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CONTENTS

From IPPC to IED: Health and environment in Europe need a stronger Directive

Marga Robesin

On 9 September 2008 the Committee on the Environment, Public Health and Food Safety (ENVI) of the European Parliament held a first discussion on the Proposal for a Directive on Industrial Emissions (IED)[1] *and the draft report of rapporteur Holger Krahmer.*[2]

The proposal revises and merges seven separate existing Directives related to industrial emissions (the IPPC Directive[3] *and six sector Directives*[4]*) into a single Directive. The current IPPC Directive and the proposed Directive have the same objective: achieving a high level of environmental protection by preventing or minimising industrial emissions into air, water or soil, with an integrated approach to pollution control.*

This high level of environmental protection is necessary to obtain an environmental quality in the EU that is healthy for its inhabitants and nature. The current situation is still far from satisfactory. The situation regarding air is even alarming. This causes serious damage to health, nature and economy.[5] *Effective and efficient instruments are therefore needed. The proposal for an IED aims at improving the existing legislation to ensure better implementation and enforcement of this legislation by national authorities yet can it succeed?*

In the Netherlands many cases concerning air pollution by industrial installations have been brought to the Dutch administrative court (the Council of State). Although the situation in other Member States is different, the lessons learnt from these cases are not typical for the Dutch situation and for air pollution. They address issues that are relevant for answering the question as to whether the proposed IED indeed will improve the possibilities to achieve a high level of protection, such as by setting ambitious standards, adequate monitoring and enforcement as well as public participation in the decision making process.

This contribution focuses on the way in which the Proposal deals with the issue of ambitious standards.[6]

1 Need for ambitious standards

Substantial reductions of industrial emissions are necessary to meet environmental quality standards and observe national emission ceilings. With regard to air pollution the EU has set limit values for ambient air quality. In the Netherlands the Directives on ambient air quality have been implemented in chapter 5 of the Environmental Management Act (EMA). In June 2008 the revised Air Quality Directive entered into force.[7] The Netherlands did not meet the limit values for particulate matter (due on 1 January 2005) and will not meet those for nitrogen oxides (due on 1 January 2010).

1.1 National emission ceilings

To reach the quality standards as soon as possible it is necessary that the Dutch national emission ceilings are met. The European Union has laid down the national ceilings of the Gothenburg Protocol[8] for sulphur dioxides (SO2), nitrogen oxides (NOx), volatile organic compounds (VOC) and ammonia (NH3) – thereupon partly more stringent – in the NEC Directive (National Emissions Ceilings Directive).[9] In the Netherlands, sector ceilings have been issued to industry, traffic, etc.[10]

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1 Proposal for a directive of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (recast) COM(2007)0844.

2 2007/0286 (COD), 2 July 2008.

3 Integrated Pollution Prevention and Control Directive 96/61/EC-2008/1/EC, OJ L 24/8.

4 Council Directive 78/176/EEC, 20 February 1978 on waste from the titanium dioxide industry, OJ L 54, 25 February 1978, p. 19; 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, OJ L 378, 31 December 1982, p. 1; 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, OJ L 409, 31 December 1992, p. 11; 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 installation, OJ L 85, 29 March 1999, p. 1; Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste, OJ L 332, 28 December 2000, p. 91; 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, OJ L 309, 27 November 2001, p. 1.

5 In the Thematic Strategy on air pollution (Communication from the Commission to the Council and the European Parliament. Brussels, 21 September 2005. COM(2005)446 final p.3) the Commission points out the damage to ecosystems and health. "*In monetary terms, the damage to human health alone is estimated at between €189-609 billion per annum in 2020. In view of these costs, taking no further action is not an option.*"

6 In the (draft) report on which this contribution is based (COM(2007)0844, *supra* note 1), the issues of monitoring, enforcement and public participation are also discussed.

7 Directive 2008/50/EC of the European Parliament and of the Council on ambient air quality and cleaner air for Europe. 11 June 2008, OJ L 152/1.

8 Protocol to the 1979 Convention on long-range transboundary air pollution to abate acidification, eutrophication and ground-level ozone. UNECE, 1999. http://www.unece.org/env/lrtap/full%20text/1999%20Multi.E.Amended.2005.pdf.

9 Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants, OJ L 309/22, 27 November 2001.

10 Erop of eronder. Uitvoeringsnotitie emissieplafonds verzuring en grootschalige luchtverontreiniging 2003.

Currently the NEC Directive is being reviewed and ceilings for 2020 (including particulate matter 2.5) will be set. In 2001 the Dutch Ministry for the Environment indicated ceilings for 2030 that would lead to a sustainable level of protection of human health and nature.[11] Although even these ceilings would not yet provide an adequate protection (because the specific sensitivity of certain areas had not been taken into account), the following table shows that there still is a wide gap between these "*directional*" ceilings, those that probably will be drafted by the European Commission for 2020 and the current ceilings for 2010.[12]

	NEC ceiling 2010 for the Netherlands	NEC ceiling 2010 for Dutch Industry	Indication of NEC ceiling 2020 for the Netherlands drafted by the European Commission	'directional' NEC ceiling 2030 for the Netherlands (Dutch Ministry for the Environment 2001)
NOX	260	65	177	70-120
SO2	50	39.5	44	24-40
VOS	185	61	161	50-120
NH3	128	3	125	30-55
Particulate matter (PM 2.5)	does not apply	does not apply	40% reduction (reference year 2000)	5-10 (PM 10)

Table 1: NEC ceilings (in kilo tonnes)

In 2006 the Netherlands Environmental Assessment Agency (MNP) has reported on the attainability of the Dutch ceilings in 2010.[13] According to this report attainment requires the realisation of the envisaged policies for sulphur dioxide and taking additional measures for nitrogen oxides: "*Although enough technological supplementary options are available to do this − like the further application of cleaner fuels and clean combustion techniques − some of the measures have possible drawbacks related to high costs, small sector support or practical barriers.*"

1.2 Source measures

So technically it will be possible to meet the ceilings and quality standards, but industry will not take all these source measures voluntarily. Industrial emissions are regulated by sector directives (e.g. the Large Combustion Plants Directive and the Waste Incineration Directive).[14] Since 1996 the IPPC Directive obliges Member States to ensure that permits are granted to all installations mentioned in Annex I of the Directive, in order to achieve a high level of protection of the environment as a whole (Art. 1 and Art. 9 IPPC). Member States shall take the necessary measures to provide that the competent authorities ensure that installations are operated in such a way that all the appropriate preventive measures are taken against pollution, in particular through application of the best available techniques (BAT, Art. 3(1) IPPC). New installations have to comply with IPPC since 30 October 1999, existing installations since 30 October 2007.[15] Optimal use of BAT in the Netherlands (and the EU) can contribute substantially to reaching (NEC) ceilings and (air) quality standards. For example, new installations can achieve very low levels of NOx emissions because of process integrated measures and improving efficiency of DeNOx-installations.

For several existing installations in the Netherlands an improvement by a factor of 5 or 6 has turned out to be possible. A few examples: the NOx emissions of several existing coal power plants have been reduced to 25 g/GJ by a combination of Low-NOx burners and the installation of DeNOx: E.ON Maasvlakte and NUON Amsterdam (both 75 mg/m^3, i.e. about 25 gNOx/GJ). Amer-9, an even older plant now has emissions of about 30 gNOx/GJ (100 mg/m3). In the Netherlands there are no longer an existing coal power plant which does not have DeNox.

2 BAT and the role of BREFs

A definition of BAT is provided in Art. 2(12) IPPC. It states that "*in determining the best available techniques, special consideration should be given to the items listed in Annex IV*". In this Annex item 12 concerns "*the information published by the Commission*

11 Op weg naar duurzame niveaus voor gezondheid en natuur. Overzichtspublicatie thema verzuring en grootschalige luchtverontreiniging. Uitgebreide samenvatting. Ministerie VROM, October 2001, p. 9.

12 Publication of the Proposal for a new NEC Directive has been postponed: ENDS Europe DAILY 2590, 22 July 2008.

13 Rapport 500092001/2006 Haalbaarheid nationale emissieplafonds in 2010. Basisgegevens betreffende emissieramingen, aanvullende opties en effecten. P. Hammingh et al., Milieu- en Natuurplanbureau, contact: Pieter.Hammingh@mnp.nl.

14 Council Directives, *supra* note 4.

15 Initially the Dutch government assumed that IPPC was adequately implemented by the Environmental Management Act and the Act on the pollution of surface water. That turned out to be a mistake; the Environmental Management Act and the Water Pollution Act have been correspondingly amended. (Wet van 16 July 2005, tot wijziging van de Wet milieubeheer en de Wet verontreiniging oppervlaktewateren. Verduidelijking in verband met de EG-richtlijn inzake geïntegreerde preventie en bestrijding van verontreiniging; vergunning op hoofdzaken/vergunning op maat. Stb. 2005, 432). Now Art. 8.11(3) EMA states: "*In the interest of achieving a high level of protection of the environment a permit shall be granted under conditions that are necessary to prevent the negative effects the plant may cause to the environment or, if that is not possible, to reduce and undo them as much as possible – preferably at the source. A starting point is that in the plant at least the relevant best available techniques are used.*" (non-official translation).

pursuant to Art. 17(2), second subparagraph, or by international organisations".

The results of the exchange of information according to Art. 17 IPPC between Member States and relevant industry on best available techniques, monitoring requirements and developments in this area, are the BAT reference documents (BREFs). So these BREFs are one of the items that should be taken into account when determining BAT.

The European IPPC Bureau organises this exchange of information and production of BREFs in Sevilla. The Bureau carries on its work through Technical Working Groups (TWGs) comprising nominated experts from EU Member States, EFTA countries, Accession countries, industry and environmental NGOs.[16] These experts provide information and data and then review the draft documents the Bureau produces following a set BREF outline and guide as agreed with DG Environment and the Information Exchange Forum (IEF). The outline refers to some standard pieces of text already translated into most European languages. In particular, the preface to BREFs and the standard introduction to chapters on BAT provide important foundations for the understanding of BREFs. The reviews of BREFs are carried out following a "*Generic schedule*". [17]

2.1 Local differences in the position of BREFs

In the Netherlands the Regulatory Guidance for BAT Documents obliges competent bodies, determining BAT, to take into account the relevant BREFs.[18] Even a draft BREF should be used as an indication of whether techniques are BAT or not. If a final BREF has been adopted prior to the assessment of the the Council of State, the Council uses the final BREF.

However, competent authorities cannot simply refer to a BREF. They have to investigate themselves whether the installation really can achieve the reductions or efficiencies mentioned in the BREF. The competent bodies also have to check whether the techniques mentioned in an outdated BREF are still BAT.[19]

The BREFs do not have the same position in all Member States.[20] The European Commission states in its Explanatory Memorandum to the IED Proposal: "*A detailed analysis has revealed that there are significant shortcomings in the implementation of best available techniques due to the vague provisions on BAT in the current legislation, the large decree of flexibility left for competent authorities to deviate from it in the permitting process and the unclear role of the BREFs. As a result, permits issued for implementing the IPPC Directive often include conditions that are not based on BAT as described in the BREFs with little, if any, justification for such deviation. As a result of these shortcomings, the proposal lays down provisions to strengthen and clarify the use of BAT. The proposal requires that BAT reference documents are the reference for setting permit conditions and that emission limit values do not exceed the emission levels associated with the best available techniques as described in those BAT reference documents.*"

2.2 More binding BREFs in the IED

Art. 12 IED Proposal states that Member States shall take the necessary measures to provide that the installations are operated in accordance with a number of principles, among which is explicitly "*the best available techniques are applied.*"

Art. 14 IED Proposal lays down that the Commission "*shall adopt*" BREFs based on the results of the information exchange referred to in Art. 29.

Art. 15(3) states that BAT Reference documents shall be the reference for setting the permit conditions and (4) adds: "*Where an installation or part of an installation is not covered by BAT reference documents or where those documents do not address all the potential environmental effects of the activity, the competent authority shall determine the best available techniques for the installation concerned, based on the criteria listed in Annex III, and shall set permit conditions accordingly.*"

For Member States like the UK, these provisions may be an improvement of the current situation, in which BREFs are for guidance only.[21] But these provisions

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16 See: www.eippcb.jrc.ec.europa.eu.

17 Translations of the executive summaries of the BREFs in the official languages of the European Union can be found from the following website: http://forum.europa.eu.int/Public/irc/env/ippc_brefs/library.

18 Simultaneously with the adaptation of the Environmental Management Act and the Wvo to IPPC, the Dutch 'Regulatory Guidance for BAT Documents' entered into force (Regeling aanwijzing BBT-documenten. Revised in 2007: Stcrt. 23 November 2007, N° 288, p. 29). This regulation prescribes which documents Dutch competent authorities have to take into account when they grant a permit based on these Acts. The documents in Table 1 of its Annex (BAT Reference documents) always have to be taken into account when it concerns an IPPC installation mentioned there. Furthermore, the Dutch competent authority has to take into account the other documents mentioned in Table 2 of the Annex when they are relevant for (a part of) an installation. One of these documents is the Dutch National Emissions Guidelines for Air (NeR). This NeR is drawn up by provinces, municipalities and the national government, in cooperation with industry, to harmonise environmental permits in the Netherlands with respect to the abatement of emissions to the air. The NeR has no legal status, but jurisprudence of the Dutch Council of State shows that this court considers the NeR to be an important guideline for the competent authorities. Therefore, derogation of this NeR should be encouraged.

19 Het beoordelingskader van de IPPC Richtlijn: implementatie, interpretatie en toepassing. Drs. F. H. Oosterhuis et al. STEM publicatie 2007/1, p. 39.

20 Drs. F. H. Oosterhuis et al., *supra* note 19, STEM 2007/1, p. 70. In this report the implementation of IPPC and in particular the BAT requirement has been assessed in the UK, Flanders, Germany and the Netherlands.

21 E.g. with regard to the permit of Aberthaw coal-fired power station (Wales, UK) the competent authority has granted a derogation on account of its fuel quality that allows it to emit 1200 mg/Nm^3 NOx instead of the 500 mg/Nm^3 that would normally apply for plants of this size under the LCP Directive. FoE UK could not challenge this decision because in the UK the BREFs are for guidance only, with regulators ultimately determining BAT assessment

might change the current situation in the Netherlands, in which the competent authorities have to check themselves whether a BREF is up-to-date and sufficient to determine BAT. That would mean a deterioration of the possibilities of achieving an optimal use of BAT. So in the IED competent authorities should be obliged to check if there is no better information on BAT than the BREF.

2.3 Quality of BREFs

This is even more important when the quality of BREFs is not guaranteed sufficiently. Their quality, timely revision and accessibility are equally important. The basis on and way in which BREFs are currently formulated are indicated above. The Sevilla process brings around one table technical experts representing different interests. The balance of representativeness however is questionable since it is composed, on average, of 40% representatives from Member States, 49% representatives from industry and one single representative from environmental non-governmental organisations.[22] Not only are the interests of the experts who participate in the Sevilla process important in terms of the quality of the BREF documents; the available data also play an important role.

This situation does not guarantee a good quality of the BREFs.

With regard to frequent updating of the BREFs: they formally have to be revised every 3 years as stated in Art. 17(2) IPPC. In practice they are not revised as often. Of course an outdated BREF does not provide the competent authority with adequate information on the best available techniques at the time of granting a permit. In the Netherlands therefore the status of a BREF (draft, recently adopted or not recently revised) is relevant to the position of the BREF in the permitting process.

Another problem for competent authorities (and the public) is the lack of availability of many BREFs. Also, it seems that they are hard to understand and to use in daily practice.[23]

Art. 14(2) IED proposal only states that the Commission shall review and update the BAT documents "*as appropriate.*"

The proposed Art. 29 no longer requires the Commission to publish the results of the exchange of information every 3 years. This article explicitly includes non-governmental organisations promoting environmental protection in the process of information exchange in Sevilla. However, this does not solve the practical problem of capacity.

3 BREF range

Another problem regarding the determination of BAT is the fact that BREFs provide BAT-associated emission levels. This does not mean that one emission limit value is given in the BREF. The BAT-AELs consist of an (often wide) range. No criteria have been provided for competent authorities to decide which level they should choose in a certain case.

The Dutch Council of State has ruled that techniques can be considered to be BAT when they are mentioned in the BREF.[24] A distinction between new and existing installations is rarely made. For the latter the lower, stricter, level of the BAT range can be hard to achieve. For new installations however this level should be no problem.

Sector	NOx emissions kton	Share process emissions	Average PSR[25] value combustion plants, g/GJ
Initial estimation 2010	67	11.6	39
Effect of using upper level BAT according to BREF	65	11.6	37
Effect of using lower level BAT according to BREF	56	9.8	32

The effect for the environment of using the lower or the upper level of the BREF range can be very substantial. For example, the effects of a combination of BAT and emissions trading on Dutch NOx emissions using the upper level or using the lower BAT level have been estimated by Van der Kolk consultancy (see figure below).[26] From this estimation it follows that using the lower level of BAT would result in a total sector (industrial) emission of 56 kton NOx per year, which is only 1 kton above the NEC sector ceiling.

In the IED Proposal no requirements regarding the level of BAT-associated limit values are proposed. Even the initial requirement (in Art. 9(1) IPPC) that permits include all measures necessary to achieve "*a high level of protection for the environment as a*

methodologies. Presentation by Lesley James at the seminar Cleaner Air in Practice. Available solutions for Cutting NOx Emissions. 9 September 2008 in Brussels.

22 This unbalance is aggravated by the lack of capacities and financial resources of environmental NGO's and smaller countries. In practice often representatives from these Member States are substituted by industry representatives.

23 Position of VNG-IPO (Dutch municipalities and provinces) on the IED Proposal, June 2008 (in Dutch), they ask, for example, for a translation of the most essential chapters of the BREFs in all EU languages.

24 Drs. F. H. Oosterhuis et al., *supra* note 19, p. 39. Dutch Council of State 23 March 2008.

25 PSR = Performance Standard Rate.

26 Eindrapport voorevaluatie NOx emissiehandel, Van der Kolk advies, July 2006. See also: Schieten om te kunnen scoren. Verslag van de werkgroep NEC en industrie. InfoMil, October 2006, p. 18.

whole" has been deleted. This phrase should be reintroduced in Art. 15(3) IED.

4 BAT-Associated Emission Levels (BAT-AELs) and sector Emission Limit Values (ELVs)

As mentioned above several directives set emission limit values for industrial emissions caused by certain sectors. Although Art. 19(2) IPPC requires that "*in the absence of Community emission limit values defined pursuant to this Directive, the relevant emission limit values contained in the Directives listed in Annex II and other Community legislation shall be applied as minimum emission limit values pursuant to this Directive for the installations listed in Annex I*", the relation between the emission limit values in the Dutch general binding rules implementing the sector directives on the one hand and the BREFs on the other hand, turned out to be unclear for competent bodies. The Dutch Council of State made it clear that the general binding rules and national guidelines can only be referred to if the emission limit values (ELVs) in those rules and guidelines fall within the range of the BAT-associated emissions levels (BAT-AELS) in the relevant BREF.[27]

Thus, in the permitting process emission limit values based on sector directives always have to be compared with the level of protection of the IPPC Directive explicitly. This may lead to lower limit values than are laid down in these sector directives. The competent authority has to show how the requirement of BAT has been checked and the way in which the prescribed limit values have been determined.

4.1 Safety net in the IED

In the IED Proposal six sector directives are integrated with IPPC in a single directive. Chapter II covers activities set out in Annex I and lays down special provisions for those activities by amending the current requirements of the IPPC Directive. Chapters III to VI respectively contain minimum technical requirements for large combustion plants, waste incineration plants, solvents installations and titanium dioxide installations. These emission limit values should never be exceeded (Art. 16(3) IED). They continue to be the 'bottomline'. According to the Proposal competent bodies may allow emission values to exceed the BAT-AELs, but the sector ELVs remain a safety net.

In the Proposal more stringent emission limit values for combustion plants (Art. 33, 35 and parts 1 and 2 of Annex V) have been set because "*emissions to air from large combustion plants present a large share of total emissions of key pollutants and far exceed the objectives set out in the Thematic Strategy on Air Pollution. Without a further reduction of emissions from these plants, the positive health and environmental effects to be obtained from these objectives will not materialise. It is therefore necessary to set more stringent emission limit values, aligned with best available techniques, for certain categories of combustion plants and pollutants.*"[28]

Large combustion plants are indeed the main contributors to overall air pollution. They contribute about 90% of total industrial emissions of SO2, NOx and Particulate Matter. Significant health and environmental benefits would arise if European power plants would apply BAT that largely outweigh costs: considering wider positive impacts total annual EU net benefits vary between 13.9 – 58.7 billion Euros if large combustion plants apply the stricter level of BAT. The Cafe evaluation method[29] also suggests the estimated health benefits are 3.4 times higher for the major 100 plants than the estimated control costs (without including damage to ecosystems and building) and that 22.823 premature deaths could have been avoided (243.657 life years gained) if the 200 highest emitters would have applied BAT.[30]

4.2 Need for stricter ELVs

The proposed emission limit values however are not in line with current BAT. In order to realise a real "*European safety net*", these ELVs should at least be associated with the lower level of the current BREF ranges and be updated frequently and their scope should be wide enough. Considering the fact that the IED will probably not enter into force before 2014 and the fact that the data on which current BAT-AELs are based are already about eight years old now, requiring current BREFs to have a stricter range (in 2014) is not asking too much.

In his draft report on the IED EP rapporteur Krahmer has introduced another "*European Safety Network*".[31] He suggests an amendment (nr. 17) of Art. 14 IED that includes a (comitology) procedure to lay down 'measures to limit emissions' on the basis of BREFs as minimum requirements. If I understand him correctly, he proposes to set minimum requirements based on BAT by the Commission. This sounds good, but probably will lead to a situation in which competent authorities no longer grant permits based on the BREFs, but on the minimum requirements. The so-called "*safety net*" would then be the standard.

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27 E.g. Decisions of the Dutch Council of State 20 April 2005; 200405315/1, 25 January 2006; 200409233/1, 4 April 2007, 200602517/1; 26 April 2006 (200504822/1).

28 Explanatory Memorandum Proposal IED, p. 11.

29 COM(2005)446, *supra* note 5.

30 http://www.eeb.org/publication/2008/080505_APC20_final.pdf; http://ec.europa.eu/environment/air/pollutants/stationary/ippc/pdf/recast/ia_en.pdf.

31 COM(2007)0844, *supra* note 1 and ENDS Europe Daily 2591, 23 July 08: MEP demands binding emission limits for plants.

5 Derogation from BAT

Krahmer substantiates his proposals by referring to the aim of the IED Proposal to make BREFs more binding. Art. 16(2) IED states: "*The competent authority shall set emission limit values that do not exceed the emission levels associated with the best available techniques as described in the BAT reference documents.*"

And 16(3) IED adds: "*By derogation from the second subparagraph of paragraph 2, the competent authority may, in specific cases, on the basis of an assessment of the environmental and economic costs and benefits taking into account the technical characteristics of the installation concerned, its geographical location and the local environmental conditions, set emission limit values that exceed the emission levels associated with the best available techniques as described in the BAT reference documents.*

Those emission limit values shall however not exceed the emission limit values set out in the Annexes V to VIII, where applicable.

The Commission may establish criteria for the granting of the derogation referred to in this paragraph."

According to Krahmer this will cause much derogation. I agree with him that the current proposal should be formulated in a way that clearly shows that derogation of BAT can only be granted in exceptional cases and that the Commission shall establish criteria (instead of may), but Krahmer's proposal would make the exception the rule.

5.1 Relation to national emission ceilings

Furthermore, stricter limit values should be explicitly allowed to be set. As pointed out in section 1, a good implementation of the IPPC Directive is important for meeting the national emission ceilings and environmental quality standards. In IPPC however no provision regulates the relation between conditions set in permits according to IPPC and the national emission ceilings.

In some Dutch cases this issue was brought before the Council of State. Plaintiffs asked for more stringent emission limit values to prevent a breach of the national emission ceiling. The court did not comply with this request, because a breach of NEC can only be established in 2010.[32]

In IED no relation to the NEC Directive (and other national emission ceilings) is regulated either. I hope this omission will be corrected.

6 Conclusions

The poor implementation of IPPC in several Member States was one of the reasons for the recast of this directive. Effective implementation resulting in permits including emission limit values that help to improve the environmental quality in Europe is urgently needed. Not only in the Netherlands should the quality of air, water and soil be improved to protect human health and nature.

The Proposal for a Directive on Industrial Emissions does not guarantee that these emissions are reduced as much as possible by applying best available techniques. It is an improvement that the BREFs will be more binding. However:

- The possibilities of derogating from BAT in a less strict way are not sufficiently restricted;
- The possibility of derogating from BAT in a stricter way is not explicitly regulated;
- The competent authorities still may grant permits with BAT-associated emission levels that are not appropriate for the installation;
- A good standard of quality, frequent updating and better accessibility of the BREFs are not guaranteed;
- The sector emission limit values (ELVs) will constitute no real safety net (in 2014) if these values have not been laid down at the lowest BAT-associated level;
- IED does not include a clear relationship to national emission ceilings.

Hopefully the European Parliament and the Council will improve the Proposal by amending it in such a way that the IED will not have the same (or other) shortcomings as the IPPC. Europe needs a strong Directive!

[32] Decisions of the Dutch Council of State 7 November 2007, 200609021/1 (BIOX Group BV, Vlissingen) and 14 November 2007, 200608547/1 (BIOX Group BV, Rotterdam).

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Contact
Freiburg Head Office:
P.O. Box 50 02 40
D-79028 Freiburg
Phone +49 (0)761-4 52 95-0
Fax +49 (0)761-4 52 95 88

Darmstadt Office:
Rheinstrasse 95
D-64295 Darmstadt
Phone +49 (0)6151-81 91-0
Fax +49 (0)6151-81 91 33

Berlin Office:
Novalisstrasse 10
D-10115 Berlin
Phone +49(0)30-280 486 80
Fax +49(0)30-280 486 88
www.oeko.de

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  - Risk management

Contact
Prof. Dr. jur. Gerhard Roller
University of Applied Sciences
Berlinstrasse 109
D-55411 Bingen/Germany
Phone +49(0)6721-409-363
Fax +49(0)6721-409-110
roller@fh-bingen.de
www.fh-bingen.de

The Society for Institutional Analysis was established in 1998. It is located at the University of Applied Sciences in Darmstadt and the University of Göttingen, both Germany.
The sofia research group aims to support regulatory choice at every level of public legislative bodies (EC, national or regional). It also analyses and improves the strategy of public and private organizations.
The sofia team is multidisciplinary: Lawyers and economists are collaborating with engineers as well as social and natural scientists. The theoretical basis is the interdisciplinary behaviour model of *homo oeconomicus institutionalis*, considering the formal (e.g. laws and contracts) and informal (e.g. rules of fairness) institutional context of individual behaviour.

The areas of research cover
- Product policy/REACh
- Land use strategies
- Role of standardization bodies
- Biodiversity and nature conversation
- Water and energy management
- Electronic public participation
- Economic opportunities deriving from environmental legislation
- Self responsibility

sofia is working on behalf of the
- VolkswagenStiftung
- German Federal Ministry of Education and Research
- Hessian Ministry of Economics
- German Institute for Standardization (DIN)
- German Federal Environmental Agency (UBA)
- German Federal Agency for Nature Conservation (BfN)
- Federal Ministry of Consumer Protection, Food and Agriculture

Contact
Darmstadt Office
Prof. Dr. Martin Führ – sofia
University of Applied Sciences
Haardtring 100
D-64295 Darmstadt/Germany
Phone +49(0)6151-16-8734/35/31
Fax +49(0)6151-16-8925
fuehr@sofia-darmstadt.de
www.h-da.de

Göttingen Office
Prof. Dr. Kilian Bizer – sofia
University of Göttingen
Platz der Göttinger Sieben 3
D-37073 Göttingen/Germany
Phone +49(0)551-39-4602
Fax +49(0)551-39-19558
bizer@sofia-darmstadt.de
www.sofia-research.com

Öko-Institut e.V.
Institut für angewandte Ökologie
Institute for Applied Ecology

I·E·S·A·R
Institute for Environmental Studies and Applied Research
FH Bingen

sofia

elni

In many countries lawyers are working on aspects of environmental law, often as part of environmental initiatives and organisations or as legislators. However, they generally have limited contact with other lawyers abroad, in spite of the fact that such contact and communication is vital for the successful and effective implementation of environmental law.

Therefore, a group of lawyers from various countries decided to initiate the Environmental Law Network International (elni) in 1990 to promote international communication and cooperation worldwide. Since then, elni has grown to a network of about 350 individuals and organisations from all over the world.

Since 2005 elni is a registered non-profit association under German Law.

elni coordinates a number of different activities in order to facilitate the communication and connections of those interested in environmental law around the world.

Coordinating Bureau

The Coordinating Bureau was originally set up at and financed by Öko-Institut in Darmstadt, Germany, a non-governmental, non-profit research institute.

Three organisations currently share the organisational work of the network: Öko-Institut, IESAR at the University of Applied Sciences in Bingen and sofia, the Society for Institutional Analysis, located at the University of Darmstadt. The person of contact is Prof. Dr. Roller at IESAR, Bingen.

elni Review

The elni Review is a bi-annual, English language law review. It publishes articles on environmental law, focussing on European and international environmental law as well as recent developments in the EU Member States. It is published by Öko-Institut (the Institute for Applied Ecology), IESAR (the Institute for Environmental Studies and Applied Research, hosted by the University of Applied Sciences in Bingen) and sofia (the Society for Institutional Analysis, located at the University of Darmstadt). The Coordinating Bureau is currently hosted by the University of Bingen. elni encourages its members to submit articles to the Review in order to support and further the exchange and sharing of experiences with other members.

elni Conferences and Fora

elni conferences and fora are a core element of the network. They provide scientific input and the possibility for discussion on a relevant subject of environmental law and policy for international experts. The aim is to gather together scientists, policy makers and young researches, providing them with the opportunity to exchange views and information as well as to develop new perspectives.

The aim of the elni fora initiative is to bring together, on a convivial basis and in a seminar-sized group, environmental lawyers living or working in the Brussels area, who are interested in sharing and discussing views on specific topics related to environmental law and policies.

Publications series

- Access to justice in Environmental Matters and the Role of NGOs, de Sadeleer/Roller/Dross, Europa Law Publishing, 2005.
- Environmental Law Principles in Practice, Sheridan/Lavrysen (eds.), Bruylant, 2002.
- Voluntary Agreements - The Role of Environmental Agreements, elni (ed.), Cameron May Ltd., London, 1998.
- Environmental Impact Assessment - European and Comparative; Law and Practical Experience, elni (ed.), Cameron May Ltd., London, 1997.
- Environmental Rights: Law, Litigation and Access to Justice, Deimann / Dyssli (eds.), Cameron May Ltd., London, 1995.
- Environmental Control of Products and Substances: Legal Concepts in Europe and the United States, Gebers/Jendroska (eds.), Peter Lang, 1994.
- Dynamic International Regimes: Institutions of International Environmental Governance, Thomas Gehring; Peter Lang, 1994.
- Environmentally Sound Waste Management? Current Legal Situation and Practical Experience in Europe, Sander/ Küppers (eds.), P. Lang, 1993
- Licensing Procedures for Industria Plants and the Influence of EC Directives, Gebers/Robensin (eds.), P. Lang, 1993.
- Civil Liability for Waste, v. Wilmowsky/Roller, P. Lang, 1992.
- Participation and Litigation Rights of Environmental Associations in Europe, Führ/ Roller (eds.), P. Lang, 1991.

Elni Website: elni.org

On the elni website www.elni.org one finds news of the network and an index of articles. It also indicates elni activities and informs about new publications. Internship possibilities are also published online.

elni, c/o Institute for Environmental Studies and Applied Research
FH Bingen, Berliner Straße 109, 55411 Bingen/Germany

www.elni.org