

## **Manual of European Environmental Policy**

The following pages are a section from the Manual of European Environmental Policy written by the Institute for European Environmental Policy.

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This section is the text of the Manual as published in 2012. It is therefore important to note the following:

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# Integrated pollution prevention and control (IPPC)

<b>Formal references</b>	
<a href="#">2008/1/EC</a> (OJ L 24/8 29.1.2008) previously <a href="#">96/61/EC</a> (OJ L257 10.10.96)	Directive on integrated pollution prevention and control (IPPC)
Proposed 14.9.93 – <a href="#">COM(93)423</a> (OJ C/1993/311/6)	
<a href="#">2000/479/EC</a> (OJ L192 28.7.2000)	Decision on the implementation of a European Pollutant Emission Register (EPER) according to Article 15 of Council Directive <a href="#">96/61/EC</a> concerning IPPC
Regulation (EC) No <a href="#">166/2006</a> (OJ 33/1 4.2.2006)	Regulation concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives <a href="#">91/689/EEC</a> and <a href="#">96/61/EC</a>
<b>Legal base</b>	Article 192 TFEU (originally Art. 130s EEC Treaty)
<b>Binding dates</b>	
Entry into force	30 October 1996
Formal compliance	30 October 1999
Application to new plants	from 30 October 1999
Application to existing plants	by 30 October 2007

The Industrial Emissions Directive [2010/75/EU](#) repeals Directive 2008/1/EC from 7 January 2014.

## Purpose of the Directive

Certain industrial activities are to be authorized in order to attain ‘a high level of protection for the environment taken as a whole’. This can be achieved by preventing or reducing emissions to air, water and land, including measures concerning waste. The Directive differs from previous legislation which dealt with emissions only to air or water. Manufacturers and authorities thus have to think about all emissions and impacts in the design of the whole plant (‘clean technology’) rather than relying on ‘end-of-pipe’ techniques.

The Directive may also be thought of as a ‘framework’ measure, since it provides for common Community emission limits to be adopted at a later date, and creates a new structure within which certain existing quantitative Community standards are to be applied.

## Summary of the Directive

The Directive applies to six categories of industry: energy, production and processing of metals, minerals, chemicals, waste management, and ‘other’. The ‘other’ group includes facilities operating in the areas of pulp and paper production, textile treatment, tanning, food production, and the intensive rearing of poultry and pigs. Within each category, the scope of the Directive is defined further either by relation to the nature of the process or product (such

as refining of oil) or the size of the operation (such as production of ferrous metal above 20 t/day).

Each facility covered by the Directive must be made subject to authorization through permitting. The obligation to apply the authorization requirements to new plants must be given effect at the latest by 30 October 1999. The majority of the Directive's provisions will have to be applied to existing plants within eight years thereafter. The Decision as to whether a facility is 'new' or 'existing', when it has already been built but has not yet come into operation or been authorized under a pre-IPPC regime, depends on whether it has been the subject of a 'full request for authorization' in the view of the competent authority.

## **Definitions**

A 'permit' is defined as that part of the whole of a written Decision (or several such Decisions) granting authorization to operate all or part of an installation, subject to certain conditions which guarantee that the installation complies with the requirements of the Directive. It is clear from this definition that Member States need not operate a system which grants a *single* permit for each site covered by the IPPC regime.

The basic technology requirement to be reflected in IPPC permits is 'Best Available Techniques' (BAT). Within the definition of BAT, 'available' is specified as meaning economically and technically viable, taking into consideration costs and advantages. In determining BAT, special consideration must be given to certain factors listed in an Annex, including the use of low-waste technology; the use of less hazardous substances; the furthering of recovery and recycling; the consumption of raw materials and water; and energy efficiency. An obligation is placed on Member States to ensure that their competent authorities remain informed of BAT developments.

Other terms defined in the Directive include 'substance', 'pollution' (which can result from vibrations, heat or noise as well as substances), 'emission', and 'change in operation'.

## **Basic obligations imposed on operators**

Member States' competent authorities must ensure that installations are operated in such a way that certain general principles are followed. These are to take all appropriate preventive measures against pollution; to ensure no significant pollution is caused; to avoid waste production and recover or safely dispose of waste produced; to use energy efficiently; to take the necessary measures to prevent accidents; and to protect and clean up the site upon cessation of the industrial activity.

## **Permitting requirements**

Member States are to ensure that installations covered by the Directive are not operated without a permit. Permit holders must be required to advise the competent authorities of any changes in their operations, and any substantial modifications must also be made subject to prior authorization through permitting. Furthermore, competent authorities must reconsider and, if necessary, update permit conditions periodically. Reconsideration must be undertaken *inter alia* when excessive pollution occurs or when developments in BAT allow significant emission reductions without excessive cost.

Applications for permits are to describe the installation and its activities; the materials, substances and energy used or generated; site conditions; emissions from the installation and significant environmental effects; techniques to prevent and reduce emissions; measures for the prevention and recovery of waste; further measures to comply with the basic obligations of operators; and proposed monitoring measures. Information generated in respect of any other legislation, including the EIA Directive [85/337/EEC](#), may be included as part of an IPPC application. The Directive also requires a non-technical summary to be included with the permit application.

A permit may not be issued unless it can be guaranteed that an installation will meet the requirements of the Directive. In the case of new installations or substantial modifications, certain information obtained during the EIA process under Directive 85/337/EEC must be taken into account in granting a permit. If more than one competent authority is involved in the permitting process, Member States must ensure that conditions and procedures are ‘fully coordinated ... in order to guarantee an effective integrated approach’.

There are some specific requirements for the content of permits. All permits must include details of the arrangements made for air, water and land. Emission limit values must be defined for pollutants likely to be emitted in significant quantities, in particular for certain priority pollutants listed in the Directive, and if necessary a permit must prescribe requirements for protection of soil and groundwater and management of waste. In all cases, permits must contain conditions to minimize long-distance and transboundary pollution and to ensure a high level of protection for the environment as a whole. Permits also must contain monitoring requirements and an obligation to provide data to the competent authority, and measures relating to non-normal operations such as accidents.

## **Emission limits**

Emission limit values or equivalent parameters imposed in permits are to be based on BAT but may not specify the actual equipment to be used. However, determination of BAT is to take account of the technical characteristics of the installation, its geographical location and local environmental conditions. These factors will vary throughout Europe, as will the consideration of economic factors in the determination of BAT, so it is to be expected that significant differences will emerge in the emission limits applied by the Member States. The Directive recognizes this fact, and sets out a procedure for the exchange of information on national assessments of BAT and emission limits. This provides the basis for the possible establishment of Community emission limit values for the priority substances listed.

In the absence of any Community emission limits established through the specific IPPC procedure, the Directive provides that the standards specified in various existing Community instruments are to serve as minimum emission limit values. These included (at the time of adoption) the following:

- Directive [76/464/EEC](#) on discharges of dangerous substances to water and its various daughter Directives (codified as Directive [2006/11/EC](#)).
- Directive [92/12/EEC](#) on waste from the titanium dioxide industry.
- Directive [75/442/EEC](#) on waste (being replaced by the Directive on Waste [2006/12/EC](#)).
- Directive [91/689/EEC](#) on hazardous waste (being replaced by the Directive on Waste [2006/12/EC](#)).

- Directive [75/439/EEC](#) on waste oils (being replaced by the Directive on Waste 2006/12/EC).
- Directive [88/609/EEC](#) on large combustion plants.
- Directives [89/369/EEC](#) and [89/429/EEC](#) on municipal waste incineration (replaced by the Waste Incineration Directive [2000/76/EC](#)).
- Directive [94/67/EC](#) on hazardous waste incineration (replaced by the Waste Incineration Directive [2000/76/EC](#)).
- Directive [87/217/EEC](#) on asbestos pollution.

Further relevant Directives adopted since 1996 include Directive 1999/13/EC on VOC emissions from industry and the Landfill Directive [1999/31/EC](#).

The stipulation that the legislation listed above is to provide ‘minimum’ standards means that if an objective assessment of BAT were to determine a stricter requirement, this would have to be reflected in the permit. Therefore, compliance with emission limit values in other Community legislation cannot be considered as meeting the obligations under the IPPC Directive 2008/1/EC. The one exception to this is the Landfill Directive 1999/31/EC, which does state that some specified obligations shall be deemed to be sufficient for compliance with Directive 2008/1/EC.

In addition, if attainment of any environmental quality standard (such as those regarding air quality) needs stricter control than is achievable by BAT, then additional measures must be required in the permit.

The exchange of information (Article 17) on national assessments of BAT and emission limits also provides the basis for the publication of reference information by the Commission. According to Annex IV of the Directive, this information is to be taken into account in any determination of BAT. Thus a competent authority should consider the material in setting permit conditions in any particular case, but would not be bound to apply specific standards in the way that would be necessary if any Community emission limit values had been established. The first submission by the Member States on emission limits and BAT assessments is due after the Directive has been in effect for 18 months, that is by 30 April 2001. However, by agreement, several of the Member States provided the Commission with material that they believed to be relevant even before the application of the IPPC regime had started. In turn, the Commission initiated the preparation of a series of the so-called ‘BAT Reference’ (BREF) notes which set out the available information for different sectors (see below).

In 2003 a Directive Establishing Emissions Trading for Greenhouse Gases ([2003/87/EC](#)) was adopted. This affects some IPPC installations and, to ensure an effective regime, Directive 96/61/EC was amended so that permits are not required to set emission limit values for the substances being traded.

## **Pollution emissions register**

Article 15 of Directive 96/61/EC required the development of a pollution emission register. Pursuant to this requirement, Decision [2000/479/EC](#) was adopted to provide for the supply of data by Member States to the Commission from June 2003 onwards. Based on these data, the Commission was to publish tri-annual reports until 2008, by which time all relevant installations should be included. From this point an annual report would be produced. The EU

wide register would cover 50 pollutants, including major air pollutants, the six greenhouse gases included in the Kyoto Protocol, heavy metals and chlorinated organic compounds. It was estimated that around 10,000 installations would be covered. The Register was formally launched jointly by the European Commission and the European Environment Agency in 2004.

In January 2006 the [European Pollutant Release and Transfer Register](#) (EPRTR) was established by Regulation (EC) No 166/2006. The Regulation amended Directive 96/61/EC and defined the information the Register shall include and its structure. The Regulation was meant to implement fully the obligations of the UN-ECE Protocol on Pollutant Release and Transfer Registers (PRTR), which was signed in May 2003 in Kiev by 36 countries and the European Community. EPRTR builds on the same principles as EPER but goes beyond it, by including reporting on more pollutants, more activities, releases to land, releases from diffuse sources and off-site transfers of waste and releases, public participation and annual instead of triennial reporting.

### **Exceptions to individual permitting**

The Directive allows two main exceptions from its provisions on individual permitting to the standard of BAT. Firstly, a facility may be allowed temporarily to exceed emission limits based on BAT or conditions relating to long-distance or transboundary pollution, if an approved rehabilitation plan ensures compliance within six months. Secondly, Member States may prescribe some requirements for certain types of installations in general binding rules instead of including them in individual permits, provided equivalent levels of environmental protection are achieved.

### **Enforcement**

The Directive includes certain requirements aimed to ensure that the system of IPPC is applied and enforced in practice. Member States must ensure that permit conditions are complied with, and that operators regularly provide competent authorities with results of release monitoring. Operators must inform authorities of any significant accidents without delay. Operators additionally must provide the authorities with the necessary access and assistance to enable inspections and other monitoring functions to be carried out.

### **Public information and participation**

Member States are required to ensure that applications for IPPC permits are made available for public review and comment before a Decision is reached.

The Decision, the permit and any updates thereto also must be publicly accessible, as must the results of any monitoring of releases under the permit. The requirements for public release of data are subject to the restrictions set out in Directive [90/313/EEC](#) on access to environmental information, which means that material may be withheld on grounds of commercial confidentiality or for certain other reasons.

## **Directive 2003/35/EC on public participation**

Directive 96/61/EC was amended in 2003 by the adoption of Directive [2003/35/EC](#) on public participation in respect of drawing up of certain plans and programmes relating to the environment. It contributes to the ratification of the Aarhus Convention on access to information, public participation and access to justice in environmental matters and, for IPPC, it extends the definition of the ‘public’ to include interest groups and require competent authorities to disclose information on the reasons for the permitting Decisions that they make.

### **Reporting**

Reporting by Member States on the implementation of the Directive is to be structured according to a questionnaire set out in Decision [1999/391/EC](#) and amended by Decision [2003/241/EC](#). Reporting questionnaires were further elaborated by a 2006 Commission Decision [2006/194/EC](#) and a 2011 Commission Decision [2011/631/EU](#).

### **Recommendation on Minimum Criteria for Environmental Inspections**

A Recommendation ([2001/331/EC](#)) on Minimum Criteria for Environmental Inspections was adopted in April 2001. Although it applies to a wide range of inspection activities covering licences issued under EC legislation, its development has come from the work of the EU Network on the Implementation and Enforcement of Environmental Law (IMPEL) on industrial inspection. Member States were expected to develop plans for inspections in advance covering the whole country and all installations, and including programmes for routine and non-routine inspections. Member States were also to report on their inspection practices within two years, that is by April 2003 (but since this is a Recommendation there can be no compulsion). In support of this Recommendation, IMPEL has undertaken a series of reviews of Member States and studies to support implementation.

### **Transitional provisions**

Directive 2008/1/EC is intended to replace the previous Community approach towards pollution control, which has operated on medium-specific lines. This required some modifications to the body of old legislation.

In order to effect an organized transition, the requirements of Directive 76/464/EEC (now Directive 2006/11/EC) and Directive [84/360/EEC](#) on emissions from industrial plants would continue to apply to facilities until they had been brought under the regime of IPPC. Directive 84/360/EEC, the coverage of which is entirely subsumed by IPPC, would be repealed after the IPPC Directive had been in force for 11 years (i.e. in 2007). Directive 2006/11/EC applies to some facilities, which are beyond the scope of IPPC and so will remain in force in respect of those facilities. Various other measures affected by the introduction of IPPC, including those listed in the summary of the Directive above under the subheading *Emission Limits*, were to be considered for possible amendment before the repeal of Directive 84/360/EEC and, as also seen from that list, revisions were indeed made to a number of the Directives.

## **Codification**

In January 2008, the IPPC Directive 96/61/EC and its amendments were codified as Directive 2008/1/EC. The new text includes all the previous amendments to the Directive 96/61/EC (principally those described above arising from Directive 2003/87/EC, Directive 2003/35/EC and Regulation (EC) No 166/2006) and introduces some linguistic changes and adaptations (e.g. updating the legislative references in the text). The substance of Directive 96/61/EC though has not been changed.

## **Development of the Directive**

EC legislation for pollution control, as in all countries, originally dealt with the environmental media (air, water, soil) one by one. The fourth Action Programme of 1987 had discussed the need for a more integrated approach but without suggesting that authorization (or permitting) of industrial plants should cover discharges to all the media together. The idea of an EC Directive requiring integrated permitting of industrial plants was first made at a conference in Brussels in November 1988 organized by the Institute for European Environmental Policy and the Conservation Foundation (Washington), at the conclusion of a two-year project that resulted in a book describing how the concept was developing in several countries<sup>1</sup>. This was followed by a report written for the Commission by the Institute, which reviewed the possibilities for integration at the EC level and recommended an ‘integrated permitting Directive’ as the most fruitful first step.

This recommendation was immediately accepted by the DG Environment but drafting was delayed because Commissioner Ripa di Meana wanted the eco-management and audit (EMAS) scheme developed first. Drafting began in 1991 when a British official was seconded from the DoE by which time an integrated permitting regime had been established in the United Kingdom. Thus, some believe that the IPPC Directive is a British idea. Undoubtedly, the United Kingdom added to the momentum, but the significant differences between the Directive and the UK scheme show that other countries also contributed significantly to its development.

Early drafts of the Directive called it ‘integrated permitting’ with the title of the adopted version being taken from the OECD Council Act of 1991. It should be remembered that the OECD’s concept of integrated pollution control is much broader than the Directive with integrated permitting being only one aspect. The title of the Directive is therefore slightly misleading.

During negotiations there was a conflict between Germany and the United Kingdom, also involving other Member States, about whether ‘best available techniques’ (BAT) should be such that emission limit values should be uniform throughout the Community or whether they can vary depending on local circumstances, with Germany wanting them uniform. In the Directive as adopted, BAT is qualified in Article 9(4) so that emission limit values, while based on BAT, shall take account of the geographical location of the plant and local environmental conditions. This satisfied the United Kingdom.

# Implementation of the Directive

## Supporting implementation: exchange of information

Article 17 of the Directive requires that information is exchanged between Member States on the implementation of the Directive and, in particular, on the interpretation of BAT. As a result the Commission has established a process for the production of BAT Reference Notes (BREFs) as a central component in promoting the development of the assessment of BAT in each Member State. BREFs are produced by the European IPPC Bureau in Seville, which collates information on techniques, environmental performance, etc., for different industrial sectors from the EU and wider in order to provide guidance on BAT for that sector. BREFs are not legally binding, but Member State governments should take them into account. In May 2000 the first two BREF documents were published (covering the iron and steel and cement and lime industries) and a series of additional BREFs have been published since. Given that the initial publication was after the deadline for initial compliance with the Directive, a number of individual permits (and, therefore, BAT determinations) were made within Member States before the full range of BREFs was finally produced. The first BREFs were formally adopted by the European Commission in late 2001. The 57 industrial and agricultural sectors listed in Annex I of the Directive were grouped into 27 sets of similar processes each of which is covered by one BREF. In addition, horizontal BREFs were developed to address emissions from storage, industrial cooling systems, monitoring, economic and cross-media effects and energy efficiency. Also a BREF on the Management of Tailings and Waste-Rock in Mining Activities (not covered by the Directive) was developed, so making 33 BREFs in total. The BREFs will also be subject to review as technical and other issues change. Since 2005 BREF reviews have started. Draft and final BREFs, together with background information, can be found on the Bureau's website (<http://eippcb.jrc.es>).

## Supporting implementation: guidance

Guidance<sup>2</sup> to industry and regulators on interpreting key elements of the IPPC Directive was released in April 2007. It is not considered a formal document and, in case of disputes, the European Court of Justice's interpretation will prevail. Nevertheless, the document offers the Commission view on fundamental concepts like 'installation', 'operator' indicates how to interpret issues such as 'capacity' and provides some clarification on industry sectoral aspects. Furthermore, as part of the IPPC review process, a public consultation through a questionnaire was launched in April 2007, while a stakeholders meeting was held in May of the same year.

## Progress in implementation in the Member States

Information on the measures taken by the Member States to transpose Directive 96/61/EC can be found in their national [execution measures](#).

Information on the measures taken by the Member States to transpose Directive 2008/1/EC can be found in their national [execution measures](#) for the transposition of this Directive.

In June 2003 the Commission issued its first report on progress in implementing the Directive ([COM\(2003\)354](#)). It criticized many Member States for their delays in transposing the Directive and in initiating the permitting process. However, a preliminary assessment of

permits issued to date was positive as to their content. The report noted a number of problems that Member States had found in implementing the Directive (such as lack of clarity in the text) and the Commission began a consultation exercise to examine the Directive.

In November 2005 the European Commission released a second report on the implementation of the IPPC Directive ([COM\(2005\)540](#)). The document covered the 2000–2002 period and thus only the EU15, with their 45,000 installations. In this report the Commission acknowledged that the Directive had been transposed with considerable delays, and reported that infringement procedures for incorrect transposition had been initiated against eight Member States. During the reporting period only about 13 per cent of new installations and installations undergoing substantial changes were granted permits, while no detailed information was available on the number of permits issued for existing installations. Apparently there were considerable discrepancies between Member States. In some countries, like Italy, Spain and Portugal, the number of permits granted was disproportionately low. The Commission expressed concern about the slow rate of implementation, and urged Member States to speed up the process. To help them meet the October 2007 deadline, by which all installations covered by the Directive had to possess a permit, the Commission launched an IPPC Implementation Action Plan. Among a number of concrete actions, the Action Plan included the development of guidance documents, the monitoring of the number of permits issued, and a compliance check of installations with high emissions.

Thanks to this action Plan more data became available on 18 Member States. The level of performance among them remained very variable, with Germany, Belgium and Luxemburg among the most advanced group, and other countries doing less well, like France and the United Kingdom. Overall an average 43 per cent of installations had had existing IPPC permits reconsidered or new permits granted.

Information on the Member State reporting for the first two reports can be found in the ‘Industrial emissions Reporting Information System’ (IRIS) [[link](#)].

In 2009 a further report on permitting progress was published by the Commission<sup>3</sup>. This concluded that, for the EU-27, there were estimated to be about 43,264 existing installations covered by the IPPC Directive. The total number of permits issued, reconsidered and updated was approximately 44,291, with 4,618 permits outstanding. The Member States were grouped as follows according to their permitting progress:

- Member States that had reported completion of their permitting activity under IPPC (100 per cent progress): France, Lithuania, Luxembourg and Slovakia.
- Member States that reported 90 per cent permitting progress or greater: Belgium, Czech Republic, Estonia, Finland, Germany, Hungary, Latvia, the Netherlands, Romania and the United Kingdom.
- Member States that reported 80 per cent permitting progress or greater: Austria, Cyprus, Denmark, Ireland, Poland, Spain and Sweden.
- Member States with 50 per cent permitting progress or greater: Bulgaria, Italy and Portugal.
- Member States with less than 50 per cent permitting progress: Greece and Slovenia.
- Member States with zero permitting progress: Malta.

However, further analysis<sup>4</sup> by the Commission has shown some additional progress (e.g. Malta) as well as less optimistic figures (e.g. France).

A third short implementation report was published in October 2010 ([COM\(2010\)593](#)), covering 25 Member States (Greece and Luxembourg failed to report on time). Previously the Commission had opened infringement cases for incorrect transposition against 16 Member States, but only two such cases remained open (Estonia and Lithuania). Between 2006 and 2008 the national legal provisions transposing the Directive were subject to changes in 19 Member States, in particular to improve aspects related to public participation and concerning changes in the sharing of competences between authorities. On the quality of permits issued for 61 IPPC installations, the Commission noted ‘the low proportion of permits reflecting the implementation of BAT’ compared to the BREFs, with no justification for this given in half of the cases. Permit review is necessary when there are major changes to installations or to BAT and the Commission noted wide variation in rules on permit review. Some Member States have a mandatory time span review (e.g. 10 years in Austria and Romania, and 8 years in the Czech Republic, Slovakia and Spain), while others, e.g. Poland or the United Kingdom, require periodic reviews on a case by case basis. Regarding monitoring and enforcement, the Commission also noted wide variation between Member States, in particular regarding minimum frequency of inspections. The Directive also requires stricter conditions where this is necessary to meet an environmental quality standard established in EU law. While all Member States have this provision in their legislation, only six reported a need to apply the provision. Finally, the Directive requires Member States to co-operate across borders where there is concern over transboundary impact from an installation. Eight Member States (Germany, Belgium, Italy, Romania, Slovenia, Slovakia, France and the Netherlands) reported the use of transboundary co-operation for a small number of permits.

## Further developments

In 2005 the Commission launched a series of studies examining the implementation of the Directive, the impact of IPPC on competitiveness, coherence with other EU legislation, the impacts of possible technical amendments and the potential for Member State action to go ‘beyond’ mere compliance with the Directive. These provided information to support the review process of the Directive, which the Commission officially launched in its 2005 report on the implementation of IPPC.

As a result of the review, a revision of the IPPC Directive was proposed by the Commission in December 2007 ([COM\(2007\)844](#)). The proposed revision would integrate six existing pieces of legislation into the revised IPPC Directive, namely the Large Combustion Plant Directive [2001/80/EC](#), the Waste Incineration Directive [2000/76/EC](#), the Solvents Emissions Directive [1999/13/EC](#) and three Directives relating to emissions from the titanium dioxide industry ([78/176/EEC](#), [82/883/EEC](#) and [92/112/EEC](#)). The proposal was adopted as the [Industrial Emissions Directive](#) 2010/75/EU. As a result the IPPC Directive is repealed from 7 January 2014. The new Directive is meant to reduce administrative costs for authorities and operators and to increase environmental and health benefits<sup>5</sup>.

The IPPC Directive also sparked debate in some Member States over the burden that EU legislation imposes on businesses. A 2004 report by the UK Better Regulation Task Force highlighted textual problems in the Directive which can impede implementation. These were also picked up by the 2004 Dutch Presidency, which held a series of meetings addressing the possibility of amending the Directive, but with little support for this from other Member States and industry associations. Reports informing the Dutch conclusions can be found on the IEEP website: ([www.ieep.eu](http://www.ieep.eu))

## Enforcement and court cases

There have been a number of cases decided in the European Court of Justice concerning Directive 96/61/EC. One case is a preliminary ruling and concerns a need for interpretation of the Directive:

- [C-437/07](#) 22.01.09: This preliminary ruling case is concerned with the interpretation of Directive 96/61/EC, and more specifically whether the term ‘poultry’, used in subheading 6.6(a) of Annex I to Directive 96/61/EC, includes quails, partridges and pigeons. The French Government asserts, *inter alia* that quails, partridges and pigeons cannot be reared intensively and that they are to be excluded from the poultry category. The Court rejected that view, and stated that such poultry could be reared intensively. It was also asked whether subheading 6.6(a) of Annex I to Directive 96/61/EC precludes a Member State from establishing a system, known as ‘animal-equivalents’, which consists of establishing prior authorization thresholds for installations for intensive rearing of poultry by weighting the number of animals per place according to species so that account may be taken of the amount of nitrogen actually excreted by the various birds. The Court answered in 2009 that Directive 96/61/EC precludes national legislation, which calculates the thresholds for authorization of installations for intensive rearing on the basis of a system of ‘animal-equivalents’.
- Joined Cases [C-165/09 - C-167/09](#) 26.05.2011. A legal action was brought before the Netherlands' courts by NGOs contesting the granting of an installation permit under the IPPC Directive for three new power stations. They argued that the, given that national emission ceilings under the [National Emission Ceilings](#) Directive were likely to be exceeded, the authorities should not have granted the permits, or should have at least inserted more stringent operation conditions. The case was sent to the ECJ for a preliminary ruling on the interpretation of ‘whether when granting an environmental permit for the construction and operation of an industrial installation, the competent national authorities are obliged to include among the conditions for grant of that permit the national emission ceilings for pollutants laid down by the NEC Directive.’ The Court answered that authorities were not obliged to take the risk of exceeding the national emission ceilings into account. It is up to the Member State to adopt the appropriate suite of measures to meet the emission ceilings and it is not possible to argue against an individual decision on the basis that the overall suite of measures may not meet the legal obligations. Furthermore, the effectiveness or otherwise of the measures refers to a future obligation for compliance and it is not possible to challenge the decisions until, or if, non-compliance is reached according to the timetable in the Directive. The overall ceilings in the NEC Directive are, therefore, not equivalent to environmental quality standards in EU law (such as air limit values or water quality standards) which the IPPC Directive does require to be respected in permitting decisions.
- [C-585/10](#) 15.12.11. The judgement interpreted the expression ‘places for sows’, in subheading 6.6(c) of Annex I of the IPPC Directive to mean that it includes places for gilts (female pigs which have already been serviced, but have not yet farrowed).

Four cases are concerned with the failure by Member States to ensure adequate transposition of the Directive:

- [C-258/09](#) 04.03.10. This was a judgement against Belgium for failure to ensure adequate transposition of Directive 2008/1/EC in the Walloon Region.
- [C-271/07](#) 20.05.08. This was a judgement against Belgium for failure to ensure adequate transposition.
- [C-64-01](#) 7.03.02. This was a judgement against Greece for failure to ensure adequate transposition.
- [C-39/01](#) 7.03.02. This was a judgement against the United Kingdom for failure to ensure adequate transposition in Northern Ireland and Gibraltar.
- [C-29/01](#) 7.03.02. This was a judgement against Spain for failure to ensure adequate transposition.

Two cases concern the failure of practical implementation by Member States:

- [C-49/10](#) 7.10.10. This was a judgement against Slovenia for failure to ensure that existing installations have received permits according to the requirements of IPPC.
- [C-48/10](#) 18.11.10. This was a judgement against Spain for failure to ensure that existing installations have received permits according to the requirements of IPPC.
- [C-534/09](#) 02.12.10. This was a judgement against Greece for failure to ensure that existing installations have received permits according to the requirements of IPPC.
- [C-50/10](#) 31.03.11. This was a judgement against Italy for failure to ensure that existing installations have received permits according to the requirements of IPPC.

## Related legislation

Directive 2008/1/EC interacts with other EU laws in a variety of ways. The Directive is focused on the determination of emission limits in permits. Other EU legislation also does this, effectively setting minimum values or particular conditions to be addressed within IPPC permits for those installations covered by more than one Directive:

- Dangerous Substances Directive [2006/11/EC](#).
- Large Combustion Plant Directive [2001/80/EC](#).
- Waste Incineration Directive [2000/76/EC](#).
- Solvents Emissions Directive [1999/13/EC](#).
- Landfill Directive [1999/31/EC](#).
- Three Directives relating to emissions from the titanium dioxide industry ([78/176/EEC](#), [82/883/EEC](#) and [92/112/EEC](#)).
- Urban Waste Water Treatment Directive ([91/271/EEC](#)).

One Directive has set conditions for industry which specifically requires that emission limit values are not set in permits. This has a strong interaction with IPPC, not least on its implications for addressing energy efficiency measures in IPPC permitting:

- Emissions Trading Directive [2003/87/EC](#).

Directive 2008/1/EC also requires that emission limits established in permits respect environmental quality standards established in EU law. These include those established in the following Directives:

- Air Framework Directive [2008/50/EC](#).
- Dangerous Substances Directive ([2006/11/EC](#)).
- Environmental Quality Standards for Water Directive [2008/105/EC](#).
- Groundwater Directive [2006/118/EC](#).
- Water Framework Directive [2000/60/EC](#).
- Habitats Directive [92/43/EEC](#).
- Birds Directive [79/409/EEC](#).

The processes established to implement IPPC also interact with other Directives, principally those on impact assessment and accident prevention and management:

- SEA Directive [2001/42/EC](#).
- EIA Directive [2003/35/EC](#).
- Major Accident Hazards Directive [96/82/EC](#).

Operators of installations regulated under the Directive are required to report emissions data according to:

- Regulation (EC) No [166/2006](#) concerning the establishment of a European Pollutant Release and Transfer Register.

## References

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3 Farmer, A., Bowyer, C, and Lawton, K. 2009. Monitoring of Permitting Progress for Existing IPPC Installations. DG Environment. [http://eea.eionet.europa.eu/Public/irc/eionet-circle/reporting/library?l=/ippc/ippc\\_permitting/monitoring\\_09076i3pdf/ EN\\_1.0\\_&a=d](http://eea.eionet.europa.eu/Public/irc/eionet-circle/reporting/library?l=/ippc/ippc_permitting/monitoring_09076i3pdf/ EN_1.0_&a=d)

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5 Farmer, A.M. 2008. Revising IPPC: incremental change rather than a radical overhaul of EU industrial emissions policy. *Environmental Law Review* 10: 258-282.