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Revision of the Industrial Emissions Directive (IED 2.0)

BusinessEurope supports the EU Green Deal's objectives and stands ready to support its implementation. The high energy prices, the disrupted supply chains and high inflation pose existential difficulties to companies who have already been under pressure in the last years due to the COVID-19 crisis. This dramatic situation calls for an 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 proposed revision of the Industrial Emissions Directive (IED 2.0) departs from these imperatives.

Furthermore, while we appreciate the European Commission's intentions to streamline the directive, promote innovation and reduce emissions, we do not see the current proposal as reaching these goals. On the contrary, the new proposed requirements lead to legal uncertainties, risk to prolong and complicate the permit procedures, and undermine the ongoing industrial transformation. Proceeding with the IED 2.0 as proposed would divert the necessary financial and human resources from the transition as not considering the operating periods nor the investment cycles of industrial plants. Also, BusinessEurope is concerned that the Commission has decided to put such a proposal forward at a moment when the entire sustainability legislative framework (e.g., chemicals, ecodesign for sustainable products, energy and climate legislations) is under revision: the expected environmental benefits are not properly assessed and likely to be overstated, whilst the risk of overlapping regulation and inconsistencies is high.

This paper offers a brief summary of where industry concerns lay. It follows the structure of the Commission's policy options. A more detailed assessment is provided in the Annex.

1. EFFECTIVENESS

The Commission's intention is to increase the ambition in permits and tighten flexibilities in order to facilitate the green transition and fulfil the goals of the EU Green Deal. However, we are not convinced that the IED 2.0 will lead to this result. To the contrary, it will hamper the industrial transformation needed for the green transition.

Setting all permit conditions at the lowest ends of the BAT AEL range ('default option' in Art. 15-3) is technically impossible for ANY installation: a plant can emit different pollutants and it cannot comply with the lowest emission limit values for each and every individual parameter (optimising one parameter may have a negative impact on another). As this provision is technically impossible, it is naturally obsolete. Also, we are concerned that this provision goes against the IED's integrated approach, the BAT definition and installation-specific applicability principle, which invite authorities to consider the



differences in the grade / purity and quality of the finished product, and in the specific design, construction, size and capacity of the installation.

Considering the impossibility of implementing the 'default option', ALL operators will be required to develop a feasibility assessment. This is problematic as it would bring additional demand on competent authorities (who are often understaffed), which would be difficult to handle. This would lead to further permit delays, contradicting the very imperative of the Green Deal, i.e. clarify and simplify permit procedures and achieve accelerated decreasing trends of emission levels.

The Commission aims at making information on performance better accessible to environmental NGOs. We are concerned that representatives of industry associations will not have access to the same level of information as environmental NGOs. This will be detrimental to the discussions in Sevilla and the innovation agenda as companies will unlikely be willing to input sensitive information in the BREF process. Also, the need to share upfront any confidential information with all actors is not understood, nor required by the Aarhus Convention. To the contrary, it can only lead to leaks, undermining trade and business secrets and therefore affecting EU's competitiveness and resilience.

Lastly, the Commission aims to better implement and enforce rules through penalties and damage redress systems. However, the Commission's proposal fails to be proportionate to the nature and seriousness of the illegal conduct. Furthermore, the proposed compensation measures could lead to frivolous and abusive litigation, undermine the principle of 'innocent until proven guilty', without ensuring that those affected are properly represented.

2. INNOVATION

Emerging and innovative techniques are not at a level of maturity which allows a thorough data collection and establishment of solid corresponding associated emission levels – one of the underlying principles to develop BREFs and BAT conclusions. This makes it challenging to have a very tightly defined time-bound flexibility.

Even though we welcome the extended testing period (Art. 27-b) and the extended period to comply with emission levels associated with BAT conclusions on emerging techniques (Art. 27-c), it is highly recommended that the competent authorities retain sufficient autonomy in these matters. In other words, the historical "command and control" mechanism of the IED needs to be adapted to ensure that it would fit with the very nature of innovation (i.e. benefits are only potential and timing is uncertain). In this way, technology providers and operators will be encouraged to increase their R&I investments and develop innovative solutions to address pollution from industrial installations.

The proposed Innovation Centre for Industrial Transformation and Emissions, INCITE (Art. 27-a), could become an asset for EU's innovation, and the business community sees its values in characterising the level of development and environmental performance of innovative techniques, and identifying potential candidate emerging techniques for industrial plants. However, it shall be clarified that INCITE should only



inform the Sevilla process. The Art. 13 Forum shall remain competent to define emerging techniques in BREF documents and derive conclusions on emerging techniques, including ET AELs where realistically doable.

Finally, to truly support innovation, the IED 2.0 should provide operators with sufficient time as well as clear and solid legal framework to demonstrate that the expected performance of emerging techniques and associated emission levels can be achieved in operational installations, and to clarify what would happen in case the expected performance is not achieved.

Long-term transformation plans (Art. 27-d) at company level have the potential to support innovation and the transition towards a clean, circular and climate-neutral industry. However, the Commission's proposal, requiring transformation plans for each industrial installation (instead of company-level), is an excess of micro-management, and only provides fragmented and misleading information: a number of parameters and key factors are beyond the control of plant operators (e.g. they depend on the situation of the energy system, technology developments and socio-economic situation of the moment). For these reasons, it shall be clear that these transformation plans should remain at company level, be indicative and should not be part of the permitting procedures. Besides the non-negligible reporting and auditing efforts and costs, the publication of this type of information is commercially sensitive and would have negative repercussion for the EU economy. In addition, negative effects will also be observed among competent authorities, who will need to control the relevancy of the plan.

3. RESOURCES AND CHEMICALS

A novelty of the IED 2.0 is that environmental performance limit values would become binding (Art. 15-3a). This is concerning for several reasons.

Firstly, this new obligation could undermine industrial transformation and innovation, as the environmental performance associated levels from the BAT conclusions would not capture the specificities from different processes of certain types of installations. This could negatively impact the environment as a whole (e.g. producing durable steel requires an energy consumption which is higher than the value included in the BAT conclusions).

Secondly, setting binding performance limit values does not necessarily lead to additional benefits to the environment: circularity is best specifically supported by product legislation since the potential to reuse onsite / recycle waste and residues will not be sector-specific (but site / process / technology-specific) and may be better supported by specific measures adopted as a result of the Circular Economy Action Plan; binding energy consumption obligations may undermine many abatement technologies (due to cross-media effects), making it impossible for an operator to comply with IED permits and contribute to the achievement of the EU's climate target at the same time.

Thirdly, the binding nature of environmental performance limit values raises a subsidiarity concern: competent authorities should be left the discretion to assess that the permit



conditions of an installation do not interfere with additional environmental requirements at national / regional / local level.

Another novelty of the IED 2.0 is the requirement for each operator to set up an Environmental Management System (EMS). We question the relevance of this new provision, as an EMS is already required in existing BAT conclusions and when ISO 14001 or ISO 50001 provide a framework to assess operators' activities and risks. The additional and very detailed (as proposed in Art. 14a) EMS would massively increase the reporting costs for companies, whilst not bringing clear additional environmental benefits. On the one hand, these requirements are already included under other legislations (e.g. the chemicals management system is part of REACH and OSH obligations, and the risk assessment and analysis is an ECHA's duty); on the other hand, these requirements do not tackle the right level of responsibility (e.g. the life cycle environmental performance of the supply chain is not solely in the hands of the installation subject to BREF).

4. SUPPORT DECARBONISATION

The ETS and the IED have been coexisting for years, and this has not undermined the EU's decarbonisation strategy. On the contrary, the sectors that have delivered the most in terms of decarbonisation efforts are the very sectors that are covered by the ETS. With this premise, BusinessEurope fully supports the Commission's proposal to maintain Art. 9-1: competent authorities should not set permit conditions for greenhouse gases that are already regulated under the ETS. In addition, we reiterate that the global challenges on GHG emission reductions are better tackled by other types of legislation whilst the IED regulates the local environmental conditions of a plant (i.e. pollutant emissions).

BusinessEurope, on the other hand, cannot support the Commission's proposal to delete Art. 9-2. Energy efficiency requirements should remain optional for the reasons explained in the above section. In addition, this deletion would lead to contradictions with the requirements of the ETS (e.g. more energy might be needed to decarbonise) and the transformation to climate neutrality.

5. WIDENING OF SCOPE

The Commission envisages to expand the scope of the IED (Annex I). BusinessEurope will not comment on the impact on the specific sectors, however we are concerned that this extension will affect the functioning of the Sevilla process. Expanding the sectoral scope of the IED will risk undermining the whole process of thorough data collection and derivation of BAT-associated emission levels. Also, the enlarged sectoral scope will increase the demand on competent authorities to issue permits. This will lead to further permit delays which slow down the EU's transition.

Furthermore, BusinessEurope is concerned about Art. 74 empowering the Commission to adopt delegated acts to further extend the sectoral scope of the directive. This undermines the legal certainty for operators: such a substantial change would rather require a co-decision discussion.

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