

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

1. The plant is operating without a valid IED permit. Which authority would deal with the case and 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. Which authority would deal with the case and what would be the likely consequences?
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. Which authority would deal with the case and what would be the likely consequences?
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 your court, could this argumentation be accepted?

Indicative answers/solutions

As a point of departure, it shall be noted that the purpose of the case study is that participants engage in a discussion about the different practices of their respective Member States and that they exchange their views and opinions on what would happen in their jurisdiction, should such a case happen. In that sense, there is no right or wrong answer or a fits-for-all solution for every question.

1. In most cases, the competent authority would be the local or regional administrative authority which has the mandate to deal with environmental permitting issues. The consequences would depend on the administrative and penal sanction regime of the Member State, with administrative fines being the most common sanctions.
2. Again, the competent authority would be the local or regional administrative authority which has the mandate to deal with environmental permitting issues, in most but not all cases the same authority that deals with the permitting of the installation. The sanctions would depend on the

nature and the volume of the pollution caused by the installation – participants are encouraged to exchange on the possible and about the likely consequences in their respective jurisdictions.

3. Same points of consideration as for question 2.
4. The wording of Article 15(4) allows that the technical characteristics of the installation are taken into consideration, whenever deviations from the use of the best available techniques are considered. This discretion by the competent authority is however limited by Chapters III to VII of the IED (whenever applicable).

In a recent study carried out by the European Commission, Member States provided some examples to illustrate their understanding of the Article 15(4) criteria to justify a derogation request, i.e. geographical location, local environmental conditions and technical characteristics of the installation concerned. Only a limited number of Member States have included these specific examples of the derogation criteria in the guidance and therefore, made available to operators (e.g. FR and UK). For the majority of Member States, these or other examples are not made publicly available. The assessment of a derogation request against these justifying derogation criteria is in some Member States considered as a prerequisite to conducting further analysis and therefore, they can be subject to litigation. In such cases, the respective Court has to come to a conclusion whether the derogation was applied in a lawful manner.