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Consultation on the European Commission's proposed Directive on Industrial Emissions (Integrated Pollution Prevention and Control)(Recast) – Various Changes to IPPC Scope

June 2008



Llywodraeth Cynulliad Cymru
Welsh Assembly Government



Department of
the Environment
www.environment.gov.uk



The Scottish
Government



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Food and Rural Affairs

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This document is also available on the Defra website at:

<http://www.defra.gov.uk/corporate/consult/emissions-other/>

Published by the Department for Environment, Food and Rural Affairs

1. Introduction

- 1.1. This consultation document has been prepared by the Department for Environment, Food and Rural Affairs (Defra) in consultation with other Government departments, the Scottish Executive, the National Assembly for Wales, the Northern Ireland Administration, and their agencies.
- 1.2. The document requests information and comments from interested parties, including industry and non-governmental organisations (NGOs)¹, on various changes to the scope of IPPC coverage which would result from substantive amendments in Annex I of the European Commission's proposed Directive on industrial emission (integrated pollution prevention and control) (Recast)².
- 1.3. We are particularly interested in your views on the appropriateness and workability of the proposals. A number of specific questions are set out throughout the document and summarised at the end.

How to respond to this consultation

- 1.4. The commencement date of this consultation is **6 June 2008**. Since this consultation will inform the position the UK takes when negotiation of the proposed Directive gets fully under way in September 2008, the closing date for responses is **31 July 2008**. Written responses to inform the Government on this proposal should be sent to:

David Demain
Industrial Pollution Control
Department for Environment, Food and Rural Affairs
Area 3C, Ergon House
17 Smith Square
London SW1P 3JR

Email: control.pollution@defra.gsi.gov.uk
Tel.: 020 7238 1687

- 1.5. When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents, and where applicable, how the views of members were assembled.

Outcome

¹ For a list of consultees see: <http://www.defra.gov.uk/corporate/consult/emissions-other/>

² See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007PC0844:EN:NOT>

- 1.6. Early responses would be most welcome. We aim to publish a summary of consultation responses by the end of 2008.

Confidentiality

- 1.7. In line with Defra's policy of openness, at the end of the consultation period copies of the responses we receive may be made publicly available through the Defra Information Resources Centre. The information they contain may also be published in a summary of responses.
- 1.8. If you do not consent to this, you must clearly request that your response be treated confidentially. Any confidentiality disclaimer generated by your IT system in e-mail responses will not be treated as such a request.
- 1.9. You should also be aware that there may be circumstances in which Defra will be required to communicate information to third parties on request, in order to comply with its obligations under the Freedom of Information Act 2000 and the Environmental Information Regulations.
- 1.10. The Information Resource Centre will supply copies of consultation responses to personal callers or in response to telephone or e-mail requests (Tel: 020 7238 6575, [mailto: defra.library@defra.gsi.gov.uk](mailto:defra.library@defra.gsi.gov.uk)). Wherever possible, callers should give the library at least 24 hours notice of their requirements. An administrative charge will be made to cover photocopying and postage costs.
- 1.11. If you wish to make a complaint, or query the consultation process, please write to:

Marjorie Addo
Consultation Co-ordinator
Department for Environment, Food and Rural Affairs
Zone 7C, Nobel House
17 Smith Square
London SW1P 3JR

E-mail: consultation.coordinator@defra.gsi.gov.uk

Consultees

- 1.12. We are seeking information and comments from industry, other non-governmental organisations, consumer groups, trade associations, and any other interested parties³.

³ For a list of consultees see: <http://www.defra.gov.uk/corporate/consult/emissions-other/>

- 1.13. Please tell us if you know of others who would be interested in receiving this consultation document.
- 1.14. Hard copies are also available by request from Government - please contact David Demain (see paragraph 1.4). Additional copies of this document can be made without seeking permission.

Help with enquires

- 1.15. If you would like help with queries, or require further information about this consultation, please contact:

Muna Ahmad: muna.ahmad@defra.gsi.gov.uk (Tel.: 020 7238 1684)

Government Code on Consultations

- 1.16. A copy of the Government Code on Consultations has been published by the Cabinet Office. A copy can be obtained from:

<http://www.berr.gov.uk/bre/consultation%20guidance/page44459.html>

2. Background and preliminary points

- 2.1. The Commission launched in November 2005 a review of the IPPC Directive⁴. The general objective of the review was stated as 'to evaluate the scope to improve the functioning of the Directive and its interaction with other legislation, in particular related to industrial emissions, while not altering the main underlying principles and the level of ambition set in the Directive'.
- 2.2. The review culminated in the publication on 21 December 2007 of a Commission Communication⁵ that accompanied the Commission's proposal for a Directive 'on industrial emissions (integrated pollution prevention and control)(recast), and an impact assessment⁶.
- 2.3. The proposal caused some initial consternation because it is some 240 pages long and contains large amounts of text shown in grey shading, "strike out" or both. Several weeks after its appearance, the Commission placed on its web site a guidance document⁷ explaining

⁴ *Directive...concerning integrated pollution prevention and control*, whence "IPPC". The Directive is now the IPPC Directive, the codified version which entered force in February 2008 and thereby repealed the original Directive, 96/61/EC.

⁵ COM(2007) 843 – *Towards an improved policy on industrial emissions*

⁶ All these documents are available at <http://ec.europa.eu/environment/air/pollutants/stationary/ippc/proposal.htm> .

⁷ At <http://ec.europa.eu/environment/air/pollutants/stationary/ippc/pdf/recast/guidance.pdf> .

the full significance of these markings. The summary from that document is reproduced at Appendix B to this paper. For present purposes, the following is the key feature:

‘A substantive amendment is any amendment **"which affects the substance of the earlier act as opposed to purely formal or editorial changes"**. This includes for instance creating a new legal obligation, restricting rights, making certain requirements more/less stringent or changing the scope of the act. The substantive changes (both additions and deletions) have to be grey shaded. These elements of the recast are discussed and agreed during the co-decision process subject to the rules presented under section 4(b) of this note’ [which says that] ‘in principle, the parts of the text concerned only by codification (i.e. which are not substantive amendments) **are not open for discussion or amendment during the legislative process.**’

2.4. In other words, only the grey-shaded text is regarded as material for the co-decision process. Whilst the UK does not necessarily agree that the limitation is as sharply defined as that, it is clear that the grey-shaded material will be the main focus of discussions, and it is axiomatic that it contains additions or amendments to the seven Directives⁸ incorporated into the recast which may be of concern in various ways to stakeholders. Subsequently, in a paper dated 17 April 2008⁹, a “Consultative Working Party”, consisting of representatives of the respective legal services of the European Parliament, the European Council and the European Commission, gave an opinion on the Commission’s proposal which identifies an additional 10 instances where text should have been grey-shaded. These instances are taken into account in this consultation paper.

2.5. Annex I of the proposed recast Directive lists the industrial activities referred to in Article 11 of the proposal – that is to say, those which would be covered by the IPPC provisions of Chapter II. Annex I is largely identical to Annex I of the current IPPC Directive¹⁰ but it contains several grey-shaded amendments, most of which would change the scope of IPPC. This consultation paper seeks views on those scope changes, which concern:

- **Non-ferrous metal foundries** (point 2.5(c) of Annex I of the proposal);

⁸ Those are the IPPC Directive and Directive 1999/13/EC on solvents emissions, Directive 2000/76/EC on waste incineration, Directive 2001/80/EC on large combustion plants and Directives 78/176/EEC, 82/883/EEC and 92/112/EEC related to the titanium dioxide industry.

⁹ A copy of this can be obtained from Defra. See paragraph 1.4 for contact details.

¹⁰ 2008/1/EC.

- **Biological processing for chemical production** (insertion in preamble to section 4 of Annex I of the proposal);
- **Production of chemicals for use as fuels or lubricants** (point 4.7 of Annex I of the proposal)
- **Specified treatments of non-hazardous waste** (insertions in point 5.3 of Annex I of the proposal), namely the inclusion of both disposal and recovery involving (i) pre-treatment of waste for co-incineration, (ii) treatment of slags and ashes, (iii) treatment of scrap metal, and (iv) biological or physico-chemical treatment (for which only disposal activities are currently covered);
- **Wood-based panel production** (point 6.1(c) of Annex I of the proposal);
- **Mixed animal and vegetable food production** (point 6.4(b)(iii) of Annex I of the proposal);
- **Preservation of wood and wood products** (point 6.9 of Annex I of the proposal); and
- **Off-site treatment of waste water** (point 6.10 of Annex I of the proposal).

2.6. Consultants' reports setting out what amounts to a Partial Impact Assessment (IA) examining the costs and benefits of each of these scope changes accompany this consultation paper. Those which are relevant to individual consultees' interests must be read in conjunction with this consultation paper. In all cases, **consultees' views are sought on how well those assessments relate to their own experience of impacts upon themselves, whether as operators, customers or suppliers.**

2.7. A separate consultation paper, *Consultation on "substantive amendments" in the proposed recast ("the grey bits")*¹¹ addresses the rest of the grey-shaded material, Article by Article in the proposed recast Directive as a whole. Consultees addressing the current consultation will need to have by them the proposed recast Directive itself¹². In particular, consultees should bear in mind (i) Article 16 of

¹¹ See: <http://www.defra.gov.uk/corporate/consult/emissions-greybits/>

¹² Consultees should note that the web site cited in footnote 6 gives access to both Word and .pdf formats of the proposed recast Directive. Very regrettably the European Commission has refused to produce, even on an informal basis, a "clean" version of the text showing how the recast Directive would appear if the proposal were accepted as it stands. However, an unofficial "clean" version is available on request from Defra at the address given in 1.4.

the proposed recast Directive which would affect the way in which emission limit values (ELVs) would be set for all activities subject to the IPPC requirements set out in Chapter II, and (ii) Article 23 which would affect eventual site closure and remediation. The impact assessment reports each also contain some pointers to other issues which may arise for the activities they cover.

3. **Non-ferrous metal foundries** (point 2.5(c) of Annex I of the proposal)

3.1. This substantive amendment would bring into IPPC `operation of non-ferrous metal foundries producing cast metal products, with a production capacity of good castings exceeding 2.4 tonnes per day for lead and cadmium or 12 tonnes per day for all other metals’.

3.2. The consultants report that no installations have been identified in the UK where this or the editorial amendments in the rest of point 2.5 will cause any amendment of the current regulatory regime, although some permit variations may be required to change the details of the permit. **Consultees should provide details of any practical examples where this may not be the case.**

3.3. Consultees in England and Wales should also note that the consequences, if any, for assignment of this activity to regulation by the Environment Agency (as a “Part A(1)” activity) or local authorities (as a “Part A(2)”) would be assessed as part of transposition arrangements after finalisation of the Directive.

4. **Biological processing for chemical production** (insertion in preamble to section 4 of Annex I of the proposal)

4.1. This substantive amendment would bring production of chemicals by biological processing into IPPC. The consultants’ report indicates that such processes are already subjected to IPPC by UK regulatory practice. **Consultees’ views are sought on this report and in particular on any future developments in chemical production which may affect that position.**

5. **Production of chemicals for use as fuels or lubricants** (point 4.7 of Annex I of the proposal)

5.1. This substantive amendment would bring production of chemicals for use a fuels or lubricants into IPPC. The Impact Assessment which accompanies the European Commission’s proposal indicates that the amendment is primarily intended to make it clear that production of biodiesel and bioethanol are subject to IPPC¹³, as those activities

¹³ See page 188ff of the document at http://ec.europa.eu/environment/air/pollutants/stationary/ippc/pdf/recast/ia_en.pdf

already are in the UK and in some other Member States. The consultants' report therefore concentrates upon biodiesel and bioethanol production, with little reference to lubricants. **Consultees should consider whether the proposed amendment would bring the production of lubricants or any other type of fuel into IPPC,** bearing in mind, however, that the existing coverage of chemical production is already very wide, and that refining is covered as a separate activity.

5.2. As for all other activities listed under point 4 of Annex I, 'production' means 'on an industrial scale' – there is no quantified threshold. However, consultees should note – and some will already be aware – that the regulators have taken pragmatic positions in assessing what constitutes 'industrial scale' for this activity¹⁴. As the consultants' report points out, those cannot be guaranteed to be the positions in and beyond 2015 when this proposed amendment would take effect. But no change is currently envisaged and **consultees' views are sought on the findings of the consultancy report on that basis.**

6. **Specified treatments of non-hazardous waste** (insertions in point 5.3 of Annex I of the proposal)

6.1. The current IPPC Directive applies to non-hazardous waste disposal activities with a capacity exceeding 50 tonnes per day and involving biological or physico-chemical treatment. The proposed recast Directive would maintain that threshold but would also include recovery activities involving those treatments and would add disposal or recovery activities involving pre-treatment of waste for co-incineration, treatment of slags and ashes and treatment of scrap metal.

6.2. The consultants' report examines the impacts which these changes may have. **Consultees are asked to consider that report and to contribute any further quantitative information on impacts they may have. Consultees' views are also sought on how these changes may affect wider waste management practices.**

7. **Wood-based panel production** (point 6.1(c) of Annex I of the proposal)

7.1. This substantive amendment would bring into IPPC the production in industrial installations of wood-based panels, with the exception of plywood, with a production capacity exceeding 600 m³ per day.

¹⁴ For example, see <http://www.environment-agency.gov.uk/business/444304/1951137/1951141/1951196/1951207/?version=1&lang=e>

7.2. The consultants' report identifies seven installations within the UK as being subject to this proposal, all of which are already subject to IPPC under UK Regulations. It is therefore unlikely that the proposed amendment would have any additional impact, but **consultees should provide details of any practical examples where this may not be the case.**

8. **Mixed animal and vegetable food production** (point 6.4(b)(iii) of Annex I of the proposal)

8.1. This substantive amendment seeks to clarify the long-standing uncertainty about the threshold for inclusion in IPPC of production of food products from both animal and vegetable raw materials. The consultants report that around ten installations in the UK may be covered by this clarification. **Consultees are asked to consider the consultants' report and to contribute views together with any additional quantitative information they may be able to provide.**

9. **Preservation of wood and wood products** (point 6.9 of Annex I of the proposal)

9.1. This substantive amendment would bring into IPPC the activity of preserving wood and wood products where the production capacity exceeds 75 m³ per day. The consultants report that some 250 installations in the UK may have a production capacity exceeding that threshold. **Consultees are asked to consider the consultants' report and to contribute views together with any additional quantitative information they may be able to provide.**

10. **Off-site treatment of waste water** (point 6.10 of Annex I of the proposal)

10.1. This substantive amendment would bring into IPPC off-site treatment of waste water not covered by the urban waste-water treatment Directive¹⁵ and discharged by an installation covered by Chapter I. In other words, it applies only to waste treatment works which treat only non-domestic waste water which is discharged from any installation in which one or more of the activities listed in Annex I ("IPPC activities") or Part 1 of Annex VII ("solvent activities") is carried out, and which furthermore are not located on the same site as the installation whose waste water they treat.

10.2. **Consultees are asked to consider the consultants' report and to contribute views together with any additional quantitative information they may be able to provide.**

¹⁵ 91/271/EC. At <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1991:135:0040:045:EN:HTML>

11. Next steps

- 11.1. The deadline for responses to this consultation is **31 July 2008**. They will inform the development of a formal UK Government position for use as the co-decision process advances through the autumn and winter of 2008 and thereafter.
- 11.2. We will aim to publish a summary of consultation responses by the end of 2008.

Summary of Questions

Question 1: How well does the impact assessments which accompanies this consultation document relate to your own experiences of impacts upon operators, customers or suppliers.

Question 2: Can you provide details of any practical examples where there the substantive amendment in point 2.5 (non-ferrous metal foundries) may cause any amendment to the current regulatory regime?

Question 3: Do you have any comments on the impact assessment on the substantive amendment to bring production of chemicals by biological processing into IPPC?

Question 4: Do you have any views on any future developments in chemical production which may be affect by IPPC?

Question 5: Do you consider that the proposed amendment to point 4.7 (Production of chemicals for use as fuels or lubricants) would bring the production of lubricants or any other type of fuel into IPPC, bearing in mind, however, that the existing coverage of chemical production is already very wide, and that refining is covered as a separate activity.

Question 6: Do you have any comments on the impact assessment on the amendments to point 4.7 (Production of chemicals for use as fuels or lubricants)

Question 7: Do you have any comments to the impact assessment on the change in point 5.3 (Specified treatments of non-hazardous waste) and can you contribute any further quantitative information on impacts?

Question 8: How do you think the changes in point 5.3 (Specified treatments of non-hazardous waste) may affect wider waste management practices?

Question 9: Can you provide details of any practical examples where there the change in point 6.1(c) (Wood-based panel production) may cause any amendment to the current regulatory regime?

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?

Question 11: Do you have any comments to the impact assessment on the substantive amendment in point 6.9 (Preservation of wood and wood products) and can you contribute any further quantitative information on impacts?

Question 12 Do you have any comments to the impact assessment on the amendment in point 6.10 (Off-site treatment of waste water) and can you contribute any further quantitative information on impacts?

APPENDIX A - Glossary

Defra – Department for Environment, Food and Rural Affairs

NGO – Non-Governmental Organisation

IPPC – Integrated Pollution Prevention and Control

IA – Impact Assessment

ELVs – Emissions Limit Values

APPENDIX B

Extract from the European Commission's *Guidance on the use of the recast legislative technique*

5. Summary of main recast rules

a) Recast involves three types of action: (1) substantive amendments to the earlier act; (2) codification of the earlier act (adaptation or minor changes); (3) repeal of the earlier act and replacement by the new act. All the changes made to the earlier act have to be visible using different types of markers (see the example presented in section 6 of this note [reproduced below]).

b) There should be clear difference in the text between **substantive amendment** and **unchanged provision** "*which, although it may be affected by purely formal or editorial changes, has not undergone any substantive amendment*".

c) A substantive amendment is any amendment "*which affects the substance of the earlier act as opposed to purely formal or editorial changes*". This includes for instance creating a new legal obligation, restricting rights, making certain requirements more/less stringent or changing the scope of the act. The substantive changes (both additions and deletions) have to be grey shaded. These elements of the recast are discussed and agreed during the co-decision process subject to the rules presented under section 4(b) of this note [reproduced below].

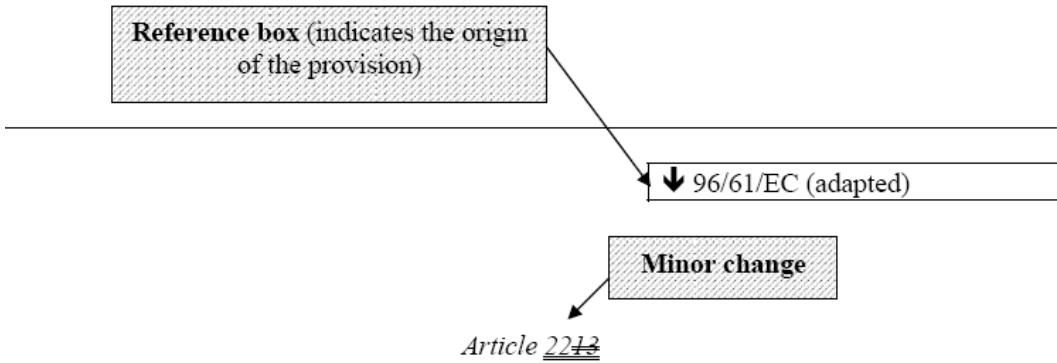
d) An adaptation consists of the reformulation of the legal text without changing its substance (e.g. deletion of a sentence which is superfluous, merging two sentences, moving a provision to another part of the legal text, correcting translation or grammatical mistakes). In principle, these elements are **not discussed or amended** during the co-decision process subject to the rules presented under section 4(b) of this note.

e) A minor change is usually editorial in nature, such as the update of article numbers or of references to pieces of legislation. These elements are not discussed and agreed during the co-decision process.

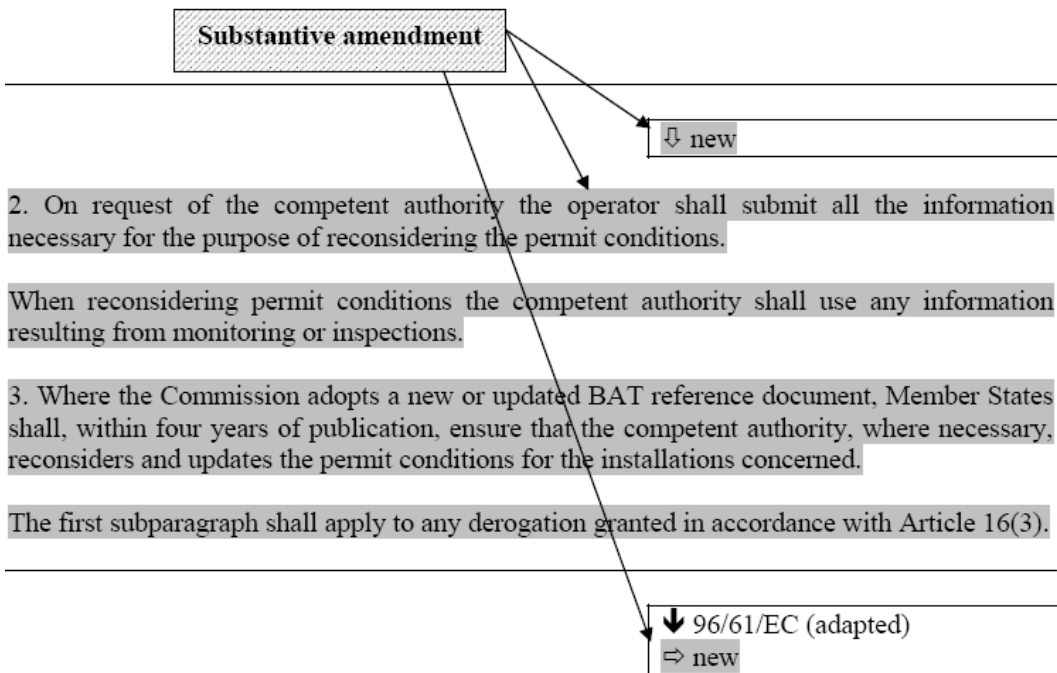
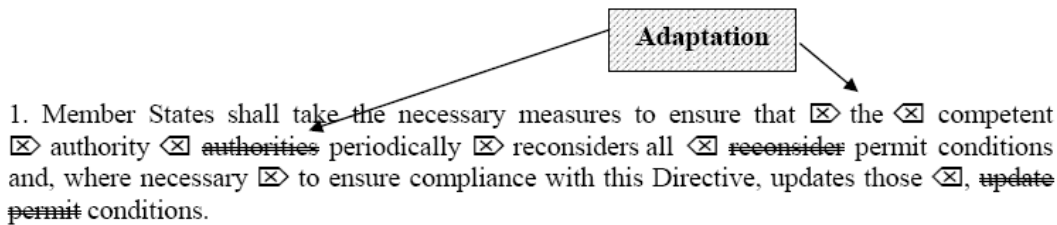
f) The Explanatory Memorandum of a recast act must refer to the recast technique, whilst at the same time making clear distinction between unchanged and substantially changed provisions (and providing reasons for the latter).

g) Specific rules apply for the first recital (it must explicitly refer to the recast technique), for the article on repeal, for the correlation table and, if the basic act is a Directive, for the article on transposition.

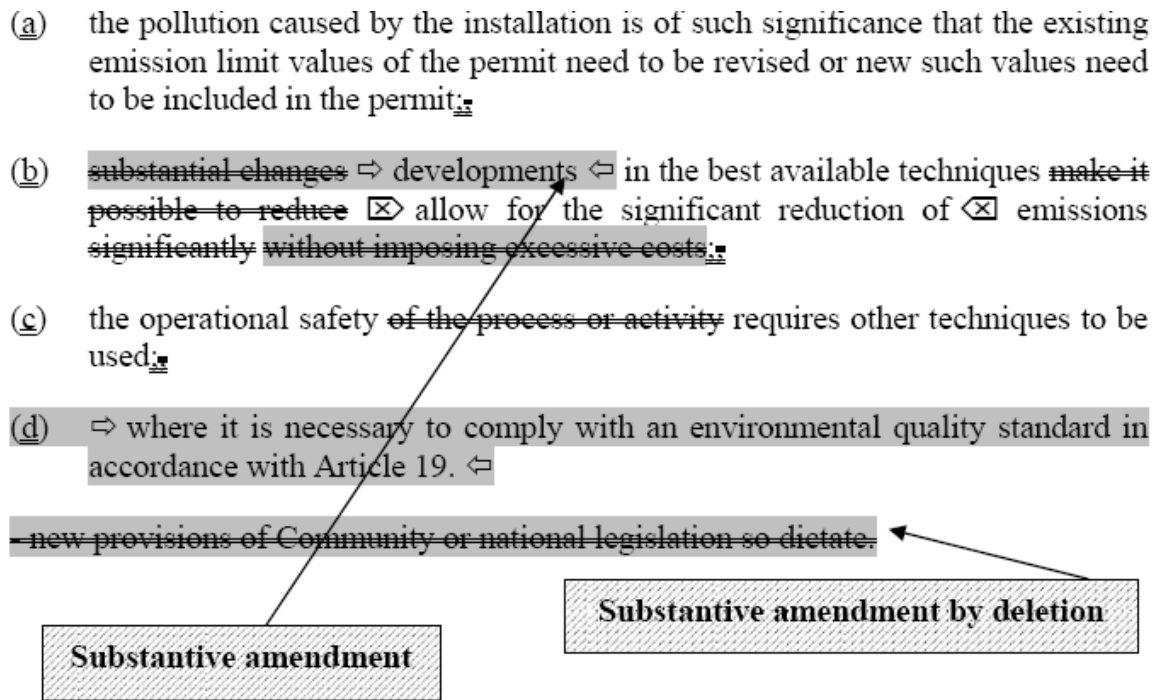
6. Example of the use of the recast markers (taken from the proposal for a Directive on Industrial Emissions)



Reconsideration and updating of permit conditions by the competent authority



~~42.~~ The ~~reconsideration~~ ~~permit~~ permit conditions ~~shall be undertaken in any event where~~ ~~reconsidered~~ and, where necessary, updated at least in the following cases ~~:~~:



Section 4(b) says:

`b) In principle, the parts of the text concerned only by codification (i.e. which are not substantive amendments) **are not open for discussion or amendment during the legislative process.**

Exceptionally, if during the legislative process *"it appears necessary to introduce substantive amendments to those provisions which remain unchanged in the Commission's proposal, such amendments must be made to that act in compliance with the procedure laid down by the Treaty to the applicable legal basis"*. The European Parliament has established that such types of amendments *"may be admitted by way of exception and on a case-by-case basis [...] if necessary for pressing reasons related to the internal logic of the text or because the amendments are inextricably linked to other admissible amendments."* According to the Commission's Legal Service, if it appears necessary during the co-decision procedure to amend a part of the legal text which has been codified for reasons of coherence, e.g. because of strong interconnection or of lack of consistency with the substantive amendments proposed by the Commission, the Commission shall exercise its right of initiative either by

proposing amendments itself or at least by accepting that the suggested changes be made.