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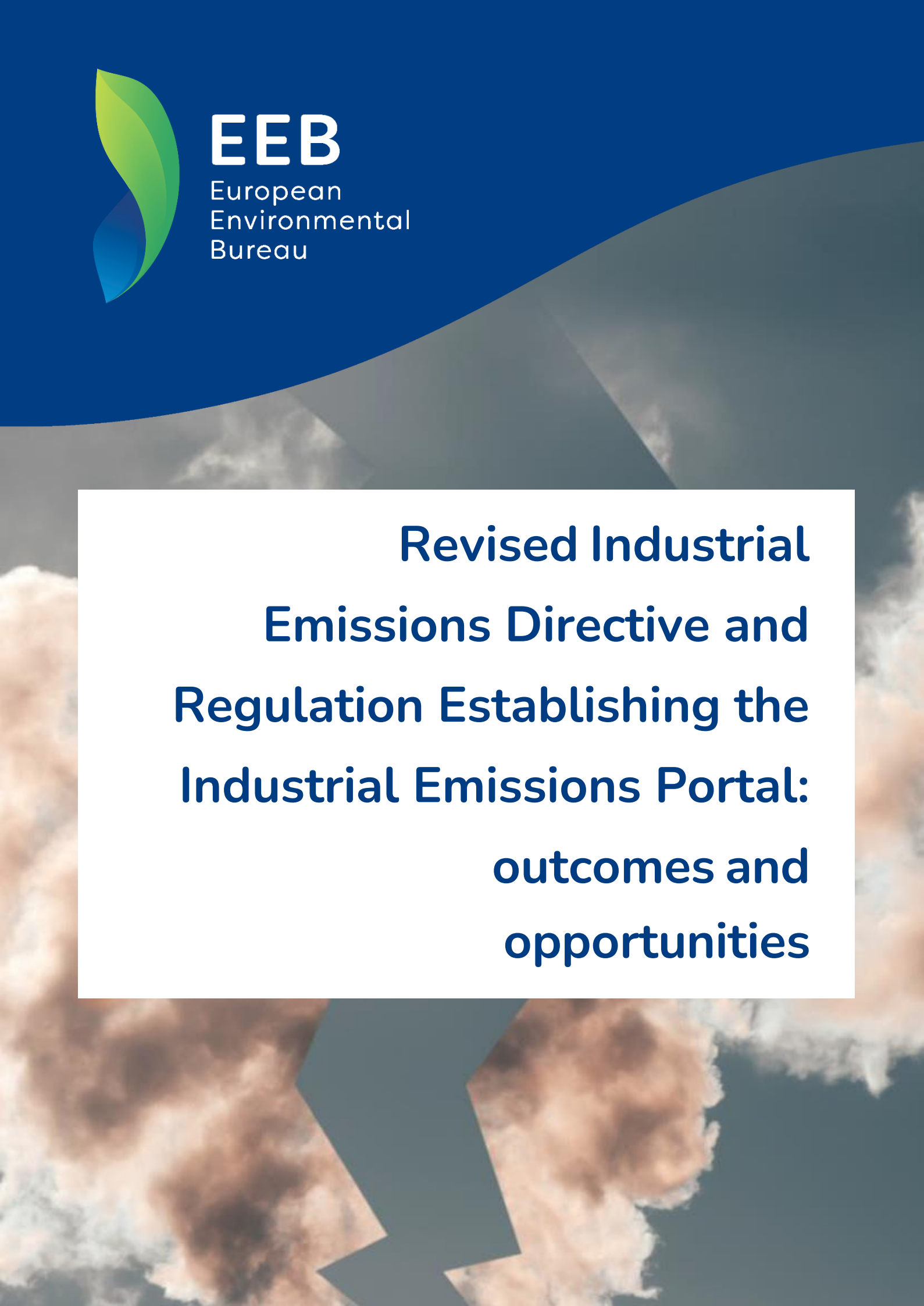
Revised Industrial Emissions Directive and Regulation Establishing the Industrial Emissions Portal: outcomes and opportunities



The EEB is the largest network of environmental citizens' organisations in Europe. It currently consists of over 180 member organisations in 40 countries, including a growing number of networks, and representing some 30 million individual members and supporters.

This policy briefing aims to provide background information regarding the revised provisions of the EU Industrial Emissions Directive (IED), and the associated Regulation establishing the Industrial Emissions Portal (IEP-R), focusing on the opportunities for the much-needed transformation of industry. It is not aimed at being exhaustive but at highlighting key points from the perspective of the author and the contributors, as well as proposing actions for the next steps.

The EEB is an international non-profit association /
Association internationale sans but lucratif (AISBL).
EC register for interest representatives:
Identification number 06798511314-27
BCE identification number: 0415.814.848
RPM Tribunal de l'entreprise francophone de Bruxelles

Published April 2024 (updated J 20uly24)
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Background

The IED covers around 50 000 industrial installations that 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. Large-scale industrial activities (from steel and cement production to the management of waste, and the rearing of poultry and pigs) are covered as mentioned in its Annex I.

According to the European Environment Agency (EEA), in its updated 2024 briefing[1] on the costs to health and the environment from industrial air pollution in Europe, during the last decade (2012-2021), industrial air emissions had an estimated external cost of between EUR 2.7 to EUR 4.3 trillion, averaging between EUR 268 to EUR 428 billion per year. Even though these external costs have decreased consistently (-33%) over that decade, significant costs persist: in 2021, the external costs of industrial air pollution from the large industrial operators included in this study were equivalent to approximately 2% of the EU's GDP.

The main obligation is the need for each industrial installation to hold a permit provided by Member States' competent authorities. The permit conditions must fulfil general principles and obligations, notably the consistency of permit conditions with the BAT Conclusions, part of the Best Available Techniques (BAT) reference documents (EU BREFs). The IED further provides for enforcement provisions (inspections, monitoring, penalties and sanctions, etc.) as well as requirements in relation to the pillars of the Aarhus Convention (public participation, access to information and justice).

Reporting of environmental data from industrial installations is provided due to IED obligations but also through the European Pollutant Release and Transfer Register (E-PRTR)[2] Regulation, which was revised by the Regulation – herewith 'Portal Regulation' (IEP-R). The register – herewith Portal – is available at this website https://industry.eea.europa.eu/. The Portal Regulation aims to enhance public access to information related to industrial emissions and facilitate public participation in environmental decision-making. The scope of the Portal Regulation is broader than the one of the IED, including further activities such as mining operations, aquaculture, and emissions from

[1] https://www.eea.europa.eu/publications/the-cost-to-health-and-the
[2] https://environment.ec.europa.eu/topics/industrial-emissions-and-safety/european-pollutant-release-and-transfer-register-e-prtr_en

landfills. The Regulation derives from the parent Kyiv UNECE Protocol on PRTRs[3] (2003).

The European Commission presented the proposal for the IED revision[4] and its proposal for a Portal Regulation (E-PRTR revision)[5] on 5 April 2022. Both instruments were approved by the Council on 12 April 2024[6]. The revised IED was published in the Official Journal of the EU (OJEU)[7] on 15 July 2024 and will enter into force on the twentieth day following publication (04 August 2024). EU Member States will have to incorporate the relevant provisions of the revised Directive into their national legislation until 01 July 2026. The Portal Regulation has been published in the OJEU on 2nd May 2024[8] it has become binding and applies directly in all Member States from 1st January 2028.

The EEB, together with other NGO partners, criticised the lack of ambition of the IED proposal, in particular in regards to missing drivers for decarbonisation[9]. A review clause to assess possible synergies of the interplay between the IED and the EU Emissions Trading System (ETS) Directive is further delayed to 2028, without any further clarification. Similar criticism emerged regarding the proposal for the Portal Regulation as it was ineffective to deliver a one-stop-shop tool for promoting benchmarking of environmental performance and permit ambition rating across the EU.

The main NGO reactions are outlined in the April 2022 joint assessment[10] and policy briefings[11] as well as the top 12 demands regarding the IED[12] and the top 10 points[13] for pollution prevention reporting fit for the digital age.

Positive outcomes and opportunities

Decarbonisation and circular economy have become explicit goals of the Directive, the BREF standards and the BAT definition

It is now official that one of the aims of the Directive is to "*continuously reduce emissions, to improve resource efficiency, and to promote circular economy, and decarbonisation, in order to achieve a high level of protection of human health and the environment taken as a whole*" (Art 1).

The BAT criteria listed in IED's Annex III have been amended to explicitly refer to decarbonisation and (risks to) biodiversity protection with a general principle to prevent or reduce to a minimum the

[3] https://unece.org/env/pp/protocol-on-prtrs-introduction
[4] https://environment.ec.europa.eu/publications/industrial-emissions-directive-proposal-revision_en
[5] https://environment.ec.europa.eu/publications/proposal-regulation-industrial-emissions-portal_en
[6] https://www.consilium.europa.eu/en/press/press-releases/2024/04/12/industrial-emissions-council-signs-off-on-updated-rules-to-better-protect-the-environment/
[7] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202401785
[8] Regulation (EU) 2024/1244 of the European Parliament and of the Council of 24 April 2024 on reporting of environmental data from industrial installations, establishing an Industrial Emissions Portal and repealing Regulation (EC) No 166/2006, OJEU of 2 May 2024 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1244&qid=1717166609477
[9] https://eeb.org/wp-content/uploads/2022/04/IED-and-PRTR-revision_NGO-Preliminary-assessment.pdf
[10] https://eeb.org/wp-content/uploads/2022/04/IED-and-PRTR-revision_NGO-Preliminary-assessment.pdf
[11] https://eipie.eu/briefings-by-eeb/
[12] https://eipie.eu/wp-content/uploads/2023/01/12-Points-for-a-pollution-prevention-framework-that-protects-people-and-environment.pdf
[13] https://eipie.eu/wp-content/uploads/2022/12/10-points-for-pollution-prevention-reporting-fit-for-the-digital-age.pdf

overall impact of the emissions on the environment.

The term 'best' of the BAT definition is also amended to explicitly refer to a high level of protection of the environment as a whole, including human health and climate protection (Art 3 (10) point c). It is also irrelevant if the techniques are used or produced across Member States.

Those changes are very useful signals to require decarbonisation measures within the future BREF reviews or new BREFs to be developed for batteries, mining and landfill activities (see revised scope), whilst human health protection was implicit, it does not harm to restate this explicitly.

A technique can no longer by claimed 'BAT' if it is not compatible with climate protection. Hence the use of fossil fuels in a combustion process with major greenhouse gas (GHG) emissions cannot be BAT any longer.

The core role of the new 'Innovation Centre for Industrial Transformation and Emissions (INCITE)' will be to collect and analyse information on innovative techniques, including emerging and transformative techniques, which contribute inter alia to minimisation of pollution, decarbonisation, resource efficiency, circular economy using less or safer chemicals (Art 27a).

Permit conditions and general binding rules should reflect the stricter BAT-AEL ranges

One of the main changes was to invert the default approach of permit writers aligning emission limits values (ELVs) to the lax (upper range) BAT levels in the implementation phase. In the future, the competent authority *shall set the 'strictest achievable* ELVs, and this shall relate to the analysis of the feasibility of meeting the *strictest end of the BAT-AEL range and demonstrating the best overall performance that the installation can achieve*.

Further added value is also expected for the countries setting BAT standards through national-level rules, so-called general binding rules (GBR). Therefore, and by analogy, the ministries in charge must consider *the strictest achievable emission limit values* and demonstrate *best performance* for categories of installations having similar characteristics (typically sectoral legislation). This is an important change to drive standards and national rules towards more ambition. Many countries such as Austria, Belgium, Germany, Denmark, France, the Netherlands, and Sweden, make use of those GBR.

Concretely this could mean the following if an ambitious implementation is carried out:

- **Iron and steel production:** Bag filters (or other technique options as effective) will have to be applied to all sinter strands so to achieve the lower end of the BAT-AELs range for dust (<1-15mg/Nm³), costly wet Flue Gas Desulphurisation or regenerative activated carbon process to reduce SOx emissions below 100mg/Nm³, and secondary deNOx Selective Catalytic Reduction (SCR) controls to achieve NOx levels below 120mg/Nm³ would have to be retrofitted. For coke oven plants this could mean the obligation to require wet oxidative desulphurisation to achieve residual hydrogen sulphide levels below 10mg/Nm³, current levels allow up to 500mg/Nm³, for dust a level of 1mg/Nm³ (instead of 20mg/Nm³) needs to be achieved, secondary deNOx retrofitting will be required to achieve levels below 350mg/Nm³. For Blast Furnaces the Iron and Steel BREF is too weak to trigger meaningful impacts except for the diffuse emissions aspects (dust), with a factor 15 tightening. For Basic oxygen furnaces (BOF), significant tightening would be expected on the dust parameter (1mg/Nm³ instead of up

to 20mg/Nm³).

- **Cement plants:** will have to install SNCR/SCR to achieve NOx levels <200mg/Nm³ (instead of levels up to 500mg/Nm³). Furthermore, operators would have to achieve SO2 levels <50mg/Nm³ (instead of up to 400mg/Nm³), dust levels <10 (instead of 20mg/Nm³). To be also noted that the current level for mercury emissions of 50µg/Nm³ is way too high to provide any meaningful impact on mercury abatement.
- **Large Combustion Plants:** For LCPs involving gas-fired combustion, existing natural gas turbines will have to comply with 10-15 mg/Nm³ (from 50 mg/Nm³) for NOx emissions, while natural gas boilers must comply with 50mg/m3 (instead of 100 mg/Nm³). Turbines using gas oil as fuel would have to ensure 35 mg/Nm³ (from 60 mg/Nm³) while boilers using gas oil or Heavy fuel oil (HFO) would have to ensure 2 mg/Nm³ (from 20 mg/Nm³). Most of these reductions should involve additional investments in SCR which can achieve the lower BAT limits. As far as coal and other solid fuel LCPs are concerned, most of them have a phase-out date by 2030/2035 and have either received short term derogations or invested in pollution abatement equipment to comply with the less strict BAT ranges of the BAT-Conclusions of 2017/2021. The dust emissions of coal/solid fuel should now move towards 2 mg/Nm³ (from 8-14 mg/Nm³), SO2 emissions should become 20 mg/Nm³ (from 180 mg/Nm³), and NOx emissions to 85 mg/Nm³ (from 175 mg/Nm³) and mercury emissions aligned to the stricter <1µg/Nm³ yearly average level.

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The downside however is that this 'technical feasibility assessment' for case-by-case permit reviews will have to be performed by the operator, which can easily argue that it is not 'feasible' (from a profit margin maximisation perspective) to apply stricter emissions levels, despite those being judged as economically viable conditions based on outdated information pre-dating a decade prior to effective application of those standards. There are no rules for the timing of providing such non-feasibility assessments and how to make those transparently available and subject to public scrutiny.

More worrying is the derogation possibility provided within Art 15(5), which has been kept largely unchanged except two more noteworthy tightenings: first the competent authority shall reconsider the validity of that derogation every 4 years. Secondly, the operator is obliged to provide an assessment of the impact of the granted derogation based on monitoring of the concentration of the pollutants concerned in the receiving environment. This means quite expensive emission monitoring requirements on soil and water pollution. The absence of negative impacts is ruled out for many persistent, bio-accumulative and toxic (PBT/vPvB) pollutants occurring from many industrial processes, such as mercury or other heavy metals.

<u>Proposed actions:</u>

- ✓ As the real impact of the permits' reviews will depend on how seriously the operators will conduct their feasibility assessment, it is naïve to expect they will conclude in a voluntary manner that their permit should be tightened. All strict BAT-AELs are indeed proven to be achievable by the sector under economically viable conditions. However, in many cases this will trigger a lock-in costly end-of-pipe pollution control instead of 'deep industrial transformation' (e.g., electrification of processes). Hence it may be more advisable to negotiate a closure plan so to force conversions on site, or rather focus on the tightening of the national rules applying for the whole of the sector (GBR) on top of

involvement in individual permit reviews.

- ✓ The European Commission will provide an implementing act setting out the methodology for assessing the disproportionality of costs vs. potential benefits regarding BAT derogation procedures, it will be key to provide for a full external cost internalisation, e.g., by using the Value of Statistical Life (VSL) method and by providing for a meaningful shadow carbon price in case of inaction.
- ✓ Damage controlling any use of that derogation requires vigilance by national groups. Any derogation procedure should be easily available through the Portal, however notification should reach the interested public before decisions are taken on the substance.
- ✓ Member States authorities shall require their operators to provide all the technical non-feasibility assessments by a given deadline, in particular for those Annex I activities which will not be subject to a revised published BREF before 2026. The assessments should be made publicly available through the Portal.

Environmental Management Systems related improvements

The use of information generated by Environmental Management Systems (EMS) is enhanced (Art 14a). Minimal requirements are set out as to what the EMS shall contain. Those following the EMAS[14] regime set out benchmarks of progress on environmental performance which the operator would have to follow. The revised IED refers to those elements and sets out minimal expectations, such as the setting of "*environmental policy objectives for the continuous improvement of the environmental performance and safety of the information*", which shall include minimal measures to that end relating to waste prevention, the optimisation of resource use and to prevent / reduce use or emissions of hazardous substances. This also relates to objectives and performance indicators (similar to the EMAS regime). A more systematic and broader requirement for a substitution assessment of all hazardous substances is provided. REACH[15] would rather focus on a subset of substances of very higher concern (SVHC). The substitution assessment shall cover all hazardous substances used and produced (Art 14a, para 1 point (d)). The operator will have to substitute and minimise their use and emissions. This provision is relevant for many industrial activities, in particular those relying on materials input with potential contamination with chemicals of concern, but also for tracking waste management actions. The EMS elements will however be considered as benchmarks and hence rather have an indicative nature, whilst Member States remain free to be more ambitious in implementation.

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Industry may claim 'double regulation' with REACH and hence not develop further the substitution assessment for all hazardous substances. Enforcement action is delegated to environmental verifiers which should be accredited; this could mean that authorities could shield themselves from any legal responsibilities in case of inaction. The content of the benchmarks is not further defined, as the minimal expectations regarding the "continuous improvement".

Proposed actions:

[14] https://green-business.ec.europa.eu/eco-management-and-audit-scheme-emas_en
[15] https://environment.ec.europa.eu/topics/chemicals/reach-regulation_en

- ✓ Identify relevant environmental verifiers and/or involve IMPEL[16] to carry out sector analysis on the content of those EMS.
- ✓ Define ambitious sector-level benchmarks on environmental performance and safety indicators, win support for extending / updating the EMAS reference documents for other activities e.g. steel and cement production.
- ✓ Ensure that the entire value chain is improving their environmental footprint (incl. on decarbonisation) as well as (safety) risk prevention at source.

Installation-level Transformation Plans towards a clean, circular and climate neutral production (by latest 2050)

One of the most forward-looking provisions is for the operator to set out a 'transformation plan' (TP) on how the installation will transform itself *during the 2030-2050 period* to *contribute to the emergence of a sustainable, clean, circular, resource efficient and climate-neutral economy by 2050, including deep industrial transformation*. The TP must be provided by latest 30 June 2030, and it shall be integral part of the EMS.

Where two or more installations are under the control of the same operator, or if the installations are under the control of different operators that are part of the same company, in the same Member States, these installations may be covered by one transformation plan. However, transformation information shall remain installation-specific and not at company level.

DANGER ZONE

However, it is for environmental verifiers (auditors) to assess the conformity of the plans with the requirements and minimal content by 30 June 2031 only, as set within a Commission delegated act to be provided prior to 30 June 2026 (Art 27d). The key shortcoming of this provision is the absence of clear and measurable key performance indicators as to what the meaning of 'clean'/'circular' actually is for the sector concerned (see possible recommendations section). There is a risk that this becomes a tick-box exercise without any screening as to the ambition and seriousness of the 'plans of good intentions' set out by the operators.

Proposed actions:

- ✓ Identify relevant environmental verifiers and/or involve IMPEL to carry out sector analysis on the content of those TPs.
- ✓ Define the minimal expectations of content and ambition that is expected for each TP, with intermediate milestones and key performance indicators (at sector level), concerning at least the following five headline indicators: (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

[16] https://www.impel.eu/en

indicators.

- ✓ The TP should also contain a plan for investments and concrete actions with intermediate target(s), dedicated arrangements with staff for its implementation and provisions allowing tracking of progress against the applicable intermediate target(s).
- ✓ The content of the TP shall be transparently reported in the Portal, enabling comparability of ambition set within those plans on the above mentioned headline indicators at company / country / sector level.

E-permit system to be in place by 2035 latest

Despite opposition from Member States an e-permit system is to be put in place which shall also support more timely and transparent access to pollution data (Art 5 - see Section 2 on EEA Industry Portal). The e-permit system shall be operational by latest 2035.

Strengthened requirements on water protection

In case of incidents that may have consequences also to human health or environmental impacts, the operator must take immediate measures to limit the consequences (Art 7). This obligation is strengthened in case of events affecting pollution of drinking water resources, including transboundary resources or affecting wastewater infrastructure in the case of indirect discharges.

The provisions on indirect discharges have been tightened (Art 15(1)) so to not impede the functioning of downstream urban wastewater treatment plants, but also with a view to recover resources from the wastewater stream. A derogation from performance-based BAT levels (BAT-AEPL) may not be granted if it would deplete water resources (Art 15(6)).

Requirements ensuring the protection of soil and groundwater have been extended to the protection of surface water and catchment areas for abstraction points of water intended for human consumption as referred to in article 7 of Directive (EU) 2020/2184. Furthermore, the monitoring frequency for groundwater has been increased to once every 4 years (from once every 5 years), and for soil to once every 9 years (from once every 10 years).

Considering that the activities (metalliferous ones) mining is now subject to scope inclusion and that those activities involve wastewater pollution can be used as an entry point for permit review triggers and tightening.

New activities subject to future rules (metalliferous mining, batteries, landfills)

New activities have been included in the scope, for which BREFs would be developed in the implementation phase of the revised IED.

Due to resistance from mainly the German government and the mining industry, the inclusion of mining activities in the scope has been limited: only the mining of specific ores (bauxite, chromium, cobalt, copper, gold, iron, lead, lithium, manganese, nickel, palladium, platinum, tin, tungsten and zinc) and onsite processing will be subject to the revised IED.

The production of batteries (other than exclusively assembling) will also be covered, if the production capacity is above 15 000 tonnes of battery cells/year. The real impact may be limited to 5-20 sites as of now but will increase (depending on the demand for uptake of electric vehicles and storage solutions for renewable electricity).

The revised IED also foresees the adoption of BAT conclusions so to address environmental issues related to the operation of waste landfills, incl. significant emissions of methane, and issues linked to hazardous pollutants releases (incl. PFAS) from the liquid waste-water phase.

Proposed actions:

- ✓ By 30 June 2028 (and every 5 years thereafter), the Commission shall submit to the European Parliament and to the Council a report reviewing the implementation of this Directive (Art 73), including an assessment of the need to control emissions from the on-site treatment and extraction of non-energy industrial minerals used in industry other than for construction, as well as the need to control emissions from the on-site treatment and extraction of ores which are newly carried out in the EU. Stakeholders interested in achieving a comprehensive coverage of the mining sector under the IED regime should follow-up on this assessment.
- ✓ Stakeholders interested in defining 'state of the art' criteria for the mining of the ores included under the revised scope, should get involved in the upcoming Mining BREF, which will officially start in second half of 2024.
- ✓ Stakeholders interested in preventing methane emissions and addressing other pollution releases, e.g. PFAS from landfills, and define standards for improving urban mining should get involved in the upcoming Landfill BREF (starting in second half of 2024 tbc).

Improvements for the BREF elaboration (Sevilla) process

The future BAT conclusions need to enable and drive the transformation towards a zero-pollution, climate- neutral, resource efficient industry, and need to be fully compatible with this vision. The most important BREF process related changes are summarised as below:

- The definition of BAT has been amended to include human health and climate protection.
- The criteria for the determination of the BAT have been similarly amended to include considerations for the protection of human health, the limitation of the use of substances of very high concern, biodiversity protection and decarbonisation.
- The BAT conclusions should now identify emerging techniques and best available techniques that industrial operators may implement to innovate and transform their processes towards the 2050 goals.
- The principle of continuous improvement of the environmental performance and safety of the installation, on the basis of specific objectives and performance indicators, is highlighted.
- The BAT conclusions should now include binding environmental performance levels (incl. resource efficiency levels) associated with BAT (BAT-Associated Environmental Performance Levels or BAT-AEPLs), environmental performance values associated with emerging techniques, and benchmarks (for other cases) to be included in the EMS.

- The provisions on the setting of emission limit values (ELVs) have been clarified to explicitly demand that operators and authorities consider the entire range of the BAT-Associated Emission Levels (BAT-AELs), and the feasibility of setting an ELV at the strictest achievable level for a given installation. This means that the relevance of lower BAT-AEL / stricter BAT-AEPL ranges will increase from a legal perspective.

- The provisions on the control and substitution of hazardous chemicals have also been strengthened, and the role of the European Chemicals Agency (ECHA) in the BREF process has been formalised.

- Whilst this already provided in the BREF guidelines, the duration of a review shall not exceed 4 years and the review cycle of each BREF "*shall aim*" to not exceed 8 years period.

Proposals for action:

The reform of the BREF review process, and hence the related BREF guidelines[17] is to be expected to be concluded by 2026. The elements that we need to secure are the following:

- The techniques should systematically appear in a hierarchical order, e.g., pollution abatement techniques shall be categorised based on their effectiveness to first prevent, or if this is not practicable, to reduce pollution in an integrated manner. The same approach shall apply to techniques implemented for a decarbonised (promotion of renewable energy production and use) and more resource efficient operation (techniques ranking according to the 'waste hierarchy' of the EU Waste Framework Directive[18].
- The future BAT conclusions should especially determine which techniques, and under what circumstances, constitute 'deep transformation techniques' for a given sector; and which techniques and processes are incompatible with the transformation vision (and timeline) and should be phased-out.
- The BREF guidance shall further provide (Key) Performance Indicators (KPIs) as to what expectations/outcomes the BAT conclusions shall deliver at installation (or sector) level. Some ideas have been provided by the EEB in the context of the development of the Transition roadmaps for Energy intensive industries[19], and an NGO-drafted briefing on the need for a forward-looking framework for the transformation of industrial production (see section III of the briefing)[20] .
- The reviews of the BREFs for energy-intensive sectors (steel, cement) should be prioritised, in line with IED Article 13(5) (highest potential to improve the protection of the environment).
- The process needs to be fast-tracked if the 8-year review cycle and dynamic nature of BAT is to be respected.

[17] See 2012/119/EU: 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 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012D0119
[18] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32008L0098
[19] https://docs.google.com/document/d/16TEJB8iwc7JvVJtFLy6kWNxIkISUaKS1AdLI7yZmnLY/edit
[20] https://eipie.eu/wp-content/uploads/2022/07/IED-briefing_innovation_v01_15July2022.pdf

- A different governance model is needed, where consensus-finding will be fact-checked against the first point above (compatible with the 2050 transformation vision), and where industry frontrunners (technique providers and operators) will be adequately represented.
- Regarding confidential business information (CBI) claims, amended Art 13 shows a first attempt to address the issue but falls short of clarifying the actual procedure of validation and handling of CBI claims. This shall be elaborated in the revised BREF guidance. Furthermore, Art 13 does not provide a definition for CBI, hence it would be useful to include at least a shortlist of what CBI could relate to. Any information relating to environmental performance shall be ruled out. Please see the EEB position on CBI[21].

For more information, please see an EEB paper[22] summarising our preliminary proposals for an EU BREF process fit for the future.

Other elements

In case of incidents that may have consequences also to human health, the operator must take immediate measures to limit the consequences. The impact of these provisions will again depend on proper enforcement, incl. legal actions as a response to potential breaches at national level.

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The provisions' triggers relate to any incident or accident 'significantly' affecting human health or the environment, with what is 'significant' enough not clarified. In the case of waste co-incineration plants, incl. cement plants, a possible tightening relates to improved requirements in relation to dioxins (PCCD/F) and dioxin-like PCB emission controls at the start-up and shut-down phases (Art 48), which phases are interpreted by part of industry as not being part of the plant's 'normal operation' and therefore not subject to requirements. Emissions of PCDD/F and dioxin-like PCBs shall as far as possible be prevented or minimized in the entire cycle of operation; it is important that this is acknowledged and addressed by the updated provisions. These additions have been opposed by the industrial association CEMBUREAU, even though those provisions re-iterate and thereby strengthen wording already included the BAT-conclusions section of the BREF on waste incineration[23] (see BAT 5 and 18 notably). The EEB, with the support of the NGO Zero Waste Europe, brought those provisions to the attention of decision-makers, since often such 'soft' (meaning non-quantitative BAT) are being overlooked in new permit applications/updates for waste incineration.

[21] https://eipie.eu/wp-content/uploads/2021/07/2021_01_20-Annex-to-CBI-discussion.pdf
[22] https://eeb.org/library/proposals-for-an-eu-bref-process-fit-for-the-2050-goals-of-climate-neutrality-zero-pollution-and-circular-economy/
[23] https://eippcb.jrc.ec.europa.eu/sites/default/files/2020-01/JRC118637_WI_Bref_2019_published_0.pdf

Negative outcomes and damage control actions

Long transitional periods for effective permit updates and extra 'crisis' derogation

The tightened requirements highlighted may be delayed up to a maximum of 12 years for existing installations (transitional provisions). However, our estimation is that it will probably not take that long: a permit reconsideration takes place in average every 8 years, with the main permit review trigger being the availability of revised BAT conclusions; in addition, further permit review trigger cases are listed in Art. 21(5):

- if the pollution is of such significance that ELVs need to be revised, or new such values included in the permit (this is typically the case for steel and cement production) or
- if the operational safety requires other techniques to be used (unlikely to be triggered) or
- if it is necessary to comply with a new or revised Environmental Quality Standard. This may be triggered in particular due to the water-related and air quality-related EU legislation currently under review.

Industry further succeeded in winning a new 'crisis situation' derogation, which may be triggered in case of *a crisis due to extra ordinary circumstances beyond the control of the operator and Member States, leading to severe disruption or shortage* of [resources, materials and equipment essential for the operator to perform its activities, of public interest, in compliance with the applicable ELVs or performance limit values, or essential resources, materials or equipment, that the operator produces in order to compensate such shortage or disruption for reasons of public health or public safety, or other imperative reasons of overriding public interests]. That derogation shall be notified to the Commission (which may raise objections within 2 months) and may not exceed 3 months but may be extended by another 3 months due to persisting public interest reasons.

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Vigilance is key to avoid abusive use of this derogation. There has been a temporary shortage of urea solutions for DeNOx controls for waste incinerators shortly after the Russian war on Ukraine which triggered some issues for operators to comply with environmental regulations. In other cases, however, such as in the case of steel and cement production, it is unlikely that producers would attempt to use this derogation since it is unlikely that there is any shortage that is beyond the control of both the Member States and the operators, further those materials are not of imperative reasons overriding public interests.

Extra 10 years derogations for stricter air pollutants limits for large combustion plants on small isolated systems (islands)

The existing IED (2010) has offered many derogations for certain operators of large combustion plants (LCPs) to evade stricter minimal emissions limit values (ELV) set in its Annex V that were due to be complied with at the latest by 2016. Art 34 allowed a further delay of the stricter Annex V ELVs to LCPs located in 'small isolated systems' (islands) up to 31st December 2019 (2020).

This means that these combustion plants had continued to emit very high levels of NOx, SO2

and dust emissions in non-compliance with the stricter levels set back in 2010, which could be met by similar plants. The list of eligible plants (accepted as such by the competent authorities was set before 7th January 2013. However, with the new IED, the governments of Greece and Cyprus managed to blackmail other Member States to accept adding a further 10 year "non-compliance situation fix retro-actively". In other words, a breach of pollution limits situation existing since 2020 and 2024 got fixed through the backdoor and extended even out to 2030, this the new IED (Art 34a). This means that those operators that have done no effort on pollution prevention will get rewarded with another 10 years of derogation – at the expense of public health- on top, despite the issue known back in 2013.

The EEB Industrial Plant Data Viewer indicates 86 derogations entries[24] under Art. 34. The combustion plants are mostly fuelled by biomass or liquid fuels. Apart from 2 Portuguese installations which are in the final list of Article 34 derogation since 2017, the rest of the installations are all from Spain, Cyprus and Greece. All Spanish installations have entered the Art 34 derogation in 2021, a year after the legal duration of the derogation has ended, this points to very likely legal breaches or a serious reporting deficit. In 2019, 18 Greek plants and 4 Cypriot plants were in the Art 34 derogation in 2019 and will most likely maintain it beyond 2020. It is worth checking the particular situation of the Greek (e.g. Linoperamata, Chania and Rodos) and Cypriot Plants e.g. Dhekelia (6 plants) and Vassilikos Power Station (4 plants). While the new extension proposed for the derogation is only applicable from the date of entry into force of the revised IED (likely in July 2024), these combustion plants have likely continued to pollute with pre 2020 emission limits for the last 4 years (2020-24), in breach of the IED requirements.

Permit review extension by +4 years for 'deep industrial transformation' projects

This initial idea (of industrial association EUROFER) for a further derogation on permit reviews made its way in through the European Parliament, but without a proper definition. It is now referred to as '*implementation by industrial operators of emerging techniques or best available techniques involving a major change in the design or technology of all or part of an installation or the replacement of an existing installation by a new installation allowing an extremely substantive reduction of emissions of greenhouse gases in consistency with the objective of carbon neutrality and optimising environmental co-benefits, at least to the levels that can be achieved by techniques identified in the applicable BAT conclusions, taking into account cross-media effects.*'. The benefit for industry to apply "deep industrial transformation" means a further +4 years compliance deadline (the current maximum is 4 years from publication date of the BAT Conclusions in the OJEU) in the permits (Art 27e).

Whilst this looks like a weakening, there are positive elements subject to damage control by Member States and NGOs: firstly, the definition refers to "extremely substantive reduction of GHG emissions in consistency with the objective of carbon neutrality and optimising environmental co- benefits', these being cumulative conditions. Secondly, what qualifies as 'deep transformation' is to be equivalent to what is identified in applicable BAT conclusions (agreed with Member States and NGO participation). Thirdly, the operator needs to report annually to the

[24] See https://eipie.eu/projects/ipdv/

authorities on progress on the uptake of deep industrial transformation, the resource and efficiency and emission levels achieved, as well as implementation milestones. A similar derogation from permit updates is provided for installations scheduled to close within an 8-year schedule as part of sites undergoing deep industrial transformation (Art 27e (2)). Information will also be reported to the European Commission as per Art 72.

This change connects to the new definition of 'emerging technique', *which is a novel technique for an industrial activity that, if commercially developed could provide either a higher general level of protection of the environment and human health or at least the same level of protection of human health and the environment and higher cost savings than existing best available techniques.* In those cases, the compliance deadline is extended by + 2 years (6 years in total). This change is similar to what already exists in the current IED, but it was limited to 9 months only.

Proposed action:

- ✓ Real progress and ambition as to decarbonisation will depend on the final wording of the revised BAT conclusions, for the revised EU BREFs. BREFs currently lack for most any qualitative and quantitative levels as to resource and energy consumption.
- ✓ In order to succeed we need to frontload the BREF review processes to make the case for the uptake of deep transformation, incl. decarbonisation techniques (with reference installation data) and win Member States support on our proposals. Supporting work by INCITE will also be key.

Energy efficiency standards still optional / ambivalent wordings on resource use standards as to implementation

Environmental performance includes resource consumption levels and efficiency (incl. for the use of materials, water, and energy) and those elements should be addressed in the EU BREFs. This is already clear due to the current wording of Article 13.2(a) (unchanged), which explicitly requires the information exchange to address performance of installations and techniques in terms of emissions [...] and *consumption and nature of raw materials, water consumption, use of energy and generation of waste*.

The changes to Annex III further explicitly state that *the consumption, nature of raw materials used in process and resource efficiency and re-use and decarbonisation* are now included in the BAT determination criteria.

On the other hand, the industry push to declare energy efficiency requirement optional for combustion units or other units emitting carbon dioxide on the site of activities that are covered by the EU-ETS has been kept (Art 9(2)). The Commission proposal was proposing to make energy efficiency requirement binding, which was overruled negatively by both Council (due to Germany's last-minute change of position due to the FDP (German branch of RENEW) affiliated Ministers lobby, on behalf of German industry) and the European Parliament (following the dominant energy intensive industries line).

At the same time, and in contradiction to this 'optional' energy efficiency requirements, the general obligations of the permit conditions require:

a) *energy to be used efficiently and production of renewable energy is promoted*" (Art 11, point f), *material resources and water are used efficiently, including through re-use* (Art 11 fa);

b) that the minimal content of permit obligations provide *information on the raw and auxiliary materials, substances the energy and water used in or generated by the installation* (Art 12 (1));

c) as part of the EMS, cross linked as a 'general principles governing the basic obligations of the operator' as per Art 11 (fc), the operator must as an environmental policy objective *continuously improve the environmental performance and safety of the installation, which shall include measures to optimise resource and energy use and water reuse;*

d) 'without prejudice to Article 9(2)', the competent authority shall set binding ranges for environmental performance that may not be exceeded [as laid down in BAT conclusions], 'in addition' it refers to 'indicative environmental performance levels concerning waste and resources other than water, which are not less strict than the binding ranges referred to [in BAT Conclusions]'. In conclusion there are quite contradictory provisions as what is the legal status of energy efficiency related requirements.

A new derogation option has also been introduced for the performance-based BAT levels (BAT- AEPL). Those derogations may be granted due to significant negative environmental impact or significant economic impact related to the local conditions or technical characteristics of the installation concerned. What this exactly means is not clear, in any case a safeguard clause is inserted that it should not cause any significant environmental impact, including depletion of water resources (Art 15(6)). One can hence argue that energy performance requirements (as other BAT-AEPL) are legally binding, but the competent authorities may grant a derogation based on the above-mentioned criteria.

Proposed action:

- ✓ There is a very ambivalent wording as to the binding nature of energy efficiency requirements, which should be exploited through court proceedings.
- ✓ The EU ETS-IED interface will be reviewed again by 30 June 2028 as well as the need to provide Union wide minimum requirements for ELVs based on impact of the activities on the environment as a whole and human health. This will also be the deadline for the inclusion of non-energy industrial minerals (other than metals) and on-site extraction of ores that are newly carried out in the EU. The review will also consider the exclusion threshold for hydrogen production by electrolysis of water, set at a production capacity of 50 tonnes per day.

Trading off people's health and empty shell compensation rights

It is well known that pollution resulting from industrial activities can cause health issues and consequently cost the economy billions[25]. While the initial proposals, aimed at strengthening the right to compensation for victims of illegal pollution and sanctions, have been weakened substantially, we nonetheless welcome some overall improvements in this area. Stronger enforcement provisions are essential to achieve a deterrent effect and thus greater compliance with the IED.

NGOs had demanded a strengthening of the existing penalties provision by setting turnover-linked minimum levels for financial penalties. The final deal is set to at least 3% of the annual Union-wide turnover of the operator in the financial year preceding the infringement year for

[25] https://www.eea.europa.eu/highlights/industrial-air-pollution-in-europe

"most serious infringements" (Art 79). Specifications were also added that penalties shall effectively deprive the relevant operator of the economic benefits derived from the infringement and take into account the population or environment affected as well as the repetitive or singular character of the infringement in question.

While trade-offs and misleading claims[26] weakened its scope, the EU did agree on a new compensation right for citizens affected by illegal pollution in the revised IED for the first time in EU environmental law (Art 79a). In transposing and applying the compensation right, Member States will have to ensure the principle of effectiveness – it must therefore truly be possible in practice to obtain compensation before courts in appropriate cases. Unfortunately, vulnerable victims suffering from cancer or heart diseases will not be able to directly rely on the IED to claim their right to bring collective actions and be represented by civil society organisations in complex court proceedings – however in many cases national legal systems may provide for such processes.

Proposed action:

- ✓ It is now on Member States to ensure effective compensation rights in their national law. The principle of effectiveness will also apply to Member States' courts reviewing compensation cases.
- ✓ Regarding financial penalties, competent authorities shall take the guidance included in the revised IED seriously and impose truly deterrent penalties.

Regulatory backtracking on intensive livestock activities

The most severe deception relates to discussions around provisions for intensive livestock rearing activities. The outcome is largely the result of denial of truth and facts about responsibilities of those industries to improve their business model towards environmental and human health protection.

In Europe, agricultural activity is the source of 93% of ammonia emissions[27], 54% of methane[28] emissions and 73% of water pollution[29]. Animal farming is responsible for between 12% and 15%[30] of total EU greenhouse gas emissions. According to a study[31] by the Centre for Research on Energy and Clean Air (CREA), emissions from agriculture are responsible for an estimated 72,500 annual deaths due to exposure to PM2.5. The countries whose emissions cause the greatest impacts are Germany, France and Italy. Improvements to agricultural practices (i.e. to apply economically and technically viable best available techniques mainly linked to ammonia emissions) could lead to avoiding 27 000 deaths per year from air pollution and economic costs worth €75bn per year. Despite that, MEPs supporting a weakening of standards for the livestock sector did, as the industry representatives of the sector (mainly French Pig and Poultry industries) not consider at any moment the EUs' methane (climate) and ammonia (air pollution) or nitrates (drinking water pollution) or algae bloom problem. The result is a significant regulatory

[26] https://www.clientearth.org/latest/documents/debunking-misleading-claims-about-the-ied-compensation-right/
[27] https://www.eea.europa.eu/data-and-maps/dashboards/necd-directive-data-viewer-7
[28] https://www.eea.europa.eu/en/datahub/datahubitem-view/3b7fe76c-524a-439a-bfd2-a6e4046302a2
[29] https://iopscience.iop.org/article/10.1088/1748-9326/10/11/115004/pdf
[30] https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1365-2486.2012.02786.x
[31] https://eeb.org/wp-content/uploads/2023/04/Upgrading-Europes-air.pdf

backtracking compared to the 2010 situation:

Since 1996 (under the framework of Directive 1996/61/EC[32]), intensive pigs >2000 and sows >750 as well as >40.000 poultry (Annex I Section 6.6) rearing were regulated through a full permit regime. The current IED (of 2010)[33] confirmed the thresholds and strengthened certain aspects in relation to permit conditions, reporting, access to justice and information as well as monitoring requirements (see its Chapter II). Operators were due to comply with the BAT-Conclusions for Intensive rearing of Pigs and Poultry[34] by latest 21/02/2021. No single opposing view was expressed by the industry associations involved, which is very a-typical but good indicator of weak ambition (see the 2017 IRPP BREF[35], search page 812). The changes in scope relate mainly to pigs and poultry (see table below).

DANGER ZONE

The new IED would however constitute a regulatory backtracking on those Annex I Section 6.6 activities, because the Chapter II IED provisions would no longer apply, namely the following:

- No full permit regime with strong public participation, access to justice and reporting requirements – this may constitute a serious infringement to the Aarhus Convention provisions.
- the possibility to have a notification system (Art 4).
- No more clear measures and standards to apply (IRPP BREF in a legal vacuum).
- No more minimal soil and groundwater monitoring obligations – Art 16.
- No more baseline report – Art 22.
- No more minimal inspections (every 3 years) – Art 23.

For many new features of the revised IED, the livestock sector got full exemptions, e.g.:

- No need to elaborate an environmental management system (new Art 14a),
- No requirement to elaborate a Transformation Plan (new Art27d)
- No more strict BAT enforcement and monitoring provisions (new Art 15).

Further to that:

- No more cattle inclusion – which was intended to be covered as from 150LSU in the initial proposal, as the trade-off for all this deregulation and backtracking on pigs and poultry.
- A fast track 'tick box approach" light touch permit/registration regime for all pigs and poultry with a slight theoretical broader cover compared to the 1996 situation, but with thresholds far higher than already in place in Member States, incl. France that invented this light touch regime back in 2013, called "Enregistrement" will be generalised at the EU level. It is useful to compare the scope coverage with the current French system.

[32] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31996L0061&qid=1702026572079
[33] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010L0075&qid=1702026940547
[34] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02017D0302-20170221
[35] https://eippcb.jrc.ec.europa.eu/sites/default/files/2019-11/JRC107189_IRPP_Bref_2017_published.pdf

Animal species (LSU factors)	**Threshold France since 2013**	**Threshold revised IED**	**Threshold IPPC 1996**	**Difference revised IED compared to French (2013) situation** Red means weakening
Pigs >30kg (0,3)	450 [1]	1167 but with exclusion*	2000	-717 no extensive regime derogation
Piglets <20kg (0,027)	2 250 [1]	12,963 but with exclusion*	2000	-10 713 no extensive regime derogation
Sows (0,5)	150 [1]	700 but with exclusion*	750	-550 no extensive regime derogation
Poultry	[2]	(280LSU)	40 000	
-laying hens (0,014)	30 000	(300 LSU) = 21 428	40 000	+ 8 571
-Broilers (0,007)	35 294- 40 000	40.00	40 000	-4706 (coquelets=cockerel), status quo broilers
-Turkeys (0,03)	8 571 / 10 000 / 13 636 [3]	9 333	40.00	-762 + 4 333 ("light" turkey)
-Ducks (0,01)	15 000– 30 000 [3]	28 000	4 0000	-13 000 +2 000 only Platyrhynchos Anas
-Geese (0,02)	10 000 [3]	14 000	40 000	-4 000
-Ostriches (0,35)	1 [3]	800	40 000	
-other Poultry (fowls / quails etc) (0,001)	240 000	280 000	40 000	-40 000
-mixed with laying hens	Aggregation rule	280LSU with 0,93 as a "weighing factor for laying hens"		no extensive regime derogation
Mixed Pigs and hens	Aggregation rule	380 LSU with exclusion pigs for extended farming + organic		no extensive regime derogation

For ostriches but also other species like Dromaius novaehollandiae and Rhea americana rules apply as from 1 animal (see notably Arrêté 02/04/2001 here)

**** Exclusions for a) organic farming and/or b) 'extensive production' (2LSU/ha feed equivalent) .***

[1] Rubrique ICPE 2102, Arrêté du 27/12/2013 [2] Rubrique ICPE 2111, Arrêté du 27/12/2013

[3] The French system differentiates ducks: only the Anas platyrhynchos ('canard colvert') threshold is 30.000, all other ducks (fattening, to roast, reproducers threshold is 15 000. For Turkeys there are 3 classes: "light"= 13 636, "medium" = 10 000, "heavy"= 8 571. Other webbed footpoultry = "palmipède" poultry that are fattened have a threshold as of 4 285.

Proposed action:

- ✓ Real impact will depend on whether Member States will follow the regulatory backtracking at national level, despite the commonly applied "non regression principle" in human health and environmental protection rules.
- ✓ Shaping the upcoming "operating rules", which will follow a Sevilla Process bis procedure, will be key. We expect the industry and pro livestock like-minded Member States delegates to keep protection ambition as low as possible. From NGOs perspective, we regard the EMAS reference standard for agriculture as a useful starting point. A positive element is that those operating rules must be 'consistent with Annex III (the BAT determination criteria), which explicitly mention decarbonisation and biodiversity protection. This is a very useful new element for the livestock sector.

Next steps / overview

Key dates

- **24 April 2024:** formal adoption of the revised IED by the EU institutions.
- **15 July 2024:** publication in the Official Journal of the EU.
- **04 August 2024**: entering into force (20th day following publication).
- **By 01 July 2026:** transposition by EU Member States.
  Note: the application of some Articles is subject to transitional periods. Please see the Article on 'Transitional Provisions'.
- **By 30 June 2028 and every 5 years thereafter,** the Commission shall submit to the European Parliament and to the Council a report reviewing the implementation of this Directive. The report shall include information on activities for which BAT conclusions have or have not been adopted pursuant to Article 13(5) of this Directive, take into account the dynamics of innovation, including emerging techniques, the need for further pollution prevention measures and the review referred to in Article 8 of Directive 2003/87/EC. That report shall include an assessment of the need for Union action through the establishment or updating of Union-wide minimum requirements for emission limit values and for rules on monitoring and compliance for activities within the scope of the BAT conclusions adopted during the previous five-year period. The Commission shall further review: (a) the need to control emissions from onshore and offshore exploration and production of mineral oil and gas; (b) the need to control emissions from the on-site treatment and extraction of non-energy industrial minerals used in industry other than for construction, as well as the need to control emissions from the on-site treatment and extraction of ores which are newly carried out in the Union; and (c) the need to revise the activity threshold in Annex I for the production of hydrogen by electrolysis of water. The Commission shall include the results of that review in the first of the reports to the European Parliament and to the Council.

INCITE

- **21 June 2024:** launch of INCITE (IED Article 27a).
- **By end 2025:** the Commission shall adopt an implementing act setting out the detailed arrangements necessary for the establishment and functioning of INCITE.
- **2025 – 2030:** INCITE publishes sectoral scoreboards and gathers information on innovation and transformative techniques.

Combustion plants, parts of small isolated systems

- 05 February 2025 (latest): this deadline concerns combustion plants that are part of a small isolated system and are exempted from compliance with specific requirements (see IED Article 34a) until end 2029. The EU Member States that provide exemptions shall implement a compliance plan covering the combustion plants that benefit from such exemptions. Not later than 05 February 2025, Member States shall communicate their compliance plan to the Commission. Member States shall report to the Commission on the progress made in relation to the actions described in the compliance plan not later than 05 February 2026, and at the end of each subsequent calendar year.

Environmental Management System (EMS)

- **By 31 December 2025:** the Commission shall adopt an implementing act on which information in the Environmental Management System (EMS) (IED Article 14a) is relevant for publication.
- **By 01 July 2027:** operators shall have prepared, implemented, and undergone first audit for the EMS (except for installations referred to in Article 3(4)). The EMS shall be reviewed periodically to ensure that it continues to be suitable, adequate and effective. The EMS shall be audited at least every 3 years.

BREFs

- **By 01 July 2026:** the Commission shall revise Implementing Decision 2012/119/EU (the rules of the 'Sevilla process', the process of drafting the BREFs).
- **Mid-2024 – 2025 (tentatively):** the drafting of new BAT conclusions is initiated for the mining of metal ores, battery gigafactories, and waste landfills. The drafting process shall not exceed 4 years for each individual BREF and shall aim at an 8-year review cycle.
- **2026 (tentatively):** the revision of existing BAT conclusions is initiated; the BREF on iron and steel production will be prioritised. The drafting process shall not exceed 4 years for each individual BREF and shall aim at an 8-year review cycle.
- **Compliance deadlines:** the new or revised BAT conclusions must be complied with at the latest 4 years after publication date; 8 years if undergoing 'deep transformation' as per IED Art. 3(9a)). The Directive further states a fixed date by when the provisions should be complied with at the absolute latest; this date is set to max 12 years for existing activities.

Transformation Plans

- **By 30 June 2026:** the Commission shall adopt a delegated act on the content of Transformation Plans (IED Article 27d). These plans will be included in the EMS.
- **By 30 June 2030:** the first Transformation Plans are produced (energy-intensive industry mainly, activities under Annex I, points 1, 2, 3, 4, 6.1 a, and 6.1 b). No later than a year after, the conformity of the transformation plans shall be assessed by audit organisations. Operators of installations carrying out other activities listed in Annex I are required to produce transformation plans as part of the permit reconsideration (and update) following the publication of decisions on BAT conclusions published after 1 January 2030. Similarly, no later than a year after the review is completed, the conformity of the transformation plans shall be assessed by audit organisations.
- **By 31 December 2034:** the Commission shall review and, where appropriate, revise the delegated act on the content of Transformation Plans (IED Article 27d).

Reporting of information by the Member States

- **By 05 August 2026**: the Commission will update the implementing decision setting out the type, format and frequency for the reporting of information by the Member States.

Compliance assessment

- **By 01 September 2026:** the Commission shall adopt an implementing act establishing the method for assessing compliance (IED Article 15a) under normal operating conditions with

emission limit values set out in the permit with regard to emissions to air and water.

Livestock rearing

- **By 01 September 2026:** the Commission shall adopt an implementing act to establish Uniform Conditions for Operating Rules (Article 70i) for livestock rearing (activities in Annex Ia). The Commission shall assess the impacts of the implementation of the operating rules and submit, by 11 years after the entry into force of the implementing act, a report to the European Parliament and to the Council on the results of that assessment.
- **By 05 August 2028:** this deadline concerns installations engaging in livestock rearing activities (Article 70b, aggregation rule). The Commission shall publish guidelines on the criteria for considering different installations to be a single unit.
- **By 31 December 2026:** the Commission shall assess the need for Union action to: (a) comprehensively address the emissions from the rearing of livestock within the Union, in particular from cattle; and (b) further achieve the objective of global environmental protection with respect to products placed on the Union market, through the prevention and control of emissions from livestock farming, and in a manner consistent with the Union's international obligations. The Commission shall report the results of that assessment by 31 December 2026 to the European Parliament and the Council. The report shall be accompanied by a legislative proposal where appropriate.

'First of a kind' permitting and e-permitting

- **As of mid-2024:** the Commission will draft guidance on best practices for implementation, incl. for 'first of a kind', and e-permitting.
- **By 31 December 2035:** EU Member States shall develop systems for the electronic permitting of installations and implement electronic permitting procedures.

Emissions from waste (co-)incineration

- **01 September 2024-2029 (within this period, exact date tbc):** the power to adopt delegated acts referred to in IED Article 48(5) (regarding continuous measurements of emissions into the air of heavy metals and dioxins and furans from waste (co-)incineration), and Article 74 (regarding the adaptation of Parts 3 and 4 of Annex V, Parts 2, 6, 7 and 8 of Annex VI and Parts 5, 6, 7 and 8 of Annex VII to scientific and technical progress) shall be conferred on the Commission during this period. The Commission shall draw up a report in respect of the delegation of power not later than 9 months before the end of the 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than 3 months before the end of each period.

Actions announced, but no specific timeline noted in the Directive:

- the Commission shall adopt an implementing act to establish a standardised methodology for assessing the disproportionality between the costs of implementation of the BAT conclusions and the potential environmental benefits (linked to IED Article 15.4 derogation from binding emission levels).
- the Commission shall similarly establish, by means of implementing acts, a standardised methodology for assessing whether the achievement of performance levels associated with BAT conclusions will lead to a significant negative environmental impact, including cross media effects, or a significant economic impact (linked to IED Article 15.6 derogation from binding performance levels).
- 'The Commission shall adopt and, where appropriate, regularly update guidance on the criteria for the appraisal of environmental risks.' (IED Article 23(4)).

Regulation establishing the Industrial Emissions Portal: main outcomes of the review

Background

As aforementioned, the co-legislators further agreed to the so-called 'Industrial Emissions Portal Regulation' (IEP-R), which aims to enhance public access to information related to industrial emissions and facilitate public participation in environmental decision-making.

Reporting of environmental data from industrial installations is provided due to IED obligations but

also through the European Pollutant Release and Transfer Register (E-PRTR)[36] Regulation of 2006, which was amended by the (IEP-R). The register – herewith Portal – is available at this website https://industry.eea.europa.eu/.

The scope of the E-PRTR is broader than the one of the IED, including further activities such as mining operations, aquaculture, and emissions from landfills. The Regulation derives from the parent Kyiv UNECE Protocol on PRTRs (2003). The European Commission presented the proposal for the revision of the E-PRTR on 5 April 2022[37]. The IEP-R was published in the Official Journal of the European Union on 2nd May 2024[38].

The main shortcomings of the current framework are as follows: the current Portal does not allow EU-wide benchmarking of the environmental performance of industrial activities covered by the IED (performance data is provided in different format, in tonnes per site and year in the Portal, whilst pollution prevention standards under the EU BREF benchmarks are mostly expressed in concentrations), permit conditions in force nor compliance information are not directly integrated, making data not comparable at Union level for similar activities in a few clicks. Data related to inputs (e.g., water and energy consumption) is not made available. Information is not put in context: it is difficult for citizens to understand the scale of pollution and health and hazard relevance to which they might be exposed, but, more importantly, it is not clear whether the operators and permit writers have taken best of the efforts to act on pollution prevention and reduction at source. Putting the performance data into context would also enable to provide for a more accurate picture of the good performers, thereby levelling the environmental playing field and making data more useful for various users.

These findings equally apply to the overall very poor national systems in place to make data available in more user-friendly manner, see notably the following EEB briefing[39] (2020) on the EEB's Industrial Plant Data Viewer[40].

The core of our asks is about making better use of current reporting requirements, improving knowledge sharing on pollution prevention efforts taken by both operators and enforcement authorities and improve public accountability. These include the following elements:

- Mandatory reporting on consumption (use of water, energy and raw materials).
- Electronic reporting and direct integration in the Portal of IED relevant information such as permit conditions in force, annual compliance data.
- Reporting of other contextual information such as BAT compliance uptake, operating hours, production volumes, other performance information contained in EMS e.g. carbon intensity.
- Extension of pollutants and removal of reporting thresholds.

[36] Regulation (EC) no 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC, OJEU L 33, 4.2.2006 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006R0166
[37] https://environment.ec.europa.eu/publications/proposal-regulation-industrial-emissions-portal_en
[38] Regulation (EU) 2024/1244 on reporting of environmental data from industrial installations, establishing an Industrial Emissions Portal and repealing Regulation (EC) No 166/2006, OJEU L 2024/1244 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1244
[39] https://eeb.org/library/industrial-plants-data-viewer-background-briefing/
[40] See https://eipie.eu/projects/ipdv/

- Reporting of the EU waste codes (dis-aggregated).

Positive outcomes and opportunities

Mandatory reporting on inputs (energy, water and 'key' raw materials)

A key shortcoming of existing Portal is that there is no data around resource consumption at installation level directly available, finally this will change (subject to mandatory reporting).

In the EU-BREFs there is a quasi-absence of meaningful standards as to resource efficiency optimisations, whilst this is a clear requirement from the IED (see Annex III but also Art. 13.2 point a) unchanged, *see point 10 of IED Section I* of this briefing.

It is a standard BAT conclusion (mandatory) of more recent BREFs that the operator must report, on an annual basis, the consumption of energy, water and materials (relevant to the sector). However, many industry associations (a few rare exceptions exist) always regarded those data as 'confidential business information'. Data sharing hence was – and still is to a large extend- very vulnerable to the good will of industry and Member States. The IEP-R confirms that the reporting of inputs such as energy, water and other 'key materials' is mandatory and that it should be part of the Portal content, this is good news since it will allow benchmarking of operators on the inputs side, once data is available. The bad news is that actual reporting may be delayed to 2027, when the relevant IEP-R obligations finally kick in. There was a lot of discussion around what materials would be relevant, the compromise was to refer to key materials (other than energy and water) which would be identified as relevant in the sector BREF documents and will be defined in future Commission implementing rules (that have to be finalised by 31 December 2025).

Mandatory reporting on production volumes, operating hours and other 'contextual information'

Despite opposition from industry, the reporting on production volumes and operating hours will be mandatory for all installations (Art 6(d) and Art 6(e)). There was a 'voluntary' obligation so far on the production volumes and was kicking in for 2023 already, based on the COM implementing rules 2022/142[41] of 31 January 2022. Considering that the revised IED is extending the scope to other activities e.g. metalliferous mining and on-site treatment operations, Giga-batteries manufacture, this means that the new elements to be reported will be extended to those activities as well.

Positive changes will also come through the improvements made in the IED, notably its Art. 72 which lists the items to be reported by Member States to the European Commission, and hence constitute 'contextual information' and are hence to be integrated in the Portal. Recital 17 of the Portal provides a so called 'mirror clause', asking on decision-makers to maximise the benefit of the Portal by including information reported through the IED as well as other information flows and reporting that stem from Union environmental law on climate change, air, water, and land protection, Union law on waste

[41] COM (2022) 142 of 31 January 2022 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022D0142

managements.

Information items listed in Art 24 (IED) also should be available "on a webpage which is easy to find" (for the EEB it should all be streamlined and made available through the Portal so everyone knows where to find all the data relating to European Industrial reporting in one place, in accordance to the mirror clause highlighted above. The current reporting interface is based on the European Commission implementing rules 2018/1135 of 10 August 2018[42], which will have to be updated, in full coherence with the mirror clause and the core objective of its parent Kyiv Protocol to '*contribute to the prevention and reduction of pollution of the environment*'. Some examples of mandatory elements are

a) the "*consolidated permit conditions*" (IED Art 24);
b) information on how "*deep transformation*" is implemented (IED Art 27e, para 2);
c) representative data on emissions and other forms of pollution, on emission limit values, on the application of best available techniques in accordance with Articles 14 and 15 [IED], in particular on the granting of exemptions in accordance with Article 15(4) [IED]. This means that EMS related reporting coming via the reviewed IED shall be also part of data integration (new IED Art 14a and following);
d) other "*information allowing contextualisation of the data*" (Art 6(1) e);
e) "relevant" raw materials (Art 6(1) point d), defined as *used in the production process and have significant effect or impact on the environment*. What is considered relevant should be identified in the EU BREFs. The COM will set up the list and specify types and units following consultation with stakeholders, incl. NGOs (recital 15), through implementing acts that need to be finalised by 31 December 2025.

Integration in the Portal should be done by the EEA within 1 months after they received the data (Art 7(2) and Art 10).

Proposed action:

- ✓ NGOs to clarify what is to be meant with "user friendly" (IED provisions) and new Portal requirements that has to allows "electronic means of extraction of data including query-based datasets" (this was an important demand of the EEB), hence the expectations of the end user needs and potential queries is to be properly understood through pro-active consultation by the European Commission and the EEA. This relates also very closely as to what is to be understood as "contextual information";
- ✓ The key objective for the NGOs, but also for all actors taking the objective of the PRTR / IEP-R pollution prevention objective seriously, including industry operators seeing merits of an outcome oriented purpose of reporting of data incl. knowledge sharing on delivering on pollution prevention actions and improving level playing field to the top, should share the view that the Portal should become a tool enabling proper integration of performance data information in such a way so to allow benchmarking (of operators and permit writers) as well as supporting information

[42] See Commission Implementing Decision (EU) 2018/1135 of 10 August 2018 establishing the type, format and frequency of information to be made available by the Member States for the purposes of reporting on the implementation of Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018D1135#:~:text=Commission%20Implementing%20Decision%20(EU)%202018,the%20Council%20on%20industrial%20emissions%20(

exchange on pollution prevention actions *(see section on negative outcomes and damage control actions)*.

Zero reporting threshold for specific substances / 90% capture rate

In the upcoming fast track review relating to the list of pollutants and the thresholds in place, which shall be finalised prior to 2026, the Regulation provides that for substances "*displaying a particularly high hazard to the environment or human health*" there should not be any reporting threshold. Further, there is a goal to capturing at least 90% of releases of each pollutant to air, water and land, it is irrelevant on whether this is from diffuse or channelled sources.

The review will take place through delegated acts. Whilst one may argue that it is not a good idea to add (or remove) pollutants or adapt thresholds without the involvement of European Parliament (elected MEPs), based on the quite bad 2022-2024 IED co- decision experience indicating that the majority of MEPs are acting in the interest of the EU industry laggards and in particular the intensive livestock 'farmers'/companies, not the wider public interest) it is rather advisable they do not interfere negatively in this process[43]. As a safety net, there is a minimal list of pollutants to consider, which should be "automatically" transferred to the Annex I of the Portal Regulation and which refer to pollutants identified in other EU environmental acquis. This is quite self-evident considering that the list of pollutants have already been agreed by co-legislators to be relevant at the Union level, hence this provision is more about more effective and coherent use of reporting obligations already existing. The EU acquis referred to is listed in Art 15(2). Overall, the proposal is quite weak in relation to the substances of very high concern (See Negative points) but other water protection, air quality protection relevant or otherwise restricted pollutants will get automatically listed, which will make this quite a list of additional substance entries.

Proposed action:

- ✓ Stakeholders to get involved in the review of pollutants listing and removing reporting thresholds that will start in 2024 and will have to be finalised by latest 2026. Clarify the meaning of what a substance displaying a "particularly high hazard" to the environment or to human health could mean.

Reporting is to be made at installation level and using the 'best available information' and slight scope extension

Currently the reporting is aggregated at facility level, this is unhelpful. With the future rules the data must be provided in non-aggregated forms and be reported at installation level (see recital 11). This was opposed by some Member States and their industry friends, "admin burden" was the main argument used.

This also connects to the waste transfer reporting, which shall also indicate the Waste Codes as to

[43] This is a personal view of the main author of this briefing

recovery or disposal. The thresholds triggering the reporting are aggregated at facility level (2t/year hazardous waste, 2000tonnes/year non-hazardous wastes). The EEB asked to also oblige the reporting by separate streams and with indication of all EU waste codes, this proposal unfortunately did not make it, despite that information already being available due to other waste and chemicals classification related legislation.

There is also an obligation on operators to make use of the "best available information" when reporting (Art 6(3). In our view this is meant to mean most accurate and state of the art measurement devices (e.g. continuous emissions monitoring systems), not by calculation or estimation. However, a derogation is offered if not "*technologically and economically viable*". The word AND is very important, both must be answered by a negative. Even if they go for those methods, they still need to be internationally approved methods.

As indicated previously, all new IED activities will be automatically covered in the IEP-R scope, which already includes some mining activities. This will mean that further reporting (and hence monitoring) that comes with it will be made available. For cement related activities e.g. quarries to produce chalk, limestone etc containing calcium carbonate, the inclusion will depend as to the size of the quarries (extractive operations area is >25ha). The reporting thresholds for underground mining and related operations have been removed. The threshold for combustion plants has been reduced to 20MWth (EEB asked to reduce down to 1MWth). Hydrogen production through electrolysis will only be covered if of "industrial scale". It is assumed that the high IED threshold (50t/day H2 production capacity) will be used in analogy.

Negative outcomes and damage control actions

The Swedish and Spanish Presidencies of the Council but also the European Commission have failed in providing for effective and early participation of the public in the elaboration of amendment to the review of the E - PRTR, despite legal requirements to the contrary[44]. Furthermore, process-aside, on substance there is quite a lot of missed ambition, mainly due to resistance from the governments of France and Germany, on the following:

- the Portal is not made fit for purpose of benchmarking with BAT uptake and compliance promotion, much will depend on implementing acts and follow up work initiated by the European Commission;
- the review of pollutants did not add any further pollutants except PFOA and PFOS, whilst the European Parliament proposed the total PFAS group, which was also supported by a group of industry affiliated organisations[45];
- the link to the substances of very high concern (SVHC) based on their properties alone were not added, the reference to the Annex XIV Authorisation list has just 50 entries (this is based on weak starting point of the Commission proposal), whilst the

[44] Art 12 of the E-PRTR (2006) provides that "The Commission shall provide the public ***with early and effective opportunities to participate in the further development of the European PRTR***, including capacity-building and the preparation of amendments to this Regulation."
[45] See joint letter of the EEB with EurEau and HWE https://eeb.org/library/joint-letter-on-health-and-environmental-ambition-in-the-industrial-emissions-directive-trilogues/

candidate list SVHC referred to in Art 59(1) of REACH has >474 entries[46]. There will be a fast-track procedure to list further substances through comitology; the EEB is observer to the expert group and will input to this process. Similarly, arbitrary relevance thresholds for reporting pollutants to the Portal, set almost two decades ago, have been kept (but will be reviewed by 2026);

- no meaningful reporting obligations on environmental footprint of the products phase, despite being covered under the "diffuse sources" obligation under the Protocol, the reporting will be carried out via separate products legislation e.g. CPR, ESPR and the digital product passport;
- the obligation to report on the accidents track record and number of employees got removed;
- all Member States also delayed the compliance / transposition deadline by 2 years.

Proposed action:

The information reported via the IED (notably listed in its Art 72), its type, format and frequency will be subject to a further implementing decision (2 years after entry into force) at the very latest, our objective is to ensure finally a proper integration of performance data information put in proper context so to allow benchmarking (of operators and permit writers) as well as supporting information exchange on pollution prevention actions (as required pursuant to recital 17 of the IEP-R precited) and its recital 9. Recital 9 of the IEP-R states that the Portal should provide for a more integrated and ***coherent dataset on key environmental pressures*** generated by industrial installations, and be seen as a "***tool for drawing comparisons and taking decisions in relation to*** *environmental matters,* ***encouraging better environmental performance, tracking trends, demonstrating progress in pollution reduction, benchmarking installations, monitoring compliance*** *with relevant international agreements,* ***setting priorities and evaluating progress achieved through Union and national environmental policies and programmes***." So far the Portal failed to meet all of those objectives highlighted in bold. Since the work is mainly initiated by the Commission and needs Member States backup, we need to do be more pro-active on Member States to support our ideas, these would notably focus on the following:

- ✓ Ensure that the information generated via the E-permit system will enable assessment of comparability of permit conditions in a few clicks.
- ✓ Ensure that the information generated via the E-permit system, notably the annual compliance report (referred to in Art 14 of the IED) to be directly imported to the Portal in electronic format so to enable compliance checks with permit conditions in a few clicks.
- ✓ Ensure that production volumes and consumption data at installation level is either made publicly available or at least accessible to NGO stakeholder groups.
- ✓ Clarify the meaning of "contextual information" e.g. put in same format as BAT-Conclusions so to allow verification of uptake of BAT based performance at the installation.
- ✓ Clarify the list of "relevant" raw materials. Those should be exhaustive and subject to meaningful reporting metrics, which are to be defined through the COM implementing rules (by 2026) and via the BAT-C reviews of sector BREFs.
- ✓ Ensure access to production volume and consumption data, at least to NGOs, will enable the public / NGOs to benchmark each installation (and hence the companies that own them) on key performance indicators such as CO2 intensity / tonne of product output (pollution intensity factors). This should also work for consumption of "key materials",

[46] Status based on 01/04/2024 https://echa.europa.eu/candidate-list-table

water and energy.

- ✓ Ensure the above-mentioned demands make its way through the regional level UNECE PRTR protocol review, expected for the 2025-2026 phase. So far the EU and its countries have slowed down any progress for a more ambitious Protocol[47].

It is key to remind all that in accordance to Art 12 of the IEP-R, the European Commission '***shall provide the public with early and effective opportunities to participate in the further development of the Portal***, *including through capacity-building and the preparation of amendments to this Regulation.*"

It is thus crystal clear that we expect the European Commission and Member States to pro-actively reach out to public interest organisations to discuss substantive matters as expressed in the proposed actions section above, since these relate directly to the further development of the Portal.

Key dates

- 24 April 2024 formal adoption of the IEP-R by the EU institutions
- 2 May 2024 publication in the Official Journal of the EU
- 22 May 2024- **latest** 31 December 2025:
  - COM to review, through delegated acts, the list of pollutants to be added in Annex II and reporting thresholds applied for the list of EU policy acquis instruments stated under point 2 of Art 15, ensuring a minimal 90% capture right and "thresholds of zero" for specific pollutants. The review may also lead to removal or addition of pollutants and activities to "align" with the Kyiv Protocol on PRTRs or to remove a pollutant that is no longer designated as a priority substance / removed from the watch list (water relevant pollutants) – See Art 16(2) point c and d;
  - COM to define, through implementing acts, the list of "relevant" materials to be included in the Portal, specifying the types and units (Art 6(1)
  - COM to define, though guidelines, how to apply in practice the definitions like "sites, "facilities", "installations" (Art 13).
- 2 May 2024- **latest** 31 December 2026:
  - COM to define, through guidelines, the reporting procedures and technical guidelines (incl. on PFAS reporting, sampling frequencies, parametric values etc) for electronic reporting (Art 13 point a), or calculation methods / emissions factors for livestock production and aquaculture (Art 13 point g)
  - COM to define, through guidelines, data to be reported, quality assurance and assessment, type of data that may be declared "confidential" and justification basis, names of parent companies (Art 13 point b, c, d and f).
- 01 January 2027: the new reporting elements apply as from the same reference year, for data of the reference year 2026, the old reporting requirements apply (this means production volumes is still to be reported);
- 30 November 2027 (no later): Member States must report all data to the EEA;
- 01 December 2027: New datasets with the required additional information to be published in the Industrial Emissions Portal.
- 01 January 2028: repeal of the E-PRTR (2006), entry into force of the IEP-R.

[47] See notably suggestions from EcoForum on the matter here https://unece.org/sites/default/files/2023-11/EcoForum%20amendment%20suggestions%20to%20ECE.MP_.PRTR_.WG_.1.2023.7_FINAL.docx and statement https://unece.org/sites/default/files/2024-02/PRTR-WGP10_6_Ecoforum_speaking-points.pdf (10th MoP UNECE Working Group Meeting of Parties to PRTR Protocol)

- 01 January 2033: the European Commission shall present its first implementation review (report), with likely proposal for a potential review, “where appropriate” (Art 19).