# Cefic suggestion for AMD on Council compromise text of 20 December

The Presidency prepared an Annex draft compromise proposal for the revised IED (hereinafter, the Compromise Text), which was presented in the Council meeting on 20 December. While the Council Environment Working Party has improved many aspects of the initial Commission’s proposal, there are still few points that should be amended. Please see below the Cefic suggestions in black and yellow based on the Council compromise text (in **bold black**):

## Permitting

**Definitions:**

(b) point (12) is replaced by the following:

‘(12) ‘BAT conclusions’ means a document containing the parts of a BAT reference document laying down the conclusions on best available techniques, their description, information to assess their applicability, the emission levels associated with the best available techniques, **and with emerging techniques,** the environmental performance levels associated with the best available techniques **and with emerging techniques**, consideration of cross-media effects, the ***~~minimum~~*** content of an environmental management system including non-confidential benchmarks ***~~associated with the best available techniques~~***~~,~~ associated monitoring, associated consumption levels and, where appropriate, relevant site remediation measures;’

(c) the following point (13a) is inserted:

‘(13a) ‘environmental performance levels associated with the best available techniques’ means the indicative **~~binding~~** range of environmental performance levels, except emission levels, obtained under normal operating conditions using a BAT or a combination of BATs, **as described in BAT conclusions.**

(50) ‘emission levels associated with emerging techniques’ means the indicative range of emission levels obtained under normal operating conditions using an emerging technique or a combination of emerging techniques, expressed as an average over a given period of time, ~~environmental protection~~ under specified reference conditions;

(51) ‘environmental performance levels associated with emerging techniques’ means the indicative range of environmental performance levels, except emission levels, obtained under normal operating conditions using an emerging technique or a combination of emerging techniques, **as described in BAT conclusions**;

(53) ‘‘benchmarks’ means the indicative range ofenvironmental performance levels associated with best available techniques taking into account cross media effects***,* which shall be used as a reference in the EMS *~~other than emission levels, and may include:~~***

***~~(a) consumption levels;~~***

***~~(b) resource efficiency levels and reuse levels covering materials, water and energy resources;~~***

***~~(e) waste and other levels obtained under specified reference conditions.’~~***~~.~~

**Article 8***:* **Non-compliance**

2. Where the breach of the permit conditions poses an immediate significant danger to human health or threatens to cause an immediate significant adverse effect upon the environment, and until compliance is restored in accordance with the first subparagraph, points (b) and (c), the operation of the installation, combustion plant, waste incineration plant, waste co-incineration plant or relevant part thereof shall be suspended without any delay.

(8) In **Article 11**, the following points (fa), (fb) and (fc) are inserted:

(fa) material resources and water are used efficiently, including through re-use;

(fb) the overall life-cycle environmental performance of the supply chain is taken into account as appropriate;

(fc) an environmental management system is implemented as referred to in Article 14a’;

(fd) The Technical Working Group of the IPPC Bureau shall evaluate the principles of energy efficiency and those listed in fa and fb and shall advise the permitting authority on prioritization to allow operators to comply with Article 11.

**Art 15.3**: ‘ Following the publication of new BREFs under this directive,The competent authority ~~shall~~ may set the ~~strictest possible~~ lowest technically and economically feasible emission limit values that are ***~~that are consistent with the lowest emissions~~*** achievable by applying BAT in the installation, and that ensure that, under normal operating conditions, emissions do not exceed the emission levels associated with the best available techniques (BAT-AELs) as laid down in the decisions on BAT conclusions referred to in Article 13(5). The emission limit values shall be based on an assessment by the operator,taking into account the whole BAT-AEL range and analysing the feasibility of meeting the ~~strictest~~ ~~end of the BAT-AEL range and demonstrating~~ the best performance that the installation can achieve under normal operating conditions by applying BAT as described in BAT conclusions while taking into account fluctuations of the performance of the best available techniques and the circumstances where the installation operates at the highest state of emissions.

**General binding rules referred to in Article 6 may be applied ~~provided these rules taking~~ ~~into account best achievable performance~~ while setting relevant emission limit values according to this article.**

**If general binding rules are adopted, the strictest possible emission limit values achievable by applying BAT shall be set for categories of installations having similar characteristics that are relevant in determining the lowest emission levels achievable. The general binding rules shall be based on an assessment made by the Member State analysing the feasibility of meeting the strictest end of the BAT-AEL range and demonstrating the best performance that those categories of installations can achieve by applying BAT as described in BAT conclusions.**

**Art 15.3a.** The competent authority shall set indicative environmental performance limit values that ensure that, under normal operating conditions, such performance limits values comply with the indicative ~~do not exceed the~~ environmental performance levels associated with BATs as laid down in the decisions on BAT conclusions referred to in Article 13(5).

**Art 15.4a. By way of derogation from paragraph 3a, the competent authority may, in specific cases, set less strict environmental performance limit values. Such a derogation may apply only where an assessment shows that that, the achievement of performance levels associated with the best available techniques as described in BAT conclusions ~~would~~ will lead to significant negative environmental impact, including cross-media effects, or significant economical impact due to:**

***(a) the geographical location or the local environmental conditions of the installation concerned; or***

***(b) the technical characteristics of the installation concerned,* ~~the achievement of performance levels~~ ~~associated with the best available techniques as described in BAT conclusions~~ ~~would lead to significantly negative~~ ~~environmental or economical impact.~~**

**The competent authority shall document in an annex to the permit conditions the reasons for the application of the first subparagraph including the result of the assessment and the justification for the conditions imposed.**

**The competent authority shall in any case ensure that operating under less strict environmental performance limit values shall not cause any significant ~~pollution~~ environmental impact and shall achieve a high level of protection of the environment as a whole is achieved.**

**The Commission shall establish, by means of implementing acts, a standardised methodology for undertaking the assessment referred to in the first subparagraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 75(2).**

**Article 18:** **Environmental quality standards**

Where an environmental quality standard requires stricter conditions than those achievable by the use of the best available techniques, additional measures shall be included in the permitwith a view to reducing the specific contribution of the installation to the pollution occurring in the relevant area. Such measures shall allow for a transition period for implementation of the new environmental quality standard. Before setting stricter conditions in the permit, Member States shall evaluate feasibility of other possible measures aiming at reducing the contribution of the installation to occurring pollution**.**

Where stricter conditions have been included in the permit in accordance with the first paragraph, ***the competent authority shall assess impact of these stricter conditions on the concentration of the pollutants concerned in the receiving environment.***

***Where the stricter conditions included in the permit in accordance with the first paragraph have a quantifiable or measurable effect on the environment, the competent authority may require the operator to monitor the concentration of the pollutants concerned in the receiving environment. ~~regular monitoring of the concentration of relevant pollutants in the receiving environment resulting from operations of the installations concerned shall be required from the operator, and t~~*** The results of such monitoring shall be transmitted to the competent authority. Where monitoring and measurement methods for the concerned pollutants are set out in other relevant Union legislation, such methods shall be used for the purpose of the monitoring referred to in this paragraph.’

## Environmental Management System

**Article 14a**:

1. Member States shall require that if the competent authorities deem it necessary**,** the operator has to prepare and implement, for **all its activities on a** **site** ~~each installation~~ falling within the scope of this Chapter, a~~n~~ corporate environmental management system (‘EMS’). The EMS shall comply with the provisions included in relevant BAT conclusions that determine aspects to be covered in the EMS.

***~~The EMS shall be reviewed periodically to ensure that it continues to be suitable, adequate and effective~~.***

2. The EMS shall include at least the following:

(a) environmental policy objectives for the continuous improvement of the environmental performance and safety of the installation, which shall include measures to:

(i) prevent the generation of waste;

(ii) optimise resource use and water reuse;

(iii) prevent or reduce risks associated with the use of hazardous substances.

(b) indicative objectives and performance indicators in relation to significant environmental aspects, which shall take into account benchmarks set out in the relevant BAT conclusions ~~and the life-cycle environmental performance of the supply chain;~~

(c) for installations covered by the obligation to conduct an energy audit or implement an energy management system pursuant to Article 8 of Directive 2012/27/EU, inclusion of the results of that audit or implementation of the energy management system pursuant to Article 8 and Annex VI of that Directive and of the measures to implement their recommendations;

(d) a chemicals inventory of the relevant hazardous substances present in the installation as such, as constituents of other substances or as part of mixtures, a risk assessment of the impact of such substances on human health and the environment and an analysis of the possibilities to substitute them with safer alternatives, ***with special regard to the substances fulfilling the criteria of Article 57*** and identified as SVHC according to art. 59 **and substances addressed in restrictions in Annex XVII to Regulation (EC) No 1907/2006** in case the restriction covers relevant industrial use(s).For such risk assessment, information what is provided under REACH registration or covered by the OSH Framework Directive 89/391/EEC, when available, should be the reference.

(e) measures taken to achieve the indicative environmental objectives and avoid risks for ~~human~~ health ~~or the~~ related environmental impact, including corrective and preventive measures where needed;

(f) an overview of the a transformation plan , excluding confidential business information as referred to in Article 27d

***The level of detail of the EMS will be consistent with the nature, scale and complexity of the installation, and the range of environmental impacts it may have.***

***Where elements of the EMS, ~~or the related performance indicators, objectives, measures and analysis~~ have already been developed elsewhere and comply with this ~~paragraph and paragraph 1~~, article a reference may be made in the EMS to the relevant documents.***

3. ***~~The non-confidential summary of the EMS, including the performance indicators, objectives, measures, analysis and transformation plan referred to in Article 14a(1) and (2) The EMS of an installation~~* Member states shall ensure that relevant information of the EMS from paragraph 2 a-e and the transformation plan**  shall be made available on the Internet, free of charge and without restricting access to registered users.’.

***~~The content of the summary of EMS shall allow comparison with information referred to in Art. 14(1) d) (iii).~~***

**Information may be redacted, or if that is not possible, excluded when made available on the Internet, if the disclosure of the information would adversely affect any of the interests listed in article 4.2 (a)-(h) of Directive 2003/4/EC.**

**The Commission shall, by 31 December 2025, adopt an implementing act to establish the standardised template to be used for the information referred to in this paragraph. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 75(2).**

***14a (3a). Member States shall take the necessary measures to ensure that* the operator reviews its EMS to ensure that it ~~continues~~ ~~to be~~ is suitable, adequate and effective andthat the EMS is audited, at *least every 3 years~~:~~ by***

***~~(a)~~ the audit organisation contracted by the operator who verifies the conformity of the EMS and of its implementation with this article,***

***~~(b) the operator reviews its EMS to ensure that it continues to be suitable, adequate and effective.~~***

***The first review and the first audit of the existing EMS shall take place at the latest 36 months after [OP please insert the date = the first day of the month following 18 months after the date of entry into force of this Directive].***

 A recognized management system (e. g. EMAS, ISO 14001) is consistent with the requirements of this article.

## Innovation and transformation plans:

**Article 27 b: Testing of emerging techniques**

Without prejudice to Article 18, the competent authority may grant temporary derogations from the requirements set out in Article 15(2), (3) and (3a) and from the principles set out in Article 11, points (a) and (b), for the testing of emerging techniques for a total period of time not exceeding 24 months, provided that after the period specified either the technique is stopped or the activity achieves at least the emission levels associated with the best available techniques.

**Article 27c:****Emission levels associated with emerging techniques**

By way of derogation from Article 21(3), the competent authority may set indicative emission limit values **and environmental performance limit values** that ensure that, within 6 years of publication of a decision on BAT conclusions in accordance with Article 13(5) relating to the main activity of an installation, emissions shall comply with the indicative ~~not, under normal operating conditions, exceed~~ emission levels **or environmental performance levels** associated with emerging techniques as laid down in the decisions on BAT conclusions.

**Article 27d:****Transformation plan for a clean, circular and climate neutral industry**

1. Member States shall require that by 30 June 2030 the operator includes in its environmental management system referred to in Article 14a an indicative transformation plan at company level, or when needed at site level ~~for each installation~~ carrying out any activity listed in points 1, 2, 3, 4, 6.1 a, and 6.1 b of Annex I. The transformation plan shall contain relevant and non-confidential information on how the installation will transform itself during the 2030-2050 period in order to contribute to the emergence of a sustainable, clean, circular and climate-neutral economy by 2050, using the format referred to in paragraph 4.

Member States shall take the necessary measures to ensure that by 31 December 2031, the audit ***~~organisation contracted by the operator as part of its environmental management system~~ referred to in Article 14a(3a)*** assesses the conformity of the indicative transformation plans referred to in the first subparagraph of paragraph 1 with the requirements set out in the implementing act referred to in paragraph 4.

## Legal aspects

**Article 13(2):**

(b) In paragraph 2, the following subparagraph is added:

Without prejudice to Union competition law, information considered as confidential business information or commercially sensitive information shall only be shared with the Commission and disclosed strictly on a need-to-know basis with~~with the following individuals having signed a confidentiality and non-disclosure agreement:~~ civil servants and other public employees representing Member States or Union agencies, under the condition that these civil servants are bound by a duty ofprofessional secrecy ~~and representatives of non-governmental organisations promoting the protection of human health or the environment~~.

The exchange of information considered as confidential business information or sensitive commercial information shall remain limited to what is strictly required to draw up, review and, where necessary, update BAT reference documents, and such confidential business information or sensitive commercial information shall not be used for other purposes.

**Article 79 (1):**

Without prejudice to the obligations of Member States under Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law, Member States shall lay down rules on penalties applicable to violations of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are applied. Rules on administrative penalties should comply the Charter of Fundamental Rights of the European Union, including but not limited to the ne bis in idem principle and the proportionality principle. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall without delay notify the Commission of those rules and of those provisions, and shall notify without delay any subsequent amendment affecting them.

**Article 79(2):**

The penalties referred to in paragraph 1 shall include fines proportionate to the nature and severity of the violation concerned, and not exceed the level necessary for fines to be effective and dissuasive ~~turnover of the legal person or to the income of the natural person having committed the infringement~~. The level of the fines shall be calculated in such a way as to make sure that they effectively deprive the person responsible for the violation of the economic benefits derived from that violation. **~~The level of the fines shall be gradually increased for repeated infringements.~~** ~~In the case of a violation committed by a legal person,~~ **~~the maximum amount~~** ~~of such fines shall be proportionate to~~ **~~at least 8 %~~** ~~of the operator’s annual turnover in the Member State concerned., taking into account, inter alia, the specificities of small and medium-sized enterprises (SMEs).~~

**Article 79a(1):**

Member States shall ensure that, where damage to human health ~~has occurred as a result of a~~ was caused by emissions in violation of national measures that were adopted pursuant to this Directive, the individuals affected have the right to ~~claim and obtain~~ seek compensation for that damage, where appropriate, from the relevant **~~natural or~~** legal persons that emitted the substance that caused the health damage and, **~~where appropriate,~~** from the relevant competent authorities responsible for the violation, except where the legal person or authority demonstrates that the emission was due to an event or circumstance referenced in Article 4, paragraph 1 of Directive 2004/35 on environmental liability with regard to the prevention and remedying of environmental damage. Compensation is in any way subject to the limitations and exceptions existing under national civil law.

**Article 79a(2):**

Member States shall ensure that, as part of the public concerned, non-governmental organisations promoting the protection of human health or the environment and meeting any requirements under national law are allowed to represent the individuals affected and bring collective actions for compensation, if and to the extent that the individuals affected have explicitly consented to the legal person concerned representing them for purposes of asserting their right to seek compensation. The requirements set out in Article 4(3), 10 and Article 12(1) of Directive (EU) 2020/1828 shall mutatis mutandis apply to such collective actions. Member States shall ensure that a claim for a violation leading to a damage cannot be pursued twice, by the individuals affected and by the non- governmental organisations referred to in this paragraph, and that injured parties are only entitled to be compensated for harm they actually suffered, to the exclusion of any punitive, treble or other non-compensatory damages.

**Article 79a(4): *Deleted***

**~~Where there is a claim for compensation~~ ~~in accordance with paragraph 1, supported~~ ~~by evidence from which a causality link may~~ ~~be presumed between the damage and the~~ ~~violation, Member States shall ensure that~~ ~~the onus is on the person responsible for the~~ ~~violation to prove that the violation did not~~ ~~cause or contribute to the damage.~~**