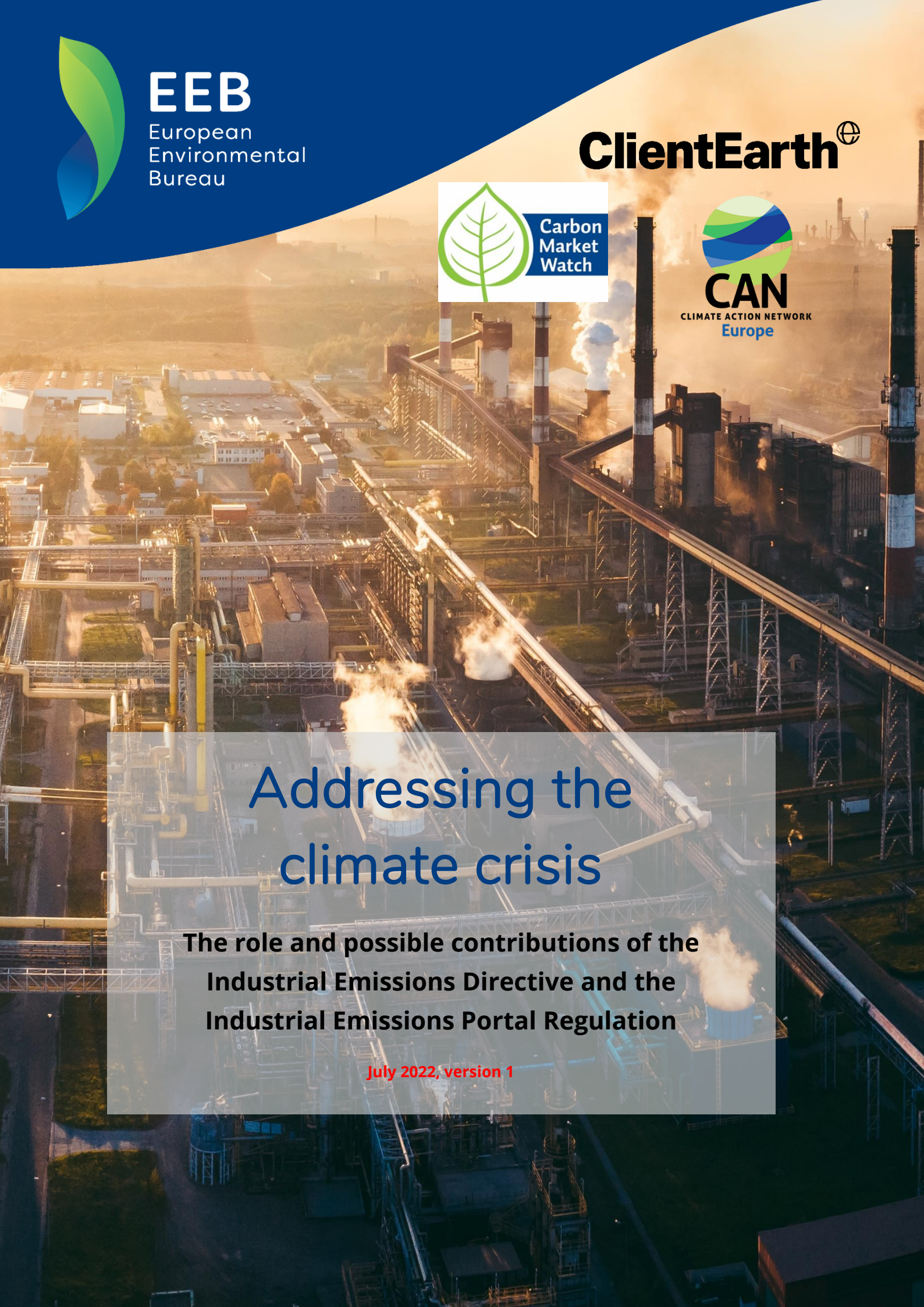

EEB
European Environmental Bureau

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Carbon Market Watch

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CLIMATE ACTION NETWORK
Europe

Addressing the climate crisis

The role and possible contributions of the Industrial Emissions Directive and the Industrial Emissions Portal Regulation

July 2022, version 1

The contribution of the Industrial Emissions Directive and Industrial Emissions Portal to address the climate crisis

We are Europe's largest network of environmental citizens' organisations. We bring together over 180 civil society organisations from more than 40 European countries. Together, we work for a better future where people and nature thrive together.

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On 5 April 2022, the European Commission adopted the proposals for a revised Industrial Emissions Directive (IED) and a revised Regulation establishing the European Pollutant Release and Transfer Register.[1] Considering the new elements presented, it doubtlessly represents a step forward towards greener industrial processes. However, there are aspects to be further strengthened and clarified. **In this briefing, we provide our assessment on the new elements included therein, focusing on the climate aspect.**

Industrial Emissions Directive (IED): the main EU instrument regulating the environmental impact of industrial installations. The IED lays down rules in order to '**prevent or, where that is not practicable, to reduce' and as far as possible eliminate pollution,** to protect the **environment and human health**. By doing so, it seeks to comply with the '**polluter pays' principle**, and the **principle of pollution prevention**, giving **priority to intervention at source**. The Directive also aims to **prevent accidents** and limit their consequences, to ensure the **efficient use of resources incl. energy**, to **prevent the generation of waste**, and to **avoid any risk of pollution upon definitive cessation of activities** (IED Recital 2, and Article 11).
All environmental aspects are taken into account, as per the so-called '**integrated approach**', which is one of the basic pillars of the IED. **Around 50 000 industrial activities of the most polluting and climate damaging sectors listed in Annex I of the IED are required to operate in accordance with a permit.** The permit conditions are based on the IED provisions, most notably the sector-specific EU BREFs.

The EEB is publishing a series of briefings on different aspects relevant to the review of the IED and the IEP-R.

All available briefings can be accessed and downloaded here: https://eipie.eu/briefings-by-eeb/
Or scan this QR code:

[1] Available here: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_2238

Best Available Techniques Reference Documents (BREFs): industry-specific documents which define the most effective techniques that industry can employ to minimise the environmental impact of their activities – the so-called 'Best Available Techniques', or BAT. BATs are already per today's definition technically and economically viable. The BAT conclusions (included in the BREFs) are used as a reference to set permit conditions such as emission limit values or other environmental performance levels, which conditions industrial installations must comply with.

Best Available Techniques – Associated Emission Levels (BAT-AELs): the emission levels achieved by the application of BAT.

Best Available Techniques – Associated Environmental Performance Levels (BAT-AEPLs): the environmental performance levels achieved by the application of BAT.

Industrial Emissions Portal Regulation (IEPR): IEPR is the proposal for a revised Regulation establishing the European Pollutant Release and Transfer Register (E-PRTR), a Europe-wide register providing public access to key environmental data from industrial activities (incl. those covered by the IED). It is intended to implement the 2006 Kyiv Protocol on PRTRs, and refers to the triple objective of (1) enhancing public access to information that would (2) facilitate public participation in environmental decision-making, and (3) contribute to the prevention and reduction of environmental pollution. The current reporting interface is hosted by the European Environment Agency.

The starting point

When the European Commission published its Communication on the Green Deal, the designing of deeply transformative policies able to speed up the EU's action to tackle climate change has been put at its heart. In this sense, the Communication affirmed that there is a need to "*rethink policies*" and to "*make consistent use of all policy levers: regulation and standardisation, investment and innovation, national reforms, dialogue with social partners and international cooperation*[2]"

The reasons behind this historic Communication are well founded: the need for speed to address climate change effects has never been so urgent, with its effects increasingly visible in the daily life of all Europeans and further science data highlighting that *"the rise in weather and climate extremes has led to some irreversible impacts as natural and human systems are pushed beyond their ability to adapt*[3]*"*.

As this was not enough, the outbreak of the war in Ukraine has put additional urgency to the EU to leave fossil fuels behind once and for all, to also promote peace and security.

Nevertheless, when it comes to using all the available levers to drive down greenhouse gas (GHG) emissions, it looks like the EU applies only one tool: the Emissions Trading System (ETS) and its market-based functioning.

The problem

The IED covers around 50.000 activities (as a comparison: ETS 11.000) that are responsible for around 40% of EU's greenhouse gas emissions. Nevertheless, Art. 9(1) of the IED prevents permit writers to set GHG emission limits for GHG on installations falling under the ETS. This led even to the effect that the IED sets barely any climate standards for its activities irrespectively of the ETS scope. The Commission did not delete this exception rule during its revised proposal. Instead, it only plans to assess possible synergies between ETS and IED in 2028, without any further clarification.

We cannot afford to lose further time and we should use all possible levers today to address the climate crisis and free our economy from fossil fuels dependency. Achieving a climate neutral and pollution-free economy requires the full mobilisation of industry, since it takes one investment cycle of 25 years[4] to transform an industrial sector and related value chains. To achieve this monumental challenge, the Commission acknowledged already in 2019 it its Green Deal communication that actions need to be taken in the next five years, or in other words as latest by 2024.

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[2] COM (2019) 640 final: Communication from the Commission to the European Parliament, the European Council, the European Economic and Social Committee and the Committee of Regions – The European Green Deal

[3] IPCC, Climate Change 2022, Impacts, Adaptation and Vulnerability

[4] Investment decisions for energy intensive industries have typically a minimum 25 years return of investment time window. Industry players themselves have committed to a 2050 carbon neutrality (see Masterplan for Energy Intensive Industries https://op.europa.eu/en/publication-detail/-/publication/be308ba7-14da-11ea-8c1f-01aa75ed71a1/language-en)

Not revising the IED/ETS relation right now is a missed opportunity to "*make consistent use of all policy levers"* to speed up decarbonisation. Instead, the Commission has preferred to put all eggs in one basket (the ETS system), despite the fact it demonstrated ineffective to drive down GHG emissions as fast as needed for several reasons:

- The price of CO2 has never launched a sufficiently strong signal to make big emitters quickly invest in low-carbon technologies; key low-carbon technologies in the steel, chemicals and cement sectors are available, but their abatement costs are in the range of 100 and 170 €/ton[5] of CO2. In particular, for steel making it should be at least 140 €/ton[6] to make the sector uptake the DRI-Electric Arc Furnace route with renewable hydrogen;
- Moreover, according to DG MOVE [7], the climate change avoidance cost to 2030 should be in the range of 105 – 199 €/ton of CO2equivalents, whereas from 2040 onwards the carbon price should be between 283 and 524 €/ton of CO2eq. Nevertheless, the actual price has never overcome 100 €/ton CO2eq, and the revision of the ETS Directive is not going to introduce a strong minimum carbon price to guarantee its effectiveness;
- This weakens the ETS and, according to the present negotiations concerning the CBAM and ETS review, free allowances will continue to exist at least until 2032, granting between 400 and 550 billion[8] despite the polluter pays principle and the need for rapid decarbonisation;
- According to a study that tried to assess the effectiveness of the ETS to drive GHG emissions down, a decrease of about 11.5% has been observed in the 2008-2016 period[9]. Thanks to a regulatory approach (CO2 performance target and EURO standards), the automotive sector will manage to reduce CO2 emissions by 60% in 2030 compared to 2000 and switch away from internal combustion engines by 2035;
- Various reports showed that in some Member State (Poland[10] and Czech Republic[11]) ETS revenues are not spent for climate purposes, but instead merged with the State budget or even used to compensate energy-intensive companies for higher electricity prices[12].

It is clear that too much time has been lost in the past two decades to decrease GHG emissions at the speed needed to address climate change because of the ineffectiveness of the ETS.

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[5] Agora Energiewende and Wuppertal Institute (2020): Breakthrough Strategies for Climate-Neutral Industry in Europe (Summary): Policy and Technology Pathways for Raising EU Climate Ambition

[6] Hydrogen Europe, Steel from Solar Energy

[7] DG Move Handbook on the External Costs of Transport (EC, 2019)

[8] Sandbag, EU ETS Revenues: Who Receives What? The Trillion Euro Question https://sandbag.be/index.php/2022/02/09/eu-ets-revenues-who-receives-what-the-trillion-euro-question/

[9] Bayer, Aklin, The European Union Emissions Trading System reduced CO2 emissions despite low prices

[10] ClientEarth: https://www.clientearth.pl/najnowsze-dzialania/dokumenty/kreatywna-ksiegowosc-jak-polska-marnuje-srodki-z-eu-ets/

[11] FrankBold: https://en.frankbold.org/news/frank-bold-points-out-non-transparent-handling-ets-revenues-and-potential-violation-eu-law

[12] According to art. 10 (3) of the ETS Directive, at least 50 % of the revenues generated from the auctioning of EUA should be used for climate and environmental protection objectives.

It is equally clear that betting again on the ETS as the only tool that would bring GHG emissions to 0 by 2050 is too risky for future generations. Also, politically and legally the situation has changed drastically since the IED/ETS relation was set up originally: Now is the time to translate the Paris Agreement and EU Climate Law into practice. Therefore, it is high time to make up for it by embracing the combined approach, coupling the ETS market-based system with a regulatory approach able to speed up the transition with clear and binding CO2 emission limits as well as other legally set decarbonisation measures.

IED – ETS interaction: a matter of priority

We call for a "combined approach" to reinforce the ETS and make it act in synergies with performance-based pollution prevention at source standards. The IED has the power to prevent and reduce emissions at source by prescribing emission limit values at facility level as permit conditions. This is also fully in line with the new 'zero pollution hierarchy' that seeks to prevent pollution in the first place, before adding other measures[13] . Building the synergies between the ETS and IED allows to have cost effective incentives at sectoral level together with clear legal obligations at installation level. At times, the protection of the ETS system looks like being the main priority for EU decision makers, instead of pushing for higher decarbonisation results by using all possible available policy instruments.

One of the most used arguments by the Commission is that deletion of Art 9 (1) of the IED "*might affect the operation of the ETS*". We assume that the Commission refers either to the so-called "waterbed effect", which claims that additional action to cut CO2 emissions in ETS sectors would result in them popping up somewhere else, or to the risk that the "cap and trade" system would be affected by mandatory CO2 reduction obligations. Such claims, with the right policy counteractions, would be proven wrong:

- More than 90% of the allowances freed by further curbing of CO2 emissions should be placed in the Market Stability Reserve (MSR), which would keep them out of the market, hence preserving the ETS price signal, as well as preventing that CO2 to be emitted elsewhere[14];
- The decision of putting the allowances in the MSR back to the market or to retire them is, at the end of the day, a decision made by policy makers at EU and national level. Policy consistency on the long term would allow to keep high the pressure on CO2 price;
- However, such long-term consistency should be not taken for granted. The fact that the ETS price signal depends to consistency of policy action is underestimated, as its vulnerability and does not provide a plan B to keep climate action ambition up despite possible changes in policy priorities[15]. A possible future overturn of the priorities of the

[13] ZPAP, COM (2021) 400 final

[14] Sandbag, Puncturing the Waterbed Myth – The Value of Additional Actions in cutting ETS GHG emissions https://sandbag.be/wp-content/uploads/2016/12/Waterbed_report_A.pdf

[15] For a recent illustration: While allowances traded for €100 on futures market recently, their price dropped to €79 after the Commission's announcement to use the MSR to fund part of the RepowerEU plan. Think tanks as Sandbag believe it could fall further as many of today's price drivers are only temporary.

EU would be better endured by climate by having clear and binding CO2 emission limits / decarbonisation measures provided by the IED

- Finally, Member States have the power to cancel ETS allowances (ETS Art. 12 (4)) to keep the CO2 price high.

Another argument used by the Commission is that "*a strong ETS with a robust carbon price signal is an important tool to foster decarbonisation in a cost-efficient manner*".

- Firstly, in our opinion cost-efficiency is not a value per se; it should be assessed against the time scale and magnitude of results that the ETS has delivered in terms of decarbonisation. As said above, the cost-efficient ETS got modest results; instead, effectiveness (in pollution prevention and cuts) should be at the core on any robustness assessment of the ETS;
- Secondly, even the Commission in its assessment of policy measures[16] realised that the environmental and employment impacts of making the ETS and the IED work together would be positive. Despite that, "uncertainty" regarding the impact on GHG reduction and the economic impacts on businesses and public authorities prevented the Commission to tear down the wall dividing the ETS and the IED. Synergies between the IED and ETS can also be used from an administrative perspective, by combining their different permits (see already today's Art. 8 ETS) as well as related monitoring and enforcement actions. To allow bold moves to reduce GHG emissions would be money well spent, whereas the contribution from businesses would be a minimal part of the money they get from free allocations under the ETS, as well as other EU funds such as the Innovation and Modernisation Funds;
- Thirdly, industry usually recalls the need for a predictable market and certainties to guide (and guarantee return on) investments. Nevertheless, relying only on a tool vulnerable to policy discussions and market volatility as the ETS does not allow businesses to compile their business plans with a sufficient degree of certainty. Following VP Timmermans announcement that MSR allowances might be used to fund the REPowerEU Plan, market analysts warned that "*if policymakers can change the amount of CO2 permits available in non-predictable ways, this shakes investors' confidence in the market and weakens incentives for low-CO2 investments. This reduces the likelihood the EU ETS will drive the transition*[17]". On the other hand, combining the ETS with performance-based standards for decarbonisation will require operators to meet the requirements at all times, hence delivering legal certainty and clear predictability.
- Lastly, high carbon prices hit everybody at the same level, making necessary interventions by public administrations to support the poorest EU communities. Regulatory approaches are more politically expendable because they put the focus on polluters, in accordance with the EU's polluter pays principle, which have the duty to keep their activities compliant with legislation.

The IED-ETS "combined approach" is also countered by arguing that, by lowering the demand for allowances with actions out of the ETS (e.g. by setting GHG emission limits or electrification

[16] SWD (2022) 111 final: Policy measure 30

[17] https://www.euractiv.com/section/emissions-trading-scheme/news/trust-in-carbon-market-undermined-by-eus-russia-plans-analysts-warn/

obligations), their price will become too low and would undermine the functioning of the ETS. Again, the priority must be to cut GHG emissions down regardless of the "how", not to preserve a piece of legislation and trading flexibility at all costs.

Policy recommendations

- "Climate neutrality" should be added as supplementary BAT criteria (current Annex III IED);
- **Delete IED Art. 9(1**) to allow permits writers to set binding emission limit values (ELVs) for greenhouse gases for installations covered under the ETS Directive ('keep the options open');
- **Set ambitious GHG emission limits**, in particular a 100g CO2eq/KWh for combustion plants to be mandatory from latest 2035 so to deliver fossil free energy generation**, fossil fuel switching obligations, electrification obligations, feedstock substitutions** etc in the relevant IED sections, notably Chapter III and Annex V regarding minimal requirements for Large Combustion Plants. As a minimum it should be expected that all operators of ETS activities do not exceed the GHG performance levels of the best products class EU ETS benchmarks, based on the 10% "most efficient" installations already operating under economically viable conditions. Those operators are "exempted" from the polluter pays principle because of the EU ETS benchmarks, although these activities also contribute to GHG emissions[18];
- **Ask for effective and enforceable Transformation Plans** (article 27 (d)) in order to contribute to the emergence of a sustainable, clean, circular and climate-neutral economy by 2050 to define the pollution prevention pathways with concrete actions to that end. Include minimal decarbonisation measures at sector level and actions to achieve carbon neutrality with interim milestones, fossil feedstock phase out/ substitution obligations;
- **Keep deletion of Art 9(2) IED** to make energy efficiency standards binding. Clarify that setting these standards in permits should be based on the strictest BAT-AE(P)L levels, where differentiated based on the "new plant" standards. Set minimal energy efficiency performance levels in the Directive notably for energy intensive industries;
- **Ensure that the Scientific Advisory Board on Climate Change is involved** in the design and ambition validation check of the Transformation Plans, the identification of deep transformation techniques (INCITE) and the revision of BAT-Conclusions;
- **Systematically set decarbonisation standards** (electrification, fuel switch, GHG BAT-AE(P)Ls etc) **in the ongoing BAT Conclusions**;
- In the Regulation for an Industrial Emissions Portal (IEP-R) r**equire the mandatory reporting of energy inputs** (type and quantity), **share of renewable resources** (including for feedstocks) **and carbon intensity per production outputs. Enable benchmarking** (of environmental and carbon intensity performance). *See more details in related briefing https://eipie.eu/wp-content/uploads/2022/07/20220712-EEB-briefing-on-IEP_FIN.pdf)*

[18] See notably https://sandbag.be/index.php/2021/01/05/benchmarks-and-free-allocation-details-reveal-problems-in-the-eu-ets/ and https://carbonmarketwatch.org/2021/12/17/eu-must-stop-subsidising-polluters-with-hundreds-of-billions-in-free-emissions-allowances-green-groups-demand/

Additional information:

- Carbon Market Watch and EEB briefing (March 2020) on EU ETS and IED interaction https://eeb.org/library/industrial-emissions-directive-and-climate-action-key-elements-for-a-review/

- EEB input to Targeted Stakeholder Survey (TSS) on IED (April 2021) https://eipie.eu/wp-content/uploads/2022/01/EEB-Submission-E-PRTR-Regulation-revision-Targeted-Stakeholder-Survey.pdf

- ClientEarth input to TSS on climate change (IED-EU ETS interaction) https://www.clientearth.org/latest/documents/combating-climate-change-new-ied-and-ets-interactions-required/

- Joint civil society statement on the IED and PRTR (February 2022) https://eeb.org/library/joint-civil-society-statement-on-the-revision-of-the-eu-ied-and-the-e-prtr/

- NGO preliminary assessment on the revised Proposals for IED and IEP-R (April 2022) https://eeb.org/library/ngo-preliminary-assessment-of-the-european-commissions-proposal-for-revised-ied-and-e-prtr/

- Joint NGO letter on ETS free allowances (May 2022) https://carbonmarketwatch.org/wp-content/uploads/2022/05/FINAL_Open-letter-to-ENVI_Free-allowances.pdf

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