



## EUROPEAN COMMISSION

*Brussels, 9.2.2023  
C(2023)1073 final*

*Mr Peter TSCHENTSCHER  
President of the Bundesrat  
Leipziger Straße 3-4  
D – 10117 BERLIN*

*Dear President,*

*The Commission would like to thank the Bundesrat for its Opinion on the proposal for a Directive of the European Parliament and of the Council amending Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions and Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste {COM(2022) 156 final}.*

*The Commission is pleased to have the opportunity to provide a number of clarifications regarding its proposal to revise the Industrial Emissions Directive and hopes that these will allay the Bundesrat's concerns.*

*The 2020 evaluation<sup>1</sup> of the Industrial Emissions Directive 2010/75/EU concluded that the directive was generally effective in preventing and controlling pollution into air, water and soil, and in promoting the use of Best Available Techniques. However, the evaluation had also identified several areas for improvement. To incentivise the deep industrial transformation required between 2025 and 2050 the Commission therefore committed, in the European Green Deal, to revise this legislation.*

*The general objectives of the Industrial Emissions Directive revision are to help to protect, in the most effective and efficient way, human health and the environment from the adverse effects of pollution from industrial installations and large livestock farms, and to improve European Union industry sectors' resilience to the impacts of climate change. It aims to stimulate and accompany the forthcoming deep transformation towards zero pollution through the use of breakthrough technologies, thereby contributing to the European Green Deal objectives of reaching climate neutrality, increased energy efficiency, a non-toxic environment and a circular economy.*

---

<sup>1</sup> Commission Staff Working Document Evaluation of the Industrial Emissions Directive (IED); SWD(2020) 181 final.

*The revision of the Directive retains its key vision of continuing to support a competitive level-playing field, whilst in parallel providing a high level of protection to human health and the environment in the European Union. In addition, the Industrial Emissions Directive revision seeks to modernise and simplify the current legislation, for example through digitalisation and improving knowledge about sources of pollution. Finally, it aims to improve public participation in decision-making, as well as access to information and justice, including effective redress mechanisms, and compensation for damages, consistent with the Aarhus Convention as well as with the case law of the Court of Justice of the European Union.*

*With Russia's unprovoked and unjustified military aggression against Ukraine, we are facing increased challenges in getting the necessary supply of energy and materials. This reminds us that we need to keep our focus on building a sustainable and more resilient European Union economy. Improving resource efficiency and increasing our autonomy in sourcing critical raw materials are therefore important priorities of the proposals.*

*The Commission welcomes the Bundesrat's support for harmonised compliance and enforcement across the EU, as well as for proportionate action on the extraction and treatment of industrial minerals and metals, to achieve a high level of environmental protection via a level playing field approach to applying Best Available Techniques. The Commission would like to stress that the Industrial Emissions Directive should provide the basis for optimised, streamlined but ambitious operating permits for minerals and metals activities within the revised scope, to facilitate the growth of this necessary sector, in a coherent, environmentally sustainable manner.*

*The Commission welcomes the Bundesrat's broad support for the aims of the proposal and notes its questions relating to the details of the implementation of the enhanced Environmental Management System, a key concept of the Directive's revision. The Commission also takes note that the Bundesrat acknowledges that it is appropriate to include larger cattle farms within the scope of the revised Directive, whilst modulating the administrative burden via a lighter authorisation process. In response to the more technical comments in the Opinion, the Commission would like to refer to the attached annex.*

*The Bundesrat's Opinion has been made available to the Commission's representatives in the ongoing negotiations of the co-legislators, the European Parliament and the Council, and will further inform these discussions.*

*The Commission hopes that the clarifications provided in this reply address the issues raised by the Bundesrat and looks forward to continuing the political dialogue in the future.*

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*

*Virginijus Sinkevičius  
Member of the Commission*

## Annex

*The Commission welcomes the analysis the Bundesrat has carried out on this important subject. The Commission would like to make the following comments and clarifications:*

***The Bundesrat recognizes that the European Green Deal adopted in 2019 is a particular priority in order to preserve a livable environment, given the wide range of environmental threats. The Bundesrat is of the opinion that the revision of the IED would consistently continue this policy but would not adequately address the changing environment in the medium term caused by the impact of the coronavirus pandemic and the war in Ukraine, such as disruption of supply chains, inflation, including with extremely higher energy prices, and skills shortages.***

- *The Commission shares the Bundesrat's views on the crucial importance of reaching the objectives of the European Green Deal and the Zero Pollution Action Plan, of which the Industrial Emissions Directive (IED) revision is a central instrument.*
- *The Commission recognises the effects of Russia's unprovoked and unjustified military aggression against Ukraine and its weaponisation of energy, triggering price increases and inflation. Since October 2022, the Commission has taken several short-term actions to alleviate the impact of the high energy prices on European citizens and businesses<sup>2</sup>.*
- *In the longer term, the greening of the EU economy is part of the structural solution. This is reinforced by the objective of the Directive's revision which is to act as a proactive instrument to reduce the use of resources, including energy, water and raw materials, whilst also accelerating the uptake of more effective processes and technologies in Europe by the large industrial plants. This will in turn increase the resilience and the autonomy of the EU.*

***The Bundesrat supports the objective of strengthening coherence with other European rules in the context of the revision of the IED and highlights that duplication of regulation and overlaps should be avoided and that areas already covered by other legal acts should not be added to the scope of the IED.***

- *The Commission fully shares the Bundesrat's consideration for the overall coherence of EU law.*
- *The revision of the Directive seeks to maximise synergies with other EU legislation, whilst maintaining the scope, specific remit and provisions of each other relevant directive or regulation.*
- *For example, the Emissions Trading System (ETS) will remain the primary market-based instrument to reduce Greenhouse Gases (GHG) within its scope, whereas the*

---

<sup>2</sup> See e. g. [COM/2022/360 final](#) ("Save gas for a safe winter"), [European Critical Raw Materials Act](#), as well as [COM\(2022\)230 final](#) (REPowerEU Plan)

revised IED would support the climate neutrality efforts by setting mandatory requirements for GHG (e.g., methane) and/or activities outside the scope of the ETS.

***The Directive calls for an increased information of the public, additional reporting obligations, additional permit provisions such as environmental performance limit values, an environmental management system including a chemicals inventory, and a transformation plan. The Bundesrat highlights the potential associated increase of administrative burden, in terms of duration and complexity.***

- *The Commission agrees on the importance to limit any undue administrative burden. The Commission's proposal is based on an impact assessment which allowed to identify the measures with the optimal ratio between such burden on competent authorities/operators and the expected environmental benefits. Whenever possible, the Commission has systematically chosen the options that minimise the additional administrative burden for public authorities. For example, the Commission proposes a flexible approach enabling operators to implement the general principles of resource efficiency and circular economy in a proportionate manner, using the Environmental Management Systems (EMS). This EMS is not part of the permit, hence it does not lead to an increased complexity of the permitting procedure.*
- *Likewise, the operators' Transformation Plans are included in their Environmental Management Systems, meaning that Member States' authorities will be solely responsible for an overall oversight, rather than detailed compliance checks.*

***The Directive calls for binding environmental performance levels and for the development and implementation of an Environmental Management System, including a chemicals inventory of the hazardous substances present in the installation, a risk assessment of their impact on human health and the environment and an analysis of the possibilities to substitute them with safer alternatives. The Bundesrat welcomes the introduction of binding environmental performance levels but points at the associated burden due to uncertainties in the development of these levels. The Bundesrat highlights the complexity of the assessment of the risk associated with hazardous substances and calls for the involvement of Competent authorities and the development of assessment rules.***

- *The Commission welcomes the Bundesrat's support to set binding environmental performance levels associated with Best Available Techniques (BAT) in BAT Conclusions. The Commission's proposal also allows to set benchmarks in BAT Conclusions. These are two mutually exclusive tools for developing quantified resource efficiency and circular economy requirements. In practice, setting environmental performance levels in BAT Conclusions will only be possible for activities that are highly homogenous across the European Union; they will become the reference for setting relevant limit values in permits. On the other hand, benchmarks in BAT Conclusions address activities that vary depending on*

*local conditions or installation specificities; they will have to be taken into account by the operators when developing their EMS.*

- *This dual approach allows for minimizing additional burden in applying environmental performance levels, while driving the improvement of the overall environmental performance of the concerned installation.*
- *In relation to the Bundesrat's views on the alleged complexity of risk-assessment associated with hazardous substances, Article 14(a) of the proposal reflects the announcement made in the Chemicals Strategy for Sustainability<sup>3</sup> to ensure that the legislation on industrial emissions promotes the use of safer and more sustainable chemicals.*
- *The Commission considers that the operators are the best placed to carry out on-site assessments of risks associated with hazardous substances, given their knowledge of their installation and the hazardous substances they use, but also given their responsibility regarding pollution prevention and reduction. The competent authorities are responsible to carry out inspections, which may address the performance of this on-site risk assessment.*
- *Under Article 13 of the Commission's proposal, the European Chemicals Agency (ECHA) will be involved in developing BAT reference documents and will support both the Commission and the IED operators by (1) providing input to identify and select relevant hazardous substances for each sector, (2) developing sector-specific good practices for the use of the less toxic substances, and (3) providing tools and guidance for the preparation, by IED operators, of the chemicals chapter of their Environmental Management System.*

***The Directive proposes that competent authorities set the strictest possible emission limit values ensuring that, under normal operating conditions, emissions do not exceed the emission levels associated with the Best Available Techniques laid down in BAT Conclusions. The Bundesrat is concerned that setting emission limit values individually by the authorities on a case-by-case basis would be contrary to the IED Article 6 and thus leads to additional burden on competent authorities and to legal uncertainty for operators. The Bundesrat highlights also that emission levels should be set in BAT conclusions in a more nuanced and differentiated way and clearly reflect the use of certain techniques or combinations of techniques and sees this proposal as contrary to IED Article 15(2), which stipulates that emission limit values must be complied with without requiring the use of certain techniques.***

- *BAT are the state-of-the-art techniques to prevent or reduce emissions and the range of emission levels associated with these techniques reflects the differences of performance of these techniques or combination of techniques. Although some BAT can therefore allow to achieve emission levels lower than the less strict end of the emissions range, the analysis of permits for several sectors shows that between*

---

<sup>3</sup> [COM\(2020\)667 final](#)

*75%-85% of all emission limit values are either based on the upper end of the range or are above it. Whilst setting the emission limits at or close to the upper limit of the range may be justified for some individual installations, such widespread fixing of emission limits at the upper limit of the range is not consistent with the obligation of operators under Article 11 (a) of the Industrial Emissions Directive.*

- *Therefore, the proposal requires the Member State's competent authorities to set the permit emission limit values, reflecting the best performance possible of BAT for the individual plant.*
- *However, some BATs may not be suitable for use in certain installations, or a combination of BATs may be more effective on some pollutants or environmental media than others. Hence, it will be the responsibility of the Member States' competent authorities to determine the appropriate level of the emission limit, inter alia based on the technical report that the operator will provide to the competent authority.*
- *The Commission agrees that more differentiated information as to the performance of techniques or combination of techniques used to reduce emissions should be made available. The Commission will include this in the future in BAT reference documents and BAT conclusions.*
- *The use of General Binding Rules under Article 6 of IED should be consistent with the need to consider the specificities of individual installations when setting emission limit values in permits. Such rules may be a suitable means for providing to the permitting authorities, at national level, the information on the performance of techniques needed for setting emission limits for individual installations.*

***The Directive calls for regular monitoring of the concentration of the relevant pollutants in the receiving environment when environmental quality standards require stricter conditions than those achievable by the use of BAT (IED Article 18). The Bundesrat deems that this additional monitoring entails a considerable additional burden for the discharger and requires intensive coordination with the relevant competent authority. The Bundesrat highlights that in complex discharge situations, a monocausal relationship between a single wastewater discharge and the measured water concentration cannot be assumed and pollutant-specific monitoring of wastewater to be discharged is generally sufficient for the intended monitoring purpose.***

- *The monitoring of the concentration of the relevant pollutants in the receiving environment is not to be carried out systematically but only in those cases where the permit of the concerned installation contains stricter conditions than those achievable by using BAT, because the use of BAT is not sufficient to meet the environmental quality standard (EQS). In 2018, the use of Article 18 was reported*

only for five cases in the EU<sup>4</sup>. Although not all cases may have been reported, a very small number of installations seems to be concerned by this measure.

- *The monitoring of the concentration of the relevant pollutants in the receiving environment should take place at a location allowing to conclude on the impact of individual plants. This could be measured for example upstream and downstream of plants concerned. It would make it possible to verify that the stricter permit conditions are sufficient in light of Article 18 of the IED.*

***The Directive calls for the harmonisation of compliance assessment through the development of an implementing act establishing a common method. The Bundesrat welcomes, in principle, the efforts to harmonise enforcement practice, but highlights that this harmonisation should not be done in a delegated act but by developing common rules using the Seville process and based on scientific standards.***

- *The Commission thanks the Bundesrat for its support to the harmonisation of compliance assessment across the EU.*
- *The proposed new Article 15a provides for the adoption of an implementing act setting out common methods to assess compliance for Chapter II installations (similarly to Annex V and Annex VI requirements for Chapter III and Chapter IV installations). An implementing act is proposed as the aim is to ensure harmonised implementation of the Directive. These common methods will be determined in cooperation with experts from relevant stakeholders and will be based on sound scientific information and methodologies.*

***The Directive proposes a summary of each installation permit is made available to the public, in addition to the permit itself. The Bundesrat suggests exempting the installations permitted under point 6.11 of IED Annex 1 from this provision, because of the burden of a permit summary under water law.***

- *Installations permitted under point 6.11 of IED Annex 1 undertake independently operated treatment of wastewater not covered by the Urban Waste Water Directive. There is no EU requirement for a permit summary for those installations in EU water legislation. Furthermore, IED permitting fulfils the conditions required under the Water Framework Directive 2000/60/EC.*
- *The permits themselves are already to be made publicly available as per Article 24 of the existing IED, including the permits of installations permitted under point 6.11 of IED Annex 1. The ‘uniform permit summary’ would include an overview of the main elements of the IED permit, such as Emission Limit Values or monitoring frequency, and will not lead to additional burden under water law.*

***The Directive regulates the production of hydrogen, which is covered by point 4.2(a) of its Annex I. The proposal for a revision of the Directive does not change the activity***

---

<sup>4</sup> Report from the Commission to the Council and the European Parliament, COM(2021) 793 final.

***description of hydrogen production. The Bundesrat highlights that the IED should not create regulatory and licensing barriers for electrolysis plants and therefore suggests that industrial electrolyzers should be differentiated according to their performance and that clear permitting requirements should be formulated. Furthermore, the Bundesrat regrets that the proposal for a directive does not make any adaptation to simplify the authorisation situation for small-scale electrolyzers.***

- *The Commission agrees that hydrogen plays a key role in the transformation towards decarbonisation. The EU Hydrogen Strategy<sup>5</sup> envisages hydrogen meeting around one quarter of the total energy demand in the EU by 2050, and REPowerEU sets a target of 10 million tonnes of domestic renewable hydrogen production by 2030.*
- *Since the proposal for a revision of the IED does not change the activity description of hydrogen production in Annex I, the production of hydrogen (covered by point 4.2(a) of Annex I) must comply with the provisions set out in the IED if it takes place “on an industrial scale” by chemical or biological processing. It is for the national competent authority to conclude on the application of the IED provisions where appropriate.*
- *The IED ensures a level playing field in the EU by addressing the environmental impact of industrial-scale electrolysis, such as energy efficiency, water consumption or risks of hydrogen explosion. However, decentralised small-scale hydrogen production units that will likely expand in the years to come, for example for individual households, are not captured by the notion “on an industrial scale”, and hence the IED provisions does not apply for these units. In case of need, the Commission would be available for providing guidance on the matter.*

***The proposal for a revision of the IED includes the extraction and treatment of industrial minerals and metals under the scope of the IED (new activity 3.6 in Annex I). The Bundesrat stresses the importance of raw materials supply and security for infrastructure projects and industrial transformation, and stresses the need for a predictable legal framework in the long term, as well as the need to strengthen the circular economy, taking into account secondary raw materials. However, the Bundesrat advocates for an assessment of the proportionality of the requirements under the IED, in particular for SMEs.***

- *The Commission agrees with the Opinion of the Bundesrat on the importance of raw materials supply and security for the industrial transformation.*
- *The proposal aims to strengthen and harmonise the EU level playing field for mining metals and critical raw materials, so that Best Available Technique for extraction, processing and pollution prevention control are harnessed across Europe. The IED’s consultative way of working ensures that Member States,*

---

<sup>5</sup> COM(2020) 301 final.



*industry experts and environmental NGOs are involved in setting these “Best Available Techniques” and in the site-specific permitting process. The Commission is confident that this will help to instil confidence in local communities when new mines or mine extensions are planned.*

- *The additional administrative costs incurred by the application of IED permitting is expected to be limited as under existing law most extraction sites are currently subject to some type of operational permit, and not represent a significant burden on the sector.*

***The proposal for the revision of the IED aims to stimulate a deep industrial transformation towards clean, circular and climate neutral industry. In this regard, the Bundesrat notes that there is a high need for investment in climate-neutral production processes, and a simultaneous acceleration of the associated planning and approval processes. The Bundesrat sees the revision of the Directive as an opportunity to increase the pace of transformation and avoid barriers to transformation without overburdening businesses and risking production relocation. It welcomes the Commission’s proposal to draw up transformation plans for Annex I installations for the transition to a clean and climate-neutral and circular economy. However, it is concerned about the publication of the transformation plans and the lack of provisions allowing for potential updating the plans resulting from external factors.***

- *Whilst largely agreeing with the Bundesrat’s views, the Commission underlines that the proposed transformation plans will optimise synergies between pollution reduction, decarbonisation, energy use and efficiency, and circular economy. The plans will promote transition pathways that create technologies which favour integrated solutions. This will limit risks of sub-optimal investment strategies and this way will contribute to reducing transformation costs for industry and the EU society as a whole.*
- *The Commission will define in an implementing act the kind of information that should be included in the transformation plan. As the transformation plans will be part of the operator’s Environmental Management System (EMS), they will be updated as needed, as part of the required regular update of the EMS.*
- *The publication of the transformation plan will also be combined with the publication of the EMS, without prejudice to the need to preserve confidentiality of commercially sensitive information.*

***The Directive calls to better address emissions from livestock rearing, by covering livestock installations, including cattle rearing farms, above a certain size. The Bundesrat takes note of this proposal. The Bundesrat highlights that authorisation, monitoring and other obligations for the concerned installations should remain manageable for both operators and competent authorities and that medium-sized farms are not industrial installations. In that regard, the Bundesrat welcomes the concept of a specific authorisation procedure for livestock farms, which takes into account the specificities of livestock farming. Finally, the Bundesrat calls for different thresholds***

***for different types of animals, to maximise environmental benefits and in line with the polluter-pays-principle.***

- *The Commission welcomes the support for the specific permitting procedure for large livestock installations. The proposed threshold for livestock rearing installations to be covered by the IED (150 Livestock Units – LSU) has been selected on the basis of its cost-benefit ratio, the degree of coverage of the emissions of the sector, and the number and the size of farms.*
- *The Commission’s view is that the Livestock Unit (LSU) concept is an accepted common denominator approach across animal livestock species, based on their resource needs and the animals’ related pollution and pressures on their surrounding and wider environment. The differences across the livestock sector will be assessed during the co-creation of Operating Rules in the context of the well-respected “Sevilla Process” in which experts from the sector, Member States’ representatives and environmental NGOs will participate. The drawing up process of such Operating Rules will take into account inter alia the nature, type, size and density of these installations and the specificities of pasture-based cattle rearing systems, where animals are only seasonally reared in indoor installations. This will ensure that the specificities of each animal type, farming practice, as well as of relevant organic or other feedstocks will be thoroughly analysed and discussed, for the purpose of identifying the most cost-effective BAT. In addition, as underlined by the Bundesrat, the concerned installations will be subject to a simplified permitting regime.*
- *This results in a highly positive benefit to costs ratio for society of just over 11, resulting in total human health benefits of around €5.5 billion per year. The ratio could in reality be even higher.*
- *The Commission would also like to stress that the proposal will extend the scope of the Directive to cover only the largest cattle, pigs and poultry farms. Those largest farms are responsible for about 60% of the ammonia and 43% of the methane emissions from EU livestock. Also, these have been assessed as those who can most cost-effectively play their part.*

***The Bundesrat is concerned by the proposed use of delegated acts in the Commission proposal and calls for a clear definition of the legal framework conditions and the political aspects of the IED in an ordinary European legislative procedure, with the involvement of the European Parliament and the Council.***

- *The use of delegated acts under the revised IED will be limited to acts which would supplement or amend certain non-essential and technical elements of the Directive. Such delegated acts will not touch upon the political framework nor the core balance of the Directive.*
- *In line with the Treaty requirements, the objectives, content, scope and duration of a delegation of power must be explicitly defined in the legislative act. This is what*

*the Commission sought to achieve in the proposed Article 70i and Article 74, read in conjunction with Article 76.*

- *In addition, the Commission will carry out appropriate consultations with all stakeholders, including Member States and the European Parliament, before adopting such delegated acts.*
- *The European Parliament and the Council have equal powers to object to the adoption of a delegated act.*

-----