# **Email Subject: Industrial Emissions Directive (IED) and Industrial Emissions Portal (IEP) - Cefic assessment of ENVI amendments**

**Cover email**

Dear Mr. / Ms. XXXX,

I am writing on behalf of Cefic, the European Chemical Industry Council, / Company member / National association regarding the proposals on the Industrial Emission Directive (IED) and the Industrial Emission Portal (IEP) to share with you our position and our assessment of the amendments tabled by the ENVI Committee, in view of the next steps ahead of the ENVI Committee votes.

Whilst Cefic / Company member / National association appreciates the aim of the European Commission of making the IED more efficient, faster, stringent, and leaner when striving for a further reduction of emissions, we are concerned that the Commission Proposal will likely not achieve this objective, and we consider the following elements as key concerns:

* Permit procedures, from first submissions by the operator to permits granted by the competent authorities, must be shortened and simplified to achieve a fast industrial dual transformation leading to fostering the implementation of lower carbon emissions and more resource-efficient technologies. The REPowerEU initiative calls for quick permitting processes which could be a good guidance for permits under the IED as well. Proper staffing of all stakeholders involved must be ensured as a prerequisite to achieving this goal.
* Additional bureaucratic binding requirements in the operating permit without additional benefits – like an binding Environmental and Chemicals Management System or new binding and potentially conflicting Environmental Performances values- must be avoided.
* Overlapping requirements deriving from different legislations leads to an even higher complexity of the operating permit and its processes. There needs to be legal certainty in the permit approval process.
* Standalone provisions on collective redress in separated pieces of EU environmental legislation should be avoided. Any collective redress mechanism requires to build in appropriate safeguards against abuse, as recognised in the Commission recommendation of June 2013 and Directive 2020/1828 on representative actions for the protection of collective interests of consumers.
* The burden of proof for private damage claims should not be reversed in the IED: generic scientific information (e.g., statistical data) should not be considered as *prima facie* evidence automatically reversing the burden of proof. The right to reverse the burden of proof should remain with the courts, on a case-by-case basis, based on the entire evidence made available by the claimants.
* All changes to the IED must be viewed in the context of the already challenging environment for the competitiveness of the European industry (disadvantage of location, no access to competitive energy and feedstock, investment decisions turning away from Europe,).

For further information on Cefic position on IED, please consult [the 10 point plan for an effective revision of the IED](https://cefic.org/library-item/10-point-plan-for-an-effective-revision-of-the-industrial-emission-directive-ied/?utm_campaign=IED-MEPs&utm_source=email&utm_medium=post-organic&utm_content=Document---IED-10-point-action-plan&utm_term=Europe_cefic_MEPs-___IED___post-organic_Document---IED-10-point-action-plan_16/01/2023) and our dedicated [webpage](https://cefic.org/policy-matters/industrial-emissions-directive/).

Having assessed the IED ENVI amendments, Cefic / Company member / National association would like to share with you some considerations regarding our priority topics.

You will find our assessment attached to this email.

We remain at your disposal, should you have any questions

Best regards

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**Attachment**

# Title: [Industrial Emissions Directive (IED)](#_Industrial_Emissions_Directive) and [Industrial Emissions Portal (IEP)](#_Industrial_Emissions_Portal) - Cefic assessment of ENVI amendments

# Industrial Emissions Directive (IED)

**Overarching key points**:

* Protect and secure a manageable Sevilla process
* The binding Emissions Limit Values (ELVs) should be taking into consideration the whole BAT range; the associated performance levels (AEPLs) for BAT should remain indicative.
* Avoid overlaps with other EU objectives and directives (eg ETS Directive, OSH Directive, REACH, water legislation, CSRD).
* Environmental management systems (EMS/CMS) and the transformation plans (TP) should remain indicative at the company levels and not become binding permit requirement.
* Innovation: the IED should remain technology neutral and sufficient time for testing should be allocated. In addition, the AEPLs and AELs should remain indicative for emerging techniques.
* Avoiding the use of delegated acts to regulate the Emissions Limit Values (ELV)
* Derogations: industrial activities may require derogations granted in a legally framed derogative process
* CBI:The IED should not generally qualify information that relates to environmental performance of an installation as non-confidential, as this would effectively deprive responsible companies from claiming any information submitted in the BREF process as confidential. Trade federation representatives should be fully entitled to participate to the article 13 Forum exchange of information.
* Penalties: no minimum amount of financial penalty should be established under the IED, whether in turnover percentage or absolute figures, as this would lead to disproportionate outcomes.
* Compensation claims, burden of proof:generic scientific information (e.g., statistical data) should not be considered as *prima facie* evidence automatically reversing the burden of proof

**Focus on Permitting:**

* **Definitions** (Art 3): installations, best available techniques (oppose AMD 295, 296, 297, 300), available techniques (oppose AMD 299), emerging techniques (oppose AMD 324, 330), operating hours[[1]](#footnote-2) (oppose 353) should remain unchanged; benchmarks (oppose AMD 380, 381, 386, 387) and the performance levels should remain indicative with more consideration of cross-media effects for Emissions Limit Value (ELVs). Performance levels such as water reuse shall be made consistent with the other directives (e.g. Water Framework Directive, Waste Framework directive). All of the changes to these definitions would undermine the Sevilla process. Hence, our opposition to AMD 811, 812, 1048.
* The definition of environmental quality standard (EQS) should remain unchanged. We oppose AMD 207, 284, 285, 286, 287 as Environmental Quality Standards Directive already constitute legal basis to trigger additional permit requirements. The scope of EQS should be legally bound to EU water policies and not based on non-binding international agreements or other related non-binding objectives of the Union (e.g. the National Air Pollution and Control Programmes pursuant to Directive(2016/2284/EU)), as this will create legal uncertainty.
* **Art 4:** The full respect of a thorough IED authorisation process for any industrial installation should be the norm. If a fast-tracking permitting process is adopted, to respect a technology-neutral approach of IED, it should be open to a wide range of processes able to foster the implementation of transformative and innovative technologies able to accomplish the ambitions of the EU Green Deal. Hence, we oppose AMD 415.
* **Art 5 and art 13:** The Sevilla process should be protected and kept manageable by avoiding the use of delegated acts to regulate the Emissions Limit Values (ELV). The Sevilla process is a rigorous, well established process and technology neutral. It includes a transparent exchange of information between relevant experts from the EC, Member States, industry and NGOs to define new Best Available Techniques on the reference documents on Best Available Techniques (the BREFs). Moreover, the BREFs are voted by the MS after the formal adoption by the EC. As IED is technology neutral, vendors and alike cannot be part of the Sevilla process. We oppose AMD 448, 565, 566, 567, 615, 616, 619, 620, 632, 634, 636, 1441, 1450, 1481. We support AMD 624, 626.

We oppose AMD 418, 419, 420, 421, 422, 425, 426: any suspensions or withdrawal of existing permits after the date of entry into force of the new IED, should be based on the prescribed limit values and not on EU wide, non-binding communications[[2]](#footnote-3) to ensure legal predictability.

* **Art 6 and Art 17:** We oppose AMD 451-452, 930, 931, the article on the general binding rules should remain as it is in the version of the Commission (same applies for Article 17). The BAT conclusions prescribe the minimum requirements at national level. In addition, IED should remain technology neutral (non-prescriptive). We oppose AMD 790, 924, 925, 926, 927, 928, 929.
* **Art 9:** we are in favour of avoiding the overlapping of ETS Directive and IED and other energy efficiency related directives. GHG emissions are already regulated under the ETS Directive and introducing these under IED would undermine the cap-and-trade principle of the ETS, lead to regulatory overlaps, conflicting priorities and inconsistencies. Hence, we oppose AMD 489, 490, 491, 492, 493, 578, 653, 654, 655, and support the original article of the current IED.
* **Art 11**: Any further expansion of the operator's obligations in the EU which cannot be forced on importers should be carefully considered and be based on a solid impact assessment of the competitiveness of the industry in the EU. Since requirements in Article 14 become permit conditions, this would lead to more comprehensive documentation and would significantly lengthen the licensing procedure, leading to an unproportional balance of costs and benefits. We therefore especially support amendment 644. We oppose AMD 531 as it extends the IED to the supply chain. We strongly advise to keep any life-cycle assessment out of the IED scope as these assessments do not fall under the installation responsibility. In addition, this would overlap with the EU Due Diligence regulations and Corporate Sustainable Reporting (CSR) Directive since these requirements are usually managed at the Corporate level. In addition, we opposeAMD 540, 541, 542,543-545, 546, 547-549, 751, 1044, 1105 as the role of IED is to set pragmatic and legally binding requirements at the installation level and shall not create overlaps with other legislations (e.g. Occupation, Safety and Health (OSH) Framework Directive).

We are concerned with AMD 739, 740 as life cycle assessments are usually performed at Head Quarter (HQ) level as part of the sustainability assessment of the chemical products portfolio and are often required via the ISO Standard certifications (ISO 14040 norm). The different sites depend on these assessments and reports done and handled at HQ level, hence sites do not usually have their life cycle assessments. Therefore a life cycle assessment cannot be an operator requirement nor a permit requirement especially not at the installation level and therefore, it should not also be part of the EMS. Hence, we support AMD 521, 523, 524, 525, 527, 529, 530.

* **Art 14:** We support amendment 644, to segregate the operator obligation (article 11) and permit requirements (article 14). We support AMD 659, 660 and 661. Permit requirements and EMS should be separated.

Regardless of standards applied, Environmental Management System (EMS) should remain indicative, not binding, and at corporate level. Hence we support AMD 742. If legislators would keep a binding nature, EMS/CMS should be segregated from the Permits requirements .We oppose AMD 532, 753, 760, as the requirements of the IED cannot be mixed with the ones coming from REACH or Industrial Emissions Portal. Substitution should not be a condition for granting a permit, respectively reporting should not be a condition for withdrawing the permit.

The IED should focus only on substances ‘relevant’ for the industrial activity and potentially leading to ‘significant’ emissions as it is currently done through the Sevilla process. Also, typically, the inventory of a chemical installation contains intermediate substances which pose no risk to health or environment as those are fully contained in the equipment as pipes and vessels. No reference should be made to substances for which REACH restrictions are put in place. REACH restrictions target specific uses of a substance where an unacceptable risk has been identified. If the restriction does not address industrial use, it means the industrial use is not relevant at all or considered sufficiently controlled. Hence, it should not be brought back via the IED. In addition, when it is used ‘priority substances’ and ‘substances of very high concern’, these concepts should be referenced based on the existing legislation: priority substances as defined by Water Framework Directive and ‘substances of very high concern’ as defined and identified in REACH. Hence, we oppose among other AMD 648.

In addition, ELV applies to all installations across Europe. The characteristics of the receiving surface waterbodies varies a lot and are site specific. Meaning linking ELVs to the characteristics of receiving water bodies can only be done at site level, not at EU level. Competent authorities can already today refine ELVs taking into account the local situation (art. 18). Therefore AMD 648 is not needed.

We support AMD 706, as this requests to have the EMS at company level. In addition, existing systems fulfilling internationally accepted standards (e.g. ISO 14001, EMAS) must be sufficient to fulfill this obligation. Hence, we opposeAMD 719 to 722, 741.

* **Art 15:**

**Art 15.1:**

We are concerned with AMD 775, 776, 783 as the re-use of industrial sludges is only recommended in few cases. These AMD would make recovery of sludges a standing preferred option, even when optimized processes and economics could not allow for this recycling technique. With regards to indirect emissions to water, we consider that this is already covered by the generic provision in IED proposal and water legislation (e.g. water treatment, waste water directive, …) and hence we oppose AMD 775, 776, 783, 779. Any additional restrictions regarding substances and requirements on sludges should be covered there.

**Use of ranges**: The BAT-AELs shall be set based on the whole BAT range as defined in the BAT conclusions. Hence, we support AMD 792, 793, 796, 797. We oppose AMD 191, 795 as it states that the strictest possible emission values shall be set by applying the most effective BATs and the assessment should be made available to the public in an easily accessible form (AMD 800).

**Art 15.3a:**

**Indicative Associated Emission Performance Levels (AEPLs)**: We are concerned with AMD 197 (recital), 831, 832, 833, 834 which requests to set the strictest, mandatory AEPLs consistent with the best performances achievable in the installation. In addition, it requests that the competent authority shall further set environmental performance values, in accordance to the objectives, targets and timeline of the transformation plan elaborated by the operator. The AEPLs should serve as a reference in the approval process of the permit taking into consideration the cross-media effects as associated emission levels (AELs) and AEPLs are in parts mutually exclusive. For instance, enhanced abatement can lead to higher consumption of energy or water.

**Art 15.4 and Art 30:**

**Derogations:** industrial activities may require derogations granted in a legally framed derogative process.Hence, we oppose AMD 843, 851, 852, 853, 854, 855, 856, 867, 1189, which call for a deletion of the derogative process and worsen the Commission proposal. In addition, the derogative process could be also possible to apply in case of cross-media effects, hence we oppose AMD 844. Regardless of the current derogation process, the industry needs a transition period on how to deal with the existing derogations. Hence, we oppose AMD 873, 874, 875, 876.

In addition, it should be sufficient for MS competent authority to document the reasons for granting a derogation, and hence we oppose AMD 868.

* **Art 18:**

The IED proposal suggests (Art 14(1) and Art 18) that whenever a change in other legislation leads towards even stricter limits than the lower end of the emissions level when implementing BATs, permits are subject to change. Given the timing of the industry investment cycles, abatement techniques that have been installed under a given permit should not be rendered outdated after a short time. Transition periods are needed in Article 18 just as they apply when a new BREF is derived. Furthermore, before adding new (technical) requirement, the Competent Authority needs to demonstrate a direct link between the emissions and the exceedance of the Environmental Quality Standards (EQS), and then consider all other avenues and options to reduce the contribution of an installation to occurring pollution, e.g., including emissions from other industrial and non-industrial sources, e.g. transportation and households.

We oppose AMD 935, as seasonal fluctuations are unknown from one year to another and cannot be defined at EU level.

Regarding the detection limits, we opposeAMD 932-935 as they read technically weak and legally uncertain. Basing a binding ELV on a technically uncertain detection limit value of any technology may lead to a counterproductive effect to go for the least advanced detection technology. Cefic members supports the adoption of the most advanced/best available detection technologies for any substance released to reduce the impact to the environment.

In addition, we urge caution in AMD 946 which notes that measurement methods should consider combined effects. Although Cefic noted this inclusion in the Water Framework Directive, we understood that the technologies to adequately assess this are still in early stages of development (i.e. not yet available to reliably address the mixtures effects).

* **Art 21:** we strongly opposeAMD 954, 971, 972,973. A permit revision should be conditioned to significant changes at the installation level due to e.g. modification of in environmental quality standard, new technologies (as by revised BREFs), substantial changes to the installations, as it would ensure industrial stability. It is common practice to adjust the permit constantly. Therefore, fixed timelines are not needed. Generally, all measurement can be taken into consideration, but as this is a very complex process, it must be secured and save guarded that all relevant data must fulfill the requirements for professional use (QAL, quality standards, calibration and validation).

**Focus on innovation:**

* **Art 27b:** Innovation needs time. Innovation cannot be ‘prescribed’ and it needs time to test new techniques under real life conditions to ensure they are delivering the expected objectives. Hence, we oppose AMD 596, 1056, 1057, 1058. We call for fit-for-purpose timeframes and clear consequences if the Emerging Technologies do not meet compliance levels. In addition, we also oppose AMD 1054 as this limits the innovation to only the emerging techniques identified by the center. To foster all innovative ways to implement the twin transition of the industry, the report should adopt a more technology neutral views and through a solid derogatory regime, support ALL innovative technologies that help in it, and not only these advised through INCITE.
* **Art 27c:** AELs and AEPLs for emerging techniques should remain indicative, as the nature of Emerging Technologies (ET) implies some uncertainties due to technology developments and maturity, that would be possible to confirm only with time. As stated in the new Art. 27b and 27c, testing respectively applying emerging techniques can be allowed under derogation, so a possible non-compliant status is put on hold as long as the derogation period granted persists. Hence, we support AMD 1068.
* **Art 14, Art 27d:**

No binding nature of environmental management systems (EMS)/ chemical management system (CMS)/ transformation plans (TP). We opposeAMD 419, 669, 681,682, 683, 970, 1091, 1092, 1095. The EMS was proposed as a binding permit requirement which would create non-necessary burden on SME based on the fact that (except for LVOC units) there is no threshold for chemical units falling under IED.

We also oppose that the transformation plans to be requested the first date of entry into force of IED 2.0 and to be added to the EMS for each installation (AMD 1091, 1092, 1095). The transformation plans and the EMS should not be seen as a prerequisite to the permit (conditionality principle) in order to prevent any delay in the permitting procedure.

We support AMD 1093, 1098, 1099, 1100, 1102, 1138, 1140, 1141, 1163 as these require the transformation plan at corporate level and shall only include non-confidential information (AMD 1162, 1165, 1166). We also support AMD 1137, 1138,1149 requesting the transformation plan to be indicative.

**Focus on legal aspects**

**Confidential Business Information (CBI) (art 13)**

* **Art 13(2)(2).** We **strongly support** AMD 602, 603, 604, 605, 606, 607, 608, 609, 610, 611 limiting access to commercially sensitive information to civil servants from relevant EU institutions, agencies and the Member States and removing the right of private interest representatives to access commercially sensitive information based on an NDA.
* We are **highly concerned by AMD 597 and AMD 600** which seek to qualify large categories of data as non-confidential. Qualifying information that relates to environmental performance of an installation as non-confidential would deprive responsible companies from claiming any information submitted in the BREF process as confidential. Information likely to qualify as confidential should be defined on a case-by-case basis for each BREF when the type of information to be collected is clarified.
* **Art. 13(3).** Trade federation representatives should be fully entitled to participate to the article 13 Forum exchange of informationand have at least the same rights as NGOs. We therefore **support AMD 598** and **recommend rejecting AMD 623, 627** suggesting that participating as industry representative to the TWG would create a conflict of interest and **rejecting AMD 632, 634** giving a ‘veto’ right to the NGO representative in the Forum.

**Non-Compliance (art 8)**

* **Art. 8 (2)(2).** Suspension of permitted activities should be mandatory only in case of immediate danger to human health or threat to cause an immediate significant adverse effect, for consistency with the different paragraphs under article 8 IED. We therefore **r**ecommend rejecting AMD 473, 474, 477. For the same reasons, we support AMD 475 and 476.
* **Art. 8 (3).** Suspension should not be mandatory in case of non-significant adverse effect upon the environment. We therefore recommend opposing or rejecting AMD 482, 483.
* **Art 8(3b)(new).** We recommend rejecting naming and shamingapproaches proposed in AMD 247 and 488. Publishing a list of installations considered in breach of IED and updating that list only once a year will likely lead to wrong accusations and unfairly harm the reputation of companies that proactively contained and remediated the damage. Due to the administrative reporting and updating procedure, the 'shaming' period will likely not match the period of non-compliance.

**Penalties (art 79)**

* **Art. 79 (1).** We support AMD 1492, 1493, 1494 stressing the need for administrative sanctions to respect the principle *ne bis in idem* and the proportionality principle*.*
* **Art. 79 (2).** We strongly welcome AMD 1495, 1499, 1500, 1501, 1504 highlighting the need for fines to be proportionate to the nature and severity of the violation and removing the requirement to calculate the fine based in turnover of the legal person or income of the natural person.
* However, we are **highly concerned by AMD 1496, 1498 and AMD 1505**: to ensure proportionality of fines imposed in case of violation, no minimum amount of financial penalty should be established under the IED, whether in turnover percentage or absolute figures. In addition, figures proposed are excessively high, going beyond what the penalty levels proposed by the Commission for environmental offenses of criminal nature (see legislative proposal for a directive on the protection of the environment through criminal law and replacing Directive 2008/99/EC, of 15.12.2021 [2021/0422 (COD)].
* **Art. 79 (3)(c).** Member States should not be required to define the penalties having regard to indirect or potential impacts. We therefore recommend opposing AMD 1511, 1512, 1513.

**Compensation (art 79a)**

* **Art 79a.** We **strongly support** AMD 1533, 1534, 1535, 1536, seeking to remove the article on compensation. The IED should not include standalone provisions on collective redress. Any collective redress mechanism requires to build in appropriate safeguards against abuse, as recognised in the Commission recommendation of June 2013 and Directive 2020/1828 on representative actions for the protection of collective interests of consumers.
* **Art. 79a(4).** We **strongly support** AMD 1547, 1548, 1549, 1550, 1551, 1552 proposing to remove art 79a(4) on reversal of the burden of proof.
* We are **deeply concerned** by AMD 1555, 1556, 1557, 1559 and 1560 which would allow compensation claims to succeed based on *prima facie* evidence demonstrating an association between the damage and the violation, without requiring any causal links to be established. This could trigger the potential liability of all companies that are alleged to have caused such emissions in case of permit exceedance. Generic scientific information (e.g., statistical data) should not be considered as *prima facie* evidence automatically reversing the burden of proof. The right to reverse the burden of proof should remain with the Courts, on a case-by-case basis, based on the entire evidence made available by the claimants.
* **Article 79a(4a) (new)**. We are **concerned** about AMD 254, 1561, 1562, 1563 which reserve the right to request the Court to order the production of evidence to the claimants. The disclosure of evidence should be available to both parties, as in the collective redress directive. We recommend rejecting AMD 254, 1561, 1562, 1563, unless the following text is added "Member States shall ensure that, if requested by the defendant, the court or administrative authority is also able to equally order the claimant or a third party to disclose relevant evidence, in accordance with national procedural law".
* **Art 79a (5)**. We **strongly recommend opposing** AMD 1568, 1579. If new scientific data becomes available after the limitation period has expired, this should not result in the opening of a new period where claims can be validly introduced. To do so would undermine the fundamental basis for having limitation periods. Also, if the event causing the action occurred too long ago, the defendant might have lost the evidence necessary to defend themselves. As under the product liability directive and the environmental liability directive, companies should have a “state-of-the art” (science) defence available.

# Industrial Emissions Portal (IEP)

**General aspects**:

* We oppose AMD 20, 30 (recital 10), 86, 87, 90, 92, 153, 154 which proposes that the data should be reported at the installation or activity levels. We support AMD 31, 109, 114, 128, 171 as the data should be reported at facility level.
* We are concerned with AMD 37 (recital 13), 137 as this requests to report also on the use of fresh water. The role of IEP is to report on the releases of pollutants to air, water and land, waste.
* We are concerned with AMD 41, 43, 139 as this requests to report also on near misses that could have led to releases. There must be consistency in reporting accidents through the different EU Directives. The SEVESO Directive (the control of major-accident hazards involving dangerous substances) gives a definition of a major accident (related to a minimum quantity release of substance that is different from substance to substance) and how it must be reported to the Member State. There is no existing definition of "near misses". Different Member States and the industry have tried in the past to define near misses, but a clear definition was not found.
* We are concerned with AMD 50, 51, 130, 131, 135, 145, 184 as this proposes to remove the thresholds from the IEP, and to report even when the releases are minimum. This will create additional burden for the authorities and companies. The IEP should be aligned with IED, and only substances ‘relevant’ for the industrial activity and potentially leading to ‘significant’ emissions should be reported to the IEP.
* We are also concerned by AMD 57, 127 as they request that the monitoring data should be reported at least on a monthly basis either by the operator or MS.  This will create additional burden for the authorities and companies. We support the current system as E-PRTR stipulates in article 5.1 *“The operator of each facility that undertakes one or more of the activities specified in Annex I above the applicable capacity thresholds specified therein shall report the amounts annually to its competent authority, along with an indication of whether the information is based on measurement, calculation or estimation*.” Some monitoring is done only once a year following the BREF BAT and cannot be reported on a monthly basis. The reporting must be done by the operator to his authority. The authority has a role of coordination, verification and consolidation of the information received before he put the information in the register. The proposition to ask to the operator to report directly will undermine the authority of the MS and take away his role. In addition, Member States may still request industry operators to continue the reporting also to them (double reporting, more work without added value).
* We opposeAMD 78, 79, 80, 92, 124, as authorities have the role to check the compliance of the installations with the environmental legislation. This is not the role of the general public.
* We are concerned with AMD 143 (based on EMAS), 144 as they request progress on the implementation of environmental management system (EMS) and with AMD 93, 101 as they aim at making EMS public. The environmental management systems should be indicative and developed at company level. In addition, existing systems fulfilling internationally accepted standards (e.g. ISO 14001, EMAS) must be sufficient to fulfill this obligation.
* We opposeAMD 35, 103, 104, 115, 119, 122 to allow for a comparison of permit conditions and benchmarking of environmental performance of the installations, including information on the derogation (AMD 121). We fully support the BREF process that defines the BAT-AEL and the BAT-AEPL,  based on contextual information and data collection. The mentioned AMD undermine the BREF Process, by additional request not respecting BREF decisions, confidential business information (CBI), contextual information, and local constraints.
* **Art. 3(1) (ea) new.** We are concerned about AMD 94 insofar as this information is meant to facilitate damage claims where a causal link between the emission in violation of the permit and the damage is not established. We recommend adding the requirement for such data to demonstrate medically proven causality links between specific types of pollution and specific health conditions, similar to IED AMD 1571 tabled by the Rapporteur.
* In order to be in line with the IED, only the relevant substances should be reported. Hence we oppose AMD 161 while we support AMD 162.

**Legal aspects**

**Confidentiality**

* **Art. 10.** We are **highly concerned by AMD 168**. Qualifying information that relates to environmental performance of an installation as non-confidential would deprive responsible companies from claiming any information submitted to authorities in the context of the IEP as confidential.
* AMD 169 inappropriately refers to the Aarhus Convention, which acknowledges in its article 5(9) that each Party retains discretion in the scope of its system of pollution register, and only establishes an overriding public interest in disclosure for information relating to emissions in the environment in connection with reactive disclosure (requests to data held by authorities), and not proactive disclosure (dissemination).

**Reporting by Member States to the Commission.**

* **Art 6(2a) new**. We are **concerned** by AMD 160 insofar as this information is meant to facilitate damage claims where a causal link between the emission in violation of the permit and the damage is not established. We recommend adding the requirement for such data to demonstrate medically proven causality links between specific types of pollution and specific health conditions, similar to IED AMD 1571 tabled by the Rapporteur.

**Penalties**

* **Rec. 31 and Art 17(2)**. We are **highly concerned** by AMD 74, 75, 198 and 199, as these proposes to establish minimum amounts of fines for violations of the IEP regulation, irrespective of their nature or severity. This would lead to disproportionate and unfair legal outcomes. In addition, the minimum level proposed in these AMDs go beyond the maximum level proposed by the Commission for the most egregious environmental crimes, in its legislative proposal of December 2021.
* **Art. 17(3).** We **oppose** AMD 200, as we consider that a company should not be sanctioned for indirect or potential damage which did not occur.
* **Art. 17(4a) new.** We recommend rejecting naming and shamingapproaches as proposed in AMD 211. Publishing a list of installations considered in breach of IEP will likely lead to wrong accusations and unfairly harm the reputation of companies that proactively corrected the instance of non-compliance. Due to the administrative reporting and updating procedure, the 'shaming' period will likely not match the period of non-compliance.

1. "excluding start-up and shut-down periods" has to be kept in the definition. All rules to be followed are described in the permit of an installation. These rules concern the normal working hours of the installation, the start-up and shut-down periods are excluded. Start-up and shut-down periods are periods in the lifetime of an installation when the installation is shut-down for (legal) inspection and maintenance and started-up after that and the normal operation rules are not applicable due to the different character of the operations at that time. This is accepted by the EU authorities and confirmed by them in the existing definition. It is, for example, also the case in the BREFs, where the different emission level are mandatory for the normal operating time and not for start-up and shut-down period. [↑](#footnote-ref-2)
2. Stemming from e.g. Paris Agreement, UN 2030 Agenda for Sustainable Development [↑](#footnote-ref-3)