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LIMITE

ENV	**SAN**
AGRI	**MI**
CODEC	**CONSOM**
COMPET	**ENT**
COMER	**IND**

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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on the Environment
Subject:	IED : Follow- up of the WPE meeting on 7 February 2023 - Comments by delegations

Following the call for comments (WK 1849/23), delegations will find attached the contribution received from the BE, DE, DK, EE, IT, NL, AT, PL, SI and SK delegations.

Written comments from BELGIUM on cluster 1, 3, 4, 5 and 8 (dd 10th of February 2023)

In follow-up to the discussion on the issues set out in WK 1574/2023 and discussed at the WPE on the 7th of February, Belgium would like to make the following written comments :

Cluster 1:

Article 16(3):

BE is of the opinion that the current proposal from the presidency for this article can also be interpreted differently.

Proposal 16(3):

> Where the ~~derogation~~ assessment referred to in Article 15(4) demonstrates that a derogation will ~~would~~ have a quantifiable or measurable effect on the environment, ~~the competent authority shall ensure that an appropriate monitoring system is put in place and require the operator to monitor~~ Member states shall ensure that the concentration of the pollutants concerned shall be monitored in the receiving environment.

What if the assessment does not demonstrate a quantifiable effect? No monitoring would then take place. However, there is always a risk that the theoretical assessment was wrong and in reality, there is a quantifiable effect, which would go unnoticed, as no monitoring is taking place…

In our view the CA should be empowered to decide on monitoring, that's why we proposed that the CA should be able to decide on monitoring in a *risk based approach* keeping the assessment in consideration – but with the final decision for monitoring should be on the CA. BE proposed orally the following text, based on the COM proposal :

> Where a derogation referred to in Article 15(4) has been granted, Member States shall ensure that risk based monitoring provisions are set in the permit to ~~the operator~~ monitor~~s~~ 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.

At the WPE meeting the Netherlands had an alternative, for BE acceptable, proposal. The Netherlands proposed to add a sentence that the CA should have the possibility to set monitoring conditions anyhow is also a way forward.

Proposal 16(3):

> **The CA decides if monitoring is relevant taking ~~Where~~** the ~~derogation~~ assessment referred to in Article 15(4) **in consideration. If the assessment** demonstrates that a derogation will ~~would~~ have a quantifiable or measurable effect on the environment, ~~the competent authority shall ensure that an appropriate monitoring system is put in place and require the operator to monitor~~ Member states shall ensure that the concentration of the pollutants concerned shall be monitored in the receiving environment.

Justification:

The CA can always decide on monitoring and if the assessment shows a quantifiable effect the monitoring is mandatory.

Article 13(2):

We do agree that CBI are part of the exchange of information in the Sevilla process. It is essential that the exchange of information for the BREF's reflect those interests. Therefore we generally support the COM proposal to have a new article on this in the IED. Data carrying the CBI tag in the information exchange process shall be in any case analysed and discussed in the TWG to draw sound and solid BAT conclusions (including BAT-AEL's and BAT-AEPL's).

We think that if information is considered confidential in the view of an operator and/or business organisation, this particular interest has to be compared and balanced with respect to article 1 of the IED: 'a high level of protection of the environment taken as a whole'.

We are of the opinion that the current article 13(2) should refer to Directive 2003/4/EC on public access to environmental information. Legislation within the EU competition law (e.g. Commissions Communication on the protection of confidential information by national courts in proceedings for the private enforcement of EU competition law – link:https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2020.242.01.0001.01.ENG&toc=OJ:C:2020:242:TOC).

In our view the current proposal could lead that too much data will be considered CBI. We want to point out that the term 'commercially sensitive information' is nowhere defined, therefore we propose to at least delete these words in article 13(2).

Proposal article 13(2):

> Without prejudice to Union competition law, information considered as confidential business information ~~**or commercially sensitive information**~~ shall only be shared with the Commission and with the following individuals having signed a confidentiality and non-disclosure agreement: civil servants and other public employees representing Member States or Union agencies, and representatives of non-governmental organisations promoting the protection of human health or the environment. The exchange of information considered as confidential business information ~~**or sensitive commercial information**~~ shall remain limited to what is required to draw up, review and, where necessary, update BAT reference documents and such sensitive or commercial information shall not be used for other purposes.

Cluster 3: no comments

Cluster 4:

Article 24(2): permit summary

Belgium would like to re-emphasize that a permit summary has an added value and should not be considered as an administrative burden (especially not when compared to a consolidated version of the permit).

BE thinks that a consolidated version of the permit is already current practice in most member states and we should, in line with the COM digital targets for 2030, promote to take the next steps in line

with the publication ambitions of the IED (article 24(2) and 24(3)). A permit summary is in our view part of this.

BE is of the opinion that the CZ proposal on article 24(2) demonstrates that the only information in the permit summary that is not yet reported to the IEPR are the ELV's in permits. BE proposed (Written comments document WK 16605/2022 INIT – November 29th 2022) to make the IEPR fit for purpose. We still think this is the way forward and does not necessarily mean that the administrative burden will grow, on the contrary a more digital system will lower the administrative burden.

We do agree that it takes time to develop digital systems that would allow permits to be digitalized (machine readable), but once in place the administrative burden would lower considerably. Therefore BE proposes to keep the permit summary in the IED but to give member states time to update and digitalise the current national systems to make permits more digital and facilitate the publication obligations of the IED and IEPR. In our view 8-10 years would be an acceptable period, in the meanwhile we could struggle forward with consolidated permits.

Besides a lower administrative burden we think digital information could also be extremely useful for the EIPPCB, assist CA to exchange information on permits, development of permit update strategies by MS, … In our view there is a lot of potential and possibilities are very diverse.

We would like the presidency to re-evaluate the potential the permit summary can have. In our view there was surely support from different member states, all over the continent, in favor of a permit summary.

Cluster 5 and 8: no comments, BE is still scrutinizing.

Transitional periods:

In general BE supports the proposals of the presidency.

However the transitional periods as proposed in period C (20 years) *existing installations* and period E (12 years) *new activities* are not acceptable.

Period C:

We agree that the Sevilla process to make BREF's is a protracted process and for all BREF's to be updated we need probably 20 years. However we think that if new installations and installations updated according to article 20 or article 21(5) need to comply with these articles more recent and more dynamic installations are treated differently than more static installations. This could create differences between permits and installations that are not beneficial for the level playing field within a member state or between member states. We also think this proposal potentially will lead to less innovation and we need innovation to achieve the 2050 goals. In our view a transitional period is needed but we would propose to shorten the transition period to 8 years.

Period E:

First of all we hope the BREF's for new activities will be published within 8 years, in which case we would not need this transition period. But as we don't know what BREF's will be drafted first we think a transition period is needed. However, in line with period E, we think a transition period of 8 years will be sufficient.

Art.	**COM proposal**	**Pres proposal + suggestions for like-minded (in bold and underlined and ~~strikethrough~~)**
15(3)	The competent authority shall set the strictest possible emission limit values that are consistent with the lowest emissions achievable by applying BAT in the installation, and that ensure that, under normal operating conditions, emissions do not exceed the emission levels associated with the best available techniques (BAT-AELs) as laid down in the decisions on BAT conclusions referred to in Article 13(5). The emission limit values shall be based on an assessment by the operator analysing the feasibility of meeting the strictest end of the BAT-AEL range and demonstrating the best performance the installation can achieve by applying BAT as described in BAT conclusions. The emission limit values shall be set through either of the following: (a) setting emission limit values expressed for the same or shorter periods of time and under the same reference conditions as the emission levels associated with the best available techniques; or (b) setting different emission limit values than those referred to under point (a) in terms of values, periods of time and reference conditions. Where the emission limit values are set in accordance with point (b), the competent authority shall, at least annually, assess the results of emission monitoring in order to ensure that emissions under normal operating conditions have not exceeded the emission levels associated with the best available techniques	*The competent authority shall set the strictest possible emission limit values* ***for pollutants referred to in Article 14(1)a*** *achievable by applying BAT in the installation* ~~*, and that ensure that, under normal operating conditions, emissions do not exceed the emission levels associated with the*~~ *If best available techniques* ***with associated emission*** *levels (BAT-AELs)* ***are established****, as laid down in the decisions on BAT conclusions referred to in Article 13(5)****, the competent authority ensures that the emission levels do not exceed those BAT-AELs under normal operating conditions****.* *The emission limit values shall be based on an assessment by the operator analysing the feasibility of meeting the strictest end of the BAT-AEL range and demonstrating the best performance the installation can achieve by applying BAT as described in BAT conclusions.* *The emission limit values* ***based on BAT-AEL*** *shall be set through either of the following:* *(a) setting emission limit values expressed for the same or shorter periods of time and under the same reference conditions as those emission levels associated with the best available techniques; or* *(b) setting different emission limit values than those referred to under point (a) in terms of values, periods of time and reference conditions.* *Where the emission limit values are set in accordance with point (b), the competent authority shall, at least annually, assess the results of emission monitoring in order to ensure that emissions under normal operating conditions have not exceeded the emission levels associated with the best available techniques.* *General binding rules referred to in Article 6 may be applied provided these rules taking into account best achievable performance while setting relevant emission limit values according to this article.*

If general binding rules are adopted, the strictest possible emission limit values achievable by applying BAT shall be set for categories of installations having similar characteristics that are relevant in determining the lowest emission levels achievable. The general binding rules shall be based on an assessment made by the Member State analysing the feasibility of meeting the strictest end of the BAT-AEL range and demonstrating the best performance that those categories of installations can achieve by applying BAT as described in BAT conclusions.

Justification

In art. 15(3) there should be a connection with article 14(1). Article 14 is the article that describes *what* should be in the permit, including ELV (see article 14.1). Article 15 describes *how* these ELV, equivalent parameters or technical measures should be set by the competent authority.

Article 15(3) of the current IED was written based on the idea that all relevant parameters – as described in article 14(1) would be taken up in BAT-conclusions. But after more than 10 years of experience with BREF's, it has become clear that the BREF process is not perfect and not all parameters described in article 14.1 are taken up in BAT-conclusions. This means that competent authorities also have to set ELV's for other relevant parameters that are not described in BAT-conclusions.

Therefore we think a reference to article 14(1) in article 15(3) is essential. It clarifies that the operator has to take up all relevant parameters, also those not in BAT-conclusions, in the assessment.

In our view this is nothing new, but merely a clarification of the existing text that empowers the competent authorities and ensures a more uniform implementation throughout Europe thus creating a level playing field.

Art.	**COM proposal**	**Pres proposal + Proposals from NL, BE, .., .., .. in bold orange text that is highlighted.**
Art. 14 (1)	1. Member States shall ensure that the permit includes all measures necessary ~~**for compliance**~~ **to comply** with the requirements of Articles 11 and 18. **To that effect, Member States shall ensure that permits are granted further to consultation of all relevant authorities who ensure compliance with Union environmental legislation, including with environmental quality standards.** Those measures shall include at least the following: (a) emission limit values for polluting substances listed in Annex II **of Regulation (EC) No 166/2006***, and for other polluting substances, which are likely to be emitted from the installation concerned in significant quantities, having regard to their nature and their potential to transfer pollution from one medium to another; **(aa) environmental performance limit values;** (b) appropriate requirements ensuring protection of the soil**,** ~~**and**~~ groundwater **and surface water**, and measures concerning the monitoring and management of waste generated by the installation; **(ba) appropriate requirements for an environmental management system as laid down in Article 14a;** **(bb) suitable monitoring requirements for the consumption and reuse of resources such as energy, water and raw materials;** (c) suitable emission monitoring requirements specifying: (i) measurement methodology, frequency and evaluation procedure; and (ii) where Article 15(3)(b) is applied, that results of emission monitoring are available for the same periods of time and reference conditions as for the emission levels associated with the best available techniques; (d) an obligation to supply the competent authority regularly, and at least annually, with: (i) information on the basis of results of emission monitoring referred to in point (c) and other required data that enables the competent authority to verify compliance with the permit conditions; and	1. Member States shall ensure that the permit includes all measures necessary ~~**for compliance**~~ **to comply** with the requirements of Articles 11 and 18. **To that effect, Member States shall ensure that permits are granted further to consultation of all relevant authorities who ensure compliance with Union environmental legislation, including with environmental quality standards.** Those measures shall include at least the following: (a) emission limit values for polluting listed in Annex II **of Regulation (EC) No 166/2006***, and for other polluting substances, which are likely to be emitted from the installation concerned in significant quantities, having regard to their nature, **their hazardousness** and their potential to transfer pollution from one medium to another, **(aa) environmental performance limit values in accordance with Article 15(3a);** **(aax)** Appropriate requirements to ensure the assessment of the need to prevent or reduce the emissions of substances [identified according to article 59 as] fulfilling the criteria

(ii) where Article 15(3)(b) is applied, a summary of the results of emission monitoring which allows a comparison with the emission levels associated with the best available techniques;

(iii) information on progress towards fulfilment of the environmental policy objectives referred to in Article 14a. Such information shall be made public;

(e) appropriate requirements for the regular maintenance and surveillance of measures taken to prevent emissions to soil and groundwater pursuant to point (b) and appropriate requirements concerning the periodic monitoring of soil and groundwater in relation to relevant hazardous substances likely to be found on site and having regard to the possibility of soil and groundwater contamination at the site of the installation;

(f) measures relating to conditions other than normal operating conditions such as start-up and shut-down operations, leaks, malfunctions, momentary stoppages and definitive cessation of operations;

(g) provisions on the minimisation of long-distance or transboundary pollution;

(h) conditions for assessing compliance with the emission limit values **and environmental performance limit values** or a reference to the applicable requirements specified elsewhere.

of article 57[1] or substances addressed in restrictions in annex XVII to regulation (EC) No 1907/2006

(b) appropriate requirements ensuring protection of the soil**, ~~and~~** groundwater, **surface water**, **and surface water used for the production of drinking water**, and measures concerning the monitoring and management of waste generated by the installation;

(ba) appropriate requirements for an environmental management system as laid down in Article 14a;

(bb) suitable monitoring requirements for the consumption and reuse of resources such as energy, water and raw materials;

(c) suitable emission monitoring requirements specifying:

(i) measurement methodology, frequency and evaluation procedure; and

(ii) where Article 15(3)(b) is applied, that results of emission monitoring are available for the same periods of time and reference conditions as for the emission levels associated with the best available techniques;

(d) an obligation to supply the competent authority regularly, and at least annually, with:

(i) information on the basis of results of emission monitoring referred to in point (c) and other required data that enables the competent authority to verify

[1] [**The proposal refers to the hazard characteristics in article 57 REACH. This would also specifically include substances identified as fulfilling one of the criteria on the basis of identification in European legislations.**]

compliance with the permit conditions**;**
~~**and**~~
(ii) where Article 15(3)(b) is applied, a summary of the results of emission monitoring which allows a comparison with the emission levels associated with the best available techniques;
(iii) information on progress towards fulfilment of the environmental policy objectives referred to in Article 14a. ~~**Such information shall be made public;**~~
(e) appropriate requirements for the regular maintenance and surveillance of measures taken to prevent emissions to soil and groundwater pursuant to point (b) and appropriate requirements concerning the periodic monitoring of soil and groundwater in relation to relevant hazardous substances likely to be found on site and having regard to the possibility of soil and groundwater contamination at the site of the installation;
(f) measures relating to conditions other than normal operating conditions such as start-up and shut-down operations, leaks, malfunctions, momentary stoppages and definitive cessation of operations;
(g) provisions on the minimisation of long-distance or transboundary pollution;
(h) conditions for assessing compliance with the emission limit values **and environmental performance limit values** or a reference to the applicable requirements specified elsewhere.

Art. 14a (1)	**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. The EMS shall be revieviewed periodically to ensure that it continues to be suitable, adequate and effective.**	**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. ~~The EMS shall be revieviewed periodically to ensure that it continues to be suitable, adequate and effective.~~ [text moved]**
Art. 14a (2)	**2. The EMS shall include at least the following:** **(a) environmental policy objectives for the continuous improvement of the environmental performance and safety of the installation, which shall include measures to:** **(i) prevent the generation of waste;** **(ii) optimise resource use and water reuse;** **(iii) prevent or reduce risks associated with the use of hazardous substances.** **(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 life-cycle environmental performance of the supply chain;** **(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;** **(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;**	**2. The EMS shall include at least the following:** **(a) environmental policy objectives for the continuous improvement of the environmental performance and safety of the installation, which shall include measures to** **(i) prevent the generation of waste,** **(ii) optimise resource use and water reuse, (iii)and prevent or reduce the ~~risks associated with~~ use or emissions of hazardous substances** **(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 life-cycle environmental performance of the supply chain;** **(c) for installations covered by the obligation to conduct an energy audit or implement an energy management system pursuant to Article 8 of**

(e) measures taken to achieve the environmental objectives and avoid risks for human health or the environment, including corrective and preventive measures where needed;
(f) a transformation plan as referred to in Article 27d.

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;
(d) a chemicals inventory of the hazardous substances present in or emitted from 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 or reduce their use or emissions, 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;
(e) measures taken to achieve the environmental objectives and avoid risks for human health or the environment, including corrective and preventive measures where needed;
(f) a transformation plan as referred to in Article 27d.
The level of detail of the EMS will be consistent with the nature, scale and complexity of the installation, and the range of environmental impacts it may have.
Where elements of the EMS~~, or the related performance indicators, objectives, measures and analysis~~

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.

Justification for the link between substances and emissions policies (link IED and REACH)

The proposal is to add requirements for the emissions of substances that fulfil the criteria of article 57 REACH (anywhere in EU legislation) or those that are on the restriction list of REACH in article 14.1 aax and 14a (2)(a) and 14a(2)(d). These substances are identified as having hazard characteristics such as CMR, vPvB or PBT. Due to the subsequent risk to health or environment of these substances, REACH requires these substances to be phased out or severely restricted. To make EU legislation consistent, we consider it crucial that also the IED assess if and how the health and environment aspects of emissions of these substances should be addressed.

The text as proposed in the articles above ensures this consistency in EU legislation. When REACH requires specific risk management measures for substances due to risks (Annex XVII) or these hazard characteristics, we should assess if for the same substances with such hazard characteristics, when emitted, steps are to be taken to prevent or reduce the emissions. This can best be done through the IED.

We have taken up 2 possibilities for this in our proposal, and reflect these options by brackets. Either the text of aax should be added in the IED to read:

Appropriate requirements to ensure the assessment of the need to prevent or reduce the emissions of substances fulfilling the criteria of article 57[2] or substances addressed in restrictions in annex XVII to regulation (EC) No 1907/2006

Or it should read:

Appropriate requirements to ensure the assessment of the need to prevent or reduce the emissions of substances identified according to article 59 as fulfilling the criteria of article 57 or substances addressed in restrictions in annex XVII to regulation (EC) No 1907/2006

The proposals do not take away from the need to address other polluting substances, we see these addressed in 14.1(b) requirements for the protection of water and soil. However, the substances of very high concern not only have a very negative impact on the environment, but their emissions can also be highly impactful on human health or the environment. That is why 14.1 aax is relevant, we need to be able to assess if measures can be taken to prevent or reduce emissions of substances that have these hazard characteristics or are taken up in the restriction list of REACH, and through that their impact on human health and the environment. This provision does not serve to pay less attention to other emission, only to pay specific attention to the substances with the highest impact on health and environment, similar to REACH.

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[2] [**The proposal refers to the hazard characteristics in article 57 REACH. This would also specifically include substances identified as fulfilling one of the criteria on the basis of identification in European legislations.**]

This can only be done when the operator who is responsible for the impact on human health and the environment due to its activity, knows which substances it emits and analyses the possibilities to address these emissions. It is their due diligence that is the basis for the assessment if measures can/should be taken to prevent or reduce emissions. That is the reason for the proposals in 14a(2)a and d to focus not only on use but also on emissions. The additions ensure that the EMS addresses the full extend of chemicals and impact for which the operator is responsible. As emissions are a vital part of the environmental performance of an installation The information provided here can be used in the discussions on the permit (and the assessment if there is a need to prevent or reduce the emissions of substances covered by 14.1 aax).

The main aim of the IED is to stimulate an integrated approach. As taken from the website of the EU on the IED:

> *The **integrated approach** means that the permits must take into account the whole environmental performance of the plant, covering e.g. emissions to air, water and land, generation of waste, use of raw materials, energy efficiency, noise, prevention of accidents, and restoration of the site upon closure.*

In our view a permit is way to regulate activities and related releases and emissions to air, water and soil. In general and from a precautionary principle perspective this means that if an activity or a release or emission of a substance is not taken up in the permit it is not allowed. Therefore it is already a responsibility for plant operators to know what their chemicals are used and to be aware of the substances that are released and emitted during the plant activities (even if unintentional thus other substances than they have in use).
As such, industry and competent authority already have to discuss and include in the permit (or via general rules) all relevant substances. The proposal only adds that for the substances that are of particular concern for health or environment, so meeting criteria of article 57 included in a restriction, you need to pay particular attention that these emissions do not lead to harm to health or environment. For competent authorities, it provides a focus to those most harmful emissions and gives the possibility to set (stricter) obligations for the protection of the environment and human health. The proposals therefore have a limited impact on the administrative burden.

The proposals aim is to ensure that emissions of substances that meet the criteria mentioned above are assessed through a continuous process. You consider the need to prevent or reduce the emissions based on what is achievable. It does not imply that industry must stop using/emitting all hazardous substances immediately.

Justification for proposal to add drinking water to 14.1 b

We propose to add that the protection of surface water used for the production of drinking water should be taken into account due to the impact on the provision of drinking water this has. This is to be added in 14.1 b. The protection of soil and water is important in general but specific requirements may be necessary for the surface water used for the production of drinking water, which can only be considered in the permit of the operator that is allowed to release substances to water.

Germany

Revision of the IED

Follow up WPE on 7 February

Additional written comments and proposals

Clusters 3, 6, 7 and Articles 14a, 15, 70, 74 and 79a and Transitional Provisions

- **Cluster 3 – Transformation plan and climate neutrality**

DEU supports the introduction of transformation plans as part of the EMS as detailed in Article 14a, in so far as it is ensured that

- The transformation plan is assessed by an contracted auditor or environmental verifier
- The administrative burden of the transformation plan is minimised
- The competent permit authority is not in charge of assessing transformation plans
- Also when publishing the transformation plan as part of the EMS confidential business information is protected.

DEU supports cutting the deadline in Article 27d Paragraph 4.

At the same time, the path to and the target of climate neutrality should be outlined clearer in the IED:

- Add new Article 9 Paragraph 5: “Climate neutrality is to be achieved by XXXX”. Fill in the target date/year in line with the date/year set for the ETS.
- Add new Article 11i): climate neutrality is strived for through prevention or reduction of GHG emissions.
- Add new Annex III 13): “the prevention or, where this is not possible, the reduction of GHG emissions by use of low-carbon or carbon-neutral techniques.“

- **Cluster 6 – Intensive rearing of cattle, pigs, and poultry**

With regard to the intensive rearing of cattle, pigs, and poultry DEU proposes as a compromise to change the threshold in Annex Ia to 300 LSU and at the same time not to delete Annex I Number 6.6. In order to ensure that operating rules are also applied to all present installations DEU proposes to include Annex I Number 6.6 in the scope of Chapter VIa. By keeping installations in Annex I, falling back behind existing environmental standards can effectively be avoided, thereby ensuring a level playing field throughout Europe. (Proposed changes: Commission: green, DEU: **purple**)

Article 70a:
This Chapter shall apply to the activities set out in **Annex I Number 6.6 and** Annex Ia which reach the capacity thresholds set out in that Annex.

Annex I:
~~6.6. Intensive rearing of poultry or pigs:~~
~~(a) with more than 40 000 places for poultry;~~
~~(b) with more than 2 000 places for production pigs (over 30 kg), or~~
~~(c) with more than 750 places for sows~~
6.6. Intensive rearing of poultry or pigs:
(a) with more than 40 000 places for poultry;
(b) with more than 2 000 places for production pigs (over 30 kg), or
(c) with more than 750 places for sows

Annex Ia:
Rearing of ~~[~~cattle,~~]~~ ~~**pigs or poultry**~~ in installations of **300** livestock units (LSU) or more.

The operating rules according to Article 70i should be determined by means of an implementation decision in order to ensure that the MS have sufficient rights to participate in the development of the operating regulations. As before, member states should be involved in the IED Seville process. The current BAT conclusions, which are to be replaced by the operating rules, were also drawn up with the participation of the member states and published in the form of **implementing decisions**. It is not clear why this should be deviated from. Therefore, we propose the following changes in Article 76 Paragraph 2 (**purple**):

Article 76 Paragraph 2:

2. The power to adopt delegated acts referred to in Article 48(5), ~~**[Article 70i]**~~ and Article 74 shall be conferred on the Commission for a period of 5 years from … [OP please insert the date = the first day of the month following the date of entry into force of this Directive].
3. The delegation of power referred to in Articles 48(5) ~~**[Article 70i]**~~ and Article 74 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

- **Cluster 7 – Scope of industrial activities**

DEU is still examining the future scope of the IED regarding electrolysers and the extraction and treatment of non-energy minerals. DEU maintains its scrutiny reservation and reserves further comments at a later time.

With regard to the extension proposed by the Commission in the area of downstream ferrous metal processing in Annex I under Number 2.3, DEU is against the inclusion of wire drawing and against the inclusion of forging presses, as the environmental impacts of both processes are so low that inclusion in the IED would be disproportionate.

DEU welcomes the explicit inclusion of battery manufacture in Number 2.7 of Annex I. DEU does not consider it necessary to consider the mere assembly of batteries into battery systems ("assembling"), as environmental impacts are not known. DEU also supports the extension of the scope to battery manufacturing in general ("manufacture of batteries"). We therefore supported the deletions and additions of the CZE Presidency.

DEU supports the threshold of 3.5 GWh/a proposed by the Commission. DEU is in favour of continuing to set the threshold in GWh/a. The proposed use of tons of batteries produced per year leads to legal ambiguity and possibly unjustified unequal treatment of different installations, as it is not clear whether this means cells, modules or systems.

We ask for clarification whether the recycling of batteries is included in Number 2.7, or whether such installations are subsumed under other items of Annex I. In detail, we also ask to review or clarify the individual steps in the battery recycling process with regard to emission relevance and in differentiation to the existing waste regulations in IED.

- **Article 14a(2) – Environmental management system**

In general, DEU wants to clarify that the environmental management system must comply with the requirements of EN ISO 14001 or the Union Eco-Management and Audit Scheme (EMAS III) or systems for environmental management recognized in Article 45 of Regulation (EC) No 1221/2009.

It should be clarified in the guideline that the auditor must fulfil the requirements according to EN ISO/IEC 17021 for the certification of environmental management systems and must prove this to the national accreditation body in the sense of Regulation (EC) 765/2008. It should also be clarified in the directive that the "environmental verifier" is an accredited or licensed environmental verifier within the meaning of Regulation EC 1221/2009 (EMAS).

- **Article 14a(2) d) – Chemical management system**

With regard to the introduction of a chemical management system DEU suggests to focus on hazardous substances used for the industrial process or manufactured in the installation instead of all substances present in the installation. This seems more suitable considering the scope of the Directive. In light of the potential burden of the analysis of substitutions, DEU suggests to limit the scope of this component of the chemical management system to substances fulfilling the criteria of Article 57 of Regulation (EC) 1907/2006. By focusing the scope of application of the different components of the chemical management system as put forward with our two suggestions, the goal to provide an information basis to prevent or mitigate the emission of chemicals is still ensured while the burden for operators is reasonably lowered. DEU suggests the following changes (**purple**).

Article 14a Paragraph 2 d):

a chemicals inventory of the hazardous substances **used in the industrial process or manufactured (excluding intermediates)** ~~**present**~~ in the installation as such, as constituents of other substances or as part of mixtures, a risk assessment **considering risk assessments performed or received under REACH and occupational health legislation related to** ~~**of**~~ the impact of such substances on human health and the environment**,** and **for the** substances fulfilling the criteria of Article 57 **a-e** of Regulation (EC) 1907/2006 an analysis of the possibilities to substitute them with safer alternatives, ~~**with special regard to the and substances addressed in restrictions in Annex XVII to Regulation (EC) No 1907/2006;**~~

- **Article 15(3):**

In the present wording of Article 15 Paragraph 3 including the changes proposed by the Presidency the balance between a case-by-case approach and general binding rules needs to be further improved. It should be clarified that the entire BAT AEL range has to be considered when implementing general binding rules. In order to ensure that implementing BAT conclusions via general binding rules remains a viable option in the future, DEU insists on further clarifying Article 15 Paragraph 3 with the following amendments (**purple**). In addition, DEU proposed to delete the words enclosed in "[that are relevant in determining the lowest emission levels achievable]".

Article 15 Paragraph 3:

3. ~~The competent authority shall set emission limit values that ensure that, under normal operating conditions, emissions do not exceed the emission levels associated with the best available techniques as laid down in the decisions on BAT conclusions referred to in Article 13(5)~~**When setting emission limit values**, the competent authority shall **consider the entire range of BAT AELs**. **For new installations, the competent authority shall** set the strictest ~~**possible**~~ **achievable** emission limit values achievable by applying BAT in the installation. **Emission limit values shall**~~, and that~~ ensure that, under normal operating conditions, emissions do not exceed the emission levels associated with the best available techniques (BAT-AELs) as laid down in the decisions on BAT conclusions referred to in Article 13(5). (…)

If general binding rules are adopted, **the entire range of emission levels shall be considered** ~~**the strictest possible emission limit values achievable by applying BAT shall be set**~~ for categories of installations having similar characteristics **[**that are relevant in determining the lowest emission levels achievable**]**. **For new installations, general binding rules shall set the strictest** ~~**possible**~~ **achievable emission limits by applying BAT.**

The general binding rules shall be based on an assessment **of the BAT AEL ranges** made by the Member State analysing the feasibility of meeting **also** the ~~strictest end of the BAT-AEL range~~ **lowest emission levels** and demonstrating the best performance that those categories of installations can achieve by applying BAT as described in BAT conclusions".

- **Article 15(5) – Exceptions**

DEU considers the SWE Presidency's proposal as a step in the right direction.

DEU invites COM and SWE Presidency to assess whether a scheme as proposed by SWE Presidency can also be considered sufficient for waste incineration plants with regard to the minimum requirements laid down in Annex VI and the other installations for which the IED itself sets minimum requirements.

DEU proposes the following changes and additions (**purple**) to the Presidency's proposal (blue). DEU proposes to align the notification procedure on Directive (EU) 2015/1535 Article 6 Paragraph 7 and reserves the right to make further comments.

Article 15 Paragraph 5:

5. By way of derogation from paragraph 3 and 3a, the competent authority may set less strict emission limit values or environmental performance limit values* in the event of a, ~~**[security or health]**~~ crisis, in the member states, due to extra ordinary circumstances beyond the control of the operator and member states leading to severe disruption of energy supplies or shortage of essential resources, materials or equipment in case there is an overriding need to maintain energy supplies or other imperative reasons of public interests of particular importance.

The member state determinates the begin and end of the crisis. The costs of energy, substances, materials or equipment for the operator, taken alone, shall not be a criterion for determining a crisis. The member state communicates the draft of the determination of the crisis to the Commission. The Commission shall give its views on the communication as soon as possible.

The derogation shall not be granted for more than 3 months. If the reasons justifying the derogations persists the derogation may be prolonged, prolonged for a period of maximum 3 months. **If the crisis is still ongoing a new derogation is possible.**

As soon as the supply conditions are restored, the installation shall comply with permit conditions set in accordance with paragraph 3 and 3a.

The competent authority shall in any case ensure that a derogation only is granted when all other less polluting reasonable measures have been exhausted.

The members states shall take measures to ensure that the emissions are monitored.

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.

Member states shall notify the Commission of any derogation granted under this paragraph, including the reasons for the derogation and the conditions imposed.

*DEU reiterates a general scrutiny reservation regarding the changes to BAT-AEPL.

- **Article 70 – Monitoring of emissions**

In an effort to harmonise the monitoring of emissions and in light of the new EN 17255 "Data Acquisition and Handling Systems (DAHS)" DEU proposes the following concretisation to Article 70 Paragraph 2 (**purple**):

Article 70 Paragraph 2:

2. Member States shall ensure the monitoring of emissions into air**, including the installation of measurement systems, measurements, quality control, and reporting,** in order to enable the competent authority to verify compliance with the permit conditions and Article 69. Such monitoring shall include at least monitoring of emissions as set out in Part 3 of Annex VIII.

- **Article 74 – Empowerment to adopt delegated acts**

From our point of view, changes of Annex I and Annex Ia, including the thresholds for animal husbandry should only be carried out by means of a regular legislative procedure within another revision of the IED. The empowerment proposed in Article 74 Paragraph 2 for the Commission to adopt delegated acts is to be deleted.

Article 74 Paragraph 2:

~~**2. In order to allow the provisions of this Directive to meet its objectives to prevent or reduce pollutants emissions and achieve a high level of protection of human health and the environment, the Commission shall be empowered to adopt a delegated act, in accordance with Article 76, to amend Annex I or Annex Ia by including in those Annexes an agro-industrial activity that meets the following criteria:**~~
~~**(a) it has or is expected to have an impact on human health or the environment, in particular as a consequence of pollutant emissions and use of resources;**~~
~~**(b) its environmental performance diverges within the Union;**~~
~~**(c) it presents potential for improvement in terms of its environmental impact through the application of best available techniques or innovative techniques;**~~
~~**(d) its inclusion within the scope of this Directive is assessed, on the basis of its environmental, economic and social impacts, to have a favourable ratio of societal benefits to economic costs.**~~

- **Article 79a – Compensations**

DEU points out that, generally, Member States will already provide for civil liability for health damages caused by negligence under national law.

In order to be acceptable for DEU, the proposal for Article 79a needs to be clarified in several respects, including collective actions and limitation periods.

To be effectively applied in practice, any civil liability provision has to safeguard common rule of law standards and maintain the essential features of tort liability:

- Fault (i.e. negligence and intent) should be a prerequisite for liability.
- The liability of companies and private persons as well as public authorities should be restricted to their own acts and omissions.
- Civil liability should only arise if the obligation violated in the individual case had protective effect towards the injured person.
- Rules on burden of proof should be used sparingly as Member States already have carefully balanced rules in place.

- It should be clarified that the calculation of damages should be left to the substantive law of the respective Member State.
- Any reference to “health” shall be limited to environmental related human health issues.

DEU reserves the right to make further comments, especially regarding collective actions and limitation periods.

- **Transitional provisions**

Applying BAT conclusions adopted under the current IED under the future Article 15 Paragraphs 3 and 4 may lead to a disproportionate burden for operators. DEU therefore welcomes the **transitional provisions in block C** proposed by the CZE and SWE Presidency for **existing installations**. DEU asks the Presidency to provide analogue provisions for new installations, ensuring that the future Article 15 Paragraphs 3 and 4 will apply only as of the publication of new BAT conclusions.

DEU proposes to align the **transitional provision F** with our proposal regarding Article 15 Paragraph 4 as follows (**purple**):

> 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 **48** 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.

Seen that Article 15 Paragraph 5 now deals with derogations in case of a crisis, DEU proposes to align the **transitional provision G** with the amended paragraph.

Ministry of Environment
of Denmark

February 9 2023

Questions on proposal for a Regulation of the European Parliament and of the Council on reporting of environmental data from industrial installations and establishing an Industrial Emissions Portal and Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control)

Comments and proposals following WPE on the 7 february 2023 from Denmark. Please be aware that Danish suggestions for amendments are marked with red.

Comments and proposals for cluster 1 – Minimisation of emissions

- **Art. 1(2):** It is stated in the explanatory memorandum that the revision seeks to support decarbonisation as one of the primary objectives, to achieve the goals of the European Green Deal. It is therefore striking that in the Subject Matter this focus isn't replicated.
- We fully support the addition of human health, but believe that it is equally important to add decarbonisation as a part of the subject, which matters in line with reduction of emissions into air, water and land and preventing the generation of waste. We therefore propose the following amendment to article 1:

Article 1.
"*It also lays down rules designed to prevent or, where that is not practicable, to reduce emissions into air, water and land, to reduce greenhouse gas emissions and to prevent the generation of waste, in order to achieve a high level of protection of human health and the environment taken as a whole.*"

Comments and proposals for cluster 2– Innovation and Industrial transformation

- Denmark believes that bringing forward the implementing act, establishing the format for the transformation plans, are one step closer to making this directive more ambitious and not postponing it far into the future. However, the following process of developing transformation plans has to keep up with the implementing act as previously stated.
- The provision in 27d(2) relating the inclusion of a transformation plan with the publication of BAT-conclusions implies that the BAT-conclusions would be essential for the development of a transformations plan.
- In our understanding, the transformation plan is a strategic tool for the installations, which will be revised by the installations when new technology and new possibilities arise towards a greener production. There is no need to delay the transformation plans as industry is already on this track.

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- We therefore propose moving the dates in art. 27d (1) and 27d(2) forward in a likewise manner.

Article 27d(1)
"*1. Member States shall require that by ~~30 June 2030~~ 1. January 2028 the operator includes in its environmental management system referred to in Article 14a a transformation plan for each installation carrying out any activity listed in points 1, 2, 3, 4, 6.1 a, and 6.1 b of Annex I. The transformation plan shall contain information on how the installation will transform itself during the 2030-2050 period in order to contribute to the emergence of a sustainable, clean, circular and climate-neutral economy by 2050, using the format referred to in paragraph 4. Member States shall take the necessary measures to ensure that by ~~31 December 2031~~ 30 june 2029, the audit organisation ~~organisation contracted by the operator as part of its environmental management system~~ referred to in Article 14a(3a) assesses the conformity of the transformation plans referred to in the first subparagraph of paragraph 1 with the requirements set out in the implementing act referred to in paragraph 4.*"

Article 27d(2)
"*2. Member States shall require that, as part of the review of the permit conditions pursuant to Article 21(3) following the publication of decisions on BAT conclusions after ~~1 January 2030~~ 30 june 2027, the operator includes in its environmental management system referred to in Article 14a a transformation plan for each installation carrying out any activity listed in Annex I that is not referred to in paragraph 1.*"

- We propose *inter alia* to delete 27d(2) and cover all annex I activities under the existing IED under 27d (1), while new activities should have a transformation plan as part of the EMS at the time of first permit under a revised IED.

Questions and proposals for cluster 3– Non-toxic circular economy, resource efficiency and decarbonisation

- **Hazardous substances:** Denmark supports the proposal from the Netherlands on increasing the focus on hazardous substances, we are pleased with a stronger linkage between REACH and IED.

- **Decarbonisation**: In general Denmark supports the much-needed focus on greenhouse gasses as mentioned by Germany. We support the German proposals. We furthermore suggest to still amend Article 14a(2)(a) ensuring that GHG and energy efficiency are part of the environmental objectives as described below. However, we are flexible with regards to how decarbonisation is emphasized in the directive, as long as it gets a greater role.

- **Article 14a(2)(a)**: In article 14a section (2) paragraph (a) the environmental policy objectives included are specified, which the installations have to include in their EMS. We do not believe these objectives correctly reflect the rationale and ambition behind the directive, and would propose a more ambitious EMS including energy efficiency and reduction of GHG emissions in the environmental policy objectives.

- To our understanding the current text in art. 14a is not clear as to whether energy efficiency needs to be addressed in the EMS. For now, we do not know how energy efficiency will play out in the future transformation plans, which are to be drafted at a later stage and whether there would in future BAT-conclusions be developed BAT-AEPLs and/or indicative benchmarks to take into account the activities covered by annex I. We would therefore suggest

including a clear reference to energy efficiency as an objective that is to be included in the EMS by all installations, not just those covered by article 8 in directive 2012/27/EU, as it is just as important an objective as the listed ones and should explicitly be a part of optimizing resources.

- As article 9(1) remains in the directive, emission limit values for GHG reductions will not be addressed for installations covered by the ETS and it is unclear at the moment at what level the transformation plans will cover this aspect. To our understanding, it is a priority to determine BAT on reduction of GHG emissions, while avoiding overlap to other legislation. The linkage to GHG reduction under IED is well into the future, which makes EMS the ideal tool to deliver on such parameters in the short-term. It would also strengthen the EMS as a credible environmental management tool and lay the foundation for the future transformation plans.

- On this background, we suggest amending the environmental policy objectives in art. 14a for the continuous improvement of the environmental performance in the environmental management system, by including energy use as a part of resource efficiency and a new objective on reducing GHG emissions. We therefore propose to include these criteria in article 14a:

Article 14a(2)
"*2. The EMS shall include at least the following:*
(a) environmental policy objectives for the continuous improvement of the environmental performance and safety of the installation, which shall include measures to:
-(i) prevent the generation of waste;
(ii) optimise resource and energy use and water reuse;
(iii) prevent or reduce risks associated with the use of hazardous substances;
(iiii) reduce greenhouse gas emissions."

- **Article 14a(3a)**: We have concerns regarding art. 14a (3a). As it is proposed now, it is not clear what the purpose of the article is. We agree that any EMS should be up to date, suitable and effective. We already have a provision in 14(1)diii, that the operator should provide information on the progress. This information should be sufficient to determine whether the EMS is effective. It also seems that the operator need to have a third party to audit and verify the EMS and we are concerned that the costs would be very high. We need to take the different set up in the member states into account and provide the necessary flexibility. We therefore propose to amend recital 13 and art. 14a (3a), so that there is no demand for an external auditor to verify the operators EMS:

Article 14a(3a)
"*3.a. Member States shall take the necessary measures to ensure that the operator reviews its EMS to ensure that it ~~continues to be~~ is suitable, adequate and effective and ~~and Member States shall take the necessary measures to ensure~~ that the EMS is audited, at least every 3 years. ~~by an audit organization contracted by the operator who verified the conformity of the EMS and of its implantation with this article.~~*
~~b) The operator reviews its EMS to ensure that it continues to be suitable, adequate and effective~~ [text moved].

The first review and the first audit of the existing 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].”

Recital 13
“*(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. 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.*
~~*In order to ensure that the EMS is in line with the requirements of the Directive, the EMS should be audited by an audit organisation contracted by the operator, such as an accredited environmental verifier in accordance with Article 2(20) of Regulation 1221/2009.*~~”

Questions and proposals for cluster 4– Public participation

- Denmark supports the diminishing of administrative burdens and therefore supports the presidency proposal in regards to the permit summary described in art. 24(2), as presented in the steering note on the 7 february 2023.

- However we have concerns in regards to the consolidated version of the permit conditions, if it is not voluntarily based. It must be to judgement of the MS to decide when consolidated permit conditions are relevant.

- Denmark would stress, that if the permit summary will be a requirement, we propose to keep it short, non-technical and precise,deleting the requirements a-f, and instead keep a) ii, iii and b) i) including a link to the permit instead:

Article 24(2)
“*2. When a decision on granting, reconsideration or updating of a permit has been taken after [OP please insert the date = the first day of 24 months following the date of entry into force of this Directive], the competent authority shall make available to the public, including systematically via the Internet, free of charge and without restricting access to registered users*~~*., in relation to points (a), (b) and (f), the following information:*~~

(a) systematic information:
~~(i) (d) the title of the BAT reference documents relevant to the installation or activity concerned~~;
(ii) the title of the BAT conclusions relevant to the installation or activity concerned;
(iii) whether any derogation is granted in accordance with Article 15(4) and 15(4a);
~~(iv) the emission limit values and environmental performance limit values;~~
~~(v) the provisions for the reconsideration and updating of the permit.~~
(b) documents and information:
(i) ~~the~~ a summary of the decision with an overview of the main environmental issues covered by the permit ~~conditions~~ including a link to the permit.

~~(ii) (a) the content of the decision, including a copy of the permit and any subsequent updates;~~
~~(iii) (b) the reasons on which the decision is based;~~
~~(iv) (c) the results of the consultations held before the decision was taken, including consultations held pursuant to Article 26, and an explanation of how those consultations they were taken into account in that decision;~~
~~(v) (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;~~
~~(vi) (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.~~

Questions and proposals for Transitional provisions

Recital X and transitional provision C and E: Denmark is very skeptical of the proposed changes in transitional provision C and E i.e. that for some installations there will be a period of 20 years after the new IED has been implemented. There are no reasons for waiting up to 20 years to comply with the new requirements in these provisions. It erodes the level playing field, and is not in line with the ambitions. Denmark therefore supports the Belgian proposal of setting a time-limited date no later than 8 years after the directive's entry into force.

Transitional provision D: Denmark supports the proposal of the Netherlands stating that there is no need to prolong the period for activities newly covered by BAT-conclusions. 2 years is enough.

Estonia

Comments on the proposal amending the Industrial Emissions Directive (IED) (2010/75/EU) 07.02.2023 – changes proposed in document WK 1574/2023 INIT of 02. February 2023.

Proposed changes to the text in red.

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

We can agree on the latest changes made by the Presidency in Cluster 3.

In order to ensure more consistency with REACH regulation we propose an additional text to article 14(1) and 14a(2).

In article 14(1) the proposal is to add requirements for the emissions of substances that fulfil the criteria of article 57 REACH (anywhere in EU legislation) or those that are on the restriction list of REACH in article 14.1 aax and 14a (2)(a) and 14a(2)(d). We need to be able to assess if measures can be taken to prevent or reduce emissions of substances that have hazardous characteristics.

Changes in article 14a(2) intend to focus on emissions of hazardous substances. The additions ensure that the EMS addresses the full extend of chemicals and impact for which the operator is responsible.

We would like to add that it would be useful to link the chemicals inventory (art. 14a.2(d)) also with the Annex I of the persistent organic pollutants regulation. REACH Annex XVII and Annex 1 of the POPs Regulation do not duplicate each other, they apply in parallel. The reference to Annex I of the POPs regulation could also be made in Article 14.1(aax).

Article 14(1) – 1. Member States shall ensure that the permit includes all measures necessary to comply with the requirements of Articles 11 and 18. To that effect, Member States shall ensure that permits are granted further to consultation of all relevant authorities who ensure compliance with Union environmental legislation, including with environmental quality standards.

Those measures shall include at least the following:

(a) emission limit values for polluting substances listed in Annex II of Regulation (EC) No 166/2006*, and for other polluting substances, which are likely to be emitted from the installation concerned in significant quantities, having regard to their nature, their hazardousness and their potential to transfer pollution from one medium to another,

(aa) environmental performance limit values in accordance with Article 15(3a);

(aax) Appropriate requirements to ensure the assessment of the need to prevent or reduce the emissions of substances fulfilling the criteria of article 57 or substances addressed in restrictions in Annex XVII to regulation (EC) No 1907/2006 and substances addressed in

restrictions in Annexes I and substances subject to release reduction provisions in Annex III to Regulation (EU) 2019/1021;

(b) appropriate requirements ensuring protection of the soil, groundwater and surface water, and measures concerning the monitoring and management of waste generated by the installation;

(ba) appropriate requirements for an environmental management system as laid down in Article 14a;

(bb) suitable monitoring requirements for the consumption and reuse of resources such as energy, water and raw materials;

(c) suitable emission monitoring requirements specifying:

(i) measurement methodology, frequency and evaluation procedure; and

(ii) where Article 15(3)(b) is applied, that results of emission monitoring are available for the same periods of time and reference conditions as for the emission levels associated with the best available techniques;

(d) an obligation to supply the competent authority regularly, and at least annually, with:

(i) information on the basis of results of emission monitoring referred to in point (c) and other required data that enables the competent authority to verify compliance with the permit conditions

(ii) where Article 15(3)(b) is applied, a summary of the results of emission monitoring which allows a comparison with the emission levels associated with the best available techniques;

(iii) information on progress towards fulfilment of the environmental policy objectives referred to in Article 14a.

(e) appropriate requirements for the regular maintenance and surveillance of measures taken to prevent emissions to soil and groundwater pursuant to point (b) and appropriate requirements concerning the periodic monitoring of soil and groundwater in relation to relevant hazardous substances likely to be found on site and having regard to the possibility of soil and groundwater contamination at the site of the installation;

(f) measures relating to conditions other than normal operating conditions such as start-up and shut-down operations, leaks, malfunctions, momentary stoppages and definitive cessation of operations;

(g) provisions on the minimisation of long-distance or transboundary pollution;

(h) conditions for assessing compliance with the emission limit values and environmental performance limit values or a reference to the applicable requirements specified elsewhere.

Article 14a(2) – 2. The EMS shall include at least the following:

(a) environmental policy objectives for the continuous improvement of the environmental performance and safety of the installation, which shall include measures to

(i) prevent the generation of waste,

(ii) optimise resource use and water reuse,

(iii) and prevent or reduce the ~~risks associated with~~ use or emissions of hazardous substances

(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 life-cycle environmental performance of the supply chain;

(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;

(d) a chemicals inventory of the hazardous substances present in or emitted from 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 or reduce their use or emissions, 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 and substances addressed in restrictions in Annexes I and substances subject to release reduction provisions in Annex III to Regulation (EU) 2019/1021;

(e) measures taken to achieve the environmental objectives and avoid risks for human health or the environment, including corrective and preventive measures where needed;

(f) a transformation plan as referred to in Article 27d.

The level of detail of the EMS will be consistent with the nature, scale and complexity of the installation, and the range of environmental impacts it may have.

Where elements of the EMS have already been developed elsewhere and comply with this article a reference may be made in the EMS to the relevant documents.

Cluster 4 – Public participation

In regard to changes made in Art. 24 and recital 13, we can generally agree to the deletion of the permit summary, but can not confirm our position before the webinar on the development of a template for a harmonised permit summary under the IED that would be held on 15.02.2023. Hopefully the webinar will give a more clear picture on what aspects have to be taken into account in order to establish such a permit summy. Therefore we would like to come back to this after the webinar.

Cluster 5 – Penalties and compensations

We appreciate the effort of the Presidency to find a horizontal approach to penalties and compensation. We propose some changes and comments for consideration regarding 07.02.2023 steering note.

Recital 31a – It is emphasised in the recital that member states may lay down rules for administrative as well as criminal penalties for the same infringements. We propose the legislation should not define the type of sanction, therefore we are in favour of deleting the reference to administrative or criminal penalties or softening the reference to administrative and criminal penalties further.

We find that the choice of the penalty should remain within the discretion of the Member States, so the administrative nature of the penalty should not be emphasised. EU law has never defined the concept of an administrative penalty; only criminal and non-criminal sanctions are known in this context. Where European Union legislation does not specifically provide any penalty for an infringement or refers for that purpose to national legislation, the choice of penalty remains within the discretion of the Member States — European Court of Justice of 7.10.2010, case 382/09 (Stils Met SIA v Valsts ieņēmumu dienests), [2010] ECR I-09315, margin no 44. We are therefore opposed to referring to the concept of 'administrative penalties' (this is not the case in the current directive). There is no common understanding of what this term means in EU law.

Article 79(2) - We support the PRES proposal to delete "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)".

Also the basis for the calculation of the sanction should not be prescribed so directly in the directive. We join the Finnish proposal to also delete the sentence from article 79(2) "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." for the reasons brought out in 01 February 2023 document WK 1447/2023 ADD 1.

Compensations – Generally in Estonia, persons who suffer damage can already claim compensation for damage under the current national law.

~~*Article 79a(2) — 2. Member States shall ensure that, as part of the public concerned, non-governmental organisations promoting the protection of human health or the environment and meeting any requirements under national law are allowed to represent the individuals affected and bring collective actions for compensation. Member States shall ensure that a claim for a violation leading to a damage cannot be pursued twice, by the individuals affected and by the non-governmental organisations referred to in this paragraph.*~~

We propose deleting article 79a(2) from the text. It would be unsystemic and unnecessary to design a specific collective claim system for claims for health damage caused by breaches of measures under the IED. In the European Union, collective representative actions for private legal remedies, including damages, are regulated by Directive (EU) 2020/1828 of the European Parliament and of the Council (representative action directive). The scope of the representative

action directive is broad and changing over time. If the IED were to be included in the scope of the representative actions directive, it would be unsystemic, unclear and unnecessary to propose parallel solutions in the proposal for the IED itself, which could lead, as a result of negotiations and trilogues, to a different approach to the IED on issues already regulated in the representative actions directive. If the IED is not recommended to be included in the scope of application of the representative actions directive, the solutions provided by the already existing system in the member states would be suitable enough.

Article 79a(5) – 5. Member States shall ensure that the limitation periods for bringing actions for compensation referred to in paragraph 1 are not shorter than 3 ~~5~~ years. Such periods shall not begin to run before ~~the violation has ceased and~~ the person claiming the compensation knows or can reasonably be expected to know that he or she suffered damage from a violation pursuant to paragraph 1.

We see that it is not justified to lay down, at Union level, a different substantive limitation period for the requirements for damage to health caused by a breach of the measures to be established by the Industrial Emissions Directive, which does not follow the logic of the general limitation regulation. There is no justification for a derogation in cases falling within the scope of the Directive. This is a breach of one and the same legal interest and the situation of the victim should not differ depending on the result of which he or she suffers harm to his or her health. It must also be generally taken into account that the rules on limitation vary from one Member State to another and follow their own comprehensive system — there are rules on the suspension and interruption of the limitation period, on the running of time limits, etc.

If the Council majority supports that such provisions are to be kept as part of the compensation rules, we propose that the provision concerning minimum time is either deleted or at least shortened to three years.

ITALIAN POSITION IN WPE 7 FEBRUARY 2023

The steering note give an effective contribution to improve the text, however Italy wants to share some consideration on it.

CLUSTER 1

As yet focused in writing comments, Italy:

- believes that if a case-by-case assessment is envisaged, there is no need to stress the need to take in account the lower limits of BAT-AEL. Therefore, Italy ask to maintain the paragraph 15(3) as it is in the current directive;
- believes that where further specification could be opportune (GBRs use without the need of a case-by-case assessment) is important to refer to a cost-benefit analysis of all performances with an integrated approach, since it is unlikely to achieve at the same time optimal performance for each pollutants;
- propose some modification in art. 16(3). In detail, for coherence the words "the concentration of the pollutants concerned in the receiving environment" should be replaced with "those quantifiable or measurable effect on the environment". Italy also proposes to collect also information on the permanence of the conditions (geographical, environmental, plant or economic) which justified the derogation, also with the aim to link to this collection the need to reconsider the derogation in paragraph 15(4);
- propose some modification in art. 15(4) and 15(4a) to provide for an additional possibility of granting a temporary derogation, to deal with cases where the previously requested environmental investment payback period has not yet been reached, and to link the obligation to reconsider the derogations with the results of the collection of information referred to in Article 16(3), suitably adapted, so as to trigger it only if there are new elements to consider (e.g. it is unlikely that in 4 years the geographical position will change);
- propose some modification in annex II regarding the aforementioned additional possibility of granting a temporary derogation, and correcting some evident mistakes (the cost should refer to the reach of BAT-AEL, not to the implementation of reference BAT, and the cost-benefit analysis should be integrated, not pollutant specific)
- propose also some modification in art. 18, where for coherence the words "the concentration of the pollutants concerned in the receiving environment" should be replaced with "those quantifiable or measurable effect on the environment";
- suggest to better clarify in the article 14(1) sense of the words "further to consultation", to avoid the risk that in the absence of an explicit contribution from any environmental authority, the permit cannot be issued, or could be contested for only formals questions. Perhaps the words "promoting the participation" is more fit to the purpose;
- will propose some improvement in recital 15, considering the current directive has not a sanitary purpose and that there is no evidence of the improper use of ELV at the upper end of BAT-AEL range.

CLUSTER 3

Generally the public has no opportunity to contribute to the definition of the EMS content, then in recital 13 the requested publicity is not coherent with the motivations of the recital, because it can

have no effect on “improving the environmental performance and safety of the installation”. The publicity opportunity, therefore, should be object of a different recital, with different motivations.
As yet focused in writing comments, Italy

- suggest in article 14a (2) to clarify that the chemical inventory is related to substance significantly present, and not to any substance present (even occasionally and in very small quantity)
- has some concerns regarding the need to define the standard template by an implementing act, which could be too generic, and overlap with other initiatives (e.g. EMAS);
- has some perplexity on article 14a(3a) and recital 13 regarding the need “in principle” of an external audit, because independent internal audits have sometimes proven as good (if not better) than audits performed by external parties.

CLUSTER 4

Italy maintains a scrutiny reserve on the permit summary, waiting for the 15 February 2023 webinar results.
Italy suggests improving the art. 1 text clarifying the sense of the reference to human health (only healthiness of the environment as a whole, and not aspect as safety at work, safety from major accidents, protection from diseases, ...).

CLUSTER 5

Italy has a positive position on the Presidency's proposal, but maintains a scrutiny reservation pending the evaluation of the improvement proposals anticipated by Finland.

TRANSITIONAL PROVISIONS

Italy has a positive position on the Presidency's proposal, but maintains a scrutiny reservation pending the evaluation of the improvement proposals anticipated by France and Belgium.

Written comments from the Netherlands on the revision of the Industrial Emissions Directive
10 February 2023

In follow-up to the discussion on the issues set out in Steering note 1574/2023 and discussed at the WPE on 7 February, the Netherlands would like to make the following written comments.

Cluster 1 – Minimisation of emission
(Art. 1, 14, 15(1), 15(3), 15(4), 15a, 16(3), 18, 21(5) c) and Annex II)

Art. 15(3)
Together with Belgium we want to make the following point with regard to article 15(3). In art. 15(3) there should be a connection with article 14(1). Article 14 is the article that describes what should be in the permit, including ELV (see article 14.1). Article 15 describes how these ELV, equivalent parameters or technical measures should be set by the competent authority.

Article 15(3) of the current IED was written based on the idea that all relevant parameters – as described in article 14(1) would be taken up in BAT-conclusions. But after more than 10 years of experience with BREF's, it has become clear that the BREF process is not perfect and not all parameters described in article 14.1 are taken up in BAT-conclusions. This means that competent authorities also have to set ELV's for other relevant parameters that are not described in BAT-conclusions.

Therefore we think a reference to article 14(1) in article 15(3) is essential. It clarifies that the operator has to take up all relevant parameters, also those not in BAT-conclusions, in the assessment.

In our view this is nothing new, but merely a clarification of the existing text that empowers the competent authorities and ensures a more uniform implementation throughout Europe thus creating a level playing field.

Text proposal:
The competent authority shall set the strictest possible emission limit values ***for pollutants referred to in Article 14(1)a*** *achievable by applying BAT in the installation~~, and that ensure that, under normal operating conditions, emissions do not exceed the emission levels associated with the~~* *If best available techniques* ***with associated emission*** *levels (BAT-AELs)* ***are established,*** *as laid down in the decisions on BAT conclusions referred to in Article 13(5)****, the competent authority ensures that the emission levels do not exceed those BAT-AELs under normal operating conditions****.*

The emission limit values shall be based on an assessment by the operator analysing the feasibility of meeting the strictest end of the BAT-AEL range and demonstrating the best performance the installation can achieve by applying BAT as described in BAT conclusions.

The emission limit values ***based on BAT-AEL*** *shall be set through either of the following:*

(a) setting emission limit values expressed for the same or shorter periods of time and under the same reference conditions as those emission levels associated with the best available techniques; or

(b) setting different emission limit values than those referred to under point (a) in terms of values, periods of time and reference conditions.

Where the emission limit values are set in accordance with point (b), the competent authority shall, at least annually, assess the results of emission monitoring in order to ensure that emissions under normal operating conditions have not exceeded the emission levels associated with the best available techniques.

General binding rules referred to in Article 6 may be applied provided these rules taking into account best achievable performance while setting relevant emission limit values according to this article.

If general binding rules are adopted, the strictest possible emission limit values achievable by applying BAT shall be set for categories of installations having similar characteristics that are relevant in determining the lowest emission levels achievable. The general binding rules shall be based on an assessment made by the Member State analysing the feasibility of meeting the strictest end of the BAT-AEL range and demonstrating the best performance that those categories of installations can achieve by applying BAT as described in BAT conclusions.

Art. 15(4)
The Netherlands is neutral about this proposal of the Presidency. The proposed changes (moving the text 'the operator shall provide the assessment' from article 16 (3) to article 15 (4)) do not change the intent of the article. But it makes the sentence more complex and less easy to read.

Furthermore, we propose to add 'human health' to this article in line with the revision of art. 1. This concerns the sentence which refers to a high level of protection of the environment. The revised text will the read as follows:

[…] in any case ensure that no significant pollution is caused and that a high level of protection **of human health and** the environment as a whole is achieved. […]

Art. 16(3)
The Netherlands is of the opinion that the text changes weaken the position of the competent authority with regard to the monitoring by the operator of the pollutants in the receiving environment. However, the Netherlands agrees that Member States have the possibility to decide whether it is the operator or the competent authority who shall monitor the pollutants concerned in the receiving environment. We also agree with Belgium that the competent authority should be empowered to decide on monitoring, that's why they proposed that the competent authority should be able to decide on monitoring in a risk based approach keeping the assessment in consideration – but the final decision for monitoring should be on the competent authority.

Therefore we would like to propose the following text: **The competent authority may require the operator to monitor the concentration of the pollutants mentioned above ~~decides~~ if monitoring is relevant taking ~~Where~~** the ~~derogation~~ assessment referred to in Article 15(4) **in consideration. If the assessment** demonstrates that a derogation will ~~would~~ have a quantifiable or measurable effect on the environment, ~~the competent authority shall ensure that an appropriate monitoring system is put in place and require the operator to monitor~~ Member states shall ensure that the concentration of the pollutants concerned shall be monitored in the receiving environment.

Cluster 2 – Innovation and industrial transformation
(Art. 3 (50), 3 (51), 13 (1) and (2), 27, 27a, 27b, 27c, 27d)

Art. 13(2) Confidential Business Information
We do agree that CBI are part of the exchange of information in the Sevilla process. It is essential that the exchange of information for the BREF's reflect those interests. Therefore we generally support the COM proposal to have a new article on this in the IED. Data carrying the CBI tag in the information exchange process shall be in any case analysed and discussed in the TWG to draw sound and solid BAT conclusions (including BAT-AEL's and BAT-AEPL's).
In our view the current proposal could lead that too much data will be considered CBI. We would like to point out that the term 'commercially sensitive information' is not defined, which is why we propose to define 'commercially sensitive information'. It would also help if this Article indicates what information should at least be classified as CBI. Furthermore, we note that there is no independent industry representative present in handling CBI in accordance with this article.

Cluster 3 – Non-toxic circular economy, resource efficiency and decarbonisation
(Art. 3 (12), 3(13a), 3 (53), 9 , 11 fa), 11 fb), 11 fc), 14 (1) aa), 14 (1) b), 14 (1) bb), 14 (1) bc), 14 (1) d), 14 (1) h), 14a, 15(3a), 73)

Recital 13
We could agree with the proposed changes, but we have our doubts about the need to include the text on confidential business information. This is already stated in art 14a (3). We prefer to avoid repetition.
However, we are positive about the included specifications regarding the verification and auditing of the EMS. We do think that the requirements are now to fragmented: parts are in de recital (e.g. linkage to accreditation of environmental verifier in accordance with Regulation 1221/2009) and parts in 14a(3a). We suggest to set the requirements for verification and auditing only in 14a (3a).

Recital 30
We are positive about the alignment of the text with changes made in art 14a (3) -> publishing relevant information from the EMS instead of introducing summary of the EMS.

Art. 3(13a)
We were positive about the last proposal to make Environmental Performance Limit Values binding. There is no need to delete the word 'binding' as art. 15(4a) gives the possibility to make a derogation and to set less strict Environmental Performance Limit Values.

Justification for the link between REACH and IED (Art. 14 and 14a)
The proposal from Belgium and the Netherlands is to add requirements for the emissions of substances that fulfil the criteria of article 57 REACH (anywhere in EU legislation) or those that are on the restriction list of REACH in article 14.1 aax and 14a (2)(a) and 14a(2)(d). These substances are identified as having hazard characteristics such as CMR, vPvB or PBT. Due to the subsequent risk to health or environment of these substances, REACH requires these substances to be phased out or severely restricted. To make EU legislation consistent, we consider it crucial that also the IED assess if and how the health and environment aspects of emissions of these substances should be addressed.

The text as proposed in the articles above ensures this consistency in EU legislation. When REACH requires specific risk management measures for substances due to risks (Annex XVII) or these hazard characteristics, we should assess if for the same substances with such hazard characteristics, when emitted, steps are to be taken to prevent or reduce the emissions. This can best be done through the IED.

The proposals do not take away from the need to address other polluting substances, we see these addressed in 14.1(b) requirements for the protection of water and soil. However, the substances of very high concern not only have a very negative impact on the environment, but their emissions can also be highly impactful on human health or the environment. That is why 14.1 aax is relevant, we need to be able to assess if measures can be taken to prevent or reduce emissions of substances that have these hazard characteristics, and through that their impact on human health and the environment. This provision does not serve to pay less attention to other emission, only to pay specific attention to the substances with the highest impact on health and environment, similar to REACH.

This can only be done when the operator who is responsible for the impact on human health and the environment due to its activity, knows which substances it emits and analyses the possibilities to address these emissions. It is their due diligence that is the basis for the assessment if measures can/should be taken to prevent or reduce emissions. That is the reason for the proposals in 14a(2)a and d to focus not only on use but also on emissions. The additions ensure that the EMS addresses the full extend of chemicals and impact for which the operator is responsible. As emissions are a vital part of the environmental performance of an installation The information provided here can be used in the discussions on the permit (and the assessment if there is a need to prevent or reduce the emissions of substances covered by 14.1 aax).

The main aim of the IED is to stimulate an integrated approach. As taken from the website of the EU on the IED:

The *integrated approach* means that the permits must take into account the whole environmental performance of the plant, covering e.g. emissions to air, water and land, generation of waste, use of raw materials, energy efficiency, noise, prevention of accidents, and restoration of the site upon closure.

In our view a permit is way to regulate activities and related releases and emissions to air, water and soil. In general and from a precautionary principle perspective this means that if an activity or a release or emission of a substance is not taken up in the permit it is not allowed. Therefore it is already a responsibility for plant operators to know what their chemicals are used and to be aware of the substances that are released and emitted during the plant activities (even if unintentional thus other substances than they have in use). As such, industry and competent authority already have to discuss and include in the permit (or via general rules) all relevant substances. The proposal only adds that for the substances that are of particular concern for health or environment, so meeting criteria of article 57 included in a restriction, you need to pay particular attention that these emissions do not lead to harm to health or environment. For competent authorities, it provides a focus to those most harmful emissions and gives the possibility to set (stricter) obligations for the protection of the environment and human health. The proposals therefore have a limited impact on the administrative burden.

The proposals aim is to ensure that emissions of substances that meet the criteria mentioned above are assessed through a continuous process. You consider the need to prevent or reduce the emissions based on what is achievable. It does not imply that industry must stop using/emitting all hazardous substances immediately.

Justification for proposal to add drinking water to 14.1 b
We propose to add that the protection of surface water used for the production of drinking water should be taken into account due to the impact on the provision of drinking water this has. This is to be added in 14.1 b. The protection of soil and water is important in general but specific requirements may be necessary for the surface water used for the production of drinking water, which can only be considered in the permit of the operator that is allowed to release substances to water.

Furthermore the Netherlands is positive about the inclusion of the reference to paragraph 2-3(a) (art. 14a(1) and about the proposed amendment to publish relevant information from the EMS (with the possibility to link to already existing documents) and to delete the obligation to publish a summary of the EMS (14a(3). In this way the relevant information will become available for public without additional administrative burden associated with creating a summary. We are also positive about the proposal to specify the relevant information for the public in an implementing act. We are also positive about the clarification concerning the confidential business information. We agree with the inclusion of the specification of the EMS- verification and auditing (recital 13 and art 14a(3a). However we have a preference to remove the specifications from the recital to art 14a(3a).

Art. 15(4a)
There are no changes in this text proposal compared to the proposal in the Steering Note of 16 January 2023.

Cluster 4 – Public participation
(Art. 3 (17), 5 (4), 7, 24 (1) d), 24 (1) e), 24 (2), 24 (3), 25 (1), 26 (1) and 26 (2)

Recital 30
We do not support the deletion of the requirement on publication of a permit summary at this moment. We believe that public available summaries in a uniform European format can have added value while not increasing the administrative burden (possibly disclosed via the Industrial Emission Portal). The insight into the different permits can contribute to comparing different installations, for example in the BREF process. There is an effort made by the Commission to develop a format which summarizes important information while limiting administrative burdens. This topic will be discussed in detail during the webinar on 15 February with the MS. The results of this workshop should provide more insight into the added value and the administrative burden. We would therefore like to ask you to wait for this workshop.

Art. 24
24(2):
- We do not support the deletion of the requirement on publication of a permit summary at this moment.
- We agree with the deletion of the text concerning a transitional period, which does not belong in article 24 but in the separate articles about transitional periods.
- We are neutral about the added text 'including consolidated permit conditions where relevant.' It seems superfluous addition because consolidated permit conditions should be part of the consolidated permit and the publication of the permit is already mentioned in the text proposal.
- We are also positive about the change in article 24 (2f), because there are other derogations in article 15 then the derogation in 15 (4).

24(3): We are positive about the text proposal.

Cluster 5 – Penalties and compensations
(Art. 8, 79 and 79a)

Art. 79 Penalties
We think the text proposed by the Presidency is the way forward. We notice that in this article the word 'violation' has been replaced by 'infringement'. Could the Presidency explain why this change was made?
Furthermore we still have several comments on paragraph 4. We are not in favour of adding a fourth paragraph, as proposed by the Presidency. In principle, the MS must already report the implementation, so we do not understand the added value of this paragraph.
- How does the new fourth paragraph of Article 79 (formerly last sentence of the first paragraph) relate to the general obligation of Member States to notify their transposition provisions to the Commission for the whole directive?
- How does 'undue delay' relate to the obligation to notify the transposition measures no later than the day the implementation period expires?

We would like to propose to delete this paragraph.

Transitional provisions

Recital X
We do not see the need to distinguish between existing and new activities for the time limit mentioned above. If an installation has a permit and that permit is granted or updated, this permit should be in compliance with the revised IED regardless of if it is a new or existing activity in Annex I of the IED. It also does not matter if there are already BBT-conclusions or not. If there are no BBT-conclusions for new activities the permit can still be updated to be in compliance with chapter 2 of the IED. Therefor we are of the opinion that installations that are newly covered by the IED should also comply with the provisions in the current IED, until there are new BAT conclusions or there is a permit update, whichever is sooner. We therefore do not agree with a period of 20 years for new activities and the 12 years period. However, we are positive about the addition of a specific time limit in which permits from installations should be updated in accordance with the revised IED. However, we think this could be a much shorter period, especially given the goal of zero pollution by 2050.
Furthermore, we would like to see an additional requirement to apply (revised) articles in chapter 2 IED when a permit is granted or updated.

Art. 3
Positive about this proposal. Two years is a reasonable time to implement the IED in national law.

Proposal A
Positive. We agree with the deletion of this text. No transitional period is necessary for the changes made in article 42. Existing installations that want to use this must still apply for a new permit.

Proposal B
We are not in favour of this text proposal. There is no need to exclude the requirements of revised articles from chapter 2 of the IED until four years after publication of BAT conclusions. It can take a long time before the BBT-conclusions are published, so it would be better if there is also a requirement to apply the revised articles in chapter 2 IED when a permit is granted or updated. We also think that the text in this article could be much simpler. See the text proposal below.

Proposal B:
In relation to installations carrying out activities referred to in Annex I Member States shall apply ***~~Article 14 (1 aa), Article 15(3a) and Article 15(4a)~~ the articles in Chapter 2, but no later then [X] years after entry into force of this Directive or*** *within 4 years of publication of decisions on BAT conclusion 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).*

Until that day installations carrying out activities referred to in Annex I (which were under the scope of the directive before [OP please insert the date = the date of entry into force of this Directive]) and (i) are in operation and hold a permit 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], or (ii) the operators of which 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]:
shall comply with Directive 2010/75/EU.

This text renders the proposals under C, D and E superfluous. These texts can therefore be deleted.

We also have some questions about this proposal:

- What does 'firstly permitted' mean? Does it concern applications submitted after the publication of BAT conclusions? Or should they also apply to applications that have not yet been decided on (pending applications)? If you do not do the latter, you could provoke undesirable strategic behaviour.
- What is meant by 'main activity'? I is possible that there will be discussions about which transitional provision applies B or C.

Proposal C
We propose to delete C (see text proposal on B). If not we have the following remarks:

- Under (ii): If this means that the competent authority considers the application complete, we agree. But you could also read it in such a way that the operator feels that he has submitted a complete application. This may give rise to discussion and should therefore be clarified.
- Is there no concurrence between text B and C? It is also about the main activity of an installation and when the permit is granted. The latter could also be for the first time.

Proposal D
We propose to delete D (see text proposal on B). We are not in favour of this proposal. It would be better if there is also a requirement to apply the revised articles in chapter 2 IED when a permit is granted or updated.

Proposal E
We propose to delete E (see text proposal on B). It is a bit confusing that there is a separate transitional period article for the categories 1.4, 2.3b, 2.3ba, 2.7 and 3.6, since these are not all the new or changed categories of annex I.

Furthermore we have the following question:

- What does 'whichever the sooner' mean in relation to the text before it? There is a date in there. Then rather: no later than.....

Proposal F
Positive about this proposal

Proposal G
Positive about this proposal

Bijlage – nadere toelichting
Changes of COM proposal in **green bold**.
Changes of the CZ Presidency in **red bold**.
Changes of the SE Presidency in **blue bold**.
Changes of the NL in **bold underlined**.

Art / Recital	COM proposal	PRES proposal	NL Position
Art. 15 (3)	The competent authority shall set the strictest possible emission limit values that are consistent with the lowest emissions achievable by applying BAT in the installation, and that ensure that, under normal operating conditions, emissions do not exceed the emission levels associated with the best available techniques (BAT-AELs) as laid down in the decisions on BAT conclusions referred to in Article 13(5). The emission limit values shall be based on an assessment by the operator analysing the feasibility of meeting the strictest end of the BAT-AEL range and demonstrating the best performance the installation can achieve by applying BAT as described in BAT conclusions. The emission limit values shall be set through either of the following: (a) setting emission limit values expressed for the same or shorter periods of time and under the same reference conditions as the emission levels associated with the best available techniques; or (b) setting different emission limit values than those referred to under point (a) in terms of values, periods of time and reference conditions.	~~3. The competent authority shall set emission limit values that ensure that, under normal operating conditions, emissions do not exceed the emission levels associated with the best available techniques as laid down in the decisions on BAT conclusions referred to in Article 13(5)~~ The competent authority shall set the strictest possible emission limit values ~~that are consistent with the lowest emissions~~ achievable by applying BAT in the installation, and that ensure that, under normal operating conditions, emissions do not exceed the emission levels associated with the best available techniques (BAT-AELs) as laid down in the decisions on BAT conclusions referred to in Article 13(5). The emission limit values shall be based on an assessment by the operator analysing the feasibility of meeting the strictest end of the BAT-AEL range and demonstrating the best performance the installation can achieve by applying BAT as described in BAT conclusions. The emission limit values shall be set through either of the following: (a) setting emission limit values ~~that do not exceed the emission levels associated with~~	*The competent authority shall set the strictest possible emission limit values* ***for pollutants referred to in Article 14(1)a*** *achievable by applying BAT in the installation.~~, and that ensure that, under normal operating conditions, emissions do not exceed the emission levels associated with the~~ If best available techniques* ***with associated emission*** *levels (BAT-AELs)* ***are established,*** *as laid down in the decisions on BAT conclusions referred to in Article 13(5)****, the competent authority ensures that the emission levels do not exceed those BAT-AELs under normal operating conditions.*** *The emission limit values shall be based on an assessment by the operator analysing the feasibility of meeting the strictest end of*

	Where the emission limit values are set in accordance with point (b), the competent authority shall, at least annually, assess the results of emission monitoring in order to ensure that emissions under normal operating conditions have not exceeded the emission levels associated with the best available techniques.	~~the best available techniques. Those emission limit values shall be~~ expressed for the same or shorter periods of time and under the same reference conditions as th~~os~~e emission levels associated with the best available techniques; or (b) setting different emission limit values than those referred to under point (a) in terms of values, periods of time and reference conditions. Where the emission limit values are set in accordance with point (b) ~~is applied~~, the competent authority shall, at least annually, assess the results of emission monitoring in order to ensure that emissions under normal operating conditions have not exceeded the emission levels associated with the best available techniques. General binding rules referred to in Article 6 may be applied ~~provided these rules taking into account best achievable performance~~ while setting relevant emission limit values according to this article. If general binding rules are adopted, the strictest possible emission limit values achievable by applying BAT shall be set for categories of installations having similar characteristics that are relevant in determining the lowest emission levels achievable. The general binding rules shall be based on an assessment made by the Member State analysing the feasibility of meeting the strictest end of the BAT-AEL range and demonstrating the best performance that those categories of installations can achieve by applying BAT as described in BAT conclusions.	*the BAT-AEL range and demonstrating the best performance the installation can achieve by applying BAT as described in BAT conclusions.* *The emission limit values* ***based on BAT-AEL*** *shall be set through either of the following:* *(a) setting emission limit values expressed for the same or shorter periods of time and under the same reference conditions as those emission levels associated with the best available techniques; or* *(b) setting different emission limit values than those referred to under point (a) in terms of values, periods of time and reference conditions.* *Where the emission limit values are set in accordance with point (b), the competent authority shall, at least annually, assess the results of emission monitoring in order to ensure that emissions under normal operating conditions have not exceeded the emission levels*

			associated with the best available techniques. *General binding rules referred to in Article 6 may be applied provided these rules taking into account best achievable performance while setting relevant emission limit values according to this article.* *If general binding rules are adopted, the strictest possible emission limit values achievable by applying BAT shall be set for categories of installations having similar characteristics that are relevant in determining the lowest emission levels achievable. The general binding rules shall be based on an assessment made by the Member State analysing the feasibility of meeting the strictest end of the BAT-AEL range and demonstrating the best performance that those categories of installations can achieve by applying BAT as described in BAT conclusions.*

Art. 15 (4)	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: (a) the geographical location or the local environmental conditions of the installation concerned; or (b) the technical characteristics of the installation concerned. 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. 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. **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 environmental quality standards referred to in Article 18.** **The competent authority shall re-assess whether the derogation granted in accordance with this paragraph is justified**	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: (a) the geographical location or the local environmental conditions of the installation concerned; or (b) the technical characteristics of the installation concerned. 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. 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. **Derogations referred to in this paragraph shall respect the principles set out in Annex II. The competent authority shall 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 the environment as a**	Ingebracht op 20/01/'23 en nu opnieuw: In line with the revision of art. 1, add human health to this article. **Text proposal** […] 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 human health and** 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. […]

	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. **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).** ~~**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.**~~ ~~**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.**~~ ~~**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.**~~	**whole is achieved. Derogations shall not be granted where they may put at risk compliance with environmental quality standards referred to in Article 18.** **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.** **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).** ~~**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.**~~ ~~**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.~~ ~~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.~~	
Art. 16 (3)	**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.**	**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.~~** **Where the ~~derogation~~ assessment referred to in Article 15(4) demonstrates that a derogation will ~~would~~ have a quantifiable or measurable effect on the environment, ~~the competent authority shall ensure that an appropriate monitoring system is put in place and require the operator to monitor~~ Member states shall ensure that the concentration of the pollutants concerned shall be monitored 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**	**Text proposal:** **<u>The competent authority may require the operator to monitor the concentration of the pollutants mentioned above ~~decides~~ if monitoring is relevant taking ~~Where~~</u>** the ~~derogation~~ assessment referred to in Article 15(4) **<u>in consideration. If the assessment</u>** demonstrates that a derogation will ~~would~~ have a quantifiable or measurable effect on the environment, ~~the competent authority shall ensure that an appropriate monitoring system is put in place and require the operator to monitor~~ Member states shall ensure that the concentration of the

		of the monitoring referred to in this paragraph.	pollutants concerned shall be monitored in the receiving environment.
Recital 13	**(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 alterna2028tives.**	**(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 this Directive and relevant BAT conclusions, and should make ~~it~~ relevant parts 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.** **In order to ensure that the EMS is in line with the requirements of the Directive, the EMS should be reviewed by the operator and audited by an external auditor or environmental verifier ~~organisation audit organisation~~ contracted by the operator, such as an**	**Text proposal (move to art. 14a(3a):** **(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 this Directive and relevant BAT conclusions, and should make ~~it~~ relevant parts available to the public. When made available to the public the operator should have an opportunity to redact or exclude confidential business information.**

		accredited environmental verifier in accordance with Regulation 1221/2009.	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. ~~In order to ensure that the EMS is in line with the requirements of the Directive, the EMS should be reviewed by the operator and audited by an external auditor or environmental verifier organisation audit organisation contracted by the operator, such as an accredited environmental verifier in accordance with Regulation 1221/2009.~~
Recital 30	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	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	**Text proposal:** In order to ensure uniform conditions for the implementation of Directive 2010/75/EU, implementing powers should be conferred on

	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 182/2011 of the European Parliament and of the Council.	**methodology for assessing the disproportionality between the costs of implementation of the BAT-conclusions and the potential environmental benefits in accordance with art. 15.4, (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 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.**	**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 in accordance with art. 15.4, (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**

			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.
Art. 3 (13a)	**(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;**	13a) '**Environmental performance levels associated with the best available techniques'** means the **~~binding~~** 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, **as described in BAT conclusions.**	
Art. 14 (1)	1. Member States shall ensure that the permit includes all measures necessary **~~for compliance~~ to comply** with the requirements of Articles 11 and 18. **To that effect, Member States shall ensure that permits are granted further to consultation of all relevant authorities who ensure compliance with Union environmental legislation, including with environmental quality standards.** Those measures shall include at least the following: (a) emission limit values for polluting substances listed in Annex II **of Regulation (EC) No 166/2006***, and for other polluting substances, which are likely to be emitted from the	1. Member States shall ensure that the permit includes all measures necessary **~~for compliance~~ to comply** with the requirements of Articles 11 and 18. **To that effect, Member States shall ensure that permits are granted further to consultation of all relevant authorities who ensure compliance with Union environmental legislation, including with environmental quality standards.** Those measures shall include at least the following: (a) emission limit values for polluting substances listed in Annex II **of Regulation (EC) No 166/2006***, and for other	1. Member States shall ensure that the permit includes all measures necessary **~~for compliance~~ to comply** with the requirements of Articles 11 and 18. **To that effect, Member States shall ensure that permits are granted further to consultation of all relevant authorities who ensure compliance with Union environmental**

	installation concerned in significant quantities, having regard to their nature and their potential to transfer pollution from one medium to another; **(aa) environmental performance limit values;** (b) appropriate requirements ensuring protection of the soil**, ~~and~~** groundwater **and surface water**, and measures concerning the monitoring and management of waste generated by the installation; **(ba) appropriate requirements for an environmental management system as laid down in Article 14a;** **(bb) suitable monitoring requirements for the consumption and reuse of resources such as energy, water and raw materials;** (c) suitable emission monitoring requirements specifying: (i) measurement methodology, frequency and evaluation procedure; and (ii) where Article 15(3)(b) is applied, that results of emission monitoring are available for the same periods of time and reference conditions as for the emission levels associated with the best available techniques; (d) an obligation to supply the competent authority regularly, and at least annually, with: (i) information on the basis of results of emission monitoring referred to in point (c) and other required data that enables the competent authority to verify compliance with the permit conditions; and (ii) where Article 15(3)(b) is applied, a summary of the results of emission monitoring which allows a comparison with the emission levels associated with the best available techniques;	polluting substances, which are likely to be emitted from the installation concerned in significant quantities, having regard to their nature**, their hazardousness** and their potential to transfer pollution from one medium to another; **(aa) environmental performance limit values in accordance with Article 15(3a);** (b) appropriate requirements ensuring protection of the soil**, ~~and~~** groundwater **and surface water**, and measures concerning the monitoring and management of waste generated by the installation; **(ba) appropriate requirements for an environmental management system as laid down in Article 14a;** **(bb) suitable monitoring requirements for the consumption and reuse of resources such as energy, water and raw materials;** (c) suitable emission monitoring requirements specifying: (i) measurement methodology, frequency and evaluation procedure~~; and~~ (ii) where Article 15(3)(b) is applied, that results of emission monitoring are available for the same periods of time and reference conditions as for the emission levels associated with the best available techniques; (d) an obligation to supply the competent authority regularly, and at least annually, with: (i) information on the basis of results of emission monitoring referred to in point (c) and other required data that enables the	**legislation, including with environmental quality standards.** Those measures shall include at least the following: (a) emission limit values for polluting listed in Annex II **of Regulation (EC) No 166/2006***, and for other polluting substances, which are likely to be emitted from the installation concerned in significant quantities, having regard to their nature, **their hazardousness** and their potential to transfer pollution from one medium to another, **(aa) environmental performance limit values in accordance with Article 15(3a);** **(aax) Appropriate requirements to ensure the assessment of the need to prevent or reduce the emissions of substances fulfilling the criteria**

	(iii) information on progress towards fulfilment of the environmental policy objectives referred to in Article 14a. Such information shall be made public; (e) appropriate requirements for the regular maintenance and surveillance of measures taken to prevent emissions to soil and groundwater pursuant to point (b) and appropriate requirements concerning the periodic monitoring of soil and groundwater in relation to relevant hazardous substances likely to be found on site and having regard to the possibility of soil and groundwater contamination at the site of the installation; (f) measures relating to conditions other than normal operating conditions such as start-up and shut-down operations, leaks, malfunctions, momentary stoppages and definitive cessation of operations; (g) provisions on the minimisation of long-distance or transboundary pollution; (h) conditions for assessing compliance with the emission limit values **and environmental performance limit values** or a reference to the applicable requirements specified elsewhere.	competent authority to verify compliance with the permit conditions; and (ii) where Article 15(3)(b) is applied, a summary of the results of emission monitoring which allows a comparison with the emission levels associated with the best available techniques; **(iii) information on progress towards fulfilment of the environmental policy objectives referred to in Article 14a.** ~~**Such information shall be made public;**~~ (e) appropriate requirements for the regular maintenance and surveillance of measures taken to prevent emissions to soil and groundwater pursuant to point (b) and appropriate requirements concerning the periodic monitoring of soil and groundwater in relation to relevant hazardous substances likely to be found on site and having regard to the possibility of soil and groundwater contamination at the site of the installation; (f) measures relating to conditions other than normal operating conditions such as start-up and shut-down operations, leaks, malfunctions, momentary stoppages and definitive cessation of operations; (g) provisions on the minimisation of long-distance or transboundary pollution; (h) conditions for assessing compliance with the emission limit values **and environmental performance limit values** or a reference to the applicable requirements specified elsewhere.	**of article 57[1] or substances addressed in restrictions in annex XVII to regulation (EC) No 1907/2006** (b) appropriate requirements ensuring protection of the soil~~**, and**~~ groundwater, **surface water, and surface water used for the production of drinking water**, and measures concerning the monitoring and management of waste generated by the installation; **(ba) appropriate requirements for an environmental management system as laid down in Article 14a;** **(bb) suitable monitoring requirements for the consumption and reuse of resources such as energy, water and raw materials;** (c) suitable emission monitoring requirements specifying:

[1] The proposal refers to the hazard characteristics in article 57 REACH. This would also specifically include substances identified as fulfilling one of the criteria on the basis of identification in European legislations.

			(i) measurement methodology, frequency and evaluation procedure; and (ii) where Article 15(3)(b) is applied, that results of emission monitoring are available for the same periods of time and reference conditions as for the emission levels associated with the best available techniques; (d) an obligation to supply the competent authority regularly, and at least annually, with: (i) information on the basis of results of emission monitoring referred to in point (c) and other required data that enables the competent authority to verify compliance with the permit conditions**; ~~and~~** (ii) where Article 15(3)(b) is applied, a summary of the results of emission monitoring which allows a comparison with the emission levels associated with the best available techniques; **(iii) information on progress towards fulfilment of the**

			environmental policy objectives referred to in Article 14a. ~~**Such information shall be made public;**~~ (e) appropriate requirements for the regular maintenance and surveillance of measures taken to prevent emissions to soil and groundwater pursuant to point (b) and appropriate requirements concerning the periodic monitoring of soil and groundwater in relation to relevant hazardous substances likely to be found on site and having regard to the possibility of soil and groundwater contamination at the site of the installation; (f) measures relating to conditions other than normal operating conditions such as start-up and shut-down operations, leaks, malfunctions, momentary stoppages and definitive cessation of operations; (g) provisions on the minimisation of long-distance or transboundary pollution;

			(h) conditions for assessing compliance with the emission limit values **and environmental performance limit values** or a reference to the applicable requirements specified elsewhere.
Art. 14a(1)	**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.** **The EMS shall be reviewed periodically to ensure that it continues to be suitable, adequate and effective.**	**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 paragraph 2-3(a) and relevant BAT conclusions that determine aspects to be covered in the EMS.** ~~**The EMS shall be reviewed periodically to ensure that it continues to be suitable, adequate and effective.**~~ **[text moved]**	
Art. 14a(2)	**2. The EMS shall include at least the following:** **(a) environmental policy objectives for the continuous improvement of the environmental performance and safety of the installation, which shall include measures to:** **(i) prevent the generation of waste;** **(ii) optimise resource use and water reuse;** **(iii) prevent or reduce risks associated with the use of hazardous substances.** **(b) objectives and performance indicators in relation to significant environmental aspects, which shall take into account**	**2. The EMS shall include at least the following:** **(a) environmental policy objectives for the continuous improvement of the environmental performance and safety of the installation, which shall include measures to** **(i) prevent the generation of waste,** **(ii) optimise resource use and water reuse, (iii)and prevent or reduce risks associated with the use of hazardous substances.** **(b) objectives and performance indicators in relation to significant**	**Text proposal:** 2. The EMS shall include at least the following: (a) environmental policy objectives for the continuous improvement of the environmental performance and safety of the installation, which shall include measures to (i) prevent the generation of waste, (ii) optimise resource use and water reuse, (iii) and

	benchmarks set out in the relevant BAT conclusions and the life-cycle environmental performance of the supply chain; **(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;** **(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;** **(e) measures taken to achieve the environmental objectives and avoid risks for human health or the environment, including corrective and preventive measures where needed;** **(f) a transformation plan as referred to in Article 27d.**	**environmental aspects, which shall take into account benchmarks set out in the relevant BAT conclusions and the life-cycle environmental performance of the supply chain;** **(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;** **(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;** **(e) measures taken to achieve the environmental objectives and avoid risks for human health or the environment, including corrective and preventive measures where needed;** **(f) a transformation plan as referred to in Article 27d.** **The level of detail of the EMS ~~will~~ shall be consistent with the nature, scale and**	prevent or reduce **the use or emissions ~~risks associated with the use~~** of hazardous substances (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 life-cycle environmental performance of the supply chain; (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; (d) a chemicals inventory of the hazardous substances present in **or emitted from** the installation as such, as constituents of other

		complexity of the installation, and the range of environmental impacts it may have. **Where elements of the EMS~~, or the related performance indicators, objectives, measures and analysis~~ 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.**	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 **or reduce their use or emissions**, 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; (e) measures taken to achieve the environmental objectives and avoid risks for human health or the environment, including corrective and preventive measures where needed; (f) a transformation plan as referred to in Article 27d. The level of detail of the EMS shall be consistent with the nature, scale and complexity of the installation, and the range of environmental impacts it may have. Where elements of the EMS have already been developed elsewhere and

			comply with this, article a reference may be made in the EMS to the relevant documents.
Art. 14a(3)	**3. The EMS of an installation shall be made available on the Internet, free of charge and without restricting access to registered users.**	**3. ~~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)~~ ~~The EMS of an installation~~ 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. The Commission shall, by 31 December 2025, adopt an implementing act on what information that is relevant for publication. ~~to establish the standardised template to be used for the information referred to in this paragraph.~~ That implementing act shall be adopted in accordance with the examination procedure referred to in Article 75(2). ~~The content of the summary of EMS shall allow comparison with information referred to in Art. 14(1) d) (iii).~~ 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.**	

Art. 14a (3a)		3a. Member States shall take the necessary measures to ensure that ~~T~~ the operator reviews its EMS to ensure that it ~~continues to be~~ is suitable, adequate and effective and ~~Member States shall take the necessary measures to ensure~~ that the EMS is audited, at least every 3 years~~: a) ,~~ by an external auditor organisation or an environmental verifier contracted by the operator, who verifies the conformity of the EMS and of its implementation with this article. ~~b) t The operator reviews its EMS to ensure that it continues to be suitable, adequate and effective.~~ [text moved] The ~~first review and the~~ first audit of the ~~existing~~ 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].	3a. Member States shall take the necessary measures to ensure that ~~T~~ the operator reviews its EMS to ensure that it ~~continues to be~~ is suitable, adequate and effective and ~~Member States shall take the necessary measures to ensure~~ that the EMS is audited, at least every 3 years~~:~~ ~~a) ,~~ by an external auditor organisation or an environmental verifier contracted by the operator such as an accredited environmental verifier in accordance with Regulation 1221/2009, who verifies the conformity of the EMS and of its implementation with ~~this article~~ the Directive. ~~b) t The operator reviews its EMS to ensure that it continues to be suitable, adequate and effective.~~ [text moved] The ~~first review and the~~ first audit of the

			~~existing~~ 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].
Art. 15 ~~(3b)~~4a		(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 ~~would~~ will lead to significant negative environmental impact, including cross media effects, or significant economical impact due to: (a) the geographical location or the local environmental conditions of the installation concerned; or (b) the technical characteristics of the installation concerned, ~~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.~~ [see text above] 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. **The competent authority shall in any case ensure that operating under less strict environmental performance limit values shall not cause any significant ~~pollution~~ environmental impact and shall achieve a high level of protection of the environment as a whole.** **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).**	
Art. 24 (2)	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 **systematically** via the Internet, **free of charge and without restricting access to registered users,** in relation to points (a), (b) and (f), the following information: (a) the content of the decision, including a copy of the permit and any subsequent updates; (b) the reasons on which the decision is based; (c) the results of the consultations held before the decision was taken**, including consultations held pursuant to Article 26,** and an explanation of how **those consultations ~~they~~** were taken into account in that decision; (d) the title of the BAT reference documents relevant to the installation or activity concerned;	2. When a decision on granting, reconsideration or updating of a permit has been taken **~~after [OP please insert the date = the first day of 24 months following the date of entry into force of this Directive~~***~~],~~* the competent authority shall make available to the public, including **systematically** via the Internet, **free of charge and without restricting access to registered users,** in relation to points (a), (b) and (f), the following **information***:* **~~(a) systematic information:~~** **~~(ii) the title of the BAT conclusions relevant to the installation or activity concerned;~~** **~~(iii) whether any derogation is granted in accordance with Article 15(4);~~** **~~(iv) the emission limit values and environmental performance limit values;~~**	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 systematically via the Internet, free of charge and without restricting access to registered users, in relation to points (a), (b) and (f), the following **~~information~~***:* **(a) systematic information:** **(ii) the title of the BAT conclusions relevant to**

	(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; (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.	~~**(v) the provisions for the reconsideration and updating of the permit.**~~ ~~**(b) documents and information:**~~ ~~**(i) the summary of the decision with an overview of the main permit conditions**~~ ~~**(ii)**~~ **(a)** the content of the decision, including a copy of the permit and any subsequent updates; **Including consolidated permit conditions where relevant.** ~~**(iii)**~~ *(b)* the reasons on which the decision is based; ~~**(iv)**~~ **(c)** the results of the consultations held before the decision was taken**, including consultations held pursuant to Article 26,** and an explanation of how **those consultations** ~~**they**~~ were taken into account in that decision; ~~**(i)**~~ (d) the title of the BAT reference documents relevant to the installation or activity concerned; ~~**(v)**~~ **(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; ~~**(vi)**~~ **(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. ~~**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**~~	**the installation or activity concerned;** **(iii) whether any derogation is granted in accordance with Article 15(4);** **(iv) the emission limit values and environmental performance limit values;** **(b) documents and information:** **(i) the summary of the decision with an overview of the main permit conditions** (ii) ~~**(a)**~~ the content of the decision, including a copy of the permit and any subsequent updates; Including consolidated permit conditions where relevant. (iii) ~~***(b)***~~ the reasons on which the decision is based; (iv) ~~**(c)**~~ the results of the consultations held before the decision was taken, including consultations held pursuant to Article 26, and an explanation of how those consultations they were taken into account in that decision;

		~~**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). 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) ~~**(d)**~~ the title of the BAT reference documents relevant to the installation or activity concerned; (v) ~~**(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; (vi) ~~**(f)**~~ where a derogation is granted in accordance with Article 15, the specific reasons for that derogation based on the criteria laid down in that paragraph and the conditions imposed.
Art. 24(3)	3. The competent authority shall also make available to the public, including **systematically** via the Internet, **free of charge and without restricting access to registered users,** ~~**at least in relation to point (a)**~~ **the following:** (a) relevant information on the measures taken by the operator upon definitive cessation of activities in accordance with Article 22; (b) the results of emission monitoring as required under the permit conditions and held by the competent authority; **(c) the results of the monitoring referred to in Article 16(3) and in Article 18, second subparagraph.**	3. The competent authority shall also make available to the public, including **systematically** via the Internet, **free of charge and without restricting access to registered users,** ~~**at least in relation to point (a)**~~ **the following:** (a) relevant information on the measures taken by the operator upon definitive cessation of activities in accordance with Article 22; (b) the results of emission monitoring as required under the permit conditions and held by the competent authority;	

		(c) the results of the monitoring referred to in Article 16(3) and in Article 18 ~~13~~.	
Recital 31a		**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. ~~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 sanction; 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~~ Member States may ~~from~~ lay~~ing~~ down rules for administrative as well as criminal ~~sanctions~~ penalties for the same infringements. ~~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.~~ In**	

		any case, the imposition of criminal and administrative penalties should not lead to a breach of the right not to be ~~principle of prohibition of being~~ tried or punished twice in criminal proceedings for the same criminal offence (ne bis in idem) 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~~.	
Art. 79 (1)	**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 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.**	**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 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. ~~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.~~**	

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 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).~~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. ~~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).~~**	
Art. 79 (3)	**3. Member States shall ensure that the penalties ~~referred to in paragraph 1~~ 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**	**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. ~~**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 provisions to the Commission by 7 January 2013 and shall notify it without delay of any subsequent amendment affecting them.**~~	**protection of human health and the environment;** **d) the repetitive or singular character of the infringement.**	
Art. 79 (4)		**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.** **[Text moved from art. 79.1]**	We are not in favour of adding a fourth paragraph, as proposed by the Presidency. In principle, the MS must already report the implementation, so we do not understand the added value of this paragraph. **Text proposal:** ~~**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.**~~
		~~**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.**~~	

Transitional provisions

Art.	COM proposal	PRES proposal	NL position
Recital X		**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. Existing installations shall comply with the provisions in the current IED, until there are new BAT conclusions or there is a permit update.**	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~~ [X]** years for existing activities and **~~12~~ [X]** years for new activities. This does not prevent BAT-conclusions to be adopted earlier. Existing installations shall comply with the provisions in the current IED, until there are new BAT conclusions or there is a permit update.

Article 3	**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]** **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.**	**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]** **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.**	
A		~~**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]**~~	

B		**In relation to installations carrying out activities referred to in Annex I Member States shall apply Article 14 (1 aa), Article 15(3a) and Article 15(4a) within 4 years of publication of decisions on BAT conclusion 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).** **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.**	In relation to installations carrying out activities referred to in Annex I Member States shall apply ~~**Article 14 (1 aa), Article 15(3a) and Article 15(4a)**~~ **the articles in Chapter 2, but no later then [X] years after entry into force of this Directive or** within 4 years of publication of decisions on BAT conclusion 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). **Until that day installations carrying out activities referred to in Annex I (which were under the scope of the directive before [OP please insert the date = the date of entry into force of this Directive]) and (i) are in operation and hold a permit 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], or (ii) the operators of which 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]: shall comply with Directive 2010/75/EU.**

C		**In relation to installations carrying out activities referred to in Annex I (~~list of existing activities~~ which are under the scope of ~~covered by~~ the directive before [OP please insert the date = the date of entry into force of this Directive]) ~~which~~ and (i) are in operation and hold a permit 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], or (ii) ~~of which~~ the operators of which 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]:** **- ~~Article 9(2),~~ 14 (1)(a), 14 (1) (b), 14(1)(ba), 14(1)(bb), 14(1)(d~~) 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**	**~~In relation to installations carrying out activities referred to in Annex I (list of existing activities which are under the scope of covered by the directive before [OP please insert the date = the date of entry into force of this Directive]) which and (i) are in operation and hold a permit 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], or (ii) of which the operators of which 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]:~~** **~~- Article 9(2), 14 (1)(a), 14 (1) (b), 14(1)(ba), 14(1)(bb), 14(1)(d) 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~~**

		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. Until that day such installations shall comply with Directive 2010/75/EU.	~~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.~~ ~~Until that day such installations shall comply with Directive 2010/75/EU.~~ [See text proposed under B]
D		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].	~~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].~~ [See text proposed under B]
E		In relation to installations carrying out activities referred to in Annex I, point 1.4, 2.3 b, 2.3 ba, 2.7 and 3.6, (~~list of new~~ activities which are not ~~covered by~~ under the scope of the directive before [OP	~~In relation to installations carrying out activities referred to in Annex I, point 1.4, 2.3 b, 2.3 ba, 2.7 and 3.6, (list of new activities which are not covered by under the scope of the directive before~~

		please insert the date = the date of entry into force of this Directive]) ~~and which are operated before [OP please insert the date = the date of entry into force of this Directive]~~ 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. Until that day such installations shall comply with Directive 2010/75/EU. 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.	~~[OP please insert the date = the date of entry into force of this Directive]) and which are operated before [OP please insert the date = the date of entry into force of this Directive] 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. Until that day such installations shall comply with Directive 2010/75/EU. 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.~~ [See text proposed under B]
F		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.	
G		**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 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.**	

Austrian Federal Ministry of
Climate Action

10. February 2023

AT comments with reference to WPE on 7 February 2023, Revision IED; 8064/22 +Add 1, 8032/2022 INIT, WK 1574/2023

Cluster 4 - Public participation

Art. 24:

Austria regrets the fact that the elements of a summary of the permit, which were originally contained in Art. 5(4) of the EC proposal and then moved to Art. 24(2), are now to be almost completely deleted (moreover the EC has meanwhile commissioned a consultant to examine what could be contained in a summary format). This provision would have made it easier to compare the permits of different MS or permits of different sites with same activities - especially for the public concerned.

In addition, the content of the permit must be (and already had to be) provided (according to Art. 24 para. 2 lit. a). In our view, this could be seen as a summary, but without uniform reference points for the MS.

In our opinion, the insertion of "consolidated permit conditions" cannot be a substitute for this.

Moreover, the insertion of "including consolidated permit conditions" should not create an obligation to prepare consolidated permits. This should be clarified in the text.

A possible compromise could be to formulate the description of the "consolidated permit conditions" as an alternative option to the summary of the permit (i.e. not to omit the deleted text on "systematic information" in Art. 24 para. 2 etc.).

We therefore support the Presidency´s approach to wait for the results of the webinar on 15 February (“Development of a template for a harmonised permit summary under the IED”) and then present a new proposal.

Transitional provisions

General preliminary remark:

Normally, in our experience the adaptation to the new revised IED will take place in the course of permit changes or updates to match the relevant BAT-conclusions. We therefore cannot accept the deadlines of 20 years (Proposal C) or 12 years (Proposal E).

Cluster 1-Minimisation of emissions

Art. 14 (1) :

We are still co-ordinating the AT position on this, but we would also like to see the pollutants according to Regulation (EU) 2019/1021 explicitly addressed in this context. This regulation is an implementation of the international Stockholm Convention on Persistent Organic Pollutants, which currently includes about 30 of the most dangerous pollutants/pollutant groups worldwide. In our opinion, this should at least be included in the list in Art. 14 (2) of the Industrial Emissions Portal Regulation de lege ferenda. Reference to the IEP is made in Art. 14 (1) a) of EC proposal (Annex II of Regulation (EC) No. 166/2006 as a placeholder for the IEP-Regulation).

Following the WPE meeting held on 7th February 2023 please find below Polish written reactions on issues covered by the Presidency in steering notes WK 1574/2023 INIT.

Cluster 3

Article 3(13a)

Poland would like to underline support for Presidency proposal to delete word: ”binding”. Binding character of future BAT AEPLs is already sufficiently reflected in art. 15(3a) and there is no need to underline it also in a definition. Even art. 3(13) providing definition of the BAT AELs does not refer to the binding character since this fact results from art 15(3).

Article 14a(3)

Poland is in favour of the proposal allowing (if necessary) to exclude form publication confidential elements of EMS.

We also welcome the proposal do develop the template for publication of relevant information from EMS. In our opinion template should rather serve as a guidance document than implementing act. Even if the EMS summary will be made by the operators the EU-wide guidance can be used by the MSs to elaborate national (binding) provisions imposing the format and the scope of information published as an EMS summary.

Article 15.4a

Poland propose to include BAT AEPLs as elements of EMS. The AEPLs would be still considered binding with the measures addressing noncompliance, penalties etc. However this approach gives possibility to apply more flexible approach if specificity of the installation would be substantial obstacle towards achieving performance levels within the range set up in the BAT conclusions. This would give a possibility to introduce incremental improvements aiming to get the installation as close as possible to the required BAT AEPL range. With the BAT AEPLs included in permit lack of compliance must lead basically to the annulment of the permit – unless derogation is granted.

Having the BAT AEPLs as elements of EMS would also facilitate monitoring of these parameters since the competent authorities may be supported by accredited environmental verifiers periodically auditing the EMS.

<u>Cluster 4</u>

Article 24(2)

Poland is of the opinion that permit summary should be deleted without any harm for availability of information on environment and public access to information.

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Cluster 5

Article 79

Poland would like to underline support for Presidency proposal which delete reference to turnover in the provisions on penalties.

Transitional provisions

Poland welcomes Presidency proposals regarding art. 3 as well as transitional periods (TP).

Although, as regards recital X we believe that for existing installations, the compliance with the new provisions should be rather associated, next to the publication of the BAT conclusions, with a substantial change of the installation concerned not any (even very minor) change, as currently proposed. We propose a change indicating that existing installations meet the requirements of the Directive in the event of adoption new BAT conclusions or a substantial change to the permit.

Also with regard to TP C references to art. 15.3 should be deleted and included in the TP B (the same way as it has been done for the provisions on performance levels).
Setting permit conditions according to the art. 15.3 require new approach directly associated with the publication of future BAT conclusions. It relates to the considerations given to determine the lower end of the BAT AELs range as well as information (which should be available in BREFs and/or BATc) necessary for the competent authorities to properly assess operators' analysis what is the lowest achievable emission level. Appropriate application of art. 15.3 would be only possible with the new BATc and the new BREFs.

Furthermore TP C refers next to the art. 21.5 and publication of the BATc also to the art. 20 which encompasses in fact any changes by operator to the installation – substantial and non-substantial. According to art. 20.1 Member States shall take the necessary measures to ensure that the operator informs the competent authority **of any planned change** in the nature or functioning, or an extension of the installation which may have consequences for the environment. **Where appropriate, the competent authority shall update the permit**. Therefore in our opinion current wording of TP C would require competent authorities to revise and amend ELVs (in line with the new art 15.3) in case of first change of the permit (even the minor one) after the transposition deadline.

Yours sincerely,

Maciej Mucha
Dyrektor
Departament Instrumentów Środowiskowych
Ministry of Climate and Environment
/ – digitally signed/

Steering note of the Presidency WK 1574/2023 from 2 February 2023
WPE on 7 February 2023
Proposal for a Directive on Industrial Emissions

COMMENTS BY SLOVENIA

Slovenia would like to thank the Presidency for very useful Steering note WK 1574/2023 from 2 February 2023 and for the structured discussion held at the WPE on February 7. We would like to keep scrutiny reservation; however, below, please find some preliminary comments on certain provisions.

We will send further comments after internal discussions at national level will be finalised, especially in relation to penalties and compensation, and transitional periods.

Cluster 1 – Minimisation of emission

Article 15(4)

Slovenia can support the Presidency's proposal in the fourth subparagraph of paragraph (4).

However, Slovenia shares the view of PT that first sentence of paragraph (4) is not completely clear regarding the less strict emission limit values that would be still within the range under the relevant BAT, considering the changed text of paragraph (3).

To ensure clarity and harmonised application of this provision in Member States we propose to revise the first sentence. for example, as follows:
'*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* ***than those associated with the best available techniques as laid down in the decisions on BAT conclusions referred to in Article 13(5)***. '.

Article 16(3)

Slovenia welcomes and supports the proposed changes that enable Member States to require such monitoring in accordance with national legal and organisational system.

However, we can be flexible as regard the proposal of IT to address monitoring of impact. The best solution might be that the wording is aligned with the wording in Article 15(4), fourth subparagraph:

' **Where the ~~derogation~~ *assessment* referred to in Article 15(4) *demonstrates that a derogation will* ~~would~~ have a quantifiable or measurable effect on the environment, ~~the competent authority shall ensure that an appropriate monitoring system is put in place and require the operator to monitor~~ *Member states shall ensure that* the *impact of the derogation on the* concentration of the pollutants concerned *shall be monitored* in the receiving environment.**'.

We can also support the NL proposal to add a sentence on the possibility for competent authority to require the operator to carry out monitoring, that could be added at the end of the fourth subparagraph, but adapted to the wording as proposed above:

'*The competent authority may require the operator to carry out such monitoring of the impact of the derogation on the concentration of the pollutants*.'.

Cluster 2 – Innovation and industrial transformation

Slovenia would like to reiterate its comment on Article 27b, to delete reference to Article 11(a). We are of the opinion that all the appropriate preventive measures must be taken against pollution, even in case of testing of emerging techniques. While granting derogation, it should be duly considered (case by base) what preventive measures could be applicable in case of such testing, however, general exemption from the preventive measures is not acceptable.

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

Slovenia is still analysing the proposed changes and would like to keep scrutiny reservation.

Cluster 4 – Public participation

Slovenia welcomes and supports the proposal do delete the requirements on the summary of the permit. We are of the opinion that consolidated version of the permit / consolidated permit conditions, where relevant, could be more useful.

However, we agree with several Member States that the webinar, announced for next week, can contribute to the understanding and final decision on the requirements to be included in the directive. We are looking forward to join the webinar.

Cluster 5 – Penalties and compensations

Slovenia welcomes the efforts of the Presidency to find a compromise solution and considers the steps taken so far as steps into right direction. However, we are still of the opinion that any detailed provisions and rules on penalties should remain under national responsibility. Therefore, provisions at EU level should remain very general and proportionate, limited to the requirements that penalties should be effective, proportionate and dissuasive. In this way, Member States would be able to ensure best use of already existing systems.

As we already expressed at previous occasions, we would also like to point out our concerns regarding the provisions on compensation that are included in each individual environmental act regulating pollution. To our opinion, this is not in line with Better Regulation; we would propose to reconsider regulating such provisions in horizontal manner as also mentioned by out minister at ENVI Council.

Similarly, we believe that access to justice should not be included in each individual environmental act; therefore, we propose to follow the approach taken in the 'Fit for 55' package, where the issue is addressed in the recital, referring to the Aarhus convention where all Member States, as well as EU, is a party to.

Transitional provisions

Slovenia is still analysing the proposed changes and would like to keep scrutiny reservation. However, below find some of our preliminary observations.

Recital X

To our opinion, the last sentence (last subparagraph) of the recital X is problematic. We believe that the current IED is only applicable to those existing installations, that are under the scope of the current IED.

However, some transitional provisions apply also to some existing installations that are now not in the scope of the current IED and will be under the scope of the revised IED. Therefore, the last sentence in the recital X, as well as the relevant transitional provisions, should be carefully redrafted. Until there are new BAT conclusions or there is a permit update, any existing installation that will be in the scope of the revised IED, should be compliant with those requirements, that are applicable to it according to the national law – either the act transposing IED if the installation is in the scope of the current IED, or other national act if the installation in question is not under the scope of the current IED.

Transitional provision A:

Slovenia is still analysing the proposed deletion and would like to keep scrutiny reservation. Our preliminary observation would be that the application of the revised provision cannot be applicable before the transposition into the national law, therefore, revised provisions of Article 42 cannot apply 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].

Transitional provision B:

Slovenia is still analysing the proposed wording and would like to keep scrutiny reservation. Our preliminary observation would be that the second subparagraph is not completely clear.

Transitional provision C:

We support the opinion expressed at the WPE that it should be clear from the text that the competent authority should decide if the application is completed, since the starting point for counting the transitional period should be completely clear. The situation, in which the operator would consider that the complete application has been submitted, but this would not be confirmed by the competent authority, should be avoided. We propose, to revise the text accordingly, for example:

'**In relation to installations carrying out activities referred to in Annex I** ~~(~~**list of existing** ~~activities~~ **which are** ***under the scope of*** ~~*covered by*~~ **the directive before [OP please insert the date = the date of entry into force of this Directive]**~~)~~ ~~**which**~~ **and (i) are in operation and hold a permit 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], or (ii) of which the** ***competent authority confirms that*** **operators** ~~**of which**~~ **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]: …**'.

Transitional provision D:

Slovenia is still analysing the proposed wording and would like to keep scrutiny reservation.

Preliminary, we would like to check our understanding, that by referring to ' **laws, regulations and administrative provisions adopted in accordance with this Directive** ..', BAT-conclusions are included in those references.

Transitional provision E:

We would like to check our understanding, that by referring to ' **laws, regulations and administrative provisions adopted in accordance with this Directive** ..', BAT-conclusions are included in those references.

Regarding the proposed second subparagraph, we would like to point out, that it is not appropriate to require compliance with the Directive 2010/75/EU for installations that are not under the scope of the directive before the date of entry into force of this Directive (meaning the revised directive). See also comments on the recital X.

Firstly, the new / revised requirements of the directive (including change of Annex I) should be transposed into national law (' **the first day of the month following 24 months after the date of entry into force of this Directive** ') and only in the national act transposing the directive's new provisions, a new obligation for the installations in question could be defined.

After transposition is completed, appropriate transitional period should be defined for the installations in question to adapt to the requirements of the Directive 2010/75/ES, considering, that they were not under its scope before and that they, therefore, cannot comply with its requirements from the moment the amendments of the directive will be adopted.

Similar to transitional provision B, the provisions of the third subparagraph are not clear. Please see comments on transitional provision B, above.

Transitional provisions F and G:

Slovenia can support the transitional provision F and G, as proposed.

COMMENTS – SLOVAKIA

To the Proposal for Industrial Emissions Directive Follow - up on WPE 07th February 2023

Cluster 3

Regarding the requirements for publication of summaries from EMS SK is of the opinion that the publication requirements should be established through an implementing act.

Cluster 5

Regarding penalties and compensations SK proposes to leave this question to the national level (and not horizontally).

Art. 14a (3)

SK is of the opinion that the conditions for the publication of data should be done through an implementing act and we should therefore include more information about this implementing act within the IED.

Art. 15 4a

SK supports the change of word “would” into “will”.

Art 16 (3) and 15 (4)

SK supports proposed changes in art 16 (3) and 15 (4)

Art. 79

SK supports deletion of reference to “*proportionate to the annual turnover*”.