EUROFER
THE EUROPEAN STEEL ASSOCIATION

Position paper

The Commission proposal for the revised Industrial Emissions Directive (IED) risks slowing the green transition, hampering innovation and complicating permit processes

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EUROFER members are firmly committed to significantly invest in the transition towards a clean, low-carbon future, in line with the Green Deal objectives[1]. To this end, there is one investment cycle left to make the right decisions while keeping the EU steel industry competitive.

The transition of industry, and in particular the steel sector, will take place in stages: new plants will be built, new processes will be introduced and existing plants will continue to operate until the new plants/processes can replace them completely. An innovation-friendly environment with legal and planning certainty is necessary for the economic activities and the preservation of the competitiveness of the steel industry.

The existing IED has been a very effective tool for reducing industrial emissions and recent BREF reviews show that it is fit-for-purpose for addressing existing and future environmental challenges. For the industries to carry on with their transition, a consistent (respect the integrated approach), efficient (by accelerating permit procedures without unnecessary burden) and legally secure permit process is key.

However, it seems that IED review (IED 2.0) will lose its spirit and the BAT process will get a very new and not desired meaning. The Commission proposal makes us extremely concerned and, if no deletions or significantly amended, it will have the opposite effect. This paper concludes on the most important parts and EUROFER has elaborated plenty of proposals for the revised IED so it remains efficient whilst supporting innovation.

[1] European Parliament project GreenSteel for Europe (July 2021), Carbon-free steel production study by European Parliament Research Service (April 2021), EUROFER low carbon steel roadmap (2019)

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EUROFER key messages and requests are the following:

- **Safeguarding the integrated approach** to pollution prevention and control: the assessment of the well performing plants applying BAT(s) shows that availability of techniques is not given and that no installation in Europe can comply with the lowest end of range of all BAT-AELs defined in all the steel related BREFs as proposed by default in Art 15.3.
- **BAT-AEPLs (raw material, water and energy) should remain non-binding** to avoid hindering innovation as well as efficiency measures, but also ambitions for circularity. Therefore Art 15.3a should be deleted and Art 9.2 on energy efficiency measures maintained.
- **IED 2.0 supports decarbonisation but need specific provisions for sectors under deep transformation** like steel in an effective manner preventing large investments on existing assets that are planned to be phased, since the transformation would already be extremely capital intensive. Lately, the **Seville process** also contributes with the identification of de-C techniques and therefore, the Commission's proposal to maintain Art 9.1 is supported.
- **Accompany the transformation, not overloading neither micromanaging** it:
  - The EMS is already included in legally binding BAT conclusions (BREFs). The proposed Article 14a on EMS should be deleted**.**
  - Emerging and innovative techniques are not at a level of maturity which allows a thorough data collection and establishment of the corresponding AELs – one of the underlying principles to develop BREFs/BAT conclusions. The revised IED should provide operators with **sufficient time and a clear and solid legal framework** to demonstrate that the expected performance of Emerging Techniques and the associated emission levels (**ET-AELs**) can be achieved in operational installations as well as legal certainty on what would happen should the expected levels not be achieved. Art. 27 c must be amended.
  - **Transformation Plans (TPs) should remain indicative**: they should not be part of the permitting process nor have a binding character as these will be based on a number of parameters and key factors that are beyond the control of plant operators. We therefore ask that provisions (Article 27d) on TPs are deleted.
  -Providing legal certainty to operators: BREF/BAT produced under the current IED must be regulated under the existing regime and not under IED 2.0, as BAT-AE(P)Ls have been produced considering the existing BREF guidance. An amended transposition article is needed.
  -The publication of permits and company data must guarantee the **protection of sensitive data** against the background of competition rules (Article 13(b)2).
  - In relation to **Environmental Quality standards (EQS)**, competent authorities are invited to apply the principle of proportionality and adopt measures that will ensure that other sources will also reduce their specific contribution to the observed exceedance (Art 18).
- **Exclude sectors of lower environmental relevance:** the inclusion of cold rolling mills, wire drawing, smitheries with forging presses and small hammer smitheries mills (Annex I 2.3) is rejected.

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EUROFER main concerns more in detail:

a) Safeguarding the integrated approach to pollution prevention and control

Setting permit conditions at the lowest ends of the BAT-AEL range, as suggested by the new Article 15(3) is at odds with the integrated approach, a key pillar of any industrial emissions legislation. It is completely in contradiction with the concept of best available techniques and ignores fully availability of techniques. Indeed, a plant can emit different pollutants and cannot comply with the lowest emission limit values for each and every individual parameter. BAT-AEL ranges reflect the fact that BATs (or the combination thereof) are not always applicable due to differences within a given type of installation[2] (e.g. differences in design, construction, size and capacity of the installation), technical barriers and/or the existence of cross-media effects that result in variations in the environmental performances achieved when applying BAT. Furthermore, the technique neutrality is lost when being obliged going for one single technique (if available) to comply with the lowest end of the BAT-AEL range in all our steel related BREFs (e.g. Iron and Steel, Ferrous Metals Processing, Large Combustion Plants, Surface Treatment using Organic Solvents,).

Example case - FMP (ferrous metal production) BREF/BAT conclusions:
- The assessment of the well performing plants shows applying BAT(s) that no installation in Europe can comply with the lowest end of range of all BAT-AELs.
- The lower end of the range for some pollutants is hardly impossible to achieve despite BAT is applied (e.g. NOx levels when firing iron and steel process gases)
- In heating processes, the installations often apply the BAT 'preheat' the combustion air using the heat contained in the exhaust gases. On the one hand, this technique saves important amount of energy; on the other hand, a significant increase of NO_x emissions is observed.

As a result, and by default, the Commission proposal will require all operators to develop a feasibility assessment to demonstrate why the strictest ends of the BAT-AEL ranges cannot be achieved, leading to significant burden, additional costs and permit delays with an unresolved legal uncertainty. It is vital that legal certainty is provided to operators (see point e) of this position paper).

b) BAT-AEPLs should remain non-binding

The idea of Article 15(3)a making environmental performance levels associated with BAT (BAT-AEPLs), legally binding must be fully rejected. Resource efficiency (including raw materials, water and energy) depend on the product profile, the plant size, the type of raw material used, etc. These variables can differ significantly from plant to plant and from country to country.

Furthermore, environmental performance levels are not exclusively under the control of the operator of the installation (depends for instance on the availability of industrial symbiosis

[2] BREF guidance (2012/119/EU) - Section 3.3. Individual BAT conclusions with associated environmental performance levels

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opportunities at site level). The difficulty to compare very different environmental performance levels due to the very individual plant and local configurations is also regularly raised and recognised in BREF discussions. Starting to regulate the amount of secondary raw materials in a process (or products) might be efficient if this markets need to be stimulated. For scrap this is not needed as all scrap collected is recycled. Transformational processes and technologies used in the steel sector will be much more electricity demanding. Thus, binding BAT-AEPLs risk hindering innovation and low-carbon transformation – among others the development of low-Carbon/fossil-free steel from primary material - as well as efficiency measures or ambitions for circularity and must therefore remain indicative. – (see also 2021 Wood plc study on the wider environmental impact of industry decarbonisation)

Example case - FMP BREF/BAT conclusions:

The manufacturing of advanced steel products necessary for the energy transition (such as high-strength steels or high-alloy steels) will require higher process temperatures or rolling forces. The BREF process cannot foresee the higher energy consumption required for the manufacturing of these products but also for new processes.

c) Supporting decarbonisation

EUROFER fully supports the Commission's proposal to maintain the current Article 9(1). Indeed, sectors covered by both the EU ETS and the IED are the ones which have delivered the most in terms of decarbonisation efforts. The IED already supports the decarbonisation efforts of industry through choice of fuels, energy efficiency and lately also the identification of techniques that can result in the reduction of GHGs whilst considering their impact on the environment as a whole. In addition, we reiterate that the global challenges on GHG emission reductions are better tackled by other types of legislation whilst the IED best regulates the local environmental conditions of a plant.

Conversely, EUROFER cannot support the proposal to delete Article 9(2), in line with our view that BAT-AEPLs should remain indicative. This deletion will likely further complexify the integrated approach and lead to the identification of energy saving techniques with a potential negative cross-media effect on GHG emissions.

In the sectors affected by the transformation like steel, the IED must ensure the continued operation of existing plants under appropriate and stable conditions. Ambitious requirements for existing plants leading to costly retrofits risk derailing the transition and should be excluded.

IED can support decarbonisation in an effective manner if it is preventing large investments on existing assets that are planned to be phased out within the decarbonisation, since the transformation would already be extremely capital intensive. Specific provisions for sectors under deep transformation, like steel are needed. This is nothing new since for instance transitional national plans for combustion plants do exist under the IED (see Chapter III, Art. 32)

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Seville process is already contributing to decarbonisation since the techniques are listed without binding values for ETS sectors and it should remain like that.

Example case – STM (Surface treatment of metals) BREF

STM Kick off meeting agreed, among others, to address the emissions of GHG in the context of decarbonisation, collecting information on techniques aiming at the decarbonisation of the sectors.

This approach is taken by default under Seville Process for the recent BREFs

d) Accompanying the transformation, not overloading neither micromanaging it

1. Environment Management Systems (EMS) are already well and better regulated in BAT conclusions (BREFs)

EMS (Article 14a) are well regulated in BREFs since their level of detail and degree of formalisation is related to the nature, scale and complexity of the installations[3]. As such, there is no need and in particular no clear rationale for including a provision on EMS in the revised IED, some of it going beyond what is under the control of the operator. In any case, the proposed Chemicals Management System goes well beyond the current obligations under the REACH framework and contradicts the 'one substance-one assessment' approach.The EMS is much better dealt with in the BAT conclusions of the BREFs. As such, Article 14a should be deleted from the Commission proposal for the revised IED.

Example case – FMP BREF:

BAT1 is to elaborate and implement an environmental management system (EMS) (See Annex)

BAT 3 is to elaborate and implement a chemicals management system (CMS) as part of the EMS (see Annex)

2. IED is not the appropriate tool for innovation. There are other tools (for instance HorizonEurope, the Research Fund for Coal and Steel, the EU ETS innovation fond), stimulating research, development and innovation

On the one hand, innovation is a long process that begins with a period of experimentation and probing, in which a wide variety of types are developed. By a process of elimination this wide variety is whittled down to one or two survivors. The key role of the IED should be to ensure that the techniques that have passed these steps and have become BAT (best available technique being what is technically achievable and economically viable) can be broadly implemented to protect the environment as a whole. Emerging and innovative techniques are not at a level of maturity which allows a thorough data collection and establishment of the

[3] Standard text used in BREFs (EIPPCB, Seville 7 March 2019) LINK

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corresponding associated emission levels – one of the underlying principles to develop BREFs and BAT conclusions. In other words, the 'command and control' approach of the IED does not fit with the very nature of innovation (i.e. benefits are only potential (expected but not proven) and timing is uncertain).

Whilst we welcome the extended testing period (Article 27b) as a positive step forward, we believe that the revised IED should provide operators with sufficient time and a clear and solid legal framework to demonstrate that the expected performance of Emerging Techniques and the associated emission levels (ET-AELs and indicative ET-AEPL) can be achieved in operational installations as well as legal certainty on what would happen should the expected performance not be achieved, contrary to the current provision in Articles 27c (emission levels associated with emerging techniques). Here also, we are ready to suggest constructive and valuable amendments.

The new Innovation Centre for Industrial Transformation and Emissions (INCITE – Article 27a) should only inform the Seville process, whilst the latter shall remain competent to define emerging techniques in BREFs and derive conclusions on emerging techniques, including the definition of ET-AELs where realistically doable. Industry's contribution to INCITE's assessments is essential and should be guaranteed.

3. Requirement for Transformation Plans (TPs) is better regulated via Corporate Sustainability Due Diligence

We strongly recommend that provisions on TPs are deleted in IED as it is better suited in other legislation and should not be connected to the permit.

A Transformation path at company level has the potential to support innovation and the transition towards a clean, circular and climate neutral industry. However, Article 27d requires TPs for each industrial installation and not company level, resulting in excessive micromanagement, which will only lead to fragmented information.

Moreover, if not deleted, TPs should remain indicative and should not be part of the permitting process nor have a binding character as these will be based on a number of parameters and key factors that are beyond the control of plant operators (e.g. they among others depend on the situation of the energy system and current geopolitical situation). Besides the non-negligible reporting and auditing efforts and costs, this information is competition-sensitive and its publication would have negative repercussions for the EU economy.

4. Regulating the use and amounts of chemicals via the permit will not improve efficiency

Chemicals are already covered via the existing effective EU chemicals legislation (e.g. REACH). Restriction, authorisation, substitution etc. is happening. We do not see the added

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effectiveness from regulating the use and amounts of chemicals via the permit. Furthermore, the principle of Key Environmental Issues as set by DG Environment should be respected[4].

e) Providing legal certainty to operators

BREF/BAT produced under the current IED must be regulated under the existing regime and not under the revised IED, as BAT-AE(P)Ls have been produced considering the existing BREF guidance. There is no such provision in the current IED and this was – and still is – the source of many legal uncertainties for operators. Even if we got oral confirmation about this from DG Environment, we still think it is needed to amend the transposition paragraph accordingly.

Example: we have the 2012 Iron and Steel BREF for which the revision started under the Integrated Prevention Pollution and Control Directive (IPPC-D) regime in 2007 and ended up in 2012 under the current IED. Conclusions on BAT became BAT conclusions making them legally binding whilst the whole data collection exercise and derivation of BAT-AELs were done under the spirit of the conclusions on BAT.

Furthermore, the publication of permits and company data must guarantee the protection of sensitive data against the background of competition rules. Environment NGOs within the TWG cannot be put at a higher level compared to their colleagues from industry (industry representatives in the TWG), that are bound to competition compliance (Article 13(b)2). We understand the need for Member States to access data from all Member States plants.

Compliance with Environmental Quality Standards (EQS) is not always exclusively related to the installation's operations. It is therefore important that competent authorities are invited to apply the principle of proportionality and adopt measures that will ensure that other sources will also reduce their specific contribution to the observed exceedance (Article 18)a. That is why the wording from Art 18 in IED 1.0 needs being reintroduced. Furthermore, derogations shall not be granted solely in case it is proven that the specific contribution of the installation puts at risk compliance with the EQS (Article 15(4)).

Legal certainty by applying BAT and complying with BAT-AEL is not given by the provisions of article 15(3). A feasibility assessment of the operator as base for setting ELV is critical in view on a legally standardized lower level of BAT-AEL.

f) Excluding sectors of lower environmental relevance to remain IED efficient

The scope of the IED does not need to be extended to include less environmentally relevant installations. This leads to disproportionately higher costs without added value for the protection of the environment and to the blocking of capacities that could be better used elsewhere. In particular, the inclusion of cold rolling mills, wire drawing, smitheries with forging

[4] Criteria for identifying key environmental issues for the review of BREFs: IED Article 13 Forum meeting of 19/10/2015; European Commission

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presses and small hammer smitheries mills (Annex I 2.3) is rejected because this activity lacks sufficient environmental relevance.

g) Amendments to Directive 1999/31/EC (Directive on the landfill of waste)

The Waste Treatment BREF specifies that landfills are covered by Directive 1999/31/EC (the 'Landfill Directive'), which establishes operational requirements for landfill sites. The reduction of landfilling is addressed via today's sector specific BREFs. Any improvement of the requirements for landfills should be addressed through a revision of the Landfill Directive.

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Annex

***FMP BAT 1**. In order to improve the overall environmental performance, BAT is to elaborate and implement an environmental management system (EMS) that incorporates all of the following features:*

i. commitment, leadership, and accountability of the management, including senior management, for the implementation of an effective EMS;

ii. an analysis that includes the determination of the organisation's context, the identification of the needs and expectations of interested parties, the identification of characteristics of the installation that are associated with possible risks for the environment (or human health) as well as of the applicable legal requirements relating to the environment;

iii. development of an environmental policy that includes the continuous improvement of the environmental performance of the installation;

iv. establishing objectives and performance indicators in relation to significant environmental aspects, including safeguarding compliance with applicable legal requirements;

v. planning and implementing the necessary procedures and actions (including corrective and preventive actions where needed), to achieve the environmental objectives and avoid environmental risks;

vi. determination of structures, roles and responsibilities in relation to environmental aspects and objectives and provision of the financial and human resources needed;

vii. ensuring the necessary competence and awareness of staff whose work may affect the environmental performance of the installation (e.g. by providing information and training);

viii. internal and external communication;

ix. fostering employee involvement in good environmental management practices;

x. establishing and maintaining a management manual and written procedures to control activities with significant environmental impact as well as relevant records;

xi. effective operational planning and process control;

xii. implementation of appropriate maintenance programmes;

xiii. emergency preparedness and response protocols, including the prevention and/or mitigation of the adverse (environmental) impacts of emergency situations;

xiv. when (re)designing a (new) installation or a part thereof, consideration of its environmental impacts throughout its life, which includes construction, maintenance, operation and decommissioning;

xv. implementation of a monitoring and measurement programme; if necessary, information can be found in the Reference Report on Monitoring of Emissions to Air and Water from IED Installations;

xvi. application of sectoral benchmarking on a regular basis;

xvii. periodic independent (as far as practicable) internal auditing and periodic independent external auditing in order to assess the environmental performance and to determine whether or not the EMS conforms to planned arrangements and has been properly implemented and maintained;

xviii. evaluation of causes of nonconformities, implementation of corrective actions in response to nonconformities, review of the effectiveness of corrective actions, and determination of whether similar nonconformities exist or could potentially occur;

xix. periodic review, by senior management, of the EMS and its continuing suitability, adequacy and effectiveness;

xx. following and taking into account the development of cleaner techniques.

Specifically for the ferrous metals processing sector, BAT is to also incorporate the following features in the EMS:

xxi. an inventory of process chemicals used and of waste water and waste gas streams (see BAT 2);

xxii. a chemicals management system (see BAT 3);

xxiii. a plan for the prevention and control of leaks and spillages (see BAT 4 (a));

xxiv. an OTNOC management plan (seeBAT 5);

xxv. an energy efficiency plan (see BAT 10 (a));

xxvi. a water management plan (see BAT 19 (a));

xxvii. a noise and vibration management plan (see BAT 32);

xxviii. a residues management plan (see BAT 34 (a)).

Note

Regulation (EC) No 1221/2009 establishes the European Union eco-management and audit scheme (EMAS), which is an example of an EMS consistent with this BAT.

Applicability

The level of detail and the degree of formalisation of the EMS will generally be related to the nature, scale and complexity of the installation, and the range of environmental impacts it may have.

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FMP BAT 3. *In order to improve the overall environmental performance, BAT is to elaborate and implement a chemicals management system (CMS) as part of the EMS (see BAT 1) that incorporates all of the following features:*

I. A policy to reduce the consumption and risks of process chemicals, including a procurement policy to select less harmful process chemicals and their suppliers with the aim of minimising the use and risks of hazardous substances and avoiding the procurement of an excess amount of process chemicals. The selection of process chemicals may consider:

a) their eliminability, their eco-toxicity and their potential to be released into the environment in order to reduce emissions to the environment;

b) the characterisation of the risks associated with the process chemicals, based on the chemicals' hazards statement, pathways through the plant, potential release and level of exposure;

c) the regular (e.g. annual) analysis of the potential for substitution to identify potentially new available and safer alternatives to the use of hazardous substances (e.g. use of other process chemicals with no or lower environmental impacts, see BAT 9).

d) the anticipatory monitoring of regulatory changes related to hazardous chemicals and safeguarding compliance with applicable legal requirements.

The inventory of process chemicals (see BAT 2) may be used to support the selection of process chemicals.

II. Goals and action plans to avoid or reduce the use and risks of hazardous substances.

III. Development and implementation of procedures for the procurement, handling, storage, and use of process chemicals to prevent or reduce emissions to the environment (e.g. see BAT 4).

Applicability

The level of detail of the CMS will generally be related to the nature, scale and complexity of the plant.

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