EEB
European Environmental Bureau

Transparency and participation in environmental decision making

Briefing on Industrial Emissions Portal

July 2022, Version 1

Transparency and participation in environmental decision making

- Industrial Emissions Portal-

We are Europe's largest network of environmental citizens' organisations. We bring together over 180 civil society organisations from more than 40 European countries. Together, we work for a better future where people and nature thrive together.

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On 5 April 2022, the European Commission adopted their proposal for a revised Industrial Emissions Portal Regulation (IEP-R).[1] Considering the new elements presented, it doubtlessly represents a step forward towards better reporting of releases from industrial processes. However, there are aspects to be further strengthened and clarified. **In this briefing, we provide our assessment on the new elements included therein.**

> *In our view, the Portal shall not just enable the public to be made aware of pollution impacts from industrial activities, information is to be provided in such a way that it empowers the various users to track progress on pollution prevention, enables benchmarking of performance and promotes compliance. It needs to enhance participation and accountability in environmental decision-making.*

EEB is publishing a series of briefings on different aspects relevant to the review of the IED and IEP.
All available briefings can be accessed and downloaded here: https://eipie.eu/briefings-by-eeb/
Or scan this QR code:

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[1]   Available   here: https://environment.ec.europa.eu/publications/proposal-regulation-industrial-emissions-portal_en

The E-PRTR in a nutshell

The European Pollution Release and Transfer Register (2004) is based on the UNECE Kyiv Protocol adopted in 2003[2], its aims to provide information on pollution from most impactful industrial activities, covering those addressed by the Industrial Emissions Directive (IED). The Protocol is based on the Aarhus Convention of 1998, which in its Article 5(9) provides that "*Each Party shall take steps to establish progressively, [...], a coherent, nationwide system of pollution inventories or registers on a structured, computerized and publicly accessible database compiled through standardized reporting. Such a system may include inputs, releases and transfers of a specified range of substances and products, including water, energy and resource use, from a specified range of activities to environmental media and to on-site and offsite treatment and disposal sites*".

The Zero Pollution Action Plan[3] developed within the EU Green Deal context puts an important emphasis on the pollution monitoring and outlook[4]. Monitoring requirements as to releases and consumption, the obligation to hold a permit and to provide the necessary evidence for complying with permit conditions are set within the IED and the Best Available Techniques Reference Documents.

The operator has to send to the competent authority the annual compliance report, which should also contain the compliance data on water and air quality but also regarding EU waste and chemicals legislation. The Aarhus Convention provides for a clear principle of overriding interest for disclosure where that information relates to emissions into the environment. Therefore, requirements to make information publicly available stem directly from those legal instruments.

> **The Portal can be ideal tool for collecting all needed information in one place. Therefore, the proposal is not generating new reporting obligations, but a more effective use of information for various purposes.**

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[2] See https://unece.org/env/pp/protocol-on-prtrs-introduction

[3] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Pathway to a Healthy Planet for All EU Action Plan: 'Towards Zero Pollution for Air, Water and Soil' COM(2021) 400 final.

[4] Ibid. section 3.4

The main problems

The European Environmental Agency (EEA) as executive agency hosts the European Industrial Emissions Portal and enables displaying and sharing of information (performance data, regulatory information) reported by member states[5].

According to the Kiev Protocol, the portal must fulfil a triple aim: *"**to enhance public access to information** through the establishment of coherent, integrated, nationwide pollutant release and transfer registers (PRTRs) [...] **f**acilitate public participation in environmental decision-making as well as contribute to the prevention and reduction of pollution of the environment."* The Commission's proposal only addresses the first aspect.

The portal does not offer a user-friendly dashboard capable of EU-wide benchmarking of the environmental performance of IED industrial activities:

- Useful information such as permit conditions, inspection reports findings or other enforcement information (e.g. monitoring reports) and all other relevant data enabling the authorities to assess compliance with the permit conditions are not directly integrated in the portal. Permit ambition cannot be compared, also due to absence of powerful search filters.

- Performance data related to inputs (water consumption, energy use and type, chemicals, resources etc) is not even made available.

- Release and transfer information is also provided in different format (in tonnes per site and year) whilst pollution prevention standards and emission / performance ranges associated relating to that activity (see EU BREFs) are expressed in concentrations, hence it is not possible to assess and benchmark installations in their efforts on pollution prevention and control, which should be the primary objective.

- Despite the obligation existing since 2004, the Portal fails to address emissions from products referred to as 'diffuse' emissions.

- Information is not put in context; it is difficult for citizens to understand the scale of pollution and health / hazard relevance they may be exposed to. Performance rating is not being provided.

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[5] Available here https://industry.eea.europa.eu/ (last accessed July 2022)

Policy recommendations

Assessment of Commission's proposals with proposals for further improvement

I. Updating the Annexes – the lists of pollutants/thresholds and activities

The Commission aims to address the updating of the outdated **Annexes I** (list of activities with reporting thresholds) **and II** (list of pollutants with reporting thresholds) in the future through delegated acts (Art. 14). Civil society regrets that the updating of these Annexes is not already part of the new Regulation proposal (IEP-R) but delayed to uncertain future.

Pollutants/thresholds related points:

The scientific findings of harmful impacts of a number of new pollutants have accumulated during the past 16 years since the list of pollutants monitored by the Register was compiled in 2006. This is reflected in the OECD study from 2014[6] comparing the E-PRTR to the Registers from other industrialized countries like US, Canada, Australia, Japan, showing that 126 pollutants are in common for 4 of them, and 177 for the three most progressive of them. This demonstrates a huge gap which the E-PRTR with only 91 pollutants needs to compensate. Even the Commission's own Impact assessment[7] accompanying the current proposal of the new Regulation states that just for harmonising with Water Framework Directive 48 additional pollutants could be added immediately. Substances meeting the properties of very high concern pursuant to REACH were not added, just a very limited list already subject to authorisation.

A comprehensive scope is necessary: First, pollutants listed in **Annex II of the IEP-R** will require the permit writers to set emission limit values, where relevant, in the IED permits (IED Art. 14(1a)) hence the necessity to deal with the problem at source. Secondly, the list of pollutants considered for future addition (Art. 14(2) of the IEP-R) are already subject to reporting obligations due to the EU environmental acquis obligations, reporting information already exist and hence should already be included. Better use of existing data will improve policy coherence and level playing field. Thirdly, some pollutants currently listed under the IED Annex II list will disappear with the new pollutants list provided by the IEP-R, which is a backtracking of current requirements.

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[6] OECD (2014), Environment, Health and Safety Publications, Series on Pollutant Release and Transfer Registers, No. 16: "Global Pollutant Release and Transfer Register, Proposal for a Harmonised List of Pollutants": Executive summary page 10, Available at: https://one.oecd.org/document/ENV/JM/MONO(2014)32/en/pdf

[7] DGENV – Impact Assessment of E-PRTR Regulation. Available at: https://environment.ec.europa.eu/publications/proposal-regulation-industrial-emissions-portal_en

Finally, the portal provides for "relevance thresholds" on reporting, meaning that even if information exists, it will not be made use of. In many cases certain operators will no longer report because they switched to cleaner processes e.g. water-based solvents displacing Volatile Organic Compounds release, electrification etc, this good practice information sharing would be lost, which is at odds with the above highlighted third objective of PRTRs. The European Commission also aims to cover at least 90% of the releases of the covered activities, with zero thresholds for substances displaying a particularly high hazard to the environment or human health. Retaining a reporting threshold will add administrative burdens, in contradiction to the desired high capture rates.

The following **improvements should be made**:

- **Annex II of IEP-R should at least match the current Annex II of IED**. In particular, for emissions to air groups of substances under points 1. [sulphur compounds] and 9. [fluorinated gases], and for emissions to water groups of substances under points 1. [organohalogen compounds], 2. [Organophosphorus compounds], 4. [CMR substances] and 9. [Biocides and plant protection products]. *(See dedicated briefing here https://eipie.eu/wp-content/uploads/2022/06/Annex-II-loss-IED-briefing.pdf)*;

- **The list of pollutants listed under the listed EU environmental acquis referred to under Article 14(2b) of the IEP-R should be directly listed to the Annex II through co-decision**. This concerns notably: a) substances listed under the Ambient Air Quality Directive and other pollutants subject to restrictions b) the watch list and priority (hazardous) substances regulated under the Water Framework Directive, a straightforward and interactive link as is currently the case to be retained: add "Substances listed in Annex X to Directive 2000/60/EC" and c) the Groundwater Directive pollutants;

- The wording of bullet (i) of Article 14(2) is to be amended to **include the substances subject to Articles 57 and 59(10) of REACH as a minimum. Further, we recommend adding the list of "substances of concern" definition as proposed under the Proposal establishing a framework for setting eco-design requirements for sustainable products** (COM (2022) 142[8], where relevant to industrial activities;

- **Add new bullet (vi) to include the substance group Persistent mobile organic chemicals (PMOCs) – group** (e.g. Trifluoromethanesulfonic acid and its halogenated homologues; 1-napthalenesulfonic acid; 1,3, di-o-tolylguanidine; GenX (2,3,3,3,-tetrafluoro-2 (heptafluoro-propoxy) propanioc acid. AKA FRD-903 or HFPO-DA);

- **The reporting thresholds (column 1 of Annex II of the IEP) is to be removed**. Where a pollutant is subject to reporting (e.g. due to the IED or other existing environmental legislation) the available data must be reported.

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[8]   see   https://environment.ec.europa.eu/publications/proposal-ecodesign-sustainable-products-regulation_en

Activities related points:

- **The following activities should be subject to different reporting metrics because of most global relevance:** energy production and energy conservation, water quality and supply, protein production, resource management, substitution of chemicals of concern. Other activities should be added such as "soil remediation activities and biodiversity protection measures" and "Industrial solutions for improved air quality", with possible activities specific thresholds;

- The reporting threshold for combustion activities above 20MWth is proposed, however the current Medium Combustion Plants Directive (2015/2193/EU) covers the combustion activities from 1MWth-50MWth. The Large Combustion Plants BREF also addresses individual combustion plants above 15MWth. Reporting and compliance assessment obligations apply above the 1MWth, even if those reporting requirements are basic, the first reporting cycle was due since 1st January 2021 (see Commission Implementing Decision (EU) 2019/1713). Hence the **reporting threshold for combustion plants should be lowered to 1MWth;**

- For **urban waste-water treatment plants**, it should cover wastewater streams that have pollutants of concern and flow rates that warrant particular concern, hence the 'population equivalents' should not be the only determining factor and should be reconsidered;

- **Activities carrying out CO_2 capture and storage or use (CCU) should be included;**

- The threshold for **mining activities** is much too high and should be lowered to at least 10ha or less. For coal and lignite mining activities the threshold should be removed due to high climate impact.

- **Activities covered by any Multilateral Environmental Agreement (MEA) should be included**, align classifications to the International Standard Classification code list (so to allow harmonised filtering);

- **Environmental footprint information relating to outputs (products) need to be addressed as 'diffuse' emissions**. Only the Norwegian PRTR[9] is pro-actively publishing production output and diffuse emissions from products in a centralised database in Europe. A possible approach, in absence of real monitoring data, could be to apply Emission Release Factors such as proposed by the OECD. Reporting should concern use, production and direct or indirect release of chemicals of concern/pollutants.

For further and future additions of pollutants and revisions of activities (beyond those highlighted above) through delegated acts, it is paramount that NGOs and academia should be involved in the process of developing these since they are the primary user group of PRTRs. Article 4(2) provides that the Portal should be designed for maximum ease of public access to allow the data to be continuously and readily accessible on the internet, hence NGO representing the public

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[9] See notably at section "products" https://www.norskeutslipp.no/en/Products/?SectorID=9999

interests should be involved systematically and when decisions are still open. This could be effectively added to Article 11(1) by adding the delegated acts of the Regulation to the provisions on public participation.

II. Streamlining IED/E-PRTR and using the Portal as a compliance and benchmarking tool

Although the IED clearly states that authorities shall make environmental information available to the public (Art. 24 IED), there is **a significant implementation deficit** at member state level[10]. A 2017 EEB report „Burning: the evidence"[11], updated in 2020, found **that over half of EU countries failed to meet the minimum requirements** when it comes to sharing permitting- and emission-related information online. Permits or other relevant documents cannot be directly downloaded, some share **incomplete information even in some cases subject to fees (e.g. Germany)**, whilst in some cases the authority's competence structures make it **unclear if and where data is available at all. The inadequacy of EU reporting rules led to high discrepancy between member states with regards to the quality and quantity of online data made available to the concerned public** – see EEA webpage[12]. Furthermore, the IED obliges Member States to not only make the permits and monitoring reports from IED installations available to the public, it also requires the operators to report, at least annually, all the relevant data to enable assessment with the permit conditions, this key information is however not centralised at EU level. See 2020 background briefing on the Industrial Plant Data Viewer (IPDV)[13].

To demonstrate **the way the environmental and regulatory information can be streamlined in a user-friendly compliance tool, the EEB has built the Industrial Plant Data Viewer (IPDV)**[14].

Examples of good practice: Due to the inertia at the EU (and most member states) level**, the EEB has compiled its own database and IT tool for large combustion plants**, demonstrating that it is possible to create a functioning centralised IT tool for effective monitoring and benchmarking based on the existing reporting requirements (see also *2020 background briefing on the Industrial Plant Data Viewer (IPDV)* for highlighting good practice in some countries like Italy, Ireland, Croatia and Czech Republic) as well as its Annex. The data was contextualised by graphic comparisons with the best/worst performing plants and emission standards from the legislation (Best Available Techniques associates emission levels). In countries like Croatia and Slovakia, real time online air monitoring data is made available, Italy and the Czech Republic have very complete reporting on annual compliance report information on standardised electronic format.

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[10] https://eeb.org/Burning_TheEvidence_Map/public/index.html
[11] https://eeb.org/publications/61/industrial-production/47539/burning-the-evidence.pdf
[12] https://industry.eea.europa.eu/
[13] https://eeb.org/wp-content/uploads/2020/09/EEB-briefing-on-highlights-on-Industrial-Plants-Data-Viewer.pdf
[14] https://eipie.eu/projects/ipdv/

Other notable examples are outside of Europe: The 'Blue Sky' map, developed by IPE in China provides for real time data at facility level are available on wastewater, air emissions, integrated with air and water quality information http://wwwen.ipe.org.cn/.

The US Air Markets Program Data system https://ampd.epa.gov/ampd/. Through this system, hourly averaged raw monitoring data can be downloaded at unit and monitoring location level, with various search filters and queries options, such as abatement techniques types and boiler or fuel types. Online publication occurs just one day after submission to the US EPA.

A very detailed information on technical plant configurations, fuel use, observed performance and detailed filters for various abatement techniques for power plants is available since 1990 and reported to the US EPA https://www.eia.gov/electricity/data/eia860/ . The reporting thresholds are much lower than in the EU (all electric power generation starting at 1MWel). In the US, thanks to forward looking IT reporting requirements, it is possible to compare any permit conditions set across various industry sectors with powerful search criteria in a few clicks. Mexico and Canada are also included in the permit database https://cfpub.epa.gov/rblc/index.cfm?action=Search.BasicSearch&lang=en .

An equivalent system would save a lot of time to identify those installations having implemented certain best available techniques (BAT), compare performance and track compliance at an EU level beyond language barriers.

In the current Commission's proposal for IEP-R, the only viable point of streamlining the publicly available information from IED (i.e. the environmental permits and emission reports from the installations, see its Art. 24) with the reporting of pollutant releases and transfers is the requirement of **Art. 3(2) point b IEP-R**. This article requires Portal to include <u>links</u> to other accessible registers, databases or websites established as a reporting requirement to other Union legislation on climate change, air, water and land protection, and on waste management.

The EEB believes that **these requirements are not explicit enough** and adding links to other websites is not a good practice in streamlining the information and making it more understandable to the user (e.g. vs. one-stop-shop), or **allow for compliance comparisons and benchmarking at EU level, overcoming language barriers.**

The EEB has been advocating for a centralised EU reporting and compliance tool for some time. Therefore, the useful streamlining requirements would **be to clarify the minimum data within Art. 3 (Content of the Portal).** For example, it should specifically list: **information required under Art. 24 of the IED** such as permit in force and the **proposed permit summary** (revised IED proposal), **information on derogations and monitoring reports, inspection reports** (Art. 23 IED), **information relating to the baseline report and site remediation**, but more importantly **the annual compliance report as per Art. 14 (1) point d (i) of the IED**, **the transformation plans** (*new* Art. 27d IED), **the consolidated EMS report** (*new* Art. 14a IED) etc should be made directly accessible through the Portal.

More importantly available information that is anyway generated under the IED, notably Art.14(1) point d (i) on the annual compliance report but also as key elements of the environmental management system (*new* Article 14a IED) but related EU legislations (such as environmental quality standards, EMAS and due diligence); should be directly integrated in the Portal instead of proposing just "links" to lengthy documents.

For this purpose, harmonised electronic reporting input forms should be developed by the EEA. **It should be the responsibility of the operator to <u>provide the required data directly to the</u>**

Portal whilst the competent authorities retain the responsibility to validate content and ensure quality assurance. The minimal expected data to be integrated and made publicly available are as follows:

- **The permit conditions in force and required data to enable compliance verification** (i.e. monitoring data on release and consumption, at least with a monthly frequency). Where it is not possible to host direct teleporting of continuous emissions monitoring raw data, that data should be made available on either national databases or company websites whilst the monthly average results are displayed in the Portal;

- **The inventory of inputs and outputs** relating to water, energy, waste and chemicals. For waste this should include the requirement to report the EU Waste Codes;

- To address the issue of contextual information the new IEP-R (Art. 3(1) points c/d/e combined with Art. 5(1) points d/e), **the performance data should be put into context, notably in relation to the outputs of the industrial activity**. It is already mandatory to report on production volumes, reporting installation specific performance in pollution intensities (e.g. mass of pollutant per amount of service/product provided) or by other metrics such a depollution / substitution index would enable a more accurate rating of efforts made by the operators of industrial activities and permit ambition set by member states to transition towards a clean, circular and climate neural industrial production;

- Other **information generated under the Environmental Management System** provision of the IED proposal (new Art. 14a), such as the key performance indicators set in relation to waste prevention, the resource use optimisation as well as share of renewable origin / recycled fraction, substitution of production and use of hazardous substances and/or substances of concern, but also carbon intensity performance of the activity and measures taken to achieve climate neutrality, milestones and actions planned pursuant to the transformation plan. Where relevant, also other **information reported under due diligence and corporate sustainability reporting**;

- Information enabling benchmarking of the operator versus state of the art in the sector;

- Information generated under the Seveso Directive framework, such as the Major Accidents Prevention Policy, accidents near miss information and the safety report. A two-level tier access right can be considered to ensure critical information is not shared with badly intended individuals;

- The validation status of the data is clearly marked (flagged) in the Portal, operators will have to report directly to the Portal the generated information, the competent authority would have to carry out the quality assurance by a given deadline.

- In order to ensure a high level of data quality and comparability, minimal calibration frequencies for monitoring devices and requirements as to measurement uncertainty levels should be set. Where measurement uncertainty is applied, the levels applied should be reported and a link to the latest accredited calibration tests (QAL-2) provided. This is necessary to improve the accuracy of the interpretation of the (non)compliance

situation as well as validity of reported performance data. Furthermore, the compliance regime provisions, notably for LCPs in Annex V part 3 and 4 of the IED, are outdated and incentivise cheating (e.g. measurements during start up and shut down may be disregarded, with high exceedance buffers up to 30% for single measurement results) The use of poorly performing measurement instruments due to absence of expected minimal measurement accuracy standards is another shortcoming.

The main **benefits of a centralised EU tool** are to ensure best use of current reporting obligations, mutualise efforts sharing and pooling of resources to make the interface more useful, for various end-users (e.g. the public incl. academia, NGO, investment rating entities, technique providers, operators willing to share and lean about best practice, permit writers and inspectors, stakeholders involved in standards making).

Putting **the performance data into context** would also enable to provide for a more accurate picture of the good performers, thereby **levelling the environmental playing field**. Improved reporting will also help to lower administrative burdens to competent authorities and stakeholders in charge of revising best available techniques reference documents (BREFs) since these will no longer rely on the goodwill of operators to provide the necessary data.

Enabling **environmental performance benchmarking** and compliance promotion at EU level **beyond language barriers**, the elaboration of the IT maintenance and helpdesks and mutualising efforts to that end (budget and tools) would satisfy much broader and diverse end-user interests, also stimulating the industry to further exchange good practice on pollution prevention.

Powerful search queries and filters are needed to provide for faster access to information knowledge. Search features should allow filtering the results by industrial categories, pollutants, environmental media, legal requirements etc.

The Commission proposes a harmonised permit summary (IED new Art. 5(4)). **The Portal could provide a user-friendly three-colour traffic lights labelling of Emission Limit Values and actual performance of installations against BAT-AE(P)L ranges from the BAT Conclusions, this should be used to easily assess the ambition/performance.**

Additional information (previous related input):

❖ EEB input to Inception Impact Assessment for the revision of the E-PRTR (October 2022)
https://eipie.eu/wp-content/uploads/2021/07/20201022-EEB-response-to-E_PRTR-inception-impact-assessment_FIN.pdf

❖ EEB input to Targeted Stakeholder Survey (TSS) on E-PRTR (April 2021)
https://eipie.eu/wp-content/uploads/2022/01/EEB-Submission-E-PRTR-Regulation-revision-Targeted-Stakeholder-Survey.pdf

❖ Joint civil society statement on the IED and PRTR (February 2022)
https://eeb.org/library/joint-civil-society-statement-on-the-revision-of-the-eu-ied-and-the-e-prtr/

❖ NGO preliminary assessment on the revised Proposals for IED and IEP-R (April 2022)
https://eeb.org/library/ngo-preliminary-assessment-of-the-european-commissions-proposal-for-revised-ied-and-e-prtr/

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