



**Integrated Pollution Prevention and Control (IPPC)
in EU Member States
Needs Analysis
2006**

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Introduction

Justice & Environment (J&E) is a network of public interest environmental law organisations based in the EU member states. J&E aims to use law to protect people, the environment and nature. Our primary goal is to ensure the implementation and enforcement of the EU legislation through the use of European law and exchange of information. This J&E needs analysis aims to provide an overview of needed work in the area of IPPC – Integrated Pollution Prevention and Control.

Background

After a long and sometimes even problematic drafting process, the European legislation gave birth to the Council Directive 96/61/EC on integrated pollution prevention and control (IPPC Directive). The Directive introduced unique mechanisms and principles concerning operations with the highest environmental impact (such as BAT). Its public participation provisions have been largely amended in the meantime by the Public Participation Directive 2003/35/EG.

IPPC aims to regulate the operation of a facility (listed in the Annex of the IPPC Directive); this operation must be based on the Best Available Technology (BAT).

While the deadline for transposition has passed for every EU Member State; there is no respective and legally substantive case law from the European Court of Justice on the IPPC matters to date. As far as application of the directive is concerned, we believe that the scope of regulation and potential impact places the IPPC process high on priority list of environmental NGOs, particularly now since in the new Member States transition periods are expiring and existing operations will enter the process of re-licensing.

Problems

Transposition

With regard to the transposition of the IPPC Directive, there are significant differences in how EU Member States perceive the importance of IPPC and what kind of other, supporting or coercive mechanisms they attach thereto, in order to improve its practical application. An example is how the respective state licensing authorities entrusted with the responsibility to issue integrated permits differ from state to state. In Slovakia it is the environmental inspection; this also controls and sanctions responsibilities of environmental licensing authorities. Thus there is no effective state controlling mechanism in the IPPC licensing. The obligation of the investor to use the best available technology is conditioned by economical feasibility for investor. A criterion for economical feasibility is not defined; thus discretion of licensing authority is too broad.

The relationship between the IPPC national legislation and national legislation regulating environmental licensing in other areas (such as in waste or water management) is not clear. For example the legal status, rights and responsibilities of these “sectional” licensing authorities are not sufficiently defined.

In several national legislations the Aarhus Convention has not been integrated into the IPPC proceeding yet: environmental NGOs and concerned public do not have legal status corresponding with the Convention obligations.

Implementation

In terms of the practical enforcement of IPPC provisions, Member States have different views on the role and the position of IPPC in the permitting regime of an installation. The relationship of IPPC with EIA needs to be clarified. The IPPC Directive allows the two to be merged while EIA is *per se* a process before the completion of a facility: as operation is the main focus of IPPC is impossible to analyze. This raises questions of whether operational conditions meet BAT at the start or during the entire operation at all. There is a discussion ongoing whether thresholds in the Annex of the IPPC Directive are set too high and should be changed in the frame of the planned revision of the Directive.

Technical Problems

The technical problems relate chiefly to the extent that the EU's BAT Center in Seville has developed BAT-REF documents, the critical areas not yet covered, and the length of the 'warranty' of the present BAT-REF documents (i.e. are they still valid for the present and constantly and rapidly changing technical conditions). A second issue – which is related to the lack of respective regulation in the IPPC Directive – is the absence of IPPC for transport infrastructure development projects.

Transposition of the Public Participation Directive

Directive 2003/35/EC «*providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC*», has brought substantial changes to the IPPC regime as regards opportunities for the public to participate. The amendments have largely increased the possibilities of NGOs in the permitting procedures, as they now have legal standing and can bring forward legal remedies.

The deadline for the Member States for transposition into national legislation was 25 June 2005. In most Member States, NGOs are not well informed about their new rights. Authorities also lack information on how to best apply the new requirements.

The deadline for bringing old installations in line of with the IPPC Directive in 2007 is 1 October 2007. All existing installations, falling under the scope of the Directive, will have to meet its requirements. This deadline is valid for all EU – 15 countries. The 10 new member states have different deadlines for compliance (transition periods); these may exceed the 1 October deadline depending on their respective Accession treaty.

NGOs will have a crucial role in monitoring this process and securing that both public participation provisions and technical provisions are properly applied.

Revision of the IPPC Directive at EU level

The Commission will develop a communication on the eventual revision of the IPPC Directive in 2007. A Working Group on IPPC has been set up by the Commission for that purpose. It consists of representatives from Member States, industry and a few NGO representatives, all of them coming via the EEB. The Justice and Environment Network has access to all relevant

information via OKOBURO; this was represented in the advisory group by Fritz Kroiss, who is holding one chair of EEB in this group.

The EEB has identified several possible threats that may weaken of the Directive; these were suggested during the revision process. On the other hand there are also several opportunities for improving the Directive, like broadening its scope, clarifying unclear provisions and wordings, etc.

The IPPC Review will proceed through 2006 and will be concluded in 2007. In order to inform the review, the Commission is launching several external projects related to the following issues:

- [Assessment of the **implementation** by the **Member States** of the IPPC Directive](#)
- [Assessment of options to **streamline legislation** on industrial emissions and analysis of the interaction between the IPPC Directive and possible emission trading schemes for NOx and SO₂](#)
- [**Incentives to improve** the environmental performance of IPPC installations beyond regulatory compliance](#)
- [Data gathering and impact assessment for possible **technical amendments** to the IPPC Directive](#)
- [Assessment of **different approaches** to implementation of the IPPC Directive and their impacts on competitiveness](#)

For further details see: http://ec.europa.eu/environment/ippc/ippc_review_process.htm

Opportunities

IPPC Directive is an opportunity to largely improve environmental performance of energy and industry sectors in EU member states and can be an extremely valuable tool to support Climate Change Policies and the Kyoto Protocol. Successful Climate Change policy can not only rely on emission trading schemes, but also has to provide for permitting of new and upgrading of existing installations to fully meet BAT standards.

Most member organizations of the J&E network are confronted with IPPC cases in their daily work, often through requests for legal aid by NGOs and Citizen Groups. Analysis of conflict cases could therefore be a useful source of information exchange for the J&E network.

The EC Commission has released several studies, e.g. the “First IPPC Report”, an assessment on the Implementation of the Directive by the Member States and an IPPC Implementation Action Plan (see ec.europa.eu/environment/ippc/index.htm). J&E can build upon these studies for its further research and lobbying activities.

Goals for J&E

The overall goals of the IPPC related activities of J&E are:

- Contribute to the **transposition process** of the IPPC Directive into national legislation where not completed yet or badly done
- Contribute to the **improvement of application** of the IPPC Directive and respective national legislation in the J&E member countries in concrete cases
- **Raise awareness** among NGOs, citizen groups and individuals about the rights as regards to Public Participation
- **Prevent weakening** of the IPPC Directive and **support strengthening** and broadening its scope in the upcoming revision process at EU level.

Activities for 2006

Analysis concerning legal implementation of the IPPC Directive and the related pieces of the environmental acquires concerning their compatibility and the legal regime they build up, with a special focus on identified problems. Given limited finances this year, work on this topic only consists of needs analysis to set the basis for further work.

Work in 2007

The following aspects could be examined as part of the J&E workplan 2007:

1. **Revision process** of IPPC Directive at EU – Level
2. **Legal transposition** of Public Participation Directive 2003/35/EG, which amends IPPC Directive, in the member states of the J&E network
3. **Practical implementation** of National IPPC Legislation in J&E countries in concrete cases, esp. looking at role and interests of affected communities, neighbors, and NGOs.
4. **Issuing of permits** for existing installations, as required by the IPPC Directive until 2007.

The following **activities** should be carried out:

5. Closely **monitor the activities** of the IPPC working group of the EC Commission and related follow up activities, as e.g. EC Communications on IPPC revisions
6. **Analyze the Public Participation arrangements** in the National IPPC legislation and comparing them towards the requirements of the Aarhus Convention and the Public Participation Directive
7. **Investigate on eventual project related conflicts** between companies, authorities and citizens/NGOs related to the application of the IPPC Directive (Green field investments, as well as expanding of existing installations)
8. **Collect information** on upgrading and permit issuing for existing installations as required by the IPPC Directive until 2007.

This should lead to the following outputs (to be further specified in the frame of the workplan preparation for 2007):

9. **Preparing of a position paper** to be forwarded to the Commission and ev. the Members of the IPPC working group. Consultation with EEB and other Green 10 NGOs in Brussels should be considered

10. **Legal analysis** of National IPPC legislation in J&E countries as described above
11. **Preparing of one case study per country** of the J&E network on practical implementation of national IPPC legislation in a concrete case
12. Brief **analysis on approach and efforts** of bringing in line of existing installations with IPPC requirements for each J&E member state

Links

<http://ec.europa.eu/environment/ippc/>
http://ec.europa.eu/environment/ippc/ippc_review_process.htm

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