

ADOPTION OF THE PROPOSAL FOR A DIRECTIVE ON INDUSTRIAL EMISSIONS**GUIDANCE ON THE USE OF THE RECAST LEGISLATIVE TECHNIQUE****Introduction**

On 21 December 2007 the Commission adopted a [Proposal for a Directive on industrial emissions \(integrated pollution prevention and control\)](#). The Proposal recasts seven existing Directives related to industrial emissions into a single clear and coherent legislative instrument. The recast includes in particular the IPPC Directive.

This guidance is an informal document prepared by Commission services for information purposes. It provides guidance for experts and stakeholders on the use of the recast technique, and indicates the way in which recast proposals are agreed through the co-decision process.

1. Clarification of the use of different legislative techniques

Consolidation: the integration of basic instruments of Community legislation, their amendments and corrections in single, non-official documents. These documents aim to provide more transparency and easier access to EU law. Several legal texts initially and officially published in different issues of the Official Journal of the European Union are combined as a 'consolidated family' in one easy-to-read document¹. The consolidated legal text is not adopted by the institutions and not published in the Official Journal.

Codification: the procedure for repealing the acts to be codified and replacing them with a single act containing no substantive change to those acts², with the aim to make the law clearer and more easily accessible without changing its substance. A codification can be either vertical (whereby the new legal act replaces a single earlier act) or horizontal (whereby the new legal act replaces several earlier acts relating to the same subject). The new act is published in the Official Journal (L series)³. The IPPC Directive has recently been codified (Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control)⁴

Recast: recasting is similar to codification in that it brings together, into a single new act, a legislative act and all the amendments made to it or a legislative act and related acts. Unlike codification, however, recasting involves new substantive changes, as amendments are made to the original act during preparation of the recast text⁵. As for a codification, a recast can be either vertical or horizontal. The new act passes through the full legislative process and repeals all the acts being recast. The new legal instrument is published in the Official Journal (L series).

¹ For more information about consolidation, see http://eur-lex.europa.eu/en/legis/avis_consolidation.htm. The consolidated version of the IPPC Directive is available on <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:01996L0061-20060224:EN:NOT>. Consolidated versions of other directives which are being recast with this recast exercise are also available in EUR-LEX

² Interinstitutional Agreement of 20 December 1994: Accelerated working method for official codification of legislative texts. OJ C 102, 4.4.1996, p.2

³ For more information about codification, see http://ec.europa.eu/dgs/legal_service/codifica_en.htm
⁴ <http://eur-lex.europa.eu/JOHtml.do?uri=OJ%3AL%3A2008%3A024%3ASOM%3AEN%3AHTML>

⁵ For more information about recasting, see http://ec.europa.eu/dgs/legal_service/recasting_en.htm

2. Basis for using the recast technique

On 28 November 2001, an Interinstitutional Agreement⁶ was adopted by the European Parliament, the Council and the Commission to lay down rules on the recast, in particular on its procedural and presentational aspects.

3. Reasons to introduce the recast technique

The recasting technique is widely used by the Commission in the context of the simplification of existing legislation where it has proven necessary to allow both substantive changes and codification of legal acts. In the rolling simplification programme of the Commission, nearly half of the planned simplification initiatives are presented as recasting⁷.

4. Procedural aspects of recast

- a) When a legislative proposal for recasting of existing acts is adopted by the Commission, it is transmitted – at the same time as the submission to the legislators – to the Consultative Working Party consisting of the legal services of the European Parliament, the Council and the Commission. This body examines in detail the proposal and delivers an opinion *"to the effect that the proposal does not comprise any substantive amendments other than those identified as such"*⁸.
- 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"*⁹. 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."*¹⁰ 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.

⁶ Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts; OJ C 77, 28.3.2002, p.1; see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002Q0328:EN:NOT>

⁷ For more information, see the Better Regulation web site of the Commission (http://www.ec.europa.eu/governance/better_regulation/codif_recast_en.htm)

⁸ Point 9 of the Interinstitutional Agreement of 28 November 2001

⁹ Point 8 of the Interinstitutional Agreement of 28 November 2001

¹⁰ Rules of procedures of the European Parliament, Rule 80 a, point 3, third subparagraph

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).
- 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*"¹¹.
- c) A substantive amendment is any amendment "*which affects the substance of the earlier act as opposed to purely formal or editorial changes*"¹². 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.
- 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)¹³.
- 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 transposition¹⁴.

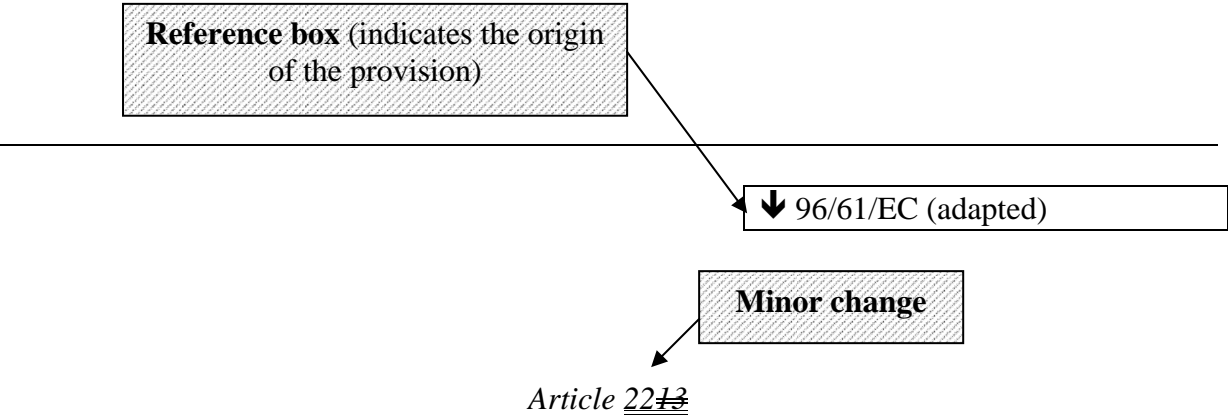
¹¹ Point 4 of the Interinstitutional Agreement of 28 November 2001

¹² Point 4 of the Interinstitutional Agreement of 28 November 2001

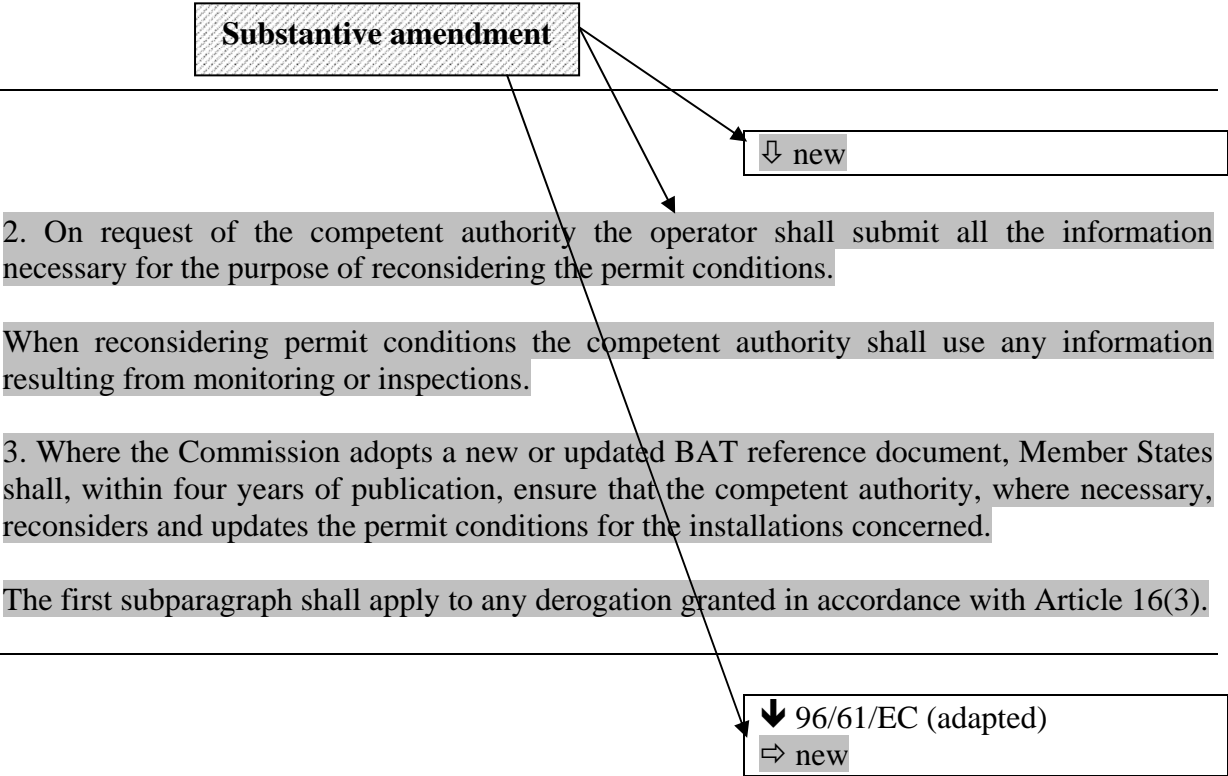
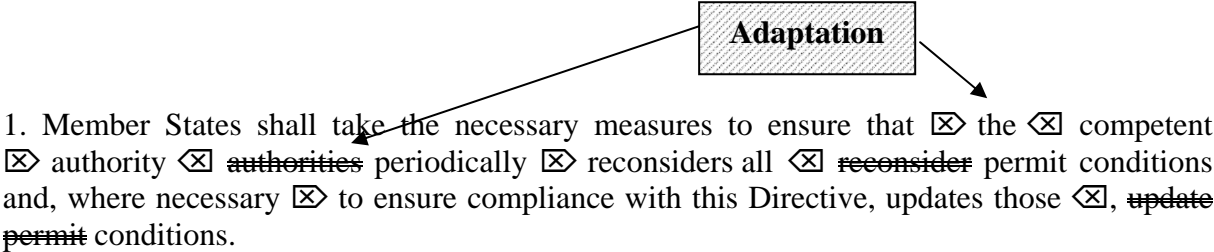
¹³ Point 6(a) of the Interinstitutional Agreement of 28 November 2001

¹⁴ Point 7 of the Interinstitutional Agreement of 28 November 2001

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

- (a) the pollution caused by the installation is of such significance that the existing emission limit values of the permit need to be revised or new such values need to be included in the permit;3
 - (b) ~~substantial changes~~ ⇒ developments ⇐ in the best available techniques ~~make it possible to reduce~~ ☒ allow for the significant reduction of ☒ emissions significantly ~~without imposing excessive costs~~;3
 - (c) the operational safety ~~of the process or activity~~ requires other techniques to be used;3
 - (d) ⇒ where it is necessary to comply with an environmental quality standard in accordance with Article 19. ⇐
- ~~new provisions of Community or national legislation so dictate.~~

Substantive amendment

Substantive amendment by deletion