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Industrial Emissions Directive

Executive Summary

The Industrial Emissions Directive 2010/75/EU (hereafter IE Directive) regulates the impact of 52,000 large industrial and livestock facilities with high pollution risk in an integrated and sectoral manner. It applies to all pollutants. Facilities covered account for about 20% of EU-wide pollutant emissions to air, about 20% of pollutant emissions to water, and about 40% of greenhouse gas emissions. The evaluation conducted in 2020 confirmed the effectiveness of the IE Directive, but also identified areas for improvement. The new regulations intend to provide for streamlined permitting procedures, reduce administrative costs, increase transparency, and provide greater support for future technologies and other innovative approaches. Sectors proposed to be included within the directives scope include mining and large-scale installations for the production of batteries for electric vehicles as well as large cattle, pig, and poultry operations.

Key points

AK supports the direction and focus of the proposal, in particular

- that the authority must use the most stringent emission levels associated with the best available techniques (BAT) from the range specified in the BAT reference documents (Art 15 (3));
- the extension of the scope of the IE Directive to the keeping of poultry, pigs, and cattle (Chapter VIa - Art 70a to 70i);
- that Member States will have to provide for more effective sanctions concerning infringements, especially against legal persons (Art 79);
- the planned requirements for better enforcement of claims for compensation for damage to health (Art 79a).

AK's Position

General remarks

With the first version of the IE Directive, seven separate EU directives concerning industrial emissions (Integrated Pollution Preservation and Control Directive, Large Combustion Plants Directive, Waste Incineration Directive, three directives concerning titanium dioxide, and the Directive on Volatile Organic Compounds) were combined in a single directive. The aim was above all to make the information sheets on the best available techniques (BAT) more binding for certain industrial sectors (e.g. energy management, waste treatment, or the chemical industry). The so-called BAT conclusions are published in the Official Journal of the EU. The evaluation conducted in 2020 confirmed the effectiveness of the IE Directive, but also identified areas for improvement. As part of the [“zero pollution ambition for a toxic-free environment”](#) reaffirmed in the European Green Deal, the Commission has also announced the revision of the IE Directive.

The new regulations intend to provide for streamlined permitting procedures, reduce administrative costs, increase transparency, and provide greater support for future technologies and other innovative approaches. Sectors proposed to be included within the directives scope include mining and large-scale installations for the production of batteries for electric vehicles as well as large cattle, pig, and poultry operations. As the first new obligations, the BAT provisions are to come into force from 2024 as part of the revised directive. The first new technologies should then be implemented from 2027. Industrial plants will have four years and factory farms will have three and a half years to meet the requirements.

The basis for the prevention and control of environmental pollution remains the procedure for approval of the respective best available techniques, which is made more effective by the directive. For example, the approval authorities of the Member States will have to apply stricter limit values for pollutant emissions in approval procedures, as currently around 80% of such procedures still adhere to the least stringent legally permitted values. The EU framework should also become

forward-looking and innovative for preventing and reducing industrial emissions, including through the establishment of an Innovation Centre for Industrial Transformation and Emissions. Furthermore, more emphasis should be placed on resource efficiency and reuse when using energy, water and materials. In industrial processes, the use of safer and less toxic or non-toxic chemicals should also be promoted. Likewise, the proposed changes aim to ensure that depollution and decarbonization techniques are used together whenever possible, to achieve optimal health and environmental outcomes, and to achieve technical and financial synergies. With the new regulations, the EU Commission wants to ensure greater public involvement in the approval process and greater transparency. Furthermore, a new EU industrial emissions portal is to be created, which will give citizens public access to emissions data and resource consumption as well as information on environmentally harmful activities in their immediate vicinity.

AK supports the direction and focus of the EU Commission's proposal.

Regarding individual provisions of the planned draft

The following comments result from individual provisions of the proposal for amendments to Directive 2010/75/EU (Article 1):

Item 4 and 5 (Art 4 and 5)

Larger cattle, pig and poultry operations can often be operated today without any regulatory approval. For this reason alone, the extension of the scope of application is to be welcomed. For this reason, however, it also appears doubtful whether a mere registration obligation can be sufficient here, as it is to be open to the Member States via the new Art 4 (1) subparagraph 2. It would be unacceptable if the new transparency requirements pursuant to the new Art 5 (4) did not also apply to registered establishments. The question also arises for

installations covered exclusively by Chapter V.

Item 11 and 22 (Art 14a and Art 27d)

The fact that operators now have to implement an environmental management system to implement the requirements of the BAT conclusions should actually be a matter of course anyway and benefits those operators who have already implemented it. The transparency obligation contained in Art 14a (3) is particularly positive. Experience has shown that companies that only implement ISO 14000 and cannot decide to implement EMAS come up against precisely this transparency obligation, which, however, provides a significant incentive to take serious action. The transparency obligation for the transformation plan to be drawn up in accordance with Article 27d (“Transition to a clean and climate-neutral circular economy”) is particularly important. As the specifications of BAT conclusions will not be able to be so specific here, initiative is needed.

Item 12

The European Commission is pursuing various approaches to improve or extend the impact of the IE Directive. Most significantly, with regard to the setting of emission limit values, it is now envisaged that the authority – based on an operator’s assessment of feasibility – must use the most stringent emission levels associated with the best available techniques (BAT) from the range set out in the BAT reference documents (Art 15 (3)).

Item 17 and 18 (Recital 22, Art 24 and 25)

The measures for early and effective public participation are welcomed. The fact that it is not necessary to participate in the preceding administrative procedure in order to have access to the courts is very broad, but in line with the case law of the ECJ (see recital 22).

Item 24 and 25 (Recital 4, 27, Chapter VIa - Art 70a to 70i, Annex 1a to Art 70a)

AK expressly welcomes the extension of the IE Directive’s scope to the keeping of poultry, pigs, and cattle. According to reports, only 30 companies in Austria have been recorded so far – now there are supposed to be 3,000. An average farm in Austria keeps 24 cattle and 40 pigs (Green Report 2021, p. 194). Against this background, the threshold of 150 [Livestock Units](#) (see Annex 1a to Art 70a) does not seem too low at all.

The proposal would cover 13% of the largest cattle,

pig, and poultry farms in the EU, representing 60% (up from 18%) of ammonia emissions and 43% (up from 3%) of methane emissions from livestock in the EU. The Commission hopes this will reduce methane emissions by 265,000 tons per year (229,000 tons per year for cattle and 36,000 tons per year for pigs and poultry) and ammonia emissions by 128,000 tons per year (50,000 tons per year for cattle and 78,000 tons per year for pigs and poultry). This would benefit human health equivalent to 5.5 billion Euros per year and speaks volumes for the chosen thresholds. In fact, extending the scope of the IED to cover poultry, pigs and cattle accounts for most of the human health benefits, worth 7.3 billion Euro a year that the Commission will derive from implementing the IED expected throughout the proposal.

For Austria, it should be noted that ammonia emissions must be reduced because ammonia is responsible for the formation of particulate matter and the acidification of soils and waters. Ammonia is almost exclusively caused by agriculture (94% according to the Austrian Air Pollution Inventory). It is mainly produced in animal husbandry, during the storage of slurry and manure, and during the fertilisation of agricultural land. The EU Directive on the reduction of national emissions of certain atmospheric pollutants EU/2016/2284 limits ammonia emissions to 62,430 tons in 2020. However, 65,420 tons were actually emitted. Annual emissions must be reduced to 55,490 tons by 2030. If no significant emission reductions are achieved, Austria runs the risk of being subject to [EU infringement proceedings](#).

Item 31 (Recital 31, Art 79 Sanctions)

It is also encouraging that the aim of the proposal is for the Member States to provide for more effective sanctions for infringements. Above all, it is important that legal entities be explicitly addressed. This is because experience has shown that the system of punishing natural persons commonly used in Austria in the Administrative Offences Act (Verwaltungsstrafgesetz, VStG), in particular the application of Section 9 VStG, leads to responsibility being pushed down to lower levels, which severely weakens the preventive effect of the threats of punishment. In addition, there are differences in the threats of punishment depending on different Austrian sectoral administrative acts – e.g. between the Waste Management Act (Abfallwirtschaftsgesetz, AWG) and the Commercial Code (Gewerbeordnung, GewO) – which cannot be objectively justified. Pursuant to Section 366, paragraph 1, items 2 and 3 of the GewO, the erection, operation, or alteration of an operating facility requiring a permit is punishable by an administrative fine of up to 3,600 Euros. Many of

the large facilities covered by the IE Directive require licensing under the GewO. It is easy to see that such a threat of punishment cannot have any preventive effect with regard to large-scale plants. AK has already drawn attention on several occasions to the fact that the principle of punishing associations (in the area of judicial criminal law), which is anchored in the Austrian Associations Responsibility Act (Verbandsverantwortlichkeitsgesetz, VbVG), should also be extended to administrative criminal law. So far, it has only been implemented in Section 28a of the Financial Crimes Act (Finanzstrafgesetz, FinStrG), apparently because the FinStrG regulates both judicial and administrative financial criminal law and the intention there was to avoid the system discontinuity that still exists today between the VbVG and the VStG.

Of course, one can still discuss the level of detail and severity with which a directive should specify the level of punishment and the sentencing. However, the anchoring of the principle of punishment of legal entities should not be shaken under any circumstances.

Item 32 (Recital 32 to 34 and Art 79a NEW)

It is true that the EU Environmental Liability Directive makes no provision for compensation for damage to health. Those affected often find it difficult to assert their claims, because the law on damages and civil procedure often lacks the necessary corrective measures to compensate for the obvious power imbalance when natural persons and large companies face each other in civil courts. The provisions to enable class actions (para 2), to facilitate proceedings (para 3), to shift the burden of proof in the case of damage to health (para 4) and on the statute of limitations (para 5) are expressly welcomed.



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About Us

The Austrian Federal Chamber of Labour (AK) represents by law the interests of about 3.8 million employees and consumers in Austria. It acts on behalf of its members in fields of social-, educational-, economical-, and consumer issues both on the national and on the EU-level in Brussels. Furthermore, the Austrian Federal Chamber of Labour is a part of the Austrian social partnership. The Austrian Federal Chamber of Labour is registered at the EU Transparency Register under the number 23869471911-54.

The main objectives of the AK EUROPA Office established in 1991 in Brussels are the representation of AK towards the European Institutions and interest groups. Other objectives are the monitoring of EU policies and transferring relevant information from Brussels to Austria, as well as to lobbying the expertise developed in Austria and positions of the Austrian Federal Chamber of Labour in Brussels.