

Questionnaire on the IPPC-directive for the annual conference in Stockholm 2009

(To be answered by e-mail to monica.stenberg@dom.se before 1 august 2009)

This questionnaire consists of two parts. First, there are some general questions about the implementation and application of the IPPC-directive (Council Directive 96/61/EC of September 1996 concerning integrated pollution prevention and control, codified version in Directive 2008/1/EC of the European Parliament and of the Council) in your country, and the role of the courts. Then, we have constructed a case, where an operator is asking for a permit, and we ask you to fill in the information about how this example would be handled/examined in your country.

General questions about the implementation and application of the IPPC-directive and the role of the courts

1. How many IPPC-plants are there in your country?

There are approx. 1000 existing and 160 newly established IPPC-plants in Hungary.

2. In what way are questions concerning the application of the IPPC-directive brought to court (litigation, application for a permit, appeal of a permit decision, application for a summons, criminal offence)?

IPPC activities can be tried for damages in litigation, all clients concerned can appeal against the permit decision and following the decision of the appeal authority the client may file an appeal to the court. If the IPPC-plant is considered dangerous for the environment, it is liable for criminal offence.

3. Which authority (authorities) issues permits according to the IPPC-directive? How far has the integration according to the directive reached? Can, in your country, one authority issue an IPPC-permit comprising the total environmental impact of the polluting activity (water, air, land, waste etc) or does the company (the applicant) have to send applications to different authorities?

On a regional level there are inspectorates for the protection of environment, nature and water. These inspectorates are entitled exclusively to examine the total environmental impact of the polluting activity. The inspectorate has to ask for the opinion of other authorities. There are some exceptions, e.g. the placement of manure on agricultural field because in this case an agricultural authority is entitled to proceed.

Regarding the integration level, Hungary reaches almost 100% at this moment (it means 1 outstanding permit of 1001)

4. Which authority or court hears appeals against IPPC-permits? What competence does the authority or court have to change/amend a permit? Can it for example decide about new or changed conditions? Can it just withdraw the permit or parts of the permit?

The appeal authority is the National Inspectorate for Environment, Nature and Water. It is entitled to annul or modify the permit. It can decide about new or changed conditions or can withdraw the permit too. The court is not entitled to modify, it can only annul the decision.

5. Who – in addition to the operator of the plant - can bring a case concerning IPPC-matters to court by appealing against an IPPC-permit? What about for example people living in the neighbourhood, NGO:s and authorities on different administrative levels (local, regional, national)? What kind of obstacles are there for them to bring a case to court; for instance different kinds of procedural costs?

Any client concerned can bring the case to the court. Any person whose rights or interests are directly affected by the case can be a client. (e.g. people living in the neighbourhood etc.) NGOs have a special status guaranteed by the environmental act, regardless of the fact where they function they are entitled to attack any environmental decision. There are no significant procedural costs, clients may ask for reduced costs.

6. On what basis is decided what is considered to be the best available technique (BAT) in a certain case? What is the role of the BREF documents?

BAT has priority in the permit procedure. If there is no information on BAT available in Hungarian language, the English one has to be applied and in both cases or if neither of them is available, the best available technique must be determined by Government decree no. 314/2005. (XII.25.), which includes general aspects (like Annex IV of Directive 2008/1/EC). It is primarily the responsibility of the applicant to compare the best available technique and its activity. The authority decides upon further requirements following the examination of the documents.

7. Is there a time limit for the IPPC-permit, or is the permit valid for ever? Is the permit holder obliged to apply for a new permit after a certain time period? Can a supervisory authority issue injunctions which go further than the conditions of the permit as regards environmental matters? Under what circumstances can a supervisory authority request a review of the permit and its conditions?

The permit has to be issued for a definite period of time, at least for five years, and it must be reconsidered every five years. If an important change in the circumstances occurs, a review and updating of the permit and its conditions has to be requested. (The extent or quality of the emission changes significantly or there is an important development in the best available technique.)

8. Is the choice of the localisation of an IPPC-plant considered in the same process as the IPPC-permit and the conditions for the permit? Or is the localisation decided in a separate process according to another legislation? In that case; which comes first, the decision on the localisation or the IPPC-permit?

If, by localisation we mean whether the plant can be established in a given territory, it is decided by the local government in a decree. If, however, it means that a construction permit has to be requested, the construction authority issues the permit in a separate procedure. In the latter process the applicant has to submit the IPPC-permit. If the IPPC-permit has not been issued yet, the construction authority may suspend its procedure. The construction permit is bound by the conditions set by the IPPC-permit.

9. Are the EIA-directive (Council Directive of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, 85/337/EEC)

and the IPPC-directive implemented in the same legislation in your country, so that you in one single process get a permit that fulfils the demands of both directives? If not so; how is the EIA-directive implemented? For example in a special legislation, in planning and building legislation or otherwise?

The rules of EIA and IPPC directives are included in a joint government decree. [314/2005. (XII.25.)] There are separate rules for each procedure but there is a possibility to take a single (consolidated) procedure when the project falls into the scope of both directives. Otherwise the IPPC procedure follows the EIA procedure. If there is a need for both procedures, in practice usually a consolidated procedure takes place.

10. Suppose an existing IPPC-plant wants to double its production and that this will be done by duplicating most of the process equipment. The plant will thus consist of an old and a new line of production, but some equipment that is necessary for environment protection will be parted so that it is used by both lines. The application concerns only the increase of production (the new line) and not the whole production (both old and new line). How does the permit authority handle this situation? Does it issue a permit concerning only the increased production (the new line)? Or does it demand a new application concerning the whole production (old and new line)? Or what? (See article 12.2.) This question can be considered in light of the EIA-directive, which demands the assessment of a project as a whole (and no cutting of the salami!).

Regulation follows the integrated viewpoint. Therefore it is not enough if the subject of the permit is only the new line, the whole production must be examined.

11. Can the permit authority decide on conditions based on BAT, even if the application only describes environment protection measures that are less strict? How does the authority handle applications that are not based on BAT?

Conditions have to be set by the BAT even if the environment protection measures are less strict.

12. If there are national general rules on emission standards that do not match BAT, how are they applied by the permit authority?

The environment authority can apply national general binding rules (these are the minimum BAT requirements), but in case of necessity can apply provisions more strict than BAT.

13. How does existing industries meet the demands of the IPPC-directive in your country? Who has the responsibility to make sure that the requirements are met? Is it the supervisory authority, the operator of the plant or someone else? What are the consequences if an existing industry does not meet the requirements? Can it be closed? Or is a certain time period accepted before measures? How long? (See article 5.)

The Hungarian IPPC-plants had to conform to BAT rules by 30 October 2007. There were exceptions in two issues in certain questions: waste disposal premises had to comply with the rules by 15 July 2009 (on this day 100 premises were closed down) and live-stock premises that could request special financial support.

In these cases there was a degree of flexibility determining permit conditions with different dates for the different standards to be implemented not later 31 October 2010. It is primarily the responsibility of the operator to make sure that the requirements are met. The plants that did not meet the requirements have been closed down. Existing plants had to prepare a schedule to meet the conditions of BAT. In some problematic cases the setting of plants into operation was delayed.

14. Which authority is supervising IPPC-plants? How often do inspections take place? What enforcement policy do they have (warnings, injunctions, sanctions and so on)? Which type of sanctions can be applied in case of violations?

The regional inspectorates oversee the activities of IPPC-plants on the basis of an inspection plan. An inspection in the form of a site visit on the premises has to be carried out every year. The inspectorate may issue warnings, injunctions and sanctions too. (Compliance promotion is not widespread.) Applicable sanctions are the following: restriction, suspension and prohibition of the activity and imposing a fine.

An example

A new tannery is going to be built in your country. The tannery will have a production that exceeds 12 tonnes per day and is thus an IPPC-plant.

There is no tannery in Hungary.

1. What kind of authority or authorities (local, regional, central) will handle (examine, review) the application and issue the permit?

The regional inspectorate will handle the application and issue the permit.

2. Will the application include an EIS according to the EIA-directive?

The application includes EIS upon basis of the decision made by the regional authority in the preliminary examination on the significance of the environmental impacts of the planned tannery.

3. Will the permit authority/authorities try the localisation of the plant in the same process as the IPPC-questions?

If localisation means whether the plant can be established in a given territory, it is decided in general by the local government in a decree regulating the land-use plan. If, however, it means that an construction permit has to be requested, the construction authority issues the permit in a separate procedure. In the latter process the applicant has to submit the IPPC-permit. If the IPPC-permit has not been issued yet, the construction authority may suspend its procedure. The construction permit is bound by the conditions set by the IPPC-permit.

4. Are there any procedural costs for the tannery operator?

The procedural costs are regulated by environmental ministry decree no. 33/2005. (XII.27.)

The request for permit of a tannery plant (preliminary examination) costs 250.000HUF (approx. 950EUR). If there is a need for a single IPPC procedure, it costs 2,1millionHUF (approx. 8500EUR). If there is a need for both (consolidated EIA and IPPC) procedure, it costs 2,8millionHUF (approx. 9800EUR).

5. Does the permit authority normally ask other authorities on different administrative levels in the permit process for their opinion on the application?

The environmental authority has to ask for the opinion of the special authorities according to government decree no. 347/2006. (XII.23.) appendix no.4. So it is not the task of the operator to get these special opinions.

6. How does the permit authority ensure public participation? Can for example people state their view in writing, by e-mail, in a public hearing or otherwise?

Clients, including NGOs, can take part in all phases of the permit procedure. They can file remarks, can ask for giving evidence and can express a juridical opinion. They have the right to have a look at the documents, to appeal and file a suit. The authority have to announce the opening of the procedure, in certain cases it has to provide the possibility for an open discussion and must take into account the remarks of the public.

7. The permitting authority will issue the permit on certain conditions. Mark with an X the in the table what kind of conditions that might be laid down. And please make good use of the “remark”-column, with for instance examples of conditions!

Kind of condition	Y e s	N o	Remark
conditions concerning the tanning technology itself (clean production)	X		
conditions concerning the cleaning technology (end of pipe solutions)	X		
limit values for water pollutants	X		
limit values for air pollutants	X		
conditions concerning solid wastes	X		
limit values for noise	X		
limit values for energy consumption	X		
conditions concerning transports to and from the plant	X		
conditions about what chemicals that are not to be used in the production	X		The public health authority can issue requirements too.

conditions concerning the control of discharges	X	
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Other questions	Y e s	N o	Remark
can the setting of conditions be postponed in the permit?	X		Only in well-founded cases.
can stricter conditions than what is stated in the BREF-document be set?	X		Based on government decree no. 314/2005. (XII.25.)

8. If the permit authority wants to prescribe a condition on the maximum discharge of chromium to water from the tannery, on what basis is the level of the discharge decided?

According to ministry decree no. 28/2004. (XII. 25.) the maximum amount of chromium content cannot exceed 1 mg/l. in case of tanning and 0,05 mg/l in case of fur dying, steeping and bleaching.

9. Who can appeal the permit and to whom?

Anybody having the status of a client has the right to appeal. The appeal authority is the National Inspectorate for Environment, Nature and Water. Any client concerned can bring the case to the court. Any person whose rights or interests are directly affected by the case can be a client. (e.g. people living in the neighbourhood etc.) NGOs have a special status guaranteed by the environmental act, regardless of the fact where they function they are entitled to attack any environmental decision.