

Council adopts 'general approach' on a proposal to review the Industrial Emissions Directive (IED)

The European Environment Council have adopted a [general approach](#) on the proposal to revise the [Industrial Emissions Directive](#) (IED) (Directive 2010/75/EU).

This marks a key step forward in the procedure to revise the IED since the [proposal](#) was announced in 2022 (together with the Commission's [proposal to revise the E-PRTR Regulation](#) – see [here](#) for the Logika led support study). Next will be for the European Parliament to undertake their first reading with the indicative plenary sitting date scheduled for 10/07/2023.¹

If both parties can agree on the text after the first reading, a revision to the IED will be adopted this calendar year. However, experience tells us that the Council and Parliament will likely continue their discussion through to a second reading, suggesting that a revision to the IED will not be agreed until 2024.

Revision of the IED

The IED is the main EU instrument regulating pollution from around 52,000 large industrial installations and intensive livestock farms. The aim of the revision is to provide better protection of human health and the environment with further efforts to reduce pollution in line with the aim of the European Green Deal to reach a zero-pollution, competitive, climate-neutral economy by 2050. Key features of the revision include:

- Increase data transparency and public access to environmental information by making permit summaries available online and providing opportunities for public involvement in permit-setting and review processes.
- Encourage Member States to fully and consistently implement the Industrial Emissions Directive (IED) and strengthen permit controls on air and water emissions.
- Integrate requirements for reducing pollution and decarbonization via transformation plans to greater account for greenhouse gas emissions, resource efficiency, and water reuse.
- Facilitate investment in newer, cleaner technologies that improve energy efficiency, resource usage, and water reuse.
- Promote the sustainable growth of industries that support the development of low-carbon and circular economies.
- Establish an Innovation Centre for Industrial Transformation and Emissions (INCITE) to drive innovation and support the transition to more sustainable industrial practices.
- Strengthen the definition of compliance assurance measures and liability to ensure effective, proportionate and dissuasive penalties are in place to address disparities in penalty regimes between Member States.
- Expand coverage of intensive farming and industrial activities.

What steer is the Council giving for the IED revision?

In their general approach, the council have introduced the following main changes to the Commission's proposal:

¹ https://eur-lex.europa.eu/procedure/EN/2022_104

Proposed area for change	Details
Permit summaries	<p>Among other things, the permit summary was introduced to facilitate public access and enforcement. The Council text removes the proposed provision for a permit summary.</p> <p>The Commission proposals for permit summaries has proven to be particularly contentious among Member States. Logika has been facilitating discussion between competent authorities for the European Commission to establish what would be most beneficial in this regard (as well as feasible). See details here.</p>
Opt-out clause for EU ETS activities	<p>The IED proposals removed the article which exempts installations carrying out an EU ETS activity from setting emission limit values in permits for GHG emissions. Whereas the Council text reinstates this provision.</p> <p>By reinstating this provision, the Council would be softening the legal grounds on which a revision to the IED can contribute to decarbonisation.</p>
REACH	<p>As regards permit conditions and the environmental management system, the Council text includes explicit reference to compliance with REACH annex XVII restrictions. There are several places in the Council text where the amended text is strengthening the emphasis on hazardous substances.</p>
Environmental management systems (EMS)	<p>The Council text specifies an earlier date by which the Commission shall set out requirements by implementing act for the transformation plan (31 December 2025 compared to 30 June 2028). Together with a provision that the EMS shall be audited at least every 3 years by verified external auditor.</p> <p>The Council text places pressure on the Commission to provide clear planning to industry as to what will be required of them by an earlier date.</p>
Emission limit values (ELVs)	<p>The Council text refers to having regard to possible cross-media effects when setting ELV in permit conditions. This is not specified by the Commission's proposal and could have implications for industry and regulators when setting permit conditions.</p>
General binding rules (GBR)	<p>The Council text provides greater detail regarding the use of GBR by Member States. Notably, it states that the use of GBR shall be set according to the best performance of the installations in scope, essentially ensuring that GBR deliver a higher level of environmental protection.</p>
Derogation for energy facilities	<p>The Council text introduces an option for a three month derogation from the ELVs associated with BAT in the event of extra ordinary circumstances resulting in disruption or shortage in supplies in energy supplies, resources, materials or equipment.</p> <p>The Council have introduced this flexibility following recent crises (the COVID-19 pandemic and the Russian war of aggression against Ukraine), which have significantly affected energy supplies.</p>

Proposed area for change	Details
Derogation for isolated combustion plants	The Council text extends the existing derogation for small isolated systems until 2029 (whereby installations are exempt from Chapter III special provisions for large combustion plants). Requires a compliance plan to be issued by a Member State where the exemption applies. In the interest of energy security, this provision is intended to more time to establish interconnecting grids to the mainland energy grid).
Centre for Industrial Transformation and Emissions (INCITE)	The Council text provides more detail regarding the remit of the Innovation Centre for INCITE whereby it shall contribute inter alia to decarbonization of pollution, decarbonization, resource efficiency, circular economy and techniques using less or safer chemicals
Uniform conditions for operating rules for intensive agriculture	The Council text requests an exchange of information before establishing uniform conditions (thereby delaying the approach set out by the Commission)
Further clarifications and attempts to reduce administrative burdens	Further changes include clarifications to many parts of the proposal and attempts to reduce administrative burdens for operators and national authorities.
Compensation	The Commission proposal includes the provision that individuals have the right to claim and obtain compensation for damage. The Council text removes the provision that relevant competent authorities may be held responsible for a violation of the Directive. Thus, the Council is steering towards holding industry accountable rather than the Competent Authorities, very much in line with the polluter pays principle underpinning EU environmental acquis. In parallel to the revision of the IED, the European Commission has launched a fitness check to review how the polluter pays principle is applied in practice across all environmental acquis (including the IED) – work to support the fitness check is led by the Logika team.
Transitional provisions	To minimize the impact on industry where the proposal includes extended scope, the Council text stipulates a staggered approach to implementation of BATC

Next steps

Concerns have been raised by industry and environmental representatives that the discussion thus far has been dominated by the proposed changes to scope for intensive agriculture – a politically sensitive matter.

Parliament are expected to vote on the Council's agreed text on 10/07/2023. Initial discussions among Members of the European Parliament (MEPs) suggest there is support to retain the exclusion of sectors covered by the ETS.