



European Union Network for
the Implementation and Enforcement
of Environmental Law

The inter-relationship of the IPPC Directive with other Directives

Foreword

The European Union Network for the Implementation and Enforcement of Environmental Law is an informal network of the environmental authorities of EU Member States, acceding and candidate countries, and Norway. The European Commission is also a member of the network and shares chairmanship of its Plenary Meetings.

The network is commonly known as the IMPEL Network.

The expertise and experience of the participants within IMPEL make the network uniquely qualified to work on certain of the technical and regulatory aspects of EU environmental legislation. The Network's objective is to create the necessary impetus in the EU to make progress on ensuring a more effective application of environmental legislation. It promotes the exchange of information and experience and the development of greater consistency of approach in the implementation, application and enforcement of environmental legislation, with special emphasis on EU environmental legislation. It provides a framework for policy makers, environmental inspectors and enforcement officers to exchange ideas, and encourages the development of enforcement structures and best practices.

Information on the IMPEL Network is also available through its web site at:
<http://europa.eu.int/comm/environment/impel>

TABLE OF CONTENTS

PROJECT SUMMARY	4
KEY FINDINGS.....	6
1. INTRODUCTION	8
2. METHOD	10
3. SUMMARY OF THE QUESTIONNAIRE RESPONSES.....	11
Background	11
Section 1: The identity and scope of activities requiring a permit	12
Section 2: The environmental standard or objectives to be achieved under the permits.....	13
Section 3: The permitting frameworks of different	16
Section 4: The permit holder	17
Section 5: Interfaces between IPPC and other Directives	18
Section 6: Other relevant information and reports	19
4. CONCLUSIONS.....	20
Introduction.....	20
The review of the IPPC Directive.....	20
Harmonisation	20
Consistency.....	21
Flexibility.....	22
Scope	22
Cost and regulatory effort.....	22
APPENDIX 1 - PROJECT TERMS OF REFERENCE	23
APPENDIX II - PARTICIPANTS IN THE PROJECT	25
APPENDIX III - BLANK QUESTIONNAIRE USED TO OBTAIN VIEWS FROM IMPEL MEMBERS	26

PROJECT SUMMARY

<i>Title report</i> The inter-relationship of the IPPC Directive with other Directives	<i>Number report: Year/number</i> 16/2006
<i>Project Manager /Authors</i> Project managers – Martin Murray and Terence Shears, Environment Agency (England and Wales), UK Author – Julie Tooley, Enviros Consulting Ltd	<i>Report adopted at IMPEL meeting:</i> By written procedure in April 2006
<i>Project Group members</i> See Appendix II	<i>Number of pages</i> Report: 21 Appendices: 10

Executive summary

Aim

The aim of this project was to inform the European Commission review of the IPPC directive.

Methodology

A questionnaire was developed and distributed within the IMPEL network to obtain a compendium of experience from within IMPEL on the implementation of the IPPC Directive and its relationship with other directives. The questionnaire gathered information on:

- Legislative background
- The identity and scope of activities requiring a permit
- The environmental standards/objectives to be achieved under the permits
- The permitting frameworks of different Directives
- The person who requires a permit
- Interfaces between IPPC and other Directives
- Other relevant information and reports

Responses were collated and discussed at a workshop and finalised in this report.

Main findings

- The report has identified a number of areas where there are inconsistencies and overlaps between the IPPC Directive and other Directives, in particular sectoral Directives.
- Overlaps and inconsistencies between the IPPC Directive and other Directives should be harmonised.
- Where definitions vary between directives, clarity should be provided as to why they are different.
- Consistency in the use of environmental standards would aid the interface between the IPPC Directive and other Directives.
- With regard to some small installations the regulatory effort to grant permits may not be proportional to their potential environmental impact. There may be a need for additional flexibility in implementing the IPPC directive.

Conclusions

The information contained in this report is based on the practical implementation of the IPPC Directive to installations. This report provides valuable feedback on areas where the drafting of the IPPC Directive has a real impact on the day to day administration of the permitting regime. The feedback also refers to structural changes that continuously take place within industry and impact on the permitting regime.

Disclaimer

This report on the inter-relationship of the IPPC Directive with other Directives is the result of a project within the IMPEL network. The content does not necessarily represent the views of the national administrations or the Commission.

KEY FINDINGS

1. EU legislation has been a major force for environmental protection and improvement for many years; however as more Directives are adopted there is an increasing array of regulatory requirements. The inter-relationships between Directives are therefore becoming more important.
2. This project was undertaken in 2006 and involved gathering information on the implementation of the IPPC Directive and its relationships with other Directives. The aim of the project was to inform the IPPC Review, which is being undertaken by the Commission.
3. The range of issues relating to the inter-relationship of the IPPC Directive with other Directives on which information was sought included:
 - The specific details of the interaction of the IPPC Directive with other EU legislation,
 - The main consequences for regulators and other affected parties and affected parties,
 - Any compounding factors,
 - Options for clarification, and
 - An indication of the significance of the issue
 - Any other legislation having an impact on the IPPC Directive.
4. The key findings of the project are presented below. The project did not aim to seek consensus views of IMPEL members but rather to gather information and comments from IMPEL members on a range of issues relating to the inter-relationship between the IPPC Directive and other Directives.
5. Inconsistency in the Directives in the definition of key terms, such as 'installation', caused some difficulty for regulators when interpreting Directive requirements as transposed into Member State legislation.
6. Some Member States use the transposition of EU Directives into domestic legislation as an opportunity to overcome apparent inconsistencies in definitions between Directives.
7. There were concerns about the relationship between emission limit values (ELVs) and Best Available Techniques (BAT) in sectoral Directives. IMPEL members described a variety of interpretations and practical approaches that have been adopted to address the difficulties.
8. Arrangements for co-ordination are in place in many Member States to ensure that overlaps and inconsistencies between requirements in different Directives are resolved in a consistent manner.
9. The lack of consistency in methods for measurement, monitoring, calculation, presentation of monitoring results and reporting adds to the administrative burden to all affected, i.e. Member States, Competent

Authorities and Installations/Industry. Regulators may have to maintain a number of systems and harmonisation could reduce this and make the regime more effective and less burdensome.

10. There is an inconsistency in the use of sectoral Directives. Sectoral Directives had seldom been subject to review whilst BAT changes with time and has to be reviewed on an installation specific basis as new techniques for pollution control are developed. IMPEL members considered there were a number of possible options to tackle this inconsistency; however, these options could involve significant regulatory effort and cost.
11. Discussions identified some variations between different language versions of the same Directives. These variations were perpetuated when directly transposed into Member States' legislation. The meeting noted that some Member States had overcome this problem by adopting consistent definitions. There is currently a codification exercise being undertaken to remove transcription errors. Some IMPEL members stated that certain inconsistencies were minimised during the transposition of Directive requirements into domestic legislation.
12. IMPEL members recognised that some regulators interpreted the use of ELVs to be consistent with BAT, however where local environmental conditions required it, stricter limits could be applied. Stricter limits were used to a varying extent across the IMPEL network.
13. Where more than one Directive is implemented through a single permit and those Directives have different levels of control the meeting noted that the most stringent controls were often used. Member States define a permit structure to implement a variety of Directives and the regulators generally use the most stringent controls set out in these Directives.
14. The regulation of very low environmental impact installations should be considered during the IPPC Directive review with a view to ensuring consistency and proportionality of approach in line with more recent Directives which allow, for example, for the registration of some activities. However, this should not lead to an alteration of the IPPC principles (permitting regime, BAT) but rather to a reconsideration of some IPPC thresholds.
15. Some difficulties in the interfaces between the IPPC Directive and other Directives were reported notably the EIA, Seveso II and the Water Framework Directives.
16. Regulators identified that the different emphasis on local impacts between the IPPC Directive and the EU ETS caused difficulties.
17. The meeting noted an inconsistency in the relationship between the IPPC Directive and other sectoral Directives. The LfD appears to take precedence over the IPPC Directive, which differs from the relationship between the IPPC Directive and other sectoral Directives.

1. INTRODUCTION

The Integrated Pollution Prevention and Control (IPPC) Directive¹ does not sit in isolation. It has complex inter-relationships with a number of other Directives including the Waste Incineration Directive (WID)², the Waste Framework Directive (WFD)³, the Solvent Emission Directive (SED)⁴, the Landfill Directive (LfD)⁵ and the Large Combustion Plant Directive (LCPD)⁶. Additionally there are interfaces with other Directives including, for instance, the Greenhouse Gas Emissions Trading Directive, the Seveso II Directive and the Water Framework Directive.

The EU Commission is undertaking a review of the IPPC Directive which is due to be completed in 2007 with the tabling of a possible legislative proposal.

It is understood that one of the main objectives of the Commissions IPPC review is to examine options of legislative streamlining with a view to contributing to the better legislation and simplification initiatives.

As part of the review the Commission intends to let contracts to review certain aspects of the Directive. The contracts include 'An assessment of options to streamline legislation on industrial emissions and analysis of the interaction between the IPPC Directive and possible emission trading schemes for NO_x and SO₂' (often referred to as the 'Regulatory Streamlining' study) and 'Beyond regulatory compliance: Incentives to improve the environmental performance of IPPC installations' (often referred to as the 'Beyond Regulatory Compliance' initiative).

The Better Legislation Cluster has previously identified a role for IMPEL to work with the Commission to identify, consider and prioritise those areas of the EU legislative work programme where IMPEL can make a useful contribution.

As part of fulfilling this role the Better Legislation Cluster developed this project on the 'Inter-relationship of IPPC Directives with other Directives'. The project aims to gather and summarise information from IMPEL members to feed into the Commissions review of the IPPC Directive. The information pertains to areas of concern relating to the implementation and enforcement of the IPPC Directive arising from its interface with other horizontal and sectoral EU legislative instruments.

This report provides summarised information on areas of concern relating the interfaces with the IPPC Directive. It does not necessarily represent a consensus view of IMPEL but rather records feedback across the IMPEL network in order to inform the review of the IPPC Directive being undertaken by

¹ 96/61/EC

² 2000/76/EC

³ 75/442/EEC as amended by 91/156/EEC

⁴ 1999/13/EC

⁵ 1999/31/EC

⁶ 2001/80/EC

the Commission. It provides an overview of areas where harmonisation might be an advantage.

The report summarises the output from the workshop which took place in London in February 2006 following the distribution of a questionnaire to IMPEL members. The questionnaire gathered information on:

- The specific details of the interaction of the IPPC Directive with other EU legislation,
- The main consequences for regulators and other affected parties and affected parties,
- Any compounding factors,
- Options for clarification, and
- An indication of the significance of the issue,
- Any other legislation impacting on the IPPC Directive.

The project also sought to identify areas where further more specific assessments need to be undertaken in order to inform the Commission's Regulatory Streamlining study and IPPC review.

2. METHOD

This project was initiated by the Better Legislation Cluster together with other interested parties from IMPEL.

The Terms of Reference for the project were developed by the Better Legislation Cluster and presented at the plenary meeting of IMPEL in Cardiff in December 2005. The Terms of Reference are included as Appendix I and Appendix II lists the project participants.

A questionnaire was developed by the project team. It was sent to IMPEL members in January 2006. The questionnaire gathered information from IMPEL members on the interface between the IPPC Directive and other EU instruments with a view to identifying any areas where the interface is seen as causing difficulties. The questionnaire is included at Appendix III.

An analysis of the information was produced in preparation for the project workshop which was held in London in February 2006. This meeting discussed the findings of the questionnaire and information and comments were gathered from the regulators leading to the preparation of the final report. A summary of the questionnaire responses is included as Section 3 and conclusions and recommendations are provided in Section 4.

The project was managed by Martin Murray and Terence Shears of the Environment Agency for England and Wales.

3. SUMMARY OF THE QUESTIONNAIRE RESPONSES

This section summarises the results of the responses to the questionnaire and follows the same structure as the questionnaire (Appendix III):

- Legislative background;
- The identity and scope of activities requiring a permit;
- The environmental standards/objectives to be achieved under the permits;
- The permitting frameworks of different Directives;
- The person who requires a permit;
- Interfaces between IPPC and other Directives ;
- Other relevant information and reports.

Each section of the questionnaire contained a number of questions on key related aspects.

Each subsection of this report begins with the key points followed by the main findings.

Legislative background

This section gives a brief overview of the range of legal systems in Member States for the environmental regulation and permitting of industrial installations.

Key points:

- There is a range of regulatory systems within Member States ranging from Member States with a number of competent authorities each responsible for one or more regimes to Member States with a single competent authority responsible for integrated environmental regulation and permitting;
- Member States with a number of competent authorities have arrangements in place to ensure co-ordination and/or consultation is undertaken.

A single regulatory authority or multiple regulatory authorities

There are examples where the environmental regulation is the responsibility of a single regulatory authority that is responsible for the issue of all permits relating to environmental protection. However in other cases a number of regulatory authorities are responsible for the protection of individual environmental media or individual sectors. The most common example of this relates to a separate regulatory authority responsible for protecting the water environment.

Integrated laws or 'piecemeal' laws

There are examples of regulatory regimes where the requirements of a number of the Directives have been transposed into one integrated legislative instrument or a comprehensive body of regulation. There are also other cases where the requirements of the Directives are transposed into a number of pieces of legislation.

Unified national (federal) laws or regional (provincial) laws

In some Member States domestic legislation has been enacted which applies to the whole Member State whilst other Member States have provincial laws which are administered on a regional basis.

General binding rules or decisions on a case by case basis

In some Member states have implemented the IPPCD by general binding legislation where as other Member states have implemented the Directive on a case by case basis at the regional level.

Section 1: The identity and scope of activities requiring a permit

Key points:

- Some regulatory regimes include arrangements to grant a single integrated permit for each activity ;
- There are some conflicting requirements in Directives but in practice this is often overcome by co-ordination between regulatory authorities or by having a single competent authority and integrated environmental legislation;
- Integration of all relevant Directives provisions and their harmonisation has been achieved by some IMPEL members during the transposition of the Directives into domestic legislation. However there are examples of issues relating to the interpretation of certain parts of the IPPC Directive which in practice have been resolved by co-ordination between competent authorities;
- Whilst consistent terminology has been introduced when transposing Directive requirements into some domestic legislation and permitting regimes, inconsistency in the definition of key terms, such as 'installation' caused some difficulty for some regulators;
- Many of the regulatory regimes where there is more than one competent authority include the requirement for co-ordination and integration between competent authorities.

Question 1.1 - The need for multiple permits at installations

Many respondents stated that where the regulatory arrangements allowed a single permit was granted. However this was not always possible and respondents reported a range in the number of permits which are required for installations where there are activities which are subject to the requirements of more than one Directive. The main exceptions from the granting of a single permit appear to relate to separate permitting of water supply or discharge and waste in some cases, or separate permits to implement the requirements of newer Directives which post-date the IPPC Directive. IMPEL members were keen to maintain the option to grant a single permit as this was seen to provide a very effective and transparent approach for both regulators and operators. In the majority of cases where one permit was issued it was based on the most stringent regime.

Question 1.2 - Problems arising from the need for multiple permits at installations

Some problems do occur where multiple permits are needed at installations but the majority of respondents considered that the problems were addressed effectively by co-ordination. The requirement for co-ordination is set out in statute in some cases however there were some particular examples of areas which caused problems for individual respondents such as those arising from conflicting requirements of Directives and those arising when regulating complex sites where a number of different activities are undertaken.

Question 1.3.1 - The differing descriptions of the extent of activities that require a permit

In order to overcome inconsistencies between Directives a significant number of respondents stated that all Directive requirements relating to the extent of activities requiring a permit had been integrated and transposed into domestic legislation, whilst in other situations decisions as to the extent of the activities requiring a permit were taken by a single authority. In this way the formulation of domestic legislation was used as an opportunity to overcome inconsistencies between Directives.

Question 1.3.2 - The different terms, definitions and descriptions used in Directives for identical activities

The different terms, definitions and descriptions used in Directives causes some problems and this has been dealt with in a number of ways. In some cases the differences have been addressed during the transposition into domestic legislation where a single term has been used, in some cases the regulators interpret the different terms as being clearly linked and in some cases a general term has been used in permits to eliminate problems of interpretation. The most common example of difficulty related to the terms 'installation', 'site' and 'operator'. It was felt by some respondents that the different terms would benefit from legal clarification and harmonisation and this would aid interpretation in the event of legal proceedings.

Question 1.4 - The effect of Article 7 of the IPPC Directive in improving co-ordination of permits and procedures

Most respondents stated that the requirement for co-ordination of permits and procedures had been set out in domestic legislation prior to the adoption of Article 7 of the IPPC Directive. The co-operation is achieved in a number of ways which includes statutory and non-statutory consultation amongst regulatory authorities and other relevant bodies, the production of guidance to applicants and regulators and the existence of a single regulatory authority in some cases.

Section 2: The environmental standard or objectives to be achieved under the permits

Key points:

- There are inconsistencies or overlaps with regard to the environmental standards or objectives to be applied, these are most notably between the IPPC Directive and WFD, LfD and LCPD;
- In general environmental standards are seen to be cumulative;

- There are some conflicts in Directives relating to environmental standards or objectives which are generally dealt with by the regulator as part of the consideration of BAT.

Question 2.1 - Conflicts or overlaps in environmental standards or objectives between Directives

There are inconsistencies as well as overlaps in some environmental standards or objectives. These are dealt with in a number of ways. Respondents generally stated that conflicts were dealt with by the competent authority on a case-by-case basis particularly during the determination of BAT. Where there were conflicts relating to standards a number of respondents applied the most restrictive standards in line with the precautionary principle. There was support for harmonisation of standards across Directives to address this issue.

The inter-relationship between the setting of standards and the determination of BAT was highlighted by one respondent. The respondent recognised the need for regulators to be well informed about the most modern techniques but felt that Operators often have the most up to date process knowledge. They recommended that this knowledge should be captured to provide a useful input into BREFs. They also felt that BAT should be specified in BREFs.

There were a number of specific examples of conflicts or overlaps between Directives notably between the IPPC Directive and the WID Directive, the WFD Directive, LCPD Directive, and to a lesser extent the Habitats Directive and the Water Framework Directive. For example one IMPEL member set out the following questions about the relationship between the IPPC Directive and LCPD and WID:

- Do the ELVs in the LCPD and WID reflect BAT as required in the IPPC Directive?
- With respect to the IPPC Directive, LCPD and WID which Directive takes precedence at a particular installation?
- How do 'general binding rules' relate to IPPC permits?
- What is the relationship between environmental quality standards and ELVs?

Another IMPEL member questioned the need for two different regulatory approaches one involving the requirement for BAT and one setting out ELVs as they felt this made it more difficult for regulators to ensure that all requirements had been taken into account. They felt that a single approach with generally standardised requirements consistent with the need to maintain a high level of environmental protection would solve this difficulty.

There can also be overlaps between the IPPC Directive and the Urban Waste Water Treatment Directive/ 91/271/EEG (UWWTD), for example if domestic water plus "industrial" waste water from, for example, one or more IPPC activities is treated together in one waste water treatment plant. The UWWTD can only be applied to urban wastewater. Industrial wastewater treatment plants do not fall under this directive.

Question 2.2 - The relationship between environmental standards or objectives between Directives

Respondents were asked whether, in cases where there were activities subject to more than one Directive, they considered the standards and requirements to be generally cumulative, have an order of precedence, or were mutually exclusive. The majority of respondents considered the standards and requirements to be generally cumulative although one respondent noted that there appeared to be a different relationship between the requirements of the IPPC Directive and the LfD and the justification for this difference was questioned. A small number of respondents stated that the environmental standards set out in the IPPC Directive were given precedence. No respondents indicated that the environmental standards and objectives in the Directives were seen to be mutually exclusive.

Question 2.3 - Regulatory difficulties resulting from the relationships between Directives

Respondents recognised that minimum standards are set in legislation and that BAT is applied on a case by case basis however there were some specific regulatory difficulties. For example, there are cases where the competent authority believes that the minimum standards do not correspond to BAT and this has been dealt with specifically in some domestic legislation. The main difficulty relates to the relationship between BAT and the Emission Limit Values (ELVs) which are fixed minimum standards set out in sectoral Directives. There are a number of interpretations and approaches to the relationship between BAT and ELVs. Some IMPEL members stated that they assume that where an ELV is set out in a sectoral Directive it represents BAT. However it was noted that some sectoral Directives are dated and have not been subject to review and this conflicts with one of the principles of the BAT approach which is that BAT is kept under review. IMPEL members suggested a number of approaches to reconciling the difficulties relating to the use of sectoral Directives:

- Undertake periodic review of sectoral Directives to take into account developments in technology and standards.
- Prepare guidance on the interpretation of sectoral Directives and their inter-relationship with other Directives.
- Integrate the requirements of sectoral Directives into the IPPC and possibly, if required into other Directives
- Review the need for ELVs and consider which sectors should be subject to an ELV based regime.

IMPEL members recognised, however, that whilst the above approaches could ease difficulties for regulators, each of the approaches above might involve significant regulatory effort and cost and this should also be taken into account in the IPPC review.

There is a specific difficulty relating to the timings set out in Article 1 and 14 of the LfD and those set out in Article 5 of the IPPC Directive, which was noted by a number of respondents. Additionally one respondent noted a particular discrepancy between the LCP and the IPPC Directives and WID with respect to combustion plant below 50MW which are not subject to the requirements of the LCPD but still fall under the WID if they burn waste. This was potentially seen to

have the effect of encouraging operators to burn pure fuel and the benefits of generating energy from waste could be lost.

One IMPEL member felt it would be useful to review the WFD to include the application of BAT.

Section 3: The permitting frameworks of different Directives

Key points:

- There are differing views on the use of 'general binding rules' but there was agreement that the environmental outcome is more important than the nature of the regulatory instrument.
- There are minor problems caused by inconsistent procedures set out in different Directives and there is support for more consistency in such procedures.

Question 3.1 - Permits vs 'general rules'

Opinion on the relative merits of permits and 'general binding rules' was fairly evenly divided. Some respondents did not support 'general binding rules' and felt that permits were a better instrument for ensuring environmental protection. On the other hand some respondents felt that for specific sectors, the use of 'general binding rules' should be extended as they provided a clear and uniform basis for regulation. There was a general agreement however that irrespective of the type of legal instrument the emphasis should be placed on the environmental outcomes achieved.

It was recognised generally that the definitions in the IPPC Directive mean that certain small installations are subject to the full requirements of the Directive. We discussed whether this was inadequate. Some participants agreed that the absence of '*de-minimis*' levels in the definitions of installations can cause difficulties and is inconsistent with some sectoral Directives e.g. SED and WFD. SED was used as an example where a proportionate approach had been taken into account and regulators found this useful. There are three possible options relating to the approach to low environmental impact installations. These are:

- Have no '*de-minimis*' levels i.e. all installations fall under the full requirements of the IPPC Directive
- Introduce '*de-minimis*' levels to exclude low environmental impact installations
- Allow legislators and regulators to exclude those installations which they determine to have a low environmental impact.

A number of IMPEL members stated that the approach to low impact installations should allow flexibility whilst maintaining clarity and, whilst regulators understood the importance of permitting, a hierarchical approach including the use of registration, general binding rules and permits could be used to achieve proportionality. Some IMPEL members took the view that if the installation does not present an environmental impact that warrants the granting of a permit to control that impact, the definitions in the IPPC Directive should exclude that type of installation. However if an installation meets the definitions in the IPPC Directive it should be subject to the permitting regime. One IMPEL

member noted that the EIA Directive requires a permit procedure to be carried out. Therefore all installations which fall under both the IPPC Directive and the EIA Directive should be subject to the permitting regime.

Inconsistencies such as the regulation of smaller or very low environmental impact installations should be taken into account during the IPPC Directive review with a view to ensuing consistency and proportionality of approach. This could be achieved by reviewing some IPPC thresholds.

One other particular point on proportionality related to the control of certain high risk activities which result in the discharge of dangerous substances to controlled waters and which, although they are subject to the Water Framework Directive, are outside the scope of the IPPC Directive.

Question 3.2 - Variations in provisions for permits and procedures between Directives

The need for unified permitting procedures was recognised and a number of Member States had addressed this issue when transposing the requirements of the Directives

The lack of consistency relating to issues such as methods of measurement, monitoring, calculation and presentation of monitoring results increases unnecessarily the administrative burden. Regulators may have to maintain a number of systems. Harmonisation and streamlining could reduce the burden of monitoring and reporting and would make the regime less burdensome for both the regulator and operator. There is also a need for regulators to ensure that application forms and guidance are kept under review in order to enable operators to submit all of the information to enable that regulators implement all of the relevant Directives.

Particular examples include interpretation of the LCPD and WID with respect to measurement methods, methodologies for calculations and the approach to time averaging. With respect to the IPPC Directive there is a requirement for public participation which is not required under WFD, differences in whether periodic reviews are required and their frequency and the provisions relating to 'changes' including an inconsistency between Directives in the definition of 'substantial change'.

Section 4: The permit holder

Key points:

- There are differences in the definition of the permit holder in different Directives;
- It can be difficult to identify who should be the permit holder in some instances;
- Clarification and justification as to why there are differences in the definition of the permit holder between Directives would be helpful.

Question 4.1 - Variations in the assignment and definition of the permit holder between Directives.

The terms 'operator' 'establishment' and 'undertaking' are used in the various Directives and these variations in the terms relating to the permit holder were recognised by a number of respondents. Some respondents reported finding difficulty in identifying who the responsibilities of permit should be assigned to. Some respondents reported that this had been addressed during the transposition of Directive requirements into domestic legislation by the use of a common single general term for example 'the operator' or 'the operator of an installation'. It was suggested that if the differences between Directives were necessary they should be clearly explained and justified.

Examples of this arose as a result of the increasing frequency with which large or complex sites are being split into parts and those parts are the responsibility of different operators. IMPEL members reported a number of administrative arrangements that had been put in place for dealing with such issues including:

- The granting of the permit to a single operator whilst ensuring the permit set out the arrangements relating to other operators and common services.
- The granting of separate permits following the determination of the applications from all operators at the same time.

The use of a consistent definition for key terms such as operator was addressed by some IMPEL members in domestic legislation. It was noted that there is an inconsistency in certain Directives in certain languages. In particular, the majority of Directives use the term 'operator' in the English translation whilst the WFD uses 'establishment' or 'undertaking' and this could be interpreted to mean that the WFD does not apply to individuals. Some IMPEL members stated that the terms used in the IPPC Directive and WFD which had been translated into their language did not use different terms. There is a codification exercise currently being undertaken which allows Member States the opportunity to identify transcription errors.

Section 5: Interfaces between IPPC and other Directives

Key points:

- There are overlaps in some of the requirements of the IPPC Directive and other Directives;
- Harmonisation of terms used in the Directives would be helpful;
- There are inconsistencies between some Directives in terms of which installations or parts of installations require to be permitted.

Question 5.1 - Regulatory difficulties relating to interfaces with other Directives

Many respondents reported no significant difficulties were caused by the interface between the IPPC Directive and other Directives however the majority did recognise that there were overlaps and some respondents had dealt with the overlaps during the transposition of the Directives into domestic legislation. There was a suggestion that it would be helpful to harmonise terminology such as 'substantial change' in the IPPC and EIA Directives. It would also be helpful

to harmonise the thresholds set in the annexes of these Directives.

It was also noted that there were inconsistencies in the scope of some Directives and in particular the differences between the scope of both the Greenhouse Gas Emissions Trading Directive and the Seveso Directive and other environmental directives was highlighted.

The relationship between the Greenhouse Gas Emissions Trading Directive and IPPC Directive caused problems for regulators. In particular, activities subject to the trading scheme need not be subject to emission limits under the IPPC Directive. Some regulators were concerned that the interface between IPPC Directive and the EU Emissions Trading Scheme (EUETS) particularly with respect to SO₂ and NO_x may diminish the scope of the IPPC Directive to limit these key pollutants. It was noted, however, that the general principle concerning energy efficiency in the IPPC Directive continued to apply.

A number of IMPEL members found difficulty with the interface with the Seveso Directive as the scope of the Seveso Directive is not confined to environmental protection but includes other things such as occupational safety and health.

One IMPEL member noted that there are different definitions for 'biomass' in the EUETS and WID which can cause difficulties.

There were also concerns about the interface of IPPC Directive with the Water Framework Directive. In particular, the Water Framework Directive requires that emissions of certain substances should be limited to an extent that results in the achievement of a 'good environmental state' and that this may go beyond BAT. Additionally one IMPEL member stated that separate regulatory arrangements were required under the Water Framework Directive with regard to water storage and impoundment works because IPPC permits are concerned with discharges to controlled waters and not water storage.

IMPEL members did not report any difficulties in the interface with the Environmental Liability Directive.

Section 6: Other relevant information and reports

Key points:

- There was little information provided on other initiatives concerning the regulatory impacts resulting from the IPPC Directive and other Directives.

Question 6.1 - Other initiatives concerning the regulatory impacts resulting from the IPPC Directive and other Directives

Initiatives that were identified as being relevant to this project were the Better Regulation Initiative, the work of the IPPC expert group and the IPPC Review. It was noted that there had been a separate IMPEL report on the Interrelationship between the IPPC, EIA and SEVESO Directives and the EMAS Regulation.

4. CONCLUSIONS

Introduction

EU environmental legislation is of significant benefit to improving integrated environmental protection. This project aimed to identify regulatory concerns relating to activities requiring permits under the IPPC Directive and other Directives with a view to identifying areas where there could be an advantage in streamlining the requirements in the various Directives and addressing inconsistencies and overlaps between Directives.

The benefits of harmonising such inconsistencies and overlaps are seen to be twofold:

- It would allow operators a clearer and more consistent understanding of the requirements of the IPPC Directive in conjunction with the requirements in other Directives; and
- It would simplify the regulatory process as the interpretation and application of the IPPC Directive requirements would be harmonised and more transparent, enhancing the possibilities for strict implementation and enforcement of the legislation.

This streamlining and simplification would be of great benefit in the regulation of complex sites where several activities take place which are required to comply with the IPPC Directive and a number of other Directives.

The following conclusions are based on discussions at the project meeting, following consideration of the questionnaire responses.

The review of the IPPC Directive

The review of the IPPC Directive provides a valuable opportunity for IMPEL Members to contribute information on areas of the implementation of the IPPC Directive which cause regulatory difficulty.

The information contained in this report is based on the practical implementation of the IPPC Directive to installations. This report provides valuable feedback on areas where the drafting of the IPPC Directive has a real impact on the day to day administration of the permitting regime. The feedback also refers to structural changes that continuously take place within industry and impact on the permitting regime. These structural changes call for additional provisions in the IPPC review for example the increased occurrence of multi-operator installations.

Harmonisation

IMPEL Members would find the implementation of the IPPC Directive more straightforward if there was a greater degree of harmonisation between the IPPC Directive and other Directives. The review of the IPPC Directive should

take into account the need for harmonisation of a number of aspects of the IPPC Directive.

Key definitions should be harmonised across all Directives wherever possible. This would improve the efficiency and transparency of the regime for both regulators and operators. Definitions should be clear and unambiguous especially where they define the scope (for example the definition of installation) or they define responsibilities (for example the definition of operator). Whilst some inconsistencies have been smoothed out during the transposition in domestic legislation there are advantages to be gained if key definitions are harmonised.

The harmonisation of approaches between IPPC Directive and other Directives including sectoral Directive should be considered. The existence of two general approaches, one involving the setting of fixed minimum standards and one using a case-by-case BAT approach can cause conflict. Whilst it is recognised that each approach has its merits and either approach may be the most appropriate in given circumstances, the interpretation, application and relationship between the two approaches should be more transparent.

The prescription of administrative arrangements in Directives has resulted in a range of administrative requirements which differ from Directive to Directive. This adds to the administrative burdens of the legislators of the MS, of the permitting and inspection capacities of the Competent Authorities and on the industry. Harmonised and streamlined administrative arrangements should be developed which would reduce the burden on regulators and operators by increasing efficiency and transparency.

Consistency

IMPEL Members are aware of a number of inconsistencies between the IPPC Directive and other Directives and the review of the IPPC Directive provides an opportunity to consider addressing such inconsistencies.

The report has identified a number of areas where there are inconsistent overlaps between IPPC Directive and other Directives in particular sectoral Directives. Consistency in areas such as measurement, calculation methodologies, monitoring and reporting requirements would simplify the requirements of the Directives and would allow regulators and operators to minimise the number of different systems needed.

Additionally consistency in the use of environmental standards would aid the interface between the IPPC Directive and other Directives. Whilst it may in the end prove not be possible to have one single approach to environmental standards, effort should be made to ensure the effects of the approaches taken are consistent.

The efforts to improve the consistency in the different language versions of the IPPC Directive have to a certain degree been successful but in other cases they have created difficulties. As a result some IMPEL members were unaware that there were differences in detail in the Directive resulting from the translation process. The current codification exercise provides a timely opportunity to

rectify any transcription errors and notification of transcription errors to inform the codification exercise should be encouraged.

Flexibility

A key attribute for regulators in implementing the IPPC Directive is flexibility. The current IPPC Directive allows regulators the ability to grant single integrated permits which is a benefit both to the regulators and the operators.

The continuous changes in the structure of industries has resulted in a number of sites to be divided and operated by different operators. This shows that there is need for flexibility in the IPPC Directive to accommodate these changes more smoothly. This is of particular importance where common services e.g. a waste water treatment plant are shared by a number of operators.

Scope

The review of the IPPC Directive should take into account regulators views relating to the inclusion of small installations or installations with low potential environmental impact in the definition of installations. In some cases the regulatory effort to grant permits to such installations may not be proportional to their potential environmental impact and these installations should be regulated through a regulatory tool other than the IPPC Directive.

Some regulators found that the use of 'general rules' eased the regulatory burden for certain installations and could contribute to demonstrating a proportional approach.

Overlaps and inconsistencies in the scope of Directives concerns regulators as this means that the regulatory role is more complex and potentially less transparent to the operator.

The interface between the IPPC Directive and the EU ETS concerned regulators, in particular if in the future key pollutants such as SO₂ and NO_x could fall under emissions trading schemes such as the EU ETS. This could diminish the scope and effectiveness of the IPPC Directive to reduce the mass emission of these pollutants and limit the local impacts.

Cost and regulatory effort

Whilst regulators recognise that there are areas where the Directives could be more consistent, this may result in the need for increased legislative efforts by the Member State and regulatory efforts by the Competent Authorities. This could impact on the cost to implement these changes. The practical aspects of implementation, including costs, of such changes should be borne in mind by the IPPC review team during the review.

APPENDIX 1 - PROJECT TERMS OF REFERENCE

No	Name of project
	Interrelationship of IPPC Directive with other Directives.

1. Scope

<p>1.1. Background</p>	<p>The IPPC Directive does not sit in isolation. It has a complex interrelationship with a number of other Directives including the Environmental Liability, EIA, Habitats, Large Combustion Plant, Waste Incineration and the Air, Water and Waste Framework and Daughter Directives as well as with certain Community Regulations, such as the animal by-products and the TFS regulations.</p> <p>The EU Commission is proposing to review the IPPC Directive. As part of this process, five contracts are in the process of being let to review aspects of the Directive. These include contracts on "Regulatory Streamlining"⁷ and going "Beyond Regulatory Compliance"⁸. The Commission's review of the Directive is due to be completed in 2007 with the tabling of a possible legislative proposal.</p>
<p>1.2. Link to MAWP and IMPEL's role and scope</p>	<p>The Better Legislation Cluster fiche identifies a role for IMPEL to work with the Commission to consider, identify and prioritise those areas of the EU legislative work programme where IMPEL can make a useful contribution. It is understood that one of the main objectives of the Commission's IPPC review is to examine options for legislative streamlining with a view to contributing to the better legislation and simplification initiatives.</p>
<p>1.3. Objective (s)</p>	<p>To identify and summarise areas of concern relating to implementation and enforcement of the IPPC Directive arising from its interface with other horizontal and sectoral EU legislative instruments.</p> <p>The output will provide a contribution to the Commission's review of the IPPC Directive, both directly and via IMPEL members' interactions with national authorities who will also provide input to the review. Moreover, it may provide a good analysis for both the Commission and Member States in relation to implementation of the environmental acquis associated with industrial regulation. This work has to be finished quickly to align with the Commission's proposed streamlining study on how the IPPC Directive interacts with other EU legislation, and to provide an initial scoping as the basis for any more detailed subsequent work of IMPEL on this subject as part of its input to the review.</p>

⁷ The full title is "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"

⁸ The full title is "Beyond regulatory compliance: Incentives to improve the environmental performance of IPPC installations"

<p>1.4. Definition</p>	<p>The project concerns the identification and collation of existing regulatory concerns within IMPEL arising from the horizontal and vertical interface of EU legislative instruments with the IPPC Directive. The project will describe the concerns raised (in terms of the precise nature of the legislative interactions) and their main consequences for regulators and the regulated. The sort of interactions it will look at will include, for example, scope, definitions, timing, administrative requirements, standards and monitoring/reporting. Where practicable, the project will suggest possible options for simplification and/or clarification.</p> <p>It will be undertaken through the use of a questionnaire and by holding a single workshop. The questionnaire will comprise a request to IMPEL members to identify and explain any areas where the interface between the IPPC Directive and other EU instruments is seen as causing difficulties. The collated responses will be discussed at a workshop in late January.</p>
<p>1.5. Product(s)</p>	<p>A concise report summarising the output from the workshop will be produced. It will inform the IMPEL network and the IPPC Review team within the Commission of concerns relating to implementation and enforcement of the IPPC Directive arising from its interaction with other legislation, and will identify areas where further, more specific assessment might be undertaken. This will allow IMPEL to contribute to the Commission's streamlining study and other aspects of the IPPC review on a more informed basis.</p> <p>For each concern raised the report will set out:</p> <ul style="list-style-type: none"> • The other legislation involved • The specific details of the interaction of the IPPC Directive with the other legislation (i.e. Article references and description of any resulting uncertainty, conflict, inconsistency, etc.) • The main consequences and affected parties • Any compounding factors (e.g. is part of the problem due to how a Directive has been implemented in a particular case, rather than just the EU legislation alone) • Any options identified for simplification/clarification • An indication of the significance of the issue (e.g. high, medium, low) – taking account of the consequences and also whether an issue is only seen as a concern in one MS or is more universally acknowledged to be problematic.

APPENDIX II - PARTICIPANTS IN THE PROJECT

Paul Bernaert	Belgium
Bohuslav Besuch	Slovak Inspectorate of Environment
Frank Clinton	Ireland
Caspar Cordon	Entec, Consultant to the EC
Chris Dekkers	The Netherlands
Neil Emmott	European Commission
Julia Farthing	Environment Agency (England and Wales)
Gabriela Isac	Romania
Andrea Jungwirth	Federal Ministry for Economic Affairs and Labour, Austria
Malgorzata Kolodziej-Nowakowska	Poland
Helena Konecna	Ministry of the Environment, Czech Republic
Keir McAndrew	Scottish Environment Protection Agency
Duncan Mitchell	Environment Agency (England and Wales)
Guy Mottard	France
Martin Murray	Environment Agency (England and Wales)
Martin Quinn	Environment Agency (England and Wales)
Nadja Salzborn	Germany
Terry Shears	Environment Agency (England and Wales)
Bruno Simplicio	Portugal
Tereza Ticha	Ministry of the Environment, Czech Republic
Julie Tooley	Enviros Consulting Ltd, Consultant to the Environment Agency (England and Wales)

APPENDIX III - BLANK QUESTIONNAIRE USED TO OBTAIN VIEWS FROM IMPEL MEMBERS

IMPEL BETTER LEGISLATION CLUSTER

PROJECT ON THE INTERRELATIONSHIP OF the IPPC Directive WITH OTHER DIRECTIVES

QUESTIONNAIRE

Introduction

There are overlaps between the activities requiring permits under the IPPC⁹ (the IPPC Directive) and the following other Directives: Waste Incineration¹⁰ (“WID”), Waste Framework¹¹ (“WFD”), Solvent Emissions¹² (“SED”), Landfill¹³ (“LfD”) and Large Combustion Plant¹⁴ (“LCPD”) Directives. (These overlaps are illustrated on the attached diagram.) The following questions are designed to explore the extent and nature of these overlaps and the regulatory impacts that may result, as experienced by members of the IMPEL network.

There are also interfaces between the IPPC Directive and a number of other Directives, as identified by the Commission in its “Streamlining Legislation” study¹⁵; and the final question in this questionnaire is designed to explore the experiences of members of the Cluster, relating to these other interfaces.

Background

As a background to your answers below, can you give a brief description of the respective legal system for the environmental regulation of industrial installations via permits, in your Member State?

⁹ 96/61/EC

¹⁰ 2000/76/EC

¹¹ 75/442/EEC as amended by 91/156/EEC

¹² 1999/13/EC

¹³ 1999/31/EC

¹⁴ 2001/80/EC

¹⁵ See the Technical Annex to the Commission study: “Assessment of options to streamline legislation on industrial emissions and analysis of the interaction between the IPPC Directive and possible emission trading schemes for NO_x and SO₂”.

Section 1. The identity and scope of the activities requiring a permit¹⁶?

Question 1.1. Where there are activities subject to more than one of the above Directives, how many permits are required as a result of EU law is the operator required to hold in your member state?

Example: an incineration plant may be subject to the requirements of the WFD, WID and the IPPC Directive. Does it require one, two or three permits in your member state?

Question 1.2 Describe any particular problems that arise as a result of the number of permits required under EU law?

Example: if three permits are required for an incineration plant, why is this so, does it cause additional regulatory burden for the operator and regulator and how are overlaps and inconsistencies avoided? If only one permit is needed, do any problems arise in trying to ensure that it delivers the requirements of all three Directives?

Question 1.3.1. The extent of the activities that require a permit is described in different ways according to each Directive. Did particular difficulties arise when the Directives were implemented? Describe any particular problems and your national solutions.

Example: A co-incinerator may be subject to WFD, WID, LCPD and the IPPC Directive but the extent of the operation requiring a permit may differ under each Directive.

¹⁶ Permits for IPPC activities may include conditions based on general binding rules instead of individual permit conditions (see art 9.8 of the IPPC Directive).

Question 1.3.2. The Directives do use different terms for what seem to be the same things/matters. Describe any particular problems that arise out of the different ways in which the Directives describe the activities that require a permit.

Example: the term “combustion plant” is used in the LCPD; “incineration plant” is used in WID; “waste disposal operation” is used in WFD; “landfill” is used in LfD and “installation” in the IPPC Directive.

Question 1.4. Has the implementation of Article 7 of the IPPC Directive led to a better coordination of permits and procedures?

Section 2. The environmental standards / objectives to be achieved under the permits

Question 2.1. Where there are activities subject to more than one Directive, have you found there to be any conflicts or overlaps between the environmental standards / objectives required by the Directives to be delivered through the permit?

Example: the principal standard required of operators under the IPPC Directive permits is that they use “best available techniques” (“BAT”) to avoid pollution; under WFD permits it is that their operations do not cause risk to water, air, soil, plants and animals; nuisance through noise or odour; or adverse effects on the countryside or places of special interest. Where both standards apply, does this cause any regulatory difficulties?

Question 2.2. Where there are activities subject to more than one Directive, do you consider the standards and requirements of each to be:

- a) generally cumulative;
- b) sometimes there is an order of precedence; or
- c) mutually exclusive ?

and where the answer to this question varies depending on the particular Directives, do you think these variations are justified ?

Examples: in a case where both the IPPC Directive and WFD apply, do you consider the IPPC Directive BAT requirement to take precedence over the WFD objectives; that they both apply equally; or that only one applies? The relationships between IPPC and WID on the one hand, and the IPPC Directive and the LfD, on the other, appear to be slightly different – are the relationships between these Directives clear to you and do you think there is an environmental basis for the different approaches?

Question 2.3. Describe any regulatory difficulties or uncertainties that you face as a result of the relationships between the Directives.

Example: There may be problems with the relationship between BAT under the IPPC Directive and fixed (minimum) standards under e.g WID. For example, if burning wastes significantly reduces emissions, then it may be BAT. However, if from 28 December 2005 (the deadline for WID implementation) having to comply with WID means burning waste is considerably more costly, then it may no longer be BAT.

Section 3. The permitting frameworks of different Directives

Question 3.1. the IPPC Directive; LCPD; SED and WID each require the activities within their scope to be subject to a permit. In contrast, the WFD allows activities which can, in the opinion of the competent authority, be conducted with a similar level of protection of the environment by way of “general rules”, to be subject only to registration with the competent authority. Do you consider there would be any benefits in aligning the approach between the Directives, for example by extending the availability of alternatives to the requirement for a permit as within the WFD? If so, what alternatives to the permit requirement do you think would be useful and what might be their advantages and disadvantages?

Example: a small hazardous waste storage facility is an activity subject to the IPPC Directive and requiring a permit; a large lead acid battery recovery process is an activity under the WFD but may be subject only to general rules and registration. The environmental impact of the battery recovery works is considerably greater than that of the storage facility. Do you consider there would be any regulatory benefit in addressing this apparent anomaly where the seemingly less environmentally risky process is subject to a higher level of regulation?

Question 3.2. The Directives referred to include varying provisions as respects:

- the content of applications for permits;
- the procedure for determination of permits including public participation in that procedure;
- the content of the permit;
- the ways in which changes to operations are dealt with under permit;
- reviews of permits; and
- reporting, monitoring and enforcement of permits

Do these procedural differences between the requirements of the different Directives cause you any regulatory difficulties and if so of what kind?

Example: the differing public participation requirements across the Directives may cause difficulties in the permitting process.

Section 4. The person who requires a permit

Question 4.1 The requirement under the various Directives to hold a permit for a specified activity applies to different types of person / organisation, depending on the Directive.

Does this cause any regulatory difficulty either in legislation or in administration?

Example: under most of the Directives the requirement to hold a permit applies to the “operator” but the definitions of this person differ and the WFD requirement applies instead to “establishments and undertakings”.

Section 5. Interfaces between IPPC and other Directives.

Question 5.1 The IPPC Directive also has interfaces with a number of other Directives, for example: the Greenhouse Gas Emissions Trading¹⁷; Public Participation¹⁸; Environmental Impact Assessment¹⁹ (“EIA”); Seveso II²⁰ and Water Framework²¹ Directives. Describe any particular regulatory difficulties you have experienced relating to any of these interfaces or any others that have troubled you.

Example: both the IPPC and EIA Directives contain requirements relating to environmental assessment and public participation in environmental decision making.

Have these overlapping requirements caused you any regulatory difficulty either in legislation or in administration?

Section 6: Other relevant information and reports

Question 6.1. Our attention has been drawn to a questionnaire and background paper from the conference in Dresden in September “On the road to Sustainable Production in the enlarged EU – Integrated Pollution

¹⁷ 2003/87/EC

¹⁸ 2003/35/EC

¹⁹ 85/337/EEC

²⁰ 96/82/EC

²¹ 2000/60/EC

Prevention and Control (IPPC),” a copy of which has been attached for information. These papers examine the interactions of the IPPC Directive with other Directives and include a summary of the responses from participating countries. If you are aware of other initiatives concerning the regulatory impacts that may result from the interface of the IPPC Directive with other Directives, please provide details.

