

IED impact assessment input

ClientEarth supports the EEB's position on this inception impact assessment, as well as its submissions to the IED fitness check roadmap and targeted consultation. We made our own submissions on issues of access to information, public participation and access to justice as part of the fitness check (<https://www.documents.clientearth.org/library/download-info/ied-fitness-check-response-aarhus-issues/>). We do not repeat these points here.

We endorse the Commission's statement of problems (Section A), and also broadly agree with the Commission's statement of objectives and policy options (Section B), save that:

(1) a new Regulation (imposing clearer, more precise and unconditional obligations) is more appropriate than a revised Directive, and

(2) a new approach of promoting the industrial activity with the least negative environmental impact for the provision of a given product / service is required, to pursue the Green Deal's decarbonisation and zero pollution objectives.

Additional systemic legal issues that we wish to highlight:

Decarbonisation: Article 9(1) prevents Member States including limits on greenhouse gases in integrated permits, yet doing so would complement rather than undermine the ETS market-based approach. Article 9(2) renders BAT-AEELs optional. In addition to revising the IED to focus on promoting the lowest environmental impact technologies, any BAT-AEELs should have binding force.

In the context of the Green Deal's decarbonisation agenda, Member States should be permitted and required to use all tools at their disposal to drive decarbonisation.

EIA coherence: Permit reviews should be accompanied by updated assessments of installations' environmental, climate and health impacts. Detailed guidelines should be adopted for conduct of derogation procedures (e.g. for cost benefit assessment under Article 15(4)), which should be subject to assessment procedures equivalent to EIA. All impact assessments should consider transboundary and climate impacts, as well as the possibility of using a less environmentally harmful alternative technology for the provision of a given product / service.

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Aarhus rights: The IED suffers major deficiencies with respect to implementing the Aarhus Convention, and should be revised, e.g.:

Access to information: require Member States to establish a comprehensive online register of information concerning IED installations. This should include all information specifically referred to in Article 24 and Annex IV, and ideally also the correspondence between operators and permitting authorities with respect to their IED permits. The register should be centralised at EU level, or at least within the Member State (rather than within multiple national / regional registries).

Public participation: the Aarhus Convention Compliance Committee found the IED not to comply with Aarhus Convention requirements, and recommends that the EU establishes "*a legally binding framework to ensure that, when a public authority in a Member State of the Party concerned reconsiders or updates permit conditions pursuant to national laws implementing article 21(3), (4), and (5)(b) and (c) of the IED, or the corresponding provisions of any legislation that supersedes the IED, the provisions of article 6(2)-(9) [Aarhus Convention] will be applied*" (advance findings published 30 March 2020 in case ACCC/C/2014/121).

Access to justice: Revise Article 25 to ensure that the public can challenge omissions by the environmental authorities, such as failure to take enforcement action (current scope of Article 25 is limited and hard to rely on in national law).

Penalties: Revise Article 79 to specify penalties that are genuinely effective, proportionate and dissuasive, rather than allowing the current highly variable approach to penalties that leads to market distortions. Establish Mechanisms for the public to ensure that these penalties are imposed where Member States unable or unwilling to take appropriate action.