



**BETTER AND SIMPLER, SIMPLIFICATION
OF REGULATION FOR A MORE
COMPETITIVE EUROPE**

A BACKGROUND REPORT FOR THE CONFERENCE ON:

**THE 1996 EU INTEGRATED POLLUTION
PREVENTION AND CONTROL (IPPC)
DIRECTIVE**

**A REPORT TO THE MINISTRY OF HOUSING, SPATIAL
PLANNING AND THE ENVIRONMENT OF THE
NETHERLANDS (VROM)**

Draft Conference Background Report

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The 1996 EU Integrated Pollution Prevention and Control (IPPC) Directive

A Background Report for the Conference:

Better and Simpler, Simplification of Regulation for a more Competitive Europe

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1. INTRODUCTION

The conference 'Better and simpler, simplification of regulation for a more competitive Europe' will be held on 7 and 8 October 2004 in Amsterdam. The conference aims to explore issues relating to the regulatory environment for business and to discuss approaches to better and simpler regulation aimed at making the EU more competitive.

What constitutes 'better' regulation is open to debate and consists of a number of facets. The UK Better Regulation Task Force (established in September 1997) has stated that there are five principles of good regulation:

- Proportionality
- Accountability
- Consistency
- Transparency
- Targeting

It will be seen that these can each be sub-divided. For example, the basic requirement that regulation should achieve its objectives can be viewed as an aspect of both proportionality and targeting.

One of the regulatory regimes that will be discussed is the 1996 EU integrated pollution prevention and control Directive (IPPC). The conference is focused on two themes – better regulation and simpler regulation. The two themes obviously inter-relate. However, they also represent different emphases in the discussion. Better regulation can focus on 'fitness for purpose' – the ability of regulation to achieve its aims and the methods to achieve this. Simpler regulation is, in effect, an end in itself – ie identifying where is there unnecessary complexity and addressing it. Simpler regulation reduces the administrative burdens on industry (as well as on the public bodies that administer the regulation).

This short report provides some input to the discussion on the IPPC Directive. It begins by providing a brief overview of the methodology used and a brief background to IPPC. It then considers the following issues:

- Choice of instruments – how does IPPC fit with other potential types of regulatory instruments, such as market-based measures?
- Potential administrative burdens for industry.
- Practicability and enforceability of the Directive.
- Interlinkages between IPPC and other regulatory instruments. This is focused on the issue of consistency and compatibility between command and control measures a number of which can apply to the same industrial process.

The report ends with some final conclusions which raise questions for the conference discussions.

The conclusions from this conference will feed into various debates at EU and national level. It is hoped that the conclusions will not only lead to possible improvements in the way that IPPC (and related instruments) are implemented, but also that principles identified in the debate should have wider significance for EU legislative development. For example, the UK Better Regulation Task Force is currently examining various aspects of EU legislation, including a specific focus on the IPPC Directive. It could, therefore, usefully take account of the conclusions of the conference.

2. METHODOLOGY

This short report has been developed using a variety of existing information sources. In particular it has benefited from the large amount of information on the views and practices of the Member States during background studies and workshops under the Netherlands led project ‘Exploring New Approaches in Regulating Industrial Installations’ – ENAP¹. The report has also drawn on selected published reports by governments, regulators and industry in the Member States and at EU level, particular relevant parts of the European Commission. It has also benefited from consideration of responses made by Member States to the Commission communication on IPPC in 2003. The authors also wish to acknowledge the many helpful discussions they have had with officials and stakeholders across the EU. Sources are referenced throughout the report which enable the reader to follow-up specific issues as they wish.

There are various elements of the analysis that are possible, including the interpretations applied by the Member States, their experiences and other forms of data analysis. In effect these elements are all inter-related and not possible to disentangle. Thus, for example, the experiences of regulators and industry in a Member States are dependent upon the interpretations that the Member State applies to specific elements of the IPPC Directive.

An interesting example of this concerns the issue of guidance produced in the Member States to support the implementation of the Directive. The earliest (and possibly still the most detailed) such guidance was produced by the UK government. Industry has generally welcomed such guidance as providing greater certainty in its implementation of the Directive (and, as will be seen, the use of such guidance is supported by other Member States such as Ireland). However, the guidance necessarily interprets the Directive. Where the Directive is not clear, or where it deliberately leaves flexibility for the Member States, governments or regulators need to give their opinion on those issues. Thus, if elements of the implementation are considered as burdensome by industry it is not necessarily possible to identify whether this is due to elements defined precisely in the Directive or interpretations placed upon those by the Member States. After all industry does not implement the Directive, *sensu strictu*, but the national implementing legislation. To disentangle these elements would require a major research project and would probably need to wait until the Directive has been fully implemented. This report, therefore, focuses on implementation as it is taking place, including any variability across the Member States.

¹ See www.vrom.nl/enap

3. BACKGROUND

The IPPC Directive was adopted in 1996. The Directive aims to achieve a high level of protection to the environment as a whole. This is achieved through various elements. Firstly installations must operate according to Best Available Techniques (BAT) for which guidance is developed at EU level, but case by case interpretation is needed (not least to ensure the local environment is protected). The Directive also addresses a wide range of issues, ranging from pollutant emissions to waste generation, resource and energy use and site restoration. This is all set in the context of taking an integrated approach. Member States have until October 2007 to issue permits to ensure that existing installations meet the requirements of the Directive (some new Member States have extended transition periods for specified installations). However, any new installations must already meet the requirements of the Directive.

This report does not address one of the most obvious potential ‘burdens’ to industry – the cost of implementing BAT. However, in this introduction it is worth noting that this has been addressed in studies elsewhere. IPTS commissioned a study on the effects on the implementation of BAT on the competitiveness of European industry². The study focused on three industrial sectors – cement, non-ferrous metals, and pulp and paper. It found that many plants have already adapted to BAT and full implementation will mean that they are viable in the long run. These plants are generally large, already strongly competitive, growing, have quality skills and undertake above average research and development. However, others have significant advances to make that could mean that implementation of BAT will result in economic harm to these companies. The issue of implementation of BAT itself is outside the scope of this paper. However, it is interesting that the characteristics of plants liable to remain competitive are similar to those able to cope with the administrative demands of IPPC, ie have a strong financial basis with good quality staff, etc.

DG Enterprise has examined some of the issues affecting the economic viability of the IPPC Directive on businesses. However, this has largely been on the application of BAT³. BAT is a dynamic concept and permit applications and determinations can be hampered where information on understanding BAT is not fully available, including how technical advances interact with investment cycles, etc. However, an in-depth economic assessment for each permit application is generally not required where techniques are common practice, where there is broad consensus between regulators and industry and in the application of low cost techniques.

Finally, it is important to note that the impacts of the IPPC Directive are heavily dependent upon the nature of the regulatory regime in existing in a Member State prior to its implementation. For example in Sweden IPPC is not expected to result in substantial change⁴. However, the country also introduced new procedures in its Environmental Code in 1999. Thus new obligations are placed on operators, but these do not seriously derive from the

² Hitchens, D., Farrell, F., Lindblom, J. and Triebswetter, U. (2002). *The Impact of Best Available Techniques (BAT) on the Competitiveness of European Industry*. European Commission Joint Research Centre Report EUR 20133.

³ DG Enterprise. *Conclusions of Workshop ‘The Economic Consequences of the IPPC Directive’ 16 May 2002*. Brussels.

⁴ Dalhammar, C. 2004. IPPC and beyond: towards ‘holistic’ permitting in Sweden? Presentation at the *European Roundtable on Sustainable Consumption and Production*, Bilbao, 12-14 May 2004. Also: Nystrom, E. 2000. Swedish experience of integrated permit procedures. In: European Conference on ‘*The Sevilla Process: A Driver for Environmental Performance in Industry*’. Stuttgart, 6-7 April 2000.

Directive. In other Member States where implementation of the Directive imposes a more radical departure from previous practice then one would expect operators to view the administrative (and other) requirements as one of a burden. Further, in others (eg the UK) IPPC represents some advance in regulation for some sectors, but a radical new regulation for others, thus generating different views on the specific consequences to industry. In implementing IPPC Member States can also 'add' to it. For example, where there is an existing regulatory regime activities below the thresholds established under IPPC might be retained within the new regime. Specific provisions (eg on environmental management systems) can also be included in the regulatory regime. Thus a number of the experiences of individual industry and regulators to specific parts of the IPPC regime can reflect Member State implementation decisions rather than the core requirements of the Directive itself. Similar outcomes could also be expected on relationships to other instruments.

4. CHOICE OF INSTRUMENTS

IPPC represents one particular type of instrument – the ‘traditional’ command and control regulatory instrument, which has grown out of a long history of use in the Member States and at EU level. It has a certain amount of flexibility (for example, it does not impose standard conditions across the EU), but there are many specific constraints in its application. Governments and regulators within some Member States have also developed a range of different instruments (eg market based mechanisms) with differing impacts on regulatory costs, effectiveness, etc. Currently none can be an alternative ‘choice’ to IPPC, as the latter is a legal obligation. However, how such instruments (often at national level) interact with IPPC and the medium and longer-term future of the appropriateness of the regulatory ‘mix’ of instruments is under debate. An important forum for this debate has been within the ENAP project and the conclusions and range of views elaborated in this context will be taken account of.

Several trends and issues can be seen in environmental regulation of industrial installations, each raising its own challenges:

- A move from an unregulated industry to one regulated through command and control, and further on to one where a wider range of instruments is used in an instrument mix that may select from several options, e.g. permits, taxes and charges, voluntary agreements, emissions trading, environmental management systems, etc;
- An increasing coverage and complexity of regulation of installations and associated activities together with an increasing argument for improved coherence, consistency and avoidance of overlap – the broad better regulation debate;
- Economic considerations are a major item on the current agenda – resource constraints by regulators to fulfil their missions, and arguments of cost effectiveness, competitiveness concerns, high administrative cost and arguments of business efficiency;
- A broadening of responsibility and the sharing of responsibility for action (monitoring, reporting) between regulators and regulated industries and for deciding how best to meet objectives (eg use of instruments or measures). This is reflected in a number of different instruments

This leads to a range of challenges and choices facing policy makers:

- Obtaining the optimal instrument mix – selecting the right mix of complementary instruments that form a coherent and consistent set that offer the greatest effectiveness and efficiency that deliver the stated goals (in this prevention and reduction of industrial pollution);
- Implementing subsidiarity to meet environmental objectives – where to draw the line between EU level and Member States roles, and between ‘allowing’ or ‘constraining’ Member State flexibility. This concerns not only whether an instrument should (or should not) be adopted at EU level, but also whether subsidiarity elements are contained within EU level instruments;
- Implementing ‘better regulation’ initiatives – where can the complex of regulations be fine-tuned to give a more effective and efficient whole to deliver the stated objectives?
- Use of resources and cost effectiveness – how can regulators and industry’s resources and capacities be optimally engaged and coordinated?

- Sharing responsibility between regulator and industry – where is there room for sharing, where is there room, if any, for shifting responsibility and under what condition (verifiable self-regulation) and what is the interface between responsibilities?

Having taken account of these issues, this leads to a number of choices in determining where the right balance is needed:

- Where is the line to be set between achieving enough flexibility and too much flexibility? Clearly it makes sense to have Member States say how best to implement objectives, but flexibility should not lead to insufficient or late implementation. Where is uniformity required for single market purposes?
- Sharing responsibility between industry and the regulator – where is it appropriate, and where would it be an irresponsible loss of regulatory authority?
- Where to define the balance between improved cost effectiveness (for industry and regulators) with environmental effectiveness? Is the right point that improved cost effectiveness should only be achieved when there is no loss of environmental effectiveness – in other words no trade-off? Where some argue for acceptable trade-offs, then there is a danger that hard won gains for environmental improvement are lost to economic arguments.

The ENAP project has identified three types of solution to taking these issues forward which can apply to the relationship between IPPC and other instruments:

- Evolution - improving what is in place based on the principles already established;
- Revolution – putting in place new alternative measures; or indeed
- Evolution and experimentation - to fine tune what we have, experiment with possible new complements or alternatives and set the scene for significant development if and when appropriate.

The Member States have made clear their opposition to wholesale change to the current regulatory situation, as well as the need to develop flexibility and a mix of regulatory instruments. Germany⁵ has argued, for example, that due to the complexities and history of the evolution of environmental legislation it would be wrong to reduce environmental policy to a single instrument. For the foreseeable future the full range of instruments needs to be exploited. Economic and other indirect environmental protection mechanisms will become more significant in the future. Overall there is a need for a reliable regulatory framework which guarantees an ambitious level of environmental protection while allowing scope for industry to develop its own innovative and efficient problem-solving approaches and improving its competitiveness. Thus the question is how far does IPPC allow this. Ireland⁶ considers more specifically that greater emphasis of the use of environmental management systems in the implementation of IPPC is required as well as the potential use of voluntary instruments. Turkey⁷ is also particularly emphatic that voluntary instruments are ‘a must’ for future regulatory development and, therefore, interaction with IPPC will need to be clarified.

The use of environmental management systems by operators assists in developing applications and the UK takes this into account in its Operator Performance and Risk

⁵ Response of Germany to the European Commission IPPC Stakeholder Consultation 2003. (COM(2003) 354.

⁶ Response of the Irish Environmental Protection Agency to the European Commission IPPC Stakeholder Consultation 2003. (COM(2003) 354.

⁷ Response of Turkey to the European Commission IPPC Stakeholder Consultation 2003. (COM(2003) 354.

Assessment of IPPC installations which drives the assessment of permits. The UK believes that voluntary agreements can compliment rather than replace IPPC. The UK does not find any fundamental difficulty in applying environmental taxes to sectors covered by IPPC.

There are a range of ‘alternative’ instruments. Some have been introduced at EU level (such as the emissions trading Directive and EMAS Regulation). Many more are being considered at Member State level. Their interaction with IPPC has been considered to varying degrees.

The IPPC Directive requires BAT at installation level, effectively requiring a high level of performance for the installation; in practice a low level of emissions. This is a bottom up requirement. Emissions trading is in principle a potentially optimal instrument to meet national (top-down) targets with the bottom-up approach of companies meeting their individual company targets. However, where there are installation specific requirements there are some real constraints – within the existing legal framework trading can only take place in the gap between IPPC required emissions and what is potentially possible. Thus economic efficiency would argue in favour of relaxing the installation specific requirements, but environmental concerns, notably local environmental impacts and conditions argue against a relaxation of installation specific requirements. Clearly, the optimum balance between these instruments reflects the relative importance of the different objectives. These might be determinable at EU level, or the determinations differ between the Member States. This can pose potential problems in achieving the regulatory mix in all situations across the Member States where the principle EU Directive establishes such a range of prescriptive requirements. Having said this, it was clear within the ENAP project that many from a range of Member States are wary of significantly altering the IPPC Directive as this could stimulate its unravelling.

Environmental management systems are an important tool to improve environmental performance of industry. The EMS requires industry to take on board increased responsibility for monitoring activities and impacts, checking and ensuring own compliance with legislation and permit conditions, and implementing (continuous) improvements. This provides the opportunity for delivering outcomes in a cost-effective way. Currently, however, there is no conclusive statistical analysis showing a relationship between EMS application and improved legal compliance or reduced environmental impact. Work is ongoing in this area (see www.remas.info). However, the existence of an EMS can make it easier for the company to make permit applications and applications for change of operations and indeed can make managing and monitoring the effects of activities easier. For this reason the existence of an EMS is argued by some to be a critical requirement for large installations. EMS can, therefore, be well integrated into the IPPC regime. However, the inter-relationship is poorly developed at EU level and only some Member States provide sufficient incentive (eg simpler permit procedures) to deliver this at national level.

In conclusion, it can be seen that IPPC poses problems for those who want to develop an optimum mix of regulatory instruments. That which is highlighted most is the requirement to set specific emission limit values in permits. This can constrain the effective use of instruments such as emissions trading or negotiated agreements. More attention ought also to be given to examining the benefits of bringing elements of different instruments together (as is being undertaken with EMS and IPPC) in order to reduce burdens and improve environmental delivery.

Questions that can be considered for discussion in the conference, therefore, include:

1. What subjects can IPPC effectively and efficiently deal with and what are best dealt with by other instruments?
2. Do the requirements of IPPC allow for the best instruments choices to be made, or do they inhibit the choice of instruments (if so, where)?
3. In consequence is there any need to change the IPPC Directive to assist in instrument choice (and is this worth the effort)?
4. How can we improve the choice of instrument mix at site level (regulator and industry)?
5. Where should we draw the line between instruments?

5. PRACTICABILITY AND ENFORCEABILITY

Regulatory laws must be both practicable and enforceable. If a law is not practicable it is not enforceable. Practicability involves two main elements:

- That laws are clear and precise – in other words: do the regulators and the regulated understand exactly what is required of them?.
- That the requirements of the law are achievable – this can relate both to the administrative requirements and the operational requirements.

Both of these elements are a challenge for law making at EU level. This is because EU legislation has to take account of the wide variety of national traditions already in place (EU laws have to integrate into national systems) and be able to address the wide variety of circumstances (economic, social and environmental) that businesses operate in across the Union. EU legislation has tended to take two alternative approaches to this problem. The first is to produce highly specific laws that prescribe exactly what is required (eg to meet a specific emission limit with specified monitoring requirements). The second is to establish more generalised procedures and objectives which are interpreted at national level. The IPPC Directive is an example of the latter, though it also contains some precise prescriptive elements.

Practicability and enforceability are critical pre-requisites of successful regulatory instruments of any type. Regulation adopted at EU level, for example, must be able to be implemented in the variable administrative and business environments of the 25 Member States (and beyond in the current and future Candidate Countries). What seems practical and ‘obvious’ in the Netherlands or the UK might not be so in Portugal or Poland. Enforceability is often seen as a particular concern of the European Commission. It is also a widespread concern of industry – businesses that implement legislation must be confident that others in the same country as well as across the single market of the EU also implement it. Only in this way can a ‘level playing field’ be maintained. Some failure to enforce can be due to inadequate administrative capacity, etc, but some is also due to the nature of the instrument. Does the flexibility (lack of clarity?) within IPPC lead to its incomplete application? This could be unintentional (an error in application) or intentional. This section will focus on the implementation and enforcement of the IPPC Directive in the Member States, ie what problems does it pose and what might the solutions to this?

An important point to note is that clarity and precision are not synonymous. Obviously, a law that requires a specific emission limit to be met is both clear and precise. Flexibility, however, can also be clear. EU laws that allow Member States to interpret requirements to take account of local circumstances can also be clear. The danger arises where variation of application between (and sometimes within) the Member States is due to lack of clarity in EU laws, such as the failure of EU legislation to define requirements adequately, or even at all. This poses problems either in the transposition phase for national governments or, if national law provides no further clarification (by ‘copying-out’ the unclear EU term), for regulators (and the regulated) in implementing the legislation. Alternatively, if Member States give their own interpretations (in the implementing law or in supporting guidance), this then opens up the possibility for inconsistent implementation of legislation across the EU. It also opens up the possibility of misapplication in the Member States, with subsequent legal challenges and potential unexpected future costs to regulators and businesses. Where terms and definitions create ambiguity in the legislation, decisions of the European Court of Justice can assist in

clarifying what these mean in practice for Member State implementation. This may, subsequently, require amendments to transposing legislation within the Member States. However, if legislation is initially unclear, Member States will be faced with the unappealing prospect of having to transpose it once, and then potentially to re-legislate once the ECJ has ruled. Thus how does the IPPC Directive fare according to these criteria?

A study of the enforceability of EU environmental legislation by IMPEL⁸ noted that there are problems with the IPPC Directive. An example of lack of clarity in defining the regulatory object includes the definition of ‘existing installation’ in the IPPC Directive. The definition depends on when the installation was brought into operation, which depends on a number of factors; hence it is not always clear whether some installations can be classified as existing or not, and therefore the requirements on both the regulator and operator are uncertain.

It was suggested that Member States would benefit in some cases from guidance from the Commission on the interpretation of key terms and definitions in Directives. This would certainly be of assistance, particularly if this guidance would provide an understanding of how particular definitions arose. However, such guidance would not have a legal basis and only interpretations arising from rulings in the ECJ would be obligatory on Member States.

The ENAP project, led by the Netherlands, has also noted a number of problems of clarity with the IPPC Directive. These particularly relate to the understanding of what is, or is not, an installation, including ‘directly associated activities’ with ‘technical connection’. The problem arises where activities under different operators or owners are physically co-located (eg on an industrial estate) or activities with the same owner/operator are dispersed. Most Member States tend not to issue IPPC permits to activities with different owners or on different sites. However, this is not always the case. For example, Cyprus will issue permits to similar activities with a common owner if they are on different sites and the UK has issued permits to multiple activities on the same site. In each case this leads to a potentially more holistic assessments of environmental performance and integrated administrative requirements. The reasons Member States give for not following this approach can relate to national restrictions (eg that permits must be issued to single legal entities) or due to their interpretation of what the IPPC Directive requires. Debate continues, not least on whether these ‘wider’ approaches are fully consistent with the Directive.

Participants at the ENAP conferences have concluded that it would generally be inappropriate to make significant changes to the Directive whose full benefits, etc, cannot yet be properly assessed. The UK⁹ has also separately made this view to the Commission.

Industry also takes this view. The European Automobile Manufacturers Association¹⁰ stresses that amendments to IPPC should be discouraged, except to achieve clarification as existing requirements are complex and stringent. Also the BREFs and permit requirements must not evolve too fast otherwise there will be regulatory uncertainty for operators and will present problems for investment planning. CEFIC¹¹ argues that Member States should decide how and in what way the Directive should be implemented and that ‘insufficiencies’ in its

⁸ IMPEL 2003. Final report of the Better Regulation Project.

⁹ Response of the United Kingdom to the European Commission IPPC Stakeholder Consultation 2003. (COM(2003) 354.

¹⁰ Response of the European Automobile Manufacturers Association to the European Commission IPPC Stakeholder Consultation 2003. (COM(2003) 354.

¹¹ Response of CEFIC to the European Commission IPPC Stakeholder Consultation 2003. (COM(2003) 354.

implementation should not be overcome by changes to the text. However, some issues do need to be implemented across all Member States. Industry¹² also stresses that timeliness in issuing guidance is important to ensure a consistent approach across the EU. Also an open dialogue between industry and regulators is essential if implementation problems are to be solved at all stages of the IPPC process.

The enforceability of the Directive has been addressed in much less detail. This is probably because the focus to date has been on initial implementation. The task for Member State regulators will be to determine (through inspections, etc) that permit conditions are complied with, etc. The precise nature of such inspections is not prescribed. It will also be some time before it is possible to determine whether the nature of conditions imposed on operators are readily assessed. However, experience with enforcement of similar prior regimes within the Member States suggests that this should be achievable.

More problematic could be the need for the Commission to ensure that the Directive is properly enforced in the Member States. Ultimately implementation is determined by whether each installation is operating according to BAT. Some practices can be obviously identified as not BAT (eg if any chlor-alkali facilities continue to use mercury). However, many issues are open to interpretation and will involve debate over techniques, costs, environment, etc. This presents a major challenge to the Commission, but there will clearly be pressure on it to ensure that BAT is implemented, not least from industry seeking a 'level playing field'. Having said this, the first assessment of implementation of the Directive by the Commission did not suggest any particular problems with the interpretation of BAT in the small number of permits that had been issued to date.

In conclusion, the IPPC Directive does have some deficiencies in its precision and clarity and variation in interpretation of requirements by the Member States. This could be overcome by minor amendment clarifying elements and guidance from the Commission. Large-scale amendment to the Directive is not generally supported by regulators and industry alike. Enforceability is a challenge to the Member States, but should be accomplished where there are sufficient resources. A greater resource challenge may, however, arise for the Commission as it considers compliance by the Member States.

Questions that can be considered for discussion in the conference, therefore, include:

1. What particular elements of IPPC pose problems for practicability and enforceability?
2. What suggestions are there for improvement with 'on the ground' implementation? How could the implementation be improved without actual amendment?

¹² Response of the British Chemical Distributors and Traders Association to the European Commission IPPC Stakeholder Consultation 2003. (COM(2003) 354.

6. ADMINISTRATIVE BURDENS FOR INDUSTRY

Regulatory instruments provide different levels of administrative burdens for the regulated. Administration is not desirable for its own sake and reducing unnecessary administration must be viewed as generally desirable. It should also be noted that the burden on the regulator can also have direct consequences for industry. This would occur where regulators seek to recover costs from those they regulate, as in the UK. Thus lower burdens 'all round' are desirable. With this aim it is important to examine how the specific elements of IPPC contribute to its goals, ie providing judge whether the elements of the administrative burden are justifiable or not.

The objective of the IPPC Directive is to ensure that the installations covered by the Directive operate in such a manner as to achieve a high level of protection for the environment as a whole. However, in order to ensure that this is the case, the Directive also establishes a series of administrative procedures which seek to ensure that operators fully understand their obligations and that regulators (and the public) are certain that these obligations are complied with.

The administrative prescriptions in the Directive are variable in their degree of detail. Most attention is given to the way that permits are to be determined and what they must contain. Thus, for each installation, BAT for that installation should be determined, along with other issues such as ensuring compliance with EU environmental standards, the ability to return the site to an acceptable condition after closure, etc. The permit does not prescribe BAT, but must define emission limit values for specified pollutants, based on the BAT assessment. The Directive is less prescriptive on the latter parts of the regulatory cycle. Thus monitoring is required and regulators must ensure compliance (inspection). However, the nature, frequency, etc, of these activities are not detailed, not least because each would be site specific. Further elaboration of inspection activities has, however, been provided by the Recommendation on Minimum Criteria for Environmental Inspections.

A particular issue that arose during the course of the IMPEL Better Regulation Project was over the issues of proportionality where many low-risk activities require monitoring and reporting to be carried out as illustrated by the lack of any threshold for some types of installations covered by the IPPC Directive. It is not that 'small' activities should not seek to protect the environment, but that the administrative burdens of the IPPC Directive outweigh the likely benefits. The IMPEL members considered that the environmental effectiveness of these requirements needs to be examined, ie the requirements should take more account of whether they are proportionate to the risks and hazards they address. In particular, small scale and low risk activities need not be covered at all by some permitting or other requirements, or simplified permitting systems could be utilised for such activities instead. Provisions for exemptions for low risk activities should also be considered. Even some large installations might be subject to disproportionate requirements. Regulators are required to undertake a variety of tasks, such as permitting, inspection, monitoring, etc. It is necessary that these requirements are clearly defined in Directives. This does not mean that such requirements should be unduly prescriptive. A requirement, for example, to review a permit 'periodically' is relatively clear and preferable because it leaves flexibility to the regulator to take a risk based approach.

In the UK the government undertook a review of the application process under IPPC¹³. The sample group for the research was quite small, being 41 applications of the 300 received to that point (by the 2007 implementation deadline 6,000 installations will require permits). The main findings were:

A significant proportion of the permit applications were too long and did not contain all the relevant information needed for a successful application. This was due to failure to follow, sufficiently, guidance issued to operators and/or assuming that the new regulatory regime was similar to previous regimes.

- As a result of the size and poor quality of some applications, the regulator has had to issue a high number of Schedule 4 Notices, the formal mechanism used to request further information from applicants. In most cases, these notices request specific information missing from the original application or clarification of information already provided. This results in additional costs to operators which could have been avoided (at least to some extent) by providing better quality original applications.
- An important issue for operators to address is to describe in detail whether their activity will comply with the standards set out in the guidance (referred to as Best Available Techniques or BAT) and if not, provide a strong justification for an alternative approach. This can require considerable technical expertise.
- That IPPC remains a learning process and the regulator will continue to assist industry to improve its understanding and its effectiveness and efficiency in delivering permit applications.

The UK Environment Agency has also undertaken more recent research on IPPC implementation. This covered responses from 51 permit holders, covering 28 sectors, including 27 new installations. Most were involved in per-application discussions with the regulator, with the majority considering that this assisted the application process. This discussion usually takes place through an 'account manager' of the Agency. Administrative problems encountered included:

- The need for more guidance;
- Better training for account managers;
- More consistency of approach between Agency staff;
- Clearer provision of information on the Internet;
- Problems with the quantity of information.

Interestingly, even though applications can be submitted electronically, only 18% took this opportunity. The forms were considered comprehensive, but not necessarily logically structured. Submissions would be easier with improved definitions, worked examples, etc. Guidance was welcomed, although there is a need for it to be more user friendly. Many used the BREFs directly and most found them useful. Clearly many of these comments concern the specific approach in the UK (such as the application form), although many comments are likely to be echoed in other Member States.

¹³ Housely, I. (2001). *A Review of the PPC Application Process*. CTC Environmental.

In its initial implementation of the Directive the UK government undertook a regulatory impact assessment examining the potential administrative and other burdens on industry. This assessment considered the effects of, *inter alia*:

- fees and charges for permits;
- the handling of applications by operators to make changes to their installations;
- the frequency of permit reviews;
- the use of standard application forms and standard permit conditions;
- the treatment of the IPPC Directive's requirement for site remediation;
- the treatment of the Directive's requirement that energy should be used efficiently.

As a result it made the following proposals, *inter alia*, in implementing IPPC to assist in reducing the administrative burden to industry:

- Permit decision times reduced from 4 months to 3 in the case of uncontentious significant changes which it is accepted will lead to an environmental improvement.
- scope for less frequent permit reviews for industry, with savings in industrial and regulator manpower costs, and also greater stability in operating conditions for industry. It avoids the expense of carrying out reviews when there have been no developments in technology and no conditions to update. At the margin, less frequent reviews will provide scope for subsistence charges for permits to be lower;
- scope for a reduction in manpower costs to industry and in decision times from the use of standard application forms, which should minimise the extent to which further information has to be sought before decisions can be made. This should, in turn, reduce delays. Scope for savings in regulator manpower from the use of standard permit conditions, with consequent scope for permit charges to be lower.

The government examined the staff time and other internal company resources required to put together an application for a permit. An unpublished study of IPC authorisations carried out for the government in 1995 found that, on average, the UK IPC regime applications had taken 22 person weeks of effort. Because industries will be able to make extensive use of existing permit information, IPPC applications should be considerably less burdensome than the *initial* IPC applications, although probably more burdensome than the work involved in reviewing and updating permits under IPC as a wide range of factors (eg noise and energy efficiency) will now have to be considered. Consideration of noise and energy efficiency should add no more than one person-week to the preparation time of even the most complex application. Many of the non-IPC installations which fall to be regulated under IPPC are relatively simple ones. Costs of preparing an application will be reduced the greater the reliance which it is possible to place upon standard application forms and standard permit conditions. The requirement to report on site conditions will add to the cost of preparing a permit application. Costs should range from £100 to £200 for a simple desk study, to several tens of thousands of pounds where a detailed site investigation is required. The UK government summarised the benefits and costs in the following table.

Measure	Benefit	Cost	Effect on Charges?
Public consultation limited to changes which harm environment plus contentious cases	Decision times for other changes reduced from 4 months to 3	Nil	No
Scope for less frequent permit reviews	More stable planning horizon for industry	Cost savings	Scope for reduced subsistence charges
Standard application forms/permit conditions	Reduction in regulatee and regulator staff input needed to secure a permit	Cost savings	Scope for reduced application charges
Site condition report on application & surrender	Removes need to extend financial security to all installations	£1 - 200 to £several tens of thousands per installation.	Need to consider site remediation at application stage will add to charges.
Energy efficiency measures	3 million tonnes carbon savings. Annual cost savings £650m	£2billion capital costs	Extra factor in environmental appraisal at application stage will add to charges
Inclusion of remaining 440 IPC installations in IPPC regime	Reduction in number of regulatory systems	Site report and energy efficiency costs as above.	Scope for reduction in charges due to lower regulator costs

Ireland¹⁴ considers that greater emphasis needs to be given to the effects on SMEs. It suggests that the following would assist in developing a proactive approach to this issue:

- Guidance on environmental laws and how to apply them.
- Publication of both technical and general guidance on how to make an application, what information is required specifically, how to participate and how to appeal decisions.
- Publication of how to access permit related information and data.
- Pre-application meetings with sectoral representative bodies and individual companies to explain the implementation of IPPC.
- Publication of the relevant criteria defining ‘substantial change’.
- Simplified application forms and facilitating electronic submission of reports and applications.
- Outlining the benefits of environmental management systems.

¹⁴ Response of the Irish Environmental Protection Agency to the European Commission IPPC Stakeholder Consultation 2003. (COM(2003) 354.

Norway¹⁵ has also argued that support measures should be taken to facilitate compliance by installation through the use of guidance and easily accessible information as industry appreciates predictability and clarity. SMEs are particularly at risk and Norway has given a priority to simplify regulations and making regulations accessible on the internet. Similarly, Turkey¹⁶ considers that there should be training support for SMEs on BREFs and sectoral guidelines to avoid excessive costs. The UK Environment Agency¹⁷ considers that there is 'much to be gained' from early proactive engagement between operators and regulators, if done in a cost-effective way. Thus it has run training and information seminars with trade associations, etc. The Agency has also introduced permitting plans for certain sectors to help staff and industry engage more effectively. The UK¹⁸ considers that it is important for regulators to work closely with SMEs to explain precisely what IPPC requires. The publication of BREFs is important in this process, though they must remain clear. In the UK the use of standardised and electronic application forms has been designed to help even the smallest operator. The Environment Agency is also developing sector plans which explain what is required so that they make better applications, reduce the permit decision time and reduce uncertainty for operators.

Industry¹⁹ also stresses that diffusion of information has to be developed to ensure that operators and authorities involved in the permit application process fully take account of the IPPC principles. Workshops assist in this process. Industry²⁰ argues that operators, especially SMEs, have been hampered by a lack of timely guidance. Industry²¹ also argues that BREF documents can be effective guidance but they need to be shorted and available in all EU languages. A simple and clear guide on 'how to use the BREF in practice' would also be useful. Industry²² also argues that the EU should concentrate on ensuring consistent interpretation across the Member States so that companies are not placed at a competitive disadvantage. Thus more guidance and support is needed for operators and regulators in interpreting the Directive. Greater investment in training, eg through IMPEL, would assist in this.

¹⁵ Response of Norway to the European Commission IPPC Stakeholder Consultation 2003. (COM(2003) 354.

¹⁶ Response of Turkey to the European Commission IPPC Stakeholder Consultation 2003. (COM(2003) 354.

¹⁷ Response of the United Kingdom Environment Agency to the European Commission IPPC Stakeholder Consultation 2003. (COM(2003) 354.

¹⁸ Response of the United Kingdom to the European Commission IPPC Stakeholder Consultation 2003. (COM(2003) 354.

¹⁹ Response of CEFIC to the European Commission IPPC Stakeholder Consultation 2003. (COM(2003) 354.

²⁰ Response of the European Aluminium Association to the European Commission IPPC Stakeholder Consultation 2003. (COM(2003) 354.

²¹ Response of the Confederation of the Food and Drink Industries of the EU to the European Commission IPPC Stakeholder Consultation 2003. (COM(2003) 354.

²² Response of the Confederation of British Industry to the European Commission IPPC Stakeholder Consultation 2003. (COM(2003) 354.

In their responses to the 2003 Commission consultation on the IPPC Directive many Member States expressed significant support for the BREF development process. However, the Netherlands²³ argued that the effectiveness of the BREF documents could be increased by, inter alia:

- The length and degree of detail of the BREFs should reflect their accessibility and readability.
- ‘Split views’ in BREFs should be avoided wherever possible.
- The BREFs should be up to date, emphasising emerging technology.
- Clarity should be given on how the vertical and horizontal BREFs are related.

The reporting requirements could also present problems where company specific information is disclosed to the public. This can make companies reluctant to divulge information. If this occurs, it can make the work of regulators more difficult.

A particular administrative issue can be the charging of fees for permits and annual charges. The Directive is, itself, totally silent on this issue. However, many Member States do charge for these operations, while others (eg the Netherlands) do not. Where permit fees are in place, they tend to vary according to a number of factors:

- Sector (eg Ireland or Sweden)
- Size of installation (eg Ireland)
- Complexity of installation (eg Sweden, France)
- Whether under local jurisdiction or national (which in turn reflects size/complexity – eg Sweden)
- Class of application (eg Belgium)
- New application or change of operation permit applications
- First application costs and annual charges
- The level of risk, in some cases linked to the existence of recognised environmental management systems and operator performance (eg UK, some German Länder)
- The level of environmental impact – linked to level of emissions and location (eg UK)

The size of the fees charged vary significantly. In the Czech Republic a flat fee of €1,000 is charged for all applicants. However, in some Member States large fees can be charged for large installations (eg €30,000 in France and €25,000 in Sweden). Annual charges in England and Wales for operators average £16,000. This is significant. The UK²⁴ considers that it is right that charging is not addressed in the Directive, but that the Commission should consider this issue across the Member States. There has been no detailed study of the impact and relative costs of these fees. However, a useful consideration can be given to a study undertaken by ENDS of the former IPC regime in the UK. Under this industry views showed that the costs of applications and fees were of major concern. The costs of preparing applications (at this time) varied significantly. Most spent around £15,000, many less than £5,000 and some more than £40,000. These costs can, however, mask the need for the work to be undertaken in any case, eg within planning applications. It was noted that the costs depended upon several factors, including:

²³ Response of the Netherlands to the European Commission IPPC Stakeholder Consultation 2003. (COM(2003) 354.

²⁴ Response of the United Kingdom to the European Commission IPPC Stakeholder Consultation 2003. (COM(2003) 354.

- *Nature of the process* – size, complexity, polluting potential.
- *Level of existing knowledge* – how much is known about process operation and polluting potential.
- *Use of consultants* – usually used when in-house expertise was lacking.
- *How seriously applicants took the issue* – some spent large sums of extensive studies.
- *The management approach* – more complex teams produce more comprehensive results and greater cost.

The fees charged by the regulator at this time were £3,750 for an application for one component (£2,500 for an existing activity), with an annual subsistence charge of £1,540. It can be seen that the application fee is low compared to the costs of preparing an application for some companies, but significant for others. The annual charge could also be significant. Thus the charging by the regulator is likely to be seen as more of a burden by processes that are either smaller or simpler.

Some industry²⁵ has stated that it is surprised that the Commission in its IPPC Communication has made no reference to charging regimes as they are a ‘real barrier’ to common application of IPPC across the Member States as practice varies enormously.

In conclusion, clarifying the administrative burden of the Directive is difficult. There is an overall quantifiable burden for permit applications, fees, etc. However, some (or all) of this might have been incurred in existing national regimes or relate to other requirements (eg planning). Secondly, any regime will impose a burden. The question is whether it is unreasonable. Few responses to the Commission’s Communication or other sources consider that there is an overall undue burden. However, this does not mean that individual examples do not occur. Thus many emphasise the need for timely guidance, communication and partnership between industry and regulators to assist in improving the application process.

Questions that can be considered for discussion in the conference, therefore, include:

1. What admin requirements of IPPC are viewed as valuable and which as less valuable?
2. What additional admin burden has IPPC imposed over existing national requirements?
3. Is there a level playing field for administrative burden (complexity, time, charging, etc) across the EU?
4. Do those with EMS find it easier to submit compliant permit applications?
5. Should EMS be made mandatory for large industry?

²⁵ Response of the National Farmers’ Union of England and Wales to the European Commission IPPC Stakeholder Consultation 2003. (COM(2003) 354.

7. INTERLINKAGES WITH OTHER INSTRUMENTS REGULATING IPPC INSTALLATIONS

IPPC installations represent the largest industrial operators in the EU. As a result they are also subject to regulation by a range of other EU Directives. The degree of regulation depends on the type of installation (eg large combustion plant), pollutants they emit (eg VOCs) or media they discharge into (eg water). These other Directives each have their own regulatory characteristics. Some set strict minimum operational limits (eg large combustion plants), others are very flexible, establishing an environmental objective to be met (eg water framework Directive). Many follow a ‘command and control’ model, but there are important exceptions to this, such as the emissions trading Directive. The important issue is how such interlinkages relate to issues of better and simpler regulation. Some Directives can be designed to interact efficiently, others result in inconsistent approaches. Overcoming these problems has been a theme of ENAP, as well as other initiatives such as that on ‘Better Regulation’ by IMPEL.

A major reason for the existing incoherence is believed to be the apparently “piecemeal” fashion in which EU environmental legislation has been produced. This often has the knock-on effect that each new EU law equally has to be transposed into national legislation in a piecemeal fashion and cannot easily be integrated into existing legislation, which inhibits the development of coherent integrated legal frameworks at the national level. Inconsistencies particularly arise when activities fall under a number of different Directives. The situation is not improved by the nature of the legal adoption process, particularly the ‘horse trading’ that can occur between Council and Parliament in the later stages such as conciliation.

For example, even if different EU Directives allow for one overall permit to be issued – which fosters coherence and is therefore positive – problems can arise due to the fact that this permit still has to meet the requirements of several Directives. This can be difficult as the Directives can be transposed through several different national laws. This has posed a challenge for some waste sites that fall under IPPC and EU waste legislation.

Inconsistencies also arise when the scope of an instrument is not well defined and it remains unclear which of the different Directives governs a particular activity or object. The same is true for the definition of how different Directives interact with each other as these can remain unclear or are highly complex, especially between Directives of a general and a specific nature.

Problems can also arise when linked Directives require essentially the same but slightly variant monitoring information, or define different reporting formats with varying intervals and different reporting thresholds. It is expected that focusing industrial emissions data through EPER will assist in delivering consistency (as will be achieved with the emissions trading Directive).

Inconsistencies also exist in the technical requirements of different Directives governing the same activities. Conflicts may arise where some Directives contain prescriptive requirements - for example emission thresholds, minimum standards, BAT and the phasing out of substances - and other Directives for the same activities are aimed at providing the Member States with more flexibility. The relationship between the National Emissions Ceilings (NEC) and the IPPC Directives concerning the question of whether emission limit values have to be

included in permits is also unclear. While the IPPC Directive seems to require this, the NEC Directive seems to be more flexible on this issue.

Processes can also be defined in different ways in different Directives. This can be particularly problematic for regulatory activity as regulators and operators expect to be able to transfer their understanding of terms such as ‘substantial change’ or ‘recycling’ across their operational areas. This is not always the case. ‘Substantial change’ is defined in different ways in the IPPC, Solvent Emissions and Waste Incineration Directives.

The requirements of different Directives do not always seem to fit together logically. These can sometimes result from broader concerns, such as those relating to the wider economy. The relationship with other EU instruments needs to be improved. Including²⁶:

- Coherence between the lists of activities covered by the EIA and IPPC Directives and improved coherence of the procedures required by the two Directives.
- Improve clarity between IPPC and sector specific Directives such as solvent emissions, large combustion plants, etc.
- The relationship with the NEC Directive is problematic and in some places IPPC might not deliver the requirements.
- Improvements are required on the relationship with EMAS, such as how it can be used to contribute to meeting IPPC requirements.

Hungary²⁷ has argued that the consistency between different environmental legislation in the EU needs further harmonisation, ranging from common lists of installations (eg EIA and IPPC) to common reporting requirements. Also the link between regulatory and non-regulatory instruments needs to be examined and developed.

The need to harmonise the details of existing regulatory instruments, such as thresholds and definitions across a range of EU Directives is highlighted by many²⁸.

Malta²⁹ also argues that companies should receive benefits in the application process for IPPC if they have environmental management systems. This would improve the integration of these instruments.

The UK³⁰ supports the Commission’s Action Plan on simplifying and improving the regulatory environment, particularly the commitment to limit Directives to the essential aspects of the legislation, including the need to ensure the optimal consistency of IPPC with other environmental Directives. The UK also supports the prescriptive aspect of IPPC Directives in that they give responsibility to national authorities, whereas sector specific Directives have ‘eroded this position’.

Questions that can be considered for discussion in the conference, therefore, include:

²⁶ Response of the Netherlands to the European Commission IPPC Stakeholder Consultation 2003. (COM(2003) 354.

²⁷ Response of Hungary to the European Commission IPPC Stakeholder Consultation 2003. (COM(2003) 354.

²⁸ See response of Latvia to the European Commission IPPC Stakeholder Consultation 2003. (COM(2003) 354.

²⁹ Response of Malta to the European Commission IPPC Stakeholder Consultation 2003. (COM(2003) 354.

³⁰ Response of the United Kingdom to the European Commission IPPC Stakeholder Consultation 2003. (COM(2003) 354.

1. What concerns are there over the interlinkages between IPPC and other instruments? Do these pose real practical problems and why?
2. How and where can inter-linkages be made more clear?
3. How can we improve the development of coherence between EU instruments?

8. CONCLUSIONS AND RECOMMENDATIONS FOR WORKSHOP DISCUSSION

There are clearly a number of concerns with the nature, detail and implementation of the IPPC Directive in relation to its potential burden on industry (directly or indirectly).

IPPC poses problems for those who want to develop an optimum mix of regulatory instruments. That which is highlighted most is the requirement to set specific emission limit values in permits. This can constrain the effective use of instruments such as emissions trading or negotiated agreements. More attention ought also to be given to examining the benefits of bringing elements of different instruments together (as is being undertaken with EMS and IPPC) in order to reduce burdens and improve environmental delivery.

The IPPC Directive does have some deficiencies in its precision and clarity and variation in interpretation of requirements by the Member States. This could be overcome by minor amendment clarifying elements and guidance from the Commission. Large-scale amendment to the Directive is not generally supported. Enforceability is a challenge to the Member States, but should be accomplished where there are sufficient resources.

Clarifying the administrative burden of the Directive is difficult. Some of this might have been incurred in existing national regimes. Few responses to the Commission's Communication or other sources consider that there is an overall undue burden. However, this does not mean that individual examples do not occur. Thus many emphasise the need for timely guidance, communication and partnership between industry and regulators to assist in improving the application process. The UK³¹ argues that the meetings of the IPPC Expert Group (IEP) should exchange information on good practice.

The attitude of industry is important on all of these issues. In its interesting review of the former UK IPC regime, ENDS divided the industry responses into four categories, which are also likely to reflect responses of industry in the EU towards IPPC. These were:

- *Believers* – those that see significant benefits and have embraced the concept.
- *Pragmatists* – those who have no great enthusiasm, but recognise the legislation is in place and so need to get on with its implementation.
- *Disillusioned ex-believers* – those who supported it in principle, but feel it is lost under a mountain of paperwork.
- *Sceptics* – those who never believed in that the regime would be an effective means of pollution control.

Most companies fell into the middle two categories. Apart from the diversity of responses to regulation that should be expected, it also underlines that most of the challenge is to help simplify matters such that 'getting on with IPPC implementation' is easier, and reducing the paper work to reduce some of the disillusionment of the 'ex-believers'.

CEFIC believes that SMEs need the implementation of a legislative and fiscal framework which is more appropriate to the features of small business in order to deal with growing global competition³². Environmental legislation poses disproportionate costs on SMEs, as

³¹ Response of the United Kingdom to the European Commission IPPC Stakeholder Consultation 2003. (COM(2003) 354.

³² CEFIC Position Paper on SMEs.

they are confronted with the same requirements as large companies, but have insufficient human resources, skill and time available to deal with them. CEFIC's general policy recommendations are to reduce bureaucracy and simplify the legislative framework by:

- Cut down on red tape and develop a positive attitude towards small business.
- Combine the current prescriptive legislation with a goal-setting one, providing scope for voluntary initiatives.
- Submit new and old legislation to cost-benefit analyses.

Other stakeholders argue that what is needed is to harmonise legislation and see to it that it is equally enforced across Europe.

Questions for the workshop

The following is a summary of possible questions for the conference

Choice of instruments – how does IPPC fit with other potential regulatory instruments?

1. What subjects can IPPC effectively and efficiently deal with and what are best dealt with by other instruments?
2. Do the requirements of IPPC allow for the best instruments choices to be made, or do they inhibit the choice of instruments (if so, where)?
3. In consequence is there any need to change the IPPC Directive to assist in instrument choice (and is this worth the effort)?
4. How can we improve the choice of instrument mix at site level (regulator and industry)?
5. Where should we draw the line between instruments?

Practicability and enforceability of the Directive.

1. What particular elements of IPPC pose problems for practicability and enforceability?
2. What suggestions are there for improvement with 'on the ground' implement? How could the implementation be improved without actual amendment?

Potential administrative burdens for industry.

1. What admin requirements of IPPC are viewed as valuable and which as less valuable?
2. What additional admin burden has IPPC imposed over existing national requirements?
3. Is there a level playing field for administrative burden (complexity, time, charging, etc) across the EU?
4. Do those with EMS find it easier to submit compliant permit applications?
5. Should EMS be made mandatory for large industry?

Interlinkages between IPPC and other regulatory instruments.

1. What concerns are there over the interlinkages between IPPC and other instruments. Do these pose real practical problems and why?
2. How and where can interlinkages be made more clear?
3. How can we improve the development of coherence between EU instruments?