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## **MEETING DOCUMENT**

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From:	General Secretariat of the Council
To:	Working Party on the Environment

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Subject:	Industrial Emissions Directive: WPE meeting on 7 February 2023 - Steering note of the Presidency
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Delegations will find in Annex a steering note and an accompanying table on the Proposal to amend the Industrial Emissions Directive prepared by the Presidency in view of the meeting of the Working Party on the Environment on 7 February 2023.

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WK 1574/2023 INIT

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# Working Party on the Environment

## **Presidency Steering note for the WPE on 7 February 2023** Industrial Emissions Directive

The Working Party on the Environment (WPE) will at the meeting 7 February continue the examination of the proposed revised IED. The Presidency has prepared this steering note to guide the discussions.

The Presidency invites the Member States to continue the discussions on what the Presidency considers to be the remaining elements in Cluster 1-5 (except art. 15.5), Cluster 8 and in the Transitional Provisions. Please note though, that no changes are proposed in Cluster 2 nor Cluster 8 from the Presidency. Based on the discussions in the WPE meetings in January (16-17 and 30) the Presidency has identified where most MS see the need for further clarification or changes in Cluster 1-5, 8 and in the transitional provisions. Those remaining elements are specified and explained in the steering note below, accompanied by text proposals in the annex to the steering note for MS considerations. The Presidency proposes to at this stage focus the discussions on those remaining issues and *invites MS to indicate whether they can accept the proposed way forward, or if not, encourages MS to share concrete text proposals.*

The Presidency would welcome the delegations' reactions and thoughts on the proposed way forward. The previous CZ Presidency's changes are marked in **red** while the current Presidency's new proposals are marked in **blue** (the latest ones for WPE 7 Feb in [blue](#)).

### **Cluster 1 – Minimisation of emissions**

The Presidency would like to follow up on the discussion regarding Art. 15(4), 16(3).

Regarding the proposal for monitoring requirements in Art. 16(3) the Presidency propose some adjustments based on the comments from the MS. The first part of the paragraph is moved to Art. 15(4) to clarify that the assessment concerning the impact on the concentration in the receiving environment shall be provided by the operator when applying for the derogation. Changes are also made in Art. 16.3 to give MS the possibility to decide whether it is the operator or the competent authority who shall monitor the pollutants concerned in the receiving environment, since the Presidency has got the

impression that this is important to fit into the current system in several MS. Due to the changes made in Art. 16(3) a consequential change is made in Art. 24(3). *The Presidency invites MS to indicate whether they can accept the proposed way forward, or if not, kindly encourages MS to share concrete text proposals.*

### **Cluster 3 – Non-toxic circular economy, resource efficiency and decarbonisation**

The Presidency would like to follow up on the discussion on cluster 3 regarding *recital 13, 30 and Art. 3(13a), 14a and 15(4a)*.

Based on the comments from the MS at previous discussion on art. 3(13a) the Presidency proposes to delete the word binding.

In order to reduce the administrative burden, there is no proposal for an obligation to publish a summary of the EMS. The obligation in Art. 14a(3) and recital 30 is to publish relevant information from the EMS, with the possibility to link to already existing documents. Confidential business information could be redacted or excluded. To enhance predictability and the level playing field, also considering the comments from the MS, the Presidency proceeds with the proposal to have an implementing act on what information that is relevant for publication.

Regarding the audit of the EMS in Art. 14a(3a) and recital 13 the Presidency proposes to clarify that the audit shall be done by an external audit. Taking into account comments from MS, the Presidency proposes to add that the audit also, in addition to an audit organisation, could be done by an environmental verifier, which is an accredited auditor in accordance with EMAS or ISO. The Presidency also proposes to clarify that the EMS shall be in accordance with both IED (Art. 14a) and BAT conclusions, not only the latter.

In Art. 15(4a) the Presidency propose minor linguistic changes. In Art. 24(2f) the Presidency proposes to delete the reference to paragraph 4 in Art. 15 to also include Art. 15(4a).

*The Presidency invites MS to indicate whether they can accept the proposed way forward, or if not, kindly encourages MS to share concrete text proposals.*

### **Cluster 4 – Public participation**

The Presidency invites MS to react on the proposed changes in Art. 24 and recital 13.

The Presidency's understanding from the discussions in January is that several MS are of the opinion that a requirement on publication of a permit summary imposes a too heavy

administrative burden on the competent authorities. Several MS expressed a will to delete a large part of the list in 24(2). Taking that into account the Presidency proposes to delete the requirement to have a summary of the permit in Art. 24(2) and recital 30. The Presidency proposes to instead only keep the current requirements on publication in Art. 24(2) with the addition of a requirement on publishing a consolidated version of the permit conditions, where relevant. This gives the MS the possibility to require a consolidated version of the permit conditions, in order to get a clear picture of which permit conditions applies when there is several layers of permits and updated permits, but no need to have a summary of all permits. The purpose from the Presidency is to reduce the administrative burden, while keeping the aim of facilitating for the public and authorities.

*The Presidency invites MS to indicate if they can accept the Presidency's proposed way forward.*

## **Cluster 5 – Penalties and compensations**

The Presidency suggests coming back to the topic on penalties. During the discussions on the last meeting several Member States expressed support for the way forward. In line with what several Member States expressed at the meeting the Presidency proposes to delete the requisite “proportionate to the annual turnover” in Article 79. This is done to make the new rules on penalties in IED more flexible and easier to fit into the different national systems of the Member States. Since the deletion of the requisite “proportionate to the annual turnover” makes the rules on penalties in IED more compatible with the Environmental Crime Directive the proposal made by the Presidency in Article 79.5 is proposed to be deleted. To mirror these changes the text in recital 31 a is also adjusted.

*The Presidency invites MS to indicate if they can accept the Presidency's proposed way forward.*

## **Transitional provisions**

The Presidency proposes to continue the discussion on transitional provisions. Based on the discussions in the WPE meeting on 17 January 2023 the Presidency has identified a need for some further clarifications and changes. The Presidency will invite MS to indicate if they can accept the Presidency's proposed way forward.

During the discussions on the meeting on 17 January 2023 some Member States said that there is no need for “*transitional provision A*”. There were no Member States that objected to this. The Presidency therefore proposes to delete transitional provision A and *invites MS to react to the proposed deletion of transitional provision A*.

The Presidency proposes to add an additional text in “*transitional provision C*” to avoid gaps and make it clear that installations that already today comply with the requirements in IED shall continue to do so until the new IED shall apply to those installations. This text is

added also in “*transitional provision E*” since installations carrying out these new activities sometimes are covered by IED because they carry out also other activities in annex I and therefore already comply with IED.

Regarding the transitional provisions connected with the publishing of BAT conclusions there is a need for more legal certainty since there is no precise deadline concerning the publication of the BAT conclusion in Article 13(5). To address this issue the Presidency proposes changes in *transitional provision C and E* that clarifies that the new IED shall apply at a fixed date as a last resort. The articles addressed in *transitional provision C* are proposed to apply when the permit is granted or updated, 20 years after the entry of force of the new IED or 4 years after BAT-conclusions are published, whichever the sooner. The new activities in IED (*transitional provision E*) are proposed to apply the rules in IED 12 years after the entry of force of the new IED or 4 years after BAT-conclusions are published, whichever the sooner. This will provide more legal certainty for when the new IED shall apply, at the latest, give the Commission time to adopt and publish new BAT-conclusions and time for the industry to comply with the new requirements. This is explained in a new recital.

The Presidency also proposes to delete the requirement regarding an installation’s need to be in operation to make “transitional provision E” apply. Changes are also made in *transitional provision C* to make it clearer when the requirements shall apply when the permit is revised. In *transitional provision C and E* some linguistic changes are made and the words “covered by” are replaced by “under the scope of”. In *transitional provision B and E* changes are made to make it clear that installations first permitted after the publications of decisions on BAT-conclusions shall immediately comply with the provisions.

As pointed out by some Member States reference should only be made to 14 (1 a), 14 (1 b), 14 (1 ba), 14 (1 bb) and 14 (1 d) in *transitional provision C* since no changes are done in the other points of Article 14. In line with this the reference to these points of article 14 are deleted in *transitional provision C*. Article 14 (1 h) is moved to *transitional provision B* since it relates to BAT AEPLs. The Presidency also proposes to delete the reference to Article 9.2 in transitional provision C. This is made since Article 9.2 is deleted from the directive and not added. Requirements relating to energy efficiency will be addressed in BAT AEPLs and in benchmarks and these parts of the directive are addressed in other transitional provisions (transitional provision B and Article 14a.3a).

*The Presidency invites MS to indicate if they can accept the Presidency’s proposed way forward on transitional provisions, or if not, kindly encourages MS to share concrete text proposals.*

We are looking forward to seeing delegations on 7 February!

**The SE Presidency IED Team**

## ANNEX to the steering note, WPE on IED 7 February 2023

### Proposal for a directive amending Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control) and directive 1999/31/EC on the landfill of waste

Changes of COM proposal in **green bold**.

Changes of the CZ Presidency in **red bold**.

Changes of the SE Presidency in **blue bold**. For WPE 7 Feb: **blue bold underlined italic**

#### Cluster 1

	COM proposal	PRES proposal
<i>Art. 15 (4)</i>	<p>4. By way of derogation from paragraph 3, and without prejudice to Article 18, the competent authority may, in specific cases, set less strict emission limit values. Such a derogation may apply only where an assessment shows that the achievement of emission levels associated with the best available techniques as described in BAT conclusions would lead to disproportionately higher costs compared to the environmental benefits due to:</p> <p>(a) the geographical location or the local environmental conditions of the installation concerned; or</p> <p>(b) the technical characteristics of the installation concerned.</p> <p>The competent authority shall document in an annex to the permit conditions the reasons for the application of the first subparagraph including the result of the assessment and the justification for the conditions imposed.</p> <p>The emission limit values set in accordance with the first subparagraph shall, however, not exceed the emission limit values set out in the Annexes to this Directive, where applicable.</p> <p><b>Derogations referred to in this paragraph shall respect the principles set out in Annex II. The competent authority shall in any case ensure that no significant pollution is caused and that a high level of protection of the environment as a whole is achieved. Derogations shall not be granted where they may put at risk compliance with</b></p>	<p>4. By way of derogation from paragraph 3, and without prejudice to Article 18, the competent authority may, in specific cases, set less strict emission limit values. Such a derogation may apply only where an assessment shows that the achievement of emission levels associated with the best available techniques as described in BAT conclusions would lead to disproportionately higher costs compared to the environmental benefits due to:</p> <p>(a) the geographical location or the local environmental conditions of the installation concerned; or</p> <p>(b) the technical characteristics of the installation concerned.</p> <p>The competent authority shall document in an annex to the permit conditions the reasons for the application of the first subparagraph including the result of the assessment and the justification for the conditions imposed.</p> <p>The emission limit values set in accordance with the first subparagraph shall, however, not exceed the emission limit values set out in the Annexes to this Directive, where applicable.</p> <p><b>Derogations referred to in this paragraph shall respect the principles set out in Annex II. The competent authority shall <u>ensure that the operator provides an assessment of the impact of the derogation on the concentration of the pollutants concerned in the receiving environment and in any case ensure that no significant pollution is caused and that a high level of protection of</u></b></p>

	<p>environmental quality standards referred to in Article 18.</p> <p>The competent authority shall re-assess whether the derogation granted in accordance with this paragraph is justified every 4 years or as part of each reconsideration of the permit conditions pursuant to Article 21, where such reconsideration is made earlier than 4 years after the derogation was granted.</p> <p>The Commission shall adopt an implementing act, to establish a standardised methodology for assessing the disproportionality between the costs of implementation of the BAT conclusions and the potential environmental benefits referred to in the first subparagraph. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 75(2).</p> <p><del>The competent authority shall in any case ensure that no significant pollution is caused and that a high level of protection of the environment as a whole is achieved.</del></p> <p><del>On the basis of information provided by Member States in accordance with Article 72(1), in particular concerning the application of this paragraph, the Commission may, where necessary, assess and further clarify, through guidance, the criteria to be taken into account for the application of this paragraph.</del></p> <p><del>The competent authority shall re-assess the application of the first subparagraph as part of each reconsideration of the permit conditions pursuant to Article 21.</del></p>	<p>the environment as a whole is achieved. Derogations shall not be granted where they may put at risk compliance with environmental quality standards referred to in Article 18.</p> <p>The competent authority shall re-assess whether the derogation granted in accordance with this paragraph is justified every 4 years or as part of each reconsideration of the permit conditions pursuant to Article 21, where such reconsideration is made earlier than 4 years after the derogation was granted.</p> <p>The Commission shall adopt an implementing act, to establish a standardised methodology for assessing the disproportionality between the costs of implementation of the BAT conclusions and the potential environmental benefits referred to in the first subparagraph. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 75(2).</p> <p><del>The competent authority shall in any case ensure that no significant pollution is caused and that a high level of protection of the environment as a whole is achieved.</del></p> <p><del>On the basis of information provided by Member States in accordance with Article 72(1), in particular concerning the application of this paragraph, the Commission may, where necessary, assess and further clarify, through guidance, the criteria to be taken into account for the application of this paragraph.</del></p> <p><del>The competent authority shall re-assess the application of the first subparagraph as part of each reconsideration of the permit conditions pursuant to Article 21.</del></p>
Art. 16 (3)	<p>3. Where a derogation referred to in Article 15(4) has been granted, Member States shall ensure that the operator monitors the concentration of the pollutants concerned by the derogation which are present in the receiving environment. The results of the monitoring shall be transmitted to the competent authority. Where relevant, monitoring and measuring methods for each concerned pollutant set out in other relevant Union legislation shall be used for the purpose of the monitoring referred to in this paragraph.</p>	<p><u><del>3. Where When granting a derogation referred to in Article 15(4) has been granted, Member States shall ensure that the operator monitors the concentration of the pollutants concerned by the derogation which are present in the receiving environment, provides an assessment of the impact of the derogation on the concentration of the pollutants concerned in the receiving environment.</del></u></p> <p>Where the <u>derogation assessment</u> referred to in Article 15(4) <u>demonstrates that a derogation will</u> <del>would</del> have a quantifiable</p>

		<p>or measurable effect on the environment, <del>the competent authority shall ensure that an appropriate monitoring system is put in place and require the operator to monitor</del> <u>Member states shall ensure that the concentration of the pollutants concerned shall be monitored</u> in the receiving environment.</p> <p><del>The results of the monitoring shall be transmitted to the competent authority.</del></p> <p>Where relevant, monitoring and measuring methods for each concerned pollutant set out in other relevant Union legislation shall be used for the purpose of the monitoring referred to in this paragraph.</p>
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### Cluster 3

Recital	COM proposal	PRES proposal
(13)	<p>(13) With a view to continuously improving the environmental performance and safety of the installation, including by preventing waste generation, optimising resource use and water reuse, and preventing or reducing risks associated with the use of hazardous substances, the operator should establish and implement an environmental management system (EMS) in accordance with relevant BAT conclusions, and should make it available to the public. The EMS should also cover the management of risks related to the use of the hazardous substances and an analysis of the possible substitution of hazardous substances by safer alternatives.</p>	<p>(13) With a view to continuously improving the environmental performance and safety of the installation, including by preventing waste generation, optimising resource use and water reuse, and preventing or reducing risks associated with the use of hazardous substances, the operator should establish and implement an environmental management system (EMS) in accordance with <u>this Directive and</u> relevant BAT conclusions, and should make <del>it relevant parts</del> available to the public. When made available to the public the operator should have an opportunity to redact or exclude confidential business information. This should apply in a restrictive way, taking into account for the particular case the public interest served by disclosure. The EMS should also cover the management of risks related to the use of the hazardous substances and an analysis of the possible substitution of hazardous substances by safer alternatives.</p> <p>In order to ensure that the EMS is in line with the requirements of the Directive, the EMS should be <u>reviewed by the operator and audited by an external auditor or environmental verifier organisation</u> contracted by the operator, such as an accredited environmental verifier in accordance with Regulation 1221/2009.</p>
30	<p>In order to ensure uniform conditions for the implementation of Directive 2010/75/EU, implementing powers should be conferred on the Commission as regards the establishment of (i) the format to be used for the permit summary, (ii) a standardised methodology for assessing the</p>	<p>In order to ensure uniform conditions for the implementation of Directive 2010/75/EU, implementing powers should be conferred on the Commission as regards the establishment of (i) <u>the format to be used for the permit summary</u>; (ii) a standardised methodology for assessing the disproportionality between</p>



	<p>disproportionality between the costs of implementation of the BAT-conclusions and the potential environmental benefits, (iii) the measuring method for assessing compliance with emission limit values set out in the permit with regard to emissions to air and water, (iv) the detailed arrangements necessary for the establishment and functioning of the innovation center for industrial transformation and emissions, and (v) the format to be used for transformation plans. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.</p>	<p>the costs of implementation of the BAT-conclusions and the potential environmental benefits <u>in accordance with art. 15.4, (ii) a standardised methodology for undertaking the assessment referred to in art. 15.4a</u> (iii) the measuring method for assessing compliance with emission limit values set out in the permit with regard to emissions to air and water, (iv) the detailed arrangements necessary for the establishment and functioning of the innovation center for industrial transformation and emissions, and (v) the format to be used for transformation plans <u>and (vi) on what information that is relevant for publication of the EMS. <del>the format to be used for the EMS summary.</del></u> Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.</p>
Art. 03 (13a)	<p>(13a) ‘environmental performance levels associated with the best available techniques’ means the range of environmental performance levels, except emission levels, obtained under normal and other than normal operating conditions using a BAT or a combination of BATs;</p>	<p>13a) ‘Environmental performance levels associated with the best available techniques’ means the <u>binding</u> range of environmental performance levels, except emission levels, obtained under normal and other than normal operating conditions using a BAT or a combination of BATs, <b>as described in BAT conclusions.</b></p>
Art. 14a (1)	<p>1. Member States shall require the operator to prepare and implement, for each installation falling within the scope of this Chapter, an environmental management system (‘EMS’). The EMS shall comply with the provisions included in relevant BAT conclusions that determine aspects to be covered in the EMS.</p> <p>The EMS shall be reviewed periodically to ensure that it continues to be suitable, adequate and effective.</p>	<p>1. Member States shall require the operator to prepare and implement, for each installation falling within the scope of this Chapter, an environmental management system (‘EMS’). The EMS shall comply with the provisions included in <u>paragraph 2-3(a) and</u> relevant BAT conclusions that determine aspects to be covered in the EMS.</p> <p><del>The EMS shall be reviewed periodically to ensure that it continues to be suitable, adequate and effective.</del> [text moved]</p>
Art. 14a (2)	<p>2. The EMS shall include at least the following:</p> <p>(a) environmental policy objectives for the continuous improvement of the environmental performance and safety of the installation, which shall include measures to:</p> <p>(i) prevent the generation of waste;</p> <p>(ii) optimise resource use and water reuse;</p> <p>(iii) prevent or reduce risks associated with the use of hazardous substances.</p> <p>(b) objectives and performance indicators in relation to significant environmental aspects, which shall take into account benchmarks set out in the relevant BAT</p>	<p>2. The EMS shall include at least the following:</p> <p>(a) environmental policy objectives for the continuous improvement of the environmental performance and safety of the installation, which shall include measures to</p> <p>(i) prevent the generation of waste,</p> <p>(ii) optimise resource use and water reuse,</p> <p>(iii) and prevent or reduce risks associated with the use of hazardous substances.</p> <p>(b) objectives and performance indicators in relation to significant environmental aspects, which shall take into account benchmarks set out in the relevant BAT conclusions and the</p>

	<p>conclusions and the life-cycle environmental performance of the supply chain;</p> <p>(c) for installations covered by the obligation to conduct an energy audit or implement an energy management system pursuant to Article 8 of Directive 2012/27/EU, inclusion of the results of that audit or implementation of the energy management system pursuant to Article 8 and Annex VI of that Directive and of the measures to implement their recommendations;</p> <p>(d) a chemicals inventory of the hazardous substances present in the installation as such, as constituents of other substances or as part of mixtures, a risk assessment of the impact of such substances on human health and the environment and an analysis of the possibilities to substitute them with safer alternatives;</p> <p>(e) measures taken to achieve the environmental objectives and avoid risks for human health or the environment, including corrective and preventive measures where needed;</p> <p>(f) a transformation plan as referred to in Article 27d.</p>	<p>life-cycle environmental performance of the supply chain;</p> <p>(c) for installations covered by the obligation to conduct an energy audit or implement an energy management system pursuant to Article 8 of Directive 2012/27/EU, inclusion of the results of that audit or implementation of the energy management system pursuant to Article 8 and Annex VI of that Directive and of the measures to implement their recommendations;</p> <p>(d) a chemicals inventory of the hazardous substances present in the installation as such, as constituents of other substances or as part of mixtures, a risk assessment of the impact of such substances on human health and the environment and an analysis of the possibilities to substitute them with safer alternatives, with special regard to the substances fulfilling the criteria of Article 57 and substances addressed in restrictions in Annex XVII to Regulation (EC) No 1907/2006;</p> <p>(e) measures taken to achieve the environmental objectives and avoid risks for human health or the environment, including corrective and preventive measures where needed;</p> <p>(f) a transformation plan as referred to in Article 27d.</p> <p>The level of detail of the EMS <del>will</del> <u>shall</u> be consistent with the nature, scale and complexity of the installation, and the range of environmental impacts it may have.</p> <p>Where elements of the EMS, <del>or the related performance indicators, objectives, measures and analysis</del> have already been developed elsewhere and comply with this paragraph and paragraph 1, article a reference may be made in the EMS to the relevant documents.</p>
Art. 14a (3)	<p>3. The EMS of an installation shall be made available on the Internet, free of charge and without restricting access to registered users.</p>	<p>3. <del>The non-confidential summary of the EMS, including the performance indicators, objectives, measures, analysis and transformation plan referred to in Art. 14a(1) and (2)</del> <del>The EMS of an installation</del></p> <p>Member states shall ensure that relevant information of the EMS from paragraph 2 a-e and the transformation plan shall be made available on the Internet, free of charge and without restricting access to registered users.</p>

		<p>The Commission shall, by 31 December 2025, adopt an implementing act <u>on what information that is relevant for publication. <del>to establish the standardised template to be used for the information referred to in this paragraph.</del></u> That implementing act shall be adopted in accordance with the examination procedure referred to in Article 75(2).</p> <p><del>The content of the summary of EMS shall allow comparison with information referred to in Art. 14(1) d) (iii).</del></p> <p>Information may be redacted, or if that is not possible, excluded when made available on the Internet, if the disclosure of the information would adversely affect any of the interests listed in article 4.2 (a)-(h) of Directive 2003/4/EC.</p>
Art. 14a (3a)		<p>3a. Member States shall take the necessary measures to ensure that <del>T</del> the operator reviews its EMS to ensure that it <del>continues to be</del> is suitable, adequate and effective and <del>Member States shall take the necessary measures to ensure that the EMS is audited, at least every 3 years: a),</del> by an <u>external auditor organisation or an environmental verifier</u> contracted by the operator, who verifies the conformity of the EMS and of its implementation with this article.</p> <p><del>b) t The operator reviews its EMS to ensure that it continues to be suitable, adequate and effective. - [text moved]</del></p> <p>The <del>first review and the existing</del> first audit of the EMS shall take place at the latest 36 months after [OP please insert the date = the first day of the month following 18 months after the date of entry into force of this Directive].</p>
Art. 15 <del>(3b)</del> 4a		<p>(4a) By way of derogation from paragraph 3a, the competent authority may, in specific cases, set less strict environmental performance limit values. Such a derogation may apply only where an assessment shows that that, the achievement of performance levels associated with the best available techniques as described in BAT conclusions <del>would will</del> lead to significant negative environmental impact, including cross media effects; or significant economical impact due to:</p>

		<p>(a) the geographical location or the local environmental conditions of the installation concerned; or</p> <p>(b) the technical characteristics of the installation concerned,</p> <p><del>the achievement of performance levels associated with the best available techniques as described in BAT conclusions would lead to significantly negative environmental or economical impact.</del> [see text above]</p> <p>The competent authority shall document in an annex to the permit conditions the reasons for the application of the first subparagraph including the result of the assessment and the justification for the conditions imposed.</p> <p>The competent authority shall in any case ensure that operating under less strict environmental performance limit values shall not cause any significant <del>pollution</del> environmental impact and shall achieve a high level of protection of the environment as a whole.</p> <p>The Commission shall adopt an implementing act to establish a standardised methodology for undertaking the assessment referred to in the first subparagraph. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 75(2).</p>
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#### Cluster 4

30	<p>In order to ensure uniform conditions for the implementation of Directive 2010/75/EU, implementing powers should be conferred on the Commission as regards the establishment of (i) the format to be used for the permit summary, (ii) a standardised methodology for assessing the disproportionality between the costs of implementation of the BAT-conclusions and the potential environmental benefits, (iii) the measuring method for assessing compliance with emission limit values set out in the permit with regard to emissions to air and water, (iv) the detailed arrangements necessary for the establishment and functioning of the innovation center for industrial transformation and emissions, and (v) the format to be used for transformation plans. Those powers should be exercised in accordance with Regulation (EU) No</p>	<p>In order to ensure uniform conditions for the implementation of Directive 2010/75/EU, implementing powers should be conferred on the Commission as regards the establishment of (i) <del>the format to be used for the permit summary,</del> (ii) a standardised methodology for assessing the disproportionality between the costs of implementation of the BAT-conclusions and the potential environmental benefits <u>in accordance with art. 15.4,</u> (ii) a standardised methodology for undertaking the assessment referred to in art. 15.4a (iii) the measuring method for assessing compliance with emission limit values set out in the permit with regard to emissions to air and water, (iv) the detailed arrangements necessary for the establishment and functioning of the innovation center for industrial transformation and emissions, and (v) the format to be used for transformation plans</p>
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	182/2011 of the European Parliament and of the Council.	<i>and (vi) on what information that is relevant for publication of the EMS. the format to be used for the EMS summary. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.</i>
Art. 24 (2)	<p>2. When a decision on granting, reconsideration or updating of a permit has been taken, the competent authority shall make available to the public, including <b>systematically</b> via the Internet, <b>free of charge and without restricting access to registered users</b>, in relation to points (a), (b) and (f), the following information:</p> <p>(a) the content of the decision, including a copy of the permit and any subsequent updates;</p> <p>(b) the reasons on which the decision is based;</p> <p>(c) the results of the consultations held before the decision was taken, <b>including consultations held pursuant to Article 26</b>, and an explanation of how <b>those consultations they</b> were taken into account in that decision;</p> <p>(d) the title of the BAT reference documents relevant to the installation or activity concerned;</p> <p>(e) how the permit conditions referred to in Article 14, including the emission limit values, have been determined in relation to the best available techniques and emission levels associated with the best available techniques;</p> <p>(f) where a derogation is granted in accordance with Article 15(4), the specific reasons for that derogation based on the criteria laid down in that paragraph and the conditions imposed.</p>	<p>2. When a decision on granting, reconsideration or updating of a permit has been taken <i>after</i> <del>[OP please insert the date = the first day of 24 months following the date of entry into force of this Directive]</del>, the competent authority shall make available to the public, including <b>systematically</b> via the Internet, <b>free of charge and without restricting access to registered users</b>, in relation to points (a), (b) and (f), the following <i>information:</i></p> <p><i>(a) systematic information:</i></p> <p><i>(i) the title of the BAT conclusions relevant to the installation or activity concerned;</i></p> <p><i>(ii) whether any derogation is granted in accordance with Article 15(4);</i></p> <p><i>(iv) the emission limit values and environmental performance limit values;</i></p> <p><i>(v) the provisions for the reconsideration and updating of the permit.</i></p> <p><i>(b) documents and information:</i></p> <p><i>(i) the summary of the decision with an overview of the main permit conditions</i></p> <p><i>(ii) (a)</i> the content of the decision, including a copy of the permit and any subsequent updates; <i>Including consolidated permit conditions where relevant.</i></p> <p><i>(iii) (b)</i> the reasons on which the decision is based;</p> <p><i>(iv) (c)</i> the results of the consultations held before the decision was taken, <b>including consultations held pursuant to Article 26</b>, and an explanation of how <b>those consultations they</b> were taken into account in that decision;</p> <p><i>(ii) (d)</i> the title of the BAT reference documents relevant to the installation or activity concerned;</p> <p><i>(iv) (e)</i> how the permit conditions referred to in Article 14, including the emission limit values, have been determined in relation to the best available techniques and emission levels associated with the best available techniques;</p> <p><i>(iv) (f)</i> where a derogation is granted in accordance with Article 15 <del>(4)</del>, the specific reasons for that derogation based on the criteria laid down in that paragraph and the conditions imposed.</p>

		<p><del><i>The Commission shall [OP please insert the date – the first day of 24 months following the date of entry into force of this Directive] adopt an implementing act to establish the format to be used for the information and documents referred to in this paragraph. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 75(2).</i></del></p> <p><del><i>The publication of the documents and information referred to in points (a)(iv) and (b)(i) shall only be required after the publication of that implementing act.</i></del></p>
Art. 24 (3)	<p>3. The competent authority shall also make available to the public, including <b>systematically</b> via the Internet, <b>free of charge and without restricting access to registered users, at least in relation to point (a)</b> the following:</p> <p>(a) relevant information on the measures taken by the operator upon definitive cessation of activities in accordance with Article 22;</p> <p>(b) the results of emission monitoring as required under the permit conditions and held by the competent authority;</p> <p><b>(c) the results of the monitoring referred to in Article 16(3) and in Article 18, second subparagraph.</b></p>	<p>3. The competent authority shall also make available to the public, including <b>systematically</b> via the Internet, <b>free of charge and without restricting access to registered users, at least in relation to point (a)</b> the following:</p> <p>(a) relevant information on the measures taken by the operator upon definitive cessation of activities in accordance with Article 22;</p> <p>(b) the results of emission monitoring as required under the permit conditions and held by the competent authority;</p> <p><b>(c) the results of the monitoring referred to in Article 16(3) and in Article 18<del>13</del>.</b></p>

## Cluster 5

Recital	COM proposal	PRES proposal
31 a		<p>Member States should lay down rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and should ensure that they are implemented. The penalties should be effective, proportionate and dissuasive.</p> <p><del>taking into account the specificities of small and medium size enterprises. Serious infringements should be prosecuted under criminal law in accordance with Directive 2008/99/EC of the European Parliament and of the Council. Directive 2008/99/EC establishes minimum criminal offences and sanctions; therefore Member states remain free to adopt or maintain more stringent criminal offences and sanctions that go beyond the minimum rules in Directive 2008/99/EC, for example for infringements that are not considered as environmental crimes according to that Directive. Even though nothing prevents</del> Member States <del>may from</del> laying down rules for administrative as well as criminal <del>sanctions</del> penalties for the same infringements. <del>They should not be required to lay down rules for administrative sanctions for infringements of this Directive which are already subject to criminal sanction pursuant to Directive 2008/99/EC.</del> In any case, the <del>imposition of criminal and administrative penalties should not lead to a breach of the right not to be principle of prohibition of being</del> tried or punished twice in criminal proceedings for the same criminal offence (ne bis in idem) <del>as interpreted by the Court of Justice should be fully respected. Where a Member State's rules on penalties adopted in accordance with this Directive comply with the requirements on level and types of penalties in Directive 2008/99/EC, the penalties shall be considered as also fulfilling the criteria in this Directive.</del></p>

Article	COM proposal	PRES proposal
Art. 79 (1)	<p>1. Without prejudice to the obligations of Member States under Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law, Member States shall lay down rules on penalties applicable to violations of national provisions adopted pursuant to this</p>	<p>1. Without prejudice to the obligations of Member States under Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law, Member States shall lay down rules on penalties applicable to infringements of national provisions</p>



	Directive and shall take all measures necessary to ensure that they are applied. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall without delay notify the Commission of those rules and of those provisions, and shall notify without delay any subsequent amendment affecting them.	adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. <del>Member States shall without delay notify the Commission of those rules and of those provisions, and shall notify without delay any subsequent amendment affecting them.</del>
Art. 79 (2)	2. The penalties referred to in paragraph 1 shall include fines proportionate to the turnover of the legal person or to the income of the natural person having committed the infringement. The level of the fines shall be calculated in such a way as to make sure that they effectively deprive the person responsible for the violation of the economic benefits derived from that violation. The level of the fines shall be gradually increased for repeated infringements. In the case of a violation committed by a legal person, the maximum amount of such fines shall be at least 8 % of the operator's annual turnover in the Member State concerned.	2. The penalties referred to in paragraph 1 shall include fines <u>proportionate to the annual turnover of the legal person in the Member State concerned or to the income of the natural person having committed the infringement, taking into account, inter alia, the specificities of small and medium-sized enterprises (SMEs).</u> The level of the fines shall be calculated in such a way as to make sure that they effectively deprive the person responsible for the infringement of the economic benefits derived from that infringement. <del>The level of the fines shall be gradually increased for repeated infringements. In the case of a violation committed by a legal person, the maximum amount of such fines shall be proportionate to at least 8 % of the operator's annual turnover in the Member State concerned., taking into account, inter alia, the specificities of small and medium-sized enterprises (SMEs).</del>
Art. 79 (3)	3. Member States shall ensure that the penalties <del>referred to in paragraph 1</del> give due regard to the following, as applicable: (a) the nature, gravity, and extent of the violation; (b) the intentional or negligent character of the violation; (c) the population or the environment affected by the violation, bearing in mind the impact of the infringement on the objective of achieving a high level of protection of human health and the environment. <del>Member States shall determine penalties applicable to infringements of the national provisions adopted pursuant to this Directive. The penalties thus provided for shall be effective, proportionate and dissuasive. Member States shall notify those</del>	3. Member States shall ensure that the penalties established pursuant to this Article give due regard to the following, as applicable: (a) the nature, gravity, and extent of the infringement; (b) the intentional or negligent character of the infringement; (c) the population or the environment affected by the infringement, bearing in mind the impact of the infringement on the objective of achieving a high level of protection of human health and the environment; d) the repetitive or singular character of the infringement.



	<del>provisions to the Commission by 7 January 2013 and shall notify it without delay of any subsequent amendment affecting them.</del>	
<i>Art. 79 (4)</i>		4. Member States shall without undue delay notify the Commission of the rules and measures referred to in paragraph 1 and of any subsequent amendments affecting them. <b>[Text moved from article 79.1]</b>
<i>Art. 79 (5)</i>		<del>5. If a Member State's rules on penalties referred to in paragraph 1 comply with the relevant requirements in Directive 2008/99/EC, they shall be considered as compliant with this Article and paragraph 2 and 3 shall not apply.</del>

## Transitional provisions

<i>Recital</i>	COM proposal	PRES proposal
<i>Recital X</i>		<p><u>In order to give the Member States, Competent Authorities and installations time to comply with the new provisions, and also to give time to adopt new BAT-conclusions that take the new provisions into account transitional provisions should be prescribed. To ensure legal certainty there is a need to have a fixed date when the provisions should be complied with at the absolute latest. With regard to the Seville process and the number of BAT reference documents that need to be reviewed, this date should be set to 20 years for existing activities and 12 years for new activities. This does not prevent BAT-conclusions to be adopted earlier.</u></p> <p><u>Existing installations shall comply with the provisions in the current IED, until there are new BAT conclusions or there is a permit update.</u></p>

Article	COM proposal	PRES proposal
Article 3	<p>Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [OP please insert the date = the first day of the month following 18 months after the date of entry into force of this Directive]</p> <p>They shall forthwith communicate to the Commission the text of those provisions. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.</p>	<p>Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [OP please insert the date = the first day of the month following 24 months after the date of entry into force of this Directive]</p> <p>They shall forthwith communicate to the Commission the text of those provisions. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.</p>
A		<p><u>In relation to installations regulated by Chapter IV Article 42 shall apply from [OP please insert the date = the first day of the month following 24 + 18 months after the date of entry into force of this Directive]</u></p>
B		<p>In relation to installations carrying out activities referred to in Annex I Member States shall apply Article 14 (1) (aa), 14 (1) (h) Article 15(3a) and Article 15(4a) within 4 years of publication of decisions on BAT conclusions that have been published after [OP please insert the date = the first day of the month following 24 months after the date of entry into force of this Directive] relating to the main activity of an installation in accordance with Article 13(5).</p> <p><u>Installations first permitted after the publications of decisions on BAT-conclusions published after [OP please insert the date = the first day of the month following 24 months after the date of entry into force of this Directive] relating to the main activity of an installation in accordance with Article 13(5), shall apply those provisions from the date the BAT-conclusions are published.</u></p>
C		<p><b>In relation to installations carrying out activities referred to in Annex I</b> <del>(list of existing activities which are under the scope of covered by</del> the directive before [OP please insert the date = the date of entry into force of this Directive]) <del>which</del> and (i) <b>are in operation and hold a permit before</b> [OP please insert the date = the first day of</p>

Article	COM proposal	PRES proposal
		<p>the month following 24 months after the date of entry into force of this Directive], or (ii) of which the operators <del>of which</del> have submitted a complete application for a permit before that date, provided that those installations are put into operation no later than [OP please insert the date = the first day of the month following 12+24 months after the date of entry into force of this Directive]:</p> <p><del>Article 9(2), 14 (1) (a), 14 (1)(b), 14 (1)(ba), 14 (1)(bb), 14 (1)(d) 14 (1)(b), 14 (1)(h) 14 (2) 14 (7), Article 15(1), Article 15(3), Article 15(3a), Article 15(3b) Article 15(4), Article 15a and Article 16(3) shall apply within 4 years of publication of decisions on BAT conclusions in accordance with Article 13(5) relating to the main activity of an installation, shall apply when the permit is granted or updated revised pursuant to Article 20 or Article 21(5), by [OP please insert the date = the first day of the month following 20 years after the date of entry into force of this Directive] or from within 4 years of publication of decisions on BAT conclusions that have been published after [OP please insert the date = the first day of the month following 24 months after the date of entry into force of this Directive] in accordance with Article 13(5) relating to the main activity of an installation, whichever the sooner.</del></p> <p><u>Until that day such installations shall comply with Directive 2010/75/EU.</u></p>
D		<p>In relation to installations carrying out activities referred to in Annex I, point 2.3 (aa), point 2.3 (ab) and 6.2 (only regarding finishing of textile fibres or textiles) which are in operation before [OP please insert the date = the first day of the month following 24 months after the date of entry into force of this Directive] Member States shall, with the exemption of Article 14 (1aa), Article 15(3a) and Article 15(4 a), apply the laws, regulations and administrative provisions adopted in accordance with this Directive within 4 years after [OP please insert the date = the first day of the month following 24 months after the date of entry into force of this Directive].</p>
E		<p>In relation to installations carrying out activities referred to in Annex I, point 1.4,</p>

Article	COM proposal	PRES proposal
		<p>2.3 (b), 2.3 (ba), 2.7 and 3.6, <del>(list of new activities which are not covered by under the scope of the directive before [OP please insert the date = the date of entry into force of this Directive])</del> <u>[and which are operated before [OP please insert the date = the date of entry into force of this Directive]]</u></p> <p><b>Member States shall apply the laws, regulations and administrative provisions adopted in accordance with this Directive by [OP please insert the date = the first day of the month following 12 years after the date of entry into force of this Directive] or within 4 years onwards of after publication of decisions on BAT conclusions in accordance with Article 13(5) relating to the main activity of an installation, whichever the sooner.</b></p> <p><u>Until that day such installations shall comply with Directive 2010/75/EU.</u></p> <p><u>Installations first permitted after the publications of decisions on BAT-conclusions published after [OP please insert the date = the first day of the month following 24 months after the date of entry into force of this Directive] relating to the main activity of an installation in accordance with Article 13(5), shall apply those provisions from the date the BAT-conclusions are published.</u></p>
F		<p>Derogations granted by the competent authority in accordance with Article 15.4 before [OP please insert the date = the first day of the month following 24 months after the date of entry into force of this Directive] shall remain valid until the competent authority re-assess whether the derogation is justified according to Article 15.4. The re-assessment shall be made 4 years from [OP please insert the date = the first day of the month following 24 months after the date of entry into force of this Directive] or as part of reconsideration of the permit conditions pursuant to Article 21, whichever the sooner.</p>
G		<p>Derogations for the testing and use of emerging techniques granted by the competent authority in accordance with Article 15.5 before [OP please insert the date = the first day of the month following 24 months after the date of entry into force of</p>

<i>Article</i>	COM proposal	PRES proposal
		<p>this Directive] shall remain valid until the end of the period specified in the decision. After the period specified, the technique shall be stopped or the activity shall achieve at least the emission levels associated with the best available techniques.</p>

