

Position paper

EUROFER extended key messages for the revision of the Industrial Emissions Directive

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EUROFER welcomes the opportunity to contribute in-depth to the assessment of options for the revision of the Industrial Emissions Directive (IED) via the Targeted Stakeholder Survey (TSS). Overall, this assessment should be carried out in light of the outcome of the evaluation of the IED, which found the Directive to be working well despite some uncertainties due to the lack of data or issues with implementation at national/regional level. This paper builds on our position on the key issues for the revision of the IED already submitted alongside our replies to the Open Public Consultation (OPC) and complements our replies to the TSS, especially for questions 2, 16, 21, 28, 33, 35, 60, 70-73, 79, 80, 81 and 86. For these questions, either no adequate level of flexibility is provided to allow for a desired answer (e.g. when it is only possible to refer to an improvement and not a deterioration or when the TSS requires to assess the impacts of policy options on environmental media/parameters separately in contrast to the integrated approach principle) or it is not possible to justify our answer. In the latter case, the column 'other' was filled in order to open the possibility to provide an answer in the next question.

DISCLAIMER: This paper focuses only on the TSS. Regarding the upcoming work on the revision of the IED, EUROFER has many important concerns regarding the IED itself, BREFs and the Seville process. We welcome the possibility to further participate to interviews and focus groups as well as the foreseen case study on steel.

1) Keep a competitive steel industry to enable its transformation

In the EU some flexibility must remain in the future permits (e.g. intervals and derogations). Increased time periods for temporary derogations for innovations are welcomed for testing emerging techniques (ET) in existing installations.

- 1.1) Setting the lower-end of the BAT-AEL ranges as ELVs by default (**Q21.1**): BAT-AEL ranges reflect the evidence-based deliberations of the EIPPCB Technical Working Groups (TWGs). During the data collection, a choice of well-performing installations is made. From this

selection, BAT-AEL ranges are derived and the lower-end is representative of what the best performers are able to achieve. Setting Emission limits values (ELVs) based on lower-end of BAT-AEL ranges by default would only apply to these installations, which by no means represent the variety of conditions in which they operate in the EU. Industrial installations implement different techniques that can achieve different environmental performances and not all of them are always applicable, for instance due to the design of the plant, the desired product quality or the local conditions. BAT-AELs are expressed as ranges to reflect such differences, the whole range is reflecting the state of the art for applying BAT and BATs are selected to ensure the best protection of the environment as a whole, in line with the integrated approach.

Keeping one end of the BAT-AEL ranges would also deny the geographical and historical background of Member States. As such, convergence between Member States may not be achievable everywhere in full or at the same pace.

Finally, environmental pressures at local level are not always linked to industrial activities and policy/legal instruments other than the IED may be more adapted to address them.

- 1.2) The derogation framework under Article 15(4) of the IED (**Q21.2**) is sufficiently rigid and strict so that there is no need to review it. The modalities of the derogation (ELV, possible time limit) can only be defined based on a case-by-case analysis of the three assessment criteria (geographical location, local environmental conditions and technical characteristics of the installation concerned).

However, the derogation set out in Article 15(5) of the IED could be adapted to allow testing emerging techniques (ETs) and assess more broadly their possible wider impacts on the environment and their compliance with the existing BAT conclusions, where relevant.

- 1.3) The evaluation of environmental quality standards (**Q21.7**) must be carried out considering the sources/origin and the contribution of industrial/non-industrial activities. Under these conditions, we believe that Article 18 of the IED is very clear and should not be amended.
- 1.4) Further guidance (e.g. implementation of BATs on permits, derogations, compliance assessment – **Q21.3 and Q28**) could ensure a more consistent implementation of the IED within the EU, provided that efforts already undertaken by Member States to provide such guidance are not undermined.

2) Respect the existing full definition of BAT

Do not introduce binding limits for emissions for emerging techniques (ET-AEL) in the test phase as this risks harming innovations and the transformation of the industry.

(Q80-86) ETs are not BATs (i.e. techniques developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions) and cannot be commercially implemented. An ET can be considered a BAT candidate when implemented at industrial scale and subsequently described following the 10-heading structure referred to in the BREF guidance. The setting of performance levels associated with the ETs is not an acceptable option due to their low level of maturity (as acknowledged by the recent Wood study on the wider environmental impacts of industry decarbonisation (March 2021) in the case of decarbonisation projects) and would create further complexity, uncertainty – integrated performance levels need being set at TRL 9 being BAT – and confusion to the IED.

The introduction of shorter BREF review cycles focusing on ETs would have a number of detrimental effects. It would not only disrupt investment cycles, which are long and well-planned, but also ignore the technical limitations of an ET as well as the safety and environmental risks that it entails and that are only fully grasped during its implementation phase. The accelerated uptake of innovative techniques could therefore have negative knock-on effects on the overall market position of industry within and outside the EU resulting in significantly reduced competitiveness, market share, trade with third countries, employment. Furthermore, it will significantly reduce innovation since it will hamper the further development of the innovative technologies to become BAT.

Nevertheless, EUROFER supports the more systematic collection of information to identify and promote the use of ETs, following the same eight to twelve-year review cycle than that of BATs, in particular through a reinforced role and participation of industry in the Innovation Observatory.

The key roles of the IED Article 13 Forum in the decision whether to trigger a BREF review and of the TWGs in the decision whether or not a technique qualifies as an ET or BAT should remain intact. If a BREF review is finalised and new BAT conclusions are implemented, the (revised) permit must be valid (providing legal certainty to the installation) and cannot be challenged by a parallel process via for instance the Innovation Observatory.

3) The IED is about integrated pollution prevention and control

While the IED “lays down rules on integrated prevention and control of pollution arising from industrial activities”, its potential to foster resource efficiency and circular economy was explored overtime and is now fully grasped.

- 3.1) Binding nature of BAT-AEPLs **(Q64-68)**: Companies seek to optimise costs all the time by proactively implementing measures, when technically and economically viable (= BAT availability criteria), to save and reduce energy, water and materials consumption and

this without the need for external pressures such as legally binding BAT-AEPLs. Setting legally binding rules, on the other hand, will jeopardise the IED's integrated approach (e.g. NOx vs energy consumption discussions or increased energy use to produce high-strength steels in the recent FMP BREF review). The possible inclusion of more parameters into a revised IED makes the existence of non-binding, indicative performance levels ever more necessary.

The Commission's recent assessment that "BAT-AEPLs and descriptive BAT are not binding in the same way as BAT-AELs, but authorities must use them as a reference for setting permit conditions" reflects well the current legal status of BAT-AEPLs which should be safeguarded in the upcoming revision.

Developments in BREF-making show that the collection and assessment of confidential business information (CBI) data in the TWGs is not an obstacle to the derivation of BAT-AEPLs if the assessment of the data is carried out under the right conditions (e.g. no distribution of figures with CBI; no pictures allowed; plants to be shown anonymised) to respect the intention of CBI. The rules protecting the disclosure of CBI data (e.g. Regulation 1049/2001) and competition law (e.g. Art. 101 TFEU) must be respected.

- 3.2) Resource efficiency and circular economy (**Q70-73**): The Ricardo report 'IED contribution to the circular economy' as well as the HAZBREF project both acknowledged that the IED is not the most suitable instrument to consider a value-chain approach. The recent study carried out by Wood stresses that many IED installations have made considerable progress on circular economy. There is, however, no 'magic bullet' in the application of IED to further improve circular material use by IED installations. Nevertheless, despite the term 'circular economy' not being used in the IED, existing BREFs already follow circular economy principles and strategies.

The sound management of resources within the boundaries of the installation is already part of the basic obligations of the operator as per Article 11 of the IED and should remain qualitative, process- and technique-based. Indeed, the choice of sources upstream is out of his control: availability and prices of renewable energy, secondary raw materials, etc. depend on factors that the installation cannot steer or master completely. The control that an operator can have downstream is, again, not under his full control due to market conditions (e.g. competition between secondary raw materials vs primary raw materials, legal framework drastically limiting market access). It should not be the role of the IED to push, e.g., secondary against primary materials. In the specific case of steel, there is no need to push for increased demand for scrap.

EUROFER supports the definition of End-of-Waste (EoW) criteria at EU level as an effective and simple measure for removing legal bottlenecks for granting market access to secondary raw materials. However this process should be streamlined within the EU waste legislation, which is currently a red tape toll rather than an enabler for the EU industry. Linking the IED with EU waste legislation would therefore not only add an unnecessary layer of complexity, it would simply not be possible due to the continuous

adjustment of sourced materials to keep economic viability and pollution prevention and control effective (integrated approach).

EUROFER fully supports the concept of industrial symbiosis, which has been implemented by the steel industry since many decades via the use of waste as input material and the supply of waste, by-products or end-of-waste materials to other sectors. Recycling of waste and reuse of by-products is at the core of symbiosis links. The IED could enable a concrete and effective promotion of industrial symbiosis by facilitating the exchange of and granting market access to industrial residues, whatever their legal status (waste, by-products or end-of-waste), thereby increasing the level playing field between primary and secondary materials.

4) Avoid excessive burdens that would affect the effectiveness of the IED

For example ETS (keep IED Article 9.1 for the ETS-sectors), REACH (The Commission Chemicals Strategy for Sustainability aims to establish the 'One Substance, One Assessment' principle across the regulatory framework), Landfill Directive, MCP Directive and adding further parameters/sectors into the IED. The IED evaluation showed that the IED "has contributed to reducing emissions and the related impacts on human health and the environment and has covered most of the important sectors although a number of polluting agro-industrial activities do not fall within its scope". This should not lead to a major revamp of a well-functioning piece of legislation.

- 4.1) Administrative costs for installations considered for inclusion in the scope of the IED (e.g. smitheries below the current IED threshold, downstream ferrous metal processing activities – **Q2-5**) would increase significantly due to additional requirements (e.g. environmental inspections, additional reporting, creation of the baseline report). Most of these installations are small and the costs incurred by the additional burden would be disproportionate compared to the expected environment benefit.
- 4.2) Article 9 of the IED (**Q55-61**) ensures the smooth functioning of the directive with the EU Emissions Trading System (EU ETS). In particular, the permit of industrial installations subject to the EU ETS "shall not include an emission limit value for direct emissions of that gas, unless necessary to ensure that no significant local pollution is caused" (Article 9.1 of the IED). Moreover, for such installations, Member States "may choose not to impose requirements relating to energy efficiency in respect of combustion units or other units emitting carbon dioxide on the site" (Article 9.2 of the IED). The EU ETS ensures that GHGs are reduced in a cost-effective manner. Removing the provisions of Article 9 of the IED would result in GHG emissions being regulated in two different instruments, contrary to better regulation principles. Moreover, it would put the efficiency of the EU ETS framework at risk and further jeopardise the integrated approach of the IED (significant uncertainties due to the low maturity of the decarbonisation options as acknowledged by the recent study carried by Wood).

The EU Green Deal “is a new growth strategy that aims to transform the EU into a fair and prosperous society, with a modern, resource-efficient and competitive economy where there are no net emissions of greenhouse gases in 2050 and where economic growth is decoupled from resource use.” The EU Green Deal does not condition the delivery of an IED permit to the achievement of an individual installation goal by a certain date. Many parameters will play a key role in the decision of a company to invest in low carbon technologies such as marginal abatement costs, the length of investment cycles, exposure to global competition and its role in delivering emission reductions along value chains, which cannot be addressed through a licensing process. Article 21 of the IED “Reconsideration and updating of permit conditions by the competent authority” already triggers periodically permit review, in particular where new BAT conclusions are published. The capacity of an IED installation to operate in accordance with EU Green Deal objectives shall not condition the delivery of the permit, as many low carbon pathways are still under development at the time of the permit review.

- 4.3) Hazardous substances (**Q46-52**) are already covered, commensurate to their degree of relevance for the various sectors. The introduction of further chemical-related measures in the IED will only contribute to duplication of efforts and bring confusion among operators. Operators are already bound by obligations under REACH and the European Chemicals Agency (ECHA) and the European IPPC Bureau (EIPPCB) are ensuring that these obligations are well reflected in sectoral BREFs via increasing cooperation. Where Substances of Very High Concern (SVHCs), despite their hazardous character, are instrumental to achieve BAT requirements for key environmental issues, the IED should recognise this valuable role in the relevant BREF documents to support the choice of an adequate risk management option. This is the most appropriate way forward, also in line with the 'one substance-one assessment' (OSOA) approach introduced in the Chemicals Strategy for Sustainability. The OSOA approach calls for the elimination of inefficiencies and overlaps through better cooperation between agencies when assessing chemicals, in order to achieve harmonised outcomes, share data and make it publicly accessible to researchers, industry and citizens. In a nutshell, while operators in the steel sector already maintain chemical management systems, more extensive requirements in the IED may significantly increase their costs and decrease their competitiveness accordingly.
- 4.4) Landfills (**Q16**) receiving more than 10 tonnes of waste per day or with a total capacity exceeding 25 000 tonnes, excluding landfills of inert waste, are subject to the minimum requirements of the IED via Annex I (activity 5.4). The Waste Treatment BREF further specifies that landfills are covered by Directive 1999/31/EC (the 'Landfill Directive'), which establishes operational requirements for landfill sites. Any improvement of the requirements for landfills should be addressed through a revision of the Landfill Directive. In order to avoid double regulation, we also suggest a deletion of activity 5.4 in Annex I of the IED.
- 4.5) The MCP Directive (**Q9-12**) considers only a limited number of parameters (essentially emissions into the air of NO_x, SO_x and dust) and was designed to avoid excessive burden

for the operators, in particular SMEs. As such, shifting plants currently regulated under the MCP Directive to the IED does not appear appropriate. It would create higher administrative burden without any additional environmental benefit.

5) Continue to develop the ‘Seville process’

Setting of legally binding BAT-AELs needs to continue following the BREF Guidance, based on the data collection exercise, knowledge of the conditions in different sectors and verified by the Member States.

As indicated in the IED evaluation report, BREF reviews are the “main mechanism through which environmental requirements are regularly reviewed and tightened”. They have been “subject to continuous refinement and improvement” and have been “recognised as a model of participative governance”.

The Seville process reflects well how complex it is to draw conclusions on the BATs and their associated performance for an industrial sector. Installations use different techniques – which are not always applicable everywhere due to, for e.g., plant design or local circumstances – and achieve different performances.

TWG members are not only technical experts, but also practitioners of the sector concerned. They are able to set requirements that can realistically be achieved by most installations, looking carefully at costs, cross-media effects and applicability of the techniques assessed. Their expertise should continue to be valued throughout the BREF elaboration process, from the determination of key environmental issues to the selection of techniques and their associated performance levels.

6) Keep the subject matter and scope of the IED

The IED evaluation acknowledged that the IED is a complex piece of legislation covering a large number of installations, involving complex technical documentation and multiple layers of Member States administration and uncertainty with regards to its legal provisions. The revision should focus on streamlining and clarifying the existing provisions of the IED for the benefit of the operators and the environment.

The IED specifically looks at the level of the installation and its relevant processes. When possible, operators already look at how to harness the benefits of the value chain (upstream and downstream) to improve the efficiency of their processes (**Q80**). However, when the circular economy benefits rest on the products and not the processes, these should be tackled in product-specific legislation.

The IED currently allows to take up activities when they are directly associated with an activity already listed under Annex I, thereby allowing for a sufficient level of flexibility (**Q2-5**). Therefore, EUROFER does not support changes to the list of activities specified in Annex I of the IED. Moreover, when other EU legislation already addresses specific

activities (e.g. MCPs, landfills), this legislation should remain the reference framework (*Q9-12; 16*).

Finally, the IED is targeting pollutants emitted in significant quantities by the installations. While not all pollutants listed in Annex II of the IED may be relevant to all industrial sectors, this Annex provides us with a certainty of which pollutants that should be assessed against the Key Environmental Issue identification criteria. Therefore, EUROFER supports keeping Annex II as it is.