



The Industrial Emissions Directive

Peter VAJDA, Senior Environmental Expert,
Energy Community Secretariat

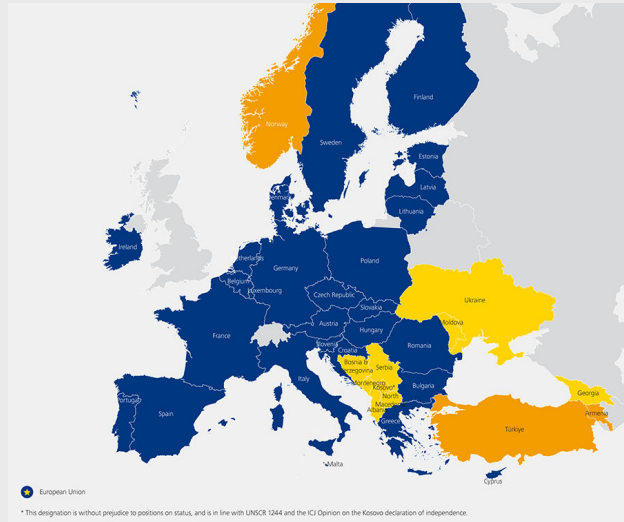
Agenda



- 1. About the Energy Community, its environmental dimension***
- 2. The content of the IED – main legal issues***
- 3. Case-law snapshot***
- 4. The review of the IED***
- 5. Q & A + case study***

- The Directive is rather technical.

Geographical Scope



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- The Energy Community is a Treaty between the EU and some third countries.
- It brings together the contracting parties predominantly in the Energy Sector.
- The EU is represented by the Commission but can also apply to have observer status on their own.

Three pillars of the Energy Community



- ***Creation of a regional energy market / enhance regional competition***
- ***Security of supply***
- ***Sustainability of energy systems***

- They mirror the scientific concept of the energy trilemma.

The history of the IED – the roots

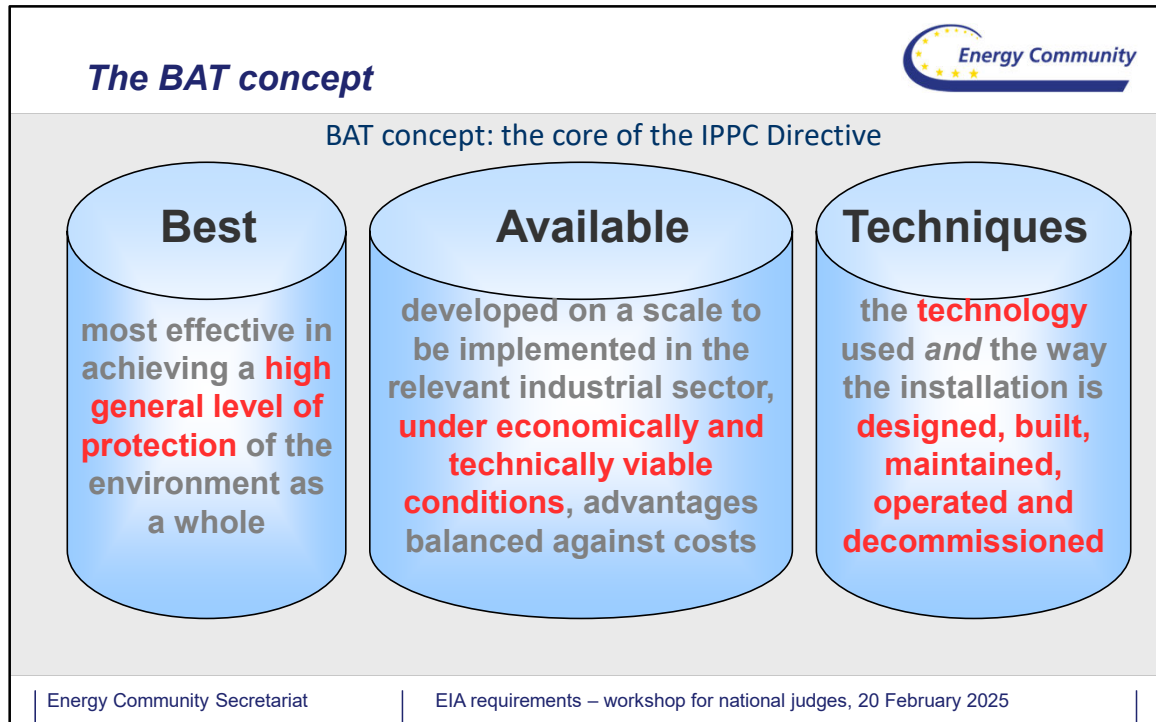


- Pioneer: the IPPC Directive (96/61/EC)
- Covers a **wide range of industrial activities** (energy sector, steel plants, chemical plants, cement kilns, intensive livestock, etc.)
- **50,000+ installations** covered EU-wide
- Use of the **best available techniques** (see later)
- Obligation to hold an **integrated permit** compliant to the Directive and covering the installation's emissions to air, (surface and ground-) water and to land
- **Installation** = stationary technical unit + directly associated activities
- Periodical **reconsideration** of the permits, substantial changes → new permit
- **Public participation, access to justice**
- **Review concluded in 2024 → IED 2.0**

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- The integrated permit is the innovation of this directive.
- It covers all emissions, stemming from all activities.



This definition gives plenty of room to manoeuvre, especially via bringing in the economical perspective in the availability criterion. According to the experience of the European Commission, the wide interpretation and the softening up of the BAT concept through this criterion was one of the reasons of the improper implementation of the IPPC Directive in the Member States.

Relation between the IPPC/IED



IPPC Directive 2008/1/EC

**Large Combustion Plants
Directive 2001/80/EC**

**Waste Incineration Directive
2000/76/EC**

**Directive on the limitation of VOC
emissions from solvents
1999/13/EC**

**Directives related to the
titanium-dioxide industry
78/186, 82/883, 92/112**

**European Pollutant Release
and Transfer Register
(E-PRTR)
Regulation 166/2006**



**Industrial Emissions Directive (IED)
2010/75/EU**

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The first version of the IPPC Directive was adopted in 1996, then later codified in 2008. It has been in place for over 10 years and the Commission has undertaken a 2-year review with all stakeholders to examine how it, and the related legislation on industrial emissions, can be improved to offer the highest level of protection for the environment and human health while simplifying the existing legislation and cutting unnecessary administrative costs.

The LCP Directive will only be replaced by the relevant provisions of the IED as of 1 January 2016.

The E-PRTR Regulation sets out reporting obligations for the Member States and the data collected is presented on the E-PRTR website: <http://prtr.ec.europa.eu/>

Structure of the IED



BAT based
permit
conditions

Ch. I: Common provisions

Ch. II: Provisions for all activities listed in Annex I

Ch. III: Special provisions for combustion plants [> 50 MW]

Ch. IV: Special provisions for waste (co-)incineration plants

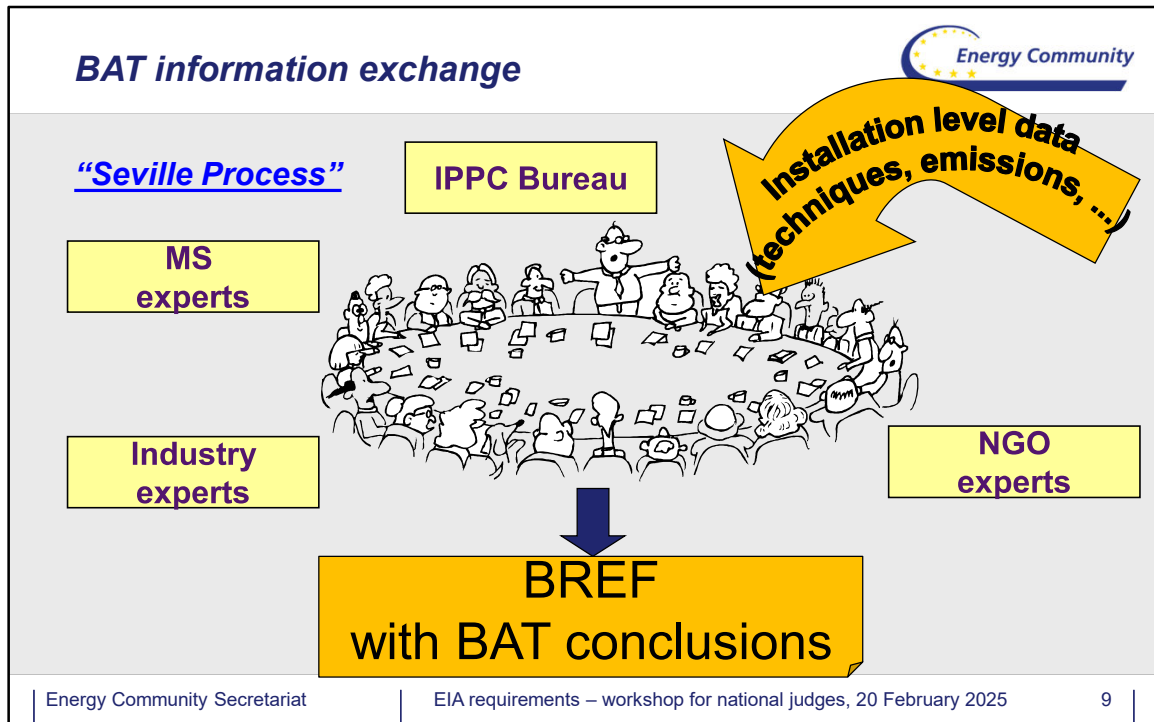
Ch. V: Special provisions for installations and activities using organic solvents

Ch. VI: Special provisions for installations producing TiO₂

Ch. VII: Committee, transitional and final provisions

Annexes

Sectoral « minimum »
requirements incl.
emission limit values



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- How are the BATs defined?
- The IPPC Bureau are the highly technical experts.
- The BREFs are technical and long documents.
- There is a BREF for each industrial activity listed in Annex one of the IED.

Derogations from BAT conclusions – Art. 15(4)



- *deviation from the use of BAT conclusions possible on 2 grounds*

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

(b) the technical characteristics of the installation concerned

- *COM guidance on the application of Art. 15(4) – March 2018*

<https://circabc.europa.eu/sd/a/9b59019b-df6c-4e6c-a5c2-1fb25cfe049c/IED%20Article%2015%284%29%20Report.pdf>

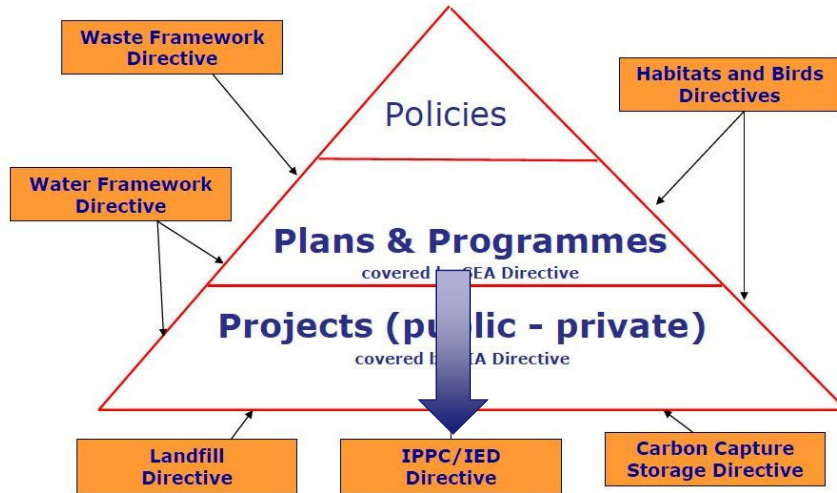
- A typical derogation concerns small islands.
- The operator then is not obliged to abate pollution there.

Relation to environmental quality standards



- ***Art. 18 IED***
- ***„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, without prejudice to other measures which may be taken to comply with environmental quality standards.”***
- ***Stichting Natuur en Milieu case (NEC vs IPPC)***

Environmental Assessments



- This is a slide developed by the European Commission.

Procedural aspects



- 2 possibilities:

a) IED permit + mandatory EIA

b) IED permit + screening

- IED permit without EIA is not possible (all IED Annex I activities covered by Annex I or II of the EIA Directive)

- Member State discretion to decide on how to align the two procedures

- Art. 2(2) EIA: *"The environmental impact assessment may be integrated into the existing procedures for consent to projects in the Member States, or, failing this, into other procedures or into procedures to be established to comply with the aims of this Directive."*

- In many cases there are overlaps.
- Nuclear installations are exempted from the IED but require an EIA.
- For combustion plants the IED requires a certain KW threshold. Usually Member States set the same limit for EIA and then the procedures are unified and simplified for the operator.

One stop-shop



MS	Power plant	Landfill	Shopping center	Road construction
AT	yes	yes	yes	yes (exc. federal)
BG	yes	yes	yes	yes
HR	no	no answer	no	no
CY	yes	yes	yes	yes
CZ	no	no	no	no
DK	no	no	yes	yes
FR	no answer	no answer	no answer	no answer
DE	no	yes	no	yes
HU	no	no	no	no
IE	no	no	yes	yes
IT	no	no	no	no
LT	no	no	no	no
MT	no	no	no	no
NL	yes	yes	no	no

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One stop-shop

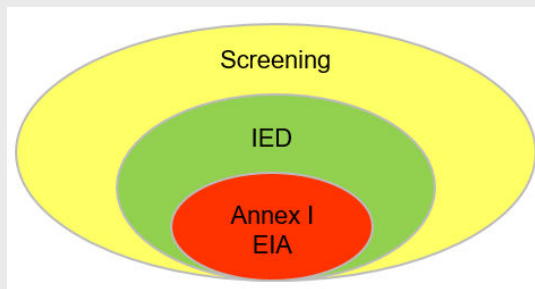


MS	Power plant	Landfill	Shopping center	Road construction
PL	no	no	no	no
RO	yes	yes	yes	yes
SK	no	no	no	no
SI	no	no	no	no
ES	no	no	no	no
UK	no	no	no	no answer

Example – large combustion plants



- **IED permit: rated thermal input of the plant is equal to or greater than 50 MW**
- **EIA: Thermal power stations and other combustion installations with a heat output of 300 megawatts or more (Annex I, mandatory EIA) – considerably narrower**
- **Industrial installations for the production of electricity, steam and hot water (projects not included in Annex I) (Annex II, screening) – considerably broader (includes all plants)**



Penalties in relation to industrial emissions



- **No general practice** regarding industrial installations amongst MSs
- *Common law countries* → no administrative sanctions in place for offences (UK: new legislation of 2010 → “civil sanctions”)
- **Parallel use** of both systems: Denmark, Greece, Hungary, Netherlands, Poland, Portugal, Romania, Czech Republic, Sweden
- Administrative and criminal sanctions **cannot be applied simultaneously**: Austria, Belgium, Germany, Slovakia, Spain („non bis in idem“)
- Differences between **centralized and federal states** (e.g. in Spain, several Autonomous Communities have established their own sanctioning regime for the infringement of environmental legislation)
- Distinction between **natural and legal persons**



- **Joined Cases C-165-167/09 Stichting Natuur en Milieu**
→ relation between IPPC (IED Chapter II predecessor) and NEC Directives
- **Case C-416/10 Križan and others** → interpretation of the rules on public participation under the IPPCD
- **Case C-260/11 Edwards** → interpretation of the rules on public participation under the IPPCD (prohibitively expensive)
- **T-685/14, T-565/14 EEB v COM** → refusal of internal review TNP approval decisions
- **Case C-137/14 COM v DE** → transposition of public participation provisions of the EIAD and the IED
- **Case C-626/22 Ilva and Others**

Stichting Natuur en Milieu: Article 9(1), (3) and (4) of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control, in its original version and as codified by Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control, must be interpreted as meaning that, **when granting an environmental permit for the construction and operation of an industrial installation**, such as those at issue in the main actions, **the Member States are not obliged to include among the conditions for grant of that permit the national emission ceilings for SO₂ and NO_x laid down by Directive 2001/81/EC** of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants, **whilst they must comply with the obligation arising from Directive 2001/81 to adopt or envisage, within the framework of national programmes, appropriate and coherent policies and measures capable of reducing, as a whole, emissions of inter alia those pollutants to amounts not exceeding the ceilings laid down in Annex I to that directive by the end of 2010 at the latest.**

During the transitional period from 27 November 2002 to 31 December 2010, provided for in Article 4 of Directive 2001/81:

- Article 4(3) TEU, the third paragraph of Article 288 TFEU and Directive 2001/81 **require the Member States to refrain from adopting any measures liable seriously to compromise the attainment of the result prescribed by that directive;**
- **adoption by the Member States of a specific measure relating to a single source of SO₂ and NO_x does not appear liable, in itself, seriously to compromise the attainment of the result prescribed by Directive 2001/81.** It is for the national court to review whether that is true of each of the decisions granting an environmental permit for the construction and operation of an industrial installation such as the permits at issue in the main actions;

Križan and others

Pezinok landfill near Bratislava – first EIA, then IED permit application

Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control, as amended by Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006, must be interpreted as meaning that it:

- **requires that the public concerned have access to an urban planning decision**, such as that at issue in the main proceedings, **from the beginning of the authorisation procedure for the installation concerned,**
 - **does not allow the competent national authorities to refuse the public concerned access to such a decision by relying on the protection of the confidentiality of commercial or industrial information where such confidentiality is provided for by national or European Union law to protect a legitimate economic interest, and**
 - **does not preclude the possibility of rectifying**, during the administrative procedure at second instance, **an unjustified refusal to make available to the public concerned an urban planning decision**, such as that at issue in the main proceedings, during the administrative procedure at first instance, provided that all options and solutions remain possible and that regularisation at that stage of the procedure still allows that public effectively to influence the outcome of the decision-making process, this being a matter for the national court to determine.
3. **Article 15a of Directive 96/61, as amended by Regulation No 166/2006, must be interpreted as meaning that members of the public concerned must be able, in the context of the action provided for by that provision, to ask the court or competent independent and impartial body established by law to order interim measures such as temporarily to suspend the application of a permit, within the meaning of Article 4 of that directive, pending the final decision.**

Edwards

Mr Edwards challenged the decision of the Environment Agency to approve the operation of a cement works, including waste incineration, in Rugby (United Kingdom), in the light of environmental law, relying, in particular, on the fact that the project had not been the subject of an environmental impact assessment.

The requirement, under the fifth paragraph of Article 10a of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment and the **fifth paragraph of Article 15a of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control**, that judicial proceedings should not be prohibitively expensive means that **the persons covered by those provisions should not be prevented from seeking, or pursuing a claim for, a review by the courts that falls within the scope of those articles by reason of the financial burden that might arise as a result.** Where a national court is called upon to make an order for costs against a member of the public who is an unsuccessful claimant in an environmental dispute or, more generally, where it is required – as courts in the United Kingdom may be – to state its views, at an earlier stage of the proceedings, on a possible capping of the costs for which the unsuccessful party may be liable, **it must satisfy itself that that requirement has been complied with, taking into account both the interest of the person wishing to defend his rights and the public interest in the protection of the environment.**

In the context of that assessment, **the national court cannot act solely on the basis of that claimant's financial situation but must also carry out an objective analysis of the amount of the costs.** It may also take into account the **situation of the parties concerned**, whether the claimant has a reasonable prospect of success, the importance of what is at stake for the claimant and for the protection of the environment, the complexity of the relevant law and procedure, the potentially frivolous nature of the claim at its various stages, and the existence of a national legal aid scheme or a costs protection regime.

By contrast, **the fact that a claimant has not been deterred, in practice, from asserting his claim is not of itself sufficient to establish that the proceedings are not prohibitively expensive for him.**

Lastly, that assessment cannot be conducted according to different criteria depending on whether it is carried out at the conclusion of first-instance proceedings, an appeal or a second appeal.

IED 2.0 – the revision



- Concluded in April 2024, in force since **August 2024**
- New rules gradually entering into force up until 2030
- Focus on agro-industrial installations → „**Industrial and Livestock Rearing Emissions Directive**”
- Innovation Centre for Industrial Transformation and Emissions (**INCITE**)
- Particular novelty → the enhanced **penalties** regime
- Suspension of non-compliant installations

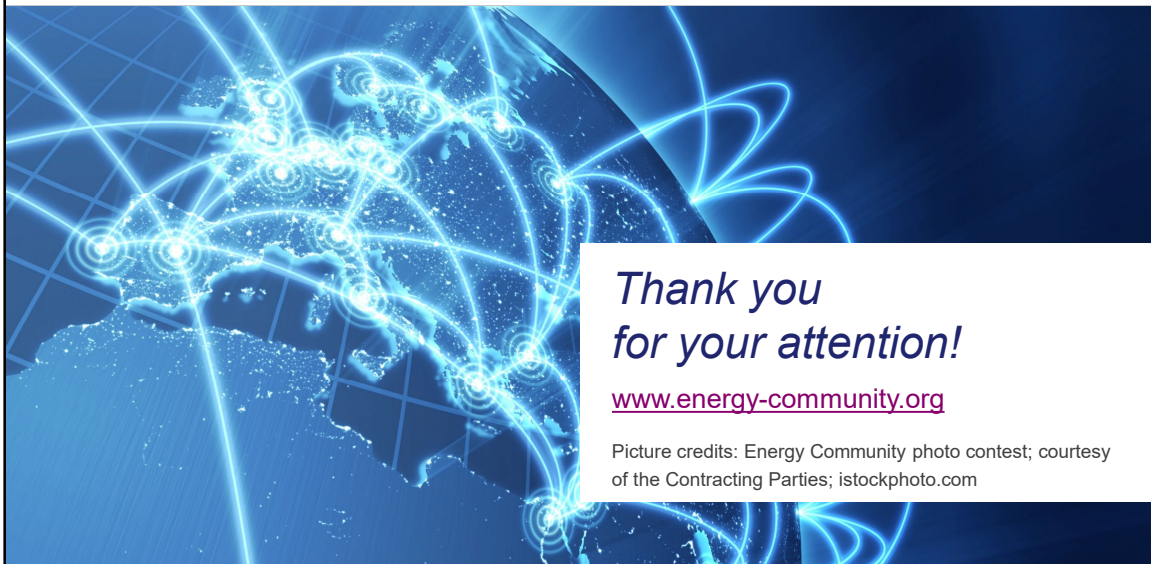
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A new Innovation Centre for Industrial Transformation and Emissions (INCITE) will gather information on innovative pollution control solutions and transformative technologies, helping to speed up their development.

penalties regime is enhanced with strengthened financial fines for the worst infringements (at least 3% of the legal person's annual EU turnover).

More powers are also granted to competent authorities suspend non-compliant installations



*Thank you
for your attention!*

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