EUROMETAUX Position paper on the revision of IED and E-PRTR

Eurometaux welcomes the review of the Industrial Emissions Directive and the E-PRTR Regulation, and the opportunities provided to stakeholders to submit input so far. Before the end of these processes, we would like to emphasize once again our main messages.
Current IED provisions and the related BREF process have been a major step forward for the reduction and elimination of pollutants arising from agro-industrial activities from 2010 until today, which was well recognised by the 2019 evaluation of the IED. While some gaps need to be filled, the pillars of the IED, in particular the integrated approach and the use of best available techniques have been and are key for achieving results in terms of environmental performance of industrial installations in Europe.
This paper aims to sum up and digest Eurometaux's position on the Policy Options proposed during the stakeholder workshop on the IED review that took place in July 2021.

- ***On decarbonisation and Green Deal***

Europe's non-ferrous metals industry is a frontrunner in the transition to a climate-neutral society, as demonstrated by the fact it has reduced its emissions by 61% since 1990 with the theoretical potential to reduce further in the near future. This result has been achieved through the electrification of the industrial processes, and additional possibilities are mainly bound to the production and availability in the market of low carbon electricity, e.g. through renewable sources.

On the one hand the IED may help reaching the targets of the Green Deal in terms of climate neutrality and should address the available techniques in this respect, keeping in mind that the main objective of the directive should remain an integrated approach to tackling pollutant emissions. On the other hand, the EU Emissions Trading System (EU ETS) is a cornerstone of the Union's climate policy and the key tool to reduce GHG emissions from industry in the most cost-effective way. The key economic rationale behind emissions trading is to ensure that emissions reductions required to achieve a pre-determined environmental outcome take place where the cost of reduction is the lowest. The energy legislative framework has also indirectly contributed to reduce GHG emissions in and from industry by promoting energy efficiency and consumption of renewable energy sources. The ETS applies to most of the significant GHG emitting activities that are already covered by the IED. Since they coexist, Member States competent authorities and operators have been able to combine the permitting procedures for both the ETS Directive and the IED, while respecting the differences in the nature of the permits and their respective objectives.

In conclusion, we do not support the policy options that would delete Article 9 or add requirements in permits on climate (PO 33, 34, 35): the IED shall remain the tool to regulate direct emissions that are under the control of the operators. Moreover, we believe that GHGs already regulated under the ETS should not be identified as KEI, and BAT conclusions should not be derived from GHG-related data collection. Regarding BAT conclusions on energy efficiency, we believe they should keep their indicative nature in the BAT conclusions context. Many abatement technologies will require a much higher amount of energy compared to today's state of the art technologies. Hence setting mandatory AEELs (PO 32) would lead to situations where an operator could not at the same time contribute to the achievement of the EU climate-neutrality objective and comply with its IED permit.

Eurometaux - European Association of Metals
Avenue de Tervueren, 168/bte 13 | B-1150 Brussels | Tel: +32 (2) 775 63 11 | www.eurometaux.eu | eurometaux@eurometaux.be | @Eurometaux

- ***On BATAELs on emission limit values***

The integrated approach ensures that permits are set to consider the whole environmental performance of the installation, covering emissions to air, water and land, generation of waste, use of raw materials, energy efficiency, noise, prevention of accidents, and restoration of the site upon closure. This is the main reason why BATAELs are expressed as ranges. In this way, balanced proportional trade-off decisions can help to protect the environment as a whole.
Default options, as mentioned in PO5 ("Require competent authorities to consider under Article 15(3) setting permit ELVs by default at the lower limit of the BAT-AEL range.") should not be used. ELV should be set in the BATAEL range after careful assessment of these conditions by the Competent Authorities, as lowering emission limits does not mean necessarily that impact on the environment is reduced.
Lower ends are sometimes linked to minimum measured values or close to the detection limit of instruments and therefore cannot be implemented as limits with the necessary legal certainty for compliance. In addition to that, and linked to the point above, GHG emissions could even be increased in some cases by applying the lower end of BATAELs due to cross media effects for reagents' production.

- ***Non-binding BAT-AEPLs***

One of the considered Policy Options (PO 37) is to "Introduce an explicit reference to the binding nature of resource efficiency BAT-AEPLs for new permits and permit reviews".
In the NFM sector material efficiency is something that strongly depends on applied techniques and processes. The significant variety of existing configurations for NFM installations would undermine the possible benefits from any binding AEPLs for material efficiency. Especially for metal recyclers, the increased complexity of waste will require that every subsector/installation develops specific configurations to meet the specific challenges and this could not realistically be captured in a general BREF document.
The IED's potential to foster resource efficiency and circular economy is there but would not be realised by setting binding environmental performance levels other than BAT-AELs (BAT-AEPLs), which should remain indicative to avoid counterproductive results.

- ***Chemical legislation***

The non-ferrous metal industry is a sector with very high REACH compliance. Eurometaux shares the aim of ensuring that hazardous substances are used and recycled safely, especially since 1/3 of industrial metal elements are on a "hazard" list globally.
Our ambition is to achieve a risk-controlled environment where hazardous substances are only used when exposure to human health or the environment is controlled. To do so, a three-step approach should be followed: starting by mapping where metals are used, then evaluating where the exposure happens and finally implementing risk control measures and communication. When aiming at a risk-controlled environment it is important to look at the overall picture and consider scopes, strengths, and limits of the various regulatory tools.
Hazardous substances are covered by other chemical legislation. While complementarity and consistency of different EU legislation are desirable, overlapping and double regulation is something that should be avoided to ensure legal certainty for competent authorities, citizens and industry.
An extensive dialogue between ECHA, DG ENV and the JRC should be structured in order to ensure an efficient interaction.

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- ***On emerging techniques***

One should not dilute and confuse the existing concept of BAT-AELs with new parameters with different legal nuances such as ET-AELs. The general description of an Emerging Technique in the BREF should not lead to the derivation of "ET-AELs" (PO 44) because of the significant uncertainties due to low maturity of the decarbonisation options (small scale or pilot projects). While we fully support fostering innovation as well as a better use and staffing of the innovation observatory, where participation of operators and experts from industry is essential, we would like to stress that the work of the Innovation Observatory should be kept separate from the BREF process. Innovation should be supported and incentivized but not forced. In addition, an appropriate selection of applied RTD institutes and technology developers and providers should be implemented to ensure a well-balanced representation of stakeholders.
Having regard to the challenges before us we believe that an additional period before compliance with BAT AELs becomes mandatory is welcome, whatever the new innovative technique that will be recognized as BAT after completing any upcoming BREF reviews, ending with the adoption of BAT conclusions.
Generally, we see a benefit looking at new techniques closer and more frequently but also caution that technologies must be ready, must be technically proven and must be economically viable before they would become eventually the reference to set permit conditions.

- ***E-PRTR***

EPRTR and IED are interconnected, as they cover the same types of installations. However, aims and priorities are different and should be kept as such. The E-PRTR Regulation shall not be the reference to identify well-performing installations or identify key environmental issues for the BREF review process.
The EPRTR already balances the right level of information with the right level of complexity in order to reach a maximum of citizens. The reporting on a more detailed level would not increase the benefit for the public but increase the time spent and costs for the operators and the administrative burden for authorities. In addition, it might increase the incidence of errors more than what we can already see today.
In order to have a complete and meaningful picture one should collect a very large amount of contextual information (e.g. plant configurations, size, CAPEX and OPEX, etc.) and this would require effort and time from operators and CA. If the intent would be to provide a benchmark, this is better done within a BREF document, where AEPLs are set with the necessary information and knowledge.
In the NFM sector, installations can be very complex, and it is rare to find two facilities alike. The level of contextual information will never be able to cover the differences in operating costs between plants. So, the addition of contextual information in E-PRTR would not have any additional benefit.

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