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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 (integrated pollution prevention and control) and Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste

(Text with EEA relevance)

{SEC(2022) 169 final} - {SWD(2022) 110 final} - {SWD(2022) 111 final} -
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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Directive 2010/75/EU on industrial emissions ('the IED')¹ regulates the environmental impacts of around 52 000 of Europe's large-scale, high-pollution-risk industrial installations and livestock farms ('agro-industrial installations') in an integrated manner, on a sector-by-sector basis. It covers all relevant pollutants potentially emitted by agro-industrial installations that affect human health and the environment. Installations regulated by the IED account for about 20% of the EU's overall pollutant emissions by mass into the air, around 20% of pollutant emissions into water and approximately 40% of greenhouse gas (GHG) emissions. Activities regulated by the IED include power plants, refineries, waste treatment and incineration, production of metals, cement, glass, chemicals, pulp and paper, food and drink, and the intensive rearing of pigs and poultry. An installation regulated by the IED may carry out several IED activities, e.g. cement production and waste co-incineration.

The 2020 evaluation² of the IED concluded that it was generally effective in preventing and controlling pollution into air, water and soil from industrial activities, and in promoting the use of best available techniques (BAT). The IED has substantially reduced emissions of pollutants into the air and, to a lesser degree, water emissions. It has also helped reducing emissions into the soil from IED installations. Although its impacts on resource efficiency, the circular economy and innovation are harder to assess, the Directive appears to have made a positive contribution, albeit of limited magnitude. It has also made a limited contribution to decarbonisation, within the constraints currently placed on the IED. Other aspects, such as public access to information and access to justice, have improved compared to the earlier legislation that the IED replaced.

However, the evaluation also identified several areas for improvement, in light of new challenges. It showed that, while it provides a sound framework, the Directive is not being implemented consistently across Member States, with different levels of ambition preventing the instrument from fully delivering on its objectives. These challenges undermine the Directive's capacity to reduce the environmental pressures exerted by agro-industrial installations and set a level playing field that provides a high level of protection of human health and the environment. As concluded by the European Court of Auditors, these issues also affect the IED's capacity to implement the 'polluter pays' principle in an appropriate manner.

To address those challenges and incentivise the deep industrial transformation required between 2025 and 2050, the Commission committed in the European Green Deal³ (EGD) to revise EU measures to address pollution from large agro-industrial installations. Moreover,

¹ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control); OJ L 334, 17.12.2010, p. 17–119.

² Commission Staff Working Document Evaluation of the Industrial Emissions Directive (IED); SWD(2020) 181 final.

³ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions The European Green Deal; COM(2019) 640 final.

the Union is committed to the 2030 Agenda for Sustainable Development⁴ and its Sustainable Development Goals⁵. This proposal contributes to several of the SDGs.

This initiative's general objective is to help, in the most effective and efficient way, protect ecosystems and human health from the adverse effects of pollution from large agro-industrial installations and improve EU industry's resilience to the impacts of climate change. The revision of the IED aims to stimulate a deep agro-industrial transformation towards zero pollution through the use of breakthrough technologies, thereby contributing to the EGD's objectives of reaching carbon neutrality, increased energy efficiency, a non-toxic environment and a circular economy. It also aims to continue supporting the creation of a competitive level playing field providing a high level of protection of human health and the environment. In addition, the IED revision will seek to modernise and simplify the current legislation, e.g. through digitalisation and improving knowledge about sources of pollution. The initiative will also aim to improve public participation in decision-making and increase access to information and justice, including to effective redress mechanisms.

More specifically, the revision of the Directive will seek to:

- i. improve IED effectiveness in preventing or, when impractical, minimising the emission of pollutants by agro-industrial installations at source, as evidenced by continued or accelerated decreasing trends of emission levels, to avoid or reduce adverse impacts on health and the environment, taking into account the state of environment in the area affected by these emissions;
- ii. ensure access by private individuals and civil society to information, participation in decision-making, and access to justice (including effective redress) in relation to permitting, operation and control of the regulated installations, resulting in increased civil society action;
- iii. clarify and simplify the legislation and reduce administrative burden while promoting consistency of implementation by the Member States;
- iv. promote the uptake of innovative technologies and techniques during the ongoing industrial transformation, by revising BAT reference documents (BREFs) without delay, when there is evidence that better performing innovative techniques become available, and ensuring permits support frontrunners;
- v. support the transition towards the use of safer and less toxic chemicals, improved resource efficiency (energy, water and waste prevention) and greater circularity;
- vi. support decarbonisation by fostering synergies in the use of and investments in techniques that prevent or reduce pollution and carbon emissions, as evidenced by a coupling of the trends in emission intensities;
- vii. address the harmful impacts on health and the environment from agro-industrial activities currently not regulated by the IED, as evidenced by decreasing trends of emission intensity.

The Council⁶ and the European Parliament^{7,8,9} welcomed the revision of the IED and expressed their expectations that this revision should address pollutant emissions into the air

⁴ https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E.

⁵ <https://sdgs.un.org/goals>.

from industrial and agricultural activities and contribute to the circular economy, including by promoting water reuse in industry^{10,11}. The European Citizens Panel on climate change and environment has adopted clear recommendations in this respect in the framework of the Conference on the Future of Europe¹². In that context, European citizens have expressed manifest support for the EU to tackle the pollution of water, soil and air and to reduce methane emissions, and they emphasize the responsibilities of the polluters.

The multi-stakeholder High Level Group on Energy-Intensive Industries, advising the Commission on policies relevant to energy-intensive industries since 2015, developed a masterplan¹³ setting out recommendations to build the policy framework needed to manage this transition while keeping industry competitive. It recommended that *'the Industrial Emissions Directive permitting process should be adapted to support GHG abatement measures in energy-intensive installations throughout the transition.'*

- **Consistency with existing policy provisions in the policy area**

The EGD is Europe's growth strategy to ensure a climate-neutral, clean and circular economy by 2050, optimising resource management and energy efficiency, and minimising pollution, while recognising the need for deeply transformative policies in line with the Energy Efficiency First principle. The EU chemicals strategy for sustainability¹⁴ of October 2020 and the zero pollution action plan¹⁵ adopted in May 2021 specifically address the pollution aspects of the EGD. In parallel, the new industrial strategy for Europe¹⁶ highlights the need for research, innovation and investments for new technologies to strengthen Europe's industrial competitiveness and facilitate industry's shift to a truly sustainable, greener, efficient and more digital economy. The updated May 2021 version of this strategy¹⁷ further emphasises the potential role of transformative technologies.

⁶ Council Conclusions of 5 March 2020 (6650-2020).

⁷ European Parliament resolution of 25 March 2021 on the implementation of the Ambient Air Quality Directives: Directive 2004/107/EC and Directive 2008/50/EC (2020/2091(INI)).

⁸ European Parliament resolution of 15 January 2020 on the European Green Deal (2019/2956(RSP)).

⁹ European Parliament resolution of 25 November 2020 on a new industrial strategy for Europe (2020/2076(INI)).

¹⁰ Council Conclusions of 3 June 2021 (9419/21).

¹¹ Communication from the Commission 'A new circular economy action plan for a cleaner and more competitive Europe', COM/2020/98 final.

¹² <https://futureu.europa.eu/pages/about>

¹³ See *Masterplan for a competitive transformation of EU energy-intensive industries enabling a climate-neutral, circular economy by 2050*, available at: <https://op.europa.eu/en/publication-detail/-/publication/be308ba7-14da-11ea-8c1f-01aa75ed71a1/language-en>.

¹⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Chemicals Strategy for Sustainability Towards a Toxic-Free Environment COM(2020) 667 final.

¹⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Pathway to a Healthy Planet for All EU Action Plan: 'Towards Zero Pollution for Air, Water and Soil' COM(2021) 400 final.

¹⁶ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, A New Industrial Strategy for Europe COM(2020) 102 final.

¹⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe's recovery COM(2021) 350 final.

Other particularly relevant policies include the ‘fit for 55’ package¹⁸, the methane strategy¹⁹ and the Glasgow methane pledge, the climate adaptation strategy²⁰, the biodiversity strategy²¹, the ‘farm to fork’ strategy²², the soil strategy²³ and the sustainable products initiative²⁴.

In the EGD, the Commission commits to revising EU measures to address pollution from large industrial installations. It does this notably by looking at the scope of the legislation and at how to make EU legislation in this area fully consistent with the zero pollution ambition, and climate, energy and circular economy policies, bearing in mind the benefits for both public health and biodiversity. The IED and Regulation (EC) No 166/2006 on the European Pollutant Release and Transfer Register (‘the E-PRTR Regulation’)²⁵ are complementary instruments regulating the environmental impact of industry. The IED aims to secure a progressive reduction in pollution from the EU’s largest agro-industrial installations²⁶, while preserving a competitive level playing field. The E-PRTR Regulation facilitates the monitoring of pollution-reduction efforts by improving publicly available information on the actual performance of installations.

This legislation has links with many other policies since it seeks to address the environmental pressures from agro-industrial installations in a holistic manner.

The IED has played an important role in reducing emissions of pollutants from industry, especially to the air, but has made a more limited contribution to the circular economy (resource efficiency) and to reducing emissions of pollutants into water.

Water is one of the three main pillars of the ‘zero pollution action plan’, which aims to achieve a toxin-free society by 2050, with pollution reduced to either zero, or levels that are no longer harmful for nature and humans. This implies action not only downstream, such as at the level of wastewater treatment plants, but also upstream, where substances are produced and used. This proposal to revise the IED is consistent with EU water legislation, in particular

¹⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, ‘Fit for 55’: delivering the EU’s 2030 Climate Target on the way to climate neutrality COM/2021/550 final.

¹⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on an EU strategy to reduce methane emissions COM(2020) 663 final.

²⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Forging a climate-resilient Europe - the new EU Strategy on Adaptation to Climate Change COM(2021) 82 final

²¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions EU Biodiversity Strategy for 2030 Bringing nature back into our lives COM(2020) 380 final.

²² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system COM(2020) 381 final.

²³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions EU Soil Strategy for 2030 Reaping the benefits of healthy soils for people, food, nature and climate COM(2021) 699 final.

²⁴ COM(2022) 142

²⁵ Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC; OJ L 33, 4.2.2006, p. 1-17.

²⁶ The expression ‘agro-industrial installations’ is used to capture all types of activities that may be regulated by the IED, including in particular energy-intensive industries and rearing livestock.

Directive 2000/60/EC (the Water Framework Directive²⁷), and its two related directives, Directive 2006/118/EC (on groundwater²⁸) and Directive 2008/105/EC, as amended by Directive 2013/39/EC, on environmental quality standards in the field of water policy²⁹.

EU water legislation obliges Member States to avoid deterioration in the status of all water bodies and to achieve good status for all water bodies, through a system of integrated water management per river basin. Through six-yearly management cycles, ecological and chemical status (surface waters) and quantitative and chemicals status (groundwater) are assessed and measures are planned to address all pressures on water bodies, including from agriculture, industry, households and other economic activities (including navigation, flood protection and hydropower). In light of the zero pollution action plan, the Commission has announced that it will formulate a proposal in 2022 to further tighten rules on surface and groundwater pollutants, as part of a legislative proposal on ‘integrated water management’.

The IED proposal complements these initiatives by, among others, widening the Directive’s scope, encouraging the development of new technologies to reduce emissions, improving resource and energy efficiency, promoting water reuse, ensuring better controlled and more integrated permitting requirements, and introducing a mandatory environmental management system. The proposal will strengthen the integrated approach by clarifying requirements for cooperation between relevant competent authorities. This cooperation includes reviewing and updating permits, depending on the status of the receiving environment, and/or planning measures to comply with environmental quality standards, objectives, plans and programmes under the water legislation. Increased coherence will also be created by clarifying the rules that apply to the indirect release of polluting substances into water through urban wastewater treatment plants. Fostering innovation will help address persistent chemical substances and substances newly identified as being of concern, including per- and polyfluoroalkyl substances (PFAS), microplastics and pharmaceuticals. This is consistent with the chemicals strategy for sustainability, the European Commission’s Communication on a strategic approach to pharmaceuticals in the environment³⁰ and the Communication on a pharmaceuticals strategy³¹.

The ‘exchange of information’ process under the IED to draw up and review Best Available Technique reference documents (BREFs) should take account of the identification of substances of concern under EU water legislation. In particular, these include ‘watch lists’ of substances for groundwater and surface water, and substances identified as possibly posing a significant risk to or via the aquatic environment at EU level.

²⁷ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy; OJ L 327, 22.12.2000, p. 1-73.

²⁸ Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration; OJ L 372, 27.12.2006, p. 19-31.

²⁹ Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy, amending and subsequently repealing Council Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and amending Directive 2000/60/EC of the European Parliament and of the Council; OJ L 348, 24.12.2008, p. 84-97.

³⁰ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions European Union Strategic Approach to Pharmaceuticals in the Environment COM(2019) 128 final.

³¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Pharmaceutical Strategy for Europe COM(2020) 761 final.

The exchange of information under the IED will also benefit the development of water efficiency measures and consideration of water reuse by agro-industrial installations, in line with the circular economy action plan³², which commits to promoting water reuse in industry. Regulation (EU) 2020/741 on minimum requirements for water reuse³³, adopted in May 2020, applies to water reuse for agricultural irrigation but it also highlights the great potential for the recycling and reuse of treated wastewater for industrial purposes, as part of integrated water management and the circular economy.

By regulating certain activities at source, the IED supports Member States in meeting their obligations under other EU legislation that sets environmental quality standards, such as the Ambient Air Quality Directive³⁴. It also supports Member States in meeting their objectives under EU legislation that sets national targets, such as the National Emission Reduction Commitments Directive³⁵, the Effort Sharing Regulation³⁶, and the Energy Efficiency Directive³⁷.

The IED's BAT associated emissions levels were utilised to define the 'do-no-significant-harm' criteria for the Taxonomy Climate Delegated Act³⁸. The proposed IED revision measures will further support the EU Taxonomy on sustainable investments over time by setting additional and updated criteria. These criteria will be determined with a view to making a substantial contribution to preventing and controlling pollution, with the additional objective of helping the Sustainable Finance Platform to define which activities might be termed as sustainable.

Finally, the IED helps to improve general environmental performance, contributing to meeting the objectives of other EU sectoral legislation including in relation to REACH, waste, and the protection of nature.

³² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A new Circular Economy Action Plan For a cleaner and more competitive Europe COM(2020) 98 final.

³³ Regulation (EU) 2020/741 of the European Parliament and of the Council of 25 May 2020 on minimum requirements for water reuse; OJ L 177, 5.6.2020, p. 32-55.

³⁴ Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe; OJ L 152, 11.6.2008, p. 1-44.

³⁵ Directive (EU) 2016/2284 of the European Parliament and of the Council of 14 December 2016 on the reduction of national emissions of certain atmospheric pollutants, amending Directive 2003/35/EC and repealing Directive 2001/81/EC; OJ L 344, 17.12.2016, p. 1-31.

³⁶ Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013; OJ L 156, 19.6.2018, p. 26-42.

³⁷ Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC; OJ L 315, 14.11.2012, p. 1-56.

³⁸ Commission Delegated Regulation supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives; C/2021/2800 final.

- **Consistency with other Union policies**

The 8th environment action programme³⁹ focuses on six interlinked priority objectives. Among these are:

- Article 2(d) – pursuing zero pollution, including in relation to harmful chemicals, in order to achieve a toxin-free environment, including air, water and soil. It also aims to reduce light and noise pollution, and protect the health and well-being of people, animals and ecosystems from environment-related risks and negative impacts.
- Article 2(f) – promoting environmental aspects of sustainability and significantly reducing key environmental and climate pressures related to the EU’s production and consumption. This particularly relates to the areas of energy, industry, buildings and infrastructure, mobility, tourism, international trade and the food system.

The IED proposal will help meet these objectives.

The new geopolitical and energy market reality requires the Union to drastically accelerate the clean energy transition and increase Europe's energy independence from unreliable suppliers and volatile fossil fuels. As part of the EU response to the 2022 Russia-Ukraine war, the REPowerEU initiative⁴⁰ aims to increase the resilience of the EU-wide energy system through a diversification of gas supplies and a reduction of the use of fossil fuels by boosting energy efficiency, increasing renewables and electrification, and addressing infrastructure bottlenecks. The revision of the Directive contributes to the resilience of the EU-wide energy system through improving energy efficiency of industrial processes in the Union.

This proposed Directive is a pilot, following the Commission's ‘one in one out’ approach to reduce administrative burden. The supporting impact assessment report provides detailed information on the proposal's expected administrative burden. The section of this memorandum on regulatory fitness and simplification outlines measures proposed to limit the proposal's administrative burden.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis for this proposal is Article 192 TFEU. In accordance with Article 191 and 192(1) TFEU, the EU is required to contribute to the pursuit of the following objectives: preserving, protecting and improving the quality of the environment; promoting measures at international level to deal with regional or worldwide environmental problems, and combating climate change.

- **Subsidiarity (for non-exclusive competence)**

This Directive's objectives of ensuring a high level of environmental protection and improving environmental quality throughout the Union cannot be sufficiently achieved by

³⁹ Proposal for a Decision of the European Parliament and of the Council on a General Union Environment Action Programme to 2030; COM/2020/652 final.

⁴⁰ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions REPowerEU: Joint European Action for more affordable, secure and sustainable energy; COM(2022) 108 final.

Member States. Because of the transboundary nature of pollution from industrial activities, these objectives can be better achieved at EU level, justifying the EU's adoption of measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.

Pollution from agro-industrial installations disperses across national borders and pollution control cannot be sufficiently achieved by one Member State alone. In addition, the operation of industrial plants is closely linked to the functioning of the single market. In the absence of an EU-wide approach for setting environmental performance standards, the same industries would face different pollution control regulations in each Member State, with the risk of creating an uneven playing field, fragmenting the single market and impeding the EU's efforts to pursue the Treaty objective of achieving a high level of environmental and human health protection.

- **Proportionality**

The design of the IED ensures proportionality of outcomes by (i) defining BAT as the most environmentally effective and economically viable range of proven techniques used in a sector, and (ii) allowing derogations in individual cases if applying the EU-wide BAT requirements would lead to costs disproportionately higher than the expected environmental/health benefits.

The supporting impact assessment assesses the impacts of all proposed revisions of the IED. Both qualitative and quantitative assessment has been undertaken that shows that the proposals are proportionate, i.e. that societal benefits are significantly higher than the costs incurred.

- The measures with the largest impact were identified as extending the scope to cover cattle farms and a larger number of pig and poultry farms. The monetised health and environmental benefits from reduced methane and ammonia emissions are valued at over EUR 5.5 billion per/year, while the compliance costs are EUR 265 million and administrative costs (administrations and operators) are EUR 223 million, resulting in a very beneficial cost-benefit factor of 11.

- **Choice of the instrument**

The proposal's objectives can be best pursued through a Directive. This is the most appropriate legal instrument to make amendments to the existing Directive on Industrial Emissions (Directive 2010/75/EU).

A Directive requires Member States to achieve its objectives and implement the measures into their national substantive and procedural law systems. This approach gives Member States more freedom when implementing an EU measure than a Regulation, in that Member States are able to choose the most appropriate means of implementing the measures in the Directive. This allows Member States to ensure that the amended rules are embedded in their substantive and procedural legal framework for implementing the EU IED, in particular regulating permits for installations and enforcement measures and penalties.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The evaluation of the IED carried out in 2020⁴¹ found that it had been effective in reducing environmental impacts and competitive distortions in the EU. The collaborative process for producing BREFs and identifying BAT, also known as the ‘Sevilla Process’, has worked well and is recognised as a model of collaborative governance.

The IED has led to substantially reduced pollutant emissions into the air and, to a lesser degree, into water. It reduced emissions into soil from IED installations. Its impacts on resource efficiency, the circular economy and innovation are harder to assess; it appears to have made a positive contribution of limited magnitude. Other aspects, such as public access to information and access to justice, have somewhat improved.

The IED was evaluated as largely efficient. The benefits of BAT conclusions substantially outweigh costs. No disproportionate or unnecessary administrative costs have been identified. There are mixed impacts on EU competitiveness; no evidence shows these to be significant.

All stakeholder groups considered the IED relevant. It can respond to emerging environmental issues, despite the length of the BREF process. While the IED has not contributed greatly to decarbonisation, views diverge about whether it is relevant to this.

The IED was evaluated as being coherent internally and with other EU policies, however there is scope for greater contribution to these. Some interpretation challenges require clarification.

The IED was deemed to provide significant EU added value. It ensures more consistent requirements to reduce industrial pollution, including through monitoring and enforcement, reducing single market distortions. Absence of EU action would have led to less demanding standards and fewer health and environment benefits. The BREF process is not replicable by individual Member States, and is increasingly used by non-EU countries. The IED’s decentralised approach is consistent with the subsidiarity and proportionality principles.

The evaluation has identified a number of areas where the IED’s performance does not appear to be as satisfactory as desired with regard to reducing pollutant emissions, especially into water, contributing to GHG emission reduction, promoting non-toxic production, and improving resource efficiency and reuse. These areas are central to the revision of the IED announced in the EGD Communication.

- **Stakeholder consultations**

The impact assessment accompanying the combined revision of the Industrial Emissions Directive (IED) and E-PRTR Regulation was subject to a thorough consultation process. This included a variety of different consultation activities aimed at gathering the views of all relevant stakeholders and ensuring that the views of different organisations and stakeholder types were considered.

Firstly, initial feedback was provided on the published inception impact assessment via the Commission’s ‘Have Your Say’ interactive portal (154 responses; consultation period 24 March 2020 to 21 April 2020). This was followed by a joint IED and E-PRTR public consultation (online survey via the Commission’s ‘Have Your Say’ interactive portal; 336

⁴¹ Supra No 2

responses; from 20 December 2020 to 23 March 2021). The survey contained 24 questions, four of which related specifically to the E-PRTR.

Then, a targeted stakeholder survey took place from 8 February to 9 April 2021. This consisted of an online survey of a more detailed nature (235 responses), to further improve the evidence base by collecting more specialised feedback from specific stakeholder groups on six problem areas, grouped by the options being considered in the impact assessment study.

These problem areas were as follows: i) the environment is polluted; ii) a climate crisis is happening; iii) natural resources are being depleted; iv) state of the art techniques cannot respond satisfactorily to problem areas i) to iii); v) private individuals have limited opportunities to become informed about, and take action regarding impacts caused by agro-industrial plants; and vi) excessive burdens may affect the efficiency of the policy instrument.

Feedback received through those surveys was also complemented by consulting focus groups, in June-August 2021, to engage stakeholders in deeper discussions on key themes. Stakeholders were selected based on their sectoral representation and to ensure a good geographical and stakeholder-type distribution between environmental NGOs, industry representatives and Member States' ministries and competent authorities, to enable balanced discussions.

Finally, two stakeholder workshops were held remotely, on 15 December 2020 and 7-8 July 2021.

Civil society and environmental NGOs considered all the above problem areas to be of high relevance, in particular in relation to:

- the environmental impacts and decarbonisation being insufficiently addressed by the IED;
- the need to have the E-PRTR pollutant list updated more quickly to take account of new threats; and
- limited access to information on installations' performance levels.

This limited access to information was perceived by all stakeholder groups as an important issue that needs to be addressed.

However, there were differences in the feedback from industry and business associations, who were more neutral (but not negative) in acknowledging issues regarding resource efficiency and less toxic production. Industry and business associations were also more neutral in acknowledging the need to support decarbonisation, highlighting the potential additional reporting costs and risks of overlaps with the Emissions Trading System (ETS)⁴². Regarding the Directive's limited scope, industry and business associations noted cost issues, and argued that existing national regimes and EU legislation are sufficient to tackle most of the difficulties encountered.

All stakeholders agreed that the IED's contribution to facilitating, harnessing and promoting innovation was too limited.

⁴² Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC; OJ L 275, 25.10.2003, p. 32–46.

- **Impact assessment**

An impact assessment was carried out, which resulted in a positive opinion from the Regulatory Scrutiny Board⁴³ dated of 10 December 2021.

Five partly interlinked but independent policy options were proposed and assessed; the selected sub-options for each problem area were brought together to form the following preferred policy package:

- Effectiveness: full implementation of 24 optimisation and updating measures.
- Innovation: frontrunners have freedom to test novel techniques, combined with setting up an innovation centre for industrial transformation and emissions (INCITE) and 2030 operators' transformation plans.
- Resource use and chemicals: improved environmental management system.
- Decarbonisation: energy efficiency minimum levels will be introduced, to maximise energy efficiency and minimise energy consumption. A review of the synergies between the IED and the ETS will take place in 2028, allowing optimal synergies from 2030 onwards.
- Sectoral scope: additional activities will come into the scope of the IED, principally intensive cattle rearing, and certain extractive activities.

The impacts of the preferred package are expected to be as follows. Overall, benefits are expected to considerably outweigh costs.

While it has not been possible to quantify and monetise all impacts, it is estimated that the set of measures enhancing the effectiveness of the Directive have health benefits between EUR 860 million and EUR 2.8 billion per year with annual business CAPEX/OPEX costs of about EUR 210 million.

The overall administrative burden of the whole proposal is estimated at EUR 250 million per year for industrial operators and EUR 196 million per year for public authorities.

Extending livestock farms coverage would result in methane and ammonia emission reductions, with related health benefits of over EUR 5.5 billion per year. An extended coverage of the 10% largest cattle farms, representing 41% of emissions of the sector, will lead to a yearly reduction of at least 184 kt of methane and 59 kt of ammonia. Extending the coverage of pig and poultry farms to the largest 18% of pig farms and 15% of poultry farms, representing respectively 85% and 91% of the emissions of the sectors, will reduce yearly emissions at least by 135 kt methane and 33 kt ammonia from pig farms, and 62 kt ammonia from poultry farms. Such increased scope will enhance the IED coverage from 18 to 60% of emissions of ammonia by rearing of cattle, pigs and poultry; and from 3% to 43% of methane emissions. Related compliance costs are estimated to be around EUR 265 million per year.

- **Regulatory fitness and simplification**

In line with the Commission's commitment to better regulation, this proposal has been prepared inclusively, based on full transparency and continuous engagement with stakeholders, listening to external feedback and taking account of external scrutiny to ensure the proposal strikes the right balance.

⁴³ Ares(2021)7643865 – 10/12/2021

The IED is the result of a better regulation initiative that successfully merged and simplified seven Directives⁴⁴ and streamlined administrative aspects, including cutting reporting requirements by around half⁴⁵. Whilst this limits the potential for further streamlining, stakeholder consultations have allowed the Commission to identify a number of potential further clarifications and simplifications to the Directive. Those attracting positive interest from stakeholders will solve uncertainties related to the permitting process.

This concerns, in particular, clarifying certain provisions on gasification, liquefaction and pyrolysis that are important activities for achieving a circular low carbon economy. Other aspects involve replacing the indicative list of pollutants in Annex II with references to other EU legislation that sets out lists of relevant pollutants, and establishing harmonised criteria for assessing compliance across the EU. Both measures will enhance legal certainty on the applicable rules for all IED operators. Furthermore, solving discrepancies in compliance assessment approaches used under Chapters II, III and IV of the IED will benefit some 4 000 operators of large combustion plants and waste incinerators.

In addition, a separate and lighter permitting regime will be introduced for 20 000 livestock farms currently regulated by the IED as well for those that will be newly brought within its scope, the smallest businesses regulated by the IED; reducing the administrative burden by EUR 113 Million per year.

A codification of the legislation after the revised act has been adopted will allow provisions that have become obsolete to be eliminated.

- **Fundamental rights**

The proposal respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union⁴⁶.

Pursuant to Article 52(1) of the Charter, any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and if they genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

This proposal strikes the right balance between the fundamental right of freedom to conduct a business and the fundamental right of property and other fundamental rights (environment, health, remedy).

The limitation to the right of freedom to conduct a business and the right of property are limited to what is necessary to preserve the other above-mentioned fundamental rights and objectives of general interest in accordance with Article 52(1) of the Charter.

The proposal contributes to the objective of a high level of environmental protection in accordance with the principle of sustainable development as laid down in Article 37 of the Charter; to the right to right to life and the integrity of the person and its health as laid down

⁴⁴ Commission staff working document - Accompanying document to the proposal for a Directive of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (recast) IMPACT ASSESSMENT [COM(2007) 843 final] [COM(2007) 844 final] [SEC(2007) 1682], SEC/2007/1679 final.

⁴⁵ Fitness Check of Reporting and Monitoring of EU Environment Policy, SWD(2017) 230 final.

⁴⁶ Charter of Fundamental Rights of the European Union; OJ C 326, 26.10.2012, p. 391.

in Articles 2, 3 and 35 of the Charter; and to the right to consumer protection as laid down in Article 38.

It also contributes to the right to an effective remedy as laid down in Article 47 of the Charter, in relation to the protection of human health.

4. BUDGETARY IMPLICATIONS

The annexed financial statement shows the budgetary implications and the human and administrative resources required. The proposal will have budgetary implications for the Commission and the European Chemicals Agency (ECHA) in terms of human and administrative resources required. The Commission will have an increased number of implementation and enforcement tasks resulting from the increased scope of the economic activities and environmental aspects covered by the IED. The Commission will also have an increased role in managing the innovation centre and wider work to draft BREFs and BAT conclusions, requiring in total 4 additional full-time-equivalent staff.

The ECHA will support the Commission by: (1) providing input to the information exchange on BAT and emerging techniques including identifying and selecting relevant substances for each sector, developing sector-specific good practice for the use of the safest substances on the market, and (2) providing tools and guidance for use by IED operators in preparing the chemicals chapter of their environmental management system. This requires a total of 3 additional full-time-equivalent staff.

Around EUR 8 200 000 per year is required to finance the necessary expertise to support the Commission in a number of work streams related to INCITE and the drafting of BREFs and BAT conclusions.

5. OTHER ELEMENTS

• Implementation plans and monitoring, evaluation and reporting arrangements

The overall emissions of pollutants per sector, based on data reported by operators to the E-PRTR, will remain key indicators for tracking progress against this initiative's objectives. The E-PRTR Regulation is being revised in parallel to the revision of this Directive and will allow better future monitoring of the IED's impact on industry's environmental performance at sector level.

- The increased granularity of reporting of pollutant emission at installation level will allow for analysis of the main processes within sectors whose environmental performance is improving or is lagging behind.
- The inclusion of reporting of resource use will allow new indicators to be identified, on use of materials, water and energy, that will enable resource efficiency improvements to be tracked.
- More dynamic updating of the list of substances covered by the E-PRTR Regulation will allow emission indicators to be identified for substances of emerging and current concern. This will enable improvements in the use and management of such substances to be tracked.

These improvements will also help ensure that this monitoring can be used effectively in the wider zero pollution monitoring and outlook framework, which will be published every 2

years from 2022 onwards⁴⁷. Data on air, water and soil pollution available through zero pollution monitoring will help evaluate the impacts of emission reductions from the installations that fall within scope of the IED and E-PRTR Regulation.

A central concern in revising the IED is to ensure that the whole range of BAT-associated emissions levels (AELs) is used. The future standardised permit summary will make it significantly easier to collect the emission limit values (ELVs) set in permits, through automated IT tools. This will allow sector-by-sector analysis of the distribution of ELVs within the BAT-AEL ranges, at the end of the permit revision cycles triggered by the adoption of BAT conclusions and will make the information contained in the permits clearer to the public.

The scale of progress in emissions reduction will depend on: technological progress; the outcomes of the innovation centre; any more frequent BREF reviews; and any actions that may be taken as a result. It will also be important to monitor the pace of development and uptake of innovations and the resulting transformation of IED sectors needed to meet the EU's 2030 and 2050 environmental and climate objectives. The standardised permit summary will allow the number of cases to be quantified where new flexibilities supporting frontrunners in testing and deploying emerging techniques have been used. Wider impacts on innovation dynamics will be more complex to monitor. New indicators will be set out in an industrial transformation scoreboard published by the innovation centre. The centre may develop indicators such as:

- technology readiness level of transformative technologies per sector;
- emissions performance of transformative technologies;
- the anticipated uptake timeline of such technologies;
- distance to target indicators, for each IED sector.

Periodic publication of implementation information by Member States will complement these indicators, by providing readily accessible, machine-readable, common-format information on key provisions via dynamic IT means. This will include information on:

- the granting of flexibilities to support transformative techniques;
- the setting of stricter permit conditions in permits, where required to meet environmental quality standards;
- the granting of derogations allowing pollutant emissions higher than the BAT-AEL range;
- enforcement action taken.

Perceptions on improvements to legal clarity will be monitored via the BREF process, through e-surveys sent to the IED stakeholder community.

The review of the interaction between the IED and the ETS and decarbonisation developments, expected to take place before 2030, will be a key milestone in monitoring and evaluating this revamped and more holistic policy approach.

⁴⁷ Commission Staff Working Document Towards a monitoring and outlook framework for the zero pollution ambition Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Pathway to a Healthy Planet for All EU Action Plan: 'Towards Zero Pollution for Air, Water and Soil'; SWD(2021) 141 final.

- **Detailed explanation of the specific provisions of the proposal**

- (a) Amendments to Directive 2010/75/EU

The amendment to **Article 1** aims at explicitly clarifying that this Directive lays down rules designed to prevent or, where that is not practicable, to reduce emissions into air, water and land and to prevent the generation of waste, in order to achieve a high level of protection of the environment and of human health taken as a whole; consistent with Article 191 of the Treaty on the Functioning of the European Union (TFEU). Such explicit clarification is also added in other Articles where necessary.

Amendments to **Article 3** aim at providing relevant definitions of new concepts or elements which are being added to the Directive by virtue of extension of its scope or strengthening of its provisions.

Amendments to **Article 5** aim at further specifying transparency requirements attached to permits granted under this Directive, against the background of uneven practice among Member States. Such permits shall be made available to the public on the internet, free of charge and without restricting access to registered users, and a uniform summary of permits shall be made available to the public.

Incidents or accidents may affect significantly the environment or human health beyond borders of the national territory of the Member State in which they occur. In such cases, pursuant to amendments to **Article 7**, immediate transboundary information, as well as multidisciplinary cooperation, must take place.

Amendments to **Article 8** aim at tightening the rules applying in case of breach of permit conditions and broadening the powers of the competent authority to suspend an installation's operations until compliance is restored.

In respect of combustion units or other units emitting carbon dioxide which are also in the scope of Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, the amendment to **Article 9** aims at making any requirements relating to energy efficiency mandatory.

Amendments to **Article 11** aim at introducing, as part of the basic obligations of the operator, requirements on resource efficiency, on the taking into account of the overall life-cycle environmental performance of the supply chain and on an environmental management system.

In the context of the exchange of information leading up to the drawing up and review of BAT reference documents (BREFs), amendments to **Article 13** are twofold. First, with a view to developing synergies between the work carried out by the European Chemicals Agency (ECHA) on chemicals and the elaboration of BREFs, it is appropriate to give a formal role to ECHA. Second, the handling of confidential business information (CBI) collected from industry should be specified so as to facilitate the exchange of information supporting the determination of emission levels and environmental performance levels associated with BAT and emerging techniques while preserving the confidentiality of relevant business information.

Several amendments are made to **Article 14** on permit conditions, with a view to strengthening the requirements attached to permits granted under this Directive; among which a duty for Member States to ensure that all authorities who ensure compliance with EU

environmental legislation, including where applicable with environmental quality standards, are duly consulted, before the granting of a permit. Moreover, it is appropriate to refer to Annex II on pollutants of Regulation (EC) No 166/2006 establishing a European Pollutant Release and Transfer Register as being amended. Indeed, by listing individual substances in a non-exhaustive way, Annex II of this Directive on the list of polluting substances is not compatible with the holistic approach sought and the need for competent authorities to take into account all relevant polluting substances, including those of emerging concern. This non-exhaustive list of polluting substances should therefore be deleted. Besides, it is also necessary to clarify the relationship between this Directive and Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries⁴⁸. Where the activity referred to in point 3.6 of Annex I to this Directive falls also under the scope of Directive 2006/21/EC, the BAT conclusions established pursuant to Article 13(5) IED will prevail for the purpose of permitting under Directive 2010/75, over BAT as referred to in Article 21(3) of Directive 2006/21/EC.

A new **Article 14a** is inserted in the Directive, requiring the operator to establish and implement an environmental management system (EMS) in accordance with relevant BAT conclusions, with a view to the continuous improvement of the environmental and energy efficient performance and safety of the installation. Article 14a bis also interlinks with the audit obligation under the Energy Efficiency Directive⁴⁹, thus strengthening both proposals.

Several improvements are proposed to tighten rules under **Article 15**. Firstly, the conditions under which the competent authority, when setting emission limit values applicable to pollutant releases to water in an IED permit, may take account of the downstream treatment processes in a waste water treatment plant, are clarified in order to ensure that such releases do not lead to an increased load of pollutants in receiving waters when compared to a situation where the IED installation applies BAT and meets BAT-AELs for direct releases. Secondly, BAT is applied heterogeneously across Member States, industry sectors and even between individual industrial installations; between 75% and 85% of all emission limit values in permits are set at the least demanding end of the BAT-AEL ranges⁵⁰, resulting in under-delivery of emissions reductions. Therefore, competent authorities should set the emission limit values (ELVs) at the lowest end of the relevant BAT-AEL range, unless the operator demonstrates that applying BAT as described in BAT conclusions only allows meeting less strict ELVs. Thirdly, in order to prevent or minimise the emission of pollutants by IED installations and level the playing field across the EU, it is necessary to better frame the conditions under which derogations to emissions limit values can be granted, consistent with principles to be set in an annex to this Directive, and with a standardised methodology for assessing the disproportionality between costs of implementation of BAT conclusions and the potential environmental benefits, to be adopted in an implementing act. Such derogations

⁴⁸ Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC; OJ L 102, 11.4.2006, p. 15.

⁴⁹ Supra N° 34.

⁵⁰ BAT-AELs are typically expressed in ranges providing the environmental performance of a basket of BATs and reflecting the diversity of installations in the EU. Member State permitting authorities should set ELVs in the permits within those ranges at a level corresponding to the performance of BAT for the specific installation.

should not be granted where they may put at risk compliance with environmental quality standards.

A new **Article 15a** is introduced, which empowers the Commission to set common rules for assessing compliance with emission limit values and validation of measured levels for both air and water emissions based on BAT, for installations covered by Chapter II. These compliance assessment rules will take precedent over rules set in Chapters III and IV on assessment of compliance with emission limit values contained in Annexes V and VI.

The amendment to **Article 16** aims at complementing monitoring requirements in respect of derogations granted under Article 15(4), as regards the concentration of the pollutants concerned by the derogation which are present in the receiving environment.

The amendment to **Article 18** aims at clarifying that environmental quality standards refer to the requirements set out in Union law, such as EU legislation on air or water; which must be fulfilled at a given time by a given environment or particular part thereof, and that where stricter conditions than those achievable by the use of the BAT by an IED installation are necessary to ensure compliance with such environmental quality standards, specific additional measures must be included in the permit as set out in this article.

The amendment to **Article 21** aims at clarifying that permit conditions should be reviewed and, where necessary, updated by the competent authority where it is necessary for the installation to comply with an environmental quality standard.

Amendments to **Article 24** include broadening the cases where the public concerned are given early and effective opportunities to participate in the granting or updating of permit conditions by the competent authority, consistent with the Aarhus Convention.

The amendment to **Article 25** aims at clarifying that Member States may not restrict legal standing to challenge a decision of a public authority to those members of the public concerned who participated in the preceding administrative procedure to adopt that decision.

Amendments to **Article 26** seek to strengthen transboundary cooperation, information exchange and public participation in permitting processes.

After Article 26, a new **Chapter IIa** on ‘**promoting innovation**’ is inserted, comprising **Articles 27** to **27d**, so as to foster innovation, facilitate the testing and deployment of emerging techniques with improved environmental performance, as well as to set up a dedicated centre to support innovation by collecting and analysing information on innovative techniques and characterise their state of development from research to deployment. The centre will allow BAT to develop a forward looking approach and help industries identifying solutions to decarbonise and reduce pollution. It will over time become a hub to foster innovation dynamics for the industrial transition on all European Green Deal policies. Operators will be required to produce transformation plans by 30 June 2030 as part of their environmental management systems, or later, depending on the activities of Annex I at stake, as a contribution towards achieving EU objectives on a clean, circular and climate neutral economy.

Amendments to **Article 42** further clarify how to assess whether the cleaned gases or liquids resulting from gasification and pyrolysis of waste are sufficiently purified to be combusted without stricter controls than those applying to clean commercial fuels.

A new **Chapter VIa** on ‘special provisions for rearing of poultry, pigs and cattle’ is inserted after Chapter VI and before Chapter VII, and comprising **Articles 70a to 70i**. In order to reduce the significant pollutant emissions to air and water caused by such rearing, this Chapter includes lowering the threshold above which pigs and poultry installations are included within the scope of Directive 2010/75/EU; and add cattle farming in this scope, alongside pigs and poultry installations. It also sets specific permitting procedures suited to the sector, mindful of the need to balance the administrative permitting procedures with public information and participation and compliance requirements. Operating Rules for livestock farms will take into consideration not only the nature, type, size and density but also the complexity of these installations and the range of environmental impacts they may have, together with economical aspects. This will allow establishing proportionate requirements for different farming practices (intensive, extensive, organic), including by taking into account the specificities of pasture based cattle rearing systems, where animals are only seasonally reared in indoor installations, while minimising burdens for the sector and the competent authorities.

Amendments to **Article 73** include setting a five-year frequency according to which the Commission shall submit to the European Parliament and to the Council a report reviewing the implementation of this Directive, the first of which will be due by June 2028. This report will take into account the dynamics of innovation and the review referred to in Article 8 of Directive 2003/87/EC.

The amendment to **Article 74** empowers the Commission to adopt a delegated act in accordance with Article 290 TFEU in respect of adding an agro-industrial activity to Annex I or Annex I a of this Directive, with a view to ensuring that it meets its objectives to prevent or reduce pollutants emissions and achieve a high level of protection of human health and the environment.

The amendments to **Article 79** aim at specifying the minimum content of penalties, so that they are effective, proportionate and dissuasive, without prejudice to Directive 2008/99/EC on the protection of the environment through criminal law⁵¹.

A new **Article 79a** on compensation is introduced, which aims at securing that, where damage to health has occurred, fully or partially as a result of a breach of national measures adopted pursuant to this Directive, the public concerned is able to claim and obtain compensation for that damage from the relevant competent authorities and, where identified, the natural or legal persons responsible for the violation.

Amendments to **Annex I** include bringing within the scope of this Directive the extraction of industrial and metallic minerals, activity which has a significant impact on the environment. Similarly, whilst several of the activities of the batteries value chain are already regulated by this Directive, adding as well in the scope of this instrument large installations undertaking

⁵¹ 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; OJ L 328, 6.12.2008, p. 28–37. The Commission adopted a proposal 15/12/2021 to replace Directive 2008/99/EC: COM(2021) 851 final ‘Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC.

the manufacturing of batteries ensures that all stages of the life-cycle of batteries are covered by the Directive's requirements, aiming at a more sustainable growth of this industrial sector.

(b) Amendment to Council Directive 1999/31/EC

The amendment to Article 1 of Council Directive 1999/31/EC on the landfill of waste⁵² aims at allowing the adoption of BAT conclusions on landfills under this Directive. Although landfills are included within the scope of the IED, no BAT conclusions exist for landfills owing to the coverage of this activity under Council Directive 1999/31/EC, pursuant to which its requirements are deemed to constitute BAT. Given technical development and innovation that has taken place since the adoption of Council Directive 1999/31/EC, more effective techniques for protecting human health and the environment are now available. The adoption of BAT conclusions would enable addressing the key environmental issues related to the operation of waste landfills, including significant emissions of methane.

⁵² Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste; OJ L 182, 16.7.1999, p. 1-19..

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 (integrated pollution prevention and control) and Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁵³,

Having regard to the opinion of the Committee of the Regions⁵⁴,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The European Green Deal⁵⁵ is Europe's strategy to ensure, by 2050, a climate-neutral, clean and circular economy, optimising resource management, minimising pollution while recognising the need for deeply transformative policies. The Union is also committed to the 2030 Agenda for Sustainable Development⁵⁶ and its Sustainable Development Goals⁵⁷. The EU Chemicals Strategy for Sustainability⁵⁸ of October 2020 and the Zero Pollution Action Plan⁵⁹ adopted in May 2021 specifically address pollution aspects of the European Green Deal. In parallel, the New Industrial Strategy

⁵³ OJ C , , p. .

⁵⁴ OJ C , , p. .

⁵⁵ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions The European Green Deal; COM(2019) 640 final.

⁵⁶ https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E

⁵⁷ <https://sdgs.un.org/goals>

⁵⁸ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Chemicals Strategy for Sustainability Towards a Toxic-Free Environment COM(2020) 667 final.

⁵⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Pathway to a Healthy Planet for All EU Action Plan: 'Towards Zero Pollution for Air, Water and Soil' COM(2021) 400 final.

for Europe⁶⁰ further emphasises the potential role of transformative technologies. Other particularly relevant policies for this initiative include the ‘Fit for 55’ package⁶¹, the Methane Strategy⁶² and the Glasgow methane pledge⁶³, the Climate Adaptation Strategy⁶⁴, the Biodiversity Strategy⁶⁵, the Farm to Fork strategy⁶⁶ and the Sustainable Products Initiative⁶⁷. Besides, as part of the EU response to the 2022 Russia-Ukraine war, REPowerEU⁶⁸ proposes a Joint European Action to support the diversification of energy supplies, accelerate the transition to renewable energy and improve energy efficiency.

- (2) The European Green Deal announced a revision of Union measures to address pollution from large industrial installations, including reviewing the sectoral scope of the legislation and how to make it fully consistent with climate, energy and circular economy policies. In addition, the Zero Pollution Action Plan, the Circular Economy Action Plan and the Farm to Fork Strategy also call for reducing pollutant emissions at source, including sources not currently within the scope of Directive 2010/75/EU of the European Parliament and of the Council⁶⁹. Addressing pollution from certain agro-industrial activities thus requires their inclusion within the scope of that Directive.
- (3) The Union’s extractive industry is key to achieving the aims of the European Green Deal and the EU industrial strategy, including its update. Raw materials are of strategic importance for the digital and green transition, the energy, materials and circular economy transformation and to strengthen EU economic resilience. In order to achieve these objectives, sustainable domestic capacities need to be further developed. This requires effective, tailored and harmonised measures to ensure that the best available techniques are established and employed, thus applying processes that are both the most efficient and have the lowest possible impacts on the environment and human health. The governance mechanisms of Directive 2010/75/EU that closely associate industry experts to the development of consensual and tailored environmental requirements will support the sustainable growth of those activities in

⁶⁰ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, A New Industrial Strategy for Europe COM(2020) 102 final.

⁶¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Fit for 55': delivering the EU's 2030 Climate Target on the way to climate neutrality COM/2021/550 final.

⁶² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on an EU strategy to reduce methane emissions COM(2020) 663 final.

⁶³ <https://www.globalmethanepledge.org/>

⁶⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Forging a climate-resilient Europe - the new EU Strategy on Adaptation to Climate Change COM(2021) 82 final.

⁶⁵ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions EU Biodiversity Strategy for 2030 Bringing nature back into our lives COM(2020) 380 final.

⁶⁶ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system COM(2020) 381 final.

⁶⁷ COM(2022) 142

⁶⁸ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions REPowerEU: Joint European Action for more affordable, secure and sustainable energy; COM(2022) 108 final.

⁶⁹ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control); OJ L 334, 17.12.2010, p. 17-119.

the Union. The development and availability of commonly agreed standards will level the Union's playing field while ensuring a high level of protection of human health and the environment. It is therefore appropriate to include those activities within the scope of Directive 2010/75/EU.

- (4) Rearing of pigs, poultry and cattle cause significant pollutant emissions into the air and water. In order to reduce such pollutant emissions, including ammonia, methane, nitrates and greenhouse gas emissions and thereby improve air, water and soil quality, it is necessary to lower the threshold above which pigs and poultry installations are included within the scope of Directive 2010/75/EU and to include also cattle farming within that scope. Relevant BAT requirements take into consideration the nature, size, density and complexity of these installations, including the specificities of pasture based cattle rearing systems, where animals are only seasonally reared in indoor installations, and the range of environmental impacts they may have. The proportionality requirements in BATs aim to incentivise farmers to implement the necessary transition towards increasingly environmentally friendly agricultural practices.
- (5) A significant increase in the number of large-scale installations for the production of batteries for electric vehicles will likely take place within the Union up to 2040, increasing the Union's share of the global battery production. Whilst several of the activities of the batteries value chain are already regulated by Directive 2010/75/EU and batteries are regulated as products by Regulation (EU) .../... of the European Parliament and of the Council* +., it is still necessary to include in the scope of the Directive large installations manufacturing batteries, ensure that they are also covered by the requirements set out in Directive 2010/75/EU and therefore contribute to a more sustainable growth of batteries manufacturing. Including large installations manufacturing batteries in the scope of Directive 2010/75/EU will improve in a holistic way the sustainability of batteries and minimise their impact on the environment throughout their life cycle.
- (6) With a view to further strengthening public access to environmental information, it is necessary to clarify that permits for installations granted pursuant to Directive 2010/75/EU are to be made available to the public on the Internet, free of charge and without restricting access to registered users. A uniform summary of permits should also be made available to the public under the same conditions.
- (7) The impact of pollution, including when caused by incidents or accidents, may extend beyond the territory of a Member State. In such cases, without prejudice to Directive 2012/18/EU of the European Parliament and of the Council⁷⁰, limiting the consequences for human health and the environment of incidents or accidents and preventing further possible incidents or accidents requires prompt information and close coordination between the competent authorities of the Members States which are or may be affected by such events. Therefore, in the event of any incident or accident significantly affecting the environment or human health in another Member State, information and transboundary and multidisciplinary cooperation between the affected

+ OP: Please insert in the text the number of the Regulation contained in document 2020/0353(COD) and insert the number, date, title and OJ reference of that Regulation in the footnote."

⁷⁰ Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances (OJ L 197, 24.7.2012, p. 1).

Member States should be fostered to limit the consequences for the environment and human health and to prevent further possible incidents or accidents.

- (8) Member States should also adopt compliance assurance measures to promote, monitor and enforce compliance with obligations placed on natural or legal persons under Directive 2020/75/EU. As part of compliance assurance measures, competent authorities should be able to suspend the operation of an installation where a continued breach of the permit conditions and the non-implementation of the findings of the inspection report pose or risk causing a danger to human health or a significant adverse effect upon the environment, in order to stop that danger.
- (9) In order to foster energy efficiency of installations within the scope of Directive 2010/75/EU which are carrying out activities listed in Annex I to Directive 2003/87/EC, it is appropriate to submit those installations to energy efficiency requirements in respect of combustion units or other units emitting carbon dioxide on the site.
- (10) The evaluation of Directive 2010/75/EU concluded that there is a need to strengthen the links between that Directive and Regulation (EC) No 1907/2006⁷¹, to better address the risks of the use of chemicals in installations within the scope of Directive 2010/75/EU. In order to develop synergies between the work carried out by the European Chemicals Agency (ECHA) on chemicals and the preparation of BAT reference documents under Directive 2010/75/EU, ECHA should be given a formal role in such preparation of BAT reference documents.
- (11) In order to facilitate the exchange of information supporting the determination of emission levels and environmental performance levels associated with best available techniques (BAT), while maintaining the integrity of confidential business information, the procedures for the handling of information qualifying as confidential business information or sensitive commercial information, and as collected from the industry in the context of the exchange of information organised by the Commission for the purpose of drafting, reviewing or updating BAT reference documents should be specified. It should be ensured that individuals participating in the exchange of information do not share information qualifying as confidential business information or sensitive commercial information with any representative of undertakings or trade associations having an economic interest in the concerned industrial activities and related markets. Such exchange of information is without prejudice to Union competition law, in particular Article 101 of the Treaty on the Functioning of the European Union (TFEU).
- (12) To ensure the protection of human health and the environment as a whole, synergies and coordination with other relevant Union environmental legislation are necessary, at all stages of its implementation. Therefore, all relevant competent authorities that ensure compliance with relevant Union environmental legislation should be duly consulted before the granting of a permit under Directive 2010/75/EU.
- (13) With a view to continuously improving the environmental performance and safety of the installation, including by preventing waste generation, optimising resource use and water reuse, and preventing or reducing risks associated with the use of hazardous

⁷¹ Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency (ECHA) (OJ L 396, 30.12.2006, p.1).

substances, the operator should establish and implement an environmental management system (EMS) in accordance with relevant BAT conclusions, and should make it available to the public. The EMS should also cover the management of risks related to the use of the hazardous substances and an analysis of the possible substitution of hazardous substances by safer alternatives.

- (14) It is necessary to specify further the conditions under which the competent authority, when setting emission limit values applicable to pollutant releases to water in a permit granted under Directive 2010/75/EU, may take account of the downstream treatment processes in a waste water treatment plant, in order to ensure that such releases do not lead to an increased load of pollutants in receiving waters when compared to a situation where the installation applies BAT and meets emission levels associated with the best available techniques for direct releases.
- (15) Providing a high level of protection of human health and the environment as a whole requires inter alia the establishment in permits of emission limit values at a level that ensures compliance with the applicable emission levels associated with the best available techniques set out in the BAT conclusions. Emission levels associated with the best available techniques (BAT-AELs) are usually expressed as ranges, rather than as single values, to reflect the differences within a given type of installations that result in variations in the environmental performances achieved when applying BAT. For example, a given BAT will not deliver the same performance for different installations, 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. The achievement of a high level of protection of human health and the environment as a whole has been jeopardised by the practice of setting emission limit values at the laxest end of the range of emission levels associated with the best available techniques, without considering the potential of a given installation to achieve lower emission levels through the application of best available techniques. Such practice discourages frontrunners from implementing more effective techniques, and hinders the achievement of a level-playing field at a high level of protection of human health and the environment. Competent authorities should therefore be required to set in permits the lowest possible emission limit values which reflect the performance of BAT for the specific installations, taking into consideration the whole range of BAT-AELs and aiming at the best environmental performance possible for the installations; unless the operator demonstrates that applying best available techniques as described in the BAT conclusions only allows the concerned installation to meeting less strict emission limit values.
- (16) The contribution of Directive 2010/75/EU to resource and energy efficiency and circular economy in the Union should be made more effective, taking into consideration the ‘Energy Efficiency First’ as a guiding principle of the Union energy policy. Therefore, the permits should establish, where possible, mandatory environmental performance limit values on consumption and resource efficiency levels, including on the use of water, energy and recycled materials, based on the environmental performance levels associated with the best available techniques (BAT AEPLs) set out in decisions on BAT conclusions.
- (17) With a view to preventing or minimising the emission of pollutants by installations within the scope of Directive 2010/75/EU and to levelling the playing field across the Union, the conditions under which derogations from emissions limit values can be granted should be better framed through general principles, in order to ensure a more harmonized implementation of such derogations throughout the Union. Moreover,

derogations from emissions limit values should not be granted where they may put at risk compliance with environmental quality standards.

- (18) The evaluation of Directive 2010/75/EU concluded that there was some discrepancy in compliance assessment approaches for installations covered by Chapter II of that Directive. In order to achieve a high level of protection of the environment as a whole, ensure a consistent implementation of Union law and a level-playing field throughout the Union, while minimising the administrative burden on businesses and public authorities, the Commission should set common rules for assessing compliance with emission limit values and validation of measured levels for both air and water emissions based on best available techniques. Those compliance assessment rules should take precedent over the rules set out in Chapters III and IV on assessment of compliance with emission limit values contained in Annexes V and VI to Directive 2010/75/EU.
- (19) Environmental quality standards refer to all the requirements set out in Union law, such as Union legislation on air and water; which must be fulfilled at a given time by a given environment or particular part thereof. Therefore it is appropriate to clarify that when granting a permit to an installation, competent authorities should not only set out conditions to ensure compliance of the installation's operations with the use of the best available techniques conclusions, but should also, where appropriate with a view to reducing the specific contribution of the installation to the pollution occurring in the relevant area, include specific additional conditions in the permit stricter than those set in relevant BAT conclusions, so as to ensure the installation's compliance with environmental quality standards. Such conditions may consist in setting stricter emission limit values or limiting the operation or capacity of the installation.
- (20) Permit conditions should be regularly reviewed and, where necessary, updated by the competent authority to ensure compliance with relevant legislation. Such review or update should also take place where it is necessary for the installation to comply with an environmental quality standard, including in the case of a new or revised environmental quality standard or where the status of the receiving environment requires a revision of the permit in order to achieve compliance with plans and programmes set under Union legislation, such as the river basin management plans under Directive 2000/60/EC of the European Parliament and of the Council⁷².
- (21) Parties to the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, at their seventh Meeting session, endorsed the Convention's Compliance Committee's findings in case ACCC/C/2014/121, according to which, by putting in place a legal framework that does not envisage any possibility for public participation in relation to reconsiderations and updates under Article 21 (3), (4) and (5)(b) and (c) of Directive 2010/75/EU, the European Union fails to comply with article 6 (10) of the Convention. These findings have been endorsed by the Union and its Member States, and with a view to reaching full compliance with the Aarhus Convention, it is necessary to specify that the public concerned should be given early and effective opportunities to participate in the granting or updating of permit conditions set by the competent authority also when permits conditions are reconsidered following the publication of decisions on BAT conclusions relating to the main activity for the

⁷² Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000).

installation; when developments in the best available techniques allow for the significant reduction of emissions; when the operational safety requires other techniques to be used; and where it is necessary to comply with a new or revised environmental quality standard.

- (22) As clarified by the case-law of the Court of Justice⁷³, Member States may not restrict legal standing to challenge a decision of a public authority to those members of the public concerned who participated in the preceding administrative procedure to adopt that decision. As also clarified by the case-law of the Court of Justice⁷⁴, effective access to justice in environmental matters and effective remedies requires inter alia that members of the public concerned should have the right to ask the court or an incompetent independent and impartial body to order interim measures to prevent a given instance of pollution, including, where necessary, through the temporary suspension of the disputed permit. Therefore, it should be specified that legal standing should not be made conditional on the role that the concerned member of the public played during a participatory phase of the decision-making procedures under this Directive. In addition, any review procedure should be fair, equitable, timely and not prohibitively expensive, and provide for adequate and effective redress mechanisms, including injunctive relief as appropriate.
- (23) Transboundary cooperation should take place prior to the granting of permits where more than one Member State may be affected by the operation of an installation, and should include prior information and consultation of the public concerned and competent authorities in the other Member States which may be affected.
- (24) The evaluation of Directive 2010/75/EU found that, even if it should foster the transformation of European industry, it is not dynamic enough and does not sufficiently support the deployment of innovative processes and technologies. It is therefore appropriate to facilitate the testing and deployment of emerging techniques with improved environmental performance, to facilitate cooperation with researchers and industries in publicly funded research projects subject to the conditions foreseen in the relevant European and national funding instruments, as well as to set up a dedicated centre to support innovation by collecting and analysing information on innovative techniques, including emerging techniques, relevant to activities within the scope of that Directive and to characterise their level of development from research to deployment (technology readiness level or ‘TRL’) and their environmental performance. This will also inform the exchange of information on drawing up, reviewing and updating BAT reference documents. Innovative techniques to be collected and analysed by the centre should be at least at the level of technology demonstrated in relevant environment (industrially relevant environment in the case of key enabling technologies) or system prototype demonstration in operation environment (TRL 6-7).
- (25) Achieving Union objectives regarding a clean, circular and climate neutral economy by 2050 calls for a deep transformation of the Union economy. Consistently with the 8th Environmental Action Programme, operators of installations covered by Directive 2010/75/EU should therefore be required to include transformation plans in their

⁷³ Case C-826/18, Judgment of the Court (First Chamber) of 14 January 2021; *LB and Others v College van burgemeester en wethouders van de gemeente Echt-Susteren*; paragraphs 58 and 59.

⁷⁴ Case C-416/10 Judgment of the Court (Grand Chamber), 15 January 2013; *Jozef Križan and Others v Slovenská inšpekcia životného prostredia*. Križan, paragraph 109.

environmental management systems. Such transformation plans will also complement the Corporate Sustainability Reporting requirements under Directive 2013/34/EU of the European Parliament and of the Council⁷⁵ by providing a means for concrete implementation of these requirements at installation level. The first priority is the transformation of energy-intensive activities listed in Annex I. Therefore, the operators of energy-intensive installations should produce transformation plans by 30 June 2030. Operators of installations carrying out other activities listed in Annex I should be required to produce transformation plans as part of the permit reconsideration and update following the publication of decisions on BAT conclusions published after 1 January 2030. Whilst the transformation plans should remain indicative documents prepared under the responsibility of the operators, the audit organisation contracted by the operators as part of their environmental management systems should check that they contain the minimum information to be set by the European Commission in an implementing act, and the operators should make the transformation plans public.

- (26) Further clarity is needed regarding the criteria to assess whether the cleaned gases or liquids resulting from the gasification and pyrolysis of waste are sufficiently purified to such an extent that they are no longer waste prior to their incineration.
- (27) In light of the high number of rearing installations that should be included within the scope of Directive 2010/75/EU, and the relative simplicity of the processes and emissions patterns of such installations, it is appropriate to set out specific administrative procedures for issuing permits and for the operation of the relevant activities which are adapted to the sector, without prejudice to requirements related to public information and participation, monitoring and compliance.
- (28) Innovative techniques coming on the market are expected to increasingly reduce both emissions of pollutants and of greenhouse gases from installations within the scope of both Directive 2010/75/EU and Directive 2003/87/EC of the European Parliament and of the Council⁷⁶. Whilst this will allow for the building of further synergies between those Directives, it may affect their operation, including on the carbon market. Directive 2003/87/EC contains in this regard a provision to review the effectiveness of synergies with Directive 2010/75/EU, and calling for environmental and climate relevant permits to be coordinated to ensure efficient and speedier execution of measures needed to comply with Union climate and energy objectives. In order to take into account the dynamics of innovation in this regard and the review referred to in Article 8 of Directive 2003/87/EC, the Commission should submit a report reviewing the implementation of Directive 2010/75/EU to the European Parliament and to the Council by 2028 and every 5 years thereafter.
- (29) In order to ensure that Directive 2010/75/EU continues meeting its objectives to prevent or reduce emissions of pollutants and achieve a high level of protection of human health and the environment, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement that Directive in order to establish operating rules containing requirements for activities relating to

⁷⁵ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC; OJ L 182, 29.6.2013, p. 19–76.

⁷⁶ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community (OJ L 275, 25.10.2003, p. 32).

rearing of poultry, pigs and cattle, and to amend Annexes I and Ia to that Directive by adding an agro-industrial activity to ensure that it meets its objectives to prevent or reduce pollutants emissions and achieve a high level of protection of human health and the environment. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016⁷⁷. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

- (30) In order to ensure uniform conditions for the implementation of Directive 2010/75/EU, implementing powers should be conferred on the Commission as regards the establishment of (i) the format to be used for the permit summary; (ii) a standardised methodology for assessing the disproportionality between the costs of implementation of the BAT conclusions and the potential environmental benefits, (iii) the measuring method for assessing compliance with emission limit values set out in the permit with regard to emissions to air and water, (iv) the detailed arrangements necessary for the establishment and functioning of the innovation centre for industrial transformation and emissions, and (v) the format to be used for transformation plans. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁷⁸.
- (31) In order to ensure the effective implementation and enforcement of the obligations set out in Directive 2010/75/EU, it is necessary to specify the minimum content of effective, proportionate and dissuasive penalties. Disparities in penalties regimes, the fact that imposed penalties are deemed in many cases too low to truly have a deterrent effect on illegal behaviours, and the lack of uniform implementation across Member States, undermine the level playing field on industrial emissions throughout the Union. Account should be taken of Directive 2008/99/EC on the protection of the environment through criminal law where a detected infringement under this Directive constitutes an offence within the scope Directive 2008/99/EC.
- (32) Where damage to human health has occurred as a result of a violation of national measures adopted pursuant to Directive 2010/75/EU, Member States should ensure that the individuals affected are able to claim and obtain compensation for that damage from the relevant natural or legal persons and, where appropriate, from the relevant competent authorities responsible for the infringement. Such rules on compensation contribute to pursuing the objectives of preserving, protecting and improving the quality of the environment and protecting human health as laid down in Article 191 TFEU. They also underpin the right to life, integrity of the person and health care laid down in Article 2, 3 and 35 of the Charter of Fundamental Rights of the European Union and the right to an effective remedy as laid down in Article 47 of the Charter. Moreover, Directive 2004/35/EC of the European Parliament and of the Council does

⁷⁷ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making; OJ L 123, 12.5.2016, p. 1–14.

⁷⁸ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

not give private parties a right of compensation as a consequence of environmental damage or of an imminent threat of such damage.

- (33) It is therefore appropriate for Directive 2010/75/EU to address the right for compensation for damages suffered by individuals. To ensure that individuals can defend their rights against damages to health caused by violations of Directive 2010/75/EU and thereby ensure a more efficient enforcement of that Directive, non-governmental organisations promoting the protection of human health or the environment, including those promoting the protection of consumers and meeting any requirements under national law, as members of the public concerned, should be empowered to engage in proceedings, as the Member States so determine, either on behalf of or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts. Member States usually enjoy procedural autonomy to ensure an effective remedy against violations of Union law, subject to the respect of the principles of equivalence and effectivity. However, experience shows that while there is overwhelming epidemiologic evidence on the negative health impacts of pollution on the population, in particular as regards air, it is difficult for the victims of violations of Directive 2010/75/EU under the procedural rules on the burden of proof generally applicable in the Member States to demonstrate a causality link between the suffered harm and the violation. As a result, in the majority of cases, victims of violations of Directive 2010/75/EU do not have an effective way to obtain compensation for the harm caused by such violations. To strengthen the rights of individuals to obtain compensation for violations of Directive 2010/75/EU and to contribute to a more efficient enforcement of its requirements throughout the Union, it is necessary to adapt the burden of proof applicable to such situations. Therefore, when an individual can provide sufficiently robust evidence to give rise to a presumption that the violation of Directive 2010/75/EU is at the origins of the damage caused to the health of an individual, or has significantly contributed to it, it should be for the defendant to rebut that presumption in order to escape his liability.
- (34) The impact of Directive 2010/75/EU on the procedural autonomy of the Member States should be limited to what is necessary to ensure the objectives of protection of human health through a safe environment pursued by it and should not affect other national procedural rules establishing the right to seek compensation for violations of that Directive. Such national rules should however not hamper the effective functioning of the mechanism for seeking compensation required by Directive 2010/75/EU.
- (35) The implementation of Directive 2010/75/EU has shown divergent applications across Member States concerning the coverage of installations for the manufacturing of ceramic products by firing, because the wording of the definition of this activity allowed Member States to decide whether to apply both or only one of the two criteria on production capacity and kiln capacity. With a view to ensuring a more consistent implementation of that Directive and securing a level-playing field throughout the Union, such installations should be included within the scope of that Directive whenever any one of those two criteria is met.
- (36) When setting emission limit values for polluting substances, the competent authority should consider all substances, including substances of emerging concern, which may be emitted from the concerned installation and may have a significant impact on the environment or human health. In doing so, the hazard characteristics, quantity and nature of the substances emitted and their potential to pollute any environmental media

should be considered. The BAT conclusions, where relevant, are the reference point for selecting the substances for which emission limit values are to be set, although the competent authority may decide to select additional substances. Currently, individual polluting substances are listed in a non-exhaustive way in Annex II to Directive 2010/75/EU; which is not compatible with the holistic approach of that Directive and does not reflect the need for competent authorities to take into account all relevant polluting substances, including those of emerging concern. The non-exhaustive list of polluting substances should therefore be deleted. Instead, reference should be made to the list of pollutants in Annex II to Regulation (EC) No 166/2006⁷⁹.

- (37) Although landfills are included within the scope of Directive 2010/75/EU, no BAT conclusions exist for landfills since that activity falls within the scope of Council Directive 1999/31/EC⁸⁰ and the requirements of the latter Directive are deemed to constitute BAT. Due to the technical developments and innovation that have taken place since the adoption of Directive 1999/31/EC, more effective techniques for protecting human health and the environment are now available. The adoption of BAT conclusions under Directive 2010/75/EU would allow addressing the key environmental issues related to the operation of waste landfills, including significant emissions of methane. Directive 1999/31/EC should therefore allow for the adoption of BAT conclusions on landfills under Directive 2010/75/EU.
- (38) Directives 2010/75/EU and 1999/31/EC should therefore be amended accordingly.
- (39) Since the objectives of this Directive, namely to ensure a high level of environmental protection and the improvement of environmental quality, cannot be sufficiently achieved by Member States and can, therefore, by reason of the transboundary nature of pollution from industrial activities, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (40) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of ensuring a high level of environmental protection and the improvement of environmental quality to lay down rules on integrated prevention and control of pollution arising from industrial activities. This Directive does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with Article 5(4) of the Treaty on European Union.
- (41) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents⁸¹, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

⁷⁹ Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 establishing a European Pollutant Release and Transfer Register (OJ L 33, 4.2.2006, p. 1).

⁸⁰ Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ L 182 16.7.1999, p. 1).

⁸¹ OJ C 369, 17.12.2011, p. 14.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2010/75/EU

Directive 2010/75/EU is amended as follows:

(1) In Article 1, the second paragraph is replaced by the following:

‘It also lays down rules designed to prevent or, where that is not practicable, to reduce emissions into air, water and land and to prevent the generation of waste, in order to achieve a high level of protection of human health and the environment taken as a whole.’.

(2) In Article 2, paragraph 1 is replaced by the following:

‘1. This Directive shall apply to the industrial activities giving rise to pollution referred to in Chapters II to VIa.’.

(3) Article 3 is amended as follows:

(a) point (3) is replaced by the following:

‘(3) ‘installation’ means a stationary technical unit within which one or more activities listed in Annex I, in Annex Ia or in Part 1 of Annex VII are carried out, and any other directly associated activities on the same site which have a technical connection with the activities listed in those Annexes and which could have an effect on emissions and pollution;’;

(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, the environmental performance levels associated with the best available techniques, the minimum content of an environmental management system including 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 range of environmental performance levels, except emission levels, obtained under normal operating conditions using a BAT or a combination of BATs;’.

(d) point (17) is replaced by the following:

‘(17) ‘the public concerned’ means the public affected or likely to be affected by, or having an interest in, the taking of a decision on the granting or the updating of a permit or of permit conditions; for the purposes of this definition, non-governmental organisations promoting the protection of

human health or the environment and meeting any requirements under national law shall be deemed to have an interest;’.

(e) the following points (23a), (23b) and (23c) are inserted:

‘(23a) ‘pigs’ means pigs as defined in Article 2 of Council Directive 2008/120/EC*;

(23b) ‘cattle’ means domestic animals of the species *Bos taurus*;

(23c) ‘livestock unit’ or ‘LSU’ means the grazing equivalent of one adult dairy cow producing 3 000 kg of milk annually, without additional concentrated foodstuffs, which is used to express the size of farms rearing different categories of animals, using the conversion rates, with reference to actual production within the calendar year, set out in Annex II to Commission Implementing Regulation (EU) No 808/2014**’.

* Council Directive 2008/120/EC of 18 December 2008 laying down minimum standards for the protection of pigs (OJ L 47, 18.2.2009, p. 5).

** Commission Implementing Regulation (EU) No 808/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ L 227 31.7.2014, p. 18).’;.

(f) the following points (48) to (53) are added:

‘(48) ‘industrial minerals’ means minerals used in industry for the production of semi-finished or finished products, with the exception of metalliferous ores, energy minerals, construction minerals and precious stones;

(49) ‘metalliferous ores’ means ores that yield metals or metallic substances;

(50) ‘emission levels associated with emerging techniques’ means the 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, under specified reference conditions;

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

(52) ‘compliance assurance’ means mechanisms for securing compliance using three categories of intervention: compliance promotion; compliance monitoring; follow-up and enforcement.’;

(53) ‘‘benchmarks’ means the indicative range of environmental performance levels associated with best available techniques, other than emission levels and may include

- (a) consumption levels;
- (b) resource efficiency levels and reuse levels;
- (c) levels of covering materials;
- (d) levels of water and energy resources;
- (e) waste levels;

(f) other levels obtained under specified reference conditions.’.

(4) In Article 4(1), the second subparagraph is replaced by the following:

‘By way of derogation from the first subparagraph, Member States may set a procedure for the registration of installations covered only by Chapter V or Chapter VIa.’.

(5) In Article 5, the following paragraph (4) is added:

‘4. Member States shall ensure that permits granted pursuant to this Article are made available on the Internet, free of charge and without restricting access to registered users. In addition, a summary of each permit shall be made available to the public under the same conditions. That summary shall include at least the following:

- (a) an overview of the main permit conditions;
- (b) the emission limit values and environmental performance limits values;
- (c) any derogations granted in accordance with Article 15(4);
- (d) the applicable BAT conclusions;
- (e) the provisions for reconsideration and updating of the permit.

The Commission shall adopt an implementing act to establish the format to be used for the summary referred to in the second subparagraph. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 75(2).’.

(6) Articles 7 and 8 are replaced by the following:

Article 7

Incidents and accidents

Without prejudice to Directive 2004/35/EC of the European Parliament and of the Council*, in the event of any incident or accident significantly affecting human health or the environment, Member States shall take the necessary measures to ensure that:

- (a) the operator informs the competent authority immediately;
- (b) the operator immediately takes the measures to limit the environmental consequences and to prevent further possible incidents or accidents;
- (c) the competent authority requires the operator to take any appropriate complementary measures that the competent authority considers necessary to limit the environmental consequences and to prevent further possible incidents or accidents.

In the event of any incident or accident significantly affecting human or health the environment in another Member State, the Member State in whose territory the accident or incident has occurred shall ensure that the competent authority of the other Member State is immediately informed. Transboundary and multidisciplinary cooperation between the affected Member States shall aim at limiting the consequences on for the environment and human health and to prevent further possible incidents or accidents.

Article 8

Non-compliance

1. Member States shall take the necessary measures to ensure that the permit conditions are complied with.

They shall also adopt compliance assurance measures to to promote, monitor and enforce compliance with obligations placed on natural or legal persons under this Directive.

2. In the event of a breach of the permit conditions, Member States shall ensure that:
 - (a) the operator immediately informs the competent authority;
 - (b) the operator immediately takes the measures necessary to ensure that compliance is restored within the shortest possible time;
 - (c) the competent authority requires the operator to take any appropriate complementary measures that the competent authority considers necessary to restore compliance.

Where the breach of the permit conditions poses an immediate 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.

3. Where the breach of the permit conditions continues to cause a danger to human health or a a significant adverse effect upon the environment, and where the necessary action for restoring compliance identified in the inspection report referred to in Article 23(6) have not been implemented, the operation of the installation, combustion plant, waste incineration plant, waste co-incineration plant or relevant part thereof may be suspended by the competent authority until compliance with the permit conditions is restored.

* Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ L 143, 30.4.2004, p. 56).

- (7) In Article 9, paragraph (2) is deleted.
- (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.’.
- (9) Article 13 is amended as follows:
 - (a) paragraph 1 is replaced by the following:
 - ‘1. In order to draw up, review and, where necessary, update BAT reference documents, the Commission shall organise an exchange of information between Member States, the industries concerned, non-governmental

organisations promoting environmental protection, the European Chemicals Agency and the Commission.’

(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 with the following individuals having signed a confidentiality and non-disclosure agreement: civil servants and other public employees representing Member States or Union agencies, 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 required to draw up, review and, where necessary, update BAT reference documents and such sensitive or commercial information shall not be used for other purposes.’

(10) Article 14 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the first subparagraph is replaced by the following:

‘Member States shall ensure that the permit includes all measures necessary to comply with the requirements of Articles 11 and 18. To that effect, Member States shall ensure that permits are granted further to consultation of all relevant authorities who ensure compliance with Union environmental legislation, including with environmental quality standards.’;

(ii) in the second subparagraph, point (a) is replaced by the following:

‘(a) emission limit values for polluting substances listed in Annex II of Regulation (EC) No 166/2006*, and for other polluting substances, which are likely to be emitted from the installation concerned in significant quantities, having regard to their nature and their potential to transfer pollution from one medium to another;

* Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC (OJ L 33, 4.2.2006, p. 1).’;

(iii) the following point (aa) is inserted:

‘(aa) environmental performance limit values;’ ;

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

‘(b) appropriate requirements ensuring protection of the soil, groundwater and surface water, and measures concerning the monitoring and management of waste generated by the installation;’;

(v) the following point (bb) is inserted:

‘(bb) appropriate requirements for an environmental management system as laid down in Article 14a;’;

(vi) the following point (bc) is inserted:

‘(bc) suitable monitoring requirements for the consumption and reuse of resources such as energy, water and raw materials;’;

(vii) in point (d), the following subpoint (iii) is added:

(iii) information on progress towards fulfilment of the environmental policy objectives referred to in Article 14a. Such information shall be made public;’;

(viii) point (h) is replaced by the following:

‘(h) conditions for assessing compliance with the emission limit values and environmental performance limit values or a reference to the applicable requirements specified elsewhere.’.

(11) The following Article 14a is inserted:

‘Article 14a

Environmental management system

1. Member States shall require the operator to prepare and implement, for each installation falling within the scope of this Chapter, an 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) 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 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;
- (e) measures taken to achieve the environmental objectives and avoid risks for human health or the environment, including corrective and preventive measures where needed;

- (f) a transformation plan as referred to in Article 27d.
3. The EMS of an installation shall be made available on the Internet, free of charge and without restricting access to registered users.’.

(12) Article 15 is replaced by the following:

Article 15

Emission limit values, environmental performance limit values, equivalent parameters and technical measures

- ‘1. The emission limit values for polluting substances shall apply at the point where the emissions leave the installation, and any dilution prior to that point shall be disregarded when determining those values.

With regard to indirect releases of polluting substances into water, the effect of a waste water treatment plant outside the installation may be taken into account when determining the emission limit values of the installation concerned, provided that the operator ensures that all of the following requirements are fulfilled:

- (a) the released polluting substances do not impede the operation of the waste water treatment plant;
- (b) the released polluting substances do not harm the health of the staff working in collecting systems and waste water treatment plants;
- (c) the waste water treatment plant is designed and equipped to abate the released polluting substances;
- (d) the overall load of the concerned polluting substances eventually released into the water is not increased compared to the situation where the emissions from the installation concerned remained compliant with emission limit values set for direct releases in accordance with paragraph (3) of this Article, without prejudice to stricter measures required pursuant to Article 18.

The competent authority shall set out in an annex to the permit conditions the reasons for the application of the second subparagraph, including the result of the assessment by the operator of the fulfilment of the required conditions.

The operator shall provide an updated assessment in cases where the permit conditions should be changed to ensure that the requirements set out in the second subparagraph, points (a) to (d) are fulfilled.

2. Without prejudice to Article 18, the emission limit values and the equivalent parameters and technical measures referred to in Article 14(1) and (2) shall be based on BAT without prescribing the use of any technique or specific technology.
3. The competent authority shall set the strictest possible emission limit values 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 analysing the feasibility of meeting the strictest end of the BAT-AEL

range and demonstrating the best performance the installation can achieve by applying BAT as described in BAT conclusions. The emission limit values shall be set through either of the following:

- (a) setting emission limit values expressed for the same or shorter periods of time and under the same reference conditions as the emission levels associated with the best available techniques; or
- (b) setting different emission limit values than those referred to under point (a) in terms of values, periods of time and reference conditions.

Where the emission limit values are set in accordance with point (b), the competent authority shall, at least annually, assess the results of emission monitoring in order to ensure that emissions under normal operating conditions have not exceeded the emission levels associated with the best available techniques.

- 3a. The competent authority shall set environmental performance limit values that ensure that, under normal operating conditions, such performance limits values 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).
4. By way of derogation from paragraph 3, and without prejudice to Article 18, the competent authority may, in specific cases, set less strict emission limit values. Such a derogation may apply only where an assessment shows that the achievement of emission levels associated with the best available techniques as described in BAT conclusions would lead to disproportionately higher costs compared to the environmental benefits 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 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 emission limit values set in accordance with the first subparagraph shall, however, not exceed the emission limit values set out in the Annexes to this Directive, where applicable.

Derogations referred to in this paragraph shall respect the principles set out in Annex II. The competent authority shall in any case ensure that no significant pollution is caused and that a high level of protection of the environment as a whole is achieved. Derogations shall not be granted where they may put at risk compliance with environmental quality standards referred to in Article 18.

The competent authority shall re-assess whether the derogation granted in accordance with this paragraph is justified every 4 years or as part of each reconsideration of the permit conditions pursuant to Article 21, where such reconsideration is made earlier than 4 years after the derogation was granted.

The Commission shall adopt an implementing act, to establish a standardised methodology for assessing the disproportionality between the costs of implementation of the BAT conclusions and the potential environmental benefits

referred to in the first subparagraph. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 75(2).’.

(13) The following Article 15a is inserted:

‘Article 15a

Compliance assessment

1. For the purpose of assessing compliance with emission limit values in accordance with Article 14(1), point (h), the correction made to measurements to determine the validated average emission values shall not exceed the measurement uncertainty of the measuring method.
2. The Commission shall by [*OP please insert date = the first day of the month following 24 months after the date of entry into force of this Directive*] adopt an implementing act establishing the measuring method for assessing compliance with emission limit values set out in the permit with regard to emissions to air and water. This implementing act shall be adopted in accordance with the examination procedure referred to in Article 75(2).

The method referred to in the first subparagraph shall address, as a minimum, the determination of validated average emission values and shall set out how measurement uncertainty and the frequency of exceedance of emission limit values are to be taken into account in the compliance assessment.

3. Where an installation falling within the scope of this Chapter also falls within the scope of Chapter III or IV and compliance with emission limit values set in accordance with this Chapter is demonstrated pursuant to paragraph 1 of this Article, the installation shall be deemed to also comply with the emission limit values set pursuant to Chapter III or IV for the pollutants concerned.’.

(14) In Article 16, the following paragraph 3 is added:

- ‘3. Where a derogation referred to in Article 15(4) has been granted, Member States shall ensure that the operator monitors the concentration of the pollutants concerned by the derogation which are present in the receiving environment. The results of the monitoring shall be transmitted to the competent authority. Where relevant, monitoring and measuring methods for each concerned pollutant set out in other relevant Union legislation shall be used for the purpose of the monitoring referred to in this paragraph.’.

(15) Article 18 is replaced by the following:

‘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 permit with a view to reducing the specific contribution of the installation to the pollution occurring in the relevant area.

Where stricter conditions have been included in the permit in accordance with the first paragraph, 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 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.’

(16) In Article 21(5), point (c) is replaced by the following:

‘(c) where it is necessary to comply with an environmental quality standard referred to in Article 18, including in the case of a new or revised quality standard or where the status of the receiving environment requires a revision of the permit in order to achieve compliance with plans and programmes set under Union legislation.’

(17) Article 24 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (d) is replaced by the following:

‘(d) the updating of a permit or permit conditions for an installation in accordance with Article 21(5), points (a), (b) and (c);’;

(ii) the following point (e) is added:

‘(e) the updating of a permit in accordance with Article 21(3) or Article 21(4).’

(b) paragraph 2 is amended as follows:

(i) the first subparagraph is replaced by the following:

‘2. When a decision on granting, reconsideration or updating of a permit has been taken, the competent authority shall make available to the public, including systematically via the Internet, free of charge and without restricting access to registered users, in relation to points (a), (b) and (f), the following information:’;

(ii) point (c) is replaced by the following:

‘(c) the results of the consultations held before the decision was taken, including consultations held pursuant to Article 26, and an explanation of how those consultations were taken into account in that decision;’;

(c) paragraph 3 is replaced by the following:

‘3. The competent authority shall also make available to the public, including systematically via the Internet, free of charge and without restricting access to registered users, the following:

(a) relevant information on the measures taken by the operator upon definitive cessation of activities in accordance with Article 22;

(b) the results of emission monitoring as required under the permit conditions and held by the competent authority;

(c) the results of the monitoring referred to in Article 16(3) and in Article 18, second subparagraph.’

(18) In Article 25(1), the following subparagraphs are added:

‘Standing in the review procedure may not be conditional on the role that the concerned member of the public played during a participatory phase of the decision-making procedures under this Directive.

The review procedure shall be fair, equitable, timely and not prohibitively expensive, and shall provide for adequate and effective redress mechanisms, including injunctive relief as appropriate.’.

(19) In Article 26, paragraphs 1 and 2 are replaced by the following:

- ‘1. Where a Member State is aware that the operation of an installation may have significant negative effects on the environment of another Member State, or where a Member State which may be significantly affected so requests, the Member State in whose territory the application for a permit pursuant to Article 4 or Article 20(2) was submitted shall forward to the other Member State any information required to be given or made available pursuant to Annex IV at the same time as it makes it available to the public. On the basis of that information, consultations shall be carried out between the two Member States, while ensuring that the comments from the Member State that may be significantly affected are provided before the competent authority of the Member State in whose territory the application for a permit was submitted reaches its decision. Should no comments be provided by the Member State which may be significantly affected within the period for consultation of the public concerned, the competent authority shall proceed with the permitting procedure.
2. Member States shall ensure that, in the cases referred to in paragraph 1, the application for a permit is also made available for comments to the public of the Member State which may be significantly affected and remains available for the same period of time as provided in the Member State where the application has been made.’.

(20) The following heading is inserted after Article 26:

‘CHAPTER IIa

PROMOTING INNOVATION’

(21) Article 27 is replaced by the following:

‘Article 27

Emerging techniques

Member States shall, where appropriate, encourage the development and application of emerging techniques, in particular where such techniques have been identified in the BAT conclusions, the BAT reference documents or the findings of the innovation centre for industrial transformation and emissions referred to in Article 27a.’.

(22) The following Articles 27a to 27d are inserted:

‘Article 27a

Innovation centre for industrial transformation and emissions

1. The Commission shall establish and operate an innovation centre for industrial transformation and emissions (the ‘centre’ or ‘INCITE’).
2. The centre shall collect and analyse information on innovative techniques, including emerging techniques relevant to activities within the scope of this Directive, and characterise their level of development and their environmental performance. The Commission shall take into account the findings of the centre when preparing the work programme for the exchange of information referred to in Article 13(3), point

(b), and when drawing up, reviewing and updating the BAT reference documents referred to in Article 13(1).

3. The centre shall be assisted by:
 - (a) representatives of Member States;
 - (b) relevant public institutions;
 - (c) relevant research institutes;
 - (d) research and technology organisations;
 - (e) representatives of the industries concerned;
 - (f) technology providers;
 - (g) non-governmental organisations promoting environmental protection;
 - (h) the Commission.
4. The centre shall make its findings public, subject to the restrictions laid down in Article 4(1) and (2) of Directive 2003/4/EC.

The Commission shall adopt an implementing act setting out the detailed arrangements necessary for the establishment and functioning of the centre. This implementing act shall be adopted in accordance with the examination procedure referred to in Article 75(2).

Article 27b

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) and (3) 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.

Article 27c

Emission levels associated with emerging techniques

By way of derogation from Article 21(3), the competent authority may set emission 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 not, under normal operating conditions, exceed emission levels associated with emerging techniques as laid down in the decisions on BAT conclusions.

Article 27d

Transformation towards 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 a transformation plan 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 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 assesses the conformity of the 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.

2. Member States shall require that, as part of the review of the permit conditions pursuant to Article 21(3) following the publication of decisions on BAT conclusions after 1 January 2030, the operator includes in its environmental management system referred to in Article 14a a transformation plan for each installation carrying out any activity listed in Annex I that is not referred to in paragraph 1. The transformation plan shall contain 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 the audit organisation contracted by the operator as part of its environmental management system assesses the conformity of the transformation plans referred to in the first subparagraph of paragraph 2 with the requirements set out in the implementing act referred to in paragraph 4.

3. The operator shall make its transformation plan as well as the results of the assessment referred to in paragraphs 1 and 2 public, as part of the publication of its environmental management system.
4. The Commission shall by 30 June 2028, adopt an implementing act establishing the format for the transformation plans. This implementing act shall be adopted in accordance with the examination procedure referred to in Article 75(2).’.

- (23) In Article 42(1), the second subparagraph is replaced by the following:

‘This Chapter shall not apply to gasification or pyrolysis plants, if the gases or liquids resulting from such thermal treatment of waste are treated prior to their incineration to such an extent that:

- (a) the incineration does not cause emissions higher than the combustion of the least polluting fuels available on the market that could be combusted in the installation;
- (b) for emissions other than nitrogen oxides, sulphur oxides and dust, the incineration does not cause emissions higher than emissions from incineration or co-incineration of waste.’.

- (24) The following heading is inserted after Article 70:

‘CHAPTER VIa

SPECIAL PROVISIONS FOR REARING POULTRY, PIGS AND CATTLE’

- (25) The following Articles 70a to 70i are inserted after the heading ‘CHAPTER VIa’:

Article 70a

Scope

This Chapter shall apply to the activities set out in Annex Ia which reach the capacity thresholds set out in that Annex.

Article 70b

Aggregation rule

If two or more installations are located close to each other and if their operator is the same or if the installations are under the control of operators who are engaged in an economic or legal relationship, the installations concerned shall be considered as a single unit for the purpose of calculating the capacity threshold referred to in Article 70a.

Article 70c

Permits

1. Member States shall take the necessary measures to ensure that no installation falling within the scope of this Chapter is operated without a permit and that its operation complies with the operating rules referred to in Article 70i.

Member States may include requirements for certain categories of installations falling within the scope of this Chapter in the general binding rules referred to in Article 6.

Member States shall specify the procedure for granting a permit in respect of installations falling within the scope of this Chapter. Those procedures shall include at least the information listed in paragraph 2.

2. Applications for permits shall include at least a description of the following elements:
 - (a) the installation and its activities
 - (b) the animal type
 - (c) the capacity of the installation;
 - (d) the sources of emissions from the installation;
 - (e) the nature and quantities of foreseeable emissions from the installation into each medium.
3. Applications shall also include a non-technical summary of the information referred to in paragraph 2.
4. Member States shall take necessary measures to ensure that the operator informs the competent authority, without delay, of any planned substantial change to the installations falling within the scope of this Chapter which may have consequences for the environment. Where appropriate, the competent authority shall reconsider and update the permit.

Article 70d

Obligations of the operator

1. Member States shall ensure that the operator carries out monitoring of emissions and of associated environmental performance levels in accordance with the operating rules referred to in Article 70i.

The operator shall keep a record of, and process, all monitoring results, for a period of at least 6 years, in such a way as to enable the verification of compliance with the emission limit values and environmental performance limit values set out in operating rules referred to in Article 70i.

2. In the event of non-compliance with the emission limit values and environmental performance limit values set out in the operating rules referred to in Article 70i, Member States shall require that the operator takes the measures necessary to ensure that compliance is restored within the shortest possible time.
3. The operator shall ensure that any land spreading of waste, animal by-products or other residues generated by the installation is undertaken in accordance with the best available techniques, as specified in the operating rules referred to in Article 70i, and other relevant Union legislation and that it does not cause significant pollution of the environment.

Article 70e

Monitoring

1. Member States shall ensure that suitable monitoring is carried out in accordance with the operating rules referred to in Article 70i.
2. All monitoring results shall be recorded, processed and presented in such a way as to enable the competent authority to verify compliance with the operating conditions, emission limit values and environmental performance limit values which are included in the general binding rules referred to in Article 6 or in the permit.
3. The operator shall, without delay, make available the data and information listed in paragraph 2 of this Article to the competent authority upon request. The competent authority may make such a request in order to verify compliance with the operating rules referred to in Article 70i. The competent authority shall make such a request if a member of the public requests access to the data or information listed in paragraph 2 of this Article.

Article 70f

Non-compliance

1. Member States shall ensure that the values for emissions and environmental performance levels monitored in accordance with the operating rules referred to in Article 70i do not exceed the emission limit values and environmental performance limit values set out therein.
2. Member States shall set up an effective compliance monitoring system, based on either environmental inspections or other measures, to check compliance with the requirements set out in this Chapter.
3. In the event of non-compliance with the requirements set out in this Chapter, Member States shall ensure that the competent authority requires the operator to take any measures, in addition to the measures taken by the operator under Article 70d, that are necessary to ensure that compliance is restored without delay.

Where non-compliance causes a significant degradation of local air, water or soil conditions, or where it poses, or risks to pose, a significant danger to human health, the operation of the installation shall be suspended by the competent authority until compliance is restored.

Article 70g

Public information and participation

1. Member States shall ensure that the public concerned are given early and effective opportunities to participate in the following procedures:
 - (a) preparation of general binding rules as referred to in Article 6 on permits for installations falling within the scope of this Chapter;
 - (b) the granting of a permit for a new installation falling within the scope of this Chapter;
 - (c) the granting of an updated permit in accordance with article 70c.4 for any substantial change to an existing installation falling within the scope of this Chapter.
2. The competent authority shall make available to the public, including systematically via the Internet, free of charge and without restricting access to registered users, the following documents and information:
 - (a) the permit;
 - (b) the results of the consultations held in accordance with paragraph 1;
 - (c) the general binding rules referred to in Article 6 applicable to installations falling within the scope of this Chapter;
 - (d) the reports of inspections of the installations falling within the scope of this Chapter.

Article 70h

Access to justice

1. Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned have access to a review procedure before a court of law, or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to this Chapter when one of the following conditions is met:
 - (a) they have a sufficient interest;
 - (b) they maintain the impairment of a right, where administrative procedural law of a Member State requires this as a precondition.

Standing in the review procedure may not be conditional on the role that the concerned member of the public played during a participatory phase of the decision-making procedures under this Directive.

The review procedure shall be fair, equitable, timely and not prohibitively expensive, and shall provide for adequate and effective redress mechanisms, including injunctive relief as appropriate.

2. Member States shall determine at what stage the decisions, acts or omissions may be challenged.

Article 70i

Operating Rules

1. The Commission shall establish operating rules containing requirements consistent with the use of best available techniques for the activities listed in Annex Ia, which shall include the following:
 - (a) emission limit values;
 - (b) monitoring requirements;
 - (c) land spreading practices;
 - (d) pollution prevention and mitigation practices;
 - (e) environmental performance limit values;
 - (f) other measures consistent with Annex III.

The operating rules shall 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.

2. The Commission shall by [OP please insert date = the first day of the month following 24 months after the date of entry into force of this Directive] adopt a delegated act in accordance with Article 76 to supplement this Directive by establishing the operating rules referred to in paragraph 1.’.
3. Member States shall ensure that all the permit conditions for the installations concerned are in compliance with the operating rules referred to in paragraph 1 within 42 months of the entry into force of the delegated act establishing those rules.’.

- (26) In Article 73(1), the first and the second subparagraphs are replaced by the following:

‘By 30 June 2028 and every 5 years thereafter, the Commission shall submit to the European Parliament and to the Council a report reviewing the implementation of this Directive. The report shall take into account the dynamics of innovation and the review referred to in Article 8 of Directive 2003/87/EC.

That report shall include an assessment of the need for Union action through the establishment or updating of Union-wide minimum requirements for emission limit values and for rules on monitoring and compliance for activities within the scope of the BAT conclusions adopted during the previous five-year period, on the basis of the following criteria:

- (a) the impact of the activities concerned on the environment as a whole and on human health;
- (b) the state of implementation of best available techniques for the activities concerned.’.

- (27) Article 74 is replaced by the following:

Article 74

Amendments of Annexes

1. In order to allow the provisions of this Directive to be adapted to scientific and technical progress on the basis of best available techniques, the Commission shall adopt delegated acts in accordance with Article 76 as regards the adaptation of Parts 3 and 4 of Annex V, Parts 2, 6, 7 and 8 of Annex VI and Parts 5, 6, 7 and 8 of Annex VII to such scientific and technical progress.
2. In order to allow the provisions of this Directive to meet its objectives to prevent or reduce pollutants emissions and achieve a high level of protection of human health and the environment, the Commission shall be empowered to adopt a delegated act, in accordance with Article 76, to amend Annex I or Annex Ia by including in those Annexes an agro-industrial activity that meets the following criteria:
 - (a) it has or is expected to have an impact on human health or the environment, in particular as a consequence of pollutant emissions and use of resources;
 - (b) its environmental performance diverges within the Union;
 - (c) it presents potential for improvement in terms of its environmental impact through the application of best available techniques or innovative techniques;
 - (d) its inclusion within the scope of this Directive is assessed, on the basis of its environmental, economic and social impacts, to have a favourable ratio of societal benefits to economic costs.
3. The Commission shall carry out appropriate consultation with stakeholders before adopting a delegated act in accordance with this Article.

The Commission shall make public relevant studies and analyses used in the preparation of a delegated act adopted in accordance with this Article, at the latest at the adoption of the delegated act.’.

(28) Article 75 is replaced by the following:

Article 75

Committee procedure

1. The Commission shall be assisted by a committee.

That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.’.

(29) Article 76 is replaced by the following:

Article 76

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 48(5), Article 70i and Article 74 shall be conferred on the Commission for a period of 5 years from ... [\[OP please insert the date = the first day of the month following the date of entry into force of this Directive\]](#). The Commission shall draw up a report in respect of the

delegation of power not later than nine months before the end of the five year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Articles 48(5), Article 70i and Article 74 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Articles 15(4) or 48(5) or Article 74 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.’.

(30) Articles 77 and 78 are deleted.

(31) Article 79 is replaced by the following:

‘Article 79

Penalties

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. 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.
2. The penalties referred to in paragraph 1 shall include fines proportionate to the 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 at least 8 % of the operator’s annual turnover in the Member State concerned.
3. Member States shall ensure that the penalties referred to in paragraph 1 give due regard to the following, as applicable:

- (a) the nature, gravity, and extent of the violation;
- (b) the intentional or negligent character of the violation;
- (c) the population or the environment affected by the violation, bearing in mind the impact of the infringement on the objective of achieving a high level of protection of human health and the environment.’

(32) The following Article 79a is inserted:

Article 79a

Compensation

1. Member States shall ensure that, where damage to human health has occurred as a result of a violation of national measures that were adopted pursuant to this Directive, the individuals affected have the right to claim and obtain compensation for that damage from the relevant natural or legal persons and, where appropriate, from the relevant competent authorities responsible for the violation.
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. 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.
3. Member States shall ensure that national rules and procedures relating to claims for compensation are designed and applied in such a way that they do not render impossible or excessively difficult the exercise of the right to compensation for damage caused by a violation pursuant to paragraph 1.
4. 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.
5. Member States shall ensure that the limitation periods for bringing actions for compensation referred to in paragraph 1 are not shorter than 5 years. Such periods shall not begin to run before the violation has ceased and the person claiming the compensation knows or can reasonably be expected to know that he or she suffered damage from a violation pursuant to paragraph 1.’

(33) Annex I is amended as set out in Annex I to this Directive.

(34) Annex Ia as set out in Annex II to this Directive is inserted.

(35) Annex II is replaced by the text in Annex III to this Directive.

Article 2

Amendments to Directive 1999/31/EC

In Article 1 of Directive 1999/31/EC, paragraph 2 is deleted.

Article 3

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [OP please insert the date = the first day of the month following] They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 4

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 5

This Directive is addressed to the Member States.

Done at Strasbourg,

For the European Parliament
The President

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

- Proposal for a directive of the European Parliament and of the Council on Industrial Emissions Directive amending the Directive 2010/75/EU of the European Parliament and of the Council

1.2. Policy area(s) concerned

- 09 Natural Resources and Environment

1.3. The proposal/initiative relates to:

- a new action
- a new action following a pilot project/preparatory action⁸²
- the extension of an existing action
- a merger or redirection of one or more actions towards another/a new action

1.4. Objective(s)

1.4.1. General objective(s)

- Protecting the environment and public health from the adverse effects of pollution from large agro-industrial installations.
- Establishing a competitive level playing field at a high level of protection of health and the environment.
- Stimulating a deep agro-industrial transformation towards achieving the EGD objectives, including zero pollution, carbon neutrality, a non-toxic environment and a circular economy.
- Improving access to information and justice, and increase public participation in decision-making.

1.4.2. Specific objective(s)

- Improving the effectiveness of the IED.
- Ensuring that the IED supports the uptake of emerging techniques during the ongoing industrial transformation also through a more dynamic permitting/ reviewing of permits of large installations
- Fostering the uptake and investments in techniques synergistically, jointly preventing/reducing pollution and carbon emissions.

⁸² As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

- Contributing to the transition towards the use of safer and less toxic chemicals, improved resource efficiency (energy, water and waste prevention) and greater circularity.
- Addressing the harmful impacts on health and environment from agro-industrial activities currently not regulated by the IED.
- Improving access of private individuals and civil society to information, participation in decision-making, and access to justice (including effective redress) in relation to permitting, operation and control of the regulated installations.

1.4.3. *Expected result(s) and impact*

- *Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.*

- The proposed Directive will address shortcomings identified in the IED evaluation and will result in a closer alignment with wider EGD policy goals.
- It will facilitate a higher uptake of innovative depollution techniques and will promote resource efficient, circular and zero-carbon production methods, thus enhancing the EU's resilience and reducing harmful impacts on both public health and biodiversity. The proposal will also address relevant stakeholder concerns about the current and future interactions between reducing emissions of pollutants (depollution) and emissions of GHGs (decarbonisation) including policy coherence to maximise agro-industrial installations' contribution to the EU's twin targets of Zero Pollution and Net Zero Carbon emissions.
- Finally, the future harmonised and published 'permit summary' will ease access to information about environmental impact of agro-industrial installations and increase public participation in decision-making.

1.4.4. *Indicators of performance*

- *Specify the indicators for monitoring progress and achievements.*

- Information including overall emissions of pollutants reported by operators to the European Pollutant Release and Transfer Register (E-PRTR) will provide key indicators to track progress against the objectives of this initiative. Those indicators are produced on a regular basis, are comparable and easily accessible via the Industrial Emission Portal managed by the EEA.
- The increased granularity of reporting of pollutant emission at installation level will allow monitoring of the main processes within sectors whose environmental performance is improving or is lagging behind.
- The inclusion of reporting of resource use will allow defining new indicators on use of materials, water and energy, that will enable tracking of resource efficiency improvements.
- Monitoring of the pace of development and uptake of innovations and the resulting required transformation of IED sectors for meeting the EU's 2030 and 2050 objectives will be ensured by a new mechanism managed by the INnovation Centre for Industrial Transformation & Emissions (INCITE) via the following indicators:

- Technology Readiness Level (TRL) of emerging techniques per sector;
- Emissions performance of emerging techniques;
- The anticipated “on the ground” uptake timeline of such technologies;
- Distance to target indicators, for each IED sector.

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

- This financial statement will secure funding for the Commission services (ENV and JRC) and ECHA to provide a number of new activities, foreseen in the IED proposal. These activities are of a different nature:

- one-off activities linked to preparation and negotiation of implementing acts
- regular tasks, i.e. those coming on top of the currently performed implementation and enforcement obligations and stemming from a widened and deepened scope of the Directive
- tasks related to setting-up and operating INCITE.

- **Timeline:**

- Q2 2022 – Q4 2023: negotiating the proposal. Due to a complex nature of the proposal and a need to liaise with the E-PRTR revision, negotiations may require more resources and time than average.

- Q2 2024 – Q4 2027: kicking-off and working out new BREFs (Best Available Techniques Reference Documents). New BREFs stem from a scope extension in the proposal. This process is a combination of technical work and stakeholder validation and is attributed mainly to the JRC.

- Q1 2024 – Q4 2027: BREFs revisions; additional resources in revisions are linked to new elements that BREFs will need to cover, such as circular economy, decarbonisation and less toxic environment. This process is a combination of technical work and stakeholder validation and is attributed mainly to the JRC.

- Q1 2024 – Q4 2027: kicking-off and carrying out the technical work to support the drafting of an implementing act on livestock farms. Although not a BREF per se, the process to develop the technical content of the implementing act is expected to be similar to the BREF process.

- Q1 2024 ECHA to start building a methodology to share information on impacts on human health and the environment of chemicals identified in BREFs.

- Q1 2024 - Q4 2025 – analytical work to prepare three implementing acts and their negotiations. These acts will involve establishing a harmonised methodology to apply derogations (Art 15.4), common rules for assessing compliance with emission limit values under Chapter II (Art 15a) and the functioning of INCITE. For the latter, both JRC and DG ENV would have a role to play in ensuring full compliance with BREF standards, transparency and participatory character of INCITE.

- Q1 2024 – launch of INCITE.

- Q1 2026 - Q4 2027 – analytical and preparatory work before the adoption of the implementing act on transformation plans, then follow-up. This will involve working out

a decision on the format and the scope of the implementing act.

- Q1 2026 – Q4 2027: preparatory work for the report on synergies with the ETS. The report is due in 2028.

1.5.2. *Added value of Union involvement.*

- Reasons for action at European level (ex-ante)
 - The Member States cannot alone effectively mitigate impacts of pollution from agro-industrial installations due to pollution's transboundary character. Furthermore, with the absence of a common EU approach for setting environmental performance standards, the same industries would face different pollution control regulation in each Member State. This may result in creating an uneven playing field, fragmenting the single market and impeding the Union's environmental and health policies.
- Expected generated Union added value (ex-post)
 - The IED BAT-based system together with the E-PRTR provide information used by all Member States, through a single EU level information exchange process, replacing the need for each Member State to establish national processes. Operators of plants in all Member States achieve economic efficiencies by only having to adhere to one EU-wide uniform regulatory approach. The EU system is increasingly being used by third countries, thereby promoting an international level playing field.

1.5.3. *Lessons learned from similar experiences in the past*

- The IED evaluation concluded that the Directive is generally effective in preventing and controlling pollution to air, water and soil from industrial activities, as well as in pushing forward the incorporation of BAT. The process for producing BREFs and identifying BAT has worked well, and is recognised as a model of collaborative governance and co-creation of legislation. There are still shortcomings in addressing resource efficiency, circular economy and non-toxic production methods and in capturing a significant stream of industrial emissions from some sectors leading to a market failure: polluters do not pay the true costs of the pollution they cause. Finally, the Directive is not efficient in promoting new production processes, technologies and innovation.
- Between 2017 and 2019, DG ENV tested a methodology to operate an Innovation Centre. It followed a 2015 study that examined options for improving innovation uptake and the exchange of information on emerging techniques. The overall objective of the Innovation Centre was to identify the latest techniques by engaging with a wide range of stakeholders, and to assess their degree of development, by using Technology Readiness Levels (TRL). The approach has been used on the textiles, slaughterhouses & animal by-products BREFs and technologies dealing with cross-cutting issues, and proved to be efficient and effective in supporting BREF revision process. This proposal for INCITE builds on Pilots' conclusions.

1.5.4. *Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments*

- This action is consistent with other EU policies and ongoing initiatives stemming from the European Green Deal.

1.5.5. *Assessment of the different available financing options, including scope for redeployment*

- **Current situation:**

- All BREFs related activity remains in the hands of the European Integrated Pollution Prevention and Control Bureau (EIPPCB, part of the JRC) set up in 1997 to organise an information exchange between the European Commission, EU Member States, industry and environmental non-governmental organisations on Best Available Techniques (BAT) used to prevent and control industrial pollution. The Bureau has the know-how, knowledge and versatility to run the process smoothly. It ensures that the data is robust, the process not-biased, and information protected, so the process is well recognised by Member States, environmental NGOs and the industry.
- Fifteen FTE scientific officers with support from 2.5 FTE for secretariat/IT support cover currently (March 2022) the above BREFs related tasks. This allows continuous work on the drawing up and review of a maximum of about eight BREFs simultaneously. The Bureau is fully (100%) financed through the JRC institutional budget without any contributions from DG ENV (no Administrative Arrangement).
- As of 2022, the European IPPC Bureau has produced 34 BREFs, most of them have been already reviewed and updated. Each BREF is the outcome of a multiannual information collection and exchange within ad-hoc sectorial technical working groups of more than 100 experts each. Emerging techniques chapters/sections form part of each BREF document.
- DG ENV supports the European IPPC Bureau in its work, ensures that the IED is implemented and enforced. It also prepares necessary guidelines, implementing acts and engages into dialogues with Member States. Seven FTE cover those tasks.
- As regards ECHA, it currently does not have a legal mandate to perform any task related to the IED. Nevertheless, in the past few years it has been regularly consulted by the EIPPCB during the review of BREFs and has provided various inputs related to chemical substances and chemical management approaches without clearly committing resources to cover these BREF related tasks. The co-operation between the EIPPCB and ECHA over BREF process started, as a pilot, in 2017 for the review of the Textiles BREF; its outcome was acknowledged as very positive. Besides this, ECHA has been involved in BREF-related activities on ad-hoc basis. ECHA's longer-term involvement and support in developing BREFs and BAT is essential for the holistic consideration of chemicals in the permits of the IED installations, from their presence in the (primary or secondary) raw materials to their presence in the emissions from the installations, as well as in the waste and by-products generated.
- Environmental Technology Verification Programme (ETV) currently verifies the performance of innovative environmental technologies of smaller size industrial organisations through a network of verification bodies managed by the European Institute of Innovation and Technology. So far, it has not participated in the BREF

process.

- **Best option**

Future extension of the IED scope and of extended scope of BREF documents

- The EIPPCB (part of JRC) has a unique setting and collaborates with many policy areas. With its expertise, experience and know-how, the JRC is considered the most appropriate to cover new and extended tasks linked to BREFs. The INnovation Centre for Industrial Transformation & Emissions (INCITE) is a new type of activity that will provide added value by bringing together information from many EU initiatives on innovation. It will also be a meeting point for different policies allowing identification of opportunities for increased synergies. Building INCITE within the JRC will benefit from efficiency gains and synergies offered by its proximity with the EIPPCB, and its involvement in BREFs and well-established relations with the industry. Moreover, the proposal for revising the IED embeds the concept of emerging techniques and their associated emissions and environmental performance levels with related legal implications. This brings about concerns about confidentiality and sensitivity of data. JRC has the experience to deal with it. Some simple secretarial and time-consuming tasks (keeping stakeholders database up-to-date, monitoring patents/Horizon Europe/Innovation Funds databases, tasks related to meetings organisation, publications) could be outsourced.

Future extended scope of BREF documents (chemicals)

- Building on the successful co-operation over textiles BREF, the expertise of ECHA makes it the best equipped to process tasks related to Chemical Management System. The role of ECHA would be to ensure that:

- An appropriate identification (and if necessary selection) of relevant substances for each sector/BREF is made. This will include a characterisation of the uses of those substances by sectors covered by BREFs including definition of best practices to use the safest alternatives on the market. This will improve clarity and consistency of the various legislations (IED, REACH, CLP)

- The correct terminology is used in the BREF processes (e.g. substance, process chemical, raw material)

- The chemicals-related BATs (such as substitution techniques) are technically sound

- Background documents, for Kick off Meeting and final meeting, drafted by the EIPPCB are relevant regarding chemicals issue

- Assistance is provided to the EIPPCB to access the information on ECHA's database

- Assistance is provided to answer stakeholders questions or comments where a chemicals expertise is needed

- This integrated approach allows two aspects of the Chemicals Strategy for Sustainability to be addressed: 1) Promoting safe and sustainable-by-design chemicals and 2) Moving towards zero chemical pollution in the environment. As a result, the Commission will ensure that the legislation on industrial emissions promotes the use of safer chemicals by industry in the EU by requiring on-site risk assessments and by restricting the use of substances of very high concern.

- Currently no other EU body is capable to deal with the complexity of such a task.

The unique database on chemicals maintained by ECHA associated with the agency's expertise in mining and extracting information from it makes ECHA the best equipped to provide the necessary input to the BREF drafting/review process in terms of substance-related information. Moreover, the agency has developed extensive expertise and knowledge on how to provide technical and scientific guidance to industry on risk assessments of chemical substances. This places ECHA in a unique position to provide IED installation operators with guidance on how to structure and manage a chemical inventory with a view to conduct site level risk assessment while applying the learnings on the topics of REACH/IED to facilitate the REACH - IED integration.

- **Options investigated for INCITE:**

- *Conclude public procurements with consultants:* Although this solution has advantages in terms of flexibility, it does not remove from the European Commission the burden to engage into the analytical and supervisory work. The Commission needs a long-term engagement into INCITE in order to produce viable and robust outcomes. This relates to the fact that the necessary industrial transformation that the revised IED aims to support will span through more than one decade due to its complexity and the volume of investments. Moreover, some of the information to be collected by INCITE will be business sensitive and its success depends on its ability to deal with such information. By entrusting the work of collecting and analysing data on emerging techniques to a consultant, the Commission would be in a delicate situation with regard to the two crucial issues mentioned above, as neither the long-term involvement nor the acceptance from stakeholders would be guaranteed.

- *ETV – (within the European Institute of Innovation and Technology, EIT)* has the capability to administer a verification process, nevertheless, a limited experience in pollution monitoring and abatement, and cleaner production processes; the ETV relies on competences of verification bodies, and the Commission has limited means to guide such work. Recent evaluation of ETV showed that the uptake of the scheme is limited and therefore the system has not yet built a wide recognition across the industrial sectors which is essential for the success of the BREF process. Due to ETV's governance design (several verification bodies) it may be complicated to set up a fixed procedure or structured communication approach that facilitates the information transfer between the EU ETV and BREF TGW and to ensure its quality.

- *European Environment Agency (EEA)* – is highly specialised in providing sound, independent information on the environment (including costs of pollution) and its knowledge of industrial technologies and processes will need to be broadened to catch up with the and it will take time. This would be a task of different nature than those established in the EEA Regulation.

- *DG ENV* – will need to build capacity and to engage an external support to cope with the complexity of the task. The latter brings in similar challenges as described in the first bullet.

1.6. Duration and financial impact of the proposal/initiative

- **limited duration**
 - in effect from [DD/MM]YYYY to [DD/MM]YYYY
 - Financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.
- **unlimited duration**

Implementation with a start-up period from 2024, followed by full-scale operation.

1.7. Management mode(s) planned⁸³

- **Direct management** by the Commission
 - by its departments, including by its staff in the Union delegations;
 - by the executive agencies
- **Shared management** with the Member States
- **Indirect management** by entrusting budget implementation tasks to:
 - third countries or the bodies they have designated;
 - international organisations and their agencies (to be specified);
 - the EIB and the European Investment Fund;
 - bodies referred to in Articles 70 and 71 of the Financial Regulation;
 - public law bodies;
 - bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
 - bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
 - persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

If more than one management mode is indicated, please provide details in the 'Comments' section.

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

- *Specify frequency and conditions.*

- The initiative involves procurement, administrative arrangement with the JRC, increase of the contribution to the ECHA and impact on the COM HR. Standard rules for this type of expenditure apply.

⁸³ Details of management modes and references to the Financial Regulation may be found on the BudgWeb site:
<https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx>

2.2. Management and control system(s)

2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

- N/A – cf. above

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

- N/A – cf. above

2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)

- N/A – cf. above

2.3. Measures to prevent fraud and irregularities

- Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.

- N/A – cf. above

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

Existing budget lines

- In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff. ⁸⁴	from EFTA countries ⁸⁵	from candidate countries ⁸⁶	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
3	09.10.01 – European Chemicals Agency	Diff.	YES	NO	NO	NO
3	09.02.02 – Circular economy and quality of life	Diff.	YES	NO	NO	NO
7	20.01.02.01 – Remuneration and allowances (statutory staff)	Non-diff.	NO	NO	NO	NO
7	20 02 01 01 - Contract staff	Non-diff.	NO	NO	NO	NO

⁸⁴ Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

⁸⁵ EFTA: European Free Trade Association.

⁸⁶ Candidate countries and, where applicable, potential candidates from the Western Balkans.

3.2. Estimated financial impact of the proposal on appropriations

3.2.1. Summary of estimated impact on operational appropriations

- The proposal/initiative does not require the use of operational appropriations
 The proposal/initiative requires the use of operational appropriations, as explained below:

Heading of multiannual financial framework	Number	Heading 3 – Natural resources and environment
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EUR million (to three decimal places)

DG: ENV			Year 2024	Year 2025	Year 2026	Year 2027 and beyond	TOTAL
• Operational appropriations							
Budget line 09 02 02 Circular economy and quality of life	Commitments	(1a)	0.645	0.645	0.445	0.445	2.180
	Payments	(2a)	0.645	0.645	0.445	0.445	2.180
Budget line 09 02 02 Circular economy and quality of life - administrative arrangement with JRC	Commitments	(1b)	1.424	1.470	1.567	1.618	6.079
	Payments	(2b)	1.424	1.470	1.567	1.618	6.079
Appropriations of an administrative nature financed from the envelope of specific programmes ⁸⁷							
Budget line		(3)					
TOTAL appropriations for DG ENV	Commitments	=1a+1b+3	2.069	2.115	2.012	2.063	8.259
	Payments	=2a+2b	2.069	2.115	2.012	2.063	8.259

⁸⁷

Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

				+3			
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DG ENV costs stem from procurement needs to finance supporting analyses for new BREFs and BREFs revisions, to support developing methodologies for implementing acts (Art 15.4 – procurement for a methodology to apply derogations, art 14.1 – procurement for common rules to assess compliance, Art 27d – transformation plans), to monitor and support implementation and compliance (Art 27a –to take stock/analyse results and Art 73 – report on synergies with ETS);

DG ENV will also bear the costs of the Administrative Arrangement (AA) to be signed with the JRC. This AA will allow for the setting up and efficient functioning of the INnovation Centre for Industrial Transformation & Emissions (INCITE) and the extension of the activities of the EIPPCB (especially the drawing up of new BREFs), which will lead to implementing measures put forward in the IED proposal. Those costs will cover 10 new FTE (10 contract agents – GF IV at the cost of EUR 5.079 million) to be employed by the JRC (staff costs takes into account JRC overheads) – this staff will cover new tasks that result from the IED revision and in particular those linked to the IED extended scope, a broadened scope of BREFs, ensuring INCITE functionality (data collection, analysis, running the Secretariat, publications, etc.).

The AA will also include specific credits to cover costs stemming from e.g. organising formal stakeholder meetings and workshops in the course of the work for drawing up the BREFs for the new sectors (estimated at EUR 0.200 million between 2024-2027), procurement needs for data analysis while preparing BREFs and reports on emerging techniques (at EUR 0.400 million between 2024-2027) and procuring new IT systems to support the new INnovation Centre for Industrial Transformation & Emissions (INCITE) – estimated at EUR 0.400 million in the analysed period.

								Year 2024	Year 2025	Year 2026	Year 2027	TOTAL
Agency: ECHA												
Title 1: Staff expenditure	Commitments	(1a)	0.570	0.581	0.593	0.605						2.349
	Payments	(2a)	0.570	0.581	0.593	0.605						2.349
Title 2: Infrastructure	Commitments	(1a)	0,050	0,050	0,050	0,050						0.200
	Payments	(2a)	0,050	0,050	0,050	0,050						0.200
Title 3: Operational expenditure	Commitments	(1b)										
	Payments	(2b)										

TOTAL appropriations for ECHA	Commitments	=1a+1b +3	0.620	0.631	0.643	0.655			2.549
	Payments	=2a+2b +3	0.620	0.631	0.643	0.655			2.549

ECHA costs include cost of new 3 FTE, who

- will do the data mining of ECHA databases and generate a list of hazardous substances potentially used in BREF sectors; extract substance-related information (regulatory status, classification, substance identity), characterise the uses of those substances by sectors covered by BREFs including definition of best practices to use the safest alternatives on the market, and provide technical support to BREF revisions (TWG meetings, review, other technical inputs) – 2 FTE
- Develop guiding principles for the Chemicals Management System focussing on data structure for a site inventory of chemicals (substances and mixtures) associated with further development of a site-level risk assessment methodology and contribute to the development of guiding principles on how to conduct a comparative risk assessment between the substances an operator uses for his processes/products and potential alternatives - 1 FTE

The required increase of the EU contribution to ECHA will be compensated by a corresponding reduction in the envelope of the LIFE programme (budget line 09.0202 - *Circular economy and quality of life*).

			2024	2025	2026	2027	Total
• TOTAL operational appropriations	Commitments	(4)	2.689	2.746	2.655	2.718	10.808
	Payments	(5)	2.689	2.746	2.655	2.718	10.808
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)					
TOTAL appropriations	Commitments	=4+6					10.808

under HEADING 3 of the multiannual financial framework	Payments	=5+6	1.777	1.777	1.577	1.577	10.808

Heading of multiannual financial framework	Number	Heading 7 – European Public Administration					
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EUR million (to three decimal places)

		Year 2024	Year 2025	Year 2026	Year 2027	TOTAL
DG: ENV						
• Human resources		0.560	0.560	0.560	0.560	2.240
TOTAL DG ENV	Appropriations	0.560	0.560	0.560	0.560	2.240
		Year 2024	Year 2025	Year 2026	Year 2027	TOTAL
TOTAL appropriations under HEADING 7	Commitments	0.560	0.560	0.560	0.560	2.240
of the multiannual financial framework	Payments	0.560	0.560	0.560	0.560	2.240

DG ENV additional staff (3 AD, 1 CA) will:

- Prepare and lead to adoption of new Commission implementing acts.

- Sustain a dialogue with Member States and JRC-EIPPCB.
- Prepare and implement rules concerning the establishment, prerogatives and functioning of INCITE and contribute to its work.
- Provide necessary input to the JRC and ECHA when requested and with regard to ongoing political and legislative developments
- Identify and develop synergies with the ETS in order to improve the overall performance of agro-industrial installations and draft a report on the outcomes.
- Analyse every year the data collected to:
 - Ensure the policy objectives are met (implementation, enforcement)
 - Identify potential improvement for managing industrial emissions prevention and control
- Fulfil ongoing tasks related to the broadened scope of the IED and BREFs, including attending Technical Working Groups meetings in Sevilla, interaction with stakeholders and other relevant Commission services, and support Member States in transposing, implementing and complying with the new IED regime.

3.2.2. Estimated output funded with operational appropriations -

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs ↓	Type ⁸⁸	Average cost	Year 2024	Year 2025	Year 2026	Year 2027	Enter as many years as necessary to show the duration of the impact (see point 1.6)					TOTAL	
			Cost €	Cost €	Cost €	Cost €	Cost €	Cost €	Cost €	Cost €	Cost €		Total No
OUTPUTS													
SPECIFIC OBJECTIVE No 1 ⁸⁹ ...													
- Output													

⁸⁸ Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).
⁸⁹ As described in point 1.4.2. ‘Specific objective(s)...’

3.2.3. Estimated impact on ECHA resources

The proposal/initiative does not require the use of appropriations of an administrative nature

The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	Year 2024	Year 2025	Year 2026	Year 2027	TOTAL
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Temporary agents (AD Grades)	0.570	0.581	0.593	0.605	2.349
Temporary agents (AST grades)	0	0	0	0	0
Contract staff	0	0	0	0	0
Seconded National Experts	0	0	0	0	0

TOTAL	0.570	0.581	0.593	0.605	2.349
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Staff requirements (FTE):

	Year 2024	Year 2025	Year 2026	Year 2027	TOTAL
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Temporary agents (AD Grades)	3	3	3	3	3/year
Temporary agents (AST grades)	0	0	0	0	0
Contract staff	0	0	0	0	0
Seconded National Experts	0	0	0	0	0

TOTAL	3	3	3	3	3/year
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ECHA additional staff will support the implementation of the Environmental Management Systems. In particular, it will develop guiding principles for Chemicals Management System, ensure identification and selection of relevant substances for each sector/BREF, the

development of sector-specific good practices for the use of the safest substances on the market, then the application of a correct terminology in the BREF processes (e.g. substance, process chemical, and raw material). It will see to the overall robustness of the chemicals-related BATs (in terms of substitution techniques for example), prepare background documents, for BREF Kick off Meetings and final meeting, drafted by the EIPPCB that are relevant regarding chemicals issue. Finally, it will assist the EIPPCB in accessing information on ECHA's database and to stakeholders' questions or comments where a chemicals expertise is needed.

A 118.6 correction coefficient was used (co-efficient for the cost of living in Finland), as well as a 2% inflationary increase.

3.2.3.1. Estimated requirements of human resources in the Commission

- The proposal/initiative does not require the use of human resources.
- The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full time equivalent units

	Year 2024	Year 2025	Year 2026	Year 2027 and beyond
• Establishment plan posts (officials and temporary staff)				
• DG ENV - 20 01 02 01 (Headquarters and Commission's Representation Offices)	3	3	3	3
• External staff (in Full Time Equivalent unit: FTE) ⁹⁰				
• DG ENV 20 02 01 (AC, END, INT from the 'global envelope')	1	1	1	1
• TOTAL	4	4	4	4

The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in light of budgetary constraints.

3.2.4. Compatibility with the current multiannual financial framework

- The proposal/initiative:
 - can be fully financed through redeployment within the relevant heading of the Multiannual Financial Framework (MFF).

- The LIFE envelope will be used to cover the expenditure incurred by DG ENV and to offset the increase of the ECHA subsidy.

⁹⁰ AC= Contract Staff; AL = Local Staff; END= Seconded National Expert; INT = agency staff; JPD= Junior Professionals in Delegations.

requires use of the unallocated margin under the relevant heading of the MFF and/or use of the special instruments as defined in the MFF Regulation.

requires a revision of the MFF.

3.2.5. *Third-party contributions*

- The proposal/initiative does not provide for co-financing by third parties.

3.3. Estimated impact on revenue

The proposal/initiative has no financial impact on revenue.