



## ***Implementation of the IED – most important legal issues***

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# Agenda



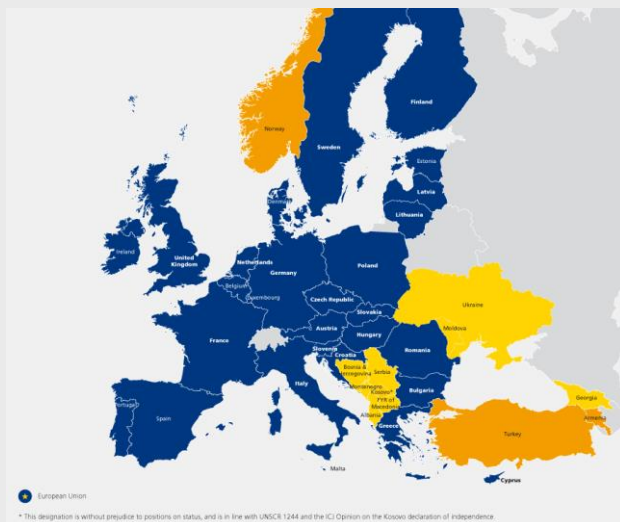
- 1. About the Energy Community, its environmental dimension***
- 2. The content of the IED – main legal issues***
- 3. The MCP Directive – the first daughter of the IED***
- 4. Jurisprudence of the ECJ on industrial emissions***
- 5. Activities of the Energy Community in the field of industrial emissions***
- 6. Q & A***

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## Geographical Scope

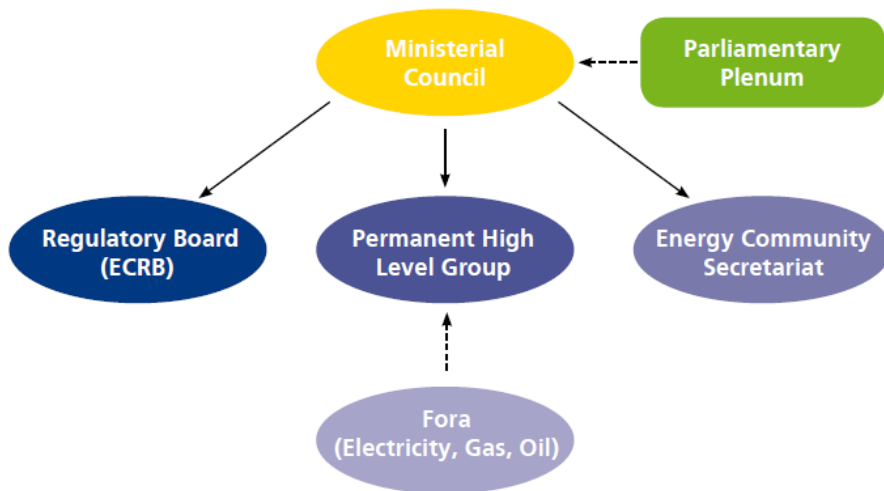


## ***Three pillars of the Energy Community***



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

## *Institutions*



Energy Community Secretariat

IED Workshop for national judges, 11-12 November 2019

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3. *The MCP Directive – the first daughter of the IED*
4. *Jurisprudence of the ECJ on industrial emissions*
5. *Activities of the Energy Community in the field of industrial emissions*
6. ***Q & A***

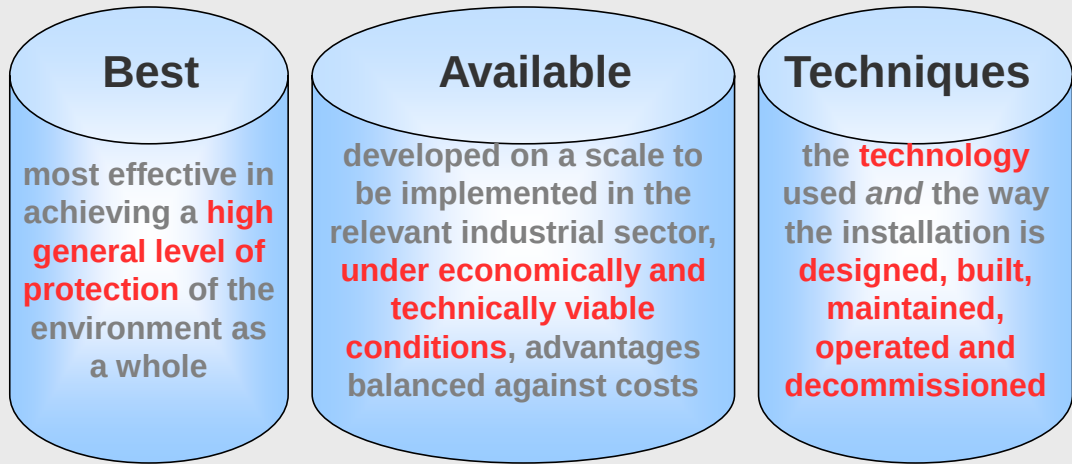
## The history of the IED – the roots



- 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**

## The BAT concept

BAT concept: the core of the IPPC Directive



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.

### 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**

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/>

## *The history of the IED 2007-2010 (the co-decision)*



- **Scope** of IPPC/sectoral directives and the IED are highly similar
- Certain **new activities** (waste treatment, wood-based panels production, etc.)
- Most difficult **discussion points** during co-decision
  - BAT conclusions (increased uptake of BAT)
  - large combustion plants
  - baseline report
  - inspections
- **Second reading agreement** (with many in-between changes )

## Structure of the IED

**Ch. I: Common provisions**

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

**BAT based  
permit  
conditions**

**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 TiO<sub>2</sub>**

**Ch. VII: Committee, transitional and final provisions**

**Annexes**

**Sectoral « minimum »  
requirements incl.  
emission limit values**



### Chapter II: BAT-based permitting (Annex I)

- content of applications & update of IED permits
- information exchange on BAT (Art. 13 Forum)
- adoption of BAT conclusions (Art. 75 Committee)
- permit conditions → Art. 14(3) (relation to EQS Art. 18)
- emission limit values + **derogation**
- **link to EQS**
- periodical reconsideration
- changes to installations
- soil protection → baseline report
- rules on inspections (novel element, based on RMCEI)
- public participation, access to justice
- transboundary effects
- emerging techniques

If new BATC are adopted → within 4 years, all related permits shall be reconsidered and updated (for existing installations)

**Baseline report** - where the activity involves the use, production or release of relevant hazardous substances and having regard to the possibility of soil and groundwater contamination at the site of the installation, the operator shall prepare and submit to the competent authority a baseline report before starting operation of an installation or before a permit for an installation is updated for the first time after 7 January 2013.

The baseline report shall contain the information necessary to determine the state of soil and groundwater contamination so as to make a quantified comparison with the state upon definitive cessation of activities provided for under paragraph 3.

The baseline report shall contain at least the following information:

- (a) information on the present use and, where available, on past uses of the site;
- (b) where available, existing information on soil and groundwater measurements that reflect the state at the time the report is drawn up or, alternatively, new soil and groundwater measurements having regard to the possibility of soil and groundwater contamination by those hazardous substances to be used, produced or released by the installation concerned.

Where information produced pursuant to other national or Union law fulfils the requirements of this paragraph that information may be included in, or attached to, the submitted baseline report.

COM guidance on baseline reports → from May 2014

## BAT information exchange

"Seville Process"

IPPC Bureau

MS  
experts

Industry  
experts

NGO  
experts

Installation level data  
(techniques, emissions, ...)



BREF  
with BAT conclusions

## 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>



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- *Importance in terms of environmental reasons*
- *ensuring a level playing field in the Union for operators*



- *MS derogation practices*
- *analysis of a selection of case studies*
- *identification of derogation principles and of EU Member State exemplar practices*
- *presentation and discussion of the project findings*

- Task 1: compilation and analysis of EU Member State derogation practices
- Task 2: analysis of a selection of EU Member State case studies, providing information on how the Member State derogation practices have been applied in actual cases;
- Task 3: the identification of derogation principles and of EU Member State exemplar practices for the evaluation of derogation requests; and
- Task 4: the presentation and discussion of the project findings at the IEEG workshop in Brussels, 19 October 2017 on IED implementation and at the IED Article 13 Forum meeting in Brussels, 20 December 2017.



- 27 MSs responded to questionnaire
- A total of 105 derogation requests reported
- industrial sectors with most derogations requested: Manufacture of Glass (40), Cement, Lime and Magnesium Oxide Manufacturing Industries (30), Iron and Steel Production (15)
- Guidance on Article 15(4) derogations developed by 14 MSs (BE, CZ, DK, ES, FI, FR, HR, IE, IT, **PL**, PT, SE, SK, UK)
- Only a limited number of MSs w/ specific examples of the derogation criteria in the guidance

When referring to the number of Article 15(4) derogations, Member States may have a different way of reporting. Some Member States reported the numbers as derogations from individual BAT-AELs, i.e. one derogation request corresponds to derogation from a single BAT-AEL. Other Member States reported the numbers as requests from industrial installations, i.e. one derogation request corresponds to a single application for permit variations (and therefore, can relate to more than one BAT-AEL of the BATC). The number of derogations presented in this study reflect the situation at the time of reporting and are constantly evolving.

**The guidance document developed by PL is specifically related to derogation requests from the BATC for Large Combustion Plants.**

Member States provided some examples to illustrate their understanding of the Article 15(4) criteria to justify a derogation request, i.e. geographical location, local environmental conditions and technical characteristics of the installation concerned. Only a limited number of Member States have included these specific examples of the derogation criteria in the guidance and therefore, made available to operators (e.g. FR and UK). For the majority of Member States, these or other examples are not made publicly available. The assessment of a derogation request against these justifying derogation criteria is in some Member States considered as a prerequisite to conducting further analysis.



- *common understanding: cost data needed for the assessment of a derogation request (both CAPEX and OPEX) / environmental benefits to be considered in the assessment of a derogation request*
- *calculating environmental benefits → not clear how to value aspects where no damage costs are available*
- *assessment of disproportionality*
- *familiar? Yes, we have heard that before in*

**EIA**

There was a common understanding amongst Member States of the type of cost data needed for the assessment of a derogation request (both CAPEX and OPEX), as well as of the type of environmental benefits to be considered in the assessment of a derogation request.

In terms of calculating environmental benefits, it was not clear for Member States how to value aspects such as emissions to water or pollutants to air where no damage costs are available. Only a few examples were reported where a different, more qualitative, approach was followed in the context of IED Article 15(4) derogations. In order to assess disproportionality, i.e. to assess whether the costs for complying with the BAT-AELs are disproportionately higher than the environmental benefits, Member States use different approaches such as cost-benefit assessments (incl. the use of fixed cut-off values), cost-effectiveness calculations (incl. comparison to reference values) and considerations of additional information on the installation and the derogation request.

## ***Relation to environmental quality standards***

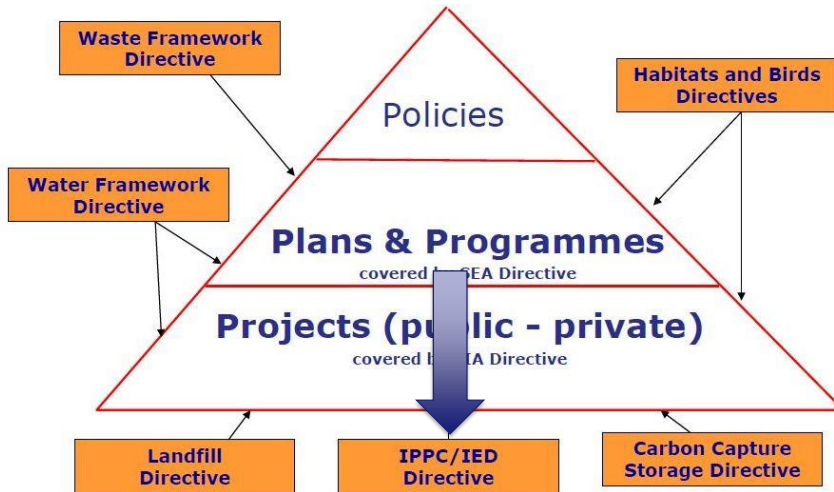


- ***Art. 18 IED***
- ***„Where an environmental quality standard requires stricter conditions than those achievable by the use of the best available techniques, additional measures shall be included in the permit, without prejudice to other measures which may be taken to comply with environmental quality standards.”***
- ***Stichting Natuur en Milieu case (NEC vs IPPC)***



- *“safety net” approach*
- *Annex V – emission limit values (Part 1: existing, Part 2: new)*
- *Art. 32: TNPs (COM approval – see later ECJ cases)*
- *Art. 33: opt-out (limited lifetime derogation)*
- *Art. 35: district heating plants*

**Environmental Assessments**



## EIA and IED - scope



| EIA                                                                                                                                                                                                          | IED                                                                                                                                                                                                                                                                                                                  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Crude-oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day | <ul style="list-style-type: none"> <li>- Refining of mineral oil and gas</li> <li>- Gasification or liquefaction of:                             <ul style="list-style-type: none"> <li>(a) coal;</li> <li>(b) other fuels in installations with a total rated thermal input of 20 MW or more</li> </ul> </li> </ul> |
| Thermal power stations and other combustion installations with a heat output of 300 megawatts or more                                                                                                        | Combustion of fuels in installations with a total rated thermal input of 50 MW or more                                                                                                                                                                                                                               |
| Nuclear installations (power stations, installations for the reprocessing of irradiated nuclear fuel, etc.)                                                                                                  | N/A                                                                                                                                                                                                                                                                                                                  |
| Integrated works for the initial smelting of cast-iron and steel                                                                                                                                             | <ul style="list-style-type: none"> <li>- Metal ore (including sulphide ore) roasting or sintering</li> <li>- Production of pig iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2,5 tonnes per hour</li> </ul>                                                    |

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## EIA and IED - scope



| EIA                                                                                                                                        | IED                                                                                                                                         |
|--------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| Chemical plants                                                                                                                            | Chemical plants                                                                                                                             |
| Traffic and infrastructure projects (railways, airports, major motorways, inland waterways, ports)                                         | N/A                                                                                                                                         |
| Waste incineration plants                                                                                                                  | Waste incineration plants                                                                                                                   |
| Installations for the <u>extraction</u> of asbestos and for the processing and transformation of asbestos and products containing asbestos | <u>Production</u> of asbestos or the manufacture of asbestos-based products                                                                 |
| Waste water treatment plants with a capacity exceeding 150 000 population equivalent                                                       | Independently operated treatment of waste water not covered by Directive 91/271/EEC and discharged by an installation covered by Chapter II |
| Extraction of petroleum and natural gas for commercial purposes                                                                            | N/A                                                                                                                                         |

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## 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 EIAD)**

**- 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."**

## 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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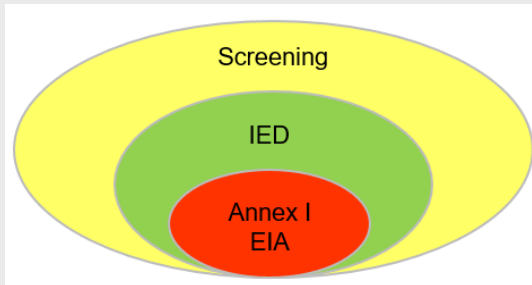
## One stop-shop



| 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)



## Enforcement of the EU acquis on IE - penalties



- **Essential tools** in the effective enforcement and implementation of EU & national environmental legislation
- **Administrative and criminal** sanctions
- Adoption of penalties as an enforcement mechanism for ensuring that legislation is complied with → competence of the Member States → **differences**
- **Wide application** outside the field of industrial emissions (e.g. nature protection, waste management)
- **Discretionary application** of penalties by Member States
- **Market-based instruments** → ideally, enforcement should not be necessary, however, it is very important to safeguard a proper functioning of the market
- **COM study** (Oct 2011): Provisions on penalties related to legislation on industrial installations



### **Effectiveness, proportionality, dissuasiveness**

- Current examples: Art. 16 LCP, Art. 19 WID, Art. 14 VOC (carried into IED)

- Criteria undefined in current EU legal framework, COM study/workshop tried to develop certain lines of interpretation

- **Effectiveness:** penalties are capable of ensuring compliance with EU law and achieving the desired objective

- **Proportionality:** penalties adequately reflect the gravity of the violation and do not go beyond what is necessary to achieve the desired objective

- **Dissuasiveness:** penalties have a deterrent effect on the offender which should be prevented from repeating the offence and on the other potential offenders to commit the said offence



The criteria of effectiveness, proportionality and dissuasiveness are still vague notions. They are not defined by EU legislation and the case law of the Court of Justice of the European Union is rather limited on this topic. The “founding” case is the Greek Maize Case (C-68/88) where the Court ruled that while the choice of penalties remains within their discretion, Member States must ensure that infringements are penalised under conditions, both procedural and substantive, which, in any case, make the penalty effective, proportionate and dissuasive.

With regard to the principle of proportionality, the Court has consistently held that, in order to establish whether a provision of EU law complies with the principle of proportionality, it must be ascertained whether the means which it employs are suitable for the purpose of achieving the desired objective and whether they do not go beyond what is necessary to achieve it (Case C-94/05 Emsland-Stärke; Case C-426/93 Germany v Council; and Case C-26/00 Netherlands v Commission).

In another case, the Court specified the notion of dissuasiveness looking specifically at the procedural aspects rather than the penalty itself (Case C-189/07 Commission v Kingdom of Spain). The Court recalled that a limited number of sanctioning procedures have been initiated, some of them more than a year after the date of control. It also highlighted that some of the infringement procedures were subject to an administrative decision more than two years after this date. The Court considered the time elapsed between the date of control and the initiating of the sanctioning procedure as well as between the date of control and the date at which an administrative decision has been taken. Considering the dissuasive nature of the sanctions, the Court specifically looked at the number of fines which were actually paid. The absence of payment in several cases was due to the fact that no constraint measure was taken. In other instances, the procedure has been suspended by appeal procedure. On these grounds, the Court ruled that Spain failed to impose penalties which have a deterrent effect on those responsible for infringing EU law provisions.

## Key enforceable provisions - summary

- *Obligation 1: to **apply** for a permit for existing and new installations*
- *Obligation 2: to **supply** information for application for permits*
- *Obligation 3: to **notify** the competent authority of any changes in the operation of an installation*
- *Obligation 4: to **comply** with the conditions set in the permit or mandatory ELVs*



## 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**

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- Adopted in Nov 2015 by Council and Parliament
- Covers plants  $1 \leq x < 50$  MW from a wide range of sectors (electricity generation, domestic/residential heating and cooling, providing heat/steam for industrial processes, etc.)
- Notable amount of exemptions (<5 MW manure-processing plants in farms, offshore platforms, crematoria, etc.)
- Approx. 143k installations EU-wide
- Gap-filling effect (IED and Ecodesign Directive)
- Applies from 20 December 2018 (new plants), 2025 or 2030 (existing plants, depending on size)
- Transposition deadline: Dec 2017

## Exemptions

2. **From 1 January 2025**, emissions into the air of SO<sub>2</sub>, NO<sub>x</sub> and dust from an existing medium combustion plant with a rated thermal input greater than 5 MW shall not exceed the emission limit values set out in **Tables 2 and 3 of Part 1 of Annex II**. **From 1 January 2030**, emissions into the air of SO<sub>2</sub>, NO<sub>x</sub> and dust from an existing medium combustion plant with a rated thermal input of less than or equal to 5 MW shall not exceed the emission limit values set out in **Tables 1 and 3 of Part 1 of Annex II**.

PEAK LOAD PLANTS → 3. Member States may exempt existing medium combustion plants which **do not operate more than 500 operating hours per year, as a rolling average over a period of five years**, from compliance with the emission limit values set out in Tables 1, 2 and 3 of Part 1 of Annex II.

Member States may extend the limit referred to in the first subparagraph to **1 000 operating hours** in the following cases of emergency or extraordinary circumstances:

- for backup power production in connected **islands** in the event of an interruption of the main power supply to an island,
- medium combustion plants used for heat production in cases of **exceptionally cold weather events**.

In all cases set out in this paragraph, an emission limit value for dust of 200 mg/Nm<sup>3</sup> shall apply for plants firing solid fuels.

SMALL AND MICRO ISOLATED SYSTEMS → 4. Existing medium combustion plants which are part of **SIS or MIS** shall comply with the emission limit values set out in Tables 1, 2 and 3 of Part 1 of Annex II from **1 January 2030**.

DISTRICT HEATING → 5. **Until 1 January 2030**, Member States may exempt existing medium combustion plants with a rated thermal input greater than 5 MW from compliance with the emission limit values set out in Annex II provided that **at least 50 %** of the useful heat production of the plant, as a rolling average over a period of five years, is delivered in the form of steam or hot water to a **public network for district heating**. In the event of such exemption, the emission limit values set by the competent authority shall not exceed 1 100 mg/Nm<sup>3</sup> for SO<sub>2</sub> and 150 mg/Nm<sup>3</sup> for dust.

**Until 1 January 2030**, Member States may exempt medium combustion plants firing **solid biomass as the main fuel**, which are situated in zones where, according to assessments under Directive **2008/50/EC**, **conformity with the limit values of that Directive is ensured**, from compliance with the emission limit values for dust set out in Annex II to this Directive. In the event of such exemption, the emission limit values set by the competent authority shall not exceed 150 mg/Nm<sup>3</sup> for dust.

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.

6. **Until 1 January 2030**, Member States may exempt existing medium combustion plants with a rated thermal input greater than 5 MW and which are **used to drive gas compressor stations required to ensure the safety and security of a national gas transmission system**, from compliance with the emission limit values for NO<sub>x</sub> set out in Table 3 of Part 1 of Annex II.

## Directive (EU) 2015/2193



- *ELVs: for plants above 5 MW, quite similar to those of the IED (SO<sub>2</sub> and dust identical, NO<sub>x</sub> more lenient),*
- *for the smallest plants (1-5 MW), significantly higher ELVs of SO<sub>2</sub> and dust*
- *flexibility instrument: permit or registration, possibility to use general binding rules*
- *deadline for permitting/registration: 1 Jan 2024 → competent authority shall have a register (inventory) based on these*

E.g. Between 1 and 5 MW, 1100 mg/Nm<sup>3</sup> for SO<sub>2</sub> for “other solid fuels” (i.e. Coal), but 400 mg/Nm<sup>3</sup> for plants above 5 MW

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- **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)**
- **IPPC permitting cases (2007 deadline): Case C-158/12 (IE), Case C-243/13 (SE)**
- **T-685/14, T-565/14 EEB v COM → refusal of internal review TNP approval decisions**

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**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 SO<sub>2</sub> and NO<sub>x</sub> 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 SO<sub>2</sub> and NO<sub>x</sub>, 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.



- Case C-137/14 COM v DE → transposition of public participation provisions of the EIAD and the IED
- Case C-442/14 Bayer CropScience → interpretation of the terms 'emissions into the environment' and 'information on emissions into the environment' under Directive 2003/4/EC (also having an impact on the IED)
- Case C-304/15 → compliance of Aberthaw power station (UK)

# Agenda



1. *About the Energy Community, its environmental dimension*
2. *The content of the IED – main legal issues*
3. *The MCP Directive – the first daughter of the IED*
4. *Jurisprudence of the ECJ on industrial emissions*
5. **Activities of the Energy Community in the field of industrial emissions**
6. Q & A

## The environmental dimension



Title II: "Acquis of the Energy Community" → NETWORK ENERGY  
geographical scope: Contracting Parties

### Environment

- **EIA Directive** (2011/92/EU as amended by 2014/52/EU) – after entry into force (in its original version)
- **Sulphur in Fuels Directive** (2016/802/EU) – as of 1 January 2012 (in its original version)
- **LCP Directive** (2001/80/EC) – as of 1 January 2018
- Art. 4(2) of the **Wild Birds Directive** (79/409/EEC) – after entry into force
- Endeavour to accede/implement: **Kyoto Protocol**; **IPPC Directive** (96/61/EC)
- **Chapter III and Annex V of IED** (2010/75/EU) – as of 1 January 2018 for new plants (2013 decision), as of 1 January 2028 for existing plants (2015 decision)
- **SEA, Env Liability**

## Future of the Energy Community



- **Treaty extended** for an additional 10 years in 2013 (2016-2026)
- In parallel, Ministerial Council mandated **High Level Reflection Group** chaired by MEP Jerzy Buzek to carry out an overall analysis on the EnCT
- **Report** published in June 2014
- Several **recommendations** regarding geographical coverage, new acquis (remarkable environmental dimension), introduction of a Court system, etc.
- **Reform of Energy Community** → process of several years, ongoing work in the area of environment and climate
- **Env Package** at 2016 Ministerial Council
- **Climate** dimension

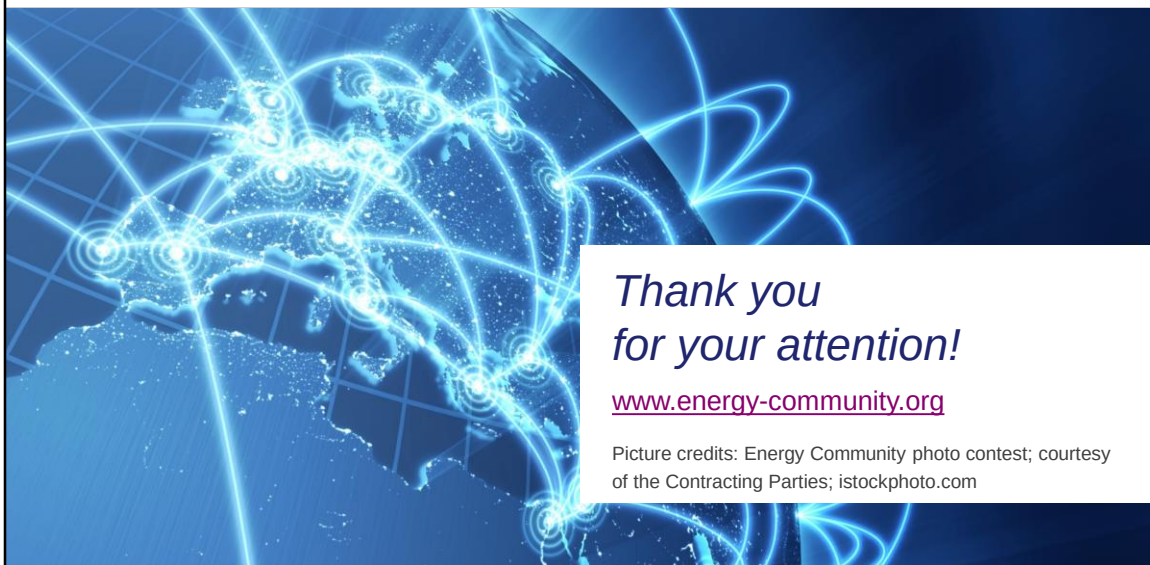
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Energy Community Secretariat

IED Workshop for national judges, 11-12 November 2019



*Thank you  
for your attention!*

[www.energy-community.org](http://www.energy-community.org)

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