



March 2021

INDUSTRIAL EMISSIONS DIRECTIVE REVISION: AVOIDING THE LEAP INTO THE UNKNOWN

KEY MESSAGES



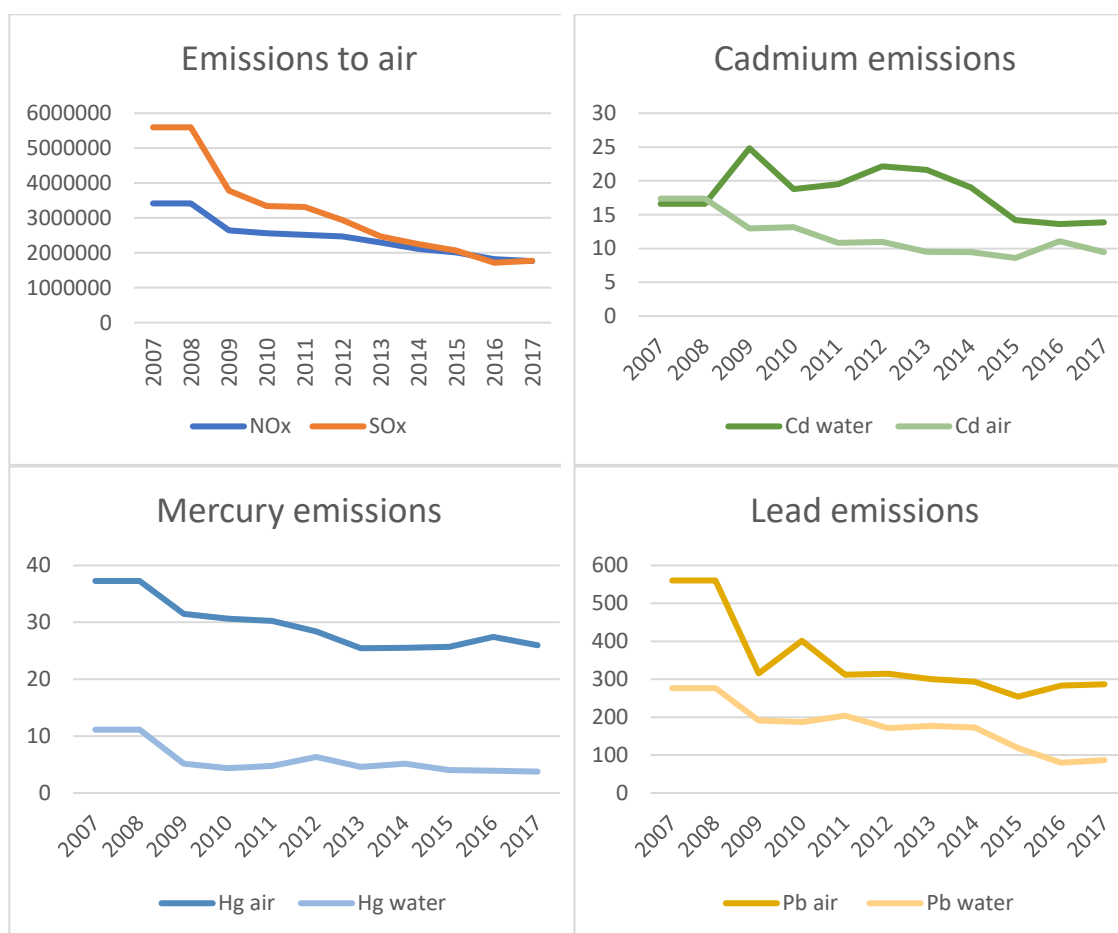
- 1 Maintaining the core principles of the Directive.** The current Industrial Emissions Directive (IED) framework is fit to enable the environmental transformation the European industry is undergoing. To ensure its success, it will be key to maintain the core principles that anchored the IED (definition of BAT, the “Sevilla process”, and its integrated approach). Furthermore, it will be essential to limit changes to the absolute minimum, otherwise it risks breaking a system that works and delivers.
- 2 Respecting scopes of EU law and avoiding overburdening the Industrial Emissions Directive.** Under the current regime, the “Sevilla process” is already long and complex, and a range of other environmental legislations covering industrial sectors are already in place. Therefore, a scientific and evidence-based assessment on a possible extension of the scope should be performed. It should make sure that the IED is the correct tool to address the environmental performance of new sectors/plants, and that no other legislation is in place.
- 3 Streamlining the permit process.** The IED licensing process can take a significant amount of time, which can be detrimental to investment decisions. The directive should consider setting fixed processing time that would ensure the authorities deliver a revised permit within a given timeframe.
- 4 Keeping flexibility under current BAT-AELs ranges.** The range of BAT-Associated Emission Levels and the possibility to derogate from them, if properly justified, should be maintained. Higher level of support for innovation, should be directed where further efforts would be desirable.
- 5 Incentivising, not mandating, GHG, energy efficiency and circular economy.** Greenhouse gas (GHG) emission reduction, energy efficiency and circular economy are of high importance for industry and are already accounted for in the directive and/or the BREF process. They should continue to be incentivised, but not become mandatory requirements under the IED permitting process.



CONTEXT

As one of the main instruments regulating industrial activity, the Industrial Emissions Directive (IED) sets the base for operations of around 50.000 installations in Europe. All the installations covered have a requirement to comply with a permit that contributes to achieving the highest level of protection of human health and the environment.

The European Environmental Agency has published numerous reports¹ showing a relevant reduction of emissions since the Directive was put in place. Between 2007 and 2017, overall emissions of sulphur oxides (SOx) declined by 54 %, nitrogen oxides (NOx) by more than one third². Furthermore, it is estimated that even if only the upper emission limits of the IED requirements are implemented, emissions from large combustion plants are projected to fall by more than two thirds (compared with 2016) in 2030 for SO₂ and dust, and by more than half for NOx.³ Direct releases to water by industry have decreased (slightly or more significantly) since 2007 for most pollutant groups.



Source: E-PRTR data

¹ EEA Report 2018 “Air quality in Europe —2018 report”

² The European environment — state and outlook 2020, pp. 274-275

³ EEA “Emission scenarios for large combustion plants under the IED regime” 2018



We believe that the Industrial Emissions Directive remains relevant to the environmental objectives, and in line with other European policies and strategies. BusinessEurope considers that the directive is fit for purpose and is delivering on the objectives it was set to achieve, which was confirmed by the Fitness check. Nonetheless, following the European Commission's decision to revise, we call on EU policymakers to carefully take into consideration comments presented in this position paper.

First, we would like to stress that no new BREF review cycle should start before the IED revision is finalised. At a time where numerous recently agreed pieces of legislations are being re-opened, there is a high-level of legal uncertainty that should be limited as much as possible.

CORE PRINCIPLES

The success and innovative approach of this directive has gone beyond the EU borders and is being emulated in organisations like the OECD. The Directive's success is partly owed to several principles, that anchored industrial activity with the highest level of environmental protection possible whilst taking on board economic viability, which should absolutely be maintained and even strengthened:

- **Best Available Techniques (BAT):** defined by the directive on art 3.10 as *“the most effective and advanced stage in the development of activities and their methods of operation which indicates the practical suitability of particular techniques for providing the basis for emission limit values and other permit conditions designed to prevent and, where that is not practicable, to reduce emissions and the impact on the environment as a whole”*⁴. BATs are implemented under economically and technically viable conditions, considering their costs and benefits. It is crucial that BAT conclusions are based on techniques that are achievable and economically viable in a competitive environment, and not on emerging techniques that are not mature yet. In addition, it is very important that BAT conclusions are not derived without robust data and that the current definition of BAT remains as it is.
- **BAT information exchange so called “Sevilla process”:** It is a multi-stakeholder exchange (formed by national authorities, NGOs and industrial representatives) which develops recommendations on Best Available Techniques Associated Emission Levels (BAT AELs). These BAT AELs will later become binding after the adoption of the implementing decision on BAT conclusions. It represents the core functioning of the Directive and should continue to guide the process. Any refinements in terms of how to derive BATAELs (agreed methodology), should be decided in the Art 13 Forum.
- **Integrated approach:** This means that a permit considers the whole environmental performance of the industrial plant (raw material use, emissions to air, water and land, energy efficiency, etc.). Going forward, when considering

⁴ DIRECTIVE 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (Recast)



BAT and emerging techniques, there could be trade-offs between all the different economic, technological and environmental parameters considered, while assessing the whole performance. Cross-media effects should always be carefully assessed to avoid suboptimal investments.

SPECIFIC COMMENTS



SCOPE OF THE DIRECTIVE

- Any adjustment to the scope of the directive in terms of sectors covered, should be scientifically sound and knowledge based. Further it should ensure that the environmental impact from a candidate sector is not already covered by other EU legislation (e.g. ETS, MCPD, REACH, Landfill Directive). For example, the extractive industry is already regulated, monitored, and controlled by EU law (Directive on Management of Extractive Waste, Water Framework Directive and the Natura 2000 regulation).
- Regarding the extension of the scope to new sectors and installations which do not meet the current thresholds, it is important to highlight the need of assessing the economic impact associated with these decisions, especially for sectors composed mainly of small and medium-sized facilities. The IED and BREF might not be well suited to regulate environmental protection in sectors with a limited number of installations across Europe, with technological solutions that are adapted to local conditions. Furthermore, it would create considerable monitoring and reporting burden. If the scope is extended, there is a risk of making the Sevilla process less efficient, in an already long and complex process.
- For example, 20-50 MW Combustion Plants are quite similar from a technical and environmental point of view, so there would be no need for plant-specific permit consideration (such is the case under the IED). Furthermore, Article 12 of the MCPD already foresees that the European Commission would assess the need to review ELVs for new MCPs based on the state-of-the-art technologies.

INDUSTRIAL PERMITS

- Currently, IED licensing can take a significant amount of. In addition to an environmental permit, companies typically need other administrative permits. In a time where investment uncertainty is often linked to legislative changes, IED permits should be prompt, efficient and predictable. This would facilitate the introduction of environmentally and climate-friendly investments.
- The directive should consider setting fixed processing times that could ensure a response from the authorities under an expected timeframe.
- In addition, a European approach for monitoring and reporting is important.



ASSOCIATED EMISSION LEVELS (AELs)

- The present BAT-AELs are the result of evidence-based deliberations within the Technical Working Groups (TWG) in Sevilla, and any work on the BAT-AELs or the ranges of the BAT-AELs should continue to be done in the TWG. The exercise of setting legally binding BAT-AELs should continue to follow the BREF Guidance (based on the data collection exercise, knowledge of the conditions in different sectors and verified by the Member States). The range of (some) BAT-AELs is caused by differences in operation, raw materials used, maintenance, design, or age of the plant, even when the same technique is used. BAT-AELs are based on real data collected by plants and verified by authorities.
- It is not possible to evaluate the impact on the environment without considering the specifics of the installation at stake and the local situation. Setting up by default lower end of the AELs range in the permit would go against the integrated approach principle: to avoid pollution transfer in different medias (cross-media effects) and considerations on resource efficiency (increase energy/water consumption).
- It is not because permits allow for a flexibility in the ranges, that the EU cannot use these conclusions constructively. For example, by offering higher levels of support for innovation in the areas/sectors where the EU would like to improve environmental performance. It would help to target public funds to the areas in which they will have the greatest impact. This will lead to important improvements in environmental performance, and these improvements would be reflected in the following BREF reviews.
- A certain degree of flexibility must remain in the future permit's derogation (Art 15.4). The justified use of derogation from BAT-AELs can ensure the cost-effectiveness of investments and take into account plant-specific technical aspects as well as the cross-cutting effects of investments.

GREENHOUSE GAS EMISSIONS

- Many IED sectors are covered in the EU Emissions Trading System (EU ETS), which provides a strong market-based incentive to reduce greenhouse gas emissions (GHG) given that it was designed as the main tool to do so. According to the European Commission, emissions from installations covered by the ETS declined by about 35% between 2005 and 2019.
- The IED states that permits shall not include an Emission Limit Value for direct emissions of greenhouse gases from EU ETS installations, unless necessary to ensure that no significant local pollution is caused. Otherwise, it would be imposing overlapping policies in areas where the ETS is the most cost-effective instrument to ensure the target is achieved. Therefore, we support IED article 9 entirely to remain as it is for all sectors to deliver the most cost-effective decarbonisation solutions.



- For the non-ETS sectors, double regulation must be avoided on their climate performance when existing or future CO₂ legislation applies (e.g., Effort- Sharing Regulation or LULUCF).
- There are discussions on how the IED permitting process could be adapted to support GHG abatement measures throughout the transition period. Therefore, it is worth mentioning that the regular BREF reviews ensure that the BATs are always up to date with the latest technological developments. So, when emerging technologies become widely available and commercially viable and are identified as BAT, it will be reflected in the BAT conclusions. We should not dilute and confuse the existing concept of BAT with Emerging Techniques.
- The Masterplan adopted by the High-Level Group on Energy Intensive Industries provides further context to this: *“The low carbon emission technologies under development should be assessed as potential emerging techniques during the BREF drawing and reviewing process.”* An option could be to adapt the IED Article 15(5) with a view to allow testing those technologies (a priori not referred to in the more recent BAT conclusions applicable to the sectors at stake) and assess more broadly their possible wider impacts on the environment and their compliance with the existing BAT conclusions where relevant.

ENERGY EFFICIENCY

- This is covered extensively in the Directive and, in the BREF guidance as well as through a horizontal BREF. Further, process-specific BATs for energy efficiency and associated energy consumption levels are given in the appropriate sector-specific BREFs. Many of BAT conclusions include requirements of energy management plans, a list of techniques deemed to be energy efficient, and BAT Associated Environmental Performance Levels (BATAEPL) on how much energy is required in an efficient production process. In the latest BREFS/BATC there have been BAT-AEPLs on energy use for a process and/or even for a product. As it is difficult to set this type of benchmark for EU industry, these numbers may only be a basis for the competent authority when setting the permit.
- Energy efficiency is always of high interest for industry partly because it is a key instrument for remaining competitive, and constant innovation tries to optimise these aspects. Nonetheless there are trade -offs to keep in mind, particularly when considering our decarbonization objectives: despite best efforts and technological progress, it may not be possible to reduce emissions to air or water without using additional energy. The use of sustainable energy sources or surplus heat may be more sustainable, but the energy efficiency in use could be lower. In industrial production it is common that when a product is upgraded/improved the use of energy increases in the production stage, but the total effect for the improved product is less usage of energy.
- Therefore, the integrated approach is and should remain a key element of the IED overall, as well as IED art 9.2.in particular. An expansion of legally binding



rules on energy efficiency would be counterproductive for the integrated approach of IED. Due to this, Associated Environmental Performance Levels should remain non-binding. BAT-AEPL may provide additional and indicative information for the permit writer only and not binding AELs.

- Setting thresholds for energy consumption neglects the positive and balancing effects of future high-performance products. Furthermore, it could hinder their development and optimized manufacturing.

CIRCULAR ECONOMY AND RESOURCE EFFICIENCY

- The IED is a legislation focused on industrial process (it only covers the manufacturing stage) and not on products, the latter being the basis for a circular economy approach. In the words of the study commissioned by the COM *“it is perhaps not unsurprising that the IED is not the ideal instrument to deliver circular economy objectives.”*⁵
- The IED already covers BAT conclusions with parameters of interest to circular economy such as material and water use, energy use (process optimisation and energy/heat recovery) or waste generation and treatment. The BREFs include specific BAT conclusions to reduce the quantities of waste sent for disposal from production, as well as to facilitate process residues use or process residues recycling. BAT-AEPLs on material use have been included in latest BREFs/BAT conclusions where relevant, either for a process or for a product. Meaningful Associated Environmental Performance Levels where they can be established based on a robust data collection should remain not binding for material, water and energy uses: BAT-AEPLs should only provide indicatival information to the permit writer.
- As IED focuses on a specific sector it is difficult to legislate about one sector’s use of another sector’s residues, as a BREF can only regulate the sector within its remit. The new Circular Economy Action Plan with the initiatives attached to it, already addresses the objectives with the appropriate approach on product groups. Alignment between legislation is highly desirable, whereas overlaps and double regulation should be avoided following the Commission’s own Better Regulatory principle.

⁵ <https://circabc.europa.eu/sd/a/23fd890d-83f9-4372-8f26-669ff50e106a/IED%20contribution%20to%20Circular%20Economy%20report.pdf>