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Industrial Emissions Directive – Inception Impact Assessment

Europe’s non-ferrous metals industries’ comments

Introduction

Europe’s non-ferrous-metals industry is committed to continually improve its production performance to prevent, control, reduce and as far as possible eliminate its pollution to the environment. Providing key raw materials for low-carbon technologies including renewable energy, batteries and clean mobility, the metals sector will be crucial for a successful Green Deal¹.

We welcome the opportunity to provide feedback on the Inception Impact Assessment planning for the Industrial Emissions Directive and would like to share several recommendations on the way forward. Below you find our considerations regarding the scoping, coherence with other policies as Circular Economy, decarbonisation and water legislation. Resulting from these we propose a set of key recommendations.

We note that the commenting period has been opened before the final results of the European Commission’s evaluation process are reported and the staff working document published. We feel that this stands in contradiction to the Commission’s own Better Regulation Guidelines.

This paper should be regarded complementary to our previous contributions to the Industrial Emissions Directive (IED) Evaluation’s public and targeted consultations (09/2019), reply to the 2nd Stakeholder Workshop (01/2020) and also specific comments on coherence with the Water Framework Directive via the Working Group Chemicals under the Water Framework Directive (04/2019). We welcome further discussions and are happy to support you throughout the process as best as possible.

Key recommendations

- **Focus on the main IED objectives** – The IED is the main EU regulatory instrument dedicated to emissions from industrial installations and related processes. Its core focus should be acknowledged when addressing coherence aspects. The assessment of coherence with circular economy and climate neutrality set out in the EU Green Deal should not compromise the IED’s key objective.
- **An overlap of different legislation must be avoided** – The IED is already in line with the objectives of the European Green Deal and contributes to the Circular Economy and decarbonisation objectives. The BREF process and implementation of BATs supports the performance’s improvement of industrial installations in terms of emissions to air and water but also energy efficiency and prevention of waste. However, other aspects related to Circular Economy, energy efficiency and decarbonisation are better dealt with by other legislation.

¹ [Green Deal Eurometaux Press Release](#), 11/12/2019



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- Secure the Integrated Approach** – Embedded to the IED is the integrated approach concept which allows to cover interaction between the different techniques effects on the several environmental compartments (air , water, waste, resources, etc.) and doing so allows the selected BAT to improve pollution in one field while avoiding to transfer it to another. The Commission should protect the Integrated Approach and maintain it as core principle for the IED. Only with balanced trade-off decisions we can protect the environment as a whole.
- Maintain a BAT-based pollution control using sound technical and economic information at the core of the IED** – The Commission should maintain the existing well-functioning processes which assure that right measures are chosen for the right activities, avoiding simplification. Technical and economical feasible BAT-based pollution control was crucial in the success of IPPC/IED implementation.
- Make sure to include all stakeholders** – When addressing policy aspects as Circular Economy, Decarbonisation, or Water Management, it is important to include all experts in- and outside the IED. Encourage cross-cutting work where exchanges and debates are crucial to identify realistic goals.
- Re-evaluate the competitiveness situation for IED installations** – A cost-benefit analysis cannot serve as basis for the conclusions of industries’ competitiveness. The Commission will need to support its European Industry with measures to tackle global trade and competition imbalances.
- Evaluate full proposals already done by Art. 13 Forum members** – The Art. 13 Forum has already discussed and/ or identified several conclusions to work on which need to be fully acknowledged throughout the Impact Assessment process. These include topics as BAT-AELs derivation methodologie or the Interface of Water Framework Directive and Industrial Emissions Directive.

Use the right tools out of the right toolbox

The Industrial Emissions Directive’s objective is to prevent, reduce and as far as possible eliminate pollution arising from industrial activities, achieving a high-level protection of the environment taken as a whole. The processes and their related emissions are in scope, while other regulations tackle the product, consumption and workers’ health precisely (e.g. Classification, Labelling and Packaging (CLP) Regulation; Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulation; Waste Framework Directive; Occupational safety and health (OSH) Directives). It is important to keep this overall framework in mind, in coherence with the Green Deal’s focus on encouraging cross-cutting efforts.

In addition, our view is that the European Pollutant Release and Transfer Register (E-PRTR) is generally coherent with the IED. Both regulations have different scopes and aims: the IED regulates emissions levels and Best Available Techniques (BATs), while the E-PRTR regulates the emissions reporting requirements. The legal frameworks complement each other but do not serve each other.



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The revision of the Industrial Emissions Directive is one of many activities planned under the Green Deal, and more specifically its zero-pollution ambition. We recognise that all EU policy initiatives must now be coherent with the EU's climate-neutrality and circular economy objectives. Within that it is most important that the IED remains focussed on its main objective of regulating industrial emissions under an integrated approach, rather than considering any further transformation.

We believe that most of issues related to this core objective could be resolved by enhancing the practise and implementation of the IED, without needing to change the actual text of the directive. Implementation issues are most probably the task of the Industrial Emissions Expert Group (IEEG) and where appropriate industry could provide service by sharing experience on permitting processes.

Secure the Integrated Approach and BAT based conclusions

The Integrated Approach is the key principle of the Industrial Emissions Directive, which is essential to its effectiveness by avoiding cross-media effects.

The Industrial Emissions Directive has a continued essential role in delivering on EU climate change and energy efficiency goals by finding best available techniques that do not cause a disproportionate shift of burden from one environmental medium to another. There are many important trade-offs to be made between e.g. emissions reductions, energy demand, waste generation or material use. Prioritising one goal over the other aspects (e.g. decarbonisation) will cause an imbalance.

Use of Best Available Techniques (BATs) are the core of the BAT conclusions, and we recommend that their requirements are continued without any simplification. The IED is successful as it considers the specificities of different sectors in- and outside.

It is important to secure the Seville process (as described in Commission Implementing Decision 2012/119/EU) and to develop it further in order to be more transparent and objective but to avoid a simplification by applying an approach where technical discussions will not find place anymore. At this point, we would like to recall the industry proposal for a systematic approach for deriving suitable BAT-AELs ranges (statement paper in Annex).

IED with a Circular Economy

First, we would like to highlight that the metals industry sees the Circular Economy Action Plan as an essential tool for Europe to improve its resource security through making its metals recycling industry a major industrial strength². Eurometaux is highly dedicated to the Action Plan and its realization³.

The IED already contributes to circular economy objectives. The BREF process addresses the prevention of waste from industrial processes in line with Circular Economy and can establish techniques to ensure that process residues are treated in efficient conditions to recover or re-use materials where economically and technically possible. The NFM BREF

² [Circular Economy Eurometaux Press Release](#), 11/03/2020

³ [Circular Economy 2.0 – our recommendations](#), 29/01/2020



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includes specific BAT conclusions to reduce the quantities of waste sent for disposal from non-ferrous metals production, as well as to facilitate process residues reuse or process residues recycling.

The Industrial Emissions Directive covers only the manufacturing stage of the life cycle. All regulatory requirements in the IED shall therefore be restricted to this life cycle stage and should not try to regulate something that is better regulated within a different piece of regulation.

IED for proper choice of decarbonisation technologies

Considerations of greenhouse gas (GHG) Emissions control under Industrial Emissions Directive are not new for both expert groups, under the EU emissions trading system (EU ETS) but also IED (e.g. when the former Integrated Pollution Prevention and Control (IPPC) Directive was reviewed). Their common conclusion was that the processes were considered too complex and too difficult to be successful. The IED and ETS have different scoping and merging them could result in even more complicated regulation systems. We urge the Commission consider those conclusions in the Impact Assessment.

Through the BREF process the IED already ensures the Best Available Techniques for energy efficiency are applied at the installations, which contributed to reduction of GHG emissions. For example, the NFM BREF includes specific Best Available Techniques (BATs) conclusions for energy efficiency such as heat recovery from pyro metallurgical processes or use oxygen-enriched air in the burners to reduce energy consumption by allowing autogenous smelting.

The IED’s integrated approach can have an important role in identifying Best Available Techniques through which installations can achieve decarbonisation objectives. GHG abatement measures may entail environmental impacts, for most activities under the scope of the Industrial Emissions Directive. Application of the integrated approach to identify BATs will ensure that overall environmental performance will be strengthened not worsened (avoiding that decarbonisation measures are pursued in isolation). By referring to IED Art. 15.5, BAT consideration for decarbonisation methods could be included. However, we do not recommend expanding them to GHG emissions regulation.

Together with ten other energy-intensive sectors, we have expressed our opposition to regulating GHG emissions under an IED permitting regime (without prejudice to the IED Art. 9.1) as this would give significantly rise to double regulation of greenhouse gases. See Annex.

Regarding the transformation, it is important to note that the non-ferrous metals industry is a frontrunner industry in the transition to a climate-neutral society. The sector has highly electrified its operations. While our industry has already made huge strides and will continue to work on the improvements and technologies to further reduce its GHG emissions, the biggest GHG reduction possibilities in our sector are related to availability of low carbon electricity at competitive prices; thus outside the scope of our operations under IED.

Detailed information of the non-ferrous metals sector’s potential in the transition to climate-neutrality, the challenges and constraints that will be faced along the way, can be found in in our recent publication “Metals for a Climate Neutral Europe - A 2050 Blueprint”⁴.

⁴ [Metals for a Climate Neutral Europe - A 2050 Blueprint](#), 10/2019



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IED contribution to Water Goals

In general, we do believe that the both regulations, the Industrial Emissions Directive and Water Framework Directive, are coherent. Hence, goals of both pieces of legislations can be achieved and are not hampered by one or another. The IED is one of mechanisms to deal with Environmental Quality Standards (EQS) compliance. Compliance problems can still occur where IED provisions are correctly applied. A link between the Industrial Emissions Directive and Water Framework Directive exists and is dealt with at a local level.

Here, we would like to highlight the Joint Workshop of DG Environment and the German Umweltbundesamt focusing on the interrelation of Industrial Emissions Directive with Water Framework Directive (27-28 November 2017 in Berlin), where the different industry sectors jointly presented their experience and considerations⁵. Overall the Workshop was crucial for identifying the points to work on in the future e.g. it was agreed to do further work on how to address indirect releases in form of exchange of good practices etc. (Conclusion 2, Joint Workshop report⁶).

Competitiveness goes beyond cost-benefit calculations

We strongly advise not to connect the cost-benefit analysis of environmental measures to competitiveness and not to use the cost-benefit calculations as methods to evaluate competitiveness. The Commission should correct and re-evaluate the conclusions made based on feedback already given by several stakeholders during and after the second stakeholder workshop of the evaluation process.

The EU non-ferrous metals industry is part of a global, highly competitive industry. Costs related to emission reduction equipment are much higher for EU industries than non-EU industries. This cost cannot be passed to customers because prices for raw material inputs and metals are set or referenced at international exchanges, predominately through the London Metals Exchange (LME).

ABOUT EUROMETAUX

Eurometaux is the decisive voice of non-ferrous metals producers and recyclers in Europe. With an annual turnover of €120bn, our members represent an essential industry for European society that businesses in almost every sector depend on. Together, we are leading Europe towards a more circular future through the endlessly recyclable potential of metals.

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⁵ [Industry Presentation "Experience with water-related BAT implementation in Europe", 27-28/11/2017, Berlin](#)

⁶ [Report of Workshop on IED and WFD interrelations, 27-28/11/2017, Berlin](#)





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Energy Intensive Industries’ statement on GHG abatement measures Interaction with the Industrial Emissions Directive

The energy intensive industries remain committed to develop and implement GHG abatement measures that contribute to the achievement of a climate-neutral EU economy. In doing so, they want to ensure full coherency with any other policy measures that address other environmental issues, in particular the Industrial Emissions Directive¹ that is the backbone of the environmental legislation applicable to large industrial installations (i.e. the integrated approach based on the BAT concept).

In the spirit of better regulation principles and considering that ETS regulates the GHG emissions, the energy intensive industries reject the option to regulate GHG emissions under an IED permitting regime (without prejudice to the article 9.1²).

The purpose of this note is to restate the meaning of the Master Plan³ recommendation as well as to confirm our position regarding the way both directives should cohabit in the future, further to some misinterpretations of the Industry position.

Background

The chapter II **Developing climate-neutral solutions and financing their uptake** of the master plan includes the following recommendation (see page 34):

The Industrial Emissions Directive permitting process should be adapted to support GHG abatement measures in energy-intensive installations throughout the transition. The low carbon emission technologies under development should be assessed as potential emerging techniques during the BREF drawing and reviewing process.

¹ Revision of the Industrial Emissions Directive Inception Impact Assessment (<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12306-EU-rules-on-industrial-emissions-revision>)

² Where emissions of a greenhouse gas from an installation are specified in Annex I to Directive 2003/87/EC in relation to an activity carried out in that installation, the permit shall not include an emission limit value for direct emissions of that gas, unless necessary to ensure that no significant local pollution is caused.

³ The [Masterplan for a Competitive Transformation of EU Energy-intensive Industries Enabling a Climate-neutral, Circular Economy by 2050](#) was published on 28/11/2019

Studies have identified several technological solutions to reduce GHG emissions of energy-intensive industries and their products and allowing them to contribute to the transition to climate neutrality. The main low-carbon pathways, applicable to most of our industries, are referred to on pages 25-26 of the master plan.

GHG abatement measures may entail environmental impacts, for most activities under the scope of the IED, in particular for the energy intensive industries.

In that respect, the IED permitting process may be adapted to support the deployment of those breakthrough technologies. One option could be to adapt the article 15(5)⁴ with a view to allow testing those technologies (a priori not referred to in the more recent BAT conclusions applicable to the sectors at stake) and assess more broadly their possible wider impacts on the environment and their compliance with the existing BAT conclusions where relevant.

The concept of performance benchmark is already covered by the EU ETS Directive and the EIs do not see the need for double regulation & overlapping policies (ETS as market-based instrument to tackle GHG emissions and IED as control and command/BAT driven to tackle other emissions).

In conclusion, the energy intensive industries reaffirm that they:

- **remain committed to develop and implement GHG abatement measures that contribute to the achievement of a climate-neutral EU economy;**
- **support a full coherency with the Industrial Emissions Directive and its integrated approach based on the BAT concept;**
- **reject the option to regulate GHG emissions under an IED permitting regime (without prejudice to the article 9.1).**

⁴ The competent authority may grant temporary derogations from the requirements of paragraphs 2 and 3 of this Article and from Article 11(a) and (b) for the testing and use of emerging techniques for a total period of time not exceeding 9 months, provided that after the period specified, either the technique is stopped or the activity achieves at least the emission levels associated with the best available techniques.

The undersigned sectors are willing to contribute to the development of a systematic approach for deriving suitable BAT-AELs ranges

Proposal

The legal obligation for permitting authorities to set the emission limit value for a given pollutant at a level that ensures that, under normal operating conditions, emissions do not exceed the BAT-AEL, has far-reaching consequences. BAT-AELs have to be implemented as ELVs and industrial installations have to comply with those. A systematic approach to derive the BAT-AEL as a result of the BREF review process and the data collection performed in that context is therefore a must. A robust and transparent approach will secure consistency for stakeholders throughout the BREF review process, as well as for regulators and operators at permitting level. Based on both the Guidance¹ published in the OJEU in March 2012 and on our combined industrial experience, we have outlined in this paper an approach which should help deriving both ends of the BAT-AEL range systematically. This is crucial if one wants to preserve the integrity of IED implementation through appropriately-designed and truly applicable BAT conclusions, technically achievable and economically viable BAT-AELs.

In principle, the upper end of the range should be set on the basis of the maximum observed emissions of the plants applying generally applicable BAT for the pollutant at stake, while the lower end should be based on the maximum emissions resulting from the use of generally applicable BAT leading to the best performance, after discarding all performances that only occur under specific circumstances. Both ends of the range will be derived from emissions reported under normal operating conditions² for the same period of time and using the associated monitoring as referred to in the BAT conclusions.

Conditions for observed emission levels to be included in the BAT-AEL ranges

- Performance levels obtained under specific circumstances (such as meeting local environmental quality standards, techniques with limited implementation in the EU, resulting from non-representative input or output reference conditions or where the integrated approach of the IED would not have been fully taken into account) shall consequently be excluded.
- The ability to check compliance with the EU standards of measurement and calculation methods during the same period of time and using the same reference conditions must be assessed. If measurements would not be compliant with the standards, those levels must be excluded.

Criteria to set up the upper end of the range:

- It must be set based on the maximum emissions for the associated monitoring period that could be expected under normal operating conditions from the use of BAT, taking into account important elements such as variability in raw materials, fuel characteristics, product specifications and variable load, as well as any cross-(media) effects/integrated approach.
- It shall always reflect all performances that generally applicable BAT can achieve under normal operating conditions addressing the various circumstances to be found in a given (sub) sector.
- It shall always reflect all performances that BAT can achieve under normal operating conditions, addressing the various circumstances to be found in a given (sub) sector. The IED Article 15(4)

¹ Commission Implementing Decision (2012/119/EU) of 10 February 2012 laying down rules concerning guidance on the collection of data and on the drawing up of BAT reference documents and on their quality assurance referred to in Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (L63/1 – 2.3.2012).

² The reference to “normal operating conditions” applies for industries for which no special dispositions are given in IED or EU legislation.

derogation clause shall only be applied to those installations, not applying BAT yet and where the application of generally applicable BAT would lead to disproportionately higher costs compared to the environmental benefits.

Criteria to set up the lower end of the range:

- Identifying the generally applicable BAT leading to the best environmental performance.
- The lower end of the BAT-AEL range shall be set based on the highest values of the lower emission levels for the associated monitoring period that could be expected under normal operating conditions from the use of this BAT, taking into account important elements such as variability in raw materials, product specifications and variable load, as well as any cross-media effects/integrated approach.



Annex: What is a BAT-AEL range, where do upper and lower ends of the BAT-AEL range fit regarding the Industrial Emission Directive provisions?

