

# FIT FOR FUTURE Platform Opinion

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<b>Topic title</b>	Directive on industrial emissions
	<a href="#">2021 AWP</a>
	<a href="#">Directive 2010/75/EU</a> <i>Legal reference</i>
<b>Date of adoption</b>	17 November 2021
<b>Opinion reference</b>	2021/SBGR1/02
<b>Policy cycle reference</b>	<input checked="" type="checkbox"/> Contribution to (ongoing) legislative process  Commission Work Programme 2021, <a href="#">Annex II</a> , Revision of Directive 2010/75/EU on industrial emissions <i>Commission work programme reference</i>
	<input checked="" type="checkbox"/> Contribution to the (ongoing) evaluation process  Evaluation of the Industrial Emissions Directive, <a href="#">SWD(2020) 181 final</a> <i>Title of the evaluation</i>  Since its adoption, the Industrial Emissions Directive (IED) <sup>53</sup> has made a substantial contribution to reducing pollutant emissions from industrial installations across the EU. In general, the evaluation shows that industry stakeholders have a high degree of satisfaction with the IED and the main implementing acts adopted under it (i.e. the BAT conclusions). Instead, environmental NGOs see shortcomings in the IED implementation, its scope set up and some key provisions and Seville Process.  The evaluation of the Industrial Emissions Directive (IED) finalised in September 2020 concluded that the directive is largely efficient and suggested that some provisions could be improved.  <u>Cost-effectiveness</u>  The assessment of various aspects of the IED appears to show that it is cost-effective. Carrying out the identification of BAT at EU level is considerably cheaper than it would be if individual Member States were to carry out the same process themselves.

No disproportionate administrative costs have been identified. Some of the issues identified for efficiency-related improvements that could relate to the platform's mandate were:

Fit for purpose: the primary objective of the IED is “integrated prevention and control of pollution arising from industrial activities”. For this purpose, the IED applies to certain “industrial activities giving rise to pollution”. The main contribution by the IED and its EU BAT-C has been primarily focused on releases (emission reduction) to air and water. The present range of BAT-AELs allows to accommodate variations in plant technical characteristics and site-specific conditions. The IED's contribution to climate change mitigation is rather limited due to the linkages with the EU ETS Directive and the non-inclusion of GHG emissions in Annex II. Also, since the IED is a legislation focused on industrial process (it only covers the manufacturing stage) and not on products, it appears that the IED is not the ideal instrument to deliver circular economy objectives.

Timeliness: The IED contributes to achieving environmental goals set in other legislation whilst it is hampered through implementation deficits. The IED approach, involving BREF reviews and then permit updating, results in an almost a ten-year time lag to implement requirements based on the achievable performance level at the start of the process. This time lag limits the contribution of the IED sectors to achieving the overall environmental policy objectives. Considering the scale of required investments and a minimum 20 years-return of investment window, further reflection on ways to enhance the process and reduce the time lag is desirable.

Digitalisation: Another area for possible efficiency gains according to the evaluation results, would be in the process for developing BREFs using digital solutions. Recent innovations have involved the use of advanced data visualisation software to enable the Technical Working Groups to better understand the data gathered and reduce the burden on the EIPPCB to produce different visualisations. A wide range of other possibilities are being explored.

	<input type="checkbox"/> Included in Annex VI of the Task force for subsidiarity and proportionality
	No
	<input type="checkbox"/> Other
	No
<b>Have your say: Simplify!</b>	S24337247
<b>Commission follow up</b>	REFIT Scoreboard: <a href="#">Industrial Emissions Directive</a> Have your say portal: <a href="#">Revision of the Industrial Emissions Directive</a> Annual Burden Survey: <a href="#">The EU's efforts to simplify legislation</a>

## SUGGESTIONS SUMMARY

<b>Suggestion 1:</b>	<b>Duration of the permit process</b>
<b>Suggestion 2:</b>	<b>Duration of the BREF process</b>
<b>Suggestion 3:</b>	<b>Entering the digital age for the authorisation and control phases</b>
<b>Suggestion 4:</b>	<b>Monitoring provisions</b>
<b>Suggestion 5:</b>	<b>Baseline reports on soil and groundwater</b>
<b>Suggestion 6:</b>	<b>Overlapping requirements</b>
<b>Suggestion 7:</b>	<b>Functioning of the BREF process</b>
<b>Suggestion 8:</b>	<b>Clarity and harmonisation</b>
<b>Suggestion 9:</b>	<b>Global dimension</b>

## SHORT DESCRIPTION OF THE LEGISLATION ANALYSED

[Directive 2010/75/EU](#) on industrial emissions (the IED) is the main EU instrument regulating pollutant emissions from industrial installations in order to achieve a high level of protection of the environment. Various primary industrial sectors are in the scope of the IED. Permits must be issued for these installations by national authorities with conditions based on the use of Best Available Techniques (BAT). Around 52,000 installations undertaking the industrial activities listed in Annex I of the IED are required to operate in accordance with a permit (granted by the authorities in the Member States). This permit should contain conditions set in accordance with the principles and provisions of the IED.

The IED is based on several pillars, in particular (1) an integrated approach, (2) use of best available techniques, (3) flexibility, (4) inspections and (5) public participation.

The European Green Deal committed to the review EU measures to address pollution from large industrial installations and how to make them consistent with climate, energy and circular economy policies. For that, an [evaluation of the IED](#) has been carried out. Furthermore, it shall be noted that the IED review goes hand in hand with the E-PRTR review.

### Sources of information

[Industrial emissions - evaluating the EU rules \(europa.eu\)](#)

[Evaluation, public consultation](#)

[Inception impact assessment](#)

[Public consultation](#) for the revision took place between December 22 – March 23, 2021

[Evaluation and revision under IED](#)

### Problem description

- **Duration of the permit process:** The IED permitting process can take a significant amount of time, which can be detrimental to investment decisions. The situation may vary across the different Member States and the environmental impact assessment procedure. Some Member States report that the problems arise from their outdated systems of preparation of professional documentation which do not meet the permitting requirements of the procedure. Also, the lack of a system for training staff responsible for permits leads to longer preparation deadlines. In addition, further to an environmental permit, in some Member States companies typically need other administrative permits (such as management plans due to the Water Framework Directive). In a time where investment uncertainty is often linked to legislative changes, IED permits should be prompt, efficient and predictable whilst ensuring environmentally friendly permit conditions and sustainable investments. It would reduce timing of issuance for end users while providing cost-effective solutions for related activities under the INSPIRE Directive and e-government initiatives.
- **Duration of the BREF process:** The BREF process is also usually very lengthy (stakeholders observe on average a doubling of the timing compared to the recommended timeline established in the 2012 Guidance; besides, the maximum 8 year-review cycle set out in the IED is not respected). While the BREF process cannot be accelerated considerably since the workload should be adapted to limited capacities of involved stakeholders, ways to streamline the process could be explored.
- **Entering the digital age for the authorisation and control phases:** A number of Member States, supported by stakeholders, are keen on enhancing the digitalisation of information and communication arising under the IED implementation for improving the effectiveness on several areas. If occurring at national level on individual basis, standardisation and computerisation of IED authorisations and controls may require significant implementation times and an extraordinary administrative and economic commitment from the public administration without guarantee for return of investment in regard to environmental level playing field, streamlining on reporting and regulatory practice sharing. Furthermore, some Member States note that a statistical analysis of the data would not automatically allow to have an integrated picture of the overall performance of an installation; it may instead provide misleading indications, if used to make decisions.
- **Monitoring provisions:** Industry stakeholders claimed during the evaluation process that the burden for operators has grown due to increased monitoring provisions under the IED, for example where the BAT on monitoring is embedded in a permit and extended to a set of additional pollutants not present in the wastewater or related to a BAT-AEL.

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- **Baseline reports on soil and groundwater:** Several industry stakeholders highlighted during the evaluation process, that the requirement, as formulated by some competent authorities, to produce baseline reports on soil and groundwater pollution which are requested in Art. 22 of the IED represented a significant additional administrative burden. Further guidance is needed.
  - **Overlapping requirements:** some Member States note that the applicability of Annex I (Categories of activities referred to in Article 10) is sometime limited, notably when the activities are part of other listed activities and covered by the IED permit as a directly associated activity. An example is the storage of hazardous waste that can be part of waste treatment or waste incineration plants. It follows that the decision whether IED Annex I point 5.5 applies is difficult to be determined by the competent authorities as it needs to be based on information on how collected waste will be processed and which processes will be used. Furthermore, the WT BAT-C do not provide any specific requirements for the temporary storage of hazardous waste.
  - **Functioning of the BREF process:** The BREF process (*Sevilla process*) can result in disproportionate burden when the full BREF guidance document is not used or result in non-meaningful BAT conclusions when the procedure for derivation of BATAELs is not sufficiently transparent. This for instance brings situations where you have recurrent discussions at Technical Working Group level, and a technical debate is mixed with political discussions. In addition, non-essential data is sometimes requested. The lack of BAT determination methodology undermines the consistency of the BREF process and risks undermining environmental improvements.
  - **Clarity and harmonisation:** different EU legislations (e.g. IED, E-PRTR, Seveso, EIA, etc.) refer to different objects whose relations are not clearly specified. Some Member States implement the provisions according to their own interpretation (e.g. diffuse emissions, efficiency evaluation on the basis of design values and/or on the basis of real capabilities of the plant), which might not reflect the rigorous application of the current legislation or distort the competition among Member States.
  - **Global dimension:** In the evaluation of IED-related costs (i.e., financial and administrative costs placed on industry through BAT compliance), the global competitiveness of European industry is not taken sufficiently into account.

## SUGGESTIONS

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### **Suggestion 1: Duration of the permit process**

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**Description:** Although the IED lays down that permits shall be updated within 4 years after publication of the BAT Conclusions or if substantial changes are made to an installation, discretion is left to national competent authorities to implement the IED and review/update the permits. An assessment of the EU 27 Member States may provide information on the effectiveness and speed at which the permitting process is organised, and lessons may be drawn from that. Based on such an assessment, quality standards for the management of IED permits (including the timing of issuance) and conditions for permit updates could then be envisaged. Furthermore, it is noted that the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) could be a driving force in sharing knowledge on best practices and make permitting and revision processes as effective as possible.

**Expected benefits:** The assessment will clarify the state of the art of the permit process across the 27 EU Member States. Sharing and applying best practices would reduce timing of issuance for end users and foster environmentally friendly investments and permit conditions.

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### **Suggestion 2: Duration of the BREF process**

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**Description:** Regarding the length of the BREF process, one could streamline it at different stages to make it more efficient (e.g. *a systematic methodology to derive BAT conclusions, a stronger focus on the main key issues covering the full spectrum of environmental impact of each sector, a resolution of the confidential business information issue*), while always maintaining the high-quality data driven process, and proven technical feasibility derivation of BAT.

Further, the development of the BREF process should always be held under the regulatory framework at hand at the kick-off meeting and should not allow TWG members to deviate from it.

**Expected benefits:** This would accelerate and improve the BREF process.

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### **Suggestion 3: Entering the digital age for the authorisation and control phases**

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**Description:** A unified coding at EU level of some parts of the IED permits and control results (i.e. communication to/from plants from/to control bodies) may allow automated management and facilitate comparison and monitoring. This solution may facilitate the reading of IED authorisations and controls without overburdening the public administration. The Platform would recommend the Commission to assess the benefits and the costs of this approach. Also, the Commission should assess the feasibility and applicability of an extension of continuous emission and consumption monitoring to installations other than the energy sector.

The requirement to submit and revise permit conditions based on a common IED electronic permit template and subject to review procedure would facilitate the speedier assessment on

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whether the conditions proposed are environmentally friendly and will allow other relevant administrative authorities to streamline internal approval procedures.

Another suggestion is to implement harmonised electronic reporting format(s) for key IED documents (e.g. permits, compliance reports, inspections reports) and to set up an EU centralised data base as enabling the integration of information.

**Expected benefits:** These suggestions would enhance the digitalisation of information and communication arising under the IED implementation, if the benefits of this approach are confirmed by the mentioned assessment.

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#### **Suggestion 4: Monitoring provisions**

**Description:** These requirements are embedded in the permit, but there is a margin of interpretation left to national competent authorities. There is a growing number of provisions in the permits that are not strictly required by the IED. There should be a fair and proportionate implementation. To do so, a clarification of the nature of monitoring provisions given in BAT-conclusions could be beneficial to a common implementation in permits.

**Expected benefits:** This would ensure a proportionate implementation of the permits and ensure a level playing field across the 27 Member States.

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#### **Suggestion 5: Baseline reports on soil and groundwater**

**Description:** The obligation derives from article 22 of the directive. Applying strictly (i.e. only where an appliance uses dangerous substances that can leak into the ground in its production) the guidance on how to establish a baseline report would be essential to minimise the administrative burden, create a level playing field and ensure that only the very essential elements are requested to operators. Further guidance on the scope of baseline reporting and closure plans could be further beneficial in order to achieve the polluter-pays-principle.

**Expected benefits:** This suggestion would reduce the administrative burden for end users and improving the state of the environment.

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#### **Suggestion 6: Overlapping requirements**

**Description:** The revision of the Annex I of the IED should be considered, as some activities may not have a significant negative impact on the environment but are part of other activities and/or covered by the IED permit as directly associated activity. Some implementation guidance should be developed, to ensure that waste related activities, including storage activities, are regulated by the relevant BREFs, where overlapping. Those guidelines should aim at an adequate level of environmental and human health protection.

**Expected benefits:** This suggestion would ensure a more effective implementation of the IED, as avoiding regulatory gaps and inconsistencies whilst ensuring the achievement of the high level of environmental protection goal of the IED.



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### **Suggestion 7: Functioning of the BREF process**

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**Description:** A systematic use of the full BREF guidance document, and respect of the mandatory data requirements, would be key to avoid disproportionate burden on operators.

A more transparent procedure for developing BAT conclusions should be ensured, data collection should be reduced to the essential to reach the IED's objectives and overcome the recurring discussions on confidential business information. Sufficient time should be allowed for proper design of questionnaires, data collection and comments. All these adjustments would help reducing and avoiding the overall burden that is linked to the implementation of the IED, without reducing its effectiveness.

**Expected benefits:** This would ensure a more effective and consistent BREF process, improving environment performances whilst reducing burden on operators and addressing their confidential business information considerations.

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### **Suggestion 8: Clarity and harmonisation**

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**Description:** reviewing the definitions would ensure a more thorough implementation of the IED and avoid misunderstandings due to application of pre-existing national rules. It would further enable the digitisation of the Directive; it would reduce administrative expenses and clarify the EU legislation. For instance, coordinating the definitions in IED and E-PRTR by introducing the concept of "single property" in the definition of the IED, while adding the need for a single / coordinated technical assessment of permit conditions for the entire industrial "site" (consisting of several facilities in the same place) based on an integrated vision of the site, would allow the IED to enhance its integrated approach and promote industrial synergies.

**Expected benefits:** This would ensure a more thorough implementation of the IED across the Member States, whilst contributing to digitisation and reducing administrative expenses.

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### **Suggestion 9: Global dimension**

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**Description:** a study should be commissioned to better qualify and, where possible quantify, the costs for industry deriving from the implementation of the IED as well as the added value of environmental and human health protection from the revised EU BREFs compared to its predecessor versions, and to benchmark European industry's environmental performances vis-à-vis non-EU competitors. A deeper understanding of the global environmental level playing field and competitiveness dimension would help, in the long-term, to further reduce unnecessary costs and ensure a level playing field in preventing pollution at source.

**Expected benefits:** This would ensure the IED costs and benefits for industry vs the rest of the world are properly considered, particularly in terms of its competitiveness and environmental performances.

### ***European Environment Bureau***

EEB Issue 1: in the introduction the following is mentioned “The IED is based on several pillars, in particular (1) an integrated approach, (2) use of best available techniques, (3) flexibility, (4) inspections and (5) public participation.”

#### **We disagree with this wording.**

EEB Issue 2: in (Suggestion 2) the following wording is added: “Further, the development of the BREF process should always be held under the regulatory framework at hand at the kick-off meeting and should not allow TWG members to deviate from it.”

#### **We propose a clarification of the underlined sentence to what this deviation relates to.**

EEB Issue 3: in (Suggestion 4) monitoring provision: We see no sound justification for maintaining the following sentence: “There is a growing number of provisions in the permits that are not strictly required by the IED”, **we call for deletion of this sentence.**

EEB issue 4: (Suggestion 5) baseline report. **The EEB disagrees with the wording used in the sentence** ‘*The obligation derives from article 22 of the directive. Applying strictly (i.e. only where an appliance uses dangerous substances that can leak into the ground in its production)*’, it is at odds with the legal text of the IED. Further we propose **a slight amendment to the last sentence so it captures the input provided by NGOs / new text**: ‘Further guidance on the scope of baseline reporting and closure plans could be further beneficial in order to achieve the polluter-pays-principle.’ and question the validity to maintain the wording “reduce the administrative burden for end users”.

EEB issue 5: (suggestion 7) Functioning of the BREF process

**We object to the addition of the sentence in the introductory part** “*In addition, non-essential data is sometimes requested*” and in the suggestion part ‘*data collection should be reduced to the essential*’. **Other shortcomings of the BREF process should be highlighted instead (see alternative proposals).**

EEB issue 6: (suggestion 8) **Clarity and harmonisation**

We see concerns with the current formulation. **Propose clarification amendments and to complete the list.**

EEB issue 7: (Suggestion 9) **Global dimension**

And explicit link to climate protection should be made, **propose amendments.**

#### *Rationale for dissenting views on the suggestions:*

EEB Issue 1: “flexibility” is not to be regarded as a key pillar of the IED, even if a DG ENV website pretends this. It is rather a key bottleneck and driver of its failures, including the main reason why the IPPC Directive got reviewed. At the time of the first review German and Dutch industry federations (BDI) were very much in favour of the (binding) EU Safety net approach and its extension – similarly the EEB-, due to the unlevel playing abuses by some Member States because of those “flexibilities” in permitting. Flexibilities lead to interpretation issues and hence administrative burden and unlevel playing field for industry

as well as the protection levels in enforcement. Aspect 4 “inspections” is part of wider compliance assurance mechanisms, which includes inspections (Art 23) but also wider enforcement activities linked to BAT uptake e.g. Article 14 and Article 18. Public participation is just one of the 3 "pillars" of the Aarhus Convention which also related to transparency / access to information and access to justice.

EEB Issue 2: Then BREF review process is based on a transparent information exchange process. It must be open to new knowledge emerging. BAT-C decisions are made on the basis of the data brought to the information exchange, so after the questionnaires are filled out and after D1 and the commenting round. Pretending that the KoM will sort out the scope and final BREF, before even starting with the data collection is not the right way to approach this. The KoM may miss important facts. Therefore, we would like to clarify to what the ‘stick to the KoM’ agreement relates to e.g. not to delist identified KEI.

EEB Issue 3: The administrative burden case has not been substantiated as to “There is a growing number of provisions in the permits that are not strictly required by the IED” . Articles 5 states that permitting is without prejudice to national or other Union law, Articles 11 +12 (notably Article 11 points a) and c) require to take all appropriate preventive measures against pollution/ that no significant pollution is caused and measures planned to monitor emissions (Article 12 f). Article 14 is explicit that all measures needed to ensure compliance with Articles 11 and Article 18 (referring to EQS e.g. Water Framework Directive) must be included in the permit. Considering that Article 11 point b) also includes BAT as to monitoring we cannot agree with a non substantiated claim that “ *a growing number of provisions*“ which ones, examples? Are ‘not strictly required by the IED’. BAT-Conclusions refer to the relevance check via the waste gas/water inventory for a given pollutant in all cases. The EEB highlighted serious shortcomings in permitting practice (here in terms of permitting conditions gaps) e.g. not setting permit conditions on energy efficiency or water/energy consumption, not setting measures on GHG emissions which not picked up in the final text. Based on the previous, the current proposal is one-sided presentation of a perception from some industry which is not even substantiated with facts.

EEB Issue 4: (baseline report): the proposal is at odds with the legal text of the IED (Art 22). It refers to ‘Where the activity involves the **use, production or release of relevant hazardous substances** and having regard to the **possibility of soil and groundwater contamination** at the site of the installation’. It therefore covers use and production and any other release (accidental or intentional) and refers to “hazardous” substances. The term “dangerous” is from Seveso III Directive and has a different legal meaning and therefore cover.

The obligation to provide a baseline report has been in the legislation since 2010; it is odd to see some stakeholders complaining or asking for guidance at such a late stage. Permit updates (major or minor) are made fairly often, and few factories will not have had any permit update since 7 January 2013 (the date in Art. 22 (2)). In other words, the obligation to have a baseline report has affected most installations for years. A complaint about administrative burden or a need for guidance is only relevant for those who do not have a BR yet, which are either those who have not had any permit updates since 2013, who have not started any new activities since 2010 or who are simply non-compliant. The latter do not really deserve any favours, do they?

Finally, there is already a detailed guidance, in all EU languages, dating back to May 2014 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014XC0506%2801%29> , the current wording may imply that industry is not even aware of it or asks for further administrative requirement, which is at odds with the usual need for de-regulation/double-regulation mantra of the operators.

On the term “administrative burden for end users”: the suggested alternative wording proposal from the EEB was to enhance usability and enhanced information access to the content of the baseline report content and findings, adapted to needs for various end users (Member states enforcement authorities, soil and water clean-up decontamination businesses/researchers, NGO and concerned citizens and operators). This aspect has not been picked up in the opinion since it refers to “scope” of baseline “reporting” and closure plans, not the means for public accessibility and usability of the information generated by the baseline report provisions.

Finally the suggestion pushes for a single minimum and therefore likely reduces the effectiveness of monitoring and hence undermines the IED. This also runs counter to the objectives of the Fit-for-Future initiative as it risks undermining performance.

EEB issue 5: (suggestion 7) Functioning of the BREF process.

As to sentence: *“In addition, non-essential data is sometimes requested”* and in the suggestion part *“data collection should be reduced to the essential”*. This is an unfair comment. What is "essential data"? What's more, in many cases, you cannot tell whether data on a certain parameter is relevant for a given environmental parameter before the data are available. Further, the limitations and bottlenecks (efficiency, effectiveness of BAT conclusions v. time efforts and admin burden linked to data collection and information exchange) are mainly due to the shortcomings already identified as to Suggestion 2 (lack of BAT determination method), bad Annex I IED scope design and also the lack of KPIs on all stakeholders involved so to deliver progress in the ambition level of the BAT-C so to undercut political interference not aligned to the IED and wider EU Green Deal objectives. Another shortcoming is the lack of internalisation of external costs, including the climate debt, which leads to additional regulatory efforts burden (e.g. EU ETS interface, other regulatory instruments such as REACH, WFD etc. not being fully served) to deal with the negative effects caused by the absence of forward looking and fully integrated BAT-C as to the scope of environmental, human health and climate protection goals. Other concerns are inclusive governance concerns and unbalance of expert groups for the interests represented, leading to significant administrative burdens for NGOs (repeating issues, procedural reminders, repetitive intervention with associated administrative burden due to exchanges of involved stakeholders incl. EU Commission). In short it is not solely an issue of process but also a different understanding of purpose of the information exchange, this latter aspect is not well reflected in the final opinion.

EEB issue 6 (suggestion 8) Clarity and harmonisation

This approach is very risk as a whole site permit could be a very complicated exercise given the scale of some sites and lead to multiple risks of reducing protection of health and environment + delays for permit authorisation. Further concerns relate to wordings used

‘under the control’ / ‘single property’, the drawbacks/benefits of using different legal entities responsible have not been provided.

The other shortcoming links to not addressing other points that in our view deserve more attention (e.g. art 15.4 derogation, compliance assessment, sanctions and breach) that have not been picked up. We support a “site” approach as to regulating an operator, which should include any associated activity and common or related infrastructure (Seveso), under the (co)control of the operator. Reporting should be dis-aggregated to the smallest entity = “installation” as per IED. Harmonisation shall also apply to

- Art 15.4 derogation practice (system boundaries, methods for assessing the (dis) proportionality of costs;
- Compliance assessment (measurement uncertainty);
- Significance thresholds as to breach situations / inspections findings etc.

#### EEB issue 7 (Suggestion 9) **Global dimension**

Considering the EU climate commitments, the self commitments by the industry to become carbon neutral by latest 2050 we see it as a no-brainer that an explicit link to climate protection should be made, and that the IED shall play its part to deliver.

#### *Alternative suggestions:*

EEB Issue 1: “The IED is based on several pillars, in particular (1) an integrated approach, (2) use of best available techniques, ~~(3) flexibility,~~ (3) enforcement and compliance assessment and (5) the 3 Aarhus pillars (access to information, public participation and access to justice).”

*Source / Evidence: IA for the first IPPC-D (recast), Article 8, 23 and 14 + 24 of the IED, Aarhus Convention.*

EEB Issue 2: to add at the end of the sentence: (i.e. in delisting identified KEI), unless necessary to be coherent for new EU policy developments e.g. fit for 55 package and ZPAP under the EU Green Deal.

*Source / Evidence: Art 18 of the IED, BREF review rules.*

#### EEB Issue 3: DELETE

*Source / Evidence: Art 5, 10? 11, 12, 14, 18 of the IED+ BREF review rules, waste water/gas inventory BATs connected to monitoring requirements.*

#### EEB issue 4

“The obligation derives from article 22 of the directive. Applying strictly (i.e. only where an appliance uses / produces / or releases a dangerous/hazardous substances that can ~~leak into~~ contaminate the ground (soil and groundwater) ~~in its production~~)”

Preferred option: ‘The content of the baseline reports shall be made accessible to the public in user friendly format e.g. EEA Industrial Pollution Portal V2.0, enabling query search on the following parameters: IED activity and installation ID codes, site boundaries limitations, pollutants ID (CAS number), sampling results and location, inventory of dangerous substances, findings as to risk ratings, technical feasibility of decontamination and description, future use of the site considered, status of the decontamination, fate of the soil

excavated / treatment steps taken (also for improving groundwater status). Reporting on soil remediation shall also be improved through the ongoing E-PRTR review. ‘

Compromise option (amended BDI proposal): ‘Further ~~guidance~~ improvements on the public access (e.g. through the EEA Industrial Pollution Portal) and usability of information generated by ~~on the scope~~ of baseline reporting and closure plans could be further beneficial in order to achieve the polluter-pays-principle.’

**Expected benefits:** Right to know about the state of soil and groundwater pollution and actions taken so to remediate the situation put into practice. Specialised industry in decontamination may better cooperate with owners / operators of those sites and track adequate treatment steps are carried out. Improved knowledge sharing on storage of hazardous chemicals, improved effectiveness with Seveso III requirements (inventory of dangerous substances) and Major Accidents Prevention Policy and compliance with Environmental Liability Directive.

*Source / Evidence: Art 22 of the IED is explicitly clear , shortcoming as access to baseline reports and its content see for yourself here <https://industry.eea.europa.eu/> + existing guidance <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014XC0506%2801%29>*

#### EEB issue 5

A) Change heading of suggestion 6 as follows: Functioning and purpose of the BREF process (IED scope design)

B) To add in description “For the E.NGO stakeholder group, the main issues relating to shortcomings in the EU BREF process are the following:

- Lack of BAT determination methodology (see proposal here <https://eeb.org/library/comments-and-suggestions-for-improved-bat-determination-methodology/> ) that is based on technical feasibility, promotes frontrunners and innovation and is outcome oriented. High hurdle as to information supplied, too EU installation focussed and backwards looking
- Bad scope design of Annex I of the IED (too installation focussed instead of intended service/product outputs)
- Lack of KPIs for all participants involved in the information exchange to provide for progress instead of preserving status quo for industry
- Lack of internalisation of external costs, including climate debt
- Inclusive governance concerns (MS TWG infiltration by industry affiliated experts, lack of involvement of technique providers and academia) and more importantly unbalance of interest groups presented. Risk of hijacking of technical debate by political agenda of certain governments to protect its industry (LCP BREF Final meeting / vote was prime example)

A further limitation is about the intended outcomes the BAT-C should serve, directly relating to the setup of the scope of the IED (Annex I). A change in the approach of how industrial

activities are regulated is proposed, by setting BAT for lowest ratio ‘environmental impact of industrial activity’ versus ‘public good/service provided’, in order to promote the industrial activity with the least negative environmental impact for the provision of a given product/service. The Commission should prioritise the following items as headline activities: energy production, water quality and supply, protein production, resource management, substitution of chemicals of concern. Other environmentally impacting activities should be covered as well (e.g. aquaculture, data centres, other forms of animal rearing) without losing focus on the desired public good / service to be provided). Annex I would have to be amended to enable the new BREF series to assess all available options to provide those main activities with a zero pollution ambition compatible screening as to the solutions identification.

Those changes are to be brought within a swift review of the BREF guidance, to be turned in a Commission Implementing Decision. “

C) change of text in **Expected benefits**: “This approach will enable industry, NGO and Member States to collaborate for identifying all possible options and therefore conclude on more holistic and forward-looking BAT as to long lasting solutions to a given problem / intended service or product. The benefit is also to finally deliver on the set policy objective of the IED, namely to achieve an ‘*integrated prevention and control of pollution arising from industrial activities ... in order to achieve a high level of protection of the environment taken as a whole*’ (Article 1).”

*Source / Evidence: EEB position to IED TSS [https://eipie.eu/wp-content/uploads/2021/07/IED-Review-TSS\\_EEB\\_-FINAL-Submission-8april2021.pdf](https://eipie.eu/wp-content/uploads/2021/07/IED-Review-TSS_EEB_-FINAL-Submission-8april2021.pdf) / COM implementation reports on sector studies, Greenpeace Smoke and Mirrors report , <https://meta.eeb.org/2021/02/04/how-industry-polluters-hijack-negotiations-on-emission-standards/>*

#### EEB issue 6 (suggestion 8) **Clarity and harmonisation** ADD

A “site” approach as to regulating an operator, which should include any associated activity and common or related infrastructure (Seveso), under the (co)control of the operator should be taken. Reporting should be dis-aggregated to the smallest entity, namely ‘installations’. Harmonisation shall also apply to

- Art 15.4 derogation practice (system boundaries, methods for assessing the (dis) proportionality of costs
- Compliance assessment (measurement uncertainty)
- Significance thresholds as to breach situations / inspections findings etc.

*Source / Evidence: EEB position to IED TSS [https://eipie.eu/wp-content/uploads/2021/07/IED-Review-TSS\\_EEB\\_-FINAL-Submission-8april2021.pdf](https://eipie.eu/wp-content/uploads/2021/07/IED-Review-TSS_EEB_-FINAL-Submission-8april2021.pdf) / COM implementation reports on sector studies, EEB LCP BREF implementation study <https://eeb.org/library/industrial-plant-data-viewer-country-factsheets/>*

#### EEB issue 7 (Suggestion 9) **Global dimension**

[...] and to benchmark European industry environmental and climate performance vis-à-vis non-EU competitors. A deeper understanding of the global environmental level playing field

and competitiveness dimension would help, in the long-term, to further reduce unnecessary costs and level the playing field to promote the IED primary goals, notably to prevent pollution at source and stimulating environmental performance innovation.

The IED is modified so to serve the climate goals and the decarbonisation (net zero) commitments of the industry. Article 26 of the EU -ETS is to be deleted so to enable this “combined approach” of BAT based standards and market-based approach. Article 9 of the IED is revised so to speed up the pace of decarbonisation within the industrial activities, showcasing that the European industry will act as a responsible environmental and climate leader. The Carbon Border Adjustment Mechanism (CBAM) currently in consideration should be adapted to include other environmental aspects and refer to a “pollution border adjustment mechanism” so to capture the other environmental media aspects (developed in the BAT requirements). A feasibility study of this pollution border adjustment mechanism should form integral part of the discussions around the CBAM.

*Source / Evidence: EEB position to IED TSS* [https://eipie.eu/wp-content/uploads/2021/07/IED-Review-TSS\\_EEB\\_-FINAL-Submission-8april2021.pdf](https://eipie.eu/wp-content/uploads/2021/07/IED-Review-TSS_EEB_-FINAL-Submission-8april2021.pdf) / <https://eeb.org/eus-fit-for-55-is-unfit-and-unfair-ngos-say/>