

FuelsEurope position paper on the revision of the Industrial Emissions Directive

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FuelsEurope supports the European Green Deal objectives to review EU measures to address pollution from large agro-industrial installations whilst also ensuring consistency with other related policies. As such, we continue to support the three underlying principles of the Industrial Emissions Directive (IED) that should prevail throughout the revision process:

1. A permitting process which is based on BAT conclusions, resulting from thorough data collection practices, which enables the derivation of meaningful BAT associated emissions levels;
2. An integrated approach aiming to protect the environment as a whole (e.g. addressing cross-media effects);
3. Consideration of the local environmental conditions and the technical characteristics of the installation(s) concerned.

High-level policy recommendations

Effectiveness:

- The IED should continue to support the overall ambition to help in **the most effective and efficient way** protecting the environment and human health from the adverse effects of pollution from large agro-industrial installations, thereby taking into account the state of environment in the area affected by these emissions. At the same time, the IED should also maintain sufficient flexibilities for the competent authorities in permitting.
- We support the holistic approach regarding pollutant substances sought by the Commission's proposal. However, efforts should only be focused on those pollutant substances that are relevant to the installation, which are emitted in significant quantities and have a potential for defining BAT-AELs that would significantly improve the level of protection of the environment and human health.
- All permit conditions being set at the lower ends of the BAT-AEL ranges 'by default' does not respect the underlying principles of the IED; also, an installation cannot perform at the best possible levels for each and every environmental aspect (from process optimisation point of view and cross media considerations).

- On EQS: All sources, from all sectors, where contribution to the observed exceedance has been scientifically established by the competent authority, should contribute to help achieve compliance with the EQS at stake (source apportionment approach).

Innovation:

- While supporting the flexibilities to test new techniques, we believe provisions should be included to provide the legal certainty needed to incentivise operators to test new techniques.
- Welcoming the creation of an innovation centre for industrial transformation and emissions (the 'centre' or 'INCITE') for collecting and analysing information on innovative techniques, including emerging techniques relevant to activities within the scope of the IED and characterising their level of development and their environmental performance.
- We support, that the centre's findings will be taken into account by the European Commission in the downstream Sevilla process to identify emerging techniques and establish associated ET-AELs in BAT conclusions.
- Strongly recommend to include provisions to ensure legal certainty for operators together with a sufficient time period to demonstrate the expected performance can be achieved by applying emerging techniques.
- Transformation plans should remain indicative and at company level.

Resources and chemicals:

- The Chemicals Management System should not go beyond current REACH obligations in the operators' Environment Management System.
- Environmental performance limit values (other than emission limit values) should be guiding and remain non-binding. We believe that the setting of binding environmental performance limit values should be left at the discretion of the competent authority, once a careful assessment has demonstrated that this requirement will not lead to inconsistencies across permit conditions set elsewhere.

Decarbonisation:

- Full support for Article 9.1 of the existing IED to be maintained: MS competent authorities shall not set GHG permit conditions for installations that are already regulated under the EU ETS.

Penalties / Compensation / Confidential Business Information:

- Any breaches to the IED and transposing legislation are already considered environmental crimes under EC Directive 2008/99 and that legislation should apply. Deviating from these rules in specific environmental directives is inconsistent with the EU's better regulation initiative and creates an incoherent, inconsistent penalties regime.
- The IED is an administrative law regime and not a civil liability directive. If there is a need for provisions on compensation as outlined in the IED proposal, they should be included in

the Environmental Liability Directive (ELD), if the EU legislature decides to add a civil liability regime to the ELD.

- Without prejudice to the above, any person asserting a claim for compensation shall be required to prove a direct causal link between the damage to human health and the alleged perpetrator: that (i) the emissions were in violation of national measures adopted pursuant to the IED, (ii) there is clear damage to human health, and (iii) such emissions caused such health damage. The competent court should apply the law of evidence and the civil procedure of the Member State, including rules relating to the burden and standard of proof.
- Subject to competition law, if confidential business information needs to be shared during the Seville process, it is fundamental to provide equal access to all TWG members (including industry representatives).

FuelsEurope, the voice of the European fuel manufacturing industry.

FuelsEurope represents with the EU institutions the interest of 38 companies manufacturing and distributing liquid fuels and products for mobility, energy & feedstocks for industrial value chains in the EU.

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