

Revision of the Industrial Emissions Directive & Industrial Emissions Portal Regulation (IED & IEP)

Eurelectric position paper

Eurelectric represents the interests of the electricity industry in Europe. Our work covers all major issues affecting our sector. Our members represent the electricity industry in over 30 European countries.

We cover the entire industry from electricity generation and markets to distribution networks and customer issues. We also have affiliates active on several other continents and business associates from a wide variety of sectors with a direct interest in the electricity industry.

We stand for

The vision of the European power sector is to enable and sustain:

- A vibrant competitive European economy, reliably powered by clean, carbon-neutral energy
- A smart, energy efficient and truly sustainable society for all citizens of Europe

We are committed to lead a cost-effective energy transition by:

investing in clean power generation and transition-enabling solutions, to reduce emissions and actively pursue efforts to become carbon-neutral well before mid-century, taking into account different starting points and commercial availability of key transition technologies;

transforming the energy system to make it more responsive, resilient and efficient. This includes increased use of renewable energy, digitalisation, demand side response and reinforcement of grids so they can function as platforms and enablers for customers, cities and communities;

accelerating the energy transition in other economic sectors by offering competitive electricity as a transformation tool for transport, heating and industry;

embedding sustainability in all parts of our value chain and take measures to support the transformation of existing assets towards a zero carbon society;

innovating to discover the cutting-edge business models and develop the breakthrough technologies that are indispensable to allow our industry to lead this transition.

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Position paper on the revision of the IED & IEP

A Eurelectric position paper

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KEY MESSAGES

Maintain the core principles of the Industrial Emissions Directive

- The current Industrial Emissions Directive (IED) framework is fit to enable the environmental transformation of European industries.
- Eurelectric welcomes the preservation of its core principles and definitions. For instance, its integrated approach, the definitions of Best Available Techniques (BAT) and the Sevilla process.

Streamline the permit process and keep flexibility under current BAT-AELs ranges for site-specific reasons

- The revision of the directive should consider setting a fixed processing time to ensure that competent authorities deliver a revised permit within a given timeframe, as lengthy permitting processes can be detrimental to investment decisions.
- Setting all permit conditions at the lowest end of the BAT-Associated Emission Levels (BAT-AEL) range is technically and economically unattainable for most industrial installations. Thus, imposing a disproportionate administrative burden on plant operators. The current approach allowing the full range of BAT-AEL and the possibility to derogate from them, if properly justified, should be maintained. For instance, existing thermal installations close to the end of their lifecycle currently operated solely to balance the intermittent generation of variable renewable energy sources and decrease the load factor.

Respect the scope of EU law and avoid overburdening the IED

- Eurelectric is concerned that empowering the Commission to adopt delegated acts to further extend the sectoral scope of the Directive may affect the functioning of the Sevilla process and undermine plant operators' legal certainty. Any adjustment to the scope of the directive, in terms of sectors covered, should be scientifically sound.
- New provisions included in Article 14a on Environmental Management Systems (EMS) and Article 79a on penalties are unwise and risk creating legal uncertainty.

Supporting emissions reduction while avoiding double regulation

- Eurelectric welcomes the proposed flexibilities to test new emerging techniques.
- The revision shall minimise overlap with existing regulations on decarbonisation and reporting requirements (e.g. the Corporate Sustainability Reporting Directive and EU Emissions Trading System) and ensure a coherent across policies. For instance: Medium Combustion Plants (MCP) between 20-50 MWth should not be included in the scope of the Industrial Emissions Portal (IEP) Regulation as combustion plants of a least 20 MWth are already covered by the MCP Directive.

Maintaining the core principles of the Industrial Emissions Directive

As one of the main instruments regulating industrial activity, the Industrial Emissions Directive (IED) sets the base for operations of over 50.000 installations in Europe. All covered installations have a requirement to comply with a permit that contributes to achieving the highest level of protection of human health and the environment. The success and innovative approach of the IED is partly owed to several principles, that anchored industrial activity with the highest level of environmental protection possible whilst taking on board economic viability.

Eurelectric fully understands the need for and supports an ambitious emissions policy in Europe while ensuring coherence with the latest climate and energy targets set by the 'Fit-for-55', and the 'REPowerEU' Communication to achieve a better environment and human health in a cost-effective approach. As highlighted by the numerous reports of the European Environmental Agency¹, in the last decades, the power sector has undertaken drastic efforts to reduce its non-CO₂ emissions and significantly limit its air pollution. For instance, between 1990 and 2019, emissions of SO₂ and NO_x by the electricity industry fell by 95% and 72% respectively, while direct emissions of PM_{2.5} were reduced by 79%.

These impressive reductions took place while electricity generation remained stable over the same period. Over the next decade, recently agreed source-specific European legislation for the energy sector (namely the recently implemented Best Available Techniques Reference Documents for Large Combustion Plants (BREF LCP) and Waste Incineration (WI) and the Medium Combustion Plant (MCP) Directive) will lead to further significant emission reductions.

Our sector intends to pursue and even accelerate its contribution to reducing industrial emissions across Europe by accelerating the clean energy transition and achieving a carbon-neutral electricity mix in the EU well before mid-century.

The following paper provides an overview of the main concerns of the electricity industry as some of the new proposed requirements of the IED & IEP Regulation revisions raise several implementation concerns which ultimately lead to legal uncertainties, prolong and complicate the permit procedures, increase the risk of double regulation and inconsistencies, ultimately undermining the ongoing industrial transformation. In this context, Eurelectric calls for a common policy framework which mitigates current short-term challenges while supporting the necessary transformation of European industries required for the long-term Green Deal's objectives.

Streamlining permitting processes and keeping flexibility under current BAT-AELs ranges for site-specific reasons

Eurelectric is concerned that the main intentions of the current IED revision proposal, i.e. increasing ambition in permits and tightening flexibilities, including public consultations may actually hamper the transformation of energy and industrial installations needed for the green transition.

The IED licensing process can take a significant amount of time, which can be detrimental to investment decisions. The revision should consider setting a fixed processing time that would ensure competent authorities deliver a revised permit within a given timeframe.

¹ European Environmental Agency (2021): [European Union emission inventory report 1990-2019](#)

Currently, BAT-AELs are expressed as ranges in BREFs/BAT conclusions. This is a sensible choice as BREFs/BAT conclusions cannot have perfect solutions for all plants across all Member States. Setting all permit conditions at the lowest end of the BAT-AEL range (i.e. the 'default option' for setting ELVs in permits in Article 15.3) is unattainable for most industrial installations, including a large majority of LCPs. Thus, creating a disproportionate administrative burden for plant operators that in compliance with Article 15.4 will need to conduct technical and economic assessments for derogations. In addition to this, the present BAT-AELs are the result of evidence-based deliberations within the Technical Working Groups in Sevilla and represent the benchmark emissions range for existing facilities. Setting the 'default option' for ELVs at the lowest end of the BAT-AEL range would entail those facilities shall operate below such range to meet the provisions of this Directive. Hence installations should beat the performance of BAT-AEL levels. This is contradictory to the concept of BAT-EAL, leading facilities to comply with processes even better than the "Best Available Technologies" set by the expert groups, and is not compliant with IED.

For instance, the NO_x BAT-AEL range for lignite combustion in plants with a capacity over 300 MWth starts at "<85 mg/m³". However, in the LCP BREF (see figure 5.38) no reference plant achieved this level (the best performing one measured around 120 mg/m³ as a yearly average. Similarly to this case, BAT-AELs for airborne mercury emissions shall also remain fact-based and expert-driven.

A plant can emit different pollutants and cannot comply with the lowest emission limit values for each parameter. Cross-media effects shall be accurately reflected as the optimisation of one parameter may come at the expense of another – for instance, a process can have higher NO_x emissions but be more efficient and emit less CO or CO₂. This new provision risks going against the IED's integrated approach and installation-specific applicability principle – which obliges authorities to consider the differences in the construction, size and capacity of the installation – severely jeopardizing the possibility of Member States to set general binding rules (per Article 17) and rendering superfluous the environmental quality standards included in Article 18.

In this context, Eurelectric welcomes the guidelines for a standardised methodology for cost-benefit analyses and feasibility assessments - if an exemption is needed - included in the new Annex II. Nevertheless, the current approach allowing the full range of BAT-AELs and the possibility to derogate from them, if properly justified, shall be maintained. Additionally, in the case of LCPs, the long investment cycles of the industry must be respected while allowing competent authorities to support LCP operators requiring more flexibility given the current evolution of the electricity system.

Respecting scopes of EU law and avoiding overburdening the IED

In Annex I of the revision, the Commission expresses its readiness to expand the scope of the IED. Eurelectric is concerned that Article 74, empowering the Commission to adopt delegated acts to further extend the sectoral scope of the Directive, may affect the functioning of the Sevilla process and undermine the legal certainty for plant operators. The enlarged sectorial scope will increase the demand for competent authorities to issue permits, leading to further permit delays and slowing down the industrial transition.

Any adjustment to the scope of the directive in terms of sectors covered should be scientifically sound and knowledge based. Furthermore, it should ensure that the environmental impact from a candidate sector is not already covered by other EU legislation. For instance, the IED should not apply to hydrogen plants using electrolytic technologies and 20-50 MW combustion plants, as the electrolytic process does not emit any of the pollutants reported in Annex II and the Medium Combustion Plants Directive (MCPD) already adequately fills the regulatory gap at EU level

between LCP (i.e. > 50 MWth) covered by the IED and smaller appliances (i.e. heaters, boilers). Additionally, Article 12 of the MCPD enables the European Commission to review ELVs for new MCPs based on state-of-the-art technologies.

Article 14 requires the permit conditions to include at least ELVs for - including emerging substances of concerns, as per recital 12 - which would burden and delay Sevilla's decisions. Provisions included in Article 14a make Environmental Management Systems (EMS) publicly available without restrictions seem unsensible. Their full disclosure risks hindering the effective role of EMS as an internal tool to manage operations. EMS also contain sensitive information like internal responsibilities and functions in unnormal situations. In addition, transitional provisions for operators regarding the newly introduced provisions and requirements (such as in Article 14, 14a, 15, 15a, 16 or 18) are entirely missing, as well as limited lifetime derogations for premature unit cessation due to decarbonization including the interconnection of Small Isolated Systems.

Eurelectric acknowledges the difficulties for individuals to prove damage to health and a causal link between suffered harm and infringements. However, the amendments to Article 79(a) related to reversing the burden of proof, are not in line with normal procedures for compensation claims and risks creating legal uncertainty for operators. Similarly, new provisions concerning compliance assessment included in Article 15a are not clear nor well justified. Despite the compliance assessment being an implementation issue and recognising the need for more consistent approaches across the EU, the European Commission shall not adopt further rules on this issue by the regulatory procedure, as currently proposed by Article 75.2, within two years of the IED entering into force. Finally, new provisions regarding the monitoring of pollutants in the receiving environment concentration included in Article 18, should be conducted by competent authorities and not plant operators.

Supporting emission reductions while avoiding double regulation

Eurelectric welcomes the proposed flexibilities to test new techniques and will encourage operators to increase their R&I investments and develop innovative solutions to address pollution from industrial installations. The new Centre for Industrial Transformation and Emissions (INCITE) could become an asset for European innovation by identifying new techniques for industrial plants. However, to truly support innovation, the revision should provide operators with sufficient time to demonstrate that the expected performance can be performed by emerging techniques and INCITE should only inform the Sevilla process.

The new provisions included in Article 27 risk causing additional pressure to identify emerging technologies and support BAT processes while duplicating the role of the European Integrated Pollution Prevention and Control Bureau (EIPPCB). Thus, making it impossible to have defined time-bound flexibility or to link emerging techniques and transformation plans with the permitting process. In other words, the 'command and control' mechanism of the IED does not fit with the very nature of innovation (i.e. benefits are only potential and timing is uncertain).

Moreover, emerging techniques as identified in BREF documents cannot be applied widely, due to the very low maturation and commercialization rate of relevant techniques, as is evident by the emerging techniques included in the 2017 BREF for LCPs. The application of a technique in a very limited number of installations cannot ensure that the technique fulfils the reliability and cost-benefit requirements of the industry.

Additionally, the new requirements in Articles 11 & 14a include life cycle performance and supply chain analysis into individual plant permits. The permit should focus only on site-specific local operation and pollution; including supply chain issues that violate the BREF principle. Additionally,

the new provisions overlap with the requirements set by the Corporate Sustainability Reporting Directive. In this case, instead of requiring installation-specific information the environment management system should include a reference to the most recent corporate sustainability report including the corporate transformation plan. In this context, concurring legislation should be avoided not to double standards and reporting obligations.

Long-term transformation plans at company-level have the potential to support innovation and the transition towards a clean, circular and climate-neutral industry. The Commission's proposal, requiring transformation plans for each industrial installation, however, risks overburdening plant operators and competent authorities and will lead to the publication of fragmented and misleading information considering that several parameters and key factors are beyond the control of plant operators or would be better addressed at the corporate level. The fixed timing for the plan might be unsuitable with respect to the timing of the future scenario work possible for the operator. Also, the legal status of the plan is unclear.

While the IED does not have a role in driving decarbonisation, it does have a role in ensuring high standards of environmental protection. Decarbonisation of industry, including the power sector, is driven by the climate and energy policy framework, in particular the EU ETS. The role of the IED is to ensure high standards of environmental protection and industrial emissions reduction, in particular for local pollutants, and not to drive decarbonisation. To avoid inefficient interference with the EU ETS, Article 9.2 should not be deleted as it leads to a double regulation. The proposed addition aims at further consistency with energy efficiency obligations but contradicts ETS requirements and the transformation to climate neutrality. Additionally, it seems inappropriate to require existing thermal installations, operated solely to balance the intermittent generation of variable renewable energy sources and decrease load factor, to comply with limit values for energy efficiency. A stepwise approach, where strict ELVs would be applied only to new plants, and a progressive and fixed process for existing and end-of-life plants would be better suited.

Additional feedback on the main provisions of the new Industrial Emissions Portal (IEP) Regulation

Extension of the list of activities covered

While previously the E-PRTR only covered facilities with a heat input of at least 50 MWth, the IEP Regulation shall now cover all activities listed in Annex I of the IED, including combustion plants of a least 20 MWth already covered by the Medium Combustion Plant (MCP) Directive.

In this context, Eurelectric recommends that MCP between 20-50 MWth should not be included as an alone standing activity in Annex I of the IEPR as:

- The scope of the IED does not extend to include MCPs with at least 20 MWth
- CO₂ emissions of these installations are already published annually through the ETS registry
- A significant share of MCP is already covered by the reporting obligations for other Annex I activities
- ELVs for MCPs (20-50 MW) in the MCPD are already significantly more stringent than the requirements for MCP (1-20 MW)
- Despite the emissions and waste transfers of the vast majority of MCPs would not exceed the applicable emissions thresholds (see information referred to in Article 5 (1) a-c), plant operators would nevertheless have to assess and report the required data accordingly on an annual basis

Extension of the scope of reported information

To allow performance benchmarking at installation level, the IEP shall include data on use of water resources, energy and raw materials. The exact content of the reporting obligation will be specified in an update of the Commission Implementing Decision (EU) 2019/1741

In this context, Eurelectric recommends that the IEP shall not include data on the use of water resources, energy and raw materials as:

- The collection and reporting of such information would significantly increase the administrative burden for all installations.
- In particular, for the use of water resources, it is not possible to make a reasonable and scientifically sound performance benchmark at installation level based on the envisaged information foreseen by the IEP. Additionally, the detailed contextual information required for interpreting the data risk of comprising confidential business information. Thus, these should not be disclosed without consent of the plant operator.
- The assessment of resource use and, if needed, benchmarking exercises should be conducted in the context of the BREF revision processes, allowing for appropriate data gathering, protection of confidential business information and expert assessment of data.
- If reporting requirements were extended to the use of water resources, energy and raw materials, suitable reporting thresholds would have to be set in the same way as for pollutant emissions.

Evolution of the list of pollutants to be reported and associated thresholds

The European Commission will prepare a Delegated Act to update the Annex II list of pollutants, including the substances of very high concern under REACH regulation, the priority substances and watch lists under Water Framework Directive and the pollutants covered by Air quality legislation (expected new pollutants are inter alia PM2.5, black carbon, Cr VI, Sb, Se, Sn, Mn, Tl, V...). Additionally, reporting thresholds will be amended to capture 90% of releases from Annex I activities, with possibility of reporting thresholds set at zero.

In this context, Eurelectric recommends that it is not appropriate to delegate the inclusion of new activities and the modification of production thresholds as foreseen by Article 14, as such essential elements shall be addressed within the regulation itself and not in a delegated act.

Strengthening of the requirements regarding data quality

Operators shall obtain data by means of ‘measurement’ and shall use ‘calculation’ only ‘where measurement is not practicable’.

In this context, Eurelectric recommends that the ‘priority’ of measurement should only apply for pollutants and waste transfers deemed to be relevant for a particular sector or activity. There it can be suspected that the emissions will be in the same order of magnitude than the respective reporting thresholds.

Eurelectric pursues in all its activities the application of the following sustainable development values:

Economic Development

- Growth, added-value, efficiency

Environmental Leadership

- Commitment, innovation, pro-activeness

Social Responsibility

- Transparency, ethics, accountability



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