.2.

This approach has to be continued. The thematic strategy on air pollution demonstrates, how local conditions require emission limitations beyond the BAT. Hence the flexible approach of the IPPC directive is limited anyway (under article 10 of the IPPC directive it is compulsory to consider local requirements). Nevertheless there still exist major differences in local business conditions for certain industry sectors which often cause competition distortions. For these sectors the above mentioned "safety-net-approach" with regard to sector-specific demands can be considered.

Obligations to adapt existing installations to certain requirements must provide flexibility (like Article 5 of the IPPC directive) to consider the economic proportionality and contain appropriate adaptation periods. Above all this concerns existing installations already attaining new requirements nearly (e.g. a combustion installation with current emission values of 500 µg/m³, the new emission limit value determine a limit value of 450 µg/m³; a full adaption to the new value would be inappropriate compared to an installation with current emission values of 1000 µg/m³).

4. Incentives for optimising environmental protection measures

Incentives for operators to go beyond the BAT requirements must really ease the operation of an installation. Incentives by introducing an ETS for NO_x and SO₂ are not appropriate as mentioned above.

Administrative facilities will only be an incentive, when they are really effective. One known incentive is the reduction of the duration of permit procedures for installations by reducing administrative burdens. At European level it is to be considered, how the requirements of EU environmental law to be obtain in permit procedures for industrial installations can be tightened and harmonised. One important step would be the relief the administrative burden caused by change permit procedures for operators using Environmental Management Systems (EMS) like EMAS. The Austrian law still excludes IPPC installations from those reliefs even when they are using EMS. Also to be considered is the incentive of higher thresholds for environmental impact assessments und the directive 85/337/EEC.

C. FURTHER SUGGESTIONS TO BE CONSIDERED WHEN REVIEWING THE IPPC-DIRECTIVE

The first experience with IPPC law after it has been transposed into Austrian law shows that authorities as well as operators still have problems **handling the BREF-Documents** from the IPPC Bureau. There are many cases where competent authorities see the values contained in a BREF Document as binding emission limit values and not as reference values. Further clarifications about the meaning and the legal status of the BREF-Documents should be made.

A clearer definition of „change in operation“ (Article 2 Nr 10 (a) IPPCD) and „substantial change“ (Article 2 Nr 10 (b) IPPCD) of an IPPC installation is preferable. Even the meeting of a thresholds of Annex I, according to the current definition a "substantial change", can cause, because of the use of new abatement (control) technologies, no additional emissions. Under the current regulations of the directive such a change requires a complete permit procedure

even when there is no additional impact on the environment. As for “change in operations” it is not clear, if information to the competent authority is necessary under Article 12 IPPCD, when there are no “consequences for the environment” expected.

A change of current Annex I-thresholds regarding the production capacity of an IPPC activity to thresholds, regarding the effective production output of it, has to be considered very carefully. Whilst the current thresholds in some sectors of Annex I IPPCD are not representative for significant impacts on the environment⁹ (e.g. in parts of the automobile industrie), a change to the effective output can be the wrong way with other sectors (e.g. some sectors of the mineral industry). However the choice of different approaches for the IPPC scope as best solution must enable to compare the application of the integrated IPPC approach among all activities concerned.

The harmonisation or any change of the term „installation“ in the IPPCD and other legal instruments regulating industrial installations (large combustion installations directive, waste incineration directive, solvents directive, etc.) has to be discussed and the impact assessed very carefully. A single term with the same legal meaning would be a big advantage for the implementation by Member States as well as for single installation permit procedures. On the other side this harmonisation must broadly not provide an extension of the IPPC scope “through the back-door”.

Another problem is the missing definition of the term “organic solvent” in the IPPCD. The Solvents Directive¹⁰ contains such a definition in Art 2 Nr 18, while Annex III of the IPPCD mentions just the term “volatile organic compounds”. A linkage between the IPPCD and the Solvents Directive would be helpful for legal security.

D. SUMMARY

- **Exact implementation of the current IPPC legislation everywhere in Europe** in order to provide a better harmonisation of local business conditions.
- **No inclusion of smaller combustion installations** (larger than 20 MW up to 50 MW) and **other waste treatment activities** into the IPPC scope and no inflexible legal requirements for these (e.g. certain technology). Instead determining European minimum standards on the basis of the “**safety-net-approach**” to harmonise local business conditions.
- **No introduction of mandatory so called „market-based instruments“** of other provisions therefore at European level for the emissions of **NO_x und SO₂** and a continuation of the BAT-system for all IPPC activities.
- **Incentives for „going beyond BAT“** in an installation will only be successful when these measures cause appropriate benefits for operators. We favour measures to shorten the duration of permit procedures.

⁹ See Communication of the Commission „On the road to sustainable production“, COM (2003) 354 final, chapter 7.3.

¹⁰ Council Directive 1999/13/EC of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations.