

**Topics for the discussion on the questionnaire,
Friday 16 October 14.30 – 17.00 and Saturday 17 October 09.00 – 12.30**

Background

(question 1 and 3 of the questionnaire; article 7 and 8 of the IPPC directive)

Even if the IPPC-directive is to be followed by all member states, which of course means that the environmental requests on industrial and agricultural plants should be more or less the same in our countries, the implementation of the directive differs between the countries depending on a number of circumstances. We have different history and tradition, with different organisation of the administration of our countries as a consequence. We have also different environmental conditions and different structure of the economy, trade and industry. The questionnaire this year aims at comparing the implementation and application of the IPPC-directive in our countries, especially when it concerns the role of the courts and questions that might be brought to court.

So the planning of this part of the conference is that we should discuss a number of issues, starting each discussion with a closer look at two or three countries that seems to have somewhat different approach. In fact, we have tried to pick out issues and countries where the differences - as far as we have understood from the answers to the questionnaire – seem to be the biggest.

From the answers to the questions 1 and 3 we have learned that the number of IPPC-plants varies in the countries from 400 – 500 in countries like Norway and Austria and up to many thousands in the large countries like Germany and France. In many countries the number of IPPC-plants is not the most interesting figure, since the same national rules apply to a much larger number of plants than only what is mandatory according to the directive. In other words, the demands of the IPPC-directive are implemented not only for the actual IPPC-plants, but for other types and sizes of plants as well.

The permit system in most countries involves an authority that issues the permit as a first instance. In many countries the level of the authority depends on the size or kind of plant, but in most countries authorities on municipal or regional level are involved. In Norway though, all permits are issued by a national authority. The permits can be issued more or less close to the political assemblies. In Belgium the provincial government issues the permits, in Austria the State Governor or the State Government. In the Czech Republic and in Italy the Ministry of Environment issues at least some of the permits.

It seems that in most countries all environmental impacts are assessed in the same process and by one single authority. An exception is the Netherlands where the discharge of polluting substances to surface waters requires a separate permit, and Italy, where the permit is issued by one single authority only if there is an important global impact of the plant.

From this background we move to the first issue to discuss:

a. The role of the courts in the system of issuing permits according to the IPPC-directive (question 2 and 4 of the questionnaire; article 16 of the IPPC directive)

In some countries, like in Belgium, The Czech Republic and Poland, the courts are normally not involved in the permitting process at all, even if there might be a possibility to have the legality of a permit reviewed by court. In other countries, in fact in most of the countries that have answered the questionnaire, permit decisions are appealed to courts as second or third instance. The courts might then have different competences. The most common seems to be that the court makes a judicial review; it can annul a permit, but not change it. In some cases and in some countries though – like in Finland and France - , changes can be made. Sweden seems to be the only country where courts issues permits as first instance.

In all countries the courts have a role when it comes to criminal offences concerning the IPPC-directive.

Opening by

- France and

- Poland

with a short (15 minutes) description of the role of the courts in their countries.

b. The relationship between the IPPC-directive and the EIA-directive (question 9 of the questionnaire; article 6 of the IPPC directive)

The EIA-directive and the IPPC-directive are over-lapping in the sense that they both apply to some large industrial plants. The EIA-directive is wider when it concerns the kinds of projects that it covers – it doesn't cover only industrial plants, but also for instance infrastructural and other large projects. The IPPC-directive on the other side covers not only the largest industrial plants, but also the “medium sized”. Both directives require a decision based on the environmental conditions of the project or plant.

The legislation and the procedures of the two directives can be more or less coordinated. From the answers to the questionnaire it seems that the division between countries that have implemented the EIA and the IPPC-directive in the same or in separate legislations is fifty/fifty. In one country, Norway, the EIA-directive has been implemented by still another legislation; the Act on Building and Planning.

Even if there are separate legislations for the EIA- and IPPC-directives, the procedures can be coordinated. When there is a coordination of the processes, this is done in two main ways. Either there is coordination only for the plants that are covered by both directives – that is only the largest IPPC-plants – or there is coordination for all IPPC-plants. In that case the demands of the EIA-directive are thus stretched to cover also smaller projects than what is mandatory according to that directive.

Examples of countries with separate legislations and procedures are Poland and Italy.

Countries that have coordination so that the procedure for all IPPC-plants also meets the demands of the EIA-directive are the Walloon region of Belgium (if we have understood correctly) and Sweden. The most common seems to be that there is coordination only for the plants that are obliged to follow both directives. This is the case for example in Austria, Finland, Hungary, Netherlands and United Kingdom.

Opening by

- Netherlands, describing their system
 - Italy, describing a the case of the waste combustion plant of Modène (case a. from the of the answer)
- (15 minutes for each country)

c. Who can appeal IPPC-permits – what is requested by neighbours and NGO:s? (question 5 of the questionnaire; article 15 and 16 of the IPPC directive)

The Aarhus-convention is implemented in EU partly by the EIA-directive, so the right to appeal a permit might differ between countries depending on what was discussed previously; how the EIA- and the IPPC-directive have been implemented. In all countries the applicant can appeal. There are also specified authorities that might appeal in the different countries. Neighbours to the plant may also appeal. This right is limited in different ways in different countries; in some countries they should have a legal interest, in others they should be directly affected. There are also different views on NGO:s and their right to appeal. For both neighbours and NGO:s there might also be obstacles of other kinds like costs or demands on the organisation to fulfil certain rules.

Opening by

- Belgium, describing the demands on NGO:s
- (15 minutes)

d. Starting points for the conditions of the permits; BAT and BREF:s (question 6, 11 and 12 of the questionnaire; article 3, 9 and 11 of the IPPC directive)

The actual environmental demands on a plant are established in the conditions of a permit. Even if the principles of how the conditions are to be decided is laid down in the IPPC-directive, and thus is common for the different countries, there is still a quite a wide range in which the demands can be decided. In all countries the conditions are to be based on BAT, best available technique, but there are different starting points when BAT is to be decided. We think we have found at least four main routes to decide conditions based on BAT, namely

- national standards for discharges (as in the Flemish Region of Belgium, Germany, Austria and the UK)
- BREF:s (which is of great importance in the Walloon Region of Belgium, Netherlands, France, Hungary),
- case by case assessment where earlier cases from the own legal practice plays an important role (Finland and Sweden)
- special expert group for exchange of information (the Czech Republic)

Opening by

- the Belgium (the Flemish Region) on the use of discharge quality standards
 - the Netherlands on the use of BREF:s
 - Finland on the case by case assessment
- (10 minutes each)

e. Time limitation of the permit and the request of a new permit in case of changes (question 7 and 10 of the questionnaire, article 12 and 13 of the IPPC directive)

In Sweden we had an idea that it was almost only in our county that a permit means a high degree of legal safety for the applicant; the permit in Sweden lasts “for ever” and is hard for the authorities to withdraw or to restrict. It is hard for the authorities to demand stricter conditions too if that is needed, even if that of course is possible.

In Sweden this has led to a system where a new permit often is requested when there are changes in the process or production.

By the questionnaire we have learnt that there are many countries in which the permits last “for ever”, that is they are not limited in time- at least not normally. That seems to be the case apart from in Sweden, at least also in Austria, the Czech Republic, Finland, France, Germany, Norway and the Netherlands. A time limitation seems to be the rule in Belgium (maximum 20 years), Hungary (5 years), Italy (5 years) and Poland (10 years).

From the Swedish experience it would be expected that countries with time limited permits would be more liberal with changes in the production or processes without a new permit for the whole plant than the countries where time limitations are sparse. Obviously there are other factors to consider, since this is only true for Italy, where a notification of the change is enough.

Opening by

- Germany on the different ways to consider changes in quantity and quality respectively
- Finland on the considerations concerning the coverage of a permit in case of changes (15 minutes each)

f. (In case of time) Existing plants (question 13 of the questionnaire; article 5 of the IPPC directive); no opening prepared

g. (In case of time) Supervision and sanctions (question 14 of the questionnaire; article 14 of the IPPC directive); no opening prepared

The example

1. In 11 of the answering countries, the permit would be issued by an authority on local or regional level. In two countries the permit would be issued by a national authority (Norway and UK). In the Czech Republic the permit would be issued by the Ministry of environment if the tannery significantly affects the state.

2. An EIS will be included in the application in at least seven of the fourteen countries that have answered. Furthermore an EIS will be filed in another process in two countries (the Czech Republic and the UK).

3. In most countries the localisation of the plant will or may be considered in the permit process, even if it is primary considered in the building and land use planning legislations. Three countries are very clear that the localisation is not a question for the IPPC-permit (Netherlands, Norway and Poland).

4. The procedural costs for the applicant vary a lot between the countries. In some countries there are no such costs at all (as in Norway and Netherlands) and in the ones that have reported the highest costs (Finland and Hungary) around 10 000 €.

5. In most countries the permitting authority will hear other authorities as well before issuing a permit. In Netherlands and Norway though this is not common, and in Poland it is possible but not formalised.

6. In all countries the permit authority shall consult with the public. This is done by different methods. Notices in newspapers are common. In some countries the website of the authority is used (Czech Republic and Poland).

7. In all countries limit values for water and air pollutants as well as conditions concerning solid waste, noise and the control of discharges can be set in the permit. When it concerns other issues, the answers of the countries differ as follows by this table where the numbers of “yes” and “no” answers are marked.

Kind of condition	Yes	No
conditions concerning the tanning technology itself (clean production)	7	2
conditions concerning the cleaning technology (end of pipe solutions)	9	2
limit values for energy consumption	8	3
conditions concerning transports to and from the plant	9	1
conditions about what chemicals that are not to be used in the production	9	2
conditions concerning the control of discharges	11	0

Other questions	Yes	No
can the setting of conditions be postponed in the permit?	7	5
can stricter conditions than what is stated in the BREF-document be set?	10	(1)

8. To decide the maximum limit of chromium discharge, sectorial limit values will be applied in at least 8 of the 14 countries. The other countries refer to what is considered to be BAT in the specific case, taking into account the quality of the receiving water. The countries that have given a figure, has mentioned a concentration level ranging from 0,5 mg/l (Finland) to 1,5 mg/l (the Flemish Region of Belgium).

9. In most countries natural or legal persons whose rights can be offended can appeal. They can appeal to the Environmental Minister or Ministry in four countries, to a tribunal or board in two cases, to another authority in one case and to a court (administrative court, environmental court or Council of State) in five cases.