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## transposition of IED to Slovenian legislation

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Jill.MICHELSEN@ec.europa.eu <Jill.MICHELSEN@ec.europa.eu>

Thu, Feb 25, 2016 at 12:28 PM

To: eko.krog@gmail.com

Cc: Barbara.Steffner@ec.europa.eu, Tanja.FRANOTOVIC@ec.europa.eu, Iris.PETSA@ec.europa.eu, Aneta.WILLEMS@ec.europa.eu, Filip.FRANCOIS@ec.europa.eu

Dear Sir,

Please find herewith some elements of information in reply to your below request.

Article 15(4) provides that competent authorities (i.e. Member States authorities) MAY allow individual installations not to comply with the BAT associated emission levels referred to in Article 15(3), subject to respecting the conditions listed.

Considering the wording of this provision, and in particular the notion 'MAY', this provision is optional and henceforth Member States are not obliged to transpose it into their legislation.

However, if they choose to transpose this option, Member States have to ensure that all conditions for granting a derogation are duly transposed and implemented.

In this respect, it should be noted that the elements for justifying a derogation mentioned under points (a) and (b) of Article 15(4) are exhaustive but not cumulative ("or"),

and so a Member State may decide to transpose the provision by referring to only one of these elements.

On 24/2/2011, the Commission has provided the Member States with a transposition checklist in which transposition of Article 15(4) was marked as "mandatory",

which has to be understood in light of the above, namely that, if transposed, it's mandatory to transpose all conditions and criteria listed therein.

The transposition checklist included the following general disclaimer: "[..] The views expressed in this document are purely those of the writer and may not in any circumstances be regarded as stating an official position of the Commission. Equally, views expressed in this document are without prejudice of any future action of the Commission on the matter. The European Court of Justice is the only instance to give an authoritative interpretation as regards compliance with EU law[..]"

Finally, the Commission is not in a position to disclose, for the time being, any communication related to

Art. 15(4) transposition between Slovenian government and the Commission, as this would undermine the protection of the purpose of investigations and the institution's decision making process within the meaning of Article 4(2) and 4(3) of Regulation (EC) No 1049/2001 regarding public access to documents.

You can find more information on formal procedures to be followed for "Access to documents requests" at: [http://ec.europa.eu/transparency/access\\_documents/index\\_en.htm](http://ec.europa.eu/transparency/access_documents/index_en.htm)

Kind Regards

Jill

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**Cc:** Uroš Macerl <[uros.macerl@gmail.com](mailto:uros.macerl@gmail.com)>  
**Subject:** **transposition of IED to Slovenian legislation**

Dear Sir or Madam,

Eko krog is following the transposition of The Industrial Emissions Directive (IED) into Slovenian national legislation and related to that we would like to ask the Commission for some clarifications. Ministry of Environment and Spatial planning recently prepared changes to the Environmental Protection Act which are now debated in the Parliament and will be adopted shortly.

One of those changes refers to transposition of **Article 15(4) of IED**. Eko krog is against introducing this derogation in Slovenia, but have been told by the

minister and officials at the Ministry that transposition of this article is mandatory and that Slovenia is introducing this derogation only because the Commission demands it. Based on our understanding of EU law, we believe transposition of Article 15(4) by member states should be optional.

Therefore we ask the Commission for:

- the official opinion on the transposition of Art. 15(4) - optional or mandatory;
- disclosure of all the communication related to Art. 15(4) transposition between Slovenian government and the Commission - if any;
- any written documents supporting Commission's opinion on the Art. 15(4) transposition which the Commission is using and/or communicating to the member states.

Thank you for your reply.

Sincerely,

Uroš Macerl, president of Eko krog NGO

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"Pomisli na stroške in okolje, preden natisneš besedilo!"

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Če sporočil EKO KROGA ne želite več prejemati,  
nam pošljite sporočilo z ZADEVO: "ODJAVA"