

Towards a clean, decarbonised, and circular EU industrial production

Joint civil society position on the European Commission's proposals for a revised Industrial Emissions Directive and improved information Portal

The revision of the EU's Industrial Emissions Directive (IED), with its associated Industrial Emissions Portal Regulation (IEPR), has the potential to become **the legislative flagship to translate the EU's zero pollution, climate neutrality and circular economy objectives for key industries into practice, while improving public health and public accountability**. The supporting organisations welcome the proposals adopted by the European Commission in April 2022¹, which doubtlessly represent a much-needed step forward towards greener industrial processes. Nevertheless, there are still shortcomings to be addressed, and aspects to be clarified, so that the revised IED ultimately triggers adequate and timely progress towards the European Green Deal² ambition. The following briefing highlights the imperative need for a timely update of the IED, key elements of the proposal, as well as necessary improvements, to provide member states' authorities and operators with clear and effective rules at hand. It builds on the joint civil society statement preceding the publication of the proposals³.

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.

¹ [The Industrial Emissions Directive - Environment - European Commission \(europa.eu\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022R0110)

² [A European Green Deal | European Commission \(europa.eu\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022R0110)

³ joint civil society statement on the revision of the IED and E-PRTR (17 February 2022) <https://eeb.org/library/joint-civil-society-statement-on-the-revision-of-the-eu-ied-and-the-e-prtr/>

Best Available Techniques Reference Documents (BREFs)⁴: 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)⁵, 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 PRTRs⁶, 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 Agency⁷.

The imperative need for a timely update of the framework

IED installations account for about 20% of the EU’s overall pollutant emissions into the air, around 20% of pollutant emissions into water, and approximately 40% of greenhouse gas (GHG) emissions. **The new IED will drive the transformation of industrial processes, and thus their impact on climate, environment, and public health.**

These are the challenges we need to address:

Climate change: the negative effects of climate change are increasingly visible in the daily life of all Europeans, and scientific facts highlight 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’*⁸. Bold actions are urgently needed to prevent further GHG emissions. The outbreak of the war in Ukraine is further driving the urgency to break free from fossil fuels, not just because of the climate crisis, but also as a necessity for the EU to gain strategic independence and promote peace and security in Europe.

⁴ [BAT reference documents | Eippcb \(europa.eu\)](#)

⁵ [The European Pollutant Release and Transfer Register \(E-PRTR\) - Environment - European Commission \(europa.eu\)](#)

⁶ [UNECE Kiev Protocol on PRTRs — European Environment Agency \(europa.eu\)](#)

⁷ <https://industry.eea.europa.eu>

⁸ IPCC, Climate Change 2022, Impacts, Adaptation and Vulnerability

Environmental pollution: air pollution is the prime environmental factor driving disease, with approx. 400 000 premature deaths attributed to air pollution in the EU every year. Air pollution emitted from large industrial sites in Europe cost society between €277 and €433 billion (about 2-3 % of EU GDP in 2017)^{9,10}. Industrial sources further have a significant contribution to **water pollution**, with the majority of EU's surface water bodies failing to achieve good chemical status. The main reason for the failure of good chemical status in over 30% of water bodies is the atmospheric deposition of mercury¹¹, with coal combustion being the main emission source to air in the EU¹². Furthermore, **60-70% of soils in the EU are unhealthy**, partly because of pollution – and almost two-thirds of point-source soil pollution in Europe can be traced back to industrial and commercial activities, as well as waste disposal and treatment. While there are 2.8 million sites where polluting activities have taken/are taking place, only 25% of them are inventoried and much less (only around 10% of those inventoried) have been remediated. The costs associated with soil degradation in general exceed € 50 billion per year¹³.

Biodiversity loss: more than 90% of **biodiversity loss and water stress** come from resource extraction and processing¹⁴. Only 12% of the materials used by EU industry come from recycling¹⁵.

Now is the unique opportunity to remediate the identified shortcomings of the 2020 IED evaluation process¹⁶, concluding that there is still untapped potential: the framework was found not as effective as it could be, in terms of ensuring reduced pollution from industry, public access to information and participation, and coherence in implementation. It is yet ineffective in reducing greenhouse gas emissions, as well as addressing the use of hazardous chemicals, resource efficiency or the circular economy. The EU's objectives cannot be overstated. The Commission itself acknowledges in its European Green Deal that: *'achieving a climate neutral and circular economy requires the full mobilisation of industry. It takes 25 years – a generation – to transform an industrial sector and all the value chains. To be ready in 2050, decisions and actions need to be taken in the next five years'*¹⁷. We don't have any time to lose.

⁹ [Counting the costs of industrial pollution — European Environment Agency \(europa.eu\)](https://www.eea.europa.eu/publications/drivers-of-and-pressures-arising)

¹⁰ Currently the damage costs triggered by emissions to water and soil are not financially estimated as there are no monetisation methodologies for these type of emissions

¹¹ <https://www.eea.europa.eu/publications/drivers-of-and-pressures-arising>

¹² <https://eeb.org/library/tackling-mercury-pollution-of-eu-waters-why-coal-combustion-must-end-by-2027-at-the-latest/>

¹³ For more information: [The EU's zero pollution ambition \(europa.eu\)](https://www.eea.europa.eu/publications/drivers-of-and-pressures-arising)

¹⁴ [Global Resources Outlook | Resource Panel](#)

¹⁵ Eurostat (2016 figures)

¹⁶ [ied - Library \(europa.eu\)](#)

¹⁷ EGD, section 2.1.3

Key priorities:

1. Make the IED fit for the zero-pollution ambition

1.1 Scope: Ensure that high-impact activities are adequately addressed and regulated

An inclusive and comprehensive scope of the IED is decisive. The Commission's proposal to extend the Directive's scope to cover activities with significant environmental and human health impacts (extraction of industrial and metallic minerals, production of batteries, industrial scale cattle farming) is very positive. At the same time, however, the intensive livestock threshold review comes with the high price of a 'lighter' permitting regime for all agricultural farms of industrial scale (new Chapter IVa): the deletion of IED Annex I point 6.6 activities (largest pigs and poultry rearing) from the more protective Chapter II of the IED is a serious backtracking of current protection levels. Member states may even ask only for registration instead of implementing a permit-based system (amended Article 4). Excluding most of IED's general obligations (e.g., the link to BAT conclusions or environmental quality standards), and enforcement rules, will weaken the future implementation severely and undermine the positive environmental impact the scope extension could bring.

Recommendations:

- **Reverse the regulatory backtracking on industrial agriculture activities: intensive livestock rearing is a high-impact activity and should be bound to strict requirements. Reinstate Annex I section 6.6, provide for strict implementing rules and safeguards, delete new Article 4 derogation. For more information, please see the related briefing on livestock here: [Briefings by EEB - EIPIE](#).**
- **Include further high-impact activities in the scope: aquaculture, upstream oil and gas activities, medium combustion plants (by lowering the 50 MW threshold for fuels combustion in Annex I).**

1.2 Targeted pollutants: Ensure that all relevant harmful pollutants are covered

First, we shall emphasize one of the very positive aspects of the Commission's proposal – that for an Environmental Management System (EMS) (new Article 14a), which among other aspects, includes the compilation of a chemicals inventory incl. analysis of substitution of hazardous substances. **The prioritisation of preventive action is at the core of the IED.**

Furthermore, when the competent authority is setting emission limit values (ELVs) for polluting substances, it should consider all substances, including substances of emerging concern. Currently, individual polluting substances are listed in a non-exhaustive way in Annex II to the IED, which the Commission proposes to delete and replace by a reference to the list of pollutants in Annex II to the European Pollutant Release and Transfer Register (E-PRTR)¹⁸. It should be reminded that this list (Annex II to the E-PRTR) has so far been kept unchanged with the Proposal for an Industrial Emissions Portal Regulation (IEP). The replacement leaves several problematic classes of substances unaddressed and opens the door to potential regression of environmental protection. Regrettably, some

¹⁸ [The European Pollutant Release and Transfer Register \(E-PRTR\) - Environment - European Commission \(europa.eu\)](#)

substances or groups of substances are not (or imperfectly) covered by the E-PRTR, now IEP, Annex. Permit writers would not focus anymore on those doubtlessly relevant pollutants when writing permits and setting ELVs.

The acceleration of efforts on the substitution of all relevant hazardous and dangerous substances produced and used at industrial activities, or on minimising their emissions if substitution is not possible, is paramount.

Recommendations:

- Ensure that all key pollutants are covered under the IED, in particular by adding substances that are of utmost importance for industrial activities, e.g., those referenced to other Union legislation (e.g., Annex VIII and X of the Water Framework Directive) and those listed under the proposed Article 14(2) point b of the IEPR.
- Put in place a mechanism that would allow for a frequent, swift update of the pollutants list when evidence for emerging pollutants and environmental / human health issues become available.
- Support improved transparency and user-friendly access to information on chemical management systems.

For more information, please see the related briefings on the Commission's proposal for the IEPR, and the IED Annex II loss, here: [Briefings by EEB - EIPIE](#).

1.3 Effective implementation: Clarify and strengthen the provisions to prevent avoidable pollution

The IED evaluation exercise showed that member states are implementing the IED requirements in a heterogeneous manner, leading to an unlevel playing field for industry and (in case of harmful impacts) differentiated protection levels for EU citizens. Cases in point are the setting of ELVs, and the procedures for granting derogations: the basis for setting ELVs is the 'Best Available Techniques - Associated Emissions Levels' (BAT-AELs) in the BREFs. These BAT-AELs are typically expressed as ranges of achievable emission levels, rather than as single values, and the permit ELV would in theory be within this range. What happens in practice, though, is that **ELVs in permits are systematically set at the laxest legally permitted (upper) end of the BAT-AELs range** (as found during the evaluation process, this is the case for 75-85% of all the identified the cases across the EU), thus resulting in emissions that could have been avoided. The Commission's proposal demanding *authorities to 'set the strictest possible emission limit values that are consistent with the lowest emissions achievable by applying BAT in the installation' (...)' based on an assessment by the operator'* (new Article 15(3)) is going in the right direction but is not explicit enough to have impact on the ground.

Recommendations:

- The authorities should be explicitly required to set the ELVs at the lower end of the BAT-AEL range by default. Only in cases where this is not technically possible, a deviation could be acceptable (for the specific pollutant in question) provided a substantiated cross-media effect is established. The public concerned should have timely access to all related documentation and should be enabled to effectively participate in the decision-making process. These aspects should be made explicit in the revised text.
- A clarification of using by default the strictest environmental performance levels (e.g., related to water use and energy efficiency) is needed in the same way. Any other wording would result in the same implementation issues we face today, ignoring the current improvement potential for environmental and human health protection.

There is even an option to defer from those weaker ELVs (set on the upper end of the BAT-AEL range) if deemed that applying the BAT-AELs would lead to disproportionately higher costs compared to environmental benefits (today's derogation clause in Article 15(4)). Numerous abuses have been witnessed in practice, especially for large combustion plants: derogation procedures turned into a 'time-winning exercise' to the benefit of the polluters, lack of proper justification when derogations are granted, biased cost-benefit assumptions, absence of public participation procedures etc. The Commission's proposal to develop a standardised methodology for assessing the disproportionality between the costs of implementation of the BAT conclusions and the potential environmental benefits (new provisions in Article 15(4)), as well as the principles outlined in the new Annex II to the Directive, could provide for a significant step forward in addressing the major shortcomings of the current derogation procedure. Nevertheless, there are important elements that are left to be decided later via a Commission implementing decision, meaning insufficient democratic scrutiny by the European Parliament.

Recommendations:

We call for more clarity during this co-decision phase, instead of addressing such crucial elements via secondary legislation. Moreover, we ask for further strengthening and clarification of the Article 15(4) provisions and the related principles to be complied with, e.g.:

- **Mandatory public participation when all options for decisions are still open, and full transparency on the justifications provided (for the derogations).** All details relating to the cost-benefit analysis and related decision-making steps concerning any Article 15(4) derogation procedure should be made publicly available on a timely manner e.g., at least 2 months prior to the decision date.
- **Derogations concerning substances that are subject to a phase out obligation in other legislation, e.g., Priority Hazardous Substances under the EU Water Framework Directive¹⁹, should be rejected by default.** Anything else would contradict the obligation to ensure that EU's policies and regulations are consistent with one another.
- **There should be a maximum validity period for any derogation** e.g., 4 years, not merely a requirement for a review as currently suggested in the Commission's proposal.
- **It should be clear that environmental benefits also relate to health and climate protection aspects²⁰.**
- **When quantifying the costs of air pollution, the use of the European Environment Agency's Value of Statistical Life (VSL) method, adapted to the US Environmental Protection Agency price levels (7.15 million €) should be required²¹.**
- **A specific minimum ratio should be set for the assessment of the 'disproportionality' of costs compared to the environmental benefits, instead of having each EU member state deciding on a case-by-case basis.** A proposal to be considered is that the costs may be 'disproportionate' where they e.g., outweigh [5] times the benefits estimated over a minimal [+10] year operation. Even more, it should be explicitly clarified that the environmental benefits are the ones resulting from applying the strictest ELV, not the weakest one.

¹⁹ [River basin management - Water - Environment - European Commission \(europa.eu\)](https://european-council.europa.eu/media/en/press-communications/infographic/infographic_river-basin-management-water-environment-european-commission-2018-01-11-01.pdf)

²⁰ The current exclusion of greenhouse gases in the scope of the EU-ETS in Article 9 (1) of the IED only applies to ELV-setting for those GHGs, not to cost-benefit calculations

²¹ [Counting the costs of industrial pollution — European Environment Agency \(europa.eu\)](https://www.eea.europa.eu/en/press-communications/infographic/infographic_counting-the-costs-of-industrial-pollution-2018-01-11-01.pdf)



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For more information, please see the following related briefings: [Briefings by EEB - EIPIE](#); <https://eeb.org/library/an-eu-industrial-strategy-for-achieving-the-zero-pollution-ambition-set-in-the-european-green-deal/>; and the Frank Bold analyses on [Art. 15\(4\) derogations](#), [other derogation regimes](#) and [public participation](#).

2. Use all policy levers to address the climate crisis

Despite the urgency to address the climate crisis and the drastic political and legislative changes since the last IED recast in 2010, when it comes to driving down greenhouse gas emissions, it looks like the EU still applies only one tool: the Emission Trading System (ETS)²² and its market-based approach. Even though the revised IED proposal presented by the Commission deleted Article 9 (2) to require permit writers to set minimal energy efficiency performance levels, it still sticks to Article 9 (1) that prevents permit writers to set ELVs for GHG and installations falling under the ETS. Whereas the Commission is planning to assess possible synergies between ETS and IED only in 2028, we cannot afford to lose further time. We must use all possible instruments today to address the climate crisis and free our economy from fossil fuels dependency – in particular if we are serious about the Paris Agreement’s and EU Climate Law targets that have been adopted after the last IED recast.

The inaction on IED/ETS relation is a missed opportunity to make consistent use of all policy levers²³ to speed up decarbonization. Relying solely on the ETS ignores the fact it demonstrated ineffective to drive down GHG emissions as fast as needed. This is due to several reasons, the main ones being that the price of CO₂ has never launched a sufficiently strong signal to make big emitters quickly invest in low-carbon technologies; and free allowances (for industrial sectors at the risk of carbon leakage) will continue to exist at least until 2035, granting between 400 and 550 billion € of ‘free allowances’ to industrial installations²⁴. It is clear that too much time has been lost in the past two decades because of the flaws of the ETS. It is also clear that betting again on the ETS as the only tool that would bring GHG emissions to zero by 2050 is too risky and gambling with needs of future generations. **It is high time to use the synergies between the ETS and IED and to embrace a combined approach of strong carbon pricing instruments with performance-based standards:** The IED has the unique power to prevent and reduce emissions at source by prescribing performance-based outcome-oriented decarbonisation results e.g., through mandatory fuel switching, electrification, or GHG ELVs at facility level as permit conditions. Such provisions should be included in the so called ‘EU safety net’²⁵, which sets out minimal binding requirements for the biggest polluters. The current requirements are outdated, in particular Chapter III (and Annex V) for large combustion plants, dating back several decades. The new ‘zero pollution hierarchy’²⁶ that seeks to first prevent pollution and a combined

²² [EU Emissions Trading System \(EU ETS\) \(europa.eu\)](#)

²³ ClientEarth, Combating Climate Change: New IED and ETS interactions required <https://www.clientearth.org/latest/documents/combating-climate-change-new-ied-and-ets-interactions-required/>

²⁴ Sandbag, EU ETS Revenues: Who Receives What? The Trillion Euro Question

²⁵ The EU safety net commonly refers to the following provisions: Chapter III (and associated Annex V) on large combustion plants, Chapter IV (and Annex VI) on waste (co-)incineration, Chapter V (and Annex VII) on activities using organic solvents, and Chapter VI (and Annex VIII) on the production of titanium dioxide

²⁶ [Zero pollution action plan \(europa.eu\)](#)

approach of policy instruments is the most effective approach in delivering clear results under the urgency of climate action.

Recommendations:

- Add ‘climate neutrality’ as supplementary BAT criterion (current Annex III of the IED). Systematically address decarbonisation (via electrification, fuel switch, GHG ELVs etc.) in the BAT conclusions revisions.
- To provide for investment signals and the acceleration of deep transformation and decarbonisation action, the IED minimal requirements for the biggest polluters (EU safety net – current Annexes V-VIII of the IED) shall include GHG ELVs, fuel-switching obligations, electrification obligations, notably for energy intensive activities.
- Delete Article 9(1) to allow permits writers to set binding ELVs (keep options open).
- Keep the deletion of Article 9(2) to make the binding nature of energy efficiency standards explicit. Clarify that authorities should refer to the strictest performance range by default. Set minimum binding energy efficiency requirements for energy intensive industries (e.g., in the EU safety net)
- 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 (see point 4.1 below).

For more information, please see the following related briefings: [Briefings by EEB - EIPIE](#); https://www.clientearth.org/media/mleppyf1/clientearth_combating-climate-change_new-ied-and-ets-interactions-required_march-2021.pdf and <https://eeb.org/library/industrial-emissions-directive-and-climate-action-key-elements-for-a-review/>.

3. Drive the transition to a circular economy

In the European Green Deal, it was recognised that achieving the EU’s climate and environmental goals requires a new industrial policy based on the circular economy – an economic model where the value of products, materials and resources is maintained for as long as possible, and the amount of waste generated is minimised.

3.1 Ensure sustainable resource sourcing, and cooperating across the value chain and across sectors

We welcome the new elements in the Commission’s proposal that aim to drive circularity: the operating permit of a given installation would now include binding **environmental performance limit values** alongside emission limit values (new Article 15(3a)), **monitoring requirements for the consumption and re-use of resources** (amended Article 14), as well as **measures concerning e.g., the optimisation of resource use, the prevention of waste and other key environmental performance aspects, as part of the installation’s Environmental Management System (EMS)** (new Article 14a). Furthermore, the **Transformation Plans proposed** under new Article 27(d) would aim at achieving a circular economy by 2050 whilst details are left unclear (see point 4.1 below). However, we still need to emphasize the **importance of sustainable resource sourcing and cooperating across the value chain and across**



sectors: according to the Circular Economy Action Plan (CEAP)²⁷, the EU industry is recognised to have a key role in transitioning to a circular economy, **particularly regarding those aspects.**

Recommendations:

- The proposal to systematically take into account the overall life cycle environmental performance of the supply chain (amended Article 11) is welcome but merits further clarification: additional elements to be considered by the operator are e.g., the environmental footprint (notably the carbon, material, and water footprint) of the feedstocks and related upstream processes of the industrial activity; and the potential for substitution of primary raw materials by secondary ones incl. through internal re-use or recycling of the residues of the process itself or via industrial symbiosis applications (see point 3.2 below).
- We expect that further aspects will be addressed by the EMS (new Article 14(a)) and the environmental performance limit values, and that these will already be specified in the revised Directive (e.g. by clarifying Articles 11 and 15).

3.2 Promote industrial symbiosis

Industrial symbiosis (IS) is an approach that brings together companies from all business sectors with the aim of improving cross-industry resource efficiency through the trading of materials, energy, and water, as well as through sharing assets, logistics and expertise. IS allows for reuse, and thus more sustainable management of industrial waste and by-products. We welcome the CEAP commitment for the development of a reporting and certification system to enable IS applications. However, we believe that additional measures are necessary such as the requirement for the operator to consider the feasibility of IS applications as part of its permit application (or update) process.

Recommendation:

Include an explicit reference to IS applications in Articles 14, 14(a) and 15. The relevant permit conditions shall be based on dedicated BAT conclusions outlining IS applications, that should be systemically included in the BREFs.

3.3 Address the challenges related to the derivation of BAT-AEPLs:

In contrast to the process of deriving BAT-AELs (when drafting EU BREFs), much less effort and resources are put into the collection of data and their subsequent analysis when it comes to other types of environmental performance levels (BAT-AEPLs), e.g., levels of raw materials consumption. Even more, this type of information is often not shared by operators as they claim it to be confidential business information (CBI), ignoring the fact that at least civil society (and civil servants) joining the BREF process as experts (and not being competitors to the operators) should have access to the full data as this is an environmental decision-making process. The result is that such performance benchmarks are very often not included in the BAT conclusions, over concerns of the overall data quality and lack

²⁷ [Circular economy action plan \(europa.eu\)](https://ec.europa.eu/eip/ceap/)



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of contextual information. This omission leaves competent authorities that wish to set such quantified permit conditions, with the (voluntary) task to derive such benchmarks themselves – a task that in most cases won't be undertaken, and if it is undertaken it may lead to an unlevel playing field for operators. When deriving circular economy-related BAT-AEPLs, it is important to also think about **the appropriate metrics to use, so that they can serve as indicators and drivers of the circular economy transition.**

Recommendations:

- Dedicate more resources to the development of BAT-AEPLs, to tackle the challenges linked to their derivation: (un)availability of data and expertise, cross-media effects, CBI claims. It is of key importance that the Commission reviews the BREF guidance²⁸ to properly address these issues – there should already be a relevant provision in the revised IED setting the objectives (and a timeline) for the BREF guidance review. Amended Article 13 shows a first attempt to address the CBI issue but falls short of clarifying the actual procedure of validation and handling of CBI claims.
- The metrics of the BAT-AEPLs (and related monitoring requirements) shall be defined taking into consideration the potential of these performance standards to serve as circular economy indicators and drivers. We should also not forget that such data may further be needed for the purpose of delivering on the EU's strategy on Sustainable Products²⁹, notably by providing input for the products' environmental footprinting. These aspects shall already be recognised in the revised IED (e.g., in Articles 14(a) and 15). The next step would then be to further elaborate on and standardise the process in the BREF guidance. The IED Forum (and TWG members) in collaboration with the Commission services would be the fora to define such indicators for the IED sectors.
- The data obtained shall be publicly shared via the Portal (alongside emission data) so to enable benchmarking and identification of hotspots for improvement potential e.g., in consumption/waste intensities per produced output. See more details in the related briefing on the IEPR: <https://eipie.eu/briefings-by-eeb/>.

For more information, please see the related briefing on IED and circular economy, as well as a more detailed position paper here: [Briefings by EEB - EIPIE](#).

²⁸ [Commission Implementing Decision of 10 February 2012 laying down rules concerning guidance on the collection of data and on the drawing up of BAT reference documents and on their quality assurance referred to in Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions \(notified under document C\(2012\) 613\)Text with EEA relevance \(europa.eu\)](#)

²⁹ [Sustainable product policy & ecodesign \(europa.eu\)](#)

4. Horizontal aspects

4.1 Effective Transformation Plans: translating good intentions to concrete actions

Achieving the EU objectives regarding a clean, circular and climate neutral economy by 2050 calls for a deep transformation of the Union's key industrial sectors. The transformation/transition plans/roadmaps with 2050 commitments are advocated by industry in various fora, notably the High-Level Group on Energy Intensive Industries and the Industrial Forum, hence the Commission's proposal on Transformation Plans (TP) is just formalising current initiatives. We welcome the forward-looking approach of the proposal, that shall demonstrate how installations will transform themselves 'in order to contribute to the emergence of a sustainable, clean, circular and climate-neutral economy by 2050' (new Article 27d). Moreover, we shall not forget that the transformation of the industry through improved environmental and human health protection rules, would further support the workforce and lead to the emergence of quality jobs where the industry itself becomes sustainable. Stricter standards would help attract investments to make the EU industry infrastructure fit for the zero-pollution ambition.

However, as the current proposal stands, the plans will be written up by operators for each installation and validated by auditors who will just formally check if minimum information (to be defined by the European Commission only in mid-2028) is included therein. There is **no control over the ambition level, effectiveness, and timeliness of these plans**. Hence, it is solely up to the operator's discretion to determine ambition, nature, pace, and scope of the transition. **No milestones/performance indicators** are set, **no specific actions** asked, **no monitoring** required. There is not even an option to review the plan's content by an authority, nor to review and update these plans in around 20 years of the transition period. Furthermore, the implementation of the TP depends on the good will of the operator. There is **no option for authorities to enforce** the inexecution of measures contained in the TP. Furthermore, **a 2030 deadline, the earliest for the submission of transformation plans by energy-intensive industries, is at odds with EU goals and planetary boundaries**.

Recommendations:

- Ensure an effective implementation and a possibility to enforce the TP by e.g., making its targets binding on the operator as part of their general obligations to be transposed into permit conditions (through amendments to Articles 11 and 14).
- Clarify the TP provisions, notably regarding:
 - the definition of performance pathways towards zero pollution, climate neutrality and a circular economy by 2050;
 - the definition of intermediate milestones and key performance indicators at sector level (for similar activities), concerning (at least) the following five headline objectives: (1) climate neutral economy; (2) zero adverse impact to health and the environment from anthropogenic emissions, and deposition and exposure below critical loads and levels; (3) transition towards a circular economy for a resource-saving EU economy operating within planetary boundaries; (4) phase out and substitution of chemicals of concern; and (5) restoration of good ecological

- and chemical status of water. The Innovation Centre for Industrial Transformation and Emissions (INCITE) should be involved in the development of the indicators;
- a plan for investments and concrete actions with intermediate target(s), dedicated arrangements with staff for implementation and measurement of progress against the applicable intermediate target(s);
 - a firm commitment to review and revise the TP regularly;
 - the obligation to transparently report on TP implementation on a regular basis, etc.
 - Advance the deadline for the first TP (e.g., 2025 or transposition deadline of IED, whichever comes earlier).
 - Regarding critical infrastructure needs, where the main responsibility is upstream to the IED sectors (e.g., acceleration of renewable energy and green hydrogen deployment) the IED and related policy instruments should facilitate the sharing of efforts (see section 3 above).
 - Due care is to be provided that the transformation process supports local and sustainable economic re-development, fully consistent with a socially acceptable 'just transition'.

4.2 Making the IED work on the ground for people and the environment: Enforcement provisions

The best IED provisions will not have an effect if there is no guarantee of ensuring their implementation in practice. Enforcement provisions (i.e., **penalties, compensation rights, access to justice and suspension of operation rules**) are therefore key to empower member states' authorities, civil society as well as individuals to address cases of non-compliance. Stringent compliance with the IED will not only lead to **direct reduction of harm to human health and the environment** from large agro-industrial installations but will also **limit distortion of competition between IED operators** in different member states.

As of today, we are experiencing huge varieties in the level of enforcement between member states, because the current IED entails too many loopholes and leaves too much discretion to the authorities as to how it is to be enforced. For example, when an operator is operating illegally, the IED asks for penalties at national level that shall be 'effective, proportionate and dissuasive' – but it does not clarify what that concretely means. This led to arbitrary results: In some jurisdictions, operating without any IED permit is sanctioned with a maximum fine of only a few thousand euros. An operator could pay even less fines for operating without any permit at all than paying fines for breaching specific conditions of an existing permit. The Commission's proposal is addressing this issue by setting clearer **minimum conditions for determining penalties** (Article 79). Parallels can be drawn with penalties provided for non-compliance in other (than environmental law) legislation e.g., in competition or protection of personal data legislation.

A **major breakthrough for the protection of people affected by illegal pollution is the new compensation right** suggested by the Commission (new Article 79(a)): industrial installations can emit neurotoxins like mercury and arsenic into the air, water, and soil. Other industrial pollutants can trigger respiratory issues and are associated with forms of cancer. Despite overwhelming epidemiologic evidence on the negative health impacts of pollution on the population, the practice shows that individuals affected are usually unable to prove the causal link between the

pollution arising from the IED breach and their health damage, in particular in the case of diffuse environmental damage. The new compensation right will finally implement a reversal of burden of proof, so as not to place the full responsibility solely on the sick person. It may also act preventively, as the risk of damage claims serves as an additional mechanism to ensure compliance in the first place; and may further lead to increased efforts on the substitution of hazardous and dangerous substances produced and used at industrial activities, something that would further benefit installation workers (occupational cancers are the leading cause of death at work³⁰).

Recommendations:

- Support the Commission's proposal (amended Article 79) on making penalties effective, proportionate and dissuasive across the EU; and further improve its legal text to ensure that (a) the amount of the fines is sufficiently high, (b) additional fines are administered as long as the breach continues, and (c) a list of operators who are in breach of the IED provisions is made publicly available.
- Support the Commission's proposal (new Article 79(a)) on the new compensation right for individuals suffering from health damages and improve further its legal text to make it most practicable. Give justice to people affected, address interlinkage between illegal pollution and human health damages.
- Enable member states' authorities to suspend the operation of an installation where a continued breach of the permit conditions poses or risks causing a danger to human health or a significant adverse effect upon the environment. Such option should not be depended on when an environmental damage may be visible (improve Article 8).
- While we welcome the partly expansion of access to justice in the Commission's proposal as well as the clarification that going to court cannot depend on previous engagement, nor may it lead to cost- and time-intensive procedures, further improvement needs to be made to ensure that full access to justice is guaranteed in all relevant cases of IED infringements (expand scope of application).
- Permits should further have a set validity period of max 10 years. Their conditions should be reviewed regularly to adapt to changes in environmental pressures; such update processes must foresee an effective public participation procedure.

For more information, please see the related briefing on enforcement here: [Briefings by EEB - EIPIE](#).

4.3 The link to the Industrial Emissions Portal Regulation

The Industrial Emissions Portal Regulation (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) which existed since 2004. 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.

³⁰ [Occupational cancers | etui](#)



The proposal has missed the opportunity to provide for a more effective use of performance and permitting information, already generated via the drafting of BREFs and the IED reporting obligations – notably the data provided via the annual compliance reports (see Article 14), that could be used for benchmarking and compliance purposes; as well as other information such as monitoring data, and inspection reports (Article 23). Enabling the environmental performance benchmarking and compliance promotion at EU level, and mutualising efforts to that end (budget and IT tools) would satisfy much broader and diverse end-user group interests; it may also stimulate the industry to further exchange good practice on pollution prevention.

Another point of concern is that the list of pollutants (Annex II of the IEPR) has not been updated (since 2006), and arbitrary reporting thresholds were maintained.

Recommendations:

- Provide for harmonised reporting obligation input forms with mandatory content for the annual compliance report, enabling automatic extraction of that information to the Portal.
- Integrate the EMS data in the Portal. Many of these elements (e.g. use of resources and water reuse, waste prevention, substitution and use of hazardous substances) are proposed to be reported under the E-PRTR already.
- Delete the arbitrary reporting thresholds in Annex II column 1.
- Add a broader list of substances with properties of concern directly e.g., list all pollutants identified in the instruments cited in Article 14(2), that are already subject to reporting obligations. It is important to explicitly refer to substances of concern – do not restrict reporting to the substances of very high concern only.
- Require mandatory reporting of the EU waste codes.
- The Portal should enable the comparison of permit limits and environmental performance intensity of similar installations and activities, in terms of their track record on pollution prevention. Appropriate metrics shall be defined to put the data into the right context (e.g., input/output ratios).
- Embrace the digital age and enable maximum use of information at global level, through powerful search filters.

For more information, please see our related briefing on the Portal here: [Briefings by EEB - EIIPE](#)

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Find the series of IED and IEPR briefings here: [Briefings by EEB - EIIPE](#)