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EUROPEAN COMMISSION

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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

**Council's position at first reading on the adoption of a Directive of the European
Parliament and of the Council on industrial emissions (integrated pollution prevention
and control) (Recast)**

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1. BACKGROUND

Date of transmission of the proposal to the EP and the Council (document COM(2007)844 final — 2007/0286 COD): 21 December 2007

Date of the opinion of the European Economic and Social Committee: 14 January 2009

Date of the opinion of the Committee of the Regions: 9 October 2008

Date of the opinion of the European Parliament, first reading: 10 March 2009

Date of adoption of the Council's position at first reading (unanimity): 15 February 2010

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The aim of the proposal is to improve the effectiveness and efficiency of the current legislation relating to the prevention and control of industrial emissions by achieving a high level of environmental protection, reducing unnecessary administrative burdens and minimising distortion of competition within the EU.

3. COMMENTS ON THE COUNCIL'S POSITION AT FIRST READING

3.1. General comments

The European Parliament gave its opinion at first reading on 10 March 2009. The Commission accepted in full, in part or in principle 47 of the 85 amendments adopted by Parliament in its first reading. 32 of these 47 amendments are reflected, at least in part, in the Council's position at first reading.

The Commission accepted amendments, either fully or in principle or in part, which would clarify the context of the proposal and are consistent with the general objective of the proposal. These include changes to improve the provision of information to the public in line with the approach taken in the Commission's proposal to increase transparency in permitting,

enforcement and compliance.

The Commission rejected amendments which would alter the nature of the proposal, such as amendments that would reduce the scope of the provisions setting minimum requirements for large combustion plants. It also rejected amendments that would create legal confusion, would lead to difficulties in implementation or would be inconsistent with the core elements of the proposal.

3.2. Detailed comments

3.2.1. Parliamentary amendments accepted by the Commission and incorporated in full, in part or in principle in the Council's position at first reading

Thirty-two amendments (**7, 12, 13, 14, 16, 18, 19, 21, 27, 34, 35, 36, 37, 40, 44, 49, 50, 51, 52, 53, 54, 55, 59, 64, 65, 66, 68, 71, 72, 73, 75** and **79**) have been incorporated to varying degrees in the Council's position at first reading.

Amendment **7** adds a useful reference to the Aarhus Convention. Amendment **12** is acceptable in principle as it provides a clarification of the meaning of 'emission levels associated with the best available techniques'. Amendment **13** is incorporated as it clarifies the definition of 'public concerned'. Amendment **14** is partly acceptable to the extent that it clarifies the definition of 'emerging techniques'. Amendment **16** concerns the inclusion of a definition of 'environmental inspection'. Amendments **18** and **19** clarify the provisions on the permitting of several installations or operators. Amendment **21** is acceptable in principle as it clarifies the provisions on the breach of permit conditions. Amendments **27** and **55** are acceptable in part and in principle to the extent that they clarify the organisation of the information exchange on BAT. Amendments **34** and **35** simplify the provisions relating to the use of general binding rules. Amendment **36** improves the provision of information to the public on the developments in BAT. Amendment **37** clarifies the provisions on the reconsideration of permit conditions. Amendment **40** is acceptable in part to the extent that it makes a link to other appropriate Community legislation. Amendment **44** is acceptable in part in relation to the principle of setting minimum frequencies for inspections but the proposed frequency is rejected. Amendments **49** and **50** ensure consistency with the obligations under the Aarhus Convention. Amendments **51, 52, 53** and **54** clarify the information to be made available to the public. Amendment **59** concerns the reporting by Member States to the Commission on the setting of emission limit values. Amendment **64** is acceptable in principle to the extent that it clarifies the scope in relation to non-ferrous metal foundries. Amendment **65** includes a useful reference to co-incineration in the scope (Annex I). Amendments **66** and **68** are acceptable in principle to the extent that they provide greater legal clarity on the scope of the proposal regarding certain waste management activities. Amendments **71, 72, 73** and **75** are acceptable in part and in principle to the extent that they improve consistency for the derogations granted for combustion plants operating a limited number of hours or used for emergency purposes while not weakening the requirements of the current legislation. Amendment **79** is acceptable in part as it reintroduces the provisions on monitoring of dioxins in the current legislation.

3.2.2. Parliamentary amendments rejected by the Commission but incorporated in full, in part or in principle in the Council's position at first reading

Twelve amendments (**15, 22, 23, 29, 31, 32, 33, 41, 47, 93** (same as **115**), **97** and **117**) were rejected by the Commission but have been incorporated in full, in part or in principle in the Council's position at first reading.

Amendment **15** was rejected by the Commission as it failed to add clarity to the proposal. This amendment is partially included in the Council's position at first reading with regard to the definition of 'baseline report' and this inclusion can be accepted as a clarification of the definition.

Amendments **22, 23, 29** and **41** on soil protection were rejected by the Commission as they were either inconsistent with the Commission's proposal or failed to add clarity to the text. These amendments are included in part and in principle in the Council's position at first reading to the extent that they clarify the soil protection measures provided for in the proposal and are, therefore, acceptable. Amendment **33** on the monitoring of soil and groundwater monitoring was rejected by the Commission as it provides a lower level of environmental protection but is incorporated in the Council's position at first reading in full.

Amendment **31** on the setting of emission limit values was rejected by the Commission on the basis of it being inconsistent with one of the core principles of the Commission's proposal, significantly weakening the level of environmental protection. The amendment is incorporated in part and in principle with regard to the requirements to ensure that emission levels associated with BAT are not exceeded, so that the amendment can be accepted. The Commission rejected amendment **32** as the proposed changes were inconsistent with the rest of the text of the proposal. However, it is included in principle in the Council's position at first reading with regard to the information of the public on the deviation from the emission levels associated with BAT and is consequently acceptable.

The Council's position at first reading includes the deletion of the requirements for public participation in the adoption of general binding rules as proposed in amendment **47**. Amendment **93** (same as **115**) on the coverage of intensive livestock rearing of poultry was rejected by the Commission as it would lower the level of environmental protection provided by the proposal but is incorporated in full in the Council's position at first reading. Amendment **117** on the scope for ceramics activities was rejected by the Commission as it would reduce the scope of the legislation when compared to the status quo, but has been included in part in the Council's position at first reading in a manner that is acceptable to the Commission. The Commission rejected amendment **97** concerning an increase of the limit values for NO_x emissions for certain large combustion plants as this would lower the environmental ambition of the proposal but this has been included in principle in the Council's position at first reading in a way that is acceptable.

3.2.3. Parliamentary amendments accepted in full, in part or in principle by the Commission but not incorporated in the Council's position at first reading

Fifteen amendments (**1, 5, 6, 8, 20, 42, 43, 46, 48, 56, 58, 60, 61, 62** and **69**) were accepted in full, in part or in principle by the Commission but not incorporated in the Council's position at first reading. These amendments relate to language in the recitals, reporting on compliance, informing the competent authority following the cessation of activities, inspection reporting, definition of the public concerned, emerging techniques, monitoring, provision of information

to the public, amendment of Annexes, establishment of new additional minimum requirements through regulatory committee procedure and establishment of guidance concerning intensive rearing of poultry.

3.2.4. Parliamentary amendments rejected by the Commission and the Council and not incorporated in the Council's position at first reading

Twenty-six amendments (2, 3, 4, 9, 10, 11, 17, 24, 25, 26, 28, 30, 38, 39, 45, 57, 63, 67, 70, 76, 77, 78, 80, 114, 129 and 133) were rejected by both institutions.

Amendments 2, 3, 4, 9, 10 and 11 are rejected by both institutions since they are inconsistent with the purpose of recitals. Amendment 17 on a definition of 'general binding rules' is rejected by both institutions as it does not bring clarification or added value. Amendments 24, 25 and 26 relating to the content of permit applications, amendment 28 on permit conditions for soil protection, amendment 30 on the determination of BAT and amendments 38 and 39 on permit reconsideration were rejected by both institutions as they are redundant or would create legal confusion in implementation. Amendment 114 on the spreading of manure is inconsistent with the Council's position at first reading and is consequently rejected by both institutions. Amendment 45 on non-routine inspections is unclear and would lead to difficulties in implementation and is therefore rejected by both institutions. Amendment 57 is rejected by both institutions as it would limit the applicability of the provision on the extension of combustion plants. Regarding the scope of Chapter II of the proposal (Annex I), amendments 63, 67, 70 and 129 are rejected by both institutions as they are inconsistent with the Council's position at first reading. Amendment 133 is rejected by both institutions as it would exclude certain combustion plants from the scope of the existing legislation. Amendment 76 is rejected by both institutions as it would extend the scope of monitoring of CO emissions to combustion plants for which no emission limit values are set. Amendment 77 is rejected by both institutions as it would change the compliance regime for combustion plants. Amendments 78 and 80 relating to the derogations for monitoring of emissions for waste incineration plants are rejected by both institutions as they are inconsistent with the Commission's proposal and the Council's position at first reading.

3.2.5. Changes made by the Council to the proposal

The Council proposed the following main changes to the Commission's proposal:

Information exchange on Best Available Techniques (BAT). The Council's position at first reading maintains the principle and content of the information exchange proposed by the Commission but adds provisions on the role of the forum while providing more details on the drawing up process and content of the BAT reference documents. The Commission agrees with the inclusion of these additional provisions, which are consistent with the current BAT reference document drawing up process. However, the Commission regrets that the Council's position at first reading provides for the adoption of non-binding guidance in relation to Article 13(3)(c) and (d) via regulatory committee procedure since the Commission has its own autonomous right under the Treaty to do so. The provision of the Council's position at first reading cannot affect this right (see declaration in the Annex to this Communication).

Procedure for adopting BAT conclusions. The Council's position at first reading provides under Article 13(5) for the adoption of the BAT conclusions (parts of the BAT reference documents laying down in particular the BAT-associated emission levels) via a regulatory procedure (Article 291 TFUE). However, in the Council political agreement, the regulatory

procedure with scrutiny had been proposed. The Commission does not share the views of the Council that Article 291 TFEU is the most appropriate legal basis for the adoption of the measures foreseen in Articles 13(5). Those measures are of general application and seek to supplement the basic act with certain new non-essential elements. As a result, their adoption should fall under the procedure of delegated acts (Article 290 TFEU) (see declaration in the Annex to this Communication).

The Commission also notes that the changes introduced by the Council will require additional tasks to be carried out by the Commission, increasing the resources to be allocated by the Commission for the procedure for drawing up and adopting the BAT reference documents.

Emission limit values in relation to emission levels associated with the BAT. Article 15(3) of the Council's position at first reading provides greater flexibility for competent authorities to set emission limit values while ensuring that emissions do not exceed the emission levels associated with the BAT as described in the BAT conclusions. The Commission regrets these changes but can accept this approach since the necessary safeguards have been introduced through monitoring and reporting requirements to ensure compliance with the expected environmental objectives. The derogation, in specific cases, from the application of Article 15(3) based on certain criteria is maintained but the Commission regrets that the possibility to specify these criteria through regulatory committee procedure is replaced by the establishment of guidance. However, in order to reach an agreement, the Commission can accept this approach.

Assessment of powers to be conferred on the Commission in relation to Article 41 (rules for combustion plants) and Article 48(5) (monitoring of certain emissions from waste incineration plants). The Commission does not share the views of the Council that Article 291 TFEU is the most appropriate legal basis for the adoption of the measures foreseen in Articles 41 and 48(5). Those measures are of general application and seek to supplement the basic act with certain new non-essential elements. As a result, their adoption should fall under the procedure of delegated acts (Article 290 TFEU) (see declaration in the Annex to this Communication).

Reconsideration of permits. The Council's position at first reading maintains the proposed obligation for competent authorities to reconsider and, where necessary, update permit conditions after the publication of a decision on BAT conclusions. However, the Council's position at first reading extends the time period from four to five years after such publication. The Commission regrets this change but can accept it since the time extension is limited and the actual frequency of permit reconsideration will remain unchanged.

Soil protection. The Council's position at first reading contains additional requirements on the prevention of soil and groundwater contamination to be included in permit conditions. The approach of setting minimum frequencies for the monitoring of soil and groundwater is retained but less frequent monitoring may be set by competent authorities based on a systematic appraisal of the risk of contamination. The Council's position at first reading maintains the provisions relating to the establishment of baseline reports and the requirements upon cessation of activities while introducing some flexibility for implementation of the provisions. While the Commission would prefer its original proposal, the changes are considered acceptable since they do not jeopardise the key principles of the proposal.

Inspections. The Council's position at first reading retains the approach of the proposal with the following main changes. The determination of the period between two site visits to an

installation has to be set on the basis of a systematic appraisal of the environmental risks (in the proposal, the appraisal of the risks was required only to derogate from the obligation of an annual site visit). This period cannot be longer than one or three years for installations posing respectively the highest and the lowest risks. The Commission considers that this requirement is useful as it provides safeguards for the setting of frequency for site visits. Although the Commission regrets the removal of the regulatory committee procedure for setting the criteria on the appraisal of the risks, it considers that the criteria laid down in the Council's position at first reading are appropriate.

Start date for new large combustion plants. The Council's position at first reading brings forward the date of application of the standards for new large combustion plants from 2016 to two years after the date of entry into force of the Directive. The Commission agrees with this date since the new standards have been considered BAT for new plants since 2006 and these plants can technically and economically comply with these new limits.

Temporary flexibilities for existing large combustion plants. The Council's position at first reading introduces the following temporary flexibilities:

- While the date of entry into effect of the revised emission limit values remains 1 January 2016, Member States may implement until the end of 2020 a transitional national plan on condition that the total emissions of the plants covered by the plan do not exceed annual ceilings decreasing in a straight line between 2016 and 2019. From 2019 the ceiling remains the same until the end of 2020.
- Possible exemption from compliance with the revised emission limit values for the following types of plants: until the end of 2023, for plants with a limited lifetime (not more than 20000 operating hours); until the end of 2019, for plants being part of small isolated systems; until the end of 2023, for district heating plants fulfilling certain specific conditions.

While the Commission would prefer these derogations not to be included, it can accept these provisions introduced to reach an agreement since the derogations are transitional and the environmental integrity of the proposal is maintained while facilitating Member States' efforts to bring large combustion plants into line with BAT as soon as possible.

Specific requirements for certain large combustion plants. The Council's position at first reading lays down different emission limit values for plants operating a limited number of hours (not more than 1500 hours annually) and introduces minimum desulphurisation rates for plants which are not able to meet the emission limit values for SO₂, even when BAT is applied, due to the specific characteristic of the indigenous solid fuels being used. The Commission considers that these provisions are useful and justified to address the specific technical issues raised while maintaining the environmental integrity of the proposal.

Aggregation rules for combustion plants. The Council's position at first reading introduces a 'de minimis' threshold of 15 MW for the application of the aggregation rules. As a result, small individual units will be excluded from the determination of the total capacity of a combustion plant composed of several units discharging through a common stack. The Commission regrets that the Council is thus weakening the application of the aggregation rules but can accept a 'de minimis' threshold of 15 MW since it would concern small plants with limited environmental impacts.

Review clause for certain large combustion plants. The Council's position at first reading introduces a clause for the Commission to review the need to amend and establish limit values for certain specific combustion plants which are not subject to minimum standards or for which the minimum requirements of the current legislation could not be revised due to the lack of updated information on BAT and, if appropriate, to make a legislative proposal by the end of 2013. The Commission supports this review clause since the outcome of the revision of the relevant BAT reference documents could be taken into account as part of the review process.

Scope. The Commission proposed to extend the scope of the current legislation in relation to certain activities. The Council's position at first reading does not include the proposed extension in relation to the combustion of fuels in installations with a total thermal input between 20 and 50 MW and to intensive livestock rearing. Furthermore, the Council's position at first reading modifies the proposed scope with regard to waste management activities and the manufacturing of ceramic products. The Council's position at first reading also removes the proposed requirement for the spreading of manure to be based on BAT. While the Commission would prefer its original proposal for the extension of the scope and its proposed provision on manure management, the changes are acceptable in view of the introduction of a review clause on these specific issues.

Trading in NO_x and SO₂ emissions. The Council's position at first reading introduces a recital on the exploration of the possibilities for market-based instruments such as trading in NO_x and SO₂ emissions. This reflects the assessment being undertaken by the Commission without prejudging its outcome.

Exercise of the delegation and objection to delegated acts (Articles 76 and 78). In line with its Communication on the implementation of Article 290 TFEU¹ and based on the analysis of the specific measures foreseen in the Council position, and given also the right of revocation foreseen in the Presidency text, the Commission favours the delegation of powers for an indeterminate period of time but can accept the approach of the Council (5-year period with tacit renewal). Furthermore, the Commission regrets that the Council's position at first reading introduces a time limit of three months for the Council and the European Parliament to object to the delegated act. The Commission favours a time limit of two months which can be extended by one month on the initiative of the European Parliament or the Council. This would help to increase the efficiency of the procedures without undermining the principle of a total period of three months.

Consultation of experts in the preparatory work for the adoption of delegated acts (Recital 39).

The Commission does not support the recital on the consultation of experts in the preparatory phase of delegated acts. The Commission considers that expert groups cannot have a formal institutional role. Therefore provisions as regards the involvement of experts in the preparation of delegated acts cannot be included in the basic acts. In this regard the Commission refers to its Communication of 9 December 2009.

¹ COM(2009)673 final

4. CONCLUSION

The changes introduced by the Council are acceptable, since they are consistent and build upon the Commission's proposal, except certain assessments made by the Council regarding the conferral of powers on the Commission, as provided by Articles 290 and 291 (TFEU). Thus, the Commission objects to the Council's position at first reading which was adopted unanimously on 15 February 2010.

ANNEX

Commission declaration in relation to correlation tables

The Commission recalls its position concerning the creation by Member States of correlation tables linking the transposition measures taken by the Member States with the Directive, in the interest of citizens, better regulation and transparency and to assist the examination of the conformity of national rules with Community provisions.

In this instance, the Commission does not stand in the way of an agreement at Council with a view to the successful conclusion of the inter-institutional procedure on this file and in light of the ongoing horizontal discussions on this matter between the institutions.

Commission declaration in relation to Article 13(3)(c) and (d)

The Commission is of the view that the adoption by it of non binding guidance should not be subject to comitology since the Commission has its own autonomous right under the Treaty to do so.

Thus, the Commission considers that the provision in Article 13(3)(c) and (d) for guidance to be adopted by regulatory procedure cannot affect this right.

Commission declaration in relation to assessment of powers to be conferred on the Commission with respect to Articles 13(5), 41 and 48(5)

The Commission does not share the views of the Council that Article 291 TFEU is the most appropriate legal basis for the adoption of the measures foreseen in Articles 13 (5), 41 and 48(5). Those measures are of general application and seek to supplement the basic act with certain new non-essential elements. As a result, their adoption should fall under the procedure of delegated acts (Article 290 TFEU).