Revision of the Industrial Emissions Directive and update of the European Pollutant Release and Transfer Register (E-PRTR)

This briefing is one in a series of implementation appraisals, produced by the European Parliamentary Research Service (EPRS), on the operation of existing EU legislation in practice. Each briefing focuses on a specific EU law that is likely to be amended or reviewed, as envisaged in the European Commission’s annual work programme. Implementation appraisals aim to provide a succinct overview of publicly available material on the implementation, application and effectiveness to date of specific EU law, drawing on input from EU institutions and bodies, as well as external organisations. They are provided by the Ex-Post Evaluation Unit of EPRS, to assist parliamentary committees in their consideration of new European Commission proposals, once tabled.

SUMMARY

Industrial pollution emitted by large agro-industrial installations is currently regulated by the EU Directive on Industrial Emissions. It lays down rules designed to prevent or, where not practicable, to reduce emissions into the air, water and land and to prevent the generation of waste in order to achieve a high level of protection of the environment taken as a whole. The European Pollutant Release and Transfer Register (E-PRTR) ensures public access to data on emissions from major industrial activities.

The ex-post evaluations of the directive and the regulation establishing the register show that they are performing well in general. However, there are implementation issues, including inconsistencies between the directive and the register. Both are scheduled for revision to help contribute to attaining the European Green Deal priorities, among them zero pollution and a circular economy.

This implementation appraisal presents the findings of publicly available sources on the implementation of the Industrial Emissions Directive and the E-PRTR and thereby aims to inform the upcoming revisions in which Parliament will be a co-legislator.

Background

While industrial activity is one of the main drivers of EU economic growth, industrial production processes are among the main sources of environmental pollution. In particular, industrial installations emit air pollutants, discharge waste water and generate waste and thus negatively affect air, water and soil. As a result, human health and the environment are also adversely affected. Furthermore, industrial activities are among the main sources of greenhouse gas (GHG) emissions, which heat the Earth’s atmosphere and thus contribute to climate change. To ensure the reduction of both types of emissions – those polluting the environment (in focus here) and those heating the atmosphere – industrial production processes are subject to regulation at EU level.
EU legal framework

Industrial Emissions Directive

The EU started regulating environment-polluting emissions from industrial activities in the 1970s. Over the next decades, the EU developed a large body of rules contained in a number of directives, such as the Directive on Integrated Pollution, Prevention and Control (IPPC), the Directive on Waste Incineration, the Medium Combustion Plants Directive (MCPD), the Ecodesign Directive, the Water Framework Directive (WFD), the Urban Waste-water Treatment Directive (UWWTD), etc.

In 2010, the European Parliament and the Council of the EU adopted Directive 2010/75/EU on Industrial Emissions (the IED or the directive), which is currently the centrepiece of the EU policy regulating environment polluting emissions from agro-industrial activities. The IED merged a body of seven directives with the aim to further strengthen the control of industrial pollution; improve enforcement of compliance; facilitate the uptake of technological innovation; improve coherence between the directive and the EU rules on air, water, soil and the circular economy (including waste); simplify the rules; and decrease red tape for business operators.

The main objective of the IED is to ensure a high level of environmental protection by laying down rules designed to prevent or, where not practicable, to reduce emissions into the air, water and land and to prevent the generation of waste. The directive also seeks to ensure a level playing field for the operators of installations in its scope. It is of note that the IED does not cover GHG emissions; these are regulated by EU climate mitigation legislation such as the Directive establishing the EU emissions trading system (ETS).

The following points are important for achieving the IED objectives:

- **an integrated approach** – to be applied by the operators of installations requiring a permit. The integrated approach covers all environmental aspects of the activities conducted by the installation: polluting emissions to air, water and soil; noise; odour; waste; energy efficiency; use of raw materials; prevention of accidents; and restoration of the site after the installation's closure. According to Commission estimates, around 50,000 industrial installations based in EU territory need a permit to operate, as they perform activities listed in Annex I to the directive. These installations operate in sectors such as energy production, minerals industry, production and processing of metals, chemicals industry, waste management, pulp and paper production, livestock slaughtering, intensive rearing of pigs and poultry, etc. The permit is issued by the competent authority (CA) of the Member State where the industrial activity takes place, and sets the conditions for the operation of the installations as per the IED requirements.

- **best available techniques (BATs)** – these are instrumental for the granting of the above-mentioned permits. In particular, permit conditions and the relevant emission limit values (ELVs) must be based on BATs. BATs are the most effective and advanced techniques, developed on a scale allowing implementation in the relevant industrial sector, under economically and technically viable conditions. BATs are discussed in detail in a type of documents known as 'best available techniques reference documents' (BREFs). The BREFs for each sector are prepared and reviewed in a process of exchanges between Member States, the industry concerned, environmental NGOs and the Commission coordinated by the European Integrated Pollution Prevention and Control Bureau at the Joint Research Centre (JRC) site in Seville (Spain). The BREFs contain 'BAT conclusions', which are adopted by the Commission in the form of implementing decisions following approval by a standing committee (in which Member States are represented). The 'BAT conclusions' contain a non-exhaustive and non-prescriptive list of BATs and environmental performance levels, which could be achieved with the use of BATs. BAT conclusions can include:

  - BAT-associated emission levels (BAT-AELs), which constitute a numerical range of emission levels for specific pollutants and thus serve as a mandatory reference for setting permit conditions for the relevant installation;
BAT-associated environmental performance levels (BAT-AEPLs) other than emission levels, which address the consumption of raw materials, energy or water, as well as the generation of waste;

descriptive BATs, which concern monitoring, site remediation, environmental management systems, or the limitation or ban of the use of hazardous substances (descriptive BATs are not related to BAT-AELs and BAT-AEPLs).

flexibility – in certain cases, CAs are allowed to set less strict ELVs. In particular, this would be possible if an assessment shows that achieving the emission levels associated with BATs would lead to disproportionately higher costs compared to the environmental benefits, which may result from the technical characteristics of the installation or its geographical location or the local environmental conditions. The decision of the CA to grant such less strict limits must be justified and documented.

inspections – environmental inspections under the IED are mandatory. Member States are obliged to set up a system of such inspections and draw up inspection plans. A site visit must take place at least every one to three years making use of risk-based criteria.

the right of the public to take part in the decision-making process on the granting of a permit by the CA but also to be informed of its consequences by having access to the permits (including to the relevant permit applications) and the results of the monitoring of releases

The transposition of the IED, which was supposed to be completed by 7 January 2013, was challenging in terms of both timely delivery and quality. Since 2013, the Commission has launched infringements for non-communication and/or incorrect transposition against several Member States. Infringement procedures for bad application of the directive have also been launched.

Regulation on the European Pollutant Release and Transfer Register

Regulation (EC) No 166/2006 (the E-PRTR Regulation or the regulation) established a European Pollutant Release and Transfer Register (the register or E-PRTR). The register, which is publically accessible and free of charge, contains data on pollution from the largest agro-industrial installations in Europe. It transposes into EU law the Kiev Protocol on pollutant release and transfer registers to the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters (the convention).

The regulation defines the scope of activities and pollutants to be included in the register. It also sets up activity capacity thresholds and pollutant release thresholds that must both be exceeded to trigger reporting by the relevant installations. The E-PRTR aims to capture 90% of the total releases of each pollutant emitted by industrial sources (the ‘90% capture’ target). The rationale behind the pollutant release thresholds is to relieve small pollution sources from the reporting burden while at the same time ensuring that the ‘90% capture’ target of the E-PRTR is met.

According to Commission estimates, around 34,000 industrial installations performing 65 economic activities (listed in Annex I to the regulation) report data to the relevant national CAs, which is then included in the register, the latter being centrally managed by the European Environment Agency (EEA). The first reported data reflected emissions released in 2007. Data is being updated annually to reflect the relevant reporting year. Reported data concerns releases (subject to exceedance of certain thresholds) of 91 key pollutants (such as heavy metals, GHGs, pesticides, chlorinated organic substances, dioxins listed in Annex II to the regulation) to air, water and soil, but also off-site transfers of pollutants contained in waste and waste water. The E-PRTR can be searched making use of criteria such as pollutant type, geographical locations of the industrial installations, affected environment, etc. The E-PRTR reinforces accountability with regard to the IED by storing data on the releases of agro-industrial installations performing activities under Annex I to the directive. The implementation of the regulation is supported by an E-PRTR guidance document.

The IED and the E-PRTR need to be revised to contribute to the zero pollution and circular economy aspects of the European Green Deal. An improved legislative framework could also support the decarbonisation of the EU economy. To address these priorities, in 2020 the Commission launched
the revision of the IED and the update of the E-PRTR. The proposals, which will be accompanied by ex-ante impact assessments (IA), are expected in the spring of 2022. They are also expected to take into account the results of available ex-post evaluations and other documents on the implementation of the two pieces of EU legislation. Their main findings are presented below.

European Commission

Ex-post evaluation of the implementation of the IED

The ex-post evaluation of the IED was published in September 2020. In accordance with its Better Regulation agenda, the Commission analysed the implementation of the directive against the standard set of ex-post evaluation criteria, namely relevance, effectiveness, efficiency, coherence and EU added value. The ex-post evaluation's findings are underpinned by several studies and consultations of stakeholders. Its main findings are summarised below.

The ex-post evaluation finds that the objectives and requirements of the IED are still relevant to current needs. More specifically, despite the general decline of some pollutants, the agro-industrial installations in the scope of the IED are still a significant source of pollution posing risks to human health and the environment. Therefore, those activities of theirs that are covered by the IED need to continue being regulated. The Commission finds, however, that certain specificities of the BREF process may be an issue in terms of relevance. In particular, the length of the BREF process and the time between BREF reviews combined with the BREF process requirement for monitoring data on pollutants create more focus on existing pollutants than on emerging ones, and, eventually, limit the IED's capacity to respond to emerging environmental challenges.

Under the effectiveness criterion, the question is whether the objectives of the legislation are being met (or progress is being achieved) as a result of its implementation. The Commission is positive that the implementation of the IED is overall effective, i.e. it has contributed to meeting its main objective: the reduction of polluting emissions and their negative effects on health and the environment. The Commission attributes the significant reduction of air polluting emissions to the implementation of the IED by large agro-industrial installations in particular, although other factors might have also supported this positive trend. It however notes that the reduction of emissions of certain large combustion plants (LCPs) has been slowed down due to the delayed application of BATs in certain Member States that have applied the time-restricted flexibilities allowed by the directive. The Commission considers this an implementation deficiency – one that has also been discussed by the European Court of Auditors (ECA) (see section ‘European Court of Auditors’ below). Although data on water pollution is less robust, the Commission notes that the implementation of the IED has contributed to reported reduction. As regards soil pollution, the ex-post evaluation notes that reported emissions are very low and these are expected to be reduced further through the application of BATs. It is difficult to assess how the implementation of the IED has affected the use of resources in industrial production (and trends over time) because of a lack of quantitative data (despite the presence of qualitative stakeholder views); nevertheless, the Commission concludes (with a medium level of certainty) that the IED 'has not been very effective in addressing resource efficiency and circular economy aspects'.

The ex-post evaluation also provides a positive assessment of the BREF process, which is instrumental for the effective operation of the IED in practice. BAT conclusions for around 20 activities (in the scope of the IED) have been adopted and applied for the purpose of issuing permits to agro-industrial installations. The revision of BREFs for several other activities is ongoing. The Commission notes as a positive development the fact that BAT-based permit issuance has significantly increased under the IED. As per 2020 (when the ex-post evaluation was published), the
Commission reports that 17 BAT conclusions were drawn up in relation to the permits issued for 38 500 installations. Practice shows that the ELVs set by the permits are largely set within the BAT-AEL range, although most frequently towards its least stringent end.

Monitoring and reporting of emissions by operators of IED installations to the CAs is instrumental for compliance assessment but also for keeping track of the quantities of pollutant releases. All recent BAT conclusions contain consistent requirements on emissions monitoring. Data reported by CAs to the Commission show that monitoring frequencies in permit conditions are consistent with the frequencies required by the BAT conclusions, meaning that transparency and consistency of the requirements across Member States have improved as a result of the IED and the relevant BREF processes. However, the Commission is less certain as to whether compliance has improved in an equal manner across the board. In several Member States, data collected via monitoring is not published in a systematic way, and it could not, therefore, be concluded that operators were reporting data consistently and CAs were using the information to assess compliance. This correlates with the fact that only limited information is available on the various approaches used by CAs for compliance assessment, which points to diverging compliance practices.

Public access to information also appears problematic. Even though data on emissions is public, access to such data is not always easy. In particular, emissions data, including real-time data, is rarely made available online, although there are examples of EU-based installations publishing the results of emissions measurements (including in real time in the case of continuous measurements) online. The ex-post evaluation views such examples as proof of how digital technologies help to improve emissions reporting, facilitate compliance checks and enhance public access to information; stakeholders seem to share this view. Another issue in terms of public access to information is that some permits are not available online and those that are available are not always easy to locate.

Similarly, the Commission finds that both public participation in the granting of permits and public access to justice have improved but still face limitations. Public access to justice seems to work mostly in cases related to new permits. On a less positive note though, the experience of some Member States shows two main issues: i) the capacity of public or environmental organisations to challenge revisions of existing permits; and ii) the interpretation of Article 24 of the IED and in particular what a 'substantial change' is ('in combination with uncertainty over whether the public can challenge a decision if the change is declared to be non-substantial'). Additional issues concern the ability of public and environmental organisations to file legal proceedings against CAs on the ground of an 'omission to act', for instance, in case a CA has not issued a permit to a given agro-industrial installation. The ex-post evaluation also highlights the case filed by the Aarhus Convention Compliance Committee (ACCC) against the EU. In this case, the ACCC considers that the IED provisions on public participation in permitting do not cover all of the cases where the Aarhus Convention requires such participation and are therefore not fully compliant with its provisions.

The ex-post evaluation also highlights as a challenge in terms of effectiveness the practice of building new industrial installations with a capacity just below the IED threshold, which leaves such facilities outside the scope of the directive and its requirements, despite the pollution they generate. In the same vein, the Commission recalls that certain highly polluting activities (such as aquaculture, cattle- and poultry raising below IED activity thresholds) are still not explicitly covered by the IED, which is a problem in terms of effectively achieving the IED objectives.

The Commission finds (with a medium level of certainty though) that the IED (in its BAT conclusions components) has contributed to efficiency because the overall benefits of its implementation substantially outweigh the relevant costs. Improved environmental sustainability is the most obvious benefit, as illustrated by the state of affairs in the iron and steel sector. In particular, the benefits to society of reduced emissions to air resulting from compliance with the BAT conclusions relevant to this sector amount to €932 million annually, roughly 10 times more than the €90 million worth of investment costs annually. The Commission notes that the implementation of the directive has had certain negative effects on EU competitiveness vis-a-vis third countries, which is a challenge in terms of efficiency. In particular, companies operating in EU territory (bound by the requirements
of the IED) need to pay higher compliance costs than competitors based in third countries (applying less stringent rules). The Commission adds, however, that these additional costs are not significant.

Even if the Commission generally assesses the IED as internally coherent, there are issues of concern, evident in particular from the stakeholders’ feedback. In particular, respondents to the various consultation activities run in support of the ex-post evaluation describe the IED as being a compilation (or ‘juxtaposition’, as used in the ex-post evaluation) of a few previous directives, rather than a piece of legislation integrating these directives in a coherent manner. Discrepancies are also said to exist between the IED requirements on LCPs (set in its Chapter III) and on waste incineration and co-incineration plants (set in its Chapter IV) and the relevant BAT conclusions.

Another coherence issue concerns the interaction between the IED and the E-PRTR. According to the ex-post evaluation, there are, among others, discrepancies as regards the scope, the reporting thresholds of industrial activities, the pollutants covered, etc. In particular, there are differences between the sectors covered by the directive and the regulation (for instance, mining and quarrying are covered by the register but not by the directive). Furthermore, the value of reported data is reduced because the register sets high emission thresholds and thus emissions below the thresholds remain unreported. In addition, the scope of the E-PRTR Regulation is restricted to the pollutants listed in its own annexes, which, however, had not yet been adapted (as per September 2020) to technological progress. This is, for instance, the case with regard to emerging environmental issues, such as per- and poly-fluorinated alkyl substances (PFAS). All of the above issues suggest that the E-PRTR Regulation and the IED need to be better aligned with each other.

The ex-post evaluation finds that the IED is mostly coherent with and supports the objectives of other EU environmental policies. However, the Commissions notes coherence issues between the IED and its implementation and EU policies on water and the circular economy.

In terms of water policy, there are coherence issues as regards the WFD and the UWWTD. In the former case, the objective of the WFD of zero releases of priority hazardous substances is stricter than (and also questions the establishment of) BAT-AELs for such substances, which is a discrepancy between the IED and the WFD. In the latter case, there are coherence issues in the joint implementation of the IED and the UWWTD. In particular, given that a significant amount of indirect releases from installations in the scope of the IED transit through urban waste water treatment plants (which are mostly unable to treat industrial waste water), there are excessive releases of those pollutants to the EU water bodies. As the IED does not allow higher loads to be released than the amounts compatible with the application of BATs, it appears difficult for CAs to tackle the issue.

As regards interactions between the IED and the principles of the circular economy, the ex-post evaluation notes that the BREF process does not systematically include BATs on circular economy aspects relevant to resource use (such as water and materials use), hazardous chemicals use and industrial symbiosis. Conversely, wherever the BREF process does include BATs on circular economy aspects such as energy, materials, and waste, they often do not give quantitative targets and are not explicitly defined as aimed at meeting circular economy objectives and strategies.

The ex-post evaluation does not identify any major discrepancies between the IED and other EU sectoral policies. As regards EU commitments taken at international level, the Commission notes the ACCC claim of incoherence between the IED and the convention (see above under effectiveness).

A final important observation in the context of coherence has to do with a ‘specific issue’: the interaction between the IED and EU climate change mitigation policy. As already mentioned, the IED does not cover GHG emissions (its Article 9 prohibits the setting of ELVs for GHGs for installations covered by the EU ETS), and thus coherence does not seem to be an issue given the current design and implementation of the IED. However, it is worth asking whether this approach would be appropriate in the future, in particular in the context of the European Green Deal and its climate neutrality and zero pollution ambitions. Therefore, the ex-post evaluation draws attention to the need to consider whether coherence challenges would arise in relation to future decarbonisation techniques and their impact on pollutant and GHG emissions.
The ex-post evaluation confirms the **EU added value** of the IED, i.e. that the design and implementation of this policy intervention at EU level have resulted in benefits that the Member States would not have been able to achieve if acting alone. Two important benefits related to environmental protection and the functioning of the EU internal market are highlighted. In particular, the directive has ensured a more consistent approach, first, in setting emission standards (with relatively limited variation across the EU Member States) accounting for effective protection of the environment, and, second, in monitoring and enforcement of the requirements across the Member States. These benefits directly stimulate a level playing field for the operators of agro-industrial installations under the IED and thus contribute to the good functioning of the internal market in the relevant sectors. Another definite achievement of the intervention, as implemented at EU rather than national level, is the BREF process and relevant BAT conclusions, which are instrumental for the implementation of the IED. According to the Commission, the individual Member States could not manage the BREF process the way it is run at EU level, for reasons related to both efficiency (price) and effectiveness. Against this backdrop, the Commission suggests that without EU action – previously under the IPPC Directive and currently under the IED – many Member States would have kept less demanding environmental standards. This would mean more emissions of industrial pollution and, ultimately, stronger negative impacts on the environment and health as opposed to the more favourable situation resulting from the implementation of the IED undertaken at EU level. The ex-post evaluation also notes that the BREF process helps the EU in exporting its expertise in environmental sustainability globally, which is evident from the fact that third countries use EU BATs to develop their own industrial and environmental policies.

Report on the implementation of the IED

In December 2021, the Commission published a second regular report on the implementation of the IED under its Article 73. It is based on data reported by Member States for 2013-2018. The report gives details on several aspects of the implementation of the IED: number of installations, permits, ELVs, derogations, baseline reports and Commission support to CAs in preparing them, CAs’ action on enforcement, CAs’ inspections (site visits), LCPs, waste incineration plants, installations using organic solvents, reporting by Member States, public access to information, state of play as regards the adoption of BAT conclusions, etc. The most important conclusions of the report are:

- a number of IED provisions granting time-limited derogations to LCPs have either expired (Articles 32 and 34) or are about to expire (Articles 33 and 35). The Commission is systematically monitoring the situation after the end date of such derogations to check the compliance of the LCPs concerned with the applicable ELVs, which is necessary because LCPs are an important source of air pollution;
- public access to permit documents needs improvement, especially as regards online accessibility, format, clarity, language and ease of locating the documents, availability of reports from site visits and monitoring data;
- reporting also needs improvement, especially as regards information on permits, updates of permits, and derogations.

Ex-post evaluation of the implementation of the E-PRTR Regulation

In 2017, the Commission published an ex-post evaluation of the implementation of the E-PRTR Regulation. It follows the standard methodology for ex-post evaluations under the Commission Better Regulation agenda (see above in the context of the IED ex-post evaluation). The ex-post evaluation is supported by an externally prepared study and consultations of stakeholders. The main findings of the ex-post evaluation are summarised below.

The regulation was assessed as overall fit for purpose. Its **relevance** in terms of ensuring environmental awareness and supporting policy development was confirmed; however, both awareness of the database and the number of its users could be increased further.

The ex-post evaluation notes that the regulation was overall **effective**. The register performs as expected and this results from the implementation of the regulation. Furthermore, the regulation is
effective in contributing to the achievement of objectives – such as maximising public access to information on pollutant releases and transfer, encouraging public participation in environmental affairs, and contributing to prevention and reduction of environmental pollution – which are pursued mainly by other pieces of EU environmental legislation. An issue reducing the regulation’s effectiveness is that the register does not provide enough contextual information, which allows for misinterpretations of E-PRTR data; for example, the public cannot easily understand, based on the information provided by the register, whether facilities are compliant with their legal obligations on emissions or what the impact of one tonne of a specific pollutant means in terms of human and environment health. The costs and benefits associated with the implementation of the regulation appear to be in good balance, which speaks of efficiency.

The Commission considers the provisions of the regulation to be coherent with each other. Stakeholders consider them to be 'generally consistent' with the provisions in EU legislation on air, water and waste. As regards coherence between the E-PRTR Regulation and the IED, the ex-post evaluation finds that even if both cover very similar industrial sectors and refer to each other, they do not match fully. In particular, the register covers more activities (e.g. urban waste-water treatment plants) and some of its capacity thresholds (e.g. for ceramics production) are different from those in the directive. The ex-post evaluation does not view this lack of full correspondence as an issue in terms of implementation but rather sees the significant overlap of rules as an opportunity to develop tools for streamlining reporting activities. This finding led to the creation of the EU Registry on Industrial Sites with the aim to facilitate annual reporting to the EEA of administrative and identification data on sites and facilities defined under the E-PRTR Regulation, and on installations, waste incinerators or LCPs covered by the IED.

The ex-post evaluation also confirmed that the intervention, as implemented at EU level, added a value that could not have been achieved by the Member States acting alone.

Study reviewing the implementation of the E-PRTR Regulation

In 2020, the Commission published an external study that reviews the implementation of the E-PRTR Regulation and the related guidance document. The study reviewed the E-PRTR activities and pollutants subject to reporting, and their thresholds. It also made recommendations for improvements (revisions to certain lists of activities, pollutants and relevant thresholds), some of which target better coherence with the IED.

The recommendations on the revision of the E-PRTR list of activities include:

- adding magnesium oxide production and carbon storage to the E-PRTR list of activities, which would increase coherence between the register and the IED (the first addition is expected to include 14 new installations in the register, while for the second addition the number of newly added installations to the register is uncertain, because there currently only pilot-scale installations in the EU);
- adding a new metal-working activity, which would ensure a more complete coverage of the manufacture of motor vehicles, electrical, transport, computer, and other equipment;
- revising E-PRTR sub-activity definitions to align them with the IED as regards cement and lime production and hazardous waste management, which would allow a separate assessment of releases from subsectors for which specific BAT conclusions exist;
- decreasing the capacity threshold for combustion plants to 20 MW to include larger installations covered by the MCPD, which is estimated to cover approximately 9% of additional nitrogen oxide (NOx) releases into the air through the addition of around 6 300 installations, but would require a lowering of the pollutant reporting threshold;
- decreasing the capacity threshold from 100 000 population equivalent (PE) to 15 000 PE to capture 90% of releases from plants covered by the UWWTD, which would involve reporting by an additional 4 700 installations;
- the study assesses that intensive cattle rearing does not require addition to the E-PRTR Regulation (in particular to its Annex I) despite the fact that this activity is a source of significant releases to air and water (the study notes that a capacity threshold of 100 livestock units would ensure that only 50% of the releases from this activity are covered,
which however would result in new reporting obligation for some 250 000 more facilities).

The recommendations on the revision of the list of E-PRTR pollutants and reporting thresholds, include:

- adding 38 pollutants to the E-PRTR list of pollutants; doing so would, among others, improve coherence with the IED;
- keeping the 24 existing pollutants in the E-PRTR list of pollutants (the study advises in favour of their retention because, even if their use has been banned and in recent years they have been reported in low quantities, taking them out of the register would impact the historical time series and hamper comparisons of environmental pressures made at international level);
- retaining the '90 % capture' target of all industrial releases (the study finds that the complete removal of reporting thresholds would add a significant burden that was not justified by the associated expected improvement in the completeness of the E-PRTR dataset);
- decreasing the reporting threshold for 11 air pollutants and 14 water pollutants; doing so would enable the 90 % capture of all industrial releases of these pollutants (it appears from the study that there is already a 90 % capture of all industrial releases for 30 air pollutants and 35 water pollutants).

Improvements to the E-PRTR guidance document are also suggested.

**European Parliament**

**European Parliament resolutions**

The European Parliament (EP) has expressed its views on industrial pollution in a number of non-legislative resolutions, including on the IED and is upcoming revision.

During the 2019-2024 legislature, in a resolution on the European Green Deal adopted in January 2020, the EP underlined that the revision of the IED should put emphasis on preventing pollution, coherence with policies on the circular economy and decarbonisation. In November that year, in a resolution on a new industrial strategy for Europe, the EP pointed out that industry is still a major contributor to environmental pollution with releases of pollutants to air, water and soil, and underlined the role of the IED in establishing obligations for large installations to minimise releases of pollutants; the resolution notes further that the revision of the IED should lead to a significant reduction of industrial pollution. Soil pollution from industrial activities was in the focus of a resolution on soil protection adopted in April 2021 and calling on the Commission to address all sources of soil pollution in the revision of the IED.

In March 2021, the Parliament adopted a resolution on the implementation of the Ambient Air Quality Directives (AAQDs). The resolution is based on a draft own-initiative implementation report drawn up by the EP Committee on the Environment, Public Health and Food Safety (ENVI), which included in its scope the implementation of EU legislation regulating the sources of air pollutants such as the IED. The EP resolution underlined that reducing emissions at the source is the only effective way to guarantee clean air. It furthermore stressed the need for stringent measures to reduce emissions in all sectors, particularly industrial installations, road and maritime transport, aviation, buildings, agriculture and energy production. The EP also asked the Commission and the Member States to look into options within the IED for mitigating ammonia (NH₃) emissions. It also expresses concern about the practice of building new industrial installations with a capacity just below the IED thresholds so as to deliberately leave them outside its scope. In this context, the EP welcomed the announced revision of the IED seeking to better address pollution from large industrial installations, promote industrial activities with the least negative environmental impact, and make them fully consistent with EU environment, climate, energy and circular economy policies. It also called on the Commission to introduce an obligation for Member States to make information
on compliance and permits publicly available. The EP considered ‘advantageous’ the inclusion of other sectors in the scope of the IED, the limitation of the derogations allowed by the IED to a minimum, the revision of current BATs, the adoption of a consistent outcome-oriented approach of promoting industrial activities having the lowest possible negative environmental impact, and the integration of provisions to stimulate progress in the authorisation phase or the BREF process. The ENVI draft implementation report was, among others, based on the findings of a topical European implementation assessment published by the Ex-post Evaluation Unit of EPRS in January 2021. The study made recommendations for due improvements in the design and implementation of the IED. It also contributed to the knowledge base on air quality policy-making by mapping and assessing the local policies designed and implemented by a sample of 10 EU agglomerations with the aim of tackling air pollution from relevant sources such as industrial activities, road transport, etc.

Written questions by Members of the European Parliament

During the 2019-2024 legislature, the implementation of the IED was the focus of several written questions submitted by Members of the European Parliament (MEPs). An example is given below.

**Written question on industrial farms and the quality of life of people living in their vicinity submitted by Sylwia Spurek, MEP, 29 April 2021**

The MEP held that large-scale livestock farms have a drastic negative impact on the quality of life of people living nearby. They cause pollution of water, soil and air, emit odour and noise and reduce property values and opportunities for businesses such as agro-tourism and organic farming. Transport to and from industrial farms is an additional problem affecting people’s quality of life. As regards the IED in particular, the MEP asked whether the Commission is aware of the ‘problem’ of fictitious splitting of large industrial farms into smaller ones to avoid the need for a permit under the directive. The MEP referred to a 2014 report by the Polish Supreme Audit Office, stating that in 2011-2013 alone, the provincial environmental protection inspectorate in Warsaw revealed that 13 poultry- and pig-rearing installations subject to the obligation to hold an integrated permit were split up into 31 smaller installations, for which no permit was required. The MEP also asked whether the Commission had the latter information and, if so, whether it planned to tighten the rules in order to prevent them from being circumvented.

**Answer given by Virginius Sinkevičius on behalf of the Commission, 16 July 2021**

The Commissioner replied that industrial animal farms are to some extent covered by the IED. Farms above a certain size must operate with a permit establishing conditions to prevent pollution and protect soil and groundwater, setting emission limits and requiring the use of BATs. He confirmed that the Commission has noted, with concern, of the practice highlighted by the written question. If true, such farm restructuring would not be ‘faithful’ to the directive’s objectives, even if the directive does not contain explicit provisions prohibiting such practices. The Commissioner noted further that the ex-ante IA on the ongoing revision of the IED would assess the options for further enhancing the IED’s contribution to the EU’s zero pollution ambition, by including new sectors such as cattle farms or mixed farms, or by lowering the thresholds of some sectors already covered. He further committed to including the case of farm restructuring in the Commission’s reflection on the IED revision and thanked the MEP for having drawn Commission’s attention to the issue.

Petitions and citizens’ enquiries

The European Parliament is frequently addressed by individual citizens and organisations with requests and petitions on industrial pollution. Several petitions, declared admissible by the EP Committee on Petitions, refer explicitly to the IED and its implementation in specific cases.16

**Council of the European Union**

In its conclusions of March 2021 on Sustainable Chemicals Strategy of the Union: Time to Deliver, the Council of the EU considered that the synergistic application of the existing regulatory instruments – such as the REACH Regulation (chemicals), the CLP Regulation (chemicals), the Eco-label Regulation, the Eco-design Directive, the IED, the Waste Framework Directive, the OSH
Revision of the Industrial Emissions Directive and update of the European Pollutant Release and Transfer Register (E-PRTR)

Framework Directive (health and safety at work), the WFD, as well as the Commission’s sustainable products initiative (expected at the end of March 2022), and the relevant funds – is crucial in stimulating the production and use of chemicals, materials and products that are safe and sustainable already at the design stage. In their conclusions of December 2020 on making the recovery circular and green, EU Member States’ governments welcomed the Commission’s announcement that it would assess the options for further promoting circularity in industrial processes in the context of the review of the IED and BREF documents, while clarifying the applicability of waste legislation.

European Court of Auditors

In 2018, the ECA published a special report on Air pollution: our health still insufficiently protected. The report refers to the implementation of certain possibilities for exemptions allowed by the IED as incoherent with the objectives of the EU AAQDs in particular as regards preventing pollution to the air. It is recalled that the IED allows Member States to set less stringent emission limit values if the application of BATs would lead to ‘disproportionately higher costs’ to the relevant installations as compared with the estimated environmental benefits. The IED also allows for the application of certain flexibility instruments by way of exemption from the limits set for LCPs. For example, according to the ECA report (as per 2018 when the report was published), 15 Member States established ‘transitional national plans’ that allowed establishing higher emission ceilings until 2020; some district heating plants benefited from a special derogation until 2023; other installations did not need to apply BATs if they had planned to limit their operations and close the installation by 2024. The result is that in these cases the application of the BATs to their full potential has been delayed, which means that the reduction of emissions from these installations has also been delayed thus preventing the achievement of the EU objectives on air quality established by the AAQDs.

European Economic and Social Committee and European Committee of the Regions

In its October 2021 opinion on the Commission’s zero pollution action plan, the European Economic and Social Committee (EESC) noted that the ongoing review of the IED provides a high level of protection for the environment as a whole. Furthermore, the implementation of BATs that do not entail excessive costs would be a more appropriate approach for SMEs. In the EESC’s opinion, the implementation of the IED should cover the whole value chain, including the sourcing of raw materials outside the EU. Compliance levels should be legally binding for industrial emissions, and standardised, reliable monitoring methodology is needed for enabling the comparison of accurate data and a harmonised assessment for ensuring a level playing field across the EU industry.

The European Committee of the Regions (CoR) welcomed the IED’s revision in a January 2022 opinion on the zero pollution action plan. The CoR noted that the IED should contribute to achieving the objectives of the circular economy. It reiterated that emissions rules are a particularly effective approach and recommends therefore that more attention be paid to tightening these rules, as a better way of reducing emissions at source. Furthermore, it supports international work on BATs, including emerging technologies, to reduce industrial emissions as a way to narrow the range of emission levels, so that a level playing field is created at international level. The opinion also points out that more efforts are needed to reduce the levels of odour pollution and sees the IED as the main tool to combat this pollution type because it covers all forms of emissions.
ENDNOTES


2 The agro-industrial installations in the scope of the IED account for a small proportion of the total EU land area and represent only a small proportion of polluted sites in the EU.

3 The E-PRTR contains data submitted by installations operating in EU territory but also in the United Kingdom, Norway, Iceland, Switzerland, Lichtenstein and Serbia.

4 The E-PRTR guidance document clarifies the methods, data sources and assumptions used by facility operators for reporting.

5 The status of the BREF process for all activities can be followed here.

6 Case ACCC/C/2014/121 Aarhus Convention Compliance Committee, United Nations Economic Commission for Europe. As per 23 February 2022, the case appears to be ongoing. It is of note though, that in October 2021, the decisions adopted at the seventh session of the Meeting of the Parties to the Convention endorsed the findings of the ACCC. In particular, it is noted that, by putting in place a legal framework that does not envisage any possibility for public participation in relation to reconsiderations and updates under Article 21(3), (4) and (5)(b) and (c) of the IED, the EU fails to comply with Article 6(10) of the Convention. It is therefore recommended that the EU put in place a legally binding framework to ensure that, when a public authority in a EU Member State reconsider or updates permit conditions pursuant to national laws implementing Article 21(3), (4) and (5)(b) and (c) of the IED, or the corresponding provisions of any legislation that supersedes the directive, the provisions of Article 6(2)–(9) be applied, mutatis mutandis and, where appropriate, bearing in mind the objectives of the convention.

7 The Commission explains that these activities have not been included in the scope of the directive because ‘a previous’ ex-ante IA has found that a full IED permitting process would not be appropriate for some of these activities (e.g. cattle-rearing) because of the red tape it would create for this sector. However, it is not clear which IA the Commission is referring to.

8 The Commission warns against drawing conclusions on the efficiency of IED implementation, because the various costs related to compliance with BATs by individual installations and enforcement of compliance by CAs are difficult to estimate.

9 Including pollutants such as heavy metals that are typically not abated by such plants.

10 In particular, Member States do not have enough installations in one or all sectors to allow for proper comparison of techniques and environmental performance levels, which is at the very heart of the BREF process.

11 It comes to third countries such as South Korea and BRIC countries such as Russia, China and India. Other third countries, such as Israel and Kazakhstan, follow suit, as mentioned by the Commission report from December 2021, whose conclusions are also discussed in this briefing.

12 According to Article 22(2) of the IED, if the activity involves the use, production or release of hazardous substances, and having regard to certain circumstances, a baseline report shall be submitted to determine the state of soil and groundwater contamination at the site of the installation.

13 Locating documents is an issue especially in cases when the documents are not handled at national level.

14 The database contains thematic data formerly reported separately under Article 7 of the E-PRTR Regulation and IED Article 72.


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