



Ms Romina Pourmokhtari
Chair of the EU Environment Council
Minister for Climate and the Environment
Herkulesgatan 17
SE-103 33 Stockholm
Sweden

28 February 2023

Re: Revision of the Industrial Emissions Directive

Dear Minister,

BusinessEurope is fully committed to the EU's Green Deal objectives and stands firmly in support of its implementation. It must imperatively go hand in hand with a strengthening of our competitiveness. However, the economic and geopolitical outlook of high energy prices, disrupted supply chains, high inflation and aggressive industrial policy in third countries seriously challenge the EU's competitiveness and pose existential difficulties to many companies in Europe. The risk of de-industrialisation has never been so high.

The only solution is to flank the Green Deal with an operational industrial strategy. The Green Deal Industrial Plan presented by the European Commission is a good step but does not go far enough. In particular, the need to simplify and reduce the overall regulatory burden is not yet sufficiently reflected.

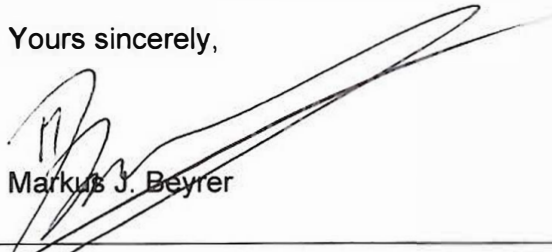
The revision of the Industrial Emissions Directive (IED 2.0), as main EU instrument regulating industrial activities, provides a real opportunity to achieve a true reduction of the regulatory burden while supporting the transformation of industries towards the Green Deal's objectives.

However, in the form proposed by the European Commission, the IED 2.0 is going the opposite direction. It is adding complexity, duplications with existing legislations and legal uncertainties. Ultimately, it risks delaying the permitting procedures and slowing down instead of accelerating the greening of industries in Europe.

In view of the Environment Council's General Approach on 16 March, we therefore call on the Council and all Ministers to substantially amend the Commission's proposal so that the IED 2.0 does not become an instrument of micro-management of European industry but will truly support its transformation.

Please find in annex our concrete proposals.

Yours sincerely,



Markus J. Beyrer

ANNEX:

AVOID ADMINISTRATIVE BURDEN AND INCREASE EFFECTIVENESS

- Setting all permit conditions at the lowest ends of the BAT AELs ranges ('default option' in Art. 15-3) is technically impossible for ANY installation: the very same technique in any given sector will not give rise to the very same emission level which is reflected in the range itself. Moreover, a plant typically emits 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). In addition, this will require competent authorities to review a high number of feasibility assessments which would inevitably lead to permit delays.
- Setting up a complex and inflexible Environmental Management System (EMS) would increase the reporting and assessment costs for operators without bringing any material environmental added value and leading to further permit delays. An EMS (as referred to in Art. 14a) should remain indicative and at company level to reduce the reporting costs and the administrative burden, operators would have with this task. It should be based on an internally accepted standardised system, such as EN ISO 14001:2015 or EMAS, already used by operators. That way, the EMS would be decoupled from the actual permitting process.
- Requiring transformation plans for each industrial installation only provides fragmented and ambiguous information and fails to properly reflect the company's integrated transformation approach across a number of installations, while obliging operators to disclose commercially sensitive information which also undermines business competitiveness. Furthermore, several parameters and key factors are beyond the control of plant operators (e.g., situation of the energy system, technology developments, 3rd party infrastructure investments and socio-economic-conditions). For these reasons, a transformation plan should remain at company level and be indicative and separate from any permitting procedures (Art 27d).
- To enforce rules through turnover-based penalties, fail to be proportionate to the nature and seriousness of the illegal conduct. They are not fair as they impact companies with low margins much more than companies with high margins and risk being excessive (Art 79). Furthermore, to facilitate compensation through a generic reversal of the burden of proof, will lead to frivolous and abusive litigation against industrial sites in Europe and undermine the principle of 'innocent until proven guilty'. Apart from this, including the compensation regime for damage to human health in this Directive is not appropriate and should remain in the hands of the Member States (Art 79a).

AVOID OVERLAPPING LEGISLATION AND USE IED 2.0 FOR ITS PURPOSE

- Maintain the existing provision that avoids overlaps of the ETS Directive, guarantees legal certainties and proportionality (Art 9). 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). Incorporating GHG emission levels for ETS-installations into the IED would hamper the industrial transformation and innovation needed for the green transition. In addition, deleting Art 9.2 would lead to contradictions with the requirements of the ETS (e.g., more energy might be needed to decarbonise) and would cause inconsistencies.
- A number of requirements of the proposed EMS (Art 14a) is already requested under other legislations (e.g., the Chemicals Management System is part of REACH, and OSH obligations, and the risk assessment and analysis are ECHA's duty). These requirements also 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 IED).
- Furthermore, other legislations (e.g., CSRD) are better suited to report and disclose investments into clean, circular and climate neutral activities. Therefore, installations/companies which fall within the scope of the CSRD should be exempt from the requirement to provide an additional transformation plan under the IED (Art 27d).

DO NOT HAMPER INNOVATION AND SUPPORT INDUSTRIAL TRANSFORMATION

- Setting provisions for the testing of innovative and emerging techniques (Art 27b) and the deployment of emerging techniques has the potential to support innovation. However, to fully unleash this potential, it will be essential to provide a clear and concrete legal framework for operators. As emerging techniques are not at a level of maturity that allows for a thorough data collection and establishment of solid corresponding associated emission levels, it is challenging to impose a very tightly defined time-bound window upon operators willing to deploy emerging techniques. Therefore, a provision should be included in case the operator chooses this option and does not comply with the expected emission limit values after the period of time specified. This is important to ensure that the operator would not end up in a non-compliance and the installation will contribute to achieving a high level of protection of the environment within the shortest period of time possible (Art 27c).
- Making environmental performance limit values and benchmarks binding would risk undermining industrial transformation and innovation (Art 15.3a). These values do not capture the specificities from different products and processes of various types of installations and the specific circumstances in which they operate. In addition, due to cross media effects, the proposed provision does not necessarily lead to environmental benefits (e.g., binding energy consumption levels may undermine many abatement technologies as these typically require more energy and resources consumption at the installation), making it impossible for an operator to comply with

IED permits and contribute to the achievement of the EU's Green Deal objectives at the same time.

IMPLEMENT TRANSITIONAL PROVISIONS

- It is of highest importance to implement transitional provisions like in the current directive. To avoid legal uncertainties, these provisions should clarify that the new provisions of IED 2.0 only apply to 'BAT conclusions' newly adopted after a transitional period following the publication of the IED 2.0 in the EU's Official Journal.

INTRODUCE DEROGATIONS IN TIMES OF CRISIS

In times where companies are facing overriding interruptions of energy supply, chemicals, raw materials, fuels or disruption of abatement technique's elements, an option for derogation from the permitted emission limits for a specific time period should be available. Therefore, the current derogation rules for combustion plants should be expanded for every installation in case of extraordinary circumstances of severe supply shortages.