

ANSWERS GIVEN BY DG ENVIRONMENT ON THE IMPLEMENTATION OF THE INDUSTRIAL EMISSIONS DIRECTIVE – CHAPTER 1

The aim of this document is to share questions and answers to them given by DG Environment in relation to implementation of Directive 2010/75/EU (the IED). These answers do not represent an official position of the Commission and cannot be invoked as such in the context of legal proceedings. Final judgements concerning the interpretation of the Directive can only be made by the European Court of Justice.

IED I.1 - Definition of "Installation"

IED I.2 - Structural approach to interpretation of "Installation"

IED I.3 - Meaning of "Stationary"

IED I.4 - Meaning of "Technical Unit"

IED I.5 - Meaning of "Directly Associated Activities" and "Technical Connection"

IED I.6 - Meaning of "Site"

IED I.7 - Meaning of "could have an effect on emissions and pollution"

IED I.8 - Definition of "Operator"

IED I.9 - Relationship between "Operator" and "Installation"

IED I.1 - Definition of "Installation"

According to Article 3(3) of the IED Directive: "Installation means a stationary technical unit within which one or more activities listed in Annex I or in Part 1 of Annex VII are carried out, and any other directly associated activities on the same site which have a technical connection with the activities listed in those Annexes and which could have an effect on emissions and pollution".

IED I.2 - Structural approach to interpretation of "Installation"

In the light of granting an IED permit and ensuring compliance with resulting obligations, it is important to identify the boundaries of an installation. This would imply:

- Identifying the activity (or activities) listed in Annex I/Annex VII (hereafter IED activities).
- Establishing whether there are any Directly Associated Activities (DAAs) on the same site, which have a technical connection with these IED activities and which could have an effect on emissions and pollution and
- Confirming that those activities are carried out in a Stationary technical unit, which contains the sum of the IED activities and the DAAs.

IED I.3 - Meaning of "Stationary"

A "technical unit" has to be "stationary" to be considered an installation. This would exclude vehicles or machines that operate while moving from one location to another. On the other hand, some of the activities within an installation may imply movement, for instance fork-lifts bringing materials from storage to processing area. The term "stationary" therefore means that the installation as a whole should be stationary – meaning not moving from one location to another – but this does not exclude the use of movable plant and equipment within the installation.

There is also a question of whether to consider as "stationary" a plant that is designed to be moved (or at least moveable) periodically, but which in practice operates at the same location for some time. An example is a "mobile" incineration plant or plant for the remediation of contaminated land. If the IED activities will be carried out at a particular location for a significant period of time, then it should be considered stationary for the purposes of the Directive. It would be for the relevant competent authorities to assess this on a case-by-case basis. Account may be taken of the potential environmental impact of the activities, the expected duration at start of the operation, the actual duration (where this is e.g. much longer than expected), the degree of effort and physical equipment involved in moving and establishing the plant (e.g. whether it arrives on its own wheels or is transported as a single unit, or needs a significant degree of engineering and construction to establish it).

IED I.4 - Meaning of "Technical Unit"

Synonyms for "technical" include technological, scientific, industrial, mechanical and specialised, which all reiterate the need for a unit to be specifically intended and equipped to carry out the activities of interest. This would exclude for instance the incineration of waste in the open air. This does not however mean that all activities must be technologically advanced or complex.

"Unit" would appear to mean entity, re-emphasising that the activities in the installation are operated, and can be regulated, in an integrated manner. It does not mean that they must be included in the same physical building or structure.

Elements of the "technical unit" could include equipment, structures, pipework, machinery, tools, private railway sidings, docks, unloading quays, jetties, warehouses and facilities for reception, storage, handling and pre-treatment of process inputs and outputs, and for controlling, monitoring and recording environmental performance. To be included in the "technical unit", such elements must be an integral part of an IED activity, or a DAA which is carried out on the same site.

IED I.5 - Meaning of "Directly Associated Activities" and "Technical Connection"

Non-IED activities are only covered if they are "directly" associated and "technically connected". Administrative offices at an industrial site would bear no technical connection to the activities carried out therein.

The operation of the non-IED activity must be closely related with the IED activity in a direct operational sense. This could include, for example, a non-IED activity that is an auxiliary facility serving an IED activity, and probably would not take place at that particular location without it.

On the other hand, a technical connection alone is not sufficient to consider an activity as a Directly Associated Activity (DAA). For example, a power station (covered by Annex I) can be considered technically connected to all of its clients, but the latter are not (necessarily) to be considered DAAs.

There is no absolute need for a fixed physical connection, e.g. in the form of pipework, wiring, conveyors, etc., for an activity to be considered technically connected, although where there is such a connection it would appear to be automatic that a DAA is technically connected. Rather "technical" is interpreted to mean that there is a link in terms of intended process operation and materials flow. For instance, two activities which are operated as part of what can reasonably be viewed as a single overall operation, even if there is no permanent physical link.

Some examples of non-IED activities that may be directly associated with and technically connected to IED activities are:

- combustion units that provide heat and/or power;
- activities for the supply, handling and preparation of raw materials used as process inputs;
- activities concerned with the handling of intermediate products (e.g. where there are two IED activities and an intermediate activity between them) or of final products (e.g. storage);

- activities concerned with the treatment or storage of by-products, wastes or emissions (e.g. effluent treatment units).

Where such a non-IED activity has a dedicated relationship to an IED activity then it will normally be a DAA. Where the non-IED activity also relates to other facilities, it will be a matter of judgement whether to consider it as a DAA to the IED activity. For instance, if a combustion unit of less than 50 MW provides most of its output directly to an IED activity (such as a chemical reactor), and a small amount to other facilities or the local electricity network, it would still be considered directly associated with the IED activity. But if only a small amount of its output were to go to the IED activity, it would most likely not be viewed as DAA.

IED I.6 - Meaning of "Site"

Drawing from the definitions in the E-PRTR Regulation, which defines a "facility" as meaning "one or more installations on the same site that are operated by the same natural or legal person", and defines "site" as meaning "the geographical location of the facility", we can conclude that an IED installation operates at a site in the sense of a geographical location, but is not necessarily the only installation or facility at that site. This also follows from Article 4(2) of the IED, which provides that a permit may cover two or more installations or parts of installation operated by the same operator at the same site, and from Article 4(3) of the IED which allows for a permit to cover several parts of an installation operated by different operators.

Ownership of the land does not seem relevant, since the operator might simply lease the land from another party. Equally, relying on the presence of a fence appears arbitrary and uncertain for establishing the boundaries of the site. Further, a site could reasonably be interpreted as continuing despite a brief physical separation, e.g. because of a road or public right of way passing through it. Such divided areas would have to be adjacent or at least reasonably close in order to remain credibly viewed as a single site for the purposes of the IED. The greater the degree of any physical separation of activities on different areas, the stronger the direct association and technical connection would have to be in order to treat the activities as part of the same site and installation. To give an example, where raw materials for and final products from a chemical plant are stored in tanks, which are connected to the plant by pipeline, then these storage activities would appear to very clearly constitute DAAs that are technically connected with an IED activity. However, where these storage tanks are not part of the same physical complex as the chemical reactor or immediately adjacent to it, but are instead located at a nearby harbour, for example, it will be a matter of judgement for the competent authority to decide if they are part of the same site.

IED I.7 - Meaning of "could have an effect on emissions and pollution"

The "effect on emissions and pollution" could result from the IED activities and/or from the DAAs, or even from the interaction of both.

This is illustrated by cold rolling or drawing at an iron or aluminium works, where offcuts from the rolling or drawing are recycled to the melting process and may carry with them oils used in the rolling or drawing process. When both activities are considered in an integrated manner the

better environmental option may be to have a melting furnace designed to accept this contamination from the offcuts, whereas if the melting process were considered separately it may be better to insist on uncontaminated input. Similarly, considering the downstream process together with the melting and casting activity may offer better overall energy efficiency through less reheating as a result of integrated management.

Note also that the words "could have an effect on emissions and pollution" does not require that such an effect will occur for a DAA to be included in an installation. For example, the storage of chemical products could be included because, although it should not in itself give rise to emissions if the chemicals are properly stored, there could still be emissions and pollution from accidents or spillage, which may be addressed by the application of the IED.

IED I.8 - Definition of "Operator"

Article 3(15) defines "operator" as:

"any natural or legal person who operates or controls in whole or in part the installation or combustion plant, waste incineration plant or waste co-incineration plant or, where this is provided for in national law, to whom decisive economic power over the technical functioning of the installation or plant has been delegated".

It is considered that Article 3(15) does not set out the entire range of possibilities for the "operator", in particular because it only refers to the singular (i.e. "any natural or legal person" rather than "persons"). The wording "in whole or in part" however clearly indicates that a single installation could be operated by two or more persons or companies. This also follows from Article 4(3) which allows Member States to provide that a permit cover several parts of an installation operated by different operators. In such cases, the permit shall specify the responsibilities of each operator. This provision being optional however, Member States may also require that the responsibilities for the operation of an installation have to be attributed to one natural or legal person (in the case of a legal person – a manager that can be held responsible in case of violations), as this may facilitate compliance with Article 8 of the IED according to which Member States must be able to ensure that the conditions of the permit are complied with by the operator when operating the installation.

IED I.9 - Relationship between "Operator" and "Installation"

It is not uncommon for different yet closely interconnected industrial activities to have different operators. For example, a power plant may provide a dedicated electricity supply for an adjacent chemical plant, whose waste water may be treated by an adjacent effluent treatment plant. These may all have separate operators even though under a normal understanding of the terms they would be considered "directly associated" and "technically connected". Ownership patterns can also change over time, as parts of large industrial complexes initially owned by a single owner are sold to other companies, subsidiary companies are set up for specialised operations, or other transactions occur.

The definition of "installation" in Article 3(3) does not contain any explicit reference to the operator. It follows from this that determining the boundaries of an installation is a purely

technical matter, based on the assessment of the IED activities, DAAs, etc., without any necessary consideration of who operates or owns what.

Article 3(8) defines a "permit" as: "a written authorisation to operate all or part of an installation or combustion plant, waste incineration plant or waste co-incineration plant". Article 4(2) furthermore provides that "Member States may opt to provide that a permit cover two or more installations or parts of installations operated by the same operator on the same site", whereas Article 4(3) provides that "Member States may opt to provide that a permit cover several parts of an installation operated by different operators"

Articles 3(3), 3(8), 4(2) and 4(3) together can be taken to support the approach of identifying the installation as a technical exercise, and then identifying the operator(s) concerned, leading to the grant of one or more permits accordingly.

Taking ownership and operation into account would not just provide the potential for fluctuation of regulatory boundaries, but would also create an incentive for operators to set up legally distinct entities for particular activities, for instance so that certain DAAs no longer fall under the IED. This cannot be within the spirit of the Directive, since if it was sufficient to regulate only the specified IED activities, there would have been no need to mention DAAs within the Directive at all.

In the case of certain large installations, even when these clearly only have a single operator, it is understood that there are cases where these too are subdivided for the purposes of issuing permits, such that the overall "permit" for the whole installation consists of several parts. This may be considered desirable for reasons of regulatory practicality, and can still ensure that the installation complies with the requirements of the Directive, provided that suitable integration and coordination mechanisms are put in place for the permitting procedures and conditions.