

Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (Recast) (Text with EEA relevance)

CHAPTER II

**PROVISIONS FOR ACTIVITIES LISTED IN ANNEX I**

*Article 10*

**Scope**

This Chapter shall apply to the activities set out in Annex I and, where applicable, reaching the capacity thresholds set out in that Annex.

*Article 11*

**General principles governing the basic obligations of the operator**

Member States shall take the necessary measures to provide that installations are operated in accordance with the following principles:

- (a) all the appropriate preventive measures are taken against pollution;
- (b) the best available techniques are applied;
- (c) no significant pollution is caused;
- (d) the generation of waste is prevented in accordance with Directive 2008/98/EC;
- (e) where waste is generated, it is, in order of priority and in accordance with Directive 2008/98/EC, prepared for re-use, recycled, recovered or, where that is technically and economically impossible, it is disposed of while avoiding or reducing any impact on the environment;
- (f) energy is used efficiently;
- (g) the necessary measures are taken to prevent accidents and limit their consequences;
- (h) the necessary measures are taken upon definitive cessation of activities to avoid any risk of pollution and return the site of operation to the satisfactory state defined in accordance with Article 22.

*Article 12*

**Applications for permits**

1 Member States shall take the necessary measures to ensure that an application for a permit includes a description of the following:

- a the installation and its activities;

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- b the raw and auxiliary materials, other substances and the energy used in or generated by the installation;
- c the sources of emissions from the installation;
- d the conditions of the site of the installation;
- e where applicable, a baseline report in accordance with Article 22(2);
- f the nature and quantities of foreseeable emissions from the installation into each medium as well as identification of significant effects of the emissions on the environment;
- g the proposed technology and other techniques for preventing or, where this is not possible, reducing emissions from the installation;
- h measures for the prevention, preparation for re-use, recycling and recovery of waste generated by the installation;
- i further measures planned to comply with the general principles of the basic obligations of the operator as provided for in Article 11;
- j measures planned to monitor emissions into the environment;
- k the main alternatives to the proposed technology, techniques and measures studied by the applicant in outline.

An application for a permit shall also include a non-technical summary of the details referred to in the first subparagraph.

2 Where information supplied in accordance with the requirements provided for in Directive 85/337/EEC or a safety report prepared in accordance with Directive 96/82/EC or other information produced in response to other legislation fulfils any of the requirements of paragraph 1, that information may be included in, or attached to, the application.

### *Article 13*

#### **BAT reference documents and exchange of information**

1 In order to draw up, review and, where necessary, update BAT reference documents, the Commission shall organise an exchange of information between Member States, the industries concerned, non-governmental organisations promoting environmental protection and the Commission.

2 The exchange of information shall, in particular, address the following:

- a the performance of installations and techniques in terms of emissions, expressed as short- and long-term averages, where appropriate, and the associated reference conditions, consumption and nature of raw materials, water consumption, use of energy and generation of waste;
- b the techniques used, associated monitoring, cross-media effects, economic and technical viability and developments therein;
- c best available techniques and emerging techniques identified after considering the issues mentioned in points (a) and (b).

3 The Commission shall establish and regularly convene a forum composed of representatives of Member States, the industries concerned and non-governmental organisations promoting environmental protection.

The Commission shall obtain the opinion of the forum on the practical arrangements for the exchange of information and, in particular, on the following:

- a the rules of procedure of the forum;

- b the work programme for the exchange of information;
- c guidance on the collection of data;
- d guidance on the drawing up of BAT reference documents and on their quality assurance including the suitability of their content and format.

The guidance referred to in points (c) and (d) of the second subparagraph shall take account of the opinion of the forum and shall be adopted in accordance with the regulatory procedure referred to in Article 75(2).

4 The Commission shall obtain and make publicly available the opinion of the forum on the proposed content of the BAT reference documents and shall take into account this opinion for the procedures laid down in paragraph 5.

5 Decisions on the BAT conclusions shall be adopted in accordance with the regulatory procedure referred to in Article 75(2).

6 After the adoption of a decision in accordance with paragraph 5, the Commission shall without delay make the BAT reference document publicly available and ensure that BAT conclusions are made available in all the official languages of the Union.

7 Pending the adoption of a relevant decision in accordance with paragraph 5, the conclusions on best available techniques from BAT reference documents adopted by the Commission prior to the date referred to in Article 83 shall apply as BAT conclusions for the purposes of this Chapter except for Article 15(3) and (4).

#### *Article 14*

#### **Permit conditions**

1 Member States shall ensure that the permit includes all measures necessary for compliance with the requirements of Articles 11 and 18.

Those measures shall include at least the following:

- a emission limit values for polluting substances listed in Annex II, and for other polluting substances, which are likely to be emitted from the installation concerned in significant quantities, having regard to their nature and their potential to transfer pollution from one medium to another;
- b appropriate requirements ensuring protection of the soil and groundwater and measures concerning the monitoring and management of waste generated by the installation;
- c suitable emission monitoring requirements specifying:
  - (i) measurement methodology, frequency and evaluation procedure; and
  - (ii) where Article 15(3)(b) is applied, that results of emission monitoring are available for the same periods of time and reference conditions as for the emission levels associated with the best available techniques;
- d an obligation to supply the competent authority regularly, and at least annually, with:
  - (i) information on the basis of results of emission monitoring referred to in point (c) and other required data that enables the competent authority to verify compliance with the permit conditions; and
  - (ii) where Article 15(3)(b) is applied, a summary of the results of emission monitoring which allows a comparison with the emission levels associated with the best available techniques;

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- e appropriate requirements for the regular maintenance and surveillance of measures taken to prevent emissions to soil and groundwater pursuant to point (b) and appropriate requirements concerning the periodic monitoring of soil and groundwater in relation to relevant hazardous substances likely to be found on site and having regard to the possibility of soil and groundwater contamination at the site of the installation;
- f measures relating to conditions other than normal operating conditions such as start-up and shut-down operations, leaks, malfunctions, momentary stoppages and definitive cessation of operations;
- g provisions on the minimisation of long-distance or transboundary pollution;
- h conditions for assessing compliance with the emission limit values or a reference to the applicable requirements specified elsewhere.

2 For the purpose of paragraph 1(a), emission limit values may be supplemented or replaced by equivalent parameters or technical measures ensuring an equivalent level of environmental protection.

3 BAT conclusions shall be the reference for setting the permit conditions.

4 Without prejudice to Article 18, the competent authority may set stricter permit conditions than those achievable by the use of the best available techniques as described in the BAT conclusions. Member States may establish rules under which the competent authority may set such stricter conditions.

5 Where the competent authority sets permit conditions on the basis of a best available technique not described in any of the relevant BAT conclusions, it shall ensure that:

- a that technique is determined by giving special consideration to the criteria listed in Annex III; and
- b the requirements of Article 15 are complied with.

Where the BAT conclusions referred to in the first subparagraph do not contain emission levels associated with the best available techniques, the competent authority shall ensure that the technique referred to in the first subparagraph ensures a level of environmental protection equivalent to the best available techniques described in the BAT conclusions.

6 Where an activity or a type of production process carried out within an installation is not covered by any of the BAT conclusions or where those conclusions do not address all the potential environmental effects of the activity or process, the competent authority shall, after prior consultations with the operator, set the permit conditions on the basis of the best available techniques that it has determined for the activities or processes concerned, by giving special consideration to the criteria listed in Annex III.

7 For installations referred to in point 6.6 of Annex I, paragraphs 1 to 6 of this Article shall apply without prejudice to the legislation relating to animal welfare.

### *Article 15*

#### **Emission limit values, equivalent parameters and technical measures**

1 The emission limit values for polluting substances shall apply at the point where the emissions leave the installation, and any dilution prior to that point shall be disregarded when determining those values.

With regard to indirect releases of polluting substances into water, the effect of a water treatment plant may be taken into account when determining the emission limit values of the installation concerned, provided that an equivalent level of protection of the

environment as a whole is guaranteed and provided this does not lead to higher levels of pollution in the environment.

2 Without prejudice to Article 18, the emission limit values and the equivalent parameters and technical measures referred to in Article 14(1) and (2) shall be based on the best available techniques, without prescribing the use of any technique or specific technology.

3 The competent authority shall set emission limit values that ensure that, under normal operating conditions, emissions do not exceed the emission levels associated with the best available techniques as laid down in the decisions on BAT conclusions referred to in Article 13(5) through either of the following:

- a setting emission limit values that do not exceed the emission levels associated with the best available techniques. Those emission limit values shall be expressed for the same or shorter periods of time and under the same reference conditions as those emission levels associated with the best available techniques; or
- b setting different emission limit values than those referred to under point (a) in terms of values, periods of time and reference conditions.

Where point (b) is applied, the competent authority shall, at least annually, assess the results of emission monitoring in order to ensure that emissions under normal operating conditions have not exceeded the emission levels associated with the best available techniques.

4 By way of derogation from paragraph 3, and without prejudice to Article 18, the competent authority may, in specific cases, set less strict emission limit values. Such a derogation may apply only where an assessment shows that the achievement of emission levels associated with the best available techniques as described in BAT conclusions would lead to disproportionately higher costs compared to the environmental benefits due to:

- a the geographical location or the local environmental conditions of the installation concerned; or
- b the technical characteristics of the installation concerned.

The competent authority shall document in an annex to the permit conditions the reasons for the application of the first subparagraph including the result of the assessment and the justification for the conditions imposed.

The emission limit values set in accordance with the first subparagraph shall, however, not exceed the emission limit values set out in the Annexes to this Directive, where applicable.

The competent authority shall in any case ensure that no significant pollution is caused and that a high level of protection of the environment as a whole is achieved.

On the basis of information provided by Member States in accordance with Article 72(1), in particular concerning the application of this paragraph, the Commission may, where necessary, assess and further clarify, through guidance, the criteria to be taken into account for the application of this paragraph.

The competent authority shall re-assess the application of the first subparagraph as part of each reconsideration of the permit conditions pursuant to Article 21.

5 The competent authority may grant temporary derogations from the requirements of paragraphs 2 and 3 of this Article and from Article 11(a) and (b) for the testing and use of emerging techniques for a total period of time not exceeding 9 months, provided that after the period specified, either the technique is stopped or the activity achieves at least the emission levels associated with the best available techniques.

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### *Article 16*

#### **Monitoring requirements**

1 The monitoring requirements referred to in Article 14(1)(c) shall, where applicable, be based on the conclusions on monitoring as described in the BAT conclusions.

2 The frequency of the periodic monitoring referred to in Article 14(1)(e) shall be determined by the competent authority in a permit for each individual installation or in general binding rules.

Without prejudice to the first subparagraph, periodic monitoring shall be carried out at least once every 5 years for groundwater and 10 years for soil, unless such monitoring is based on a systematic appraisal of the risk of contamination.

### *Article 17*

#### **General binding rules for activities listed in Annex I**

1 When adopting general binding rules, Member States shall ensure an integrated approach and a high level of environmental protection equivalent to that achievable with individual permit conditions.

2 General binding rules shall be based on the best available techniques, without prescribing the use of any technique or specific technology in order to ensure compliance with Articles 14 and 15.

3 Member States shall ensure that general binding rules are updated to take into account developments in best available techniques and in order to ensure compliance with Article 21.

4 General binding rules adopted in accordance with paragraphs 1 to 3 shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication.

### *Article 18*

#### **Environmental quality standards**

Where an environmental quality standard requires stricter conditions than those achievable by the use of the best available techniques, additional measures shall be included in the permit, without prejudice to other measures which may be taken to comply with environmental quality standards.

### *Article 19*

#### **Developments in best available techniques**

Member States shall ensure that the competent authority follows or is informed of developments in best available techniques and of the publication of any new or updated BAT conclusions and shall make that information available to the public concerned.

## Article 20

### Changes by operators to installations

1 Member States shall take the necessary measures to ensure that the operator informs the competent authority of any planned change in the nature or functioning, or an extension of the installation which may have consequences for the environment. Where appropriate, the competent authority shall update the permit.

2 Member States shall take the necessary measures to ensure that no substantial change planned by the operator is made without a permit granted in accordance with this Directive.

The application for a permit and the decision by the competent authority shall cover those parts of the installation and those details listed in Article 12 which may be affected by the substantial change.

3 Any change in the nature or functioning or an extension of an installation shall be deemed to be substantial if the change or extension in itself reaches the capacity thresholds set out in Annex I.

## Article 21

### Reconsideration and updating of permit conditions by the competent authority

1 Member States shall take the necessary measures to ensure that the competent authority periodically reconsiders in accordance with paragraphs 2 to 5 all permit conditions and, where necessary to ensure compliance with this Directive, updates those conditions.

2 At the request of the competent authority, the operator shall submit all the information necessary for the purpose of reconsidering the permit conditions, including, in particular, results of emission monitoring and other data, that enables a comparison of the operation of the installation with the best available techniques described in the applicable BAT conclusions and with the emission levels associated with the best available techniques.

When reconsidering permit conditions, the competent authority shall use any information resulting from monitoring or inspections.

3 Within 4 years of publication of decisions on BAT conclusions in accordance with Article 13(5) relating to the main activity of an installation, the competent authority shall ensure that:

- a all the permit conditions for the installation concerned are reconsidered and, if necessary, updated to ensure compliance with this Directive, in particular, with Article 15(3) and (4), where applicable;
- b the installation complies with those permit conditions.

The reconsideration shall take into account all the new or updated BAT conclusions applicable to the installation and adopted in accordance with Article 13(5) since the permit was granted or last reconsidered.

4 Where an installation is not covered by any of the BAT conclusions, the permit conditions shall be reconsidered and, if necessary, updated where developments in the best available techniques allow for the significant reduction of emissions.

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5 The permit conditions shall be reconsidered and, where necessary, updated at least in the following cases:

- a the pollution caused by the installation is of such significance that the existing emission limit values of the permit need to be revised or new such values need to be included in the permit;
- b the operational safety requires other techniques to be used;
- c where it is necessary to comply with a new or revised environmental quality standard in accordance with Article 18.

## *Article 22*

### **Site closure**

1 Without prejudice to Directive 2000/60/EC, Directive 2004/35/EC, Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration<sup>(1)</sup> and to relevant Union law on soil protection, the competent authority shall set permit conditions to ensure compliance with paragraphs 3 and 4 of this Article upon definitive cessation of activities.

2 Where the activity involves the use, production or release of relevant hazardous substances and having regard to the possibility of soil and groundwater contamination at the site of the installation, the operator shall prepare and submit to the competent authority a baseline report before starting operation of an installation or before a permit for an installation is updated for the first time after 7 January 2013.

The baseline report shall contain the information necessary to determine the state of soil and groundwater contamination so as to make a quantified comparison with the state upon definitive cessation of activities provided for under paragraph 3.

The baseline report shall contain at least the following information:

- a information on the present use and, where available, on past uses of the site;
- b where available, existing information on soil and groundwater measurements that reflect the state at the time the report is drawn up or, alternatively, new soil and groundwater measurements having regard to the possibility of soil and groundwater contamination by those hazardous substances to be used, produced or released by the installation concerned.

Where information produced pursuant to other national or Union law fulfils the requirements of this paragraph that information may be included in, or attached to, the submitted baseline report.

The Commission shall establish guidance on the content of the baseline report.

3 Upon definitive cessation of the activities, the operator shall assess the state of soil and groundwater contamination by relevant hazardous substances used, produced or released by the installation. Where the installation has caused significant pollution of soil or groundwater by relevant hazardous substances compared to the state established in the baseline report referred to in paragraph 2, the operator shall take the necessary measures to address that pollution so as to return the site to that state. For that purpose, the technical feasibility of such measures may be taken into account.

Without prejudice to the first subparagraph, upon definitive cessation of the activities, and where the contamination of soil and groundwater at the site poses a significant risk to human health or the environment as a result of the permitted activities carried out by the operator before the permit for the installation is updated for the first time after

7 January 2013 and taking into account the conditions of the site of the installation established in accordance with Article 12(1)(d), the operator shall take the necessary actions aimed at the removal, control, containment or reduction of relevant hazardous substances, so that the site, taking into account its current or approved future use, ceases to pose such a risk.

4 Where the operator is not required to prepare a baseline report referred to in paragraph 2, the operator shall, upon definitive cessation of the activities, take the necessary actions aimed at the removal, control, containment or reduction of relevant hazardous substances, so that the site, taking into account its current or approved future use, ceases to pose any significant risk to human health or the environment due to the contamination of soil and groundwater as a result of the permitted activities and taking into account the conditions of the site of the installation established in accordance with Article 12(1)(d).

### *Article 23*

#### **Environmental inspections**

1 Member States shall set up a system of environmental inspections of installations addressing the examination of the full range of relevant environmental effects from the installations concerned.

Member States shall ensure that operators afford the competent authorities all necessary assistance to enable those authorities to carry out any site visits, to take samples and to gather any information necessary for the performance of their duties for the purposes of this Directive.

2 Member States shall ensure that all installations are covered by an environmental inspection plan at national, regional or local level and shall ensure that this plan is regularly reviewed and, where appropriate, updated.

3 Each environmental inspection plan shall include the following:

- a a general assessment of relevant significant environmental issues;
- b the geographical area covered by the inspection plan;
- c a register of the installations covered by the plan;
- d procedures for drawing up programmes for routine environmental inspections pursuant to paragraph 4;
- e procedures for non-routine environmental inspections pursuant to paragraph 5;
- f where necessary, provisions on the cooperation between different inspection authorities.

4 Based on the inspection plans, the competent authority shall regularly draw up programmes for routine environmental inspections, including the frequency of site visits for different types of installations.

The period between two site visits shall be based on a systematic appraisal of the environmental risks of the installations concerned and shall not exceed 1 year for installations posing the highest risks and 3 years for installations posing the lowest risks.

If an inspection has identified an important case of non-compliance with the permit conditions, an additional site visit shall be carried out within 6 months of that inspection.

The systematic appraisal of the environmental risks shall be based on at least the following criteria:

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- a the potential and actual impacts of the installations concerned on human health and the environment taking into account the levels and types of emissions, the sensitivity of the local environment and the risk of accidents;
- b the record of compliance with permit conditions;
- c the participation of the operator in the Union eco-management and audit scheme (EMAS), pursuant to Regulation (EC) No 1221/2009<sup>(2)</sup>.

The Commission may adopt guidance on the criteria for the appraisal of environmental risks.

5 Non-routine environmental inspections shall be carried out to investigate serious environmental complaints, serious environmental accidents, incidents and occurrences of non-compliance as soon as possible and, where appropriate, before the granting, reconsideration or update of a permit.

6 Following each site visit, the competent authority shall prepare a report describing the relevant findings regarding compliance of the installation with the permit conditions and conclusions on whether any further action is necessary.

The report shall be notified to the operator concerned within 2 months of the site visit taking place. The report shall be made publicly available by the competent authority in accordance with Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information<sup>(3)</sup> within 4 months of the site visit taking place.

Without prejudice to Article 8(2), the competent authority shall ensure that the operator takes all the necessary actions identified in the report within a reasonable period.

#### *Article 24*

##### **Access to information and public participation in the permit procedure**

1 Member States shall ensure that the public concerned are given early and effective opportunities to participate in the following procedures:

- a the granting of a permit for new installations;
- b the granting of a permit for any substantial change;
- c the granting or updating of a permit for an installation where the application of Article 15(4) is proposed;
- d the updating of a permit or permit conditions for an installation in accordance with Article 21(5)(a).

The procedure set out in Annex IV shall apply to such participation.

2 When a decision on granting, reconsideration or updating of a permit has been taken, the competent authority shall make available to the public, including via the Internet in relation to points (a), (b) and (f), the following information:

- a the content of the decision, including a copy of the permit and any subsequent updates;
- b the reasons on which the decision is based;
- c the results of the consultations held before the decision was taken and an explanation of how they were taken into account in that decision;
- d the title of the BAT reference documents relevant to the installation or activity concerned;

- e how the permit conditions referred to in Article 14, including the emission limit values, have been determined in relation to the best available techniques and emission levels associated with the best available techniques;
  - f where a derogation is granted in accordance with Article 15(4), the specific reasons for that derogation based on the criteria laid down in that paragraph and the conditions imposed.
- 3 The competent authority shall also make available to the public, including via the Internet at least in relation to point (a):
- a relevant information on the measures taken by the operator upon definitive cessation of activities in accordance with Article 22;
  - b the results of emission monitoring as required under the permit conditions and held by the competent authority.
- 4 Paragraphs 1, 2 and 3 of this Article shall apply subject to the restrictions laid down in Article 4(1) and (2) of Directive 2003/4/EC.

#### *Article 25*

#### **Access to justice**

- 1 Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to Article 24 when one of the following conditions is met:
- a they have a sufficient interest;
  - b they maintain the impairment of a right, where administrative procedural law of a Member State requires this as a precondition.
- 2 Member States shall determine at what stage the decisions, acts or omissions may be challenged.
- 3 What constitutes a sufficient interest and impairment of a right shall be determined by Member States, consistently with the objective of giving the public concerned wide access to justice.
- To this end, the interest of any non-governmental organisation promoting environmental protection and meeting any requirements under national law shall be deemed sufficient for the purpose of paragraph 1(a).
- Such organisations shall also be deemed to have rights capable of being impaired for the purpose of paragraph 1(b).
- 4 Paragraphs 1, 2 and 3 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.
- Any such procedure shall be fair, equitable, timely and not prohibitively expensive.
- 5 Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.

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## Article 26

### Transboundary effects

1 Where a Member State is aware that the operation of an installation is likely to have significant negative effects on the environment of another Member State, or where a Member State which is likely to be significantly affected so requests, the Member State in whose territory the application for a permit pursuant to Article 4 or Article 20(2) was submitted shall forward to the other Member State any information required to be given or made available pursuant to Annex IV at the same time as it makes it available to the public.

Such information shall serve as a basis for any consultations necessary in the framework of the bilateral relations between the two Member States on a reciprocal and equivalent basis.

2 Within the framework of their bilateral relations, Member States shall ensure that in the cases referred to in paragraph 1, the applications are also made available for an appropriate period of time to the public of the Member State likely to be affected so that it will have the right to comment on them before the competent authority reaches its decision.

3 The results of any consultations pursuant to paragraphs 1 and 2 shall be taken into consideration when the competent authority reaches a decision on the application.

4 The competent authority shall inform any Member State which has been consulted pursuant to paragraph 1 of the decision reached on the application and shall forward to it the information referred to in Article 24(2). That Member State shall take the measures necessary to ensure that that information is made available in an appropriate manner to the public concerned in its own territory.

## Article 27

### Emerging techniques

1 Member States shall, where appropriate, encourage the development and application of emerging techniques, in particular for those emerging techniques identified in BAT reference documents.

2 The Commission shall establish guidance to assist Member States in encouraging the development and application of emerging techniques as referred to in paragraph 1.

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- (1) [OJ L 372, 27.12.2006, p. 19.](#)
- (2) Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS) ([OJ L 342, 22.12.2009, p. 1.](#))
- (3) [OJ L 41, 14.2.2003, p. 26.](#)