

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)

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on industrial emissions (integrated pollution prevention and control)

(Recast)

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee⁽¹⁾,

Having regard to the opinion of the Committee of the Regions⁽²⁾,

Acting in accordance with the ordinary legislative procedure⁽³⁾,

Whereas:

- (1) A number of substantial changes are to be made to Council Directive 78/176/EEC of 20 February 1978 on waste from the titanium dioxide industry⁽⁴⁾, Council Directive 82/883/EEC of 3 December 1982 on procedures for the surveillance and monitoring of environments concerned by waste from the titanium dioxide industry⁽⁵⁾, Council Directive 92/112/EEC of 15 December 1992 on procedures for harmonising the programmes for the reduction and eventual elimination of pollution caused by waste from the titanium dioxide industry⁽⁶⁾, Council Directive 1999/13/EC of 11 March 1999 on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations⁽⁷⁾, Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste⁽⁸⁾, Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants⁽⁹⁾ and Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control⁽¹⁰⁾. In the interests of clarity, those Directives should be recast.
- (2) In order to prevent, reduce and as far as possible eliminate pollution arising from industrial activities in compliance with the ‘polluter pays’ principle and the principle of pollution prevention, it is necessary to establish a general framework for the control of the main industrial activities, giving priority to intervention at source, ensuring

prudent management of natural resources and taking into account, when necessary, the economic situation and specific local characteristics of the place in which the industrial activity is taking place.

- (3) Different approaches to controlling emissions into air, water or soil separately may encourage the shifting of pollution from one environmental medium to another rather than protecting the environment as a whole. It is, therefore, appropriate to provide for an integrated approach to prevention and control of emissions into air, water and soil, to waste management, to energy efficiency and to accident prevention. Such an approach will also contribute to the achievement of a level playing field in the Union by aligning environmental performance requirements for industrial installations.
- (4) It is appropriate to revise the legislation relating to industrial installations in order to simplify and clarify the existing provisions, reduce unnecessary administrative burden and implement the conclusions of the Commission Communications of 21 September 2005 on the Thematic Strategy on Air Pollution (hereinafter the Thematic Strategy on Air Pollution), of 22 September 2006 on the Thematic Strategy for Soil Protection and of 21 December 2005 on the Thematic Strategy on the Prevention and Recycling of Waste adopted as a follow-up to Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme⁽¹¹⁾. Those Communications set objectives to protect human health and the environment which cannot be met without further reductions in emissions arising from industrial activities.
- (5) In order to ensure the prevention and control of pollution, each installation should operate only if it holds a permit or, in the case of certain installations and activities using organic solvents, only if it holds a permit or is registered.
- (6) It is for Member States to determine the approach for assigning responsibilities to operators of installations provided that compliance with this Directive is ensured. Member States may choose to grant a permit to one responsible operator for each installation or to specify the responsibility amongst several operators of different parts of an installation. Where its current legal system provides for only one responsible operator for each installation, a Member State may decide to retain this system.
- (7) In order to facilitate the granting of permits, Member States should be able to set requirements for certain categories of installations in general binding rules.
- (8) It is important to prevent accidents and incidents and limit their consequences. Liability regarding the environmental consequences of accidents and incidents is a matter for relevant national law and, where applicable, other relevant Union law.
- (9) In order to avoid duplication of regulation, the permit for an installation covered by Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community⁽¹²⁾ should not include an emission limit value for direct emissions of the greenhouse gases specified in Annex I to that Directive except where it is necessary to ensure that no significant local pollution is caused or where an installation is excluded from that scheme.

- (10) In accordance with Article 193 of the Treaty on the Functioning of the European Union (TFEU), this Directive does not prevent Member States from maintaining or introducing more stringent protective measures, for example greenhouse gas emission requirements, provided that such measures are compatible with the Treaties and the Commission has been notified.
- (11) Operators should submit permit applications containing the information necessary for the competent authority to set permit conditions. Operators should be able to use information resulting from the application of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment⁽¹³⁾ and of Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances⁽¹⁴⁾ when submitting permit applications.
- (12) The permit should include all the measures necessary to achieve a high level of protection of the environment as a whole and to ensure that the installation is operated in accordance with the general principles governing the basic obligations of the operator. The permit should also include emission limit values for polluting substances, or equivalent parameters or technical measures, appropriate requirements to protect the soil and groundwater and monitoring requirements. Permit conditions should be set on the basis of best available techniques.
- (13) In order to determine best available techniques and to limit imbalances in the Union as regards the level of emissions from industrial activities, reference documents for best available techniques (hereinafter BAT reference documents') should be drawn up, reviewed and, where necessary, updated through an exchange of information with stakeholders and the key elements of BAT reference documents (hereinafter BAT conclusions') adopted through committee procedure. In this respect, the Commission should, through committee procedure, establish guidance on the collection of data, on the elaboration of BAT reference documents and on their quality assurance. BAT conclusions should be the reference for setting permit conditions. They can be supplemented by other sources. The Commission should aim to update BAT reference documents not later than 8 years after the publication of the previous version.
- (14) In order to ensure an effective and active exchange of information resulting in high-quality BAT reference documents, the Commission should establish a forum that functions in a transparent manner. Practical arrangements for the exchange of information and the accessibility of BAT reference documents should be laid down, in particular to ensure that Member States and stakeholders provide data of sufficient quality and quantity based on established guidance to enable the determination of best available techniques and emerging techniques.
- (15) It is important to provide sufficient flexibility to competent authorities to set emission limit values that ensure that, under normal operating conditions, emissions do not exceed the emission levels associated with the best available techniques. To this end, the competent authority may set emission limits that differ from the emission levels associated with the best available techniques in terms of the values, periods of time and reference conditions applied, so long as it can be demonstrated, through the results of

emission monitoring, that emissions have not exceeded the emission levels associated with the best available techniques. Compliance with the emission limit values that are set in permits results in emissions below those emission limit values.

- (16) In order to take into account certain specific circumstances where the application of emission levels associated with the best available techniques would lead to disproportionately high costs compared to the environmental benefits, competent authorities should be able to set emission limit values deviating from those levels. Such deviations should be based on an assessment taking into account well-defined criteria. The emission limit values set out in this Directive should not be exceeded. In any event, no significant pollution should be caused and a high level of protection of the environment taken as a whole should be achieved.
- (17) In order to enable operators to test emerging techniques which could provide for a higher general level of environmental protection, or at least the same level of environmental protection and higher cost savings than existing best available techniques, the competent authority should be able to grant temporary derogations from emission levels associated with the best available techniques.
- (18) Changes to an installation may give rise to higher levels of pollution. Operators should notify the competent authority of any planned change which might affect the environment. Substantial changes to installations which may have significant negative effects on human health or the environment should not be made without a permit granted in accordance with this Directive.
- (19) The spreading of manure contributes significantly to emissions of pollutants into air and water. With a view to meeting the objectives set out in the Thematic Strategy on Air Pollution and Union law on water protection, it is necessary for the Commission to review the need to establish the most suitable controls of these emissions through the application of best available techniques.
- (20) The intensive rearing of poultry and cattle contributes significantly to emissions of pollutants into air and water. With a view to meeting the objectives set out in the Thematic Strategy on Air Pollution and in Union law on water protection, it is necessary for the Commission to review the need to establish differentiated capacity thresholds for different poultry species in order to define the scope of this Directive and to review the need to establish the most suitable controls on emissions from cattle rearing installations.
- (21) In order to take account of developments in best available techniques or other changes to an installation, permit conditions should be reconsidered regularly and, where necessary, updated, in particular where new or updated BAT conclusions are adopted.
- (22) In specific cases where permit reconsideration and updating identifies that a longer period than 4 years after the publication of a decision on BAT conclusions might be needed to introduce new best available techniques, competent authorities may set a longer time period in permit conditions where this is justified on the basis of the criteria laid down in this Directive.

- (23) It is necessary to ensure that the operation of an installation does not lead to a deterioration of the quality of soil and groundwater. Permit conditions should, therefore, include appropriate measures to prevent emissions to soil and groundwater and regular surveillance of those measures to avoid leaks, spills, incidents or accidents occurring during the use of equipment and during storage. In order to detect possible soil and groundwater pollution at an early stage and, therefore, to take appropriate corrective measures before the pollution spreads, the monitoring of soil and groundwater for relevant hazardous substances is also necessary. When determining the frequency of monitoring, the type of prevention measures and the extent and occurrence of their surveillance may be considered.
- (24) In order to ensure that the operation of an installation does not deteriorate the quality of soil and groundwater, it is necessary to establish, through a baseline report, the state of soil and groundwater contamination. The baseline report should be a practical tool that permits, as far as possible, a quantified comparison between the state of the site described in that report and the state of the site upon definitive cessation of activities, in order to ascertain whether a significant increase in pollution of soil or groundwater has taken place. The baseline report should, therefore, contain information making use of existing data on soil and groundwater measurements and historical data related to past uses of the site.
- (25) In accordance with the polluter pays principle, when assessing the level of significance of the pollution of soil and groundwater caused by the operator which would trigger the obligation to return the site to the state described in the baseline report, Member States should take into account the permit conditions that have applied over the lifetime of the activity concerned, the pollution prevention measures adopted for the installation, and the relative increase in pollution compared to the contamination load identified in the baseline report. Liability regarding pollution not caused by the operator is a matter for relevant national law and, where applicable, other relevant Union law.
- (26) In order to ensure the effective implementation and enforcement of this Directive, operators should regularly report to the competent authority on compliance with permit conditions. Member States should ensure that the operator and the competent authority each take necessary measures in the event of non-compliance with this Directive and provide for a system of environmental inspections. Member States should ensure that sufficient staff are available with the skills and qualifications needed to carry out those inspections effectively.
- (27) In accordance with the Århus Convention on access to information, public participation in decision-making and access to justice in environmental matters⁽¹⁵⁾, effective public participation in decision-making is necessary to enable the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken. Members of the public concerned should have access to justice in order to contribute to the protection of the right to live in an environment which is adequate for personal health and well-being.

- (28) The combustion of fuel in installations with a total rated thermal input below 50 MW contributes significantly to emissions of pollutants into the air. With a view to meeting the objectives set out in the Thematic Strategy on Air Pollution, it is necessary for the Commission to review the need to establish the most suitable controls on emissions from such installations. That review should take into account the specificities of combustion plants used in healthcare facilities, in particular with regard to their exceptional use in the case of emergencies.
- (29) Large combustion plants contribute greatly to emissions of polluting substances into the air resulting in a significant impact on human health and the environment. In order to reduce that impact and to work towards meeting the requirements of Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants⁽¹⁶⁾ and the objectives set out in the Thematic Strategy on Air Pollution, it is necessary to set more stringent emission limit values at Union level for certain categories of combustion plants and pollutants.
- (30) The Commission should review the need to establish Union-wide emission limit values and to amend the emission limit values set out in Annex V for certain large combustion plants, taking into account the review and update of the relevant BAT reference documents. In this context, the Commission should consider the specificity of the energy systems of refineries.
- (31) Due to the characteristics of certain indigenous solid fuels, it is appropriate to apply minimum desulphurisation rates rather than emission limit values for sulphur dioxide for combustion plants firing such fuels. Moreover, as the specific characteristics of oil shale may not allow the application of the same sulphur abatement techniques or the achievement of the same desulphurisation efficiency as for other fuels, a slightly lower minimum desulphurisation rate for plants using this fuel is appropriate.
- (32) In the case of a sudden interruption in the supply of low-sulphur fuel or gas resulting from a serious shortage, the competent authority should be able to grant temporary derogations to allow emissions of the combustion plants concerned to exceed the emission limit values set out in this Directive.
- (33) The operator concerned should not operate a combustion plant for more than 24 hours after malfunctioning or breakdown of abatement equipment and unabated operation should not exceed 120 hours in a 12-month period in order to limit the negative effects of pollution on the environment. However, where there is an overriding need for energy supplies or it is necessary to avoid an overall increase of emissions resulting from the operation of another combustion plant, competent authorities should be able to grant a derogation from those time limits.
- (34) In order to ensure a high level of environmental and human health protection and to avoid transboundary movements of waste to plants operating at lower environmental standards, it is necessary to set and maintain stringent operating conditions, technical requirements and emission limit values for plants incinerating or co-incinerating waste within the Union.

- (35) The use of organic solvents in certain activities and installations gives rise to emissions of organic compounds into the air which contribute to the local and transboundary formation of photochemical oxidants which causes damage to natural resources and has harmful effects on human health. It is, therefore, necessary to take preventive action against the use of organic solvents and to establish a requirement to comply with emission limit values for organic compounds and appropriate operating conditions. Operators should be allowed to comply with the requirements of a reduction scheme instead of complying with the emission limit values set out in this Directive where other measures, such as the use of low-solvent or solvent-free products or techniques, provide alternative means of achieving equivalent emission reduction.
- (36) Installations producing titanium dioxide can give rise to significant pollution into air and water. In order to reduce these impacts, it is necessary to set at Union level more stringent emission limit values for certain polluting substances.
- (37) With regard to the inclusion in the scope of national laws, regulations and administrative provisions brought into force in order to comply with this Directive of installations for the manufacturing of ceramic products by firings, on the basis of the characteristics of the national industrial sector, and in order to grant clear interpretation of the scope, Member States should decide whether to apply both the criteria, production capacity and kiln capacity, or just one of the two criteria.
- (38) In order to simplify reporting and reduce unnecessary administrative burden, the Commission should identify methods to streamline the way in which data are made available pursuant to this Directive with the other requirements of Union law, and in particular Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register⁽¹⁷⁾.
- (39) In order to ensure uniform conditions for implementation, implementing powers should be conferred on the Commission to adopt guidance on the collection of data, on the drawing up of BAT reference documents and on their quality assurance, including the suitability of their content and format, to adopt decisions on BAT conclusions, to establish detailed rules on the determination of start-up and shut-down periods and for transitional national plans for large combustion plants, and to establish the type, format and frequency of information that Member States are to make available to the Commission. In accordance with Article 291 TFEU, rules and general principles concerning mechanisms for the control by Member States of the Commission's exercise of implementing powers are to be laid down in advance by a regulation adopted in accordance with the ordinary legislative procedure. Pending the adoption of that new regulation, Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽¹⁸⁾ continues to apply, with the exception of the regulatory procedure with scrutiny, which is not applicable.
- (40) The Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU in respect of the setting of the date from which continuous measurements of emissions into the air of heavy metals and dioxins and furans are to be

carried out, and the adaptation of certain parts of Annexes V, VI and VII to scientific and technical progress. In the case of waste incineration plants and waste co-incineration plants, this may include, inter alia, the establishment of criteria to allow derogations from continuous monitoring of total dust emissions. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.

- (41) In order to address significant environmental pollution, for example from heavy metals and dioxins and furans, the Commission should, based on an assessment of the implementation of the best available techniques by certain activities or of the impact of those activities on the environment as a whole, present proposals for Union-wide minimum requirements for emission limit values and for rules on monitoring and compliance.
- (42) Member States should lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.
- (43) In order to provide existing installations with sufficient time to adapt technically to the new requirements of this Directive, some of the new requirements should apply to those installations after a fixed period from the date of application of this Directive. Combustion plants need sufficient time to install the necessary abatement measures to meet the emission limit values set out in Annex V.
- (44) Since the objectives of this Directive, namely to ensure a high level of environmental protection and the improvement of environmental quality, cannot be sufficiently achieved by Member States and can, therefore, by reason of the transboundary nature of pollution from industrial activities, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (45) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to promote the application of Article 37 of that Charter.
- (46) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directives. The obligation to transpose the provisions which are unchanged arises under the earlier Directives.
- (47) In accordance with paragraph 34 of the Interinstitutional agreement on better law-making⁽¹⁹⁾, Member States are encouraged to draw up, for themselves and in the interests of the Union, their own tables, which will as far as possible, illustrate the correlation between this Directive and the transposition measures, and to make those tables public.
- (48) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex IX, Part B,

HAVE ADOPTED THIS DIRECTIVE:

- (1) OJ C 182, 4.8.2009, p. 46.
- (2) OJ C 325, 19.12.2008, p. 60.
- (3) Position of the European Parliament of 10 March 2009 (OJ C 87 E, 1.4.2010, p. 191) and position of the Council at first reading of 15 February 2010 (OJ C 107 E, 27.4.2010, p. 1). Position of the European Parliament of 7 July 2010 (not yet published in the Official Journal) and decision of the Council of 8 November 2010.
- (4) OJ L 54, 25.2.1978, p. 19.
- (5) OJ L 378, 31.12.1982, p. 1.
- (6) OJ L 409, 31.12.1992, p. 11.
- (7) OJ L 85, 29.3.1999, p. 1.
- (8) OJ L 332, 28.12.2000, p. 91.
- (9) OJ L 309, 27.11.2001, p. 1.
- (10) OJ L 24, 29.1.2008, p. 8.
- (11) OJ L 242, 10.9.2002, p. 1.
- (12) OJ L 275, 25.10.2003, p. 32.
- (13) OJ L 175, 5.7.1985, p. 40.
- (14) OJ L 10, 14.1.1997, p. 13.
- (15) OJ L 124, 17.5.2005, p. 4.
- (16) OJ L 309, 27.11.2001, p. 22.
- (17) OJ L 33, 4.2.2006, p. 1.
- (18) OJ L 184, 17.7.1999, p. 23.
- (19) OJ C 321, 31.12.2003, p. 1.