

FDF Response to Defra Consultation on the European Commission's Proposed Directive on Industrial Emissions (IPPC) (Recast)

1. Substantive Amendments

Question 1: Do you have any views on any aspect of the substantive amendments?

The proposal introduces issues which will be covered by comitology such as criteria for derogations when prescribing ELVs not within BATAELs range, measures related to monitoring requirements, site closure and remediation, inspections, emerging techniques and adaptation of Annexes V to VIII.

FDF considers that whatever procedure is adopted for the determination and implementation of such measures, a structured and continuous dialogue with stakeholders, as exists under the current IPPC regime, must be preserved. If the comitology procedure remains the chosen route, it is vital that an explicit consultation mechanism for stakeholders is introduced in the proposal following the principles of better regulation and simplification. In addition, decisions taken by comitology committees should be made subject to an impact assessment.

The remainder of our views on the substantive amendments are given under the specific questions below.

Question 2: Are you able to provide some quantified assessment of any costs or benefits you perceive may result from the matter being addressed, in addition to more qualitative comments?

We have so far been unable to come up with any such quantified assessment.

Question 5: How does the requirement in Article 8 for the operator of an installation to provide at least an annual report on compliance with permit conditions to the competent authority compare to reporting requirements already embodied in extant permits?

The requirement for an annual report from each operator, at least every 12 months, does not differ greatly from current UK requirements. However we support the UK's comment that it should be for the competent authority to specify a form and content of that reporting which is proportionate to the nature of the risk posed by the activity and that it will therefore not be necessary in all cases for the report to cover every permit condition.

Question 6: What are the practical consequences of the substantive amendments in Article 9(2)(b) which gives an explicit role to the competent authority along with the operator in restoring compliance in the event of noncompliance? - bearing in mind the current provisions of regulation 36 of the EPR Regulations and the analogous provisions in the Regulations for Scotland and Northern Ireland.

We note that the involvement of the competent authority in situations of non-compliance has already provided for within UK legislation and thus do not wish to raise an objection here. We support the UK Government's comment that the operation of the installation should be suspended only in the grave circumstances of an immediate danger.

Question 12: (i) Whether the information exchange process by which the BAT reference documents are produced is sufficiently robust and transparent to justify the requirement that emissions limit values set by the competent authority shall not exceed the BAT-associated emission levels set out in BAT reference documents, (ii) how the BAT-reference process could be improved, and (iii) what effects this requirement may have on the contribution of information to the process by operators.

FDF is also concerned about the proposal that ELVs should be set within the range associated with the BATs (BATAELs) as described in the corresponding BREF. The emission levels set in the BREFs are prepared for individual sectors, integrating economic conditions. They represent emission levels expressed as averages achievable during a substantial period of time in normal operating conditions. This is fundamentally different from the ELVs set in the permits for individual installations which are intended to take account of short term fluctuations and which should never be exceeded. An ELV that would be set within the range of the levels prescribed in the corresponding BREF document would be impossible to meet at all times. This approach would also have a detrimental impact on the Sevilla process producing the BREFs as reaching consensus on ELVs will be much more challenging. It is also likely to impose a massive cost burden on industry.

Question 13: How does the 'derogation' in the first paragraph of Article 16(3) compare in practical effect with the provisions of Article 9(4) of the IPPC Directive? – bearing in mind the reference in both to consideration of the technical characteristics and geographical location of the installation and the local environmental conditions.

Whilst FDF supports a clarification of the role of BREFs to achieve better and harmonised implementation of the Directive, we have major concerns about the proposal to delete the requirement to automatically consider the technical characteristics of the installation, its geographical location and the local environmental conditions when authorities set emission limit values (ELVs) based on the BREFs. In FDF's view this represents a fundamental abandonment of the principles of the IPPC regime, principles which need to be preserved and not made the exception. No installation is identical even when producing the same product since local conditions eg raw materials are always different. Trade offs will often be required between different types of environmental impacts and these judgements will often be influenced by local environmental needs. If

this flexibility is removed then effectively this is a move towards pan-EU emission standards. These would be wholly inappropriate as well as very expensive and disproportionate in terms of environmental protection. **Therefore the flexibility principle of the IPPC Directive needs to be safeguarded and it cannot become the exception in the form of a derogation.**

Question 16: (i) Whether criteria for granting of the derogation' by means of the RPS referred to in Article 69(2) are desirable, irrespective of the means by which they are set, (ii) what those criteria should be, (iii) whether RPS [Regulatory Procedure with Scrutiny] provides an appropriate means of establishing those criteria, (iv) by what other means should those criteria be established, and (v) whether criteria should be set in the Directive itself.

If the provisions of Article 9 (4) of the current IPPC Directive cannot be restored we consider that at the very least criteria need to be developed for the granting of the derogation to ensure consistency of approach. We are not yet in a position to say what these criteria should be or how they are developed, suffice to say that it is vital that there is an explicit consultation mechanism for stakeholders, including industry, to contribute to their development. Therefore the current proposal that these criteria be developed by RPS alone will not be sufficient.

Question 17: Whether monitoring requirements set in permits based upon BAT conclusions would enable the competent authority to take a truly risk-based approach to monitoring?

FDF supports this amendment as a useful means of improving the uniformity of monitoring requirement amongst member states.

Question 18: (i) Whether a minimum frequency of the periodic monitoring should be set, (ii) whether criteria for the determination of the frequency of the periodic monitoring are desirable, irrespective of the means by which they are set, (iii) what those criteria should be, (iv) whether RPS provides an appropriate means of establishing those criteria, (v) by what other means should those criteria be established, and (vi) whether criteria should be set in the Directive itself.

FDF agrees with the UK view that the minimum frequency of monitoring should take account of environmental risks. Therefore whilst the Commission could give some indication of minimum frequency, deviations from this should be allowed if supported by risk appraisal. In turn it would seem more appropriate for the Commission to develop criteria for the appraisal of environmental risk rather than frequency of monitoring.

Question 20: (i) Is four years or some other time period appropriate for reconsideration of the permit conditions for all installations 'concerned' by the Commission's adoption of a new or updated BAT reference document, (ii) what are the consequences for installations to which more than one BAT reference document is relevant, and (iii) how does this requirement relate to that of Article 22(4)(b).

The requirement, where the Commission adopts a new or updated BAT reference document, for the competent authority, where necessary, to reconsider and update the permit conditions within four years of publication for the installations concerned does not take into account the duration of investment cycles and service life of equipment. It will therefore lead to legal uncertainty that will trigger disinvestments and possible plant closures. This time period therefore should be defined on a case-by-case basis.

Question 26: (i) What would be the additional benefits of the requirement in Article 24 requiring an operator to include in its compliance report to the competent authority a comparison 'between the operation of the installation, including the level of emissions, and [BAT] as described in BAT reference documents', (ii) how operators could establish the relevant comparators within BAT reference documents, and (iii) what action should be taken in the event of an unfavourable comparison. Consultees are also invited to contribute information on the cost implications of such a requirement.

FDF supports the UK's view that this requirement could potentially be excessively burdensome, particularly on SMEs and probably unnecessary given other requirements in the proposal including Article 8 requiring the operator to provide an Annual Report on compliance with the permit conditions.

Question 41: Whether the specification of the information exchange process in article 29 is sufficient for the purposes of developing and using BAT reference documents in the manner set out in Articles 14 and 16?

Our comments under Q12 are relevant to consider here particularly the detrimental impact prescribing ELVs in the range prescribed in the BREFs could have on the process for the BREFs' production. Moreover Article 29 no longer considers that BAT is defined under the Sevilla process, which has so far been a cornerstone to the successful operation of the Directive. Without the technical expertise of industry and its experience in operating BAT, the Sevilla process and the BREF making exercise would be seriously undermined.

The result of the exchange of information must remain a consensus reached by all stakeholders involved and the final endorsement of the BREF must remain a collective exercise. Therefore FDF considers it essential that the Technical Working Group, composed of Member States, the Commission, industry and NGOs, remains as the body discussing the whole content of the BREFs, including the conclusive chapter on BAT and BATAELs.

Question 50: What are the consequences' of inserting the words 'or recovery' into point 5.3 in Annex I? – bearing in mind however that only the recovery operations listed in points 5.3(a) to (e) would be brought in to IPPC.

FDF considers that the proposal to insert the word 'or recovery' into point 5.3 of Annex I has the potential to extend the scope of the Directive to larger scale anaerobic digestion

and composting activities, designed to divert waste from landfill, where these exceed the capacity threshold of >50 tonnes/day. We note also the potential for such installations to be located in close proximity (though not normally on the same site) to activities concerning food and drink processing due to the requirement for a 'heat sink' and for feedstock (although other sources of feedstock may also be used). However it is important in these situations that such adjacent food and drink activities are not automatically deemed a directly associated activity and brought under IPPC.

Question 51: Are there any practical consequences of deleting the words 'average value on a quarterly basis' in point 6.4(b)(iii)?

Notwithstanding our understanding from discussions held between our European Association, CIAA and DG ENV that this deletion may have been an error, FDF would like to see the phrase 'average value on a quarterly basis' maintained in Annex I, Section 6.4 (b) (ii) in respect of the vegetable production threshold. This phrase indicates that the finished product production capacity is based on actual output of the plant, averaged over a 3 month rolling period for the days processing took place.

This we see as a more pragmatic approach to defining thresholds as it can be extremely difficult to determine the design or theoretical capacity for any one production unit. An actual output approach is also easier to monitor from an operators' perspective as production records are readily kept by companies and in turn for regulators to enforce. Moreover inclusion of this phrase is understood to be the main justification for the Environment Agency's guidance indicating that 6.4 (b) (ii) refers to actual production (Phase 2, Part 6, Pg 48 of the Impact Assessment prepared by Entec for the Various Changes consultation document refers).

We generally see a production threshold based on actual output as a more pragmatic approach to defining the installations covered by both sub paras (i) and (ii) of para 6.4 (b). Although we acknowledge that this falls outside the parameters of the co-decision process as defined by the Commission, we would like the UK to take the opportunity to press for this clarification in the negotiations.

2. Combustion Plants

Question 1: How well does the impact assessment which accompanies this consultation document relate to your own experiences?

FDF's main interest in respect of the combustion sector lies with small plant below 50 MW. The main conclusion of the Impact Assessment for small combustion plants (SCPs) - that costs are higher than associated benefits under all scenarios - concurs very much with our understanding of the conclusions of previous studies in this area. In particular we note that the consultants drew on the findings of the recent AEAT study carried out for the Commission review. It is worth highlighting that the AEAT work also showed that combustion installations in the 20-50 MW range represented less than 3% of EU - 25 ETS CO₂ emissions in 2005.

Question 2: Can you contribute further quantification of envisaged impacts upon operators, their customers and suppliers?

We are not in a position to quantify the impacts as such suffice to say that in our members' view a lowering of the threshold to 20MW along with the aggregation rule could be expected to bring in many more combustion plants in the food industry. For some companies this could mean as much as a 50% increase in the number of installations subject to IPPC.

Question 9: Are the aggregation "rules" in the paragraphs at the head of Annex I and point 1.1 of Annex I (i) appropriate and (ii) practicable?

The main requirement of Annex I to add together the capacities of plant operated at the same installation will capture many medium sized food factories since these often have small boilers in the range 3 MW - 10 MW.

Question 10: Do you have any views on the proposed lowering of the threshold for subjection of combustion plants to IPPC from 50 to 20 MW rated thermal input?

Further to our response to Q1 above FDF opposes the proposal to lower the combustion plant threshold to 20MW as we consider this will cause unnecessary bureaucratic burden and costs for our industry and regulators alike in excess of any environmental benefit.

We also have concerns regarding the uncertainty within the Commission's proposals about what would be deemed Best Available Techniques Associated Emission Levels (BAT-AELs) for smaller combustion plants such as boilers. Small boilers are inherently of a different design to larger boilers, producing more emissions per unit of heat than the water tube boilers and are less efficient. This is recognised in current emissions standards and would need to be followed through into a development of a separate BREF for smaller combustion plants were the Commission's proposals to be taken forward.

FDF would like to see the definition of 'combustion plant' in Article 3 (19) made more precise in the same way as the equivalent definition in the revised EU ETS Directive has been through the inclusion of Recital 28 which implies that the definition covers "all kinds of boilers, burners, turbines, heaters, furnaces, incinerators, kilns, ovens, driers, engines, flares and thermal or catalytic after burning ..."

Question 11: Do you think the July 2015 date for the proposed recast Directive being applied to installations with a rated (aggregate) thermal input of between 20 and 50 MW is appropriate?

Notwithstanding our basic position of being opposed to the proposed extension of the Directive to smaller combustion plant we support the need to have a later implementation date.

3. Various Changes to IPPC Scope: Mixed Animal and Vegetable Food Production

Question 10: Do you have any comments to the impact assessment on the substantive amendment in point 6.4(b)(iii) (Mixed animal and vegetable food production) and can you contribute any further quantitative information on impacts?

As recorded in the Impact Assessment FDF considers that the Commission's proposal for clarifying the application of the thresholds to mixed animal and vegetable installations will actually lead to more complexity and uncertainty on the part of operators and enforcers alike. Aside from the complexity of the calculation itself the proposal our main concern is that the slope of the line between 75 tonnes/day and 300 tonnes/day is very steep such that a difference of +/- 1% would change the threshold by 45 tonnes. In practice this would be difficult to apply and almost impossible for operators and regulators to interpret or agree particularly for those installations where the animal content of the product would typically fluctuate according to product formulation and ingredient sources.

Instead FDF would like the Recast proposal to reflect the UK Environment Agency's guidance for mixed products whereby the process is categorised as vegetable provided the amount of animal derived material entering does not exceed 10% of the weight of the total raw materials including water added as an ingredient.

Additionally in respect of the Impact Assessment carried out by Entec FDF would like to underline:

- The uncertainties recorded around the number of installations likely to be affected by the proposed mixing rule and would concur that 10 sites for the UK is probably an underestimate. This is particularly in view of the likelihood that additional installation will choose to apply for a permit as insurance for the future against the uncertainty of having to deal with two variables;
- The acknowledgement that the sites likely to be brought in through this new rule are already covered by legislation on waste, emissions to water and energy use as well sector initiatives such as FDF's Five Fold Environmental Ambition;
- The inability (due to lack of data) of the consultants to quantify any environmental benefits of including the additional 'mixed operations under IPPC';
- The study does not capture the significant compliance costs for operators such as major capital investment in for example effluent treatment which have sometimes been required by existing IPPC installations;
- The EA's concerns about the complexity of the Commission's proposed calculation leading to the need for further guidance, the potential for further inconsistencies and potential challenges;
- The concerns recorded in relation to the removal of the phrase 'average value on a quarterly basis' from section 6.4 (a) (ii) and which FDF would like to see reinstated notwithstanding whether this was deleted by the Commission in error

or not (see also our comments under Q51, Section 1, Substantive Amendments, above).