

Stockholm 8th of April 2021

The Confederation of Swedish Enterprise's comments on the revision of the Industrial Emissions Directive (IED)

The Confederation of Swedish Enterprise would like to conclude that the IED has proven to be effective reducing pollutants and emissions and to preserve efficiency. We therefore recommend the adoption of a pragmatic, data-driven and science-based approach when revising the legislation. The outcome of the refit exercise should follow a strict application of Better Regulations Principles.

The Confederation especially want to emphasize the following key messages in regards of the revision of the directive. These has also been submitted in the reply to the European Commission's Targeted Stakeholder Survey.

The Confederation supports the objectives of the Commission's Green deal to review EU-measures to address pollution from large industrial installations, look at the sectoral scope of the legislation and how to make it fully consistent with climate policies. It is important that any review of measures supports a competitive EU industry and enables its transformation. The EU industry is at the forefront of reaching carbon neutrality and becoming circular and this needs to be enchanted by upcoming EU policy.

Key messages:

SCOPE

IED has proven to be effective in reducing pollutants, emissions and to preserve efficiency. The Confederation therefore want to stress, in order to preserve this, that the revision of the directive need to remain the subject matter (art 1) and the scope to keep IED continuous efficient. Any widening of the directive (with GHG, chemicals, circular economy and new sectors) should only include what is not regulated in other legislations, being EU-wide activities and respect the integrated approach for the environment taken as a whole (cross-media effect). Cross-media effects should always be carefully assessed to avoid suboptimal investments.

Extensions of IED should be refrained from not to undermine the efficiency of other existing instruments (e.g. ETS, Non-ETS, MCP-D, REACH, Landfill Directive). Activities that are not included in IED today are regulated by other legislation, for example, the extractive industry is already regulated, monitored, and controlled by EU law (eg. Directive on Management of Extractive Waste, Water Framework Directive and the Natura 2000 regulation). Also the geology in EU is not EU-wide and differs a lot in different countries.

BAT- AELs, BAT- AEPL, and ET-AELs

A significant part of the IED are the legally binding BAT-AELs. Setting of legally binding BAT-AELs needs to continue to follow the BREF Guidance, based on the data collection exercise, knowledge of the conditions in different sectors and verified by the Member States. The principle that the techniques listed in BATC are neither prescriptive nor exhaustive need to remain as well as the definition of BAT.

BAT-AEPL should remain not-binding performance levels. The non-binding performance levels (BAT-AEPL) need to remain to foster resource efficiency and circular economy. Setting legally binding rules for specific energy consumption (energy efficiency) will be counterproductive not only for more resource efficient, advance, specialized products and new innovations but also for the integrated approach (material, chemicals, water).

It is important that the existing concept of BAT-AELs is preserved and not diluted with other concepts as ET-AELs. It is not suitable to derive “ET-AELs” from the general description of an Emerging Technique in the BREF. This because of the consisting significant uncertainties due to low maturity of the decarbonisation options (small scale or pilot projects) in many sectors as acknowledged by Woodplc decarbonisation study (03/03/2021)¹.

GREENHOUSE GASES

The EU Emissions Trading System (EU ETS) is a cornerstone of the Union’s climate policy and its key tool for reducing GHG emissions in industry in a cost-effective way. The EU ETS is and remain the most appropriate regulatory tool to organize the reduction of GHG emissions from industrial installations.

Due to the different regulatory approaches, tackling GHG emissions both under the ETS and the IED cannot be done in a consistent manner and would simply result in inefficient regulations. The IED is a control and command, technology-driven instrument, while the EU ETS is a market-based instrument, which cover industrial emissions. Tackling GHG emissions also under the IED would change its core principles and would make the BAT and permitting processes very complex both for operators and authorities.

Many industrial plants in the scope of IED are also covered by the EU ETS. Therefore it is important that IED article 9 remains as it is. Since GHG and pollutants have different types of environmental and geographical impacts, it makes sense to tackle them through separate dedicated instruments. Due to the different regulatory approaches, tackling GHG emissions both under the ETS and the IED cannot be done in a synchronized manner and would simply result in inefficient overregulation.

Regulating GHG at the unit level would also be inefficient and counterproductive. By setting a GHG emissions constraint at the level of each unit instead of site/installation level, the IED would leave no flexibility to the operator of the site to optimize the abatement option through a cost-efficient approach (following the abatement cost curve).

¹ https://circabc.europa.eu/d/a/workspace/SpacesStore/c027a361-02da-49f4-b187-63f9e429561d/Final_report.pdf

ENERGY EFFICIENCY

This is already covered extensively in the Directive and, in the BREF guidance as well as through a horizontal BREF. To expand this with legally binding rules on energy efficiency doesn't add any additional value and would be counterproductive for the integrated approach of IED.

Process-specific BATs for energy efficiency and associated energy consumption levels are already given in the appropriate sector-specific BREFs. Many of BAT conclusions include requirements of energy management plans, a list of techniques deemed to be energy efficient, and BAT-AEPL on how much energy is required in an efficient production process. There has also in later BREFS/BATC been BAT-AEPLs on energy use for a process and/or even for a product. As it is difficult to set this type of benchmark for EU industry, these should serve as a base for the competent authority when setting the permit but not being binding. In industrial production it is also common that when a product is upgraded/improved the use of energy increases in the production stage, but the total effect for the improved product is less usage of energy.

Energy efficiency is always of high interest for industry since it is a key instrument for remaining competitive. Innovation optimizes these aspects continuously. With regards to energy consumption there are also tradeoffs, especially when considering decarbonization objectives, since despite best efforts and technological progress, it may not be possible to reduce emissions to air or water without using additional energy.

CIRCULAR ECONOMY

The IED is a legislation focused on industrial processes and not products (Art 1 Subject matter). In a Circular economy on the other hand focus lies on products and resource efficiency. Therefore IED is not the main tool to use to increase resource efficiency. In the words of the study commissioned by the COM *"it is perhaps not unsurprising that the IED is not the ideal instrument to deliver circular economy objectives."* The Circular Economy Action Plan with the upcoming initiatives, addresses the objectives for circular economy with a focus on resource efficiency for materials and products.

The IED already contributes, via the BREFs, to an enhanced circular economy via a continued relative decoupling for the use of resources e.g. material and water use, energy use and waste generation. To set binding BATEALs for primary and secondary raw material use, or other materials should be left to the operator of the plant not the legislator.

IED focuses on a specific sector which makes it difficult to legislate about one sector's use of another sector's residues, as a BREF can only regulate the sector within its remit.

Jenny Svärd
 Director Environmental Policy
 Email: jenny.svard@svensktnaringsliv.se
 +46 8 553 431 36 M: +46 72 451 59 52
www.svensktnaringsliv.se