

Eurometaux's Position on the new IED Proposal

This paper provides an overview on the main critical issues for the Non-Ferrous Metals (NFM) sector and includes points to be considered in the review of the Industrial Emissions Directive (IED) and Industrial Emissions Portal (IEP).

Eurometaux members support the European Commission's Green Deal objectives and the Commission's intentions to streamline the IED, promote innovation and reduce emissions. However, the current proposal might need to be substantially reworked in order to reach these goals. The present geo-political settings emphasise the absolute necessity for a European strategic resilience and a raw materials independence – and the essential role of European Industry to achieve such objectives. The challenges industry is already facing, including high energy prices, disruption of supply chains and high inflation, pose existential difficulties to companies who have already been under pressure in the last years due to the pandemic crisis. The current scenario calls for a solid EU policy framework which mitigates these severe challenges while supporting the necessary industrial transformation required for delivering the long-term objectives of the Green Deal.

The new proposed requirements lead to legal uncertainties and risk to prolong and complicate permit procedures for the sector, undermining the ongoing industrial transformation and the transition to sustainability. The NFM sector has a key role to play in enabling the green, digital and energy transition towards sustainability, and calls that the best possible conditions for a thriving European industry are set – and reflected in the new IED.

Industrial Emissions Directive (IED)

The IED integrated approach must be respected. BAT-AELs are set as ranges for a reason: to take into account the complexity and variability of different installations within the same sector, including diverse input material, local conditions, availability of techniques, etc. Therefore, emission limit values should be set only after careful assessment of such conditions by operators and Competent Authorities, under the holistic principle of the protection of the environment as a whole, and by taking into account cross-media effects, in order to identify the highest environmental ambition that a specific installation can achieve within its local context and strike the right balance on what is achievable from a techno-economic perspective. IED Article 15.3 should reflect this principle and not just call for the strictest end of BAT-AELs ranges.

Techniques leading to minimum emissions have cross-media effects and it is technically impossible to achieve the most stringent levels for all emissions and parameters. Additionally, lower ends of BAT-AELs are often set at a level close to measuring instruments' detection limits: for compliance and enforceability, emission limit values require legal certainty, which would not be guaranteed under such conditions.

Innovation cannot be forced and Industry needs a solid framework for investments. The mandatory introduction of 2030-2050 transformation plans for installations as a requirement for the permit review process cannot be supported. Technologies need to be available, scalable and economically viable before being adopted to become the reference to set permit conditions. If not commercially developed, by definition they cannot be considered 'available techniques' and it is not possible to derive from them any reliable associated emission levels. Instead, innovation and adoption of emerging techniques must be obtained by supporting mechanisms (e.g., simplified permitting processes, financial or tax incentives, etc.). Innovation should be incentivised, not imposed.

Companies need a good level of certainty for their investments and cannot commit themselves to a technology that may need to be replaced only a few years later. As investment cycles can be very long and capital intensive, legal clarity, predictability and planning security are indispensable for the economic activities of the NFM sector.



23 June 2022

The burden of proof should remain on the person who brings a claim. The proposed “reversed burden of proof” on the individual claiming damage from industrial emissions in case of violation of national law (from the individual to the installation, onus to prove 'innocence' on the operator) risks generating legal uncertainty for operators and will be impossible to meet in some circumstances (e.g., several installations in the surrounding of that individual). Any individual claiming damage should bear the burden of proof with regard to any claims that they make, and must provide sufficient evidence in order to support those claims. Furthermore, in case of breaches, penalties should be proportional to damage, and not to the annual turnover of the company.

Avoid overlaps with existing legislation. The ISO 14001 and the ISO 50001 standards already provide a framework to assess operators' activities and risks. The requirements on 'resource use' and 'chemicals', are already covered under other legislations (e.g., chemicals management systems are part of REACH and OSH obligations). Overlaps with other legislations and increased reporting for companies must be avoided, especially if it does not provide any added value from an environmental perspective.

IED scope is integrated pollution prevention and control. It is unclear how the IED could directly address topics such as circular economy, which by definition is a broad issue not limited to a single installation, involving the value chain and society as a whole; this was also recognised by the impact assessment study and should be reflected in the Proposal. Additionally, general recommendations based on the principles of circular economy and resource efficiency are already part of BREF reviews. These topics can be better addressed via other pieces of legislation that have a broader and more systemic approach (e.g., Waste Framework Directive, Taxonomy, etc.), whilst the IED should keep its specific, installation-level focus.

Supporting Decarbonisation. We do not support the Commission's proposal to delete Art. 9-2. Energy efficiency requirements shall remain optional and the deletion would lead to contradictions with the requirements of the ETS and the path towards climate neutrality (e.g., more energy might be needed to decarbonise). Moreover, the sectors that have delivered the most in terms of decarbonisation efforts are the very sectors that are covered by the ETS.

On the introduction of Extractive and Mining Industries. Expanding the IED to include extractive and mining industries represents a considerable increase in the scope of the Directive without any apparent environmental benefit: the European mining sector is already strongly regulated today by a dense legislative system both at European and at national level, within international management standards and best practice guidelines, ensuring a very high-level of environmental protection and performance. Therefore, additional administrative burden may not bring significant environmental benefits, but rather hinder permitting for new projects and reduce Europe's availability of primary raw materials to support the objectives of the Green Deal and the EU Strategic Autonomy policy.

On the Inclusion of 'Battery Manufacturing'. The critical industrial processes commonly used in the production and recycling of batteries are already included in the scope of the IED¹. Batteries are complex products and their manufacturing often requires a great variety of different technologies and involves various actors along the value chain. Battery manufacturing sites do not necessarily have all critical processes integrated onsite, which are instead distributed along the supply chain. Regulating the respective processes, rather than manufacturing sites, would be far more effective to mitigate potential risks to the environment and enhance sustainability. Not only would it prove to be extremely inefficient and impractical to properly regulate 'battery production' as such under the IED, but it must be ensured that the IED keeps

¹ Typical processes used in the battery manufacturing supply chain are; (i) the processing of non-ferrous metals (IED, Annex I, No. 2.5 b), a key process for the manufacturing and recycling of batteries. In case of lead-based batteries, this is typically an integrated part of the manufacturing site. In case of lithium-based batteries, these processes (e.g., production of copper and aluminum foils) are typically allocated to the supply chain and not integrated into the battery manufacturing site; (ii) the production of metal oxide (e.g., cathode material), which is already subject to IED as regulated under Annex 4.2 e (Production of inorganic chemicals, such as (e) non-metals, metal-oxides or others).



23 June 2022

its focus on regulating industrial production processes through BATs, rather than specific industries. Therefore, we recommend identifying processes that are relevant for the manufacturing of batteries and regulating such processes under the IED.

Industrial Emission Portal (IEP)

Supporting increased transparency. The increased transparency ambition of the new IEP is supported, provided that boundaries of competition and confidentiality issues are well-assessed. Disclosing contextual information and production volumes could put companies' confidential business information at risk. The IEP shall not be used for frontloading the work of BREF processes: the information in the IEP shall serve communication purposes only, and shall not be used for policy-making actions. Instead, the information exchange described in IED Article 13 is the appropriate legal procedure to set the basis for BAT Conclusions.

Moreover, current bottlenecks in sharing information on emissions are not linked to Industry, but are more a consequence of the lack of resources and capacity in Member States. It must be noted that if the number of reporting installations is increased, together with the addition of new sectors, Member States will be subject to a heavier burden of work, which will add up to the fact that MSs are already lagging behind on reporting. This must be addressed by Commission and Member States.

Contact: Lorenzo Marotti, Chemicals Management Manager | marotti@eurometaux.be | +32 (0) 470 41 63 25

About Eurometaux. Eurometaux is the decisive voice of non-ferrous metals producers and recyclers in Europe. We are an umbrella association representing the combined non-ferrous metals industry, including smelters, refiners, fabricators and recyclers. In total the sector employs 500,000 people across over 900 facilities, with an annual turnover of €120bn.

