

## Joint civil society statement on the revision of the EU IED and the E-PRTR

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As a joint alliance of leading environmental and human health civil society organisations at EU level, representing millions of EU citizens, we hereby share our main expectations as to the review of the EU's framework for the prevention and control of industrial pollution (the EU Industrial Emissions Directive 2010/75/EU – IED) and the associated review of the European Pollutant Release and Transfer Register Regulation (E-PRTR (EC)166/2006).

The European Environmental Agency estimated annual air pollution costs to society from industrial activities at €433 billion, whereas the European Court of Auditors has recently confirmed that just 3% of industrial pollution is taxed. The evaluation found that approaches preventing wider negative pollution footprints e.g. by using resources efficiently, and substituting chemicals of concern with safer alternatives, will need to be strengthened, alongside efforts to speed up decarbonisation.

The IED is the most important EU instrument aimed at preventing pollution at source in an integrated way and to achieve a high level of protection of the environment taken as a whole. It therefore bears the potential to give a concrete meaning to the self-declared Zero Pollution Ambition and will also contribute to better health. Its review is a test for EU decision makers to demonstrate if they are serious about bringing the EU Green Deal ambitions into practice, with concrete provisions to that end. This letter sets out some of the key issues and in bullet points our main expectations for the revisions.

### **Issue 1: Climate action and delivering on industrial decarbonisation: “combined approach”**

Contrary to the views expressed by industry, climate action should not be conditional to “cost effectiveness” or whether the carbon markets provide for a business-case but should be guided by climate science and the shrinking time left available for bold action. Hence a combined approach of performance-based standards evolving over time with meaningful carbon pricing is the coherent policy route to take. Whilst the considered policy measure (*PM33*) of binding Transformation Plans is interesting, the ambition level and measures to be taken should not be left to the discretion of operators and substance matters parked to a future date. Early signals and investment certainty as to what transition we are collectively aiming for are needed now.

A “climate ambition and 2040 carbon neutrality” chapter shall provide clear forward-looking measures, milestones and quantitative targets for relevant industry sectors. A detailed action plan for how to achieve the zero-pollution ambition shall be set in the Directive itself and prior to 2025 e.g. in the relevant climate ambition chapter and/or as supplementary provisions added to Annex III on the BAT criteria (e.g. headline indicator KPIs) - see *Issue 2*. The transformation must clearly refer to a “Zero Pollution Action Plan”, in line with the spirit of the IED of an integrated approach on pollution prevention

- Article 26 of the EU ETS (Art 9 of the IED) shall be deleted (*PM35*) or preferably amended by pollution prevention at source provisions such as an Emissions Performance Factor (EPF), a GHG performance standard set to 100gCO<sub>2</sub>eq/kWh, fossil fuels switch obligations and wider electrification obligations notably targeting Energy Intensive Industries
- The BAT-AEPLs on energy efficiency are made binding (*PM32, 38*)
- Annex II includes GHG, BAT conclusions do systematically set decarbonisation requirements (*PM30, 38,39*), the BAT criteria in Annex III lists “climate neutrality”

More information: [IED-ETS Interface briefing](#), [EEB letter to COM](#), Section 2 [NGO TSS input](#), [ClientEarth analysis New IED and ETS interactions required](#)

## **Issue 2: Re-designing scope, key performance indicators guiding decarbonisation, zero-pollution ambition and the transition to a circular economy**

If the revised IED is to promote the wider Zero Pollution Ambition (incl. decarbonisation, circular economy, toxic free environment) in a forward-looking manner, decision-makers should re-think its scope more broadly. The current scope dates to 1996, limiting environmental impacts from the “most damaging” industrial activities with an installation focus. Example: for energy industries, the scope is listing sub-activities from highly polluting (fossil based) energy industries, including thermal combustion plants above a certain thermal capacity threshold, instead of defining BAT on how to produce energy in the best way (electricity, heat or mechanical energy). Some positive scope setup examples refer to textiles or food and drink production which enables a broader approach as to the wider life cycle impacts of that activity or options to consider on how to best deliver that product/service. Due to the scale of urgency of actions required and long investment cycles, it is no longer acceptable, nor economically sound, to promote incremental improvements at installation level only, when a faster and deeper transition of production methods is required. The expectations on industry and decision makers as to qualitative and time-bound outcomes shall be further laid down in Key Performance Indicators (KPIs). Those KPIs would both apply for the Seville Process (BAT determination) and shall serve as a binding guide for the elaboration and compliance promotion tool for delivering on the measures set in the Transformation Plans and sector Environmental Management Systems (EMS).

- The scope (Annex I) is redesigned to enable setting BAT as the lowest ratio ‘environmental impact of industrial activity’ versus ‘public good/service provided’. This should apply to activities where there are competing solutions with various environmental and human health footprints, prioritising: energy production/conservation, water quality and supply services, transformation of plant/animal protein production and other foods and drinks, resource management, substitution of chemicals of concern, soil remediation/fertility
- Headline KPIs applicable for all industrial activities are added to the Annex III BAT criteria, those shall be used for the elaboration of the Zero pollution Ambition Plan(s) and guide the content of the proposed sector EMSs (*PM38*) and ambition of EU BREFs
- For the EU to achieve its green and digital ambitions, a massive electrification will have to take place. The IED must address associated environmental impacts from mining, quarries (*PM25*) and extractive industry (e.g. of critical raw materials), production of batteries (*PM19*) (e.g. Li-ion) and production of semiconductor chips. Provisions to prevent or reduce the impacts of methane emissions from all (intensive) livestock (incl. cattle) and aquaculture (*PM26*) are long due to be addressed by the IED.

More information: NGO TSS input Section 1.1, [EEB briefing IED and Green Deal](#) (section 3) [KPI proposals for Energy Intensive Industries](#) (in context of the Industrial Transition pathways)

## **Issue 3: Restrict flexibility for Member State (ab)use for side-lining ambitious enforcement of Union Standards, enforcing Environmental Quality Standards (EQS)**

The first review of the IPPC-Directive was triggered by (ab)uses of ‘flexibilities’ offered to Member States, leading to loopholes and uneven compliance practice. Unfortunately, NGOs confirm the numerous implementation shortcomings identified by consultancy studies under the evaluation. Member States still exploit unclear legal provisions and systematically align to the most permissible upper-BAT-AEL ranges, at the expense of environmental and human health and in disregard of EQS. Permitting authorities set lax permit conditions, also thanks to generous BAT-Conclusions, or even

grant derogations so that polluters can avoid more effective pollution controls at the source. This malpractice also concerns the EU's largest air pollution point source emitters (Large Combustion Plants) even concerning mercury, subject to a 2027 phase out obligation under the Water Framework Directive. Competent authorities hardly ever set stricter permit requirements: just 0.05% of the 154,362 records in the IED registry data indicate 'stricter permit conditions' for all reference years. Climate protection is not yet considered as an EQS in its own right.

- Set an obligation on permit writers to set Emission Limit Values based on the strict BAT-AE(P)Ls (*PM5*) by default, where differentiated refer to "new plant" standards (*PM5bis*)
- The Article 15(4) derogation procedure is overhauled, new criteria/provisions are added to ensure compatibility of not risking a breach of an EQS, derogations are only allowed on the basis of demonstrated cross-media impact(s), automatic rejection if 3 or more installations achieve the standard, trans-boundary impact assessment and pre-consultation incl. with at least 3 independent techniques providers. No "playing time/catch up" derogations type unless there is a win-win agreement with the public concerned, a maximum 4-year derogation validity
- A harmonised method for assessing proportionality is added, internalising externalised costs (negative externalities) and benefits of pollution prevention (*see Issue 4*),
- Provide for a "zero tolerance approach" as to pollutants subject to an EQS standard (not permissible for PBT properties), dissuasive penalties and pollution cost recovery if breached.
- Automatic permit conditions tightening triggers should be provided: where a Member State is not on track to comply with the achievement of a given EQS, the air quality standards set by the new WHO air guidelines and NEC-D ceilings, compliance safety buffer(s) so to ensure pre-emptive action prior to breach are provided, such as withdrawals of derogations, reduced operation, pollution load quotas etc.
- Explicitly list climate protection, the toxic free environment, the circular economy goals, the revised WHO air quality guidelines and NEC ceilings as EQS (clarify Article 3(6) of the IED).
- For high impacting activities, the COM shall systematically update and extend the EU Safety net through a fast-track procedure, to ensure compliance with strict BAT-C. Other regulatory instruments with faster delivery should be used, e.g., the 1 $\mu\text{g}/\text{Nm}^3$  BAT on mercury to air emissions from coal combustion enforced through the EU Mercury Regulation.

More information: [NGO TSS input](#), Q21 and Q23 EU safety net approach, [LCP BREF implementation shortcomings and related recommendations / EU and country factsheets](#),

#### **Issue 4: A forward looking, inclusive, BAT determination process putting public interests first, stimulating innovation uptake and levelling the environmental playing field**

The proposed "innovation observatory" (*PM43*) will not deliver improved environmental outcomes if the used criteria are based on the short-sighted Technology Readiness Levels (TRL). Instead, it should be clarified that "innovation" shall deliver in terms of human health and environmental protection outcomes, compatible to the Annex III BAT criteria. Forward looking KPIs may help to guide that assessment as to what is 'desired innovation', the expected ambition of the content of the proposed Environmental Management Systems (*PM38*) and reality check on what is an "emerging" technique. The main shortcoming of the current BAT assessment relates to the absence of proper external cost internalisation and lack of forward-looking BAT derivation method. It should set technical achievable performance levels rather than what is judged as economically viable or profitable for the operator. The considerable unbalance of operators' interest representation v. NGO interests in the Seville Process needs remediation.

Change the BAT definition and determination method so the term "available" means "technical achievable", based on the proposed EEB BAT derivation methodology

- Move from end-of-pipe pollution abatement BAT, to process-integrated and fit for circularity BAT

- Provide for an EU harmonised method for ensuring proper external cost internalisation, serving as a method for BAT determination and implementation at national level and as a source of financial resources paid by operators (e.g. Zero Pollution Fund) aimed at speeding up the depollution of industrial activities
- Revise COM expert groups rules and current practice, re-balance consensus finding between the various interest groups, include academia and human health protection NGOs. Rule out conflict of interest situations, improve accountability of decision making aligned to the 'Green Oath'.

More information: NGO TSS input Section 4, Q66; Q108; [BAT determination method](#), [external cost internalisation method](#) [Annex I](#), [EEB suggestions to improve governance and balance](#)

#### **Issue 5: Entering the digital age for reporting on industrial activities (E-PRTR related)**

The findings of the EEB '[Burning: the Evidence' report \(2017\)](#), confirmed in 2020 linked to the EEB [Industrial Plant Data Viewer \(IPDV\) project](#), highlight serious shortcomings on access to environmental information on industrial activities. The current Industrial Emissions Portal/E-PRTR system do not enable benchmarking and compliance promotion at EU level. In the US, permit conditions can be compared with '[a few clicks](#)' with those applied in Canada and Mexico, thus enabling cross-country comparison and overcoming language barriers limitations. Art 14(1) d) of the IED on the annual compliance report requires the operator to provide, 'at least annually', "*information on the basis of results of emission monitoring [...] and other required data that enables the competent authority to verify compliance with the permit conditions*". Only providing for a summary of permit conditions (*PM47*) and making only key data available to the public (*PM14, 46, 49*) is thus insufficient, and so publication must happen at a centralised EU level. Agreeing on a common EU electronic reporting interface would therefore be the first necessary step to enable effective integration of information in the new EU reporting portal. The reporting and data access overhaul shall serve multiple purposes, notably to enable improved and more timely access to environmental performance information, benchmarking and compliance promotion at EU level.

- A centralised EU tool will ensure best use of current reporting obligations, mutualise efforts sharing and pooling of resources to make the interface more useful, for various end users.
- Design harmonised electronic reporting format(s) for key IED documents and BREF required information (e.g., inventory of inputs and outputs, water, energy, waste and chemicals management plan, and other performance information) enabling the EU centralised database to directly report permit conditions and to retrieve those mandatory data-fields; made available online at EU level beyond language barriers
- Set powerful search queries and filters. Enable tele-reporting by operators of raw continuous emissions monitoring data (the validation status of the data is clearly marked)
- Extend obligation for timely public participation for any change of permit conditions capable of impacting the environment, following to recommendations set in ACCC/C/2014/121(*PM47*). Provide for RSS feeds for public.

More information: NGO TSS input Section 5, [EEB briefing IED and Green Deal \(section 6\)](#), [EEB TSS input on PRTR, Recommendations following IPDV launch](#), [Background Paper](#) and [Annex](#) of proposed harmonised annual compliance report template to Member States, [ClientEarth response to IED Targeted Stakeholder Survey](#)

We hope that you will take our comments and findings on board and seize the opportunity to demonstrate that decision makers will also walk the talk of the EU Green Deal, whilst showing EU leadership on taking action on the worst climate and pollution point source offenders.

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**More information:** [Mythbusting the Industrial Emissions Directive](#) (available soon)