

INDUSTRIAL EMISSIONS

Proposal COM(2022) 156 of 5 April 2022 amending Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control)

cepPolicyBrief No. 18/2022

SHORT VERSION [[Go to German Long Version](#)]

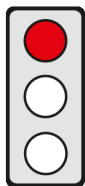
Context | Objective | Interested Parties

Context: Pollutant emissions into air, water and soil from industrial and livestock facilities will be comprehensively reduced by the “best available techniques” (BAT) without stipulating any specific techniques. For this purpose, emission levels that can be achieved through the use of BAT will be determined at EU level for types of installation. The national authorities will use these to set specific emission limit values in installation permits.

Aim: Protection of the environment and human health.

Affected parties: Large industrial installations – e.g. energy industry, chemical industry – as well as livestock farms with poultry, pigs or cattle.

Brief Assessment

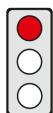


Contra

- ▶ Compliance with the strictest possible emission limit values results in emission reductions irrespective of the cost-efficiency and often fails to allow national authorities any scope to take adequate account of the diversity of installations and technologies across the EU.
- ▶ Specifications on resource consumption as well as the use of recycled materials only have limited impact on the reduction of pollutant emissions and may also prolong permit procedures.
- ▶ Empowering the Commission to extend the scope by way of delegated acts is contrary to EU law. This essential decision needs to be addressed in the directive itself.

Scope and Permits [Long Version A.1.2.1, A.2.2, C.1.1 and C.2.4]

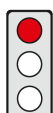
Commission proposal: The scope will be extended to include, inter alia, the production of lithium-ion batteries and cattle farming. In addition, the thresholds for intensive farming of poultry and pigs will be lowered. Furthermore, the Commission will be empowered to include additional agricultural and industrial activities in the scope and to tighten the thresholds by means of delegated acts.



cep-Assessment: Extending the scope will risk delaying permit procedures and thereby also the industrial transformation and the realisation of environmental, health and climate targets pursued by the Industrial Emissions Directive (“IED”). Empowering the Commission to extend the scope by way of delegated acts is contrary to EU law because this essential decision must be regulated in the IED by the EU legislator itself, i.e. the European Parliament and the Council [Art. 290 TFEU].

Strictest Possible Emission Limit Values I [Long Version A.2.3 and C.1.2]

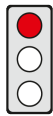
Commission proposal: National authorities usually have to set the “strictest possible” emission limit values in the permits. These are the lowest emission levels that can be achieved through the use of BAT. Deviation may only be approved in exceptional cases on the basis of an assessment by the installation operator.



cep-Assessment: The obligation to set the strictest possible emission limit values results in emission reductions irrespective of the cost-efficiency. In addition, the strictest possible emission limit values can often only be achieved by using certain techniques. As a result, when making permit decisions, national authorities will no longer be able to take account of the diversity of installations and technologies in the EU which should be reflected by the range of emission levels in the BAT conclusions.

Strictest Possible Emission Limit Values II [Long Version A.2.3 and C.2.3]

Commission proposal: National authorities generally have to set the “strictest possible” emission limit values in the permits. This gives rise to a corresponding obligation upon the Member States to set the “strictest possible” emission limit values when establishing “general binding rules” [Art. 6].



cep-Assessment: An obligation for Member States to set the strictest possible emission limit values, even for “general binding rules”, would effectively limit their discretion to zero. This restriction on the decision-making rights of the Member States in combination with the administrative and cost burden is disproportionate and consequently contrary to EU law [Art. 5 (4) TFEU].

Environmental Performance Limit Values [Long Version A.2.4 and C.1.3]

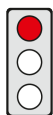
Commission proposal: The national authority will also set binding “environmental performance limit values” in the installation permit. These are designed to promote resource and energy efficiency and the circular economy by reducing the consumption of raw materials, water and energy and increasing the use of recycled materials.



cep-Assessment: Specifications on resource consumption as well as on the use of recycled materials only have limited impact on the reduction of pollutant emissions. Not all resource consumption has negative effects on the environment and health. Instead of setting binding regulatory requirements for individual installations, market-based incentives – e.g. the pricing of resource consumption – should streamline the permit process.

Transformation Plan [Long Version A.2.6 and C.1.5]

Commission proposal: For certain installations – e.g. energy sector, chemical industry – a transformation plan must be drawn up from 2030. This will include measures for “contributing” to a climate-neutral circular economy by 2050. The transformation plan must be published on the internet.



cep-Assessment: The obligation to publish the transformation plan on the internet poses the risk of enforcing the disclosure of business secrets. Other economic actors, such as competing companies and commodity traders, could exploit this information for market manipulation and distortion of competition. The obligation should, therefore, be limited to non-confidential information.

Energy Efficiency [Long Version A.2.8 and C.1.6]

Commission proposal: In future, Member States will be obliged to set energy efficiency requirements for installations covered by both the IED and the EU ETS; this will no longer be voluntary. This also allows for CO₂ reduction specifications for the installations. The ENVI report provides that Member States remain free not to impose energy efficiency requirements.



cep-Assessment: CO₂ emissions from certain industrial installations are already regulated by way of the EU ETS. Double regulation can both reduce the efficiency of the measures and increase the administrative burden on companies. Since reducing pollutants and energy consumption simultaneously can be complex or even impossible, double regulation should be avoided if these installations are already obliged to conduct an energy audit and operate an energy management system.