

## ANNEX

### **Question 1: Application under the IED of the derogations (longer transitional period) from the NO<sub>x</sub> and dust emission limit values of the LCP Directive for certain combustion plants as set out in the Accession Treaty**

The Polish authorities recall that Annex XII, Part 13, Section D(2)(b) and (c), of the Treaty of Accession of the Republic of Poland (hereafter throughout this letter, the "Accession Treaty")<sup>1</sup> provides as follows:

- The solid fuel fired combustion plants with a rated thermal input greater than 500 MWth that are listed under letter (b) are not required to comply until 31 December 2017 with the emission limit values (hereafter throughout this letter, "ELV(s)") for nitrogen oxides (hereafter throughout this letter, "NO<sub>x</sub>"), that apply from 1 January 2016 by virtue of Article 4(3) and Annex VI (Part A) of Directive 2001/80/EC of the European Parliament and of the Council of 23 October 2001 on the limitation of emissions of certain pollutants into the air from large combustion plants (hereafter throughout this letter, "the LCPD"). During this transitional period, the emissions of NO<sub>x</sub> from all combustion plants covered by the LCPD shall not exceed particular ceilings.
- The municipal district heating plants that are listed under letter (c) are not required to comply until 31 December 2017 with the ELVs for dust, that apply to them by virtue of Article 4(3) and Annex VII (Part A) of the LCPD.

The Polish authorities are asking the Commission to confirm that the abovementioned derogations shall remain applicable under Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on Industrial Emissions (hereafter throughout this letter, the "IED"), which will repeal and replace the LCPD on 1<sup>st</sup> January 2016.

### **Response**

The provisions of EU Treaties, including the Accession Treaty, prevail over those set forth in EU secondary legislation, such as the LCPD and the IED.

This means that the temporary derogations from requirements of Article 4(3) and Annex VI (Part A) or Annex VII (Part A) of the LCPD, as set out in the Accession Treaty, will remain valid once the LCPD will have been replaced by the IED (from the 1<sup>st</sup> January 2016 on). Those particular derogations will thus be applicable for the specific plants listed in the Accession Treaty for the purpose of Chapter III and Annex V (Part 1) of the IED under the conditions specified in the Accession Treaty and until the end date mentioned therein (31 December 2017).

From 1 January 2018 on, the relevant ELVs set out in Chapter III and Annex V (Part 1) of the IED will apply for the plants concerned.

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<sup>1</sup> OJ L 236 of 23 September 2003.

Concerning the application of the provisions of Articles 32 and 33 of the IED, please see the replies to the following questions.

**Question 2: The case of combustion plants that are covered by the Accession Treaty derogations but which have decided to make use of the limited life-time derogation foreseen in Article 4(4) LCPD**

The Polish authorities declare that some operators of combustion plants that are covered by the derogations from certain ELVs of the LCPD as set out in the Accession Treaty have chosen to opt for a limited life-time derogation (undertaking to operate not more than 20 000 hours in the period 2008-2015) for the whole combustion plant or part thereof under Article 4(4) of the LCPD.

The Polish authorities are asking the Commission to confirm that the concerned combustion plants shall not be entitled to apply for a new limited life-time derogation (covering the period 2016-2023) under Article 33 of the IED, or to be part of a Transitional National Plan (thereafter throughout this letter, "TNP") under Article 32 of the IED.

**Response**

Firstly, a precise reply to this question in relation to specific plants requires details on the conditions and timescales under which the different derogations have been applied in order to determine what derogation has exactly been granted to a specific plant.

Secondly, the fact that plants under the Accession Treaty are allowed to derogate temporarily from certain ELVs set out in the LCPD, does not have any direct implications for the application of the provisions of Article 32 or 33 of the IED. The Accession Treaty only provides for a temporary derogation from the application of certain ELVs for specific plants. As such, this does not exclude the possibility for such plants to apply the provisions of Article 32 or 33 of the IED.

However, Articles 32(1)(d) and 33(1)(d) of the IED make clear that combustion plants, which benefit from a limited life-time derogation under Article 4(4) LCPD cannot, under the IED, be included in a TNP or be granted a new limited life-time derogation.

For combustion plants that chose to "opt-out" under Article 4(4) of the LCPD none of the ELVs set out in the LCPD apply (on the condition that the number of operating hours of the plant is limited). Hence, such an "opt-out" may have provided the plants with additional (be it conditional) derogations from the applicable ELV when compared with the regime applicable under the Accession Treaty derogations. In this sense, the LCPD opt-out regime is more flexible than the Accession Treaty, as there are no combustion plants in Poland for which the Accession Treaty grants a derogation from the application of *all* relevant ELVs of the LCPD (i.e. for all three pollutants regulated: NO<sub>x</sub>, SO<sub>2</sub> and dust).

As a consequence, the plants, which were granted a derogation from certain LCPD ELVs under the Accession Treaty, but which instead opted for the limited life-time derogation under Article 4(4) LCPD, have effectively benefited from the opt-out regime and **can**

**therefore not be eligible** for the application of Articles 32 (TNP) or Article 33 (limited life-time derogation) of the IED.

For those cases where the Polish authorities have been granting a limited life-time derogation under Article 4(4) LCPD for a part of a combustion plant (and not for the entire combustion plant), see the reply to Question 11.

### **Question 3: Modalities of the application of the "aggregation rules" foreseen in Article 29 IED**

The Polish authorities are asking the Commission about the implementation of the "aggregation rules", as set out in Article 29 IED, and in particular about how the ELVs must be set in the following cases:

- Case where combustion plants, which are discharging waste gases via a common stack, are not operating simultaneously. How should the rated thermal input be determined in order to decide on the applicable ELVs?
- Case where combustion plants, which are discharging waste gases via a common stack, include both "existing" and "new" plants. Should the ELV be established on the basis of the ELV set in Annex V (Part 1) IED or those set in Annex V (Part 2) IED or, alternatively, as a weighted average of those ELVs?

In addition, the Polish authorities are asking the Commission about the application of the "aggregation rule" in relation to the obligation set out in Annex V (Part 3) IED, to monitor continuously the emissions from combustion plants with a total rated thermal input of at least 100 MW.

#### **Response**

*(i) The applicability of the "aggregation rule" in case where not all the combustion plants operate simultaneously.*

As set out in Article 30(4) IED, the ELVs established in Annex V IED apply to the emissions of each common stack, and are determined on the basis of the total rated thermal input of the **entire** combustion plant. An exception to this rule applies for those cases where Annex V IED explicitly provides that the ELVs set out therein may be applied for a **part** of a combustion plant which has a limited number of operating hours.

Accordingly, the total rated thermal input that determines the applicable ELVs shall not depend on the number of units operated at a given point in time. Under all circumstances, the total rated thermal input of the "**entire** combustion plant" has to be considered for this purpose.

For the specific case where multiple fuels are used simultaneously within a single combustion plant (common stack), the ELVs will have to be determined on the basis of Article 40 IED, in the light of the thermal input of the fuel used at a given point in time.

*(ii) The applicability of the "aggregation rule" in case of a combustion plant consisting of both "existing" and "new" parts<sup>2</sup>.*

Where a combustion plant, within the meaning of Article 29 IED, consists of a combination of "existing" and "new" plants, Article 30(7) IED applies as the "new" part of the combustion plant has to be considered an extension of the "existing" combustion plant. As a consequence, the "new" part of the plant will be subject to the ELVs set out in Annex V (Part 2) IED. The "existing" part of the plant will remain subject to the ELVs set out in Annex V (Part 1) IED. For both parts, the ELVs will have to be determined in relation to the total rated thermal input of the **entire** combustion plant (existing + new parts), in accordance with Articles 29(1-2), 30(4) and 30(7)(1<sup>st</sup> sentence) IED.

Alternatively, where the waste gases of the different parts of the combustion plant would be emitted via the same flue, competent authorities could decide to apply one single ELV for such combination of "existing" and "new" combustion plant at the common stack (flue) level. This ELV would have to be set as the average of the aforementioned ELVs for existing and new plants, weighted on the basis of the actual thermal input of the fuel used within the different parts of the plant at a given point in time, and taking into account the total rated thermal input of the entire combustion plant. Obviously, this implies that the applicable ELVs may vary over time depending on the actual amount of fuel used within each part of the plant. It should be noted that this approach is similar to the one that applies in case of simultaneous firing of multiple fuels within a combustion plant (Article 40 IED).

*(iii) The applicability of the "aggregation rule" for establishing monitoring requirements*

As specified above, the aggregation rule set out in Article 29 IED is used to determine the total rated thermal input of a combustion plant. This rated thermal input will have to be used to determine the applicable monitoring regime for the entire combustion plant in accordance with Annex V (Part 3) IED.

#### **Question 4: Terms "substantial change", "change" and "extension" of a combustion plant**

The Polish authorities are asking the Commission to provide clarification concerning the term "substantial change", as defined in Article 3(9) IED, and the terms "change" and "extension" as referred to in Article 30(7) IED.

In particular, the Polish authorities are wondering how to deal with a "change" or "extension" affecting a combustion plant that has a rated thermal input lower than 50 MW.

#### **Response**

The provisions of Article 3(9) IED that define "substantial change" and those of Article 30(7) IED that set out the specific rules for defining the ELVs applicable to combustion

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<sup>2</sup> Chapter III IED does not define "existing plant" and "new plant"; the terms used here refer to plants fulfilling the criteria concerning the date of their permitting mentioned in Article 30(2) ("existing") and other plants ("new"), respectively.

plants falling under Chapter III IED in case of an "extension" or "change" of the plant, should not be confused.

*(i) "Substantial change" (IED Chapter II)*

A "substantial change", as defined in Article 3(9) IED is a change in the nature or functioning of the installation or combustion plant or an extension to the installation or combustion plant, which may have significant negative effects on human health or the environment. Those parts of installations undergoing a "substantial change" must be covered, by virtue of Article 20 IED, by a new permit in accordance with the relevant provisions of the IED, including its Article 24 on public participation.

Article 20(3) IED (within Chapter II) specifies that any change or extension that reaches in itself the relevant capacity threshold set out in Annex I IED is deemed to be "substantial" *per se*. In other words, whenever a modification of a combustion plant leads to an increase of its total rated thermal input by at least 50 MW or where a part of a combustion plant of 50 MW or more is replaced (even without increasing its capacity), those changes are considered to be "substantial" and a new permit will be needed for them.

In case the change or the extension does not reach in itself the capacity threshold set in Annex I IED, e.g. where a 25 MW combustion unit is added to an existing combustion plant, the competent authorities shall assess whether such a change or extension has significant negative effects on human health or the environment and thus would require a new permit.

*(ii) "Change"/ "extension" of a combustion plant (IED Chapter III)*

Article 30(7) IED defines the rules for calculating the ELVs applicable to a combustion plant in case where that plant is extended or is undergoing a "change which may have consequences for the environment".

In case where Article 30(7) IED applies, the ELVs need to be determined as explained under point (ii) of the reply to Question 3.

This rule covers all extensions to combustion plants falling under the scope of Chapter III, independent of whether the extension in itself exceeds or not 50 MW.

Where a combustion plant of less than 50 MW, which was permitted before 7 January 2013, is extended after the date of entry into effect of the IED, and thus comes within the scope of Chapter III of the IED, the approach set out in Article 30(7) IED for the setting of ELVs also applies. For determining which part(s) of the plant is (are) subject to the ELVs of Part 1 or Part 2 of Annex V, the criteria mentioned in Article 30(2) and 30(3) shall be applied. See also the reply to Q.9.

*Illustrative examples:*

**1. Case of a combustion plant of 100 MW (single Boiler A), which was initially granted a permit on 01/01/2000 and which is extended by 50 MW (Boiler B) by virtue of a permit delivered on 01/01/2017**

**a. Before 1 January 2017 (Boiler A only):**

- 01/01/2000 – 31/12/2015: ELVs for 100 MW plant as set out in the LCPD

- 01/01/2016 – 31/12/2016: ELVs for 100 MW plant as set out in Annex V (Part 1) IED

**b. From 1 January 2017 on (*Boilers A and B*):**

- - Boiler A: ELVs for 150 MW plant as set out in Annex V (Part 1) IED
- - Boiler B: ELVs for 150 MW plant as set out in Annex V (Part 2) IED

**2. Case of a combustion plant of 40 MW with Boiler A, which was initially granted a permit on 01/01/2000 and which is extended by 30 MW (Boiler B) by virtue of a permit delivered on 01/01/2017**

**a. Before 1 January 2017 (*Boiler A only*):**

- 01/01/2000 – 31/12/2015: combustion plant is not subject to LCPD (< 50 MW)
- 01/01/2016 – 31/12/2016: combustion plant is not subject to Chapter III IED (< 50 MW)

**b. From 1 January 2017 on (*Boilers A and B*):**

- - Boiler A: ELVs for 70 MW plant as set out in Annex V (Part 1) IED
- - Boiler B: ELVs for 70 MW plant as set out in Annex V (Part 2) IED

**3. Case of a combustion plant consisting of a 100 MW Boiler A and a 30 MW Boiler B (both boilers discharging their waste gases via a common stack), which was initially granted a permit on 01/01/2000 and where the 100 W Boiler A is changed (a change having consequences for the environment) on 01/01/2017**

**a. Before 1 January 2017 (*Combination of Boilers A and B*):**

- 01/01/2000 – 31/12/2015: ELVs for 130 MW plant as set out in the LCPD
- 01/01/2016 – 31/12/2016: ELVs for 130 MW plant as set out in Annex V (Part 1) IED

**b. From 1 January 2017 on:**

- - Boiler A: ELV for 130 MW plant as set out in Annex V (**Part 2**) IED
- - Boiler B: ELV for 130 MW plant as set out in Annex V (Part 1) IED

**Question 5: Applicability of the "aggregation rule" - Notion of "technical" and "economic" factors"**

The Polish authorities remark that Article 29(2) IED does not specify how competent authorities should interpret the expression "taking technical and economic factors into account" to determine whether several combustion plants not discharging their waste gases via a common stack should be considered as a single combustion plant or not.

**Response**

According to Article 29(2) IED and in line with the subsidiarity principle, it is up to the competent authority to assess and determine whether several combustion plants, which are not sharing a common stack, could actually do so, taking into account technical and economic factors. When doing so, they should keep in mind that the intention of this provision is to avoid that combustion plants are intentionally constructed in such a way that they would not have to comply with the provisions of Chapter III IED.

### **Question 6: Notion of "common stack" and of "waste gas flues"**

The Polish authorities are of the opinion that the definition of "stack" in Article 3(26) IED (a "structure containing one or more flues providing a passage for waste gases in order to discharge them into the air") is unclear. In this respect, whilst they acknowledge that this definition does not raise any interpretation issues when dealing with multi-flue stacks with a 'common windshield', they are asking the Commission whether this definition refers also to different flues or stacks that are supported by or provided with a single open-lattice structure.

#### **Response**

The reference in Article 3(26) IED to a "structure" may cover different types of constructions, such as a common tube or mantle, but also construction gratings, latticework or any other construction which contains several flues. In such cases it will be up to the competent authority to decide whether the actual structure contains the flues concerned and has to be considered as a common stack within the meaning of the IED.

### **Question 7: Applicable ELVs preceding and following the adoption of a Decision on BAT conclusions for large combustion plants**

The Polish authorities acknowledge that Article 15(3) IED concerning the implementation of the BAT conclusions and the emission levels associated with BAT ("BAT-AEL") that are set out therein, is the rule. They also acknowledge that the application of ELVs that would lead to emissions exceeding the BAT-AELs would require a derogation in accordance with IED Article 15(4), also where the ELVs set out in Annex V IED would be met.

Therefore, the Polish authorities ask the Commission how to set ELVs in case no Decision on BAT conclusions would have been adopted and published for the large combustion plant sector by 1 January 2016, and they point out that such situation may create uncertainty for those wanting to invest.

#### **Response**

For the setting of ELVs in a permit in relation to the BAT-AEL set out in the Decisions on BAT conclusions adopted in accordance with Article 13(5), the provisions of Article 15(3) are the rule.

Derogations from the application of Article 15(3) can only be granted in specific cases where the criteria and conditions given in Article 15(4) are fulfilled. The reasons for applying the derogation, including the result of the assessment and the justification for the conditions imposed, shall be documented in an annex to the permit.

As set out in Article 21(3) IED, the competent authorities will have to reconsider and, if necessary, update all permits that would have been granted to relevant combustion plants within 4 years from the date of publication of BAT conclusions related to the main activity of the installation, and to ensure that ELVs set in permits are in line with the BAT-AEL established in the relevant BAT conclusions.

The Polish authorities are reminded that the BAT reference document for Large Combustion Plants (LCP BREF) is currently being revised. A Commission Implementing Decision on BAT Conclusions for LCP is foreseen to be adopted in the course of 2014.

In all cases, the provisions of Articles 14 and 15 of the IED require that ELVs set in permits must be based upon BAT. In accordance with Article 13(7) of the IED, as long as no Commission Decision on BAT conclusions has been adopted and published for large combustion plants, the conclusions from the existing LCP BREF, which was adopted in the context of the IPPC Directive, shall be used as the reference for setting the permit conditions. However, the provisions of Article 15(3) will not be applicable pending the adoption and publication of a Commission Decision on BAT conclusions in accordance with Article 13(5).

**Question 8: Applicable ELVs under the IED for combustion plants that benefit from a derogation from the LCPD ELVs under the Accession Treaty that extends beyond 1 January 2016**

The Polish authorities are concerned with the applicability of certain longer transitional periods provided under the Accession Treaty to certain combustion plants once the LCPD will have been repealed and replaced by the IED on 01/01/2016. More specifically, they are asking to the Commission the following questions:

- The Accession Treaty provides that the combustion plants, listed in its Annex XII, Part 13, Section D(2)(b) and (c), are not obliged to meet until 31/12/2017 certain ELVs set out in Part A of Annexes VI and VII LCPD. As the LCPD will be repealed and replaced by the IED on 01/01/2016, the Polish authorities are wondering whether the extended transitional period granted in the Accession Treaty for those plants will also apply for the application of the corresponding IED ELVs.
- Will the competent authorities be entitled to allow the combustion plants that benefit from derogations under the Accession Treaty to make use of the regimes foreseen in Articles 32 (TNP) and 33 (limited life-time derogation) IED?
- If these plants would be allowed to be part of a TNP, how should their contributions to the emission ceilings be determined?

**Response**

As specified in the response to Question 1, the Accession Treaty provisions prevail over those set out in the LCPD and in the IED. The mere fact that the LCPD shall be repealed and replaced by the IED on 01/01/2016 shall not affect the applicability of the derogations foreseen in Annex XII, Part 13, Section D(2)(b) and (c) of the Accession Treaty. In other words, the combustion plants concerned shall not be required until 31/12/2017 to meet the ELVs in Annex V IED that correspond with the ELVs from the LCPD for which they have been granted a derogation in the Accession Treaty.

Combustion plants that have been granted a derogation from the LCPD ELVs under the Accession Treaty should also be entitled to apply the provisions of Article 32 (inclusion in a TNP) or 33 (limited life-time derogation) IED.

*(i) Inclusion in TNP (Article 32 IED) and calculation of the contribution to the TNP emission ceilings*

The rules for calculating the ceilings under the TNP are set out in the Commission Implementing Decision 2012/115/EU of 10 February 2012 laying down rules concerning the transitional national plans referred to in Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (OJ L 52/12, 24.02.2012).

These rules also apply in case combustion plants that were granted longer transitional periods from the LCPD ELVs under the Accession Treaty (until 31/12/2017) would be included in the TNP. This means that for the calculation of the contribution of such a plant to the 2016 TNP emission ceilings, the emission limit values set out in the Annexes to the LCPD that would have applied on 1 January 2016 need to be used.

For the **calculation of the TNP ceilings**, the derogations granted under the Accession Treaty **cannot** be applied because those derogations have been **exclusively** granted to individual plants identified in the Accession Treaty. Hence, they cannot be used to allow other plants to have higher emissions under the IED, which would be the case when the derogations would serve as the basis for calculating the TNP ceilings.

As an example, in case a solid fuel fired combustion plant with a total rated thermal input of more than 500 MW would be included in the TNP, the ELV for NO<sub>x</sub> of 200 mg/Nm<sup>3</sup> has to be used for the calculation of the contribution of that plant to the 2016 NO<sub>x</sub> ceiling. This also applies for such a combustion plant which under the Accession Treaty has been granted a transitional period until the end of 2017 to comply with that ELV under the LCPD.

It should be noted that for the setting of ELVs in the permit of an individual combustion plant which is included in the TNP, Article 32(2) IED requires that at least the ELVs set out in the permit which are applicable on 31 December 2015, pursuant in particular to the requirements of Directives 2001/80/EC and 2008/1/EC, shall be maintained. In this respect, for the setting of such ELVs, the relevant derogations from the LCPD ELVs that were granted in the Accession Treaty may be taken into account.

*(ii) Limited life-time derogation (Article 33 IED)*

In case the combustion plants concerned would opt for a limited life-time derogation under Article 33 IED, this can only be accepted if the four conditions set out in Article 33(1) IED are met, including the limitation that the combustion plants shall not be operated for more than 17,500 hours between 1 January 2016 and 31 December 2023. Concerning the requirement in Article 33(1)(c) IED for an individual plant to maintain at least the ELVs set out in the permit which are applicable on 31 December 2015, pursuant in particular to the requirements of Directives 2001/80/EC and 2008/1/EC, the relevant derogations from the LCPD ELVs granted in the Accession Treaty may be taken into account.

**Question 9: Applicable ELVs in case where a combustion plant is extended (addition of a boiler)**

The Polish authorities are wondering what ELVs should be imposed in case a combustion plant is extended through the addition of a boiler (with all boilers discharging their waste gases via a common stack).

### **Response**

The response to this question can be found as part of the response to Questions 3 and 4.

### **Question 10: Applicable ELVs in case where one part of a combustion plant operates less than 1.500 hours/year and where another part operates more than 1.500 hours/year**

The Polish authorities are asking to the Commission what ELVs should apply for a combustion plant consisting of two boilers, one of which is operating less than 1.500 hours/year while the other one is operating more than 1.500 hours/year. It is understood that the waste gases of both boilers are discharged via a common stack.

In this respect, the Polish authorities are wondering whether the emissions should be subject to two different ELVs (at boiler level) or whether a single ELV should be set for the entire combustion plant.

### **Response**

*(i) Combustion plants consisting of several boilers sharing a common stack, but each discharging their waste gases through a separate flue:*

This is the case which is explicitly referred to in Annex V (Part 1) IED. In such a case, a part of the combustion plant that operates less than 1.500 hours/year and is emitting its waste gases through a separate flue may indeed benefit from less strict ELVs under the conditions set out in Annex V (Part 1) IED. It requires however that the emissions of each of the flues are monitored separately.

*(ii) Combustion plants consisting of several boilers sharing a common stack, which are NOT discharging waste gases through a separate flue:*

Where there is no possibility to monitor the emissions in the waste gas flue from a part of the plant separately, it results from Annex V (Part 1) IED that the number of operating hours shall not be determined for such a part taken in isolation, but only for the plant as a whole (i.e. at the level of the stack).

In such a case, the number of operating hours of the combination of boilers taken together must be accounted for to determine whether the combustion plant as a whole operates less or more than 1.500 hours per year. Such a plant is considered to be operating when any part of it operates, irrespective of the load factor. Therefore, when any of the individual boilers operates at any load factor for, say, one hour, it will be considered that the whole plant is operating for one hour.

### **Question 11: Applicability of Article 32(1)(d) IED on the combustion plants that are not entitled to be included in a TNP**

The Polish authorities are informing the Commission that, in some cases, under Article 4(4) LCPD a limited life-time derogation has been granted to individual boilers. As Article 32(1)(d) IED provides that combustion plants that have benefitted from such a derogation will not be entitled to be included in a TNP under the IED, the Polish authorities are wondering whether the entire combustion plants within which the relevant individual boilers operate shall be excluded from the scope of application of Article 32 IED.

### **Response**

The Polish authorities are reminded that, in view of the Commission, the limited life-time derogation foreseen under Article 4(4) LCPD should only have been granted to combustion plants as a whole, taking into account the interpretation of the LCPD definition of “combustion plant” based on the “common stack” principle.

Consequently, where the waste gases of two or more separate combustion plants or boilers are discharged through a common stack, the combination formed by such plants or boilers must be considered as a single combustion plant and only that combination could be entitled to apply for a derogation under Article 4(4) LCPD.

In view of this, regarding **the individual boilers to which a limited life-time derogation has erroneously been granted** by the Polish authorities under Article 4(4) LCPD, the possibility to apply Articles 32 and 33 of the IED will depend on whether or not those boilers continue to operate after 31 December 2015:

- in case the boiler, which was granted a limited life-time derogation under the LCPD would **continue operating** after 31 December 2015: the entire combustion plant will have to be considered as a "new" plant, and be subject to the ELVs set out in Annex V (Part 2) IED. Under no circumstances can such a combustion plant be subject to Articles 32 (TNP) or 33 (limited life-time derogation) IED;
- in case the boiler which was granted a limited life-time derogation under the LCPD **does no longer operate** after 31 December 2015: the remaining entire combustion plant (i.e. excluding the decommissioned boiler) may be included in the TNP or may be subject to a limited life-time derogation under Article 33 IED if the conditions for benefiting from those derogations are met. However, where such a combustion plant would be included in the TNP, its contribution to the TNP ceilings has to be calculated on the basis of the fuel used in the period 2001-2010 within the part of the combustion plant that was not benefiting from the LCPD Article 4(4) derogation. The fuel used by the boiler which was granted a limited life-time derogation under the LCPD shall therefore not be taken into account.

### **Question 12: Applicability of Article 32 IED on TNP: What ELVs should apply for combustion plants that have benefitted from a derogation under the Accession Treaty?**

The Polish authorities mention that, in accordance with national rules, in the permits for large combustion plants the emission standards have been set at the level of individual boilers and that for existing plants no aggregation rule has been applied for adding the thermal input at the level of the stack. They ask to the Commission the following questions in relation to Article 32(2) IED (plants covered by the TNP):

- Which emission standards will have to be applied for sulphur dioxide and nitrogen oxides to boilers which, on 31 December 2015, are subject to the derogations listed in the Accession Treaty?
- Will the aggregation rule in the stack apply even for the application of the previous emission standards?

### **Response**

Firstly, it should be noted that combustion plants with a total rated thermal input of 50 MW or more are not only subject to the provisions of Chapter III of the IED, but also and foremost to the provisions of Chapter II of the IED. This means that in all cases the permits for these installations will have to include emission limit values ("ELVs") for all relevant pollutants emitted by the plants, which are based on the application of the BAT – see Articles 14 to 16 IED in particular. For existing installations, these provisions will apply from 7 January 2014 on, replacing those of the IPPC Directive.

The provisions of Chapter III, i.e. the requirement to meet certain "minimum" ELVs set out in Annex V, and including the possibility to exempt certain plants (temporarily) from those ELVs, should always be considered in this context.

It should also be considered that the derogations granted under the 2003 Accession Treaty in relation to the LCP Directive only mean that longer transitional periods were allowed for complying with the ELVs contained therein. Regarding the obligation under the IPPC Directive to use BAT to define ELVs, Annex XIII, Part 13 D(1)(b) and (c) of the 2003 Accession Treaty provides that certain installations could be exempted from it, but only until 31 December 2010.

This means that **all** permits for combustion plants (also those covered by a derogation from the LCPD under the Accession Treaty) have to include ELVs for the pollutants concerned in accordance with the provisions of the IPPC Directive (BAT based) and the LCPD and their transposing national legislation. In the view of the Commission, a correct implementation of the LCPD implied the application of aggregation rules based on the "common stack" approach.

Article 32(2) of the IED requires that during the period, in which the combustion plants are covered by the TNP, the ELVs set out in those permits in accordance with the abovementioned principles and which apply on 31 December 2015, shall not be weakened.

### **Question 13: Article 32 IED on TNP determination of the emission ceilings**

The Polish authorities are raising questions regarding the calculation of the emission ceilings (maximum total annual emissions for all plants covered by a TNP) for the years between 2016 and 2020 in the framework of the elaboration of a TNP. In particular, they are asking the following questions:

- Must the TNP emission ceiling for 2016 be based on the ELVs prescribed in the permits that were valid on 31/12/2015 ?
- Can the TNP emission ceilings be determined without applying the aggregation rules (common stack)?
- What data should be used to determine the ceilings for the period from 01/01/2020 to

30/06/2020: the average emissions of waste gases generated during all the first six-month periods between 2001 and 2010 or half of the average annual emissions of waste gases between 2001 and 2010?

### **Response**

The Polish authorities are reminded that the rules for calculating the emission ceilings within the framework of the elaboration of a TNP are set out in the Commission Implementing Decision 2012/115/EU of 10 February 2012 (OJ L 52/12, 24.02.2012). Article 32(3)(2<sup>nd</sup> sub-paragraph) IED clearly states that the ceiling for the year 2016 shall be calculated on the basis of the relevant ELVs set out in Annexes III-VII LCPD. Annex C.1 of Decision 2012/115/EU lists the relevant ELVs (note, however, that this is not an exhaustive list). These ELVs are not necessarily the same as those that have been set out in the permits for the plants concerned.

The application of the TNP under Article 32 is part of the provisions of Chapter III IED allowing for temporary derogation from the ELVs in that Directive. In this regard, the other provisions of the IED remain applicable and therefore the aggregation rules set out in Article 29 IED have to apply whenever it is relevant to determine the ceiling applicable throughout the whole TNP period.

Regarding the calculation of the ceiling for 2020, the Polish authorities are reminded that the above-mentioned Implementing Decision 2012/115/EU provides the necessary explanation.

### **Question 14: Applicability of the condition set out in Article 33(1)(c) IED**

The Polish authorities are concerned with the applicability of Article 33(1)(c) IED, which provides that in the permits for the combustion plants that will benefit from a limited life-time derogation at least the ELVs for SO<sub>2</sub>, NO<sub>x</sub> and dust that will be applicable on 31/12/2015 pursuant to the requirements in particular of the LCPD and IPPC Directive, have to be maintained.

In this respect, the Polish authorities are asking whether there is an obligation to aggregate the thermal inputs of all combustion plants that discharge their waste gases via a common stack in view of defining what ELVs should be imposed.

In addition, they are wondering what ELVs should be taken into account on 31/12/2015 regarding the combustion plants that will have benefited from a derogation under the Accession Treaty until 31/12/2015 and those that will still benefit from an derogation under that Treaty until 31/12/2017.

### **Response**

The response to this question can be found as part of the response to Question 12, and similar provisions apply under Articles 32(2) and 33(1)(c) IED.

### **Question 15: ELVs to be imposed upon a combustion plant after expiry of a limited life-time derogation**

The Polish authorities ask to the Commission which ELVs apply for a combustion plant that has benefited from a limited life-time derogation under Article 33 IED and which will continue to operate after expiry of that derogation

### **Response**

Once the limited life-time derogation foreseen under Article 33 IED will have expired (at the latest on 31/12/2023 or before when reaching the maximum number of operating hours mentioned in that Article), any combustion plant that will have been granted such a derogation and which continues operating thereafter will have to meet the ELVs set out in Annex V (Part 2) IED without prejudice to the other provisions of the IED that apply (see response to Question 7).

### **Question 16: Case of combustion plants operating less than 1.500 hours / year as a rolling average over a 5-year period**

The Polish authorities are concerned with the conditions of application of the more lenient emission limits foreseen in Annex V (Part 1) IED for combustion plants that operate less than 1.500 hours / year as a rolling average over a 5-year period.

In particular, the Polish authorities are asking to the Commission the following questions:

- Will a boiler connected to a single stack with other boilers but with separate monitoring be able to benefit from the 1.500 hours per year derogation independently of the operation of the other boilers?
- Is it possible to use the status of 'peak source' when operating through the total 1 500 hours, irrespective of how much and in which year? What happens with the subsequent operation of the source if in a particular year the rolling average exceeds 1 500 hours;
- How should emission ceilings for these sources be determined in the transitional national plan?

### **Response**

Firstly, in a number of specific cases, Annex V (Part 1)(points 2, 4 and 6) sets out less strict ELVs for combustion plants operating not more than 1.500 operating hours per year (as an average over a 5-year period). In certain cases, this approach can also be applied to "*a part of a combustion plant discharging its waste gases through one or more separate flues within a common stack*". It needs to be stressed that this approach can only be applied for combustion plants for which the possibility of applying the "peak load" approach is explicitly mentioned in points 2, 4 or 6 of Part 1 of Annex V. Another precondition for applying the "peak load" ELVs to a part of a plant is that the emissions through each of the flues concerned shall be monitored separately.

Secondly, all combustion plants exceeding 1500 operating hours per year (as a 5-year average) shall meet the ELVs that apply to combustion plants which cannot benefit from the "peak load" derogation.

Thirdly, the Polish authorities are reminded that the rules for calculating the emission ceilings under the TNP are set out in the Annex (Points 3.2 and 3.3) to Commission Implementing Decision 2012/115/EU of 10 February 2012 laying down rules concerning the transitional national plans referred to in Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions. Particular rules have been defined therein for the plants operating less than 1500 hours per year.

**Question 17: Meaning of "NOx" under the IED**

The Polish authorities are asking how the term "NOx", as used in the IED, should be understood.

**Response**

The expression NO<sub>x</sub> refers to the sum of nitrogen oxide (NO) and nitrogen dioxide (NO<sub>2</sub>), expressed as NO<sub>2</sub>.