

1.1. Questionnaire

1.1.1. Questions on policies of the MS

1. Is there any (un)official data available from your country on either the use of Article 176 or Article 95(4-5) EC?

There is no official (or unofficial) systematic data on this. The following answers are based on discussions with officials and some research work that we have done concerning environmental permits and more or less common opinion in Finland. In fact what is meant by stricter standards could be understood many in ways.

Environmental permit system in Finland is not mainly based on certain emission values, but instead permits are being tailored according to recipient environment given the vulnerability of the Nordic nature, stricter rules are systematically followed in administrative practice. In order to get precise answers one would need to study all permits given and compare them with EU norms. (See some examples of practice below, answer 15.)

2. Is there in your country a (unofficial/official) policy on (avoiding/favouring) 'gold plating'? If so, is this policy applicable only to the implementation of EU environmental law or is it applicable with respect to the implementation of all EU directives?

There is not any policy on "gold plating".

3. If there is an official 'no gold plating' policy, what are the reasons given for this (e.g. detrimental to own industry/business, not necessary because EU standards are high).

4. Is there in your country any public discussion (industry, business, NGO) on 'gold plating', either in general or with respect to environmental standards.

There was a relatively lively discussion on this in mid 90's before and after the membership decision. That time there was quite common belief that Finnish standards were stricter and better. This discussion has dissolved.

In couple of research works we have been able to point out that the Finnish legislation is stricter because the scope of our legislation is wider than the scope of EU legislation as the same rules are applicable for smaller plant as well (see references below). This - "administrative or formal enlargement"- could be understood as some form of stricter legislation. There is some discussion on these kind of issues, at the moment it is related to modifications of IPPC directive, which would not be trouble free related to BAT and energy installations under 50 MW.

5. Is there any debate in your country if 'stricter' standards are indeed 'better' for the environment? In other words, is there any debate on counter-productive (hindering, rather than serving, the purpose of environmental protection) standards?

Not much, see also question 4.

1.1.2. Questions on national laws

6. Is there, in your national law, a similar provision like Article 176 EC with respect to the relation of central and regional/local authorities?

Not in this sense.

7. Who is (or as the case may be: who are) the competent authority in your country to notify more stringent measures to the European Commission?

The competent ministry, in most of the cases Ministry of Environment, but it can also be Ministry of Employment and the Economy (energy/technology related issues) or Ministry of Social Affairs and Health (chemicals, etc.).

8. Is it allowed under your national (constitutional) arrangements that regional and/or local authorities enact more stringent measures? If so, who will notify these measures to the European Commission? Direct by regional/local authorities, by proxy of central government or formally by central government?

Not in this sense.

9. Are there any internal legal reasons (e.g. more complex legislative procedures) which would make implementation of the European standards at the minimum level easier than going beyond the European standard?

No.

1.1.3. Questions on court decisions

10. Is there any national case law where either Article 176 or Article 95(4-6) played a role?

No.

11. There are two, more or less recent, cases where the Court of Justice dealt with more stringent measures under Article 176 EC: Case C-6/03 DeponieZweckverband and Case C-188/07 Mesquer. It would be interesting to analyse the problems addressed in these cases in a more comparative perspective. In Deponiezweckverband concerned Article 5 of the Landfill of Waste Directive and Mesquer concerned Article 15 of the old Waste Directive on producer liability in connection with the polluter pays principle. We suggest that participants have a close look at their national legislation and let the meeting know whether more stringent measures exist or not, as well provide us with all relevant information pertaining to the topic of discussion.

No.

1.1.4. Concrete examples

12. In your country, are there any concrete examples where the legislator refused taking stringent standards, with the argument that this would conflict with EU law?

No, but sometimes applicants claim this.

13. Are there any examples in your country of 'downgrading' the national standard to the level of the European standard?

Not to my knowledge.

14. Are there any examples in your country where the legislator broadened, so to say, the scope of the obligations of a directive on a voluntary basis? For instance: the IPPC Directive is only applicable to the installations mentioned in Annex 1; are there examples where the national legislator applied the IPPC-regime to installations not mentioned in Annex 1? By the way, would you regard this as a more stringent measure under Article 176 (and therefore subject to notification)? Or would you regard this as a matter not governed by the Directive and therefore completely within the domain of the member state in question?

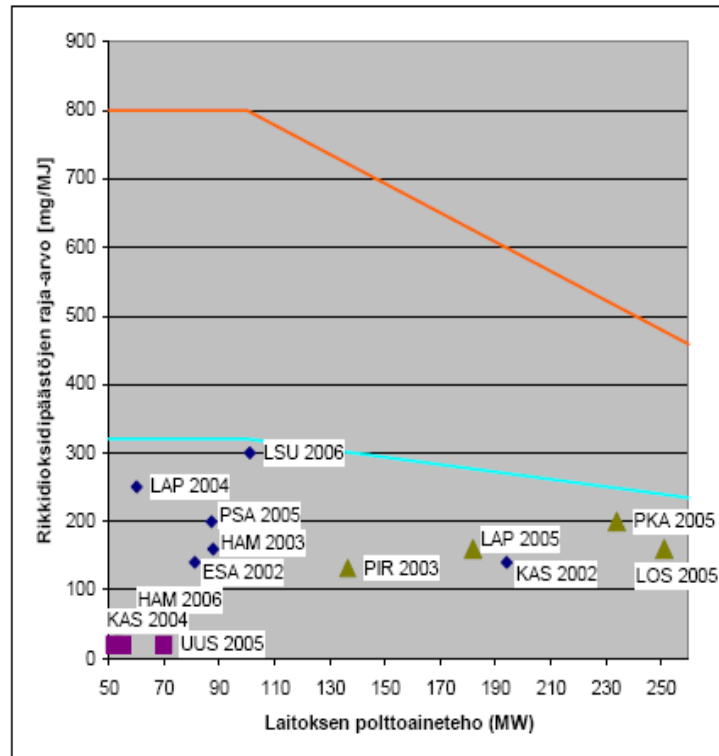
In Finland for many smaller installations are under same kind of environmental permitting procedure and material permit requirements as IPPC installations. This means that installations listed in section 1 of the Environmental Protection Decree (169/2000) could be interpreted as "stricter measure". (See also answers 1 and 4.)

It has been debated whether this wider scope of legislation should be considered as a stricter measure. That has not been understood to trigger notification according to Article 176, because it is seen as a result of historical development - permits were required in years preceding the EU membership in 1995 and these requirements have been maintained.

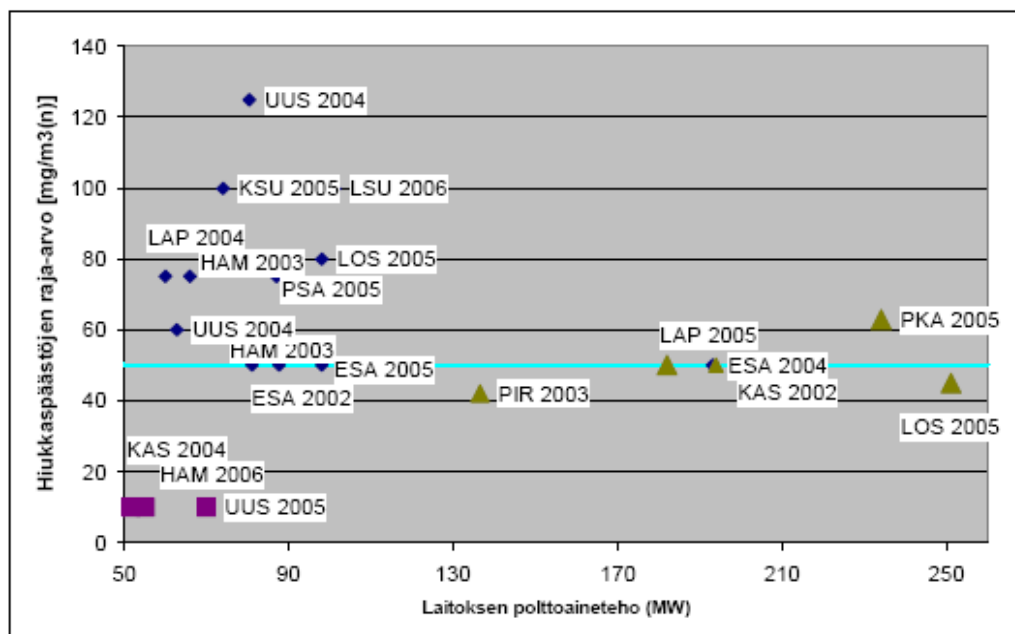
15. Are there any concrete examples where at national level more stringent emission limits or quality values (air, water) exist?

Examples below relatively well show that the subject matter is complex and the whole question could be understood in many ways. Examples are environmental permits that are given according to Environmental Protection Act (86/2000).

First picture (kuva 28) shows sulphur dioxide emission limits in environmental permits of large solid fuel composting plants (2002-2005). Blue line indicates level according to LCP directive (2001/80/EC) for peat and orange line for other solid fuels. It can be seen that most of the plants have "stricter rules" and there are a couple of small plants that even have much stricter emission limits.



Kuva 28. Ympäristökeskusten luvittamien polttoaineteholtaan yli 50 MW:n kiinteän polttoaineen laitosten nykyinen rikkidioksidipäästöraja: vihreällä merkittyihin sovelletaan LCP-asetusta, sinisellä merkityt ovat asetuksen ulkopuolella, purppuralla merkittyihin sovelletaan jätteenpolttoasetusta (LCP-raja-arvo merkitty vaaleansinisellä viivalla turpeen osalta ja oranssilla viivalla muiden kiinteiden polttoaineiden osalta)

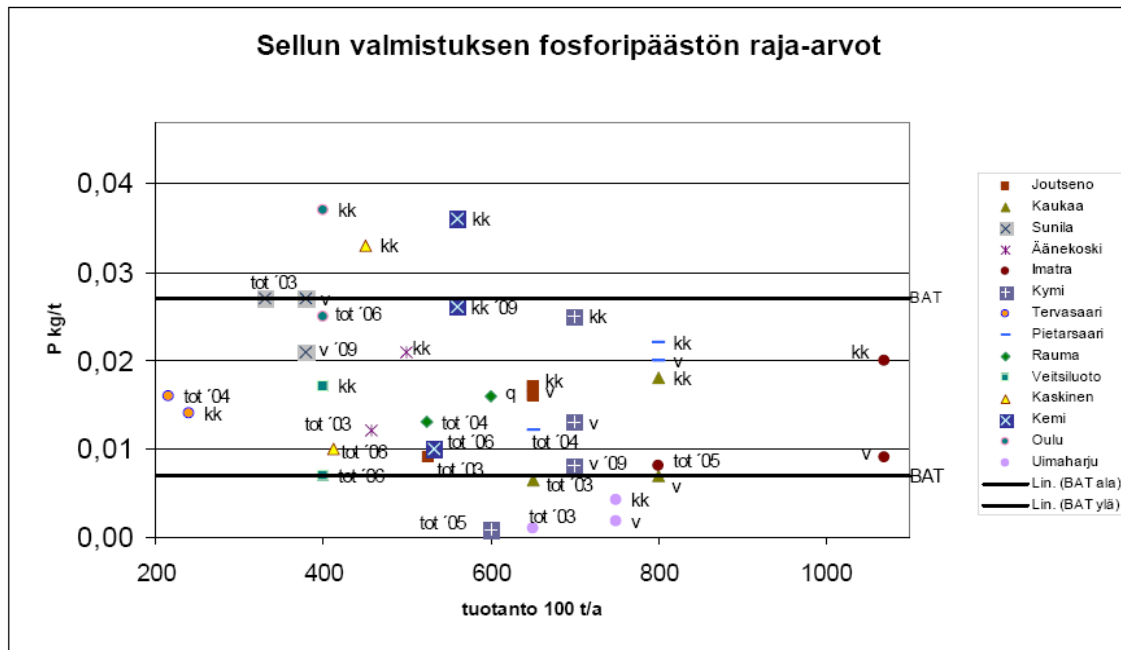


Kuva 27. Ympäristökeskusten luvittamien polttoaineteholtaan yli 50 MW:n kiinteän polttoaineen laitosten nykyinen hiukkaspäästöraja: vihreällä merkittyihin sovelletaan LCP-asetusta, sinisellä merkityt ovat asetuksen ulkopuolella, purppuralla merkittyihin sovelletaan jätteenpolttoasetusta (LCP-raja-arvo merkitty vaaleansinisellä viivalla)

The second picture (kuva 27) shows particle emission limits in environmental permits of large solid fuel composting plants (2002-2005) (Warsta and Warsta, Hyvönen, Ekroos). Blue line indicates level according to LCP directive (2001/80/EC). It can be seen that most of the plants have been permitted more or less according to directive, though there are couple of small plants that have much stricter emission limits (it should also be noticed that for some of the

plants requirements of the directive came into force 1 January 2008).

The third picture (kuva 64) shows phosphorous in waste water emissions of pulp installations according to environmental permits (2003-2007) and BAT/BREF levels (max and min) (also realized emission (=tot) shown). BAT/BREF levels are not - at least yet - binding rules, but they indicate level of good environmental performance (Warsta, Harju, Ekroos). Most of the pulp installations are between the BAT lines, but there are some that are below and some over of those limits. Could one say that there are stricter rules in Finland (presuming that BAT would be a rule)? No, I do not think so.



Kuva 64. Sellutehtaiden fosforipäästöjen toteuma ja lupapäästösten raja-arvot

16. Are there any concrete examples where at national level more stringent environmental product standards (pesticides, biocides, hazardous substances) exist?

Not to my knowledge.

References:

Warsta, Matias: Energiateollisuuden kattilalaitoksien ympäristöluvat alueellisissa ympäristökeskuksissa ilmapäästöjen rajoittamisen näkökulmasta, Edilex 2007/19, www.edilex.fi

Warsta, Matias - Hyvönen, Anu - Ekroos, Ari: Ympäristöluvat kattilalaitosten ohjauskeinoina. Research report to Finnish Energy Industries. 2007.

Warsta, Matias - Harju, Mari-Linda - Ekroos, Ari: Metsäteollisuuden ympäristöluvat. Research report to Finnish Forest Industries. 2008.