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Consequences of Annex II loss

Laxer permitting due to the new
Industrial Emissions Directive?



Towards a cleaner EU industrial production

The EU's zero-pollution ambition and the role of the Industrial Emissions Directive

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On 5 April 2022, the European Commission adopted their proposal for a revised Industrial Emissions Directive (IED).¹ Considering the new elements presented, it doubtlessly represents a step forward towards cleaner 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.**

EU Industrial Emissions Directive (IED): the main EU instrument regulating the environmental impact of industrial installations. **It mandates that high-impact activities are permitted to operate according to strict conditions** incl. pollutant emission limit values (ELVs), based on the performance of the best available techniques in the EU BREFs (see paragraph below). Furthermore, the Directive requires stricter permit conditions to be set in cases where environmental quality standards (EQS) are not met (IED, Article 18).

EU '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**. The **BAT conclusions** (included in the BREFs) are used as a **reference to set permit conditions**, which conditions industrial installations must comply with.

EEB is publishing a series of briefings on different aspects relevant to the review of the IED. All available briefings can be accessed and downloaded here: <https://eipie.eu/briefings-by-eeb/>
Or scan this QR code:



¹ Available here: https://environment.ec.europa.eu/publications/proposal-revision-industrial-emissions-directive_en

Until now, the Industrial Emissions Directive (IED) [2010/75](#) provided a list of polluting substances of relevance to water and air, Annex II. In the course of the IED review, the Commission [published on 4th April 2022 a proposal](#) for a revised legal text. This text proposes to delete Annex II; however, the replacement provided leaves several problematic classes of substances unaddressed. This opens the door to potential regression of environmental protection.

IED Review: consequences of losing the current Annex II

Old and new legal situation

<u>Current legal text²</u>	<u>Commission proposal</u>
<p>Art. 14 (1.a) [Permits shall include at least] emission limit values</p> <ul style="list-style-type: none"> • for polluting substances listed in Annex II, • and for other polluting substances, which are likely to be emitted from the installation concerned in significant quantities, having regard to their nature and their potential to transfer pollution from one medium to another; 	<p>Art. 14 (1.a) [Permits shall include at least] emission limit values</p> <ul style="list-style-type: none"> • for polluting substances listed in Annex II of Regulation (EC) No 166/2006, • and for other polluting substances, which are likely to be emitted from the installation concerned in significant quantities, having regard to their nature and their potential to transfer pollution from one medium to another;

In other words, the reference to Annex II of the (current) IED is replaced by a reference to Annex II of the E-PRTR Regulation. The legal text obliges the permit writer to check the relative list of substances relevant to the installation in question for any of these pollutants, and to set ELVs for all relevant members of these groups.

<u>Current Annex II of the IED³</u>	<u>Annex II of the E-PRTR Regulation</u>
26 generic groups of substances ⁴ relevant to air (13) and to water (13)	91 substances and groups of substances relevant for air, water and soil

² Emphasis and bullet points added.

³ It is worth noting that the list of substances relevant for water in the current Annex II of the IED is identical to Annex VIII of the [Water Framework Directive](#).

⁴ Strictly speaking, one of these is only one substance (carbon monoxide), and several groups of substances are relevant for both media.

Content of the two annexes

Regrettably, some substances or groups of substances are not or imperfectly covered by Annex II of the E-PRTR Regulation – which results in clear weakening of environmental standards. This is a non-exhaustive list:

Emissions to air

<u>Group</u>	<u>Current Annex II of the IED⁵</u>	<u>Annex II of the E-PRTR Regulation</u>
Sulphur compounds	Fully covered by “1. [and other sulphur compounds].”	Some are covered ⁶ : SF ₆ , SO _x /SO ₂
Fluorinated gases	Fully covered by “9. Fluorinated gases”	Many are covered ⁷

Emissions to water

<u>Group</u>	<u>Current Annex II of the IED⁸</u>	<u>Annex II of the E-PRTR Regulation</u>
PFAS	Fully covered by “1. organohalogen compounds [...]”	Not covered ⁹
Brominated flame retardants	Fully covered by “1. organohalogen compounds [...]”	Not covered
Organophosphorus compounds	Fully covered by “2. Organophosphorus compounds”	Not covered
CMRs ¹⁰	Fully covered by “4. [...]”	Not covered systematically
Pesticides	Fully covered by “9. Biocides and plant protection products”	Only a few dozens of mostly phased-out substances.

⁵ It is worth noting that the list of substances relevant for water in the current Annex II of the IED is identical to Annex VIII of the [Water Framework Directive](#).

⁶ As an example, hydrogen sulphide (H₂S), is not covered. Many other sulphur compounds also display a terrible stench and different types of toxicity.

⁷ Indeed PFCs (entry #9) and HFCs (entry #4) are covered, but these are restricted in scope to a positive list in two footnotes. Some relevant pollutants such as perfluoro-methylcyclobutanes or fluorinated olefins are not covered.

⁸ It is worth noting that the list of substances relevant for water in the current Annex II of the IED is identical to Annex VIII of the [Water Framework Directive](#).

⁹ Entry 83 reads “fluorides (as total F)”, which could potentially include organic fluorides, i.e. include all PFAS. However, the term is generally interpreted as covering inorganic fluorides, i.e. fluoride salts only.

¹⁰ Including those of relevance for the environment.

As a result, permit writers would not have any legal obligation anymore to consider all those doubtlessly relevant pollutants anymore when writing permits and setting ELVs. This would be a clear step back.

One should not rely on the E-PRTR annex to solve the problem: the list is not only out of date and slow to update, but it also lists only common pollutants found in many places and emitted by many sources – however the environment must also be protected against a locally specific pollutant (such as a specific chemical). The existing Annex II has so far provided a very good list for this purpose.



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