



Brussels, 15 February 2023

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**Interinstitutional files:**  
**2022/0104 (COD)**

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**WK 2121/2023 ADD 1**

#### **LIMITE**

<b>ENV</b>	<b>SAN</b>
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#### **CONTRIBUTION**

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

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Subject: IED : Follow- up of the WPE meeting on 7 February 2023 - Comments by delegations

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Following the call for comments (WK 1849/23 ), delegations will find attached the contribution received from the FR and PL delegations and a joint contribution from the NL, BE and DK delegations.



# RÉPUBLIQUE FRANÇAISE

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Paris, le 13 février 2023

## NOTE DES AUTORITÉS FRANÇAISES

**Objet : Commentaires écrits des autorités françaises à la suite du groupe de travail environnement du 7 février 2023 sur la révision de la directive sur les émissions industrielles (IED)**

Les autorités françaises remercient la Présidence suédoise pour l'opportunité de formuler des commentaires écrits.

Elles souhaitent faire part des commentaires suivants.

### **Groupe 1 : Minimisation des émissions**

Les autorités françaises soutiennent les propositions de la Présidence faites aux articles 15(4) et 16(3).

La rédaction de l'article 15(3) n'est notamment pas compatible avec la rédaction de règles générales contraignantes. De plus, les autorités françaises sont opposées à ce que chaque Etat membre évalue la possibilité de respecter les valeurs limites d'émission les plus basses. Cette analyse, ainsi que le choix des catégories d'installations qui ont des caractéristiques similaires doivent être menés dans le cadre de l'élaboration des BREF lors des travaux du processus de Séville.

**Il s'agit d'un point majeur pour la France.**

Les autorités françaises proposent donc la rédaction suivante.

#### **« Article 15(3) :**

*3. 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 achievable emission limit values by applying BAT in the installation. Emission limit values shall 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.*

*General binding rules referred to in Article 6 may be applied while setting relevant emission limit values according to this article.*

*If general binding rules are adopted, they shall set, for new installations, the strictest possible achievable emission limits by applying BAT. »*

**3. 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 that are consistent with the lowest emissions 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).**

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 best available techniques. These emission limit values shall be expressed for the same or shorter periods of time and under the same reference conditions as these 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 while setting relevant emission limit values according to this article.**

**If general binding rules are adopted, they shall set, for new installations, the strictest possible achievable emission limits by applying BAT. 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 these categories of installations can achieve by applying BAT as described in BAT conclusions.**

## **Article 15a :**

La Commission a proposé que l'article 15a prévoie une décision d'exécution visant à traiter des incertitudes de mesures afin de les prendre en compte dans l'évaluation de la conformité de la mesure par rapport aux valeurs limites. La Commission propose un système tel que, si l'opérateur respecte les dispositions prévues au chapitre II, alors il est réputé respecter les dispositions des chapitres III et IV. Les autorités françaises constatent que les périodes de surveillance des émissions et les valeurs limites d'émission ne sont pas les mêmes entre le chapitre II et les chapitres techniques. Les installations soumises aux BREFs LCP ou WI sont couvertes par des NEA-MTD qui s'appliquent uniquement en période normale de fonctionnement, alors que les chapitres III et IV couvrent respectivement des VLE en heures d'exploitation pour le chapitre III et toutes les plages de fonctionnement pour le chapitre IV.

Le chapitre II et la décision établissant les conclusions sur les MTD pour l'incinération des déchets ne prennent en compte que les périodes de conditions normales de fonctionnement (période où le déchet brûle et où il n'y a aucun dysfonctionnement) alors que le chapitre IV prend en compte toute la période de conditions effectives de fonctionnement (lorsque le déchet brûle, qu'il y ait ou non dysfonctionnement), donc une période plus importante. Les autorités françaises souhaitent également souligner que les champs d'application sont différents entre les chapitres II et IV. Le chapitre II ne s'applique qu'aux incinérateurs qui dépassent le seuil IED alors que le chapitre IV s'applique à tous les incinérateurs, sans seuil de capacité. De plus, les valeurs limites d'émission et les NEA-MTD n'ont pas le même statut entre les différents chapitres, notamment en ce qui concerne les dérogations.

De manière similaire, les VLE du chapitre III ne prennent en compte que les « heures d'exploitation » de l'installation. On entend par « heures d'exploitation » les heures de fonctionnement de l'installation, en dehors des phases de démarrage et d'arrêt. La décision établissant les conclusions sur les MTD pour les grandes installations de combustion ne prend en compte que les périodes de conditions normales de fonctionnement (période de fonctionnement de l'installation, en dehors des phases de démarrage et d'arrêt et des divers autres dysfonctionnements susceptibles d'être rencontrés).

Ainsi, le chapitre III prend en compte une période de fonctionnement plus importante que les conclusions MTD du BREF LCP, pris en application du chapitre II. Les autorités françaises souhaitent également souligner que les champs d'application sont différents entre le chapitre II et le chapitre III. Le chapitre III exclut certaines activités qui sont comprises dans le chapitre II.

**La France constate donc que la proposition actuelle de la Commission de ne considérer que le chapitre II engendrerait une absence de surveillance et de valeurs limites d'émission sur les périodes de conditions d'exploitation autres que normales et sur les heures d'exploitation de l'installation, telles que définies pour le chapitre III. Elle propose donc :**

- d'une part de modifier la rédaction pour que les paragraphes 15a 1 et 2 ne s'appliquent que pour une évaluation de la conformité de valeurs limites dans des conditions d'exploitation normales de l'installation ;
- de supprimer l'article 15a(3) car le respect des VLE du chapitre II ne permet pas de satisfaire aux VLE des chapitres III et IV.

De plus, l'utilisation de l'expression « valeurs moyennes d'émission validées » (validated average emission values) ne semble pas souhaitable dans le sens où elle n'est pas définie dans le chapitre II. Cette expression amène plusieurs sources de confusion. D'une part car cet article ne s'applique qu'aux installations visées par le chapitre II, pourtant cette expression ne figure dans la directive que dans les annexes des chapitres techniques (III, IV notamment). D'autre part, cette notion s'apparente à l'évaluation du respect de la conformité de la mesure en continu uniquement. Afin de vérifier cette conformité, il est en plus nécessaire de fixer des incertitudes réglementaires, tel que cela est défini par l'annexe V (partie 3-9) pour les installations soumises au chapitre III et à l'annexe VI (partie 6-1.3) pour les installations soumises au chapitre IV. De plus, dans les commentaires écrits des Pays-Bas, une rédaction est proposée évoquant un « système de mesure en continu ». Pourtant, dans l'étude d'impact, la mesure 7 notamment n'évoque en rien une mesure en continu. Au contraire, la mesure vise la conformité aux VLE pour les flux d'eaux usées combinées provenant de différents processus et installations, qui sont généralement des mesures moyennes sur 24h dont la fréquence de surveillance est mensuelle par exemple. Aussi, en l'absence de modification de cette expression, la France accueillerait favorablement qu'une définition soit ajoutée pour la définir, voire une mention explicite dans les conditions de l'autorisation (article 14). Les autorités françaises considèrent que l'évaluation du respect des VLE en dehors de la mesure en continu doit être couverte par ce nouvel article 15a.

Au-delà des modifications proposées ci-dessous, les autorités françaises s'interrogent sur l'intention de la Commission une fois que l'acte d'exécution prévu à l'article 15a(2) sera publié. En effet, est-ce que cet acte, qui encadrera l'évaluation du respect des VLE fixées pendant les périodes normales de fonctionnement des installations couvertes par le chapitre II, aura vocation à modifier les annexes techniques des chapitres III et IV (comme le permet l'article 74.1 proposé par la Commission) ?

La Commission a indiqué dans la mesure 7 (« Measure 7: Introduce common rules for assessing compliance with emission limit values under Chapter II of the IED. ») de son étude d'impact relative à ce nouvel article qu'une étude était en cours sur ce sujet. La Commission pourrait-elle en dire plus ?

La France est en désaccord avec la proposition de certains États-Membres d'ajouter le chapitre V aux chapitres concernés par ce nouvel article 15a. A titre d'illustration, des VLE pour les composés organiques volatils auxquels sont attribuées des phrases de risques spécifiques sont déterminées au sein de l'annexe VII, partie 4 (relative au chapitre V), elles ne sont donc pas reprises dans les conclusions MTD élaborées en application du chapitre II (par exemple : aucun NEA-MTD pour des COV spécifiques dans les conclusions relatives au traitement de surface utilisant des solvants).

La France propose donc :

« **Article 15a**

*1. For the purpose of assessing compliance under normal operating conditions with emission limit values in accordance with Article 14(1), point (h), the correction made to measurements to determine the validated average emission values shall not exceed the measurement uncertainty of the measuring method.*

*2. The Commission shall by [OP please insert date = the first day of the month following 24 months after the date of entry into force of this Directive] adopt an implementing act establishing the measuring method for assessing compliance under normal operating conditions with emission limit values set out in the permit with regard to emissions to air and water. This implementing act shall be adopted in accordance with the examination procedure referred to in Article 75(2).*

*The method referred to in the first subparagraph shall address, as a minimum, the determination of validated average emission values and shall set out how measurement uncertainty and the frequency of exceedance of emission limit values are to be taken into account in the compliance assessment under normal operating conditions.*

*~~3. Where an installation falling within the scope of this Chapter also falls within the scope of Chapter III or IV and compliance with emission limit values set in accordance with this Chapter is demonstrated pursuant to paragraph 1 of this Article, the installation shall be deemed to also comply with the emission limit values set pursuant to Chapter III or IV for the pollutants concerned. »~~*

### **Groupe 3 : Economie circulaire non toxique, efficacité des ressources et décarbonation**

**Article 3(13a)** : Les autorités françaises ne soutiennent pas la suppression du terme « contraignant » de la définition des niveaux de performances environnementales associées aux meilleures techniques disponibles (NPEA-MTD). Les NPEA doivent être obligatoires.

**Article 14a** : système de management de l'environnement (SME)

Même si les autorités françaises saluent la suppression de la mise en ligne « **d'un résumé** » du SME à l'article 14a (3), elles sont toujours fermement opposées à la mise à disposition sur Internet « **d'informations pertinentes à publier** » (nouveau terme proposé par la Présidence), informations dont le contenu sera déterminé par un acte d'exécution. **C'est un point important pour la France.**

Cette mise à disposition sur internet d'informations « pertinentes » présente une très lourde charge administrative pour les opérateurs et pour l'autorité compétente qui devra s'assurer qu'ils sont effectivement mis en ligne, mais aussi vérifier si leur contenu correspond aux exigences de la directive.

Les autorités françaises proposent donc de supprimer le point 3 de l'article 14a proposé par la Commission :  
**« Article 14a**

**3. Le système de management environnemental est mis à disposition sur l'internet, gratuitement et sans restriction d'accès aux seuls utilisateurs inscrits. »**

### **Article 9 :**

La France souhaite rappeler l'importance de pouvoir prendre en compte son commentaire faisant suite au groupe du 25 novembre 2022, à savoir :

La suppression du paragraphe 2 de l'article 9 rend obligatoire l'imposition d'exigences en matière d'efficacité énergétique aux installations à la fois soumises à la directive IED et à la directive ETS, dont les installations de combustion d'une puissance supérieure à 50 MW.

Si la France soutient cette modification pour le territoire métropolitain, elle est en revanche difficilement conciliable pour les régions ultrapériphériques (Martinique, Guadeloupe, ...).

En effet, les régions ultrapériphériques françaises sont caractérisées par des réseaux électriques non-interconnectés et de petite taille, avec des contraintes structurelles qui contraignent fortement l'efficacité énergétique des installations. Les températures sont plus élevées qu'en Europe continentale, dégradant de fait les rendements des cycles thermodynamiques des centrales, qui s'affichent donc mécaniquement inférieurs aux références d'Europe continentale ; elles ne fonctionnent pas en permanence à leur rendement nominal du fait de productions adaptées à la demande ; il n'y a que peu

de demandes d'utilisation de la chaleur leur permettant de développer la cogénération ; les rendements des installations sont plus faibles, du fait de la valorisation de différentes sources de biomasse. Enfin, ces installations produisent jusqu'à 50 % des besoins électriques de ces territoires.

Aussi, l'atteinte de niveaux d'efficacité énergétique similaires à ceux des installations de combustion équivalentes en Europe continentale n'est pas possible.

Les autorités françaises proposent de prendre en compte ces spécificités en ajoutant le paragraphe suivant à l'article 9 :

**« For activities listed in Annex I to Directive 2003/87/EC, Member States may choose not to impose requirements relating to energy efficiency in respect of combustion units or other units emitting carbon dioxide on the site for installations located in an outermost region as referred to in article 349 of the Treaty on the Functioning of the European Union ».**

#### **Groupe 4 : Participation du public**

##### **Articles 5(4) et 24(2) : résumé des permis**

Les autorités françaises remercient la Présidence d'avoir supprimé l'obligation de mise en ligne d'un « **résumé de la décision avec un récapitulatif des conditions principales du permis** » à l'article 24(2). Obligation qui a déjà été supprimée à l'article 5(4). C'est en effet un point majeur pour la France du fait de la charge administrative extrêmement forte que cela représente.

Même si les autorités françaises saluent cette suppression, elles ne souhaitent pas ajouter une nouvelle contrainte avec la mise en ligne d'une « **version consolidée des conditions du permis quand cela est pertinent** ». La réalisation de versions consolidées de permis serait, là encore, extrêmement chronophage, alors même que l'ensemble des conditions de l'autorisation sont déjà présentes dans les permis et les prescriptions générales contraignantes applicables aux établissements IED. Les autorités françaises proposent donc, par rapport à la rédaction proposée par la Commission en avril 2022 :

- De supprimer l'article 5(4) qui introduit le résumé des permis ;
- Et de ne pas modifier l'article 24(2).

#### **Groupe 5 : sanctions et indemnisations**

La Présidence, dans la note de cadrage WK 1032/2023 INIT du 24 janvier 2023, en préparation du groupe environnement du 30 janvier, avait proposé un grand nombre de modifications que les autorités françaises avaient globalement soutenues. Or, la note de cadrage du groupe environnement du 7 février supprime la majorité des ajouts précédemment réalisés et fait de nouvelles modifications. La France est défavorable aux suppressions réalisées, sauf celle opérée au premier alinéa de l'article 79(2) qui supprime les critères de sanctions liées aux PME.

La France rappelle que la directive relative à la criminalité environnementale est en cours de révision et devrait, a priori, être publiée avant la révision de la directive IED. Aussi, les autorités françaises pensent qu'il conviendra d'aligner les critères de la directive IED avec les critères correspondants, une fois la négociation finalisée de rédaction de la directive relative à la criminalité environnementale. Elle rappelle qu'elle soutient une rédaction qui indique qu'à partir du moment où un Etat membre respecte les exigences de la directive relative à la criminalité environnementale, alors il respectera les exigences de l'article 79 de la directive IED.

Elles proposent donc de maintenir la proposition de la Présidence faite à l'article 79(5) :

##### **Article 79**

***« 5. Si les règles d'un État membre relatives aux sanctions visées au paragraphe 1 sont conformes aux exigences pertinentes de la directive 2008/99/CE, elles sont considérées comme conformes au présent article et les paragraphes 2 et 3 ne s'appliquent pas. »***

La France soutient ainsi la position de l'Allemagne indiquée dans ses commentaires écrits du 7 février 2023 référencée WK 1447/2023 ADD 4. La France est favorable à une approche horizontale claire de la réglementation des sanctions pénales et (pour les personnes morales) administratives en matière d'environnement, comme convenu dans le projet révisé de la directive sur la criminalité environnementale (orientations générales du Conseil du 9 décembre 2022).

La France soutient qu'il convient de demander au service juridique du Conseil de recommander une approche générale respective et un texte de référence aux textes relatifs à la criminalité environnementale. Afin d'éviter les incohérences ou les contradictions, ce texte de référence devrait également être utilisé dans d'autres directives et règlements actuellement négociés sur la protection de l'environnement et du climat (par exemple, le règlement sur les gaz fluorés, le règlement sur les substances qui appauvissent la couche d'ozone, le règlement sur la protection de l'environnement et du climat), en tenant compte de la nécessaire différenciation entre les sanctions pénales et les sanctions administratives.

Une référence claire à la directive relative à la criminalité environnementale éviterait des problèmes de transposition et d'application différente dans les États membres.

Le droit dérivé environnemental sectoriel devrait limiter son champ d'application aux exigences minimales de sanction pour les cas d'infractions mineures, en prévoyant des sanctions administratives horizontalement cohérentes, adéquates et proportionnées pour les personnes physiques et morales.

### **Dispositions transitoires**

La Présidence propose de modifier certaines dispositions transitoires afin de préciser que la nouvelle directive s'appliquera à une date fixe en dernier recours (20 ans et 12 ans respectivement pour les sites existants et les nouveaux sites). Il est proposé que la nouvelle directive s'applique donc à l'échéance la plus proche entre les différentes échéances possibles suivantes :

- Le moment de l'octroi ou de la mise à jour de l'autorisation ;
- Ou 4 ans après la publication des « futures » conclusions sur les MTD ;
- Ou **20 ans** après l'entrée en vigueur de la nouvelle directive pour les sites existants (article de transition « C ») et **12 ans** pour les nouveaux sites (article de transition « E »).

Dans l'attente de cette échéance, les exigences de la directive dans sa version actuelle de 2010 continuent de s'appliquer. La France soutient le considérant et les articles de transition modifiés en ce sens, mais estime que les délais de 12 et de 20 ans sont trop longs, et que des délais plus courts devraient être recherchés.

### **Article précisant le délai de transition « A »**

La France est favorable à la suppression de cet article de transition « A ».

### **Article précisant le délai de transition « B »**

Les autorités françaises proposent que ce délai de transition soit également applicable pour la fixation des valeurs limites d'émission les plus strictes possibles qui ne peuvent pas être imposées tant que de nouvelles décisions sur les conclusions MTD n'ont pas été prises.

Il convient également de rendre applicable les NPEA-MTD pour les installations qui font l'objet d'une demande de modification (article 20) ou relevant de l'article 21(5) ou faisant l'objet d'une première demande de permis après la date d'entrée en vigueur de la directive plus 24 mois.

Elles proposent donc la rédaction suivante (**ajout en souligné gras**) :

« *In relation to installations carrying out activities referred to in Annex I, Member States shall apply Article 14(1) (aa), 14(1) (h), **the strictest possible emission limit values of Article 15(3)**, Article 15(3a) and Article 15(4a) within 4 years of publication of decisions on BAT-conclusions that have been published after [OP please insert the date = the first day of the month following 24 months after the date of entry into force of this Directive] relating to the main activity of an installation in accordance with Article 13(5).*

*Installations first permitted, or permit granted or updated pursuant to Article 20 or Article 21(5), after the publication 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. »*

### **Article précisant le délai de transition « C »**

Les autorités françaises accueillent favorablement cette disposition transitoire. Elles proposent cependant de supprimer : « ~~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]~~ », afin de clarifier le cas des éventuels sites qui ne seraient pas mis en service dans un délai de 12 + 24 mois après l'entrée en vigueur de la directive. En effet, il convient de prendre en compte une installation qui aurait déposé une demande de permis complète mais qui n'aurait pas encore commencé son exploitation dans le délai de 24 mois.

Les autorités françaises estiment que le délai proposé de 20 ans pour rendre applicable les Articles 15(1), Article 15(3), Article 15(4), Article 15a and Article 16(3) est trop long et proposent de rechercher un délai plus court.

### **Article précisant le délai de transition « D »**

Les autorités françaises proposent de prendre en compte également le cas des installations faisant l'objet d'une modification substantielle (article 20) ou relevant de l'article 21(5) ou faisant l'objet d'une première demande de permis après la date d'entrée en vigueur de la directive plus 24 mois.

Elles proposent que ce délai de transition soit également applicable pour la fixation des valeurs limites d'émission les plus strictes possibles qui ne peuvent pas être imposées tant que de nouvelles décisions sur les conclusions MTD n'ont pas été prises.

De plus, elles estiment que cet article doit également viser les installations ayant une activité 3.5 nouvellement entrante du fait de la révision de la directive.

Concernant ce dernier point, les autorités françaises tiennent à indiquer que le considérant 37 de la directive IED actuelle indique :

*« En ce qui concerne l'inclusion dans le champ d'application des dispositions législatives, réglementaires et administratives nationales mises en vigueur afin de se conformer à la présente directive, des installations destinées à la fabrication de produits céramiques par cuisson, les États membres devraient, sur la base des caractéristiques de leur industrie nationale, et afin d'assurer une délimitation claire du champ d'application, choisir d'appliquer soit les deux critères de la capacité de production et de la capacité de four, soit l'un ou l'autre de ces deux critères. »*

Aussi, la France a fait le choix de soumettre les sites de fabrication de produits céramiques à l'activité 3.5 de la directive IED quand les deux critères de la capacité de production et de la capacité de four étaient remplis. Or la Commission prévoit dans sa proposition que les sites concernés soient ceux qui atteignent l'un ou l'autre de ces critères.

Le BREF Céramique est actuellement en cours de révision et sa publication est prévue en 2025.

La France considère que les conclusions MTD issues de cette révision seront adaptées et appropriées aux sites « nouveaux entrants » (c'est-à-dire aux sites dont l'un **ou** l'autre des critères sera rempli, ce qui concerne une trentaine de sites en France) mais avec le même délai transitoire que celui des sites nouvellement soumis aux activités 2.3 (aa), 2.3 (ab) et 6.2 du fait de la modification de la directive IED à savoir 4 ans après le délai d'entrée en vigueur de la directive.

Elles proposent donc la rédaction suivante (**ajout en souligné gras**) :

*« In relation to installations carrying out activities referred to in Annex I, point 2.3 (aa), point 2.3 (ab), **point 3.5 (in its wording referred to in this Directive)** 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), **the strictest possible emission limit values of Article 15(3), 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].***

**Installations first permitted, or permit granted or updated pursuant to Article 20 or Article 21(5), after the publication 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.** »

## **Article précisant les délais de transition « E »**

Les autorités françaises soutiennent cet article, toutefois une erreur a dû se glisser car l'intention n'est pas que la directive IED dans sa version actuelle de 2010 s'applique aux sites dont l'activité est nouvelle dans le champ de la Directive (comme l'industrie extractive) et il convient donc de supprimer l'alinéa : « Jusqu'à ce jour, ces installations doivent être conformes à la directive 2010/75/UE. »

Les autorités françaises estiment que le délai proposé de 12 ans pour rendre applicables les Articles 15(1), Article 15(3), Article 15(4), Article 15a and Article 16(3) est trop long et proposent de rechercher un délai plus court.

## **Groupe 7 (périmètre des activités industrielles) :**

### **Article 42 :**

Les autorités françaises accueillent favorablement les précisions apportées au sein de l'article 42 et proposent de préciser qu'il s'agit bien de deux critères cumulatifs.

Par ailleurs, il pourrait être suggéré :

- au sein du critère a), de préciser que les émissions analysées pour la justification du critère a) portent au moins sur l'ensemble des critères suivis par le chapitre IV et l'annexe VI relatives à l'incinération/co-incinération de déchets ;
- au sein du critère a), de préciser quels sont les combustibles les moins polluants disponibles sur le marché ou de préciser comment les autorités compétentes doivent le définir ;
- au sein du critère b), d'expliquer la raison considérant à exclure les oxydes d'azote, les oxydes de soufre et les poussières. Il peut être proposé que les émissions analysées pour la justification du critère b) portent sur l'ensemble des critères suivis par le chapitre IV et l'annexe VI relatives à l'incinération/co-incinération de déchets.

Les autorités françaises souhaitent avoir confirmation de la Commission sur les points suivants. Si l'exemption prévue au sein de l'article 42 est utilisée :

- L'installation incinérant le gaz ainsi épuré devra-t-elle relever de l'activité « 1.1 combustion de combustible » (sous réserve de l'atteinte des seuils IED) et devra-t-elle respecter les prescriptions issues du chapitre III de la directive IED ?

- L'installation de gazéification ou de pyrolyse de déchets devra-t-elle relever de l'activité 1.4 et/ou 5.2 ? Si tel est le cas, la prescription de l'article 42 pourrait préciser ces éléments.

La France propose donc la rédaction suivante :

### **Article 42 :**

« *This chapter shall not apply to gasification or pyrolysis plants, if the gases or liquids resulting from such thermal treatment of waste are treated prior to their incineration to such an extent that :*

*a) The incineration does not cause<sup>(1)</sup> emissions higher than the combustion of the least polluting fuels available<sup>(2)</sup> on the market that could be combusted in the installation. »*

*« b) **for all parameters covered by Annex VI**, the incineration does not cause emissions higher than emissions from incineration or co-incineration of waste.*

**These two criteria are cumulative.**

**If covered by this exemption, the combustion installation must comply with the provisions of Chapter III.**

**If covered by this exemption, the gasification or pyrolysis plant is no longer regarded as a co-incineration plant as defined in Article 3. »**

Avec les remarques de méthode suivantes :

(1) Cette vérification porte sur l'ensemble des paramètres considérés au sein de l'annexe VI relative à l'incinération et la co-incinération de déchets.

(2) La France souhaite que la Commission précise comment les Etats-membres déterminent les « least polluting fuels available on the market » et comment ces derniers seront harmonisés au niveau européen. Des valeurs de référence pourraient par exemple être introduites.

Les autorités françaises sont également favorables à déterminer des conditions permettant de favoriser l'économie circulaire tout en garantissant un haut niveau de protection de l'environnement. En ce sens, elles sont ouvertes à la création d'une nouvelle rubrique, proposée par la Belgique dans ses

commentaires écrits (WK 17919/2022 INIT), qui permettrait d'avoir des prescriptions homogènes entre Etats-membres et adaptées à ces procédés spécifiques et émergents.

Les autorités françaises considèrent qu'il est nécessaire de lancer une étude permettant d'évaluer la pertinence d'introduire une telle rubrique et, le cas échéant, que des prescriptions spécifiques relatives aux installations de pyrolyse et de gazéification de déchets soient proposées.

Proposition de rédaction complémentaire :

« La Commission évalue la pertinence d'introduire une nouvelle rubrique et des prescriptions relatives aux installations de pyrolyse et de gazéification de déchets, et présente, s'il y a lieu, une proposition législative au plus tard le XX XXX 2027. »

Dans l'attente d'éventuelles prescriptions spécifiques à ce secteur, il nous semble nécessaire de garantir une protection de l'environnement adéquate et veiller à ce que les prescriptions relatives à l'incinération du chapitre IV et les MTD WI soient bien appliquées si des substances résultant de ces traitements thermiques sont incinérées. En effet, le périmètre du BREF WI actuel se base sur les activités 5.2-a et 5.2-b, et il convient que ces installations, si elles sont concernées, restent bien incluses dans ce périmètre. Il ne faudrait en effet pas, sous prétexte de valorisation d'une partie des déchets traités, omettre de surveiller certaines émissions de l'installation.

## Courtesy translation

**Subject:** Written comments from the French authorities following the environmental working group of 7<sup>th</sup> of February on the industrial emissions directive (IED).

The French authorities thank the Swedish Presidency for the opportunity to provide written comments.

They wish to make the following comments:

### **Cluster 1: Minimisation of emissions**

The French authorities support the Presidency's proposals in Articles 15(4) and 16(3).

In particular, the wording of Article 15(3) is not compatible with the drafting of general binding rules. Furthermore, the French authorities are opposed to requiring each Member State to assess the possibility of respecting the lowest emission limit values. This analysis, as well as the choice of categories of installations with similar characteristics, should be carried out in the framework of the elaboration of the BREFs during the Seville process. **This is a major point for France.**

The French authorities therefore propose the following wording:

#### **« Article 15(3) :**

*3. 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 achievable emission limit values by applying BAT in the installation. Emission limit values shall 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.*

*General binding rules referred to in Article 6 may be applied while setting relevant emission limit values according to this article.*

*If general binding rules are adopted, they shall set, for new installations, the strictest possible achievable emission limits by applying BAT. »*

**3. 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 that are consistent with the lowest emissions 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).**

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 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 these 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 while setting relevant emission limit values according to this article.

If general binding rules are adopted, they shall set, for new installations, the strictest possible achievable emission limits by applying BAT, 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.

### **Article 15a:**

The Commission has proposed in Article 15a that an implementing decision will deal with measurement uncertainties in order to take them into account when assessing the compliance of the measurement with the limit emissions values. The Commission proposes a system such as if the operator complies with the provisions of Chapter II, then he is deemed to comply with the provisions of Chapters III and IV. The French authorities note that the emission monitoring periods and the emission limit values are not the same between Chapter II and the technical chapters. Installations subject to the LCP or WI BREFs are covered by BAT AELs which apply only during normal operating periods, whereas Chapters III and IV cover respectively ELVs during operating hours for Chapter III and all operating periods for Chapter IV.

Chapter II and the Decision on BAT for waste incineration only take into account periods of normal operating conditions (when the waste is burning and there is no malfunction) whereas Chapter IV takes into account the whole period of operation (when the waste is burning, whether there is a malfunction or not), thus a longer period. The French authorities also wish to point out that the scope of application is different between Chapters II and IV. Chapter II only applies to incinerators that exceed the IED threshold whereas Chapter IV applies to all incinerators, without a capacity threshold. Furthermore, emission limit values and BAT AELs have different status between the different chapters, in particular with regard to derogations.

Similarly, the ELVs in Chapter III only take into account the "operating hours" of the installation. "Operating hours" are defined as the hours during which the installation is in operation, excluding start-up and shut-down phases. The decision establishing the BAT conclusions for large combustion plants only takes into account periods of normal operating conditions (period of operation of the plant, excluding start-up and shut-down phases and various other malfunctions that may be encountered).

Thus, Chapter III takes into account a longer period of operation than the BAT conclusions of the LCP BREF, taken in application of Chapter II. The French authorities would also like to point out that the scope of application is different between chapter II and chapter III. Chapter III excludes certain activities that are included in chapter II.

**France therefore notes that the Commission's current proposal to consider only Chapter II would result in a lack of monitoring and emission limit values for periods which are not normal operating conditions, as defined for Chapter III. It therefore proposes**

- To amend the wording so that paragraphs 15a(1) and (2) apply only to an assessment of compliance with limit values under normal operating conditions of the installation;
- To delete Article 15a(3) because compliance with the ELVs of Chapter II does not allow compliance with the ELVs of Chapters III and IV.

In addition, the use of the term "validated average emission values" does not seem to be appropriate as it is not defined in Chapter II.

This expression leads to several sources of confusion. On the one hand, because this article only applies to installations covered by Chapter II, yet this expression only appears in the Directive in the annexes to the technical chapters (III, IV in particular). On the other hand, this concept is similar to the assessment of compliance of continuous measurement only. In order to verify this compliance, it is also necessary to set regulatory uncertainties, as defined in Annex V (part 3-9) for installations subject to Chapter III and in Annex VI (part 6-1.3) for installations subject to Chapter IV. Furthermore, in the written

comments of the Netherlands, a wording is proposed which refers to a "continuous measurement system". However, in the impact assessment, measure 7 in particular makes no mention of continuous measurement. On the contrary, the measure refers to compliance with ELVs for combined wastewater flows from different processes and installations, which are generally 24-hour average measurements with a monitoring frequency of e.g. monthly. Therefore, in the absence of a modification of this term, France would welcome the addition of a definition to define it, or even an explicit mention in the permit conditions (Article 14). The French authorities consider that the assessment of compliance with ELVs outside continuous measurement should be covered by this new proposal of Article 15a.

Beyond the amendments proposed below, the French authorities wonder about the Commission's intention once the implementing act foreseen in Article 15a(2) is published. Indeed, will this act, which will provide a framework for the assessment of compliance with the ELVs set during the normal operating periods of installations covered by Chapter II, be intended to amend the technical annexes of Chapters III and IV (as permitted by Article 74.1 proposed by the Commission)?

The Commission has indicated in Measure 7 ("Measure 7: Introduce common rules for assessing compliance with emission limit values under Chapter II of the IED.") of its impact assessment on this new article that a study is being carried out on this subject. Could the Commission say more about this?

France disagrees with the proposal of some Member States to add Chapter V to the chapters concerned by this new proposal of Article 15a. As an illustration, ELVs for volatile organic compounds with specific risk phrases are determined in Annex VII, part 4 (relating to Chapter V), so they are not included in the BAT conclusions drawn under Chapter II (e.g. no BAT AELs for specific VOCs in the conclusions relating to surface treatment using solvents).

France therefore proposes:

**« Article 15a**

*1. For the purpose of assessing compliance under normal operating conditions with emission limit values in accordance with Article 14(1), point (h), the correction made to measurements to determine the validated average emission values shall not exceed the measurement uncertainty of the measuring method.*

*2. The Commission shall by [OP please insert date = the first day of the month following 24 months after the date of entry into force of this Directive] adopt an implementing act establishing the measuring method for assessing compliance under normal operating conditions with emission limit values set out in the permit with regard to emissions to air and water. This implementing act shall be adopted in accordance with the examination procedure referred to in Article 75(2).*

*The method referred to in the first subparagraph shall address, as a minimum, the determination of validated average emission values and shall set out how measurement uncertainty and the frequency of exceedance of emission limit values are to be taken into account in the compliance assessment under normal operating conditions.*

*3. Where an installation falling within the scope of this Chapter also falls within the scope of Chapter III or IV and compliance with emission limit values set in accordance with this Chapter is demonstrated pursuant to paragraph 1 of this Article, the installation shall be deemed to also comply with the emission limit values set pursuant to Chapter III or IV for the pollutants concerned. »*

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

**Article 3(13a):**

The French authorities do not support the deletion of the term "binding" from the definition of environmental performance levels associated with best available techniques BAT AEPL. BAT AEPLs must be mandatory.

**Article 14a: Environmental Management System (EMS)**

Although the French authorities welcome the deletion of the provision of a "summary" of the EMS in Article 14a (3), they are still strongly opposed to the provision of "relevant information to be published"

(new term proposed by the Presidency) on the Internet, the content of which will be determined by an implementing act. **This is an important point for France.**

This provision of "relevant" information on the Internet presents a very heavy administrative burden for operators and for the competent authority, which will have to ensure that it is actually put online, but also to check whether its content corresponds to the requirements of the Directive.

The French authorities therefore propose to delete point 3 of Article 14a proposed by the Commission:

~~3. The EMS of an installation shall be made available on the Internet, free of charge and without restricting access to registered users.'~~

## **Article 9:**

France wishes to recall the importance of being able to take into account its comment following the WPE of 25 November 2022, namely:

The deletion of paragraph 2 of Article 9 makes it mandatory to impose energy efficiency requirements on installations subject to both the IED and the ETS Directives, including combustion installations with a capacity greater than 50 MW.

While France supports this change for the mainland, it is difficult to reconcile for the outermost regions (Martinique, Guadeloupe, etc.).

Indeed, the French outermost regions are characterized by non-interconnected and small-scale electricity networks, with structural constraints that strongly limit the energy efficiency of the installations. Temperatures are higher than in continental Europe, which degrades the efficiency of the thermodynamic cycles of the power plants, which are therefore mechanically lower than the references in continental Europe; they do not operate permanently at their nominal efficiency because of productions adapted to the demand; there are few requests for the use of heat, which would allow them to develop cogeneration; the efficiency of the installations is lower, because of the use of different biomass sources.

Finally, these installations produce up to 50% of the electrical needs of these territories.

Therefore, it is not possible to achieve energy efficiency levels similar to those of equivalent combustion plants in continental Europe.

The French authorities propose to take these specificities into account by adding the following paragraph to Article 9:

**"For activities listed in Annex I to Directive 2003/87/EC, Member States may choose not to impose requirements relating to energy efficiency in respect of combustion units or other units emitting carbon dioxide on the site for installations located in an outermost region as referred to in article 349 of the Treaty on the Functioning of the European Union."**

## **Cluster 4: Public participation**

### **Articles 5(4) and 24(2): Summary of permits**

The French authorities thank the Presidency for deleting the obligation to put online a "summary of the decision with an overview of the main permit conditions " in Article 24(2). This obligation was already deleted in Article 5(4). **This is indeed a major point for France because of the extremely high administrative burden it represents.**

Although the French authorities welcome this deletion, they do not wish to add a new requirement to put a "**consolidated permit conditions where relevant**". The drafting of consolidated versions of permits would again be extremely time-consuming, even though all the conditions of the permit are already present in the permits and the general binding rules applicable to IED installations. The French authorities therefore propose, compared to the wording proposed by the Commission in April 2022:

- To delete Article 5(4) which introduces the summary of the permits;

- And to leave Article 24(2) unchanged.

### **Cluster 5: sanctions and compensation**

In the WK 1032/2023 INIT steering note of 24 January 2023, in preparation for the WPE of 30 January, the Presidency had proposed a large number of changes that the French authorities had generally supported. However, the steering note prepared for WPE of the 7 February deletes most of the additions previously made and makes new changes. France is not in favour of the deletions made, except for the one made to the first paragraph of Article 79(2), which deletes the criteria for penalties relating to SMEs.

France recalls that the negotiation of the Directive on the protection of the environment through criminal law is more advanced than that of the IED Directive, and should be published before the revision of the IED. Therefore, the French authorities believe that it will be appropriate to align the criteria of the IED Directive with the corresponding criteria, once the negotiation of the drafting of the Environmental Crime Directive is finalised. It recalls that it supports a wording which indicates that as soon as a Member State respects the requirements of the environmental crime directive, it will respect the requirements of article 79 of the IED directive.

They therefore propose to maintain the Presidency's proposal in Article 79(5):

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.

France thus supports the position of Germany indicated in its written comments of 7 February 2023 referenced WK 1447/2023 ADD 4. France is in favour of a clear horizontal approach to environmental penal and (for legal persons) administrative sanction regulation, as agreed in the revised draft of the Environmental Crime Directive (Council's general approach of December 9th, 2022).

France supports to ask the Council's legal service to recommend a respective general approach and model reference to the relevant ECD regulations. In order to avoid inconsistencies or contradictions, this same model reference should also be used in other currently negotiated directives and regulations on environmental and climate protection (e.g. the F-gas Regulation, the Regulation on Ozone Depleting Substances), taking into account the necessary differentiation between criminal and administrative sanctions.

A clear and effective reference to the Environmental Crime Directive would avoid extensive duplication of work and potentially huge transposition and application issues in Member States.

Sectoral environmental secondary legislation should limit its scope to minimum sanction requirements for minor infringements, providing for horizontally consistent, adequate and proportionate administrative sanctions for natural and legal persons.

### **Transitional provisions**

The Presidency proposes to amend some transitional provisions to clarify that the new Directive will apply at a fixed date as a last resort (20 years and 12 years respectively for existing and new sites). It is proposed that the new Directive should therefore apply at the closest of the following possible dates

- When the permit is granted or updated;
- Or 4 years after the publication of the "future" BAT conclusions;

- Or **20 years** after the entry into force of the new directive for existing sites (transitional article "C") and **12 years** for new sites (transitional article "E").

Until this deadline, the requirements of the directive in its current 2010 version continue to apply. France supports the recital and the transitional articles amended in this sense, but considers that the 12 and 20 year deadlines are too long, and that shorter timeframes should be sought.

### **Article specifying the transitional period "A"**

France is in favour of deleting this transitional article "A".

### **Article specifying the transitional period "B"**

The French authorities propose that this transitional period should also apply to the setting of the strictest possible emission limit values that cannot be required until new decisions on BAT conclusions have been taken.

It is also appropriate to make the BAT-AEPLs applicable for installations that are the subject of an application for a modification (Article 20) or falling under Article 21(5) or that are the subject of a first permit application after the date of entry into force of the Directive plus 24 months.

They therefore propose the following wording (addition in underlined bold):

*« In relation to installations carrying out activities referred to in Annex I, Member States shall apply Article 14(1) (aa), 14(1) (h), **the strictest possible emission limit values of Article 15(3)**, Article 15(3a) and Article 15(4a) within 4 years of publication of decisions on BAT-conclusions that have been published after [OP please insert the date = the first day of the month following 24 months after the date of entry into force of this Directive] relating to the main activity of an installation in accordance with Article 13(5).*

*Installations first permitted, **or permit granted or updated pursuant to Article 20 or Article 21(5)**, after the publication 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. »*

### **Article specifying the transitional period "C"**

The French authorities welcome this transitional provision. However, they propose to delete: "~~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]~~", in order to clarify the case of possible sites that would not be put into operation within 12 + 24 months after the entry into force of the Directive. Indeed, it is appropriate to take into account an installation which has submitted a complete permit application but which has not yet started operating within the 24-month period.

The French authorities consider that the proposed period of 20 years for the application of Articles 15(1), 15(3), 15(4), 15a and 16(3) is too long and propose to look for a sooner deadline.

### **Article specifying the transitional period "D"**

The French authorities propose to take into account also the case of installations undergoing a substantial change (Article 20) or falling under Article 21(5) or subject to a first permit application after the date of entry into force of the Directive plus 24 months.

They propose that this transitional period should also apply to the setting of the strictest possible emission limit values which cannot be imposed until new decisions on BAT conclusions have been taken.

Furthermore, they consider that this article should also cover installations with a new 3.5 activity as a result of the revision of the directive.

Concerning this last point, the French authorities would like to point out that recital 37 of the current IED Directive states:

*"(37) With regard to the inclusion in the scope of national laws, regulations and administrative provisions brought into force in order to comply with this Directive of installations for the manufacturing of ceramic products by firings, on the basis of the characteristics of the national industrial sector, and in order to grant clear interpretation of the scope, Member States should decide whether to apply both the criteria, production capacity and kiln capacity, or just one of the two criteria."*

Therefore, France has chosen to subject ceramic manufacturing sites to activity 3.5 of the IED directive when both criteria of production capacity and kiln capacity were met. However, the Commission's proposal provides for the sites concerned to be those that meet one or the other of these criteria. The Ceramics BREF is currently being revised and is expected to be published in 2025. France considers that the BAT conclusions resulting from this revision will be adapted and appropriate for "new entrant" sites (i.e. sites where one **or** the other criterion will be fulfilled, which concerns about 30 sites in France) but with the same transitional period as for sites newly subject to activities 2.3 (aa), 2.3 (ab) and 6.2 due to the modification of the IED, i.e. 4 years after the entry into force of the directive

They therefore propose the following wording (**addition in underlined bold**):

*« In relation to installations carrying out activities referred to in Annex I, point 2.3 (aa), point 2.3 (ab), **point 3.5 (in its wording referred to in this Directive)** 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), **the strictest possible emission limit values of Article 15(3), 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].***

**Installations first permitted, or permit granted or updated pursuant to Article 20 or Article 21(5), after the publication 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.** »

## Article specifying the transitional periods "E"

The French authorities support this article, however an error must have occurred as it is not the intention that the IED Directive in its current 2010 version applies to sites with new activity in the scope of the Directive (such as extractive industry) and therefore the paragraph should be deleted:

~~"Until that day such installations shall comply with Directive 2010/75/EU."~~

The French authorities consider that the proposed time limit of 10 years for the application of Articles 15(1), Article 15(3), Article 15(4), Article 15a and Article 16(3) is too long and propose to look for a sooner deadline

## Cluster 7: scope of industrial installations

### Article 42

The French authorities welcome the clarifications made in Article 42 and propose to specify that these are two cumulative criteria.

In addition, it could be suggested that

- within criterion (a), to specify that the emissions analysed for the justification of criterion (a) cover at least all the criteria followed by Chapter IV and Annex VI relating to the incineration/co-incineration of waste;
- within criterion (a), to specify which fuels are the least polluting available on the market or to specify how the competent authorities should define this;

- within criterion (b), to clarify the reason for excluding nitrogen oxides, sulphur oxides and dust. It can be proposed that the emissions analysed for the justification of criterion b) should cover all the criteria followed by Chapter IV and Annex VI on waste incineration/co-incineration.

The French authorities would like to have confirmation from the Commission on the following points. If the exemption in Article 42 is used:

- Will the installation incinerating the cleaned gas have to fall under activity "1.1 fuel combustion" (subject to the IED thresholds being met) and will it have to comply with the requirements of Chapter III of the IED Directive?
- Will the waste gasification or pyrolysis installation have to fall under activity 1.4 and/or 5.2? If so, the requirement in Article 42 could specify these elements.

France therefore proposes the following wording:

*« b) **for all parameters covered by Annex VI**, the incineration does not cause emissions higher than emissions from incineration or co-incineration of waste.*

**These two criteria are cumulative.**

**If covered by this exemption, the combustion installation must comply with the provisions of Chapter III.**

**If covered by this exemption, the gasification or pyrolysis plant is no longer regarded as an co)incineration plant as defined in Article 3. »**

With the following methodological remarks:

- (1) This verification concerns all the parameters considered in Annex VI on the incineration and co-incineration of waste.
- (2) France would like the Commission to specify how the Member States determine the "least polluting fuels available on the market" and how these will be harmonised at European level. For example, reference values could be introduced.

The French authorities are also in favour of determining conditions that would make it possible to promote the circular economy while guaranteeing a high level of environmental protection. In this sense, they are open to the creation of a new heading, proposed by Belgium in its written comments (WK 17919/2022 INIT), which would allow for homogeneous prescriptions between Member States and adapted to these specific and emerging processes.

The French authorities consider it necessary to launch a study to assess the relevance of introducing such a heading and, if necessary, to propose specific requirements for waste pyrolysis and gasification installations.

Proposed additional wording:

"The Commission shall assess the appropriateness of introducing a new entry and requirements for pyrolysis and gasification plants for waste and shall, if appropriate, present a legislative proposal by XX XXX 2027."

While waiting for possible specific requirements for this sector, we believe it is necessary to guarantee adequate environmental protection and to ensure that the incineration requirements of Chapter IV and the BAT WI are applied if substances resulting from these thermal treatments are incinerated. Indeed, the scope of the current BREF WI is based on activities 5.2-a and 5.2-b, and these installations, if they are concerned, should remain well included in this scope. Indeed, under the pretext of recovery of part of the treated waste, some emissions from the installation should not be omitted.



Please find below Polish comments on art. 15(5) regarding the force majeure derogation aiming to facilitate the exchange of views during the upcoming WPE meeting.

Poland welcomes the Presidency proposal as it's very well balanced and efficiently captures the main objectives of the extraordinary provisions. Below we would like to highlight just two issues which in our opinion should be duly considered.

1. The proposed text provides a possibility to derogate from the BAT AELs and the BAT AEPLs without any reference made to the ELVs set out in the IED Annexes V-VIII as a so-called "safety net". What means that ELVs will still apply even if derogation would be used. We consider this as a potential risk limiting fast and effective reaction in case of crisis. The existing IED provisions aiming to deal with e.g. unexpected interruption in the supply of low-sulphur fuels or natural gas, given in articles 30(5) and 30(6) are limited to the single "combustion plant" defined through the aggregation rules. Therefore existing flexible mechanisms may not be sufficient to effectively face the crisis.

That is why we suggest to include derogation in the art. 15(5) (eg. after the list of premisses triggering application of the derogation) the following paragraph:

*The competent authorities may also choose to not apply provisions described in art 15.4 subparagraph 2 if it's necessary to apply derogation in a meaningful manner.*

2. There is also an issue addressing the extent of the future crisis which according to the proposal should encompasses at least two or more Member States. In our opinion it's not really feasible to predict a character of future crisis including its geographical distribution. At the same time it's clear that the mechanism described in art. 15(5) should not apply to individual installations. Therefore we suggest to make a reference to the industrial sectors instead of the MSs.

*(...) due to extra ordinary circumstances beyond the control of the operator and Member States, having negative consequences at the level of industrial sector/s rather than individual installations and leading to severe disruption or shortage of:  
(...)*

Art.	COM proposal	Pres proposal + suggestions for like-minded (in bold and underlined and strikethrough)
<b>15(3)</b>	<p>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.</p> <p>The emission limit values shall be set through either of the following:</p> <p>(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.</p> <p>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</p>	<p><b><u>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.</u></b></p> <p><i>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.</i></p> <p><i>The emission limit values <b><u>based on BAT-AEL</u></b> shall be set through either of the following:</i></p> <p class="list-item-l1">(a) <i>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</i></p> <p class="list-item-l1">(b) <i>setting different emission limit values than those referred to under point (a) in terms of values, periods of time and reference conditions.</i></p> <p><i>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.</i></p>

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*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)	<p>1. Member States shall ensure that the permit includes all measures necessary <b>for compliance to comply</b> with the requirements of Articles 11 and 18. <b>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.</b> Those measures shall include at least the following:</p> <p>(a) emission limit values for polluting substances listed in Annex II <b>of Regulation (EC) No 166/2006*</b>, 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;</p> <p><b>(aa) environmental performance limit values;</b></p> <p>(b) appropriate requirements ensuring protection of the soil, <b>and</b> groundwater <b>and surface water</b>, and measures concerning the monitoring and management of waste generated by the installation;</p> <p><b>(ba) appropriate requirements for an environmental management system as laid down in Article 14a;</b></p> <p><b>(bb) suitable monitoring requirements for the consumption and reuse of resources such as energy, water and raw materials;</b></p> <p>(c) suitable emission monitoring requirements specifying:</p> <p>(i) measurement methodology, frequency and evaluation procedure; and</p> <p>(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;</p> <p>(d) an obligation to supply the competent authority regularly, and at least annually, with:</p> <p>(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</p>	<p>1. Member States shall ensure that the permit includes all measures necessary <b>for compliance to comply</b> with the requirements of Articles 11 and 18. <b>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.</b> Those measures shall include at least the following:</p> <p>(a) emission limit values for polluting substances listed in Annex II <b>of Regulation (EC) No 166/2006*</b>, and for other polluting substances, which are likely to be emitted from the installation concerned in significant quantities, having regard to their nature, <b>their hazardousness</b> and their potential to transfer pollution from one medium to another,</p> <p><b>(aa) environmental performance limit values in accordance with Article 15(3a);</b></p> <p><b>(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</b></p>

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(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<sup>1</sup>[<sup>1</sup>] 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

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<sup>1</sup> [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.]

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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 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 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<sup>2</sup> 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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<sup>2</sup> [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.]

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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.