

To: Environment and Justice Ministers of EU Member States

Cc: Commission President, Executive Vice-President for the European Green Deal and Commissioners for Environment, Transport, Energy, Industry, Agriculture, Health and Food Safety and the Chair of the European Parliament Environment Committee

Re: Input to COREPER meeting Brussels, 4 October 2023. Key expectations and “red lines” by civil society regarding Trilogue Industrial Emissions Directive (IED)

Brussels, 02 October 2023

Dear Minister, Dear Chair of the WPE,

On behalf of the European Environmental Bureau, I am writing to share with you our key concerns regarding the Trilogues on the Industrial Emissions Directive Review (IED) -[2022/0104\(COD\)](#). A political decision is expected at the forthcoming COREPER of the Working Party on Environment of the EU Environment Council on 4 October 2023.

We believe that the common position reached by the Council on 16 March 2023 already presents a very weak position not fit for purpose to generate transformative change towards circular, decarbonised and zero-pollution industry. Yet we have come to understand that some Member States delegations expressed a wish to further weaken critical elements: Notably a Member State on the exclusion of mining activities and how to deal with what industry considers confidential business information. Another Member State is understood to resist electronic permitting and reporting systems. 5 Member States demonstrate unwillingness to concede progress on compensation rights to citizens or bringing meaningful penalties on operators of the largest EU point sources breaching the law. We regard all those positions as unacceptable.

Any possible Council ‘concession’ in the context of the trilogues should be scrutiny-checked as to which interests and objectives would thereby be sacrificed. Does the position serve any public interest, or does it actually satisfy the sole interest(s) of a few national industry players or is it motivated to preserve status quo in permit culture? Demands that would jeopardize concrete improvements of health and environmental protection and public accountability in decision-making and that would undermine the EU Green Deal objectives should be firmly rejected, irrespective of which institution this originates from.

Following are civil society’s main substantive concerns “red lines”:

1. Bring justice to affected citizens and provide meaningful sanctions

The Commission proposal of a compensation right for individuals suffering from human health damages due to illegal pollution is the bare minimum. We expect the following key elements to be secured: means for collective action, accepting state liability, a disclosure tool for courts and rebuttable presumption of causality. The amount of the fines should be set up to a minimum 4% of the operator’s annual global turnover applied at Union level, this will also help EU level playing field and generating resources for proper enforcement. See a joint position on this topic [here](#).

2. Ensure cattle inclusion (stick with initial Council position as the minimum)

The proposed Council level of 350 Livestock Units will only ‘cover’ 2% of all cattle farms, yet such tiny minority is responsible for 50% of ammonia and 25% of methane emissions. There aren’t any measures the operators will apply since those are yet to be defined, including with the participation of the agro-industry. Pollution is generated by animal-based manure and the inputs used for intensive rearing of livestock, it is irrelevant to the environment whether the animal species is a poultry or pig (both species were regulated in the IED since 1996) – or cattle. Despite regulatory backtracking on intensive pigs and

poultry, the European Parliament would like to provide for a freeride pass for cattle rearing for decades to come on top.

3. Reject exclusion of mineral and heavy metals mining activities

Real measures impacting the mineral and heavy metals mining operators will be developed in later stage, which would take at least 3 years, with a 4 years compliance transition on top. The information exchange is the right framework to assess key environmental issues, processes, the proportionality of pollution controls to consider, differentiated by types but based on robust facts, not political connections of the German mining industry.

4. Reject industry written proposals regarding confidential business information (CBI) and treating NGOs as second-class stakeholders in the EU Sevilla Process (Art 13)

The Commission and Council common position treating the NGO delegates in the same way as public servants in regard to access to what some industry may claim as CBI is to be maintained. Current good practice should be pursued i.e. an agreed non-disclosure agreement, industry may appoint a third party representative should they insist to get access to those CBI data under the same conditions.

5. Support digitalisation of permitting and reporting. Provide mandate to the EEA to act as a service provider to facilitate electronic reporting via EEA Industry Portal

Current IED reporting requirements, the INSPIRE Directive and High Value Datasets Regulation already require for electronic / and machine-readable reporting. The EEA should be mandated to provide for the necessary tools to allow for a direct electronic reporting and integration of permit and compliance information within the Industrial Emissions Portal managed by the EEA. Any delay of e-permitting system is unfounded.

6. Exclude end of pipe technique options from the definition of “deep transformation”

The European Parliament introduced a further derogation of an industry written “deep transformation” permit extension period, but without a definition. It is paramount that secondary or end of pipe techniques like Carbon Capture and Storage or Use (CCS/U) are excluded and that an explicit phase out of fossil feedstock(s) by a given target date is introduced. This will not mean that CCU/CCS is prohibited, extra 8 years permit review standstills may only be justified to operators that do real deep process transformation efforts e.g. steel industry switching to green Hydrogen DRI route.

The above points relate to the few remaining provisions bringing real improvement regarding industrial activities. Any further weakening on the above issues will question the added value of the revision and the credibility of EU governments to serve public interests.

Your engagement is essential! Please flag red lines ensuring a greening of the regulatory framework so it will address pollution from the EU's largest point source polluters in a more effective way.

Yours sincerely,

Patrick ten Brink
Secretary General, European Environmental Bureau (EEB)

See also the joint [NGO main demands \(2 pager\) summary paper](#) and [5 pager briefing](#)