Joint civil society position for the trilogues on the Industrial Emissions Directive

Towards an EU Industrial Emissions Directive that protects people's health, the environment and industry

The EU Directive on Industrial Emissions (IED) regulates environmental and health impacts from the EU's largest industrial activities. **A rigorous IED would ensure people's right to breathe clean air, drink clean water and eat food grown on toxic-free soil – while ensuring a level playing field for industry actors.**

As interinstitutional negotiations on this law begin, the EU Legislators' choice can determine the future transformation of the European industry and its actual contribution to the promises of the European Green Deal. Today, IED activities are responsible for **50%** of EU's total emissions to air of sulphur oxides, heavy metals and other harmful substances, **40%** of EU's GHG emissions, and **20%** of pollutant emissions by mass into air and the same into water. Industry's air pollution alone causes **health and environmental damages worth EUR 277 - 433 billion** per year. **This can change now.**

We strongly regret that both EU Legislators – Parliament and Council – have already watered down the Commission's proposal significantly. This makes it even more essential that decision makers agree on a final text that upholds the EU's commitments on climate, environment and public health, including at least the following options still on the table:

I. Address all activities with the highest climate and environmental impact, including livestock and the extractive industry

In Europe, agriculture is the source of **93%** of ammonia emissions, **54%** of all methane emissions linked to human activity and **73%** of water pollution. For methane and ammonia emissions the highest proportion comes from cattle farming, in particular the largest factory farms. At the same time, the agriculture sector is particularly vulnerable to climate and environmental degradation, including extreme weather events. The IED must not ignore scientific evidence on the outstanding impact of the cattle sector, nor create a regulatory backtracking for pig and poultry, which would be the case if the Parliament's position is adopted. That would clearly contradict the EU's commitments under the European Green Deal.

Furthermore, the extractive industry is expected to grow considerably in the EU in the coming years, with serious environmental impacts. As there is no harmonised approach in regulating the extractive industry, in particular for industrial minerals as well as oil and fossil gas, the IED review presents a timely opportunity for an EU-level response to this challenge.

KEY ASKS:

1. Annex I, Ia: The IED must cover the biggest and most polluting industrial animal farms in Europe – Due to the pollution they cause, all large and intensive cattle farms, as well as many more pig and poultry farms, must be included in the IED scope. Only the largest activities are at stake – the **350 livestock units** (LSU) threshold suggested by the Council would only cover around **2%** of all *commercial* cattle farms in Europe (or less than 1% if one were to include all cattle farms). The thresholds proposed by the Council could still address **25%** of methane and **50%** of ammonia

emissions, while the exclusion of all cattle farms and the weakening of all other thresholds by the Parliament would almost ignore methane pollution and only cover a fraction of ammonia emissions. The administrative costs that the IED would impose to the targeted large-scale business is absurdly small compared to the economic size of the targeted farms and the benefits it could trigger.

2. Chapter VIa: The most intensive pig and poultry factory farms (Annex I Point 6.6), already subject to a full permit regime, must continue to obtain solid permits to operate. Exempting these farms from getting a permit or simplifying the process would represent a legal backtracking compared to today's system, and would counter the very objective of the IED revision. The lighter permitting regime and registration option were only to be considered as a compromise for including the cattle sector as well as many more pig and poultry activities. Given that the proposed thresholds have either been considerably increased or have disappeared altogether, there is no justification for such weakening.

3. "Extensive farming" definition: The stocking density level must be reduced to max 1LSU/ha and refer to farms satisfying Organic farming practices. Whilst the key priority is to ensure the inclusion of industrial cattle farms, the proposed 2 LSU/ha 'extensive farming' exclusion must be corrected. According to the UNECE Task Force for reactive nitrogen experts, the 2 LSU factor is **more than double the maximum level of what a science-based factor would require,** to ensure compliance with the Nitrates Directive and other EU laws.

4. Art. 70(i), Art. 70i(1a): The key elements of the Operating Rules must be defined clearly and rigorously by the law. To comply with the EU environmental principles and the objectives set out in the IED a clear reference to Annex III as proposed by the EP (mentioning biodiversity and decarbonisation) must be kept in relation to the livestock sector.

5. Annex I, Art. 74: The IED must include the extraction and treatment of industrial minerals, including silver, without thresholds. The definition of what is "industrial scale" mineral extraction and differentiated BAT standards can be dealt with by the technical Expert Group during the identification stage of Key Environmental Issues (KEI) within the BREF information exchange, as was the case for the chemicals activities. A review of an exhaustive list of minerals/metals could be acceptable if the European Commission will be empowered to amend the scope in case of new discoveries, however this exercise is an inherent part of the BREF development on minerals mining.

II. Guarantee effective enforcement rules to protect health and to ensure a level playing field

Industry, consumer, health and environmental groups are urging you to adopt meaningful protection for people suffering from cancer, respiratory, cardiovascular or other diseases due to unlawful pollution. Enforcement provisions provide a major opportunity to put **justice and health** at the centre of the IED and ensure a **level playing field for industry**. *If well designed*, they will incentivise the industry to comply with the law, prevent health damage to citizens – saving billions of EUR every year for the EU economy – and help Member States fulfil their environmental targets.

KEY ASKS:

1. Art. 79a: Adopt an effective compensation right for victims of *illegal* pollution that includes key procedural guarantees. Without minimum guarantees such as *accountability of authorities when acting unlawfully, disclosure obligation, representative actions and presumptions before courts*, such a

compensation right would be an empty shell in practice. The EU legislator can be at the forefront to prevent shocking examples of pollution and its impacts on workers, local residents, children. Among others, air pollution exposure may contribute over 10% of Europe's cancer burden. Existing EU law already entails compensation rights with much broader evidence and collective action rules, e.g. laws protecting consumers, competition, equal treatment, or data. None of these have led to excessive litigation. People's health deserves the same protection – and industry a level playing field.

2. Art. 25: Expand access to justice for individuals to further breaches of the IED (Art. 25). Under the Aarhus Convention, ***any*** violation of the IED obligations must be challengeable (see Art. 9(3) Aarhus Convention and pp. 197 Implementation Guide). Environmental and human health impacts persist in reality - irrespective of the nature of the provision breached.

3. Art. 79: Create a penalty provision with a reference to the (mother) company's turnover within the Union, at least 4% at EU level as suggested by the European Parliament. Anything less would not have a deterrent effect for stakeholders in order to comply with EU law, and, on top, discriminate national businesses compared to global ones.

4. Art. 8: Ensure mandatory suspensions in case of continuous breaches of the law, as suggested by the European Parliament. This ensures to keep the harm to the environment and health as little as possible and make EU law most efficient.

III. Support the transformation of industry in practice, i.e. *at source*

The IED still falls short on driving the transformation of large European industries towards clean, less carbon intensive and circular processes to meet the Union's 2050 objectives. Integrated planning tools looking at reducing pollution from installations at its source can address these challenges and fill the gap in the transition pathways that still lack a granular approach down to the plant level, breaking down corporate commitments into actionable, concrete and tangible changes. The role of industrial operators cannot be overstated, as made clear by the European Green Deal in 2019: "[a]chieving a climate neutral and circular economy requires the full mobilisation of industry. It takes 25 years – a generation – to transform an industrial sector and all the value chains. **To be ready in 2050, decisions and actions need to be taken in the next five years.**"

KEY ASK:

Art. 27d: Maintain transformation plans at installation level. The strength of the IED lies in its unique approach to look at the process specificities for each industrial installation. The IED is *the* law to transpose the EU environmental principle of acting at source according to Art. 191(2) TFEU and transformation plans at installation level the tool to actually implement the companies' promises to enhance their environmental sustainability. Acknowledging the need for administrative effectiveness, transformation plans can complement other higher level pathways established in other EU legislation for overlapping information, as long as cross-referenced information remains publicly accessible, up-to-date, free of charge and not restricted to registered users. A good example of this effectiveness could be in case of industrial symbioses on site, for which joint transformation plans for those installations active at site level could be established, following the "directly associated activities" of the facilities/site approach of the IED, IEP Regulation and the Seveso III Directive.

IV. Support effective permitting and compliance promotion

One of the key purposes of the IED update was to address the lax implementation of the IED across Europe. In 80% of the permits, Member States could have asked for stricter emission limit values legally, that are defined as technically and economically viable already today (see definition in Art. 3(10) IED). Moreover, the time must pass when the opportunities to prevent other negative environmental impacts are not used – e.g. when it comes to the consumption of precious natural resources. Industry and enforcement authorities know those BAT standards, in most cases based on more than a decade old performance data. There is no objective rationale as to why operators lagging behind cannot already start making their case on the non-feasibility of meeting the stricter levels other operators did manage under technically and economically viable conditions. This should not be delayed further to another decade.

Efficient permitting and monitoring also requires more digital and direct reporting tools. Such instruments would really address lengthy administrative procedures – from the application by industry, to access to information for the public, to the compliance promotion by authorities.

KEY ASKS:

1. Art. 15(3): Keep transition periods to the minimum, and decouple the application of the updated provisions, esp. Art. 15(3), from the availability of new BAT Conclusions for activities that are already covered by today's binding BAT Conclusions. To accelerate the process, operators shall be required to make the non–feasibility assessment available in the Industrial Emissions Portal by latest 01/01/2026. Such an approach will allow right away for a technical assessment also by technique providers, the public concerned, and competing industry as to the validity of the non-feasibility claims.

2. Art. 15(3a): Make environmental performance levels explicitly binding, to unleash the potential of the IED to contribute to a more efficient resource use and circular economy. Practice has taught that wherever there is unclarity, the IED will be implemented weakly (see current use of value ranges above).

3. Art. 11fb, Art. 14a: Uphold the considerations of life-cycle environmental performances. Those are important to tackle upstream or downstream impacts of a given industrial activity *that are under the control of the operator* (e.g. procurement of low-impact raw materials, sustainable management of waste, industrial symbiosis applications). In any case, mentioning the life-cycle considerations as currently drafted can only be a first step in the direction of travel.

4. Art. 50 (2a): Protect human health from dioxins and dioxin like-PCBs emissions from incinerators and Art. 58(1) substitution of hazardous solvents. As suggested by the European Parliament, the IED can finally close an important permitting and monitoring loophole that relates to BAT to be applied at start-up and shut down phases (full operation of abatement system prior to waste feed), which is critical for Dioxin formations. The Parliament's suggestion in Art. 58(1)complements the list of missed hazardous solvents (endocrine disruption and PBTs).

5. Art. 5 and 24: Ensure a standardised permit summary and use electronic permitting to ease the administrative burden of the permit application process, reporting and compliance promotion actions. A digital permit summary does not only aim at improving access to information, but would also make it easier to compare the permit conditions e.g. emission/performance limit values

through *automated IT tools*, allowing for a sector-by-sector comparative analysis of the ambition level of permitting practice and hence BAT uptake, and monitor the testing and deployment of emerging techniques. An electronic permitting and compliance reporting system is also key to reduce administrative burden for Member States as regards compliance promotion.

6. IE Portal: Ensure reporting tools support transparent benchmarking of BAT uptake and compliance promotion. The EEA should provide the electronic input forms needed to streamline, ease up and consolidate the publication and reporting obligations – delivering in an efficient manner also on the annual compliance reporting under Art. 14 IED and the objectives pursued by the Regulation establishing the IE Portal. The IE Portal must also provide for a *query based* tracking of progress on environmental performances (see further 10 points IEP-R related asks here).

7. Art. 3a: Reject any backtracking in terms of permit publication. Adding new rules on confidential business information next to the already existing ones, and inventing a new 'back-and-forth'-system between authorities and operators as suggested by the European Parliament creates legal uncertainty, additional administrative burden and potential liability risks for the Member States. Clear publication rules are in particular in the interest of the operator and authorities to have utmost legal certainty (e.g. as publications usually initiate (and set an end for) legal deadlines).