

Guidance on Interpretation of "Installation" and "Operator" for the Purposes of the IPPC Directive

The aim of these documents is to provide guidance in implementing the IPPC Directive 96/61/EC by suggesting an approach to some questions on how certain provisions of the Directive should be understood. The guidance does 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.

1. Definition of "Installation"

According to Article 2(3) of the IPPC Directive:

"installation" shall mean a stationary technical unit where one or more activities listed in Annex I are carried out, and any other directly associated activities which have a technical connection with the activities carried out on that site and which could have an effect on emissions and pollution.

2. Structural approach to interpretation of "Installation"

It is noted that the wording of the definition of "installation" could be read in two ways in terms of the structural approach to take to interpretation. One possible approach is that the "stationary technical unit" (STU) merely covers that part of the installation in which one or more activities listed in Annex I of the Directive are carried out, with other things ("directly associated activities" or DAAs) also potentially being part of the installation despite not (necessarily) being part of the STU. The other possible approach is that the installation as a whole is a STU, in which the Annex I activities and DAAs are carried out.

The choice between these two structural approaches is not clear in the English and certain other language versions. However, the German text, for example, makes clear that the STU contains both Annex I activities and DAAs. The Swedish text, on the other hand, is clear about the opposite approach, i.e. the approach of "installation" = STU+DAA(s). Thus it is difficult to draw any firm conclusions from the different language versions of the Directive. It is therefore necessary to look at other factors.

One issue to consider is the question of which approach provides a simpler basis for interpretation. The approach of "installation = STU" appears slightly to be preferred in this respect, since the installation is simply the sum of the Annex I activities and any DAAs. The term STU nevertheless remains important, since it provides the requirement that, for there to be an installation which is subject to the IPPC Directive, activities must be carried out in a unit that is stationary and technical. To give an example, incineration of waste is covered by Annex I activity definitions 5.1 and 5.2, yet if waste is burned in the open, there would be no STU and thus no installation for the purposes of IPPC¹. See also the discussion of "stationary" and "technical unit" below.

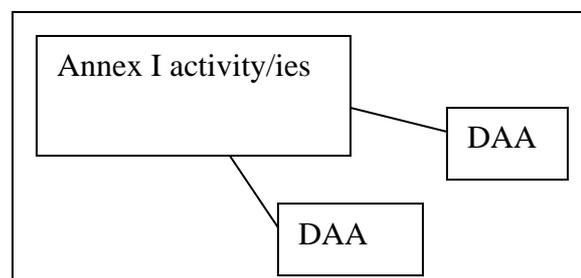
¹ It should be noted, however, that such open burning is likely in most cases to be incompatible with the Waste Framework Directive 2006/12EC as amended.

Coherence with other Community legislation can also be considered. Many Community instruments (e.g. the Greenhouse Gas Emission Trading Directive 2003/87/EC, European Pollutant Emission Register (EPER) Decision 2000/479/EC, European Pollutant Release and Transfer Register (E-PRTR) Regulation (EC) No. 166/2006 and VOC Solvents Directive 1999/13/EC) use the same or very similar definitions of "installation" and so do not shed light on the best structural approach to interpretation either way. However:

- the Seveso II Directive 96/82/EC says that an "installation" is a technical unit, and includes a lengthy list of types of equipment which are to be considered included in such a unit.
- the Waste Incineration Directive 2000/76/EC does not use the expression "installation" but defines "plant" as meaning any stationary or mobile technical unit and equipment dedicated to the thermal treatment of wastes, elaborating that this definition "covers the site and the entire incineration plant", and also adding a long list of equipment to be considered included.

Both the Seveso II and Waste Incineration Directives thus reflect an approach in which the installation or plant is equal to the technical unit. These Directives do not in themselves have any direct legal bearing on interpretation of the IPPC Directive. Generally speaking, however, coherence with other Community legislation would seem to be better supported by taking the approach of "installation = STU" for the purposes of the IPPC Directive. Under this interpretation, the structural approach to identifying the boundaries and content of an installation involves:

- Identifying the activity (or activities) listed in Annex I on a site;
- Establishing whether there are any other DAAs, which have a technical connection with the Annex I activities and which could have an effect on emissions and pollution; and
- Confirming that those activities are carried out in a STU, which contains the sum of the Annex I activities and the other activities (see example in the figure below).



Installation = STU

In terms of regulatory and environmental outcomes, it is not immediately clear that the two different approaches will lead to different conclusions, although this possibility cannot be ruled out. Therefore, if a particular Member State were to choose to apply the other approach,

this could also meet the requirements of the Directive provided that the appropriate activities are identified.

3. Meaning of "Stationary"

A "technical unit" has to be "stationary" to be an installation. This would seem to clearly exclude ships, cars or other machines that operate while moving from one location to another from being installations in their own right. On the other hand, it would seem nonsensical to exclude all activities involving movement from potentially being subject to IPPC. For instance, at an installation where there is raw materials handling and then processing, the raw materials may be moved from the storage to the processing area by, for example, fork lift trucks. Excluding the possibility of regulating such movement could seriously undermine the objectives of IPPC, since there could be spillages and emissions if the handling of the materials during movement is not properly controlled.

The conclusion, therefore, is that the term "stationary" means that the installation as a whole should be stationary – meaning not moving from one location to another – but this does not exclude from regulation plant and equipment that may be used within the installation while moving. This is because, in particular, while a STU must by definition be stationary, there is no requirement in the definition of installation for the activities themselves that are carried out within the installation to be stationary.

There is also a question of whether to consider as "stationary" 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 "mobile" incineration plant or plant for the remediation of contaminated land. It could be concluded that if equipment that carries out one of the specified Annex I activities will operate at a particular location for a significant period of time, then it should be considered stationary for the purposes of the Directive. The precise duration of plant being located at a particular site that could lead it to be considered stationary would need to be determined according to the facts of individual cases. Such decisions could take account of factors such as the nature of the activities concerned and their environmental impact, the expected duration upon initial establishment, the actual duration (e.g. a plant might initially have been expected to operate for just a short period but in practice could remain much longer), and the degree of physical installation involved in moving and establishing the plant (e.g. does the plant just arrive on its own wheels or be transported as a single unit, or does it need a significant degree of engineering and construction to establish it as ready for use at a particular location?). These will be matters of judgement for the competent authorities concerned.

Looking at other legislation, the Seveso II Directive does not include a reference to "stationary, but includes things "floating or otherwise" in its definition of installation. The Waste Incineration Directive, in contrast, explicitly covers both "stationary or mobile technical units". However, it does not define the distinction between the two. Certainly it is known that, in addition to "mobile" incinerators discussed above which can be operated at the same place for periods of time such as months or even years (and might therefore be considered stationary), waste oils (for instance) are burned in plant that moves while operating, or stays in the same location for only very short periods. In addition, incineration has in the past taken place on ships, although this is now illegal. Therefore the fact that the Waste Incineration Directive explicitly covers mobile plant does not suggest that IPPC can only cover installations that will not foreseeably move, since it seems apparent that some

plants covered under the former could be truly mobile (i.e. moving while used or at very short intervals) and therefore not at all be covered under IPPC.

4. Meaning of "Technical Unit"

The meaning of "technical unit" has already partly been discussed above in the context of the distinction between incineration in an IPPC installation and open burning. Synonyms for "technical" include technological, scientific, industrial, mechanical and specialised, which all reiterate the need for a unit to be specifically intended to carry out the activities of interest. This does not however mean that all of the activities within the technical unit must be technologically advanced or complex. In some cases, some or even all of activities involved might be of a rather simple nature, without affecting the fact that the technical unit is indeed specifically intended to allow an IPPC activity to be carried out.

"Unit" would simply 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, for example.

According to the definition of "installation" in the Seveso II Directive, a "technical unit" shall "include all the equipment, structures, pipework, machinery, tools, private railway sidings, docks, unloading quays serving the installation, jetties, warehouses or similar structures, floating or otherwise, necessary for the operation of the installation".

According to the Waste Incineration Directive, the definition of an "incineration plant", meaning any "stationary or mobile technical unit and equipment", covers "the site and the entire incineration plant including all incineration lines, waste reception, storage, on site pretreatment facilities, waste-fuel and air-supply systems, boiler, facilities for the treatment of exhaust gases, on-site facilities for treatment or storage of residues and waste water, stack, devices and systems for controlling incineration operations, recording and monitoring incineration conditions."

Drawing on these definitions, for the purposes of IPPC it can be interpreted that "technical unit" means a unit designed and engineered to carry out the activities of interest. Elements of the "technical unit" could include equipment, structures, pipework, machinery, tools, private railway sidings, docks, unloading quays, jetties, warehouses or similar structures, 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 Annex I activity, or a DAA which is also part of the installation.

5. Meaning of "Directly Associated Activities" and "Technical Connection"

The expressions "DAAs" and "technical connection" appear next to each other in the definition of installation. Clearly, non-Annex I activities are only included in the installation if they are "directly" associated and "technically connected". Activities that are directly associated, but not technically connected, are excluded, e.g. administrative offices at an industrial site.

An activity could be said to be associated with an Annex I activity if it shares some common features, e.g. it is part of the same industrial complex, operates in the same or a related sector,

or operates with some collective aspects such as site security or participation in a local community relations programme. However, this does not necessarily mean that such a non Annex I activity is directly associated. To be directly associated, the operation of the non-Annex I activity must somehow be closely related with the Annex I activity in a direct operational sense. This could include, for example, a non Annex I activity that is an auxiliary facility serving an Annex I activity, and probably would not take place at that particular location without it.

Equally, a non Annex I activity might be technically connected to an Annex I activity without being directly associated with it. For example, a power station may fall under IPPC Annex I point 1.1, and any industrial plant (or indeed other activity) that gets its electricity from it could be said to be technically connected, since there must be a physical connection between power generation and use. However, it would be extreme to view any such user as directly associated, especially where, for example, a particular user takes only a small share of a power plant's output, and would also be reasonably free to obtain electricity from other sources. At the same time, it should be noted that there will be cases where there is an especially direct relationship between a particular power plant and another particular industrial activity, in which case they could be considered as part of the same installation.

Note that it is not considered necessary that a technical connection entails a fixed physical connection, e.g. in the form of pipework, wiring, conveyors, etc., 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 can be said to be technically connected if they are operated as part of what can reasonably be viewed as a single overall operation, even if the nature of the connection is by means other than a permanent physical link. Thus a connection by means such as transport via mobile machinery (e.g. fork lift trucks), or by manual handling, could still count.

Some general types of non Annex I activities that may be directly associated with and technically connected to Annex I 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 Annex I activities and an intermediate activity between them);
- activities concerned with the handling (e.g. finishing, storage) of products; and
- activities concerned with the treatment or storage of by-products, wastes or emissions (e.g. effluent treatment units).

Note that where such a non Annex I activity has a dedicated relationship to an Annex I activity then it will normally be a DAA. On the other hand, where the non Annex I activity also relates to other facilities, it will be a matter of judgement whether the non Annex I activity is considered directly associated with the Annex I activity. For instance, if a combustion unit of less than 50 MW provides most of its output directly to an Annex I

activity (such as a chemical reactor), and a small amount to other facilities or possibly the local electricity network, it would still be considered directly associated with the Annex I activity. But if only a small amount of its output were to go to the Annex I activity, with most going somewhere else, it could reasonably be viewed as not being directly associated, since the Annex I activity would not be the major driver for its operation.

In the specific case where several production facilities – only one of which undertakes an Annex I activity – share an auxiliary activity (e.g. heat/power supply, storage of materials, waste treatment, etc.), the auxiliary activity might still be considered as a DAA on the basis of a judgement as referred to in the previous paragraph. However, this would not automatically mean that the other production facilities that additionally use the auxiliary facility also become part of the "installation", since they may not have a direct association with the Annex I activity.

6. Meaning of "Site"

Practical implementation of IPPC in the Member States to date has shown a variety of interpretations of the term "site" including:

- the geographical location of an installation;
- a strict connection between the installation and the site (i.e. a one installation, one site relationship);
- a fenced area around an installation; and
- the area under the ownership or control of the operator.

From the perspective of coherence with other Community legislation, the clearest indication appears to be provided by the E-PRTR. This 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. This suggests that an IPPC installation operates at a site – i.e. a geographical location – but is not necessarily the only thing at that site. Clearly under the E-PRTR definition – and also under Article 2(9) of the IPPC Directive, which provides that "*A permit may cover one or more installations or parts of installations on the same site operated by the same operator*" – there may be several installations operated at the same site by the same operator. In this case, they are to be reported as a single facility (E-PRTR), and may be covered by one permit issued to the operator concerned (IPPC). Neither of these provisions excludes the possibility of other operators and installations also using the same site, although they would be reported separately under E-PRTR, and also would normally be permitted separately, although some Member States have apparently designed arrangements for a single permit to cover more than one operator (see Section 10).

Questions of who owns the land do 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. Where there is a fence or similar barrier, this might provide a reasonable basis for establishing the boundaries of the site, but this should not provide an artificial constraint on the extent of an installation, nor a possible loophole for operators to try to establish such a limitation simply by introducing fencing. For example, 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 the middle of it, which might also involve some fencing. On the other hand, such divided areas would have to be adjacent or at least reasonably proximate in order to remain credibly viewed as a single site for the purposes of IPPC. Moreover, 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 in accordance with section 5 of this paper these storage activities would appear to very clearly constitute DAAs that are technically connected with an Annex I activity. In the case where the 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.

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

Generally speaking this part of the definition does not appear to cause problems and so is discussed only briefly here. The "effect on emissions and pollution" could be from the Annex I activities, from the DAAs themselves, or from the interaction of the two.

An illustration of this is provided by the example of 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 Directive refers to "could have an effect on emissions and pollution" rather than requiring that such an effect will occur for a DAA to be included in an installation. Thus, for example, the storage of chemical products could be included, because although it should not have an effect on emissions and pollution from the chemical production process, and should not in itself give rise to such emissions if the chemicals are properly stored, there could still be emissions and pollution from accidents or spillages, which may be addressed by the application of the IPPC Directive.

8. Definition of "Operator"

Article 2(12) defines "operator" as:

"any natural or legal person who operates or controls the installation or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of the installation has been delegated".

9. Interpretation of "Operator"

It is considered that Article 2(12) 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"). It seems reasonable to assume that it is not the intention of the IPPC Directive to limit the possibilities provided within Member States' legal regimes for individuals (natural persons) or companies (or other legal persons) to operate IPPC installations (unless, of course, they are judged unable to comply with the conditions that would be imposed). Therefore, and depending on the legal arrangements that exist in any particular Member State, there seems no reason to judge that the Directive rules out the possibility that a single installation could be operated by two or more people or companies acting together (i.e. acting jointly as a single operator).

For example, if two individuals (e.g. a husband and wife who jointly own a farm) applied for a permit to operate, say, an intensive pig rearing installation (point 6.6 of Annex I of the IPPC Directive), it would not seem necessary under the Directive itself to insist that just one of them apply as the "operator", excluding the other. On the other hand, there may be practical difficulties with such joint operation, and it must be clear how persons applying together would exercise joint control of the installation. In particular, in accordance with Article 14 of the Directive Member States must be able to ensure that the conditions of the permit are complied with by the operator when operating the installation. To keep responsibilities clear and enforceable it is common practice in many Member States that the (in this case) two natural persons form one legal person that applies for the permit.

The precise arrangements in this area will depend on the legal systems of the Member States. These may also sometimes require that the responsibilities for the operation of an installation have to be attributed to one person (one natural person or – in the case of a legal person – a manager that can be held responsible in case of violations).

10. Relationship between "Operator" and "Installation"

In real industrial operations it is not uncommon, at least in some Member States, for different yet closely interconnected industrial activities to have different operators. For example, a power plant may provide a dedicated electricity supply for an immediately adjacent chemicals plant, whose waste water may be treated by an immediately 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 2(3) does not contain any explicit reference to the operator. Thus it could be interpreted that determination of the installation is a purely technical matter, based on the assessment of the Annex I activities, DAAs, etc., without any necessary consideration of who operates what.

On the other hand, the definition of "operator" in Article 2(12), if read in isolation, could be taken as suggesting that a single operator operates a single installation, discounting the possibility of different parts of an installation being operated by different parties. However, Article 2(9) defines a "permit" as:

"that part or the whole of a written decision (or several such decisions) granting authorization to operate all or part of an installation [emphasis added], subject to certain conditions which guarantee that the installation complies with the requirements of this Directive. A permit may cover one or more installations or parts of installations on the same site operated by the same operator."

Thus it can be seen that the Directive explicitly recognises the possibility of providing a permit to operate just part of an installation rather than necessarily the whole of the installation. At the same time it notes the potential to issue a permit covering two or more installations operated on the same site by a single operator, without actually excluding the possibility of a permit covering more than one operator, or installations operated by the same operator but on different sites.

Therefore, Articles 2(3) and 2(9) 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. Such an interpretation is favoured for several reasons:

- Firstly, this constitutes a simple approach to interpretation, because it will not be necessary for regulators to look into issues of ownership – which may entail matters of complex company law, and interactions of allegedly different companies (parent and subsidiary companies, joint ventures, etc.) – in determining the installation boundaries.
- Secondly, it is consistent with the principles and integrated approach of the Directive, since it ensures that consideration of the installation boundaries depends only on the technical and environmental issues at stake. Thus a non Annex I activity would be included in an installation if merited on the basis of being a DAA, technically connected, potentially having an effect on emissions and pollution and being on the same site. These factors will be the same whether or not the non Annex I activity has the same operator as the Annex I activity.
- Thirdly, it will ensure stable installation boundaries, whereas taking ownership and operation into account can allow the boundaries to vary and will lead to inconsistent application of the Directive within and between the Member States. The Commission Services have already received comments and questions from Member States and Accession Countries indicating that, for instance, taking operation into account in determining installation boundaries has led to unequal treatment of DAAs, which are included if they have same operator as the Annex I activity, and excluded if they have a different operator, despite all other technical factors being the same in both situations. It has also meant that single installations granted transitional periods during accession negotiations have subsequently become viewed as multiple "installations" following changes in ownership. Indeed, taking ownership and operation into account does not just provide the potential for fluctuation of regulatory boundaries, but also creates an incentive for operators to set up legally distinct entities for particular activities, for instance so that certain DAAs no longer fall under IPPC. This cannot be within the spirit of the Directive, since if it was sufficient to regulate just the specified Annex I activities, there would have been no need to mention DAAs within the Directive at all.

It is further noted that the approach of establishing the installation independently from the operator can be accommodated by making provision in transposing legislation for those circumstances where an installation has more than one operator. The possibilities include:

- If two or more legal or natural persons share operation of a single installation, they would jointly apply as a single operator and receive a single permit. As stated in Section 9 above, however, it must be clear in such cases how the persons applying together would exercise joint control of the installation and how the competent authority would enforce the requirement to ensure that the conditions of the permit are complied with.
- If the operators operate different parts of the installation, it might still be possible to grant a single permit (as is the case in some Member States) as long as a clear and legally enforceable definition and division of responsibilities can be ensured. Alternatively, coordination mechanisms could be provided (e.g. integrated evaluation of activities leading to separate but coordinated permits, as is the case in other Member States).

The main definitions of the Directive, and its spirit and objectives, all therefore support the approach of separating identification of the installation from identification of the operator(s).

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.

11. Consideration of the "Operator" in aggregation of Annex I activities

Note 2 at the start of Annex I of the Directive reads:

"The threshold values given below generally refer to production capacities or outputs. Where one operator carries out several activities falling under the same subheading in the same installation or on the same site, the capacities of such activities are added together."

This note is clearly intended only for the purposes of adding the capacities of activities to see whether they exceed a specified capacity threshold. As such, the note says nothing about the potential inclusion of DAAs which do not themselves involve the specific activities mentioned in Annex I, since this issue would not apply here anyway.

To the extent that it deals with aggregation of Annex I activities, the note, if read in isolation, could be taken as implying that this is limited to those cases where activities are carried out by the same operator in the same installation or on the same site. However, it does not say anything explicitly about the situation where activities under the same subheading are carried out by different operators. Where such activities take place as part of the same installation, for the reasons described in the previous section the main definitions of the Directive, and its spirit and objectives, all support the approach of aggregation of the activities. It is therefore considered that note 2 at the start of Annex I is a general rule, the purpose of which is to

establish the principle of aggregation, rather than to alter the fundamental principles and definitions of the Directive.

It will in any case be necessary to maintain close safeguards against possible abuse of the aggregation rule leading to inconsistent application. For instance, going back to the pig farm example mentioned earlier, if there were two pig houses, each of just less than 750 places for sows (the IPPC threshold), the husband and wife might divide legal ownership to one house each in an attempt to avoid falling under IPPC. In this case, however, it could be concluded that there is in fact still only one installation operated as a single entity by the husband and wife together. In order for this not to be the case, it would be necessary for there to be a substantial degree of independence of the two pig units – for example with entirely distinct feeding, treatment of animals, manure management, etc – in order to support the argument that there were really two separate facilities.