

# A European Safety Net?

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# BAT-AELs

- IPPC: 2007
- The permit shall include emission limit values based on BAT
- taking into account the technical characteristics of the installation concerned, its geographical location and the local environmental conditions (art.9, § 4)
- In any case: minimise long distance pollution and high level of protection of the environment as a whole

# Interpretation

- taking into account the technical characteristics of the installation concerned, its geographical location and the local environmental conditions.

= indication on how to choose the right BAT?

= authorisation to derogate from BAT?

# Authorisation to derogate?

Renewing a permit for a cement kiln + coincineration under the IPPC regime:

- Wait with BAT-AELS till 2016
- Justification: kilns shall by then be modernized
- **Technical characteristics of the installation** (old, plans for renovation) justify a derogation to BAT
- Result: no BAT, no BAT-AELS, no emission limit values for pollutants which are not covered by existing sector Emission Limit Values (ELVs)

# IED

Confirms the possibility to derogate from  
BAT-AELs:

**Art. 15, § 4:**

By way of derogation from paragraph 3 (BAT-AELS)  
and without prejudice to Article 18 (quality  
standard)

the competent authority may, **in specific cases**, set  
**less strict emission limit values.**

# Conditions

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.

# Tensions

- Keep flexibility
- But no blank cheque
  
- A true level playing field
- This derogation = **wisdom or black hole?**
- Fierce battle

# Derogation framed by

- The necessity to provide an « **assessment** » (who is in charge?)
- Prove the « **disproportionnate** » higher cost (for the private operator, in comparison with the environmental benefit)
- Justify in an **annex** to the permit



# Safety net?

- Less strict emission limit values?
- But where is the floor?

# Safety net ?

First level:

keep the derogation tight

- Give the reason why (« assessment »)
- In the permit -> controlable
- Specific reporting by member states (art. 72)
- Criteria? (The Commission may, through guidance ...)

# Balance of interest

- What is a disproportionate higher cost?
- ELV: environment is a cost, not a potential resource?
- Link to public health

# Safety net?

- Derogate from BAT-AELs
- But not from the obligation to set emission limit values
- Net:
  - not exceedance of ELVs set in the annexes, where applicable (not link to minimum BAT)
  - Other pollutants, other sectors?
  - Not significant pollution
  - Ensure the HLP as a whole

# Margin of appreciation

- **Red line** in interpretation:
  - **High level of environmental protection** -  
Directly from the Treaty: mission,  
environment, health  
in case of doubt: pull up
  - **Derogation = exception** - must be  
interpreted strictly
  - Role of the Member States