

Case Study 1

The below presented case study is for the review and discussion of the group members. Please exchange your views on what would be the legal assessment in your respective Member States and regarding the probable consequences.

The company called “Big Energy” is operating a coal-fired thermal power plant in your Member State, in the proximity of a residential area. The plant has a rated thermal input of more than 50 MW.

Scenarios / Questions

1. The plant is operating without a valid IED permit.
 - a) Which authority would deal with the case and
 - b) what would be the likely consequences?
2. The plant operates with a valid integrated permit, but its emissions are not in line with the limit values established in the permit.
 - a) Which authority would deal with the case and what would be the likely consequences?
 - b) Who would be able to bring this case to the attention of the competent authority and/or judicial review?
 - c) What would be the conditions for standing in the latter?
3. Due to an unexpected malfunction of emissions abatement equipment at the plant, accidental emissions of PM (dust) are emitted and it causes severe problems in the neighbouring residential area.
 - a) Which authority would deal with the case and what would be the likely consequences?
 - b) What would be the potential judicial consequences and who would have standing in such a case?
4. In the permit reconsideration procedure under Article 21 of the IED, the company argues that Article 15(4) of the IED should be applied, due to the technical characteristics of the installation. It argues that the stack (chimney) does not provide enough space to install additional emission abatement techniques that could bring down the emissions to the updated BAT AELs, as adopted in 2017 in the new BAT conclusions. Should this case go to court in your Member State, could this argumentation be accepted?
5. In case the answer to question 4 is affirmative,
 - a) who could bring this case to court?
 - b) what would be the rules for access to justice in the permit reconsideration procedure?
 - c) would they be different compared to the granting of the first permit to the installation?

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Scenarios / Questions

1. The plant is operating without a valid IED permit.
 - a) Which authority would deal with the case and
 - b) what would be the likely consequences?

Articles of the IED to consider in the discussion:

4 (Obligation to hold a permit) – as amended by IED2.0
23 (Environmental inspections)
79 (Penalties)
79a (Compensation) – new article introduced in 2024 by IED2.0

2. The plant operates with a valid integrated permit, but its emissions are not in line with the limit values established in the permit.
 - a) Which authority would deal with the case and what would be the likely consequences?
 - b) Who would be able to bring this case to the attention of the competent authority and/or judicial review?
 - c) What would be the conditions for standing in the latter?

Articles of the IED to consider in the discussion:

8 (Non-compliance)
14 (Permit conditions) – as amended by IED2.0
23 (Environmental inspections)
25 (Access to justice) – as amended by IED2.0
79 (Penalties)
79a (Compensation) – new article introduced in 2024 by IED2.0

3. Due to an unexpected malfunction of emissions abatement equipment at the plant, accidental emissions of PM (dust) are emitted and it causes severe problems in the neighbouring residential area.
 - a) Which authority would deal with the case and what would be the likely consequences?

- b) What would be the potential judicial consequences and who would have standing in such a case?

Articles of the IED to consider in the discussion:

7 (Incidents and accidents)

25 (Access to justice) – as amended by IED2.0

79 (Penalties)

79a (Compensation) – new article introduced in 2024 by IED2.0

- 4. In the permit reconsideration procedure under Article 21 of the IED, the company argues that Article 15(4) of the IED should be applied, due to the technical characteristics of the installation. It argues that the stack (chimney) does not provide enough space to install additional emission abatement techniques that could bring down the emissions to the updated BAT AELs, as adopted in 2017 in the new BAT conclusions. Should this case go to court in your Member State, could this argumentation be accepted?

Articles of the IED to consider in the discussion:

15 (Emission limit values, environmental performance limit values, equivalent parameters and technical measures) – as amended by IED2.0

21 (Reconsideration and updating of permit conditions by the competent authority) – as amended by IED2.0

25 (Access to justice) – as amended by IED2.0

- 5. In case the answer to question 4 is affirmative,
 - a) who could bring this case to court?
 - b) what would be the rules for access to justice in the permit reconsideration procedure?
 - c) would they be different compared to the granting of the first permit to the installation?

Same as in the case of Q4.

Case Study 2

The below presented case study (based on a real case) is for the review and discussion of the group members. Please exchange your views on what would be the legal assessment in your respective Member States and regarding the probable consequences.

MAL Zrt. (a private limited company) operated an aluminium and alumina production company in Ajka, Hungary. The by-product of alumina production is a substance called red mud, a highly alkaline slurry which is stored in large ponds close to the installation.

The dam of a storage pond broke on 4 October 2010 and the red mud disaster in its wake turned out to be the one of the greatest environmental crises in the history of both Hungary and the entire region. The approx. 1 million cubic meters of red mud which got loose reached seven nearby municipalities, contaminated the valleys of nearby creeks and rivers and through the waterflows of the Torna, Marcal, Rába and the Moson branch of the Danube, the highly alkaline slurry entered the Danube, causing contamination in all the affected waters. The contamination was of high variability: along the Torna and the impacted section of Marcal, practically all forms of aquatic life were destroyed, while in the Danube, the impact was limited due to natural dilution. The disaster left 10 people dead and almost 150 injured (some of them severely), including local residents and participants of the rescue operations. The spilt mud and alkaline slurry polluted about 400 hectares of land.

The installation had an integrated permit under the IED (at that time, the IPPC Directive) at the time of the accident and the competent environmental authority carried out an inspection on the site approx. 2 months before the accident.

Discussion Points

1. Which court would deal with the case in your Member State (administrative, criminal aspects both to be considered)?
2. What would be the main points for the court's analysis in your respective Member State?
3. What types of court procedures would such an accident trigger in your respective Member State?
4. In terms of legal standing, who would have the right / obligation to initiate the relevant court procedures in your respective Member State? What would be the role of the state and the individuals affected?