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Revised EU Industrial Emissions Directive

Effective transposition of access to justice and enforcement provisions at EU Member State level

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Executive Summary

The European Union's Industrial Emissions Directive (**IED**) regulates the permitting and environmental impact of large industrial installations, including their emissions into air, water and soil. IED installations account for 20% of the EU's pollutants emissions to air and water, and around 40% of greenhouse gas emissions. If enforced effectively, the IED therefore has significant potential to reduce emissions across Member States. The IED originally entered into force in 2010 and was revised in 2024. EU Member States have until 1 July 2026 to transpose the updated Directive into their national laws. This briefing sets out the IED's revised access to justice and enforcement provisions under the IED and provides practical guidance on how Member States can effectively transpose these provisions into their national legal systems.

Access to justice

The existing access to justice provision in the IED has been aligned with the Aarhus Convention in terms of scope, procedural guarantees and remedies. Member States must exclude any national provisions making access to justice for members of the public concerned conditional on their participation in a public consultation. Review procedures must be fair and equitable, timely and not prohibitively expensive. Adequate and effective remedies may compensate past damage, prevent future damage and/or provide restoration, and should be capable of real and efficient enforcement. Injunctive relief includes the possibility to order interim measures to prevent pollution, such as permit suspension. Member States could also introduce automatic suspension of IED permits when these are challenged.

Non-compliance and suspension

The revised non-compliance provision emphasises that Member States' authorities have to take up an active and continuous role in promoting, monitoring and enforcing compliance by industrial operators with their IED obligations. Where a permit breach by an installation poses an immediate danger to human health or threatens to cause an immediate significant adverse effect on the environment, Member States are obliged to suspend operation without any delay. They also have an additional discretionary suspension power in case of persistent breaches. The requirement of effective enforcement of suspension measures is not compatible with industrial operators who challenge such measures before court being allowed to continue operations while court proceedings are ongoing.

Penalties

Member States shall review their legal framework and practice on penalties to ensure truly effective, proportionate and dissuasive penalties. Penalties shall deprive operators of the direct and indirect economic benefits they derived from the infringement. Penalties have to take into account the impact of the infringement on human health and the environment, including not only materialised impact but also risk. While a reference to the turnover of the operator is mandatory for the most serious infringements, Member States should also consider this mechanism for other infringements.

Compensation right

Individuals whose health has been damaged as a result of an infringement of national measures adopted pursuant to the revised IED have the right to compensation. Member States have to review their civil liability regimes to ensure that the compensation right is effective in the context of the IED. Mechanisms and tool which may be used to put the principle of effectiveness into practice for the IED compensation right include: possibility of collective actions, disclosure obligations, evidence rules such as presumptions and adapted burden of proof.

Introduction

Failing to implement EU environmental laws currently costs the European Union economy around EUR 180 billion per year.[1] One of these laws is the Industrial Emissions Directive (**IED**), the main instrument in the EU regulating the environmental impact of large industrial installations, including emissions into air, water and soil, and waste generation. The IED aims to achieve a high level of protection of the environment and human health, and prioritises intervention at the source of pollution. It implements the "polluter pays" principle and the principle of pollution prevention. While the original IED is from 2010[2], it underwent a revision process culminating in the publication of the revised IED in the Official Journal of the European Union on 15 July 2024.[3] EU Member States have until 1 July 2026 for the transposition of the Directive into their national laws.

The IED has significant potential to reduce emissions: IED installations falling under the 2010 IED – and the scope has since been expanded – already accounted for around 20% of the EU's overall pollutant emissions by mass to air, around 20% of pollutant emissions to water and approximately 40% of greenhouse gas emissions.[4] These installations each require a permit issued by national authorities based on the use of best available techniques, including emission limit values for relevant pollutants, and conditions relating to soil and groundwater protection, waste management, monitoring and reporting. However, to realise this potential permits need to meet the requirements set in the IED and IED installations need to comply with their permit conditions. Where installations do not comply, they need to face consequences.

A crucial feature of the IED in this respect is the revised regime of access to justice provisions and enforcement. Member States need to transpose these provisions adequately and ensure their national authorities enforce compliance with the IED's provisions by all covered installations. Member States may choose the form and methods of implementing the new IED rules in their laws, however the IED remains binding on each Member State as to the result to be achieved. [5] In addition, according to the Treaty on the Functioning of the European Union, environmental protection measures adopted at EU level, such as the revised IED, shall not prevent Member States from maintaining or introducing more stringent protective measures.[6]

This briefing sets out the following revised access to justice and enforcement provisions under the IED and provides practical guidance on how Member States can effectively transpose these provisions into their national legal systems:

- Access to justice
- Non-compliance and suspension
- Penalties
- Compensation right

[1] European Commission, publication, April 2025, Update of the costs of not implementing EU law, Executive Summary
[2] Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (recast) (Industrial Emissions Directive, **2010 IED**)
[3] Directive (EU) 2024/1785 of the European Parliament and of the Council of 24 April 2024 amending Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) and Council Directive 1999/31/EC on the landfill of waste (Industrial Emissions Directive, **2024 IED**)
[4] European Commission, Impact Assessment Report accompanying the Proposal for the IED, 05.04.2022 SWD(2022) 111 final Part 1/5, page 3
[5] Treaty on the Functioning of the European Union, Art. 288
[6] Treaty on the Functioning of the European Union, Art. 193

Access to justice

Article 25
Access to justice[7]
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 Article 24 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 shall not be conditional on the role that the member of the public concerned 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 remedies, including injunctive relief as appropriate.

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

3. What constitutes a sufficient interest and impairment of a right shall be determined by Member States, consistently with the objective of giving the public concerned wide access to justice.
To this end, the interest of any non-governmental organisation promoting environmental protection and meeting any requirements under national law shall be deemed sufficient for the purpose of paragraph 1(a).
Such organisations shall also be deemed to have rights capable of being impaired for the purpose of paragraph 1(b).

4. Paragraphs 1, 2 and 3 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.
Any such procedure shall be fair, equitable, timely and not prohibitively expensive.

5. Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.

The 2010 IED already required Member States to grant member of the public concerned, including non-governmental organisations access to a review procedure before a court or other independent and impartial body to challenge the substantive or procedural legality of decisions, acts or omissions subject to Article 24 regarding access to information and public participation in the permit procedure.[8]

The revised IED introduces four notable changes to the access to justice provision:

- Scope
- Non-preclusion in standing

[7] 2024 IED, Art. 25. Bold and struck out text indicates the changes from the 2010 IED.
[8] 2010 IED, Art. 25

- Fair, equitable, timely and not prohibitively expensive review procedure
- Adequate and effective remedies.

In most Member States, rules related to access to justice and the guarantees set out below will be contained in civil or administrative procedure laws, rather than legislation specific to industrial emissions. Member States must therefore consider the general rules as well and ensure they are suitable to ensure effective access to justice, including adequate and effective remedies. Transposition is not limited to legislative changes, but also requires courts to comply with new EU law. Therefore, in addition to reviewing and potentially amending their procedural laws, Member States and particularly their Ministries of Justice may choose to issue an administrative notice to national courts to inform them of the new access to justice provision and how this may affect IED cases (e.g. in terms of the available remedies).

In addition, Member States must inform the public of relevant changes when transposing the revised access to justice provision, pursuant to Article 25(5) IED which requires practical information on access to justice to be made available to the public. This obligation derives from Article 9(5) of the Aarhus Convention. Adequate information should not only provide the text of the revised provisions, but also provide context, explain which national jurisdictions would be competent and should be disseminated widely.

Scope

The scope of the IED's access to justice provision extends to all decisions, acts or omissions subject to the public participation provision in Article 24. The 2010 IED already required public participation and therefore also access to justice in the following procedures:

(i) granting of a permit for new installations;

(ii) granting of a permit for any substantial change;

(iii) granting or updating of a permit for an installation where a derogation is proposed;

(iv) updating of a permit or permit conditions for an installation where the pollution caused by an installation is of such significance that the existing emission limit values of the permit need to be revised or new such values need to be included in the permit.

Following the revision of Article 24, access to justice will now also extend to the following procedures:

(v) updating of a permit or permit conditions for an installation where operational safety requires other techniques to be used (Article 21(5)(b) of IED);

(vi) updating of a permit or permit conditions for an installation where it is necessary to comply with a new or revised environmental quality standards (Article 21(5)(c) of IED);

(vii) updating of a permit or permit conditions for an installation in the case of a request from the operator to extend the duration of the operation of a landfill (Article 21(5)(d) of IED);

(viii) updating of a permit following the publication of new best available techniques (BAT) conclusions applicable to an installation (Article 21(3) IED);

(ix) updating of a permit following developments in the best available techniques that allow for the significant reduction of emissions for an installation not covered by any BAT conclusions (Article 21(4) IED).

The amendment addresses the findings of the Aarhus Convention Compliance Committee in communication ACCC/C/2014/121, which had found that the EU did not properly implement Article 6 of Aarhus Convention in relation to public participation in the IED.[9]

An adequate transposition of the scope of the access to justice provision would therefore depend on the transposition of the new list of procedures in Article 24.

Non-preclusion in standing

The revised provision clarifies that standing in the review procedures pursuant to Article 25 shall not be conditional on the role that the relevant member of the public concerned played during the participatory phase of the decision-making procedures under the IED.[10]

This amendment codifies the case law of the Court of Justice of the EU (**CJEU**). In *Stichting Varkens in Nood*, the referring Dutch national court took the view that the application of several non-governmental organisations seeking the annulment of an environmental permit granted to a livestock installation should be declared inadmissible because the organisation had not participated in the preparatory permitting procedure. The CJEU, however, held that: "*Participation in an environmental decision-making procedure under the conditions laid down in that convention is separate from the exercise of a legal review and has a different purpose from the latter, since that review may, where appropriate, be directed at a decision adopted at the end of that procedure. Therefore, participation in the decision-making procedure has no effect on the conditions for access to that review procedure*".[11] It concluded on the basis of Article 9(2) of the Aarhus Convention that admissibility in review procedures brought by the public concerned may not be made subject to their participation in the decision-making procedure which led to the adoption of the contested decision.[12]

Any pre-existing national provision according to which access to justice for members of the public concerned is conditional on their participation in a public consultation must therefore be deleted.

Fair, equitable, timely and not prohibitively expensive review procedure

The revised provision specifies that the review procedure shall be fair, equitable, timely and not prohibitively expensive.[13] This addition is required to achieve compliance with Article 9(4) of the Aarhus Convention and reiterates the wording verbatim from the Convention. The Aarhus Convention Compliance Committee has provided helpful guidance in its findings on what constitutes a "fair, equitable, timely and not prohibitively expensive" review procedure, which EU Member States shall consider for an Aarhus-compliant implementation in the IED context.[14]

[9] Aarhus Convention Compliance Committee, findings on communication ACCC/C/2014/121 European Union, ECE/MP.PP/C.1/2020/8, para. 120. These findings were endorsed by the European Union at the seventh Meeting of the Parties to the Aarhus Convention.
[10] 2024 IED, Art. 25(1)
[11] CJEU, judgment in C-826/18 Stichting Varkens in Nood and Others, para. 56
[12] CJEU, judgment in C-826/18 Stichting Varkens in Nood and Others, para. 59
[13] 2024 IED, Art. 25(1)
[14] For a more detailed and expansive overview of the findings of the Aarhus Convention Compliance Committee see: Digest of selected findings and advice of the Aarhus Convention Compliance Committee, March 2025

Fair and equitable

- "Fairness" refers to what is fair for the claimant, not the defendant public body.[15]
- The process and final ruling of the decision-making body must be impartial and free from prejudice, favouritism or self-interest.[16]
- Time limits in which review procedures must be initiated are clearly defined.[17]
- Proper notification of a court hearing must be given to the parties involved.[18]
- Parties have the right to a reasoned opinion.[19]
- The review body must address all relevant claims raised by the applicant.[20]
- Fairness is also relevant for cost allocation: Where a claimant loses a case pursuing environmental concerns the fact that the public interest is at stake should be accounted for in allocating costs.[21]

Timely

- Access to justice must be provided when it is effectively possible to challenge the decision permitting the activity in question.[22] For example, a decision on whether to grant suspension as a preventive measure should be issued before decision is executed. [23]
- Whether a review procedure is considered excessively long depend on "the complexity of the factual or legal issues raised by the case or the issue at stake for the applicant."[24]
- A court decision must be communicated to the parties within a short time to enable them to take further actions, including filing an appeal.[25]

Not prohibitively expensive

- "The cost of bringing a challenge […] must not be so expensive that it prevents the public, whether individuals or NGOs, from doing so. Various mechanisms, including waivers and cost-recovery mechanisms, are available to Parties to meet this obligation. […] the Convention sets an obligation of result, which allows the Parties great discretion in how to proceed, but limited discretion in what to achieve. When assessing compliance with this provision, the decisive issue is the outcome rather than how each Party ensures that the procedures remain at an acceptable cost. […] Although the phrase "not prohibitively expensive" is not very detailed, the obligation it conveys on Parties is straightforward and unconditional."[26]

- Costs associated with court procedures can include court fees, attorney's fees, witness transport costs and expert fees, amongst others.[27]

[15] Aarhus Convention Compliance Committee, findings on communication ACCC/C/2008/27 United Kingdom, para. 45
[16] Aarhus Convention Compliance Committee, findings on communication ACCC/C/2011/57 Denmark, para. 44
[17] Aarhus Convention Compliance Committee, findings on communication ACCC/C/2008/33 United Kingdom, para. 139
[18] Aarhus Convention Compliance Committee, findings on communication ACCC/C/2004/6 Kazakhstan, para. 28
[19] Aarhus Convention Compliance Committee, findings on communication ACCC/C/2013/81 Sweden, para. 96
[20] Aarhus Convention Compliance Committee, findings on communication ACCC/C/2004/6 Kazakhstan, para. 26
[21] Aarhus Convention Compliance Committee, findings on communication ACCC/C/2008/27 United Kingdom, para. 45
[22] Aarhus Convention Compliance Committee, findings on communication ACCC/C/2006/17 European Community, para. 56
[23] Aarhus Convention Compliance Committee, findings on communication ACCC/C/2008/24 Spain, para. 112
[24] Aarhus Convention Compliance Committee, findings on communication ACCC/C/2012/69 Romania, para. 87
[25] Aarhus Convention Compliance Committee, findings on communication ACCC/C/2004/6 Kazakhstan, para. 29
[26] United Nations Economic Commission for Europe, 2014, Aarhus Convention Implementation Guide, p. 203
[27] United Nations Economic Commission for Europe, 2014, Aarhus Convention Implementation Guide, p. 204

Adequate and effective remedies

According to the revised provision, the review procedure under Article 25 shall provide for adequate and effective remedies, including injunctive relief as appropriate.[28] This addition is also required to achieve compliance with Article 9(4) of the Aarhus Convention and reiterates the wording verbatim from the Convention provision.

The Aarhus Convention Compliance Committee has elaborated in its findings on what is required for remedies to be adequate and effective: "Adequacy requires the relief to ensure the intended effect of the review procedure. This may be to compensate past damage, prevent future damage and/or to provide for restoration. The requirement that the remedies should be effective means that they should be capable of real and efficient enforcement. Parties should try to eliminate any potential barriers to the enforcement of injunctions and other remedies."[29]

The CJEU has emphasized the increased importance of adequate and effective remedies where the failure to adopt measures required by the relevant legislation would endanger human health.[30] This also applies to the IED.[31]

The practice of national courts of Member States will be especially relevant to implement the added requirement of adequate and effective remedies. For this purpose, Member States may emphasize in administrative notices to national courts the use of remedies tools in IED cases, including injunctive relief.

Injunctive relief

Adequate and effective remedies in the revised provision include injunctive relief, which the Compliance Committee has defined in the following terms: "When initial or additional damage may still happen and the violation is continuing, or where prior damage can be reversed or mitigated, courts and administrative review bodies must be able to issue an order to stop or to undertake certain action."[32] Injunctive relief must be made available "as appropriate". According to the findings of the Compliance Committee, this means that national courts are "required to consider any application for injunctive relief to determine whether the grant of such relief would be appropriate, bearing in mind the requirements to provide fair and effective remedies".[33]

The Compliance Committee has emphasized that "taking into account the particularly important public interest in the protection of the environment and the need for precaution with respect to preventing environmental harm […], it is of crucial importance that injunctive relief is granted whenever there is a risk of environmental damage".[34] When considering injunctive relief/interim measures, review bodies should make "their own assessment of the risk of environmental damage in the light of all the facts and arguments significant to the case, taking into account the particularly important public interest in the protection of the environment and the need for precaution with respect to preventing environmental harm".[35] While

[28] 2024 IED, Art. 25(1)
[29] United Nations Economic Commission for Europe, 2014, Aarhus Convention Implementation Guide, p.200
[30] CJEU, judgment in C-752/18 Deutsche Umwelthilfe, para. 38
[31] C-752/18 Deutsche Umwelthilfe concerned the Ambient Air Quality Directive. The CJEU stated in its judgment in C-626/22 Ilva SpA, para. 70 that the IED provisions puts into concrete terms the EU's obligation to protect human health.
[32] United Nations Economic Commission for Europe, 2014, Aarhus Convention Implementation Guide, p.200
[33] Aarhus Convention Compliance Committee, findings on communication ACCC/C/2013/89 Slovakia, para. 97
[34] Aarhus Convention Compliance Committee, findings on communication ACCC/C/2013/106 Czech Republic, para. 115
[35] Aarhus Convention Compliance Committee, findings on communication ACCC/C/2012/76 Bulgaria, para. 77

automatic suspensive effect is not necessarily required, the Compliance Committee has found it to be a "very useful mechanism through which to prevent environmental damage".[36]

The CJEU also highlighted the importance of injunctive relief in a case concerning an integrated permit for the construction of a landfill site, falling within the scope of the IED's predecessor, the Integrated Pollution Prevention and Control (**IPPC**) Directive.[37] The CJEU held that for access to justice to be effective "members of the public concerned should have the right to ask the court [...] to order interim measures such as to prevent [...] pollution, including, where necessary, by the temporary suspension of the disputed permit".[38] This interpretation follows from the purpose of the IPPC Directive to prevent or reduce emissions and achieve a high level of protection of the environment.[39]

An effective way to guarantee injunctive relief in the context of the IED would be for Member States to introduce automatic suspension of IED permits when these are challenged. Where court orders disapply such automatic suspension and allow installations to operate while proceedings are ongoing, it should in any case be possible for applicants to challenge these orders.

Non-compliance and suspension

Article 8
Non-compliance[40]
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 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.

3. 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 **second paragraph**, points (b) and (c) **of the first subparagraph**, the operation of the installation, combustion plant, waste incineration plant, waste co-incineration plant or relevant part thereof shall be suspended **without any delay**.
Where such breach threatens human health or the environment in another Member State, the Member State in whose territory the breach of the permit conditions has occurred shall ensure that the other Member State is informed.

[36] Aarhus Convention Compliance Committee, findings on communication ACCC/C/2013/106 Czech Republic, para. 113
[37] CJEU, judgment in C-416/10 Križan and Others
[38] CJEU, judgment in C-416/10 Križan and Others, para. 109
[39] CJEU, judgment in C-416/10 Križan and Others, para. 108
[40] 2024 IED, Art. 8. Bold and struck out text indicates the changes from the 2010 IED.

4. In situations not covered by paragraph 3 of this Article, where a persistent breach of the permit conditions poses a danger to human health or causes 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) has 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.

5. Member States shall ensure that suspension measures referred to in paragraphs 3 and 4 and adopted by competent authorities in relation to an operator which infringes national provisions adopted pursuant to this Directive are enforced in an effective manner.

6. In the event of a breach of compliance affecting drinking water resources, including transboundary resources, or affecting waste water infrastructure in the case of an indirect discharge, the competent authority shall inform the drinking water and waste water operators, and all relevant authorities with a responsibility regarding compliance with the environmental legislation concerned, of the breach and the measures taken to prevent damage being caused, or remedy the damage caused, to human health and the environment.

Non-compliance

According to the 2010 IED, in case of a breach of IED permit conditions, Member States are required to ensure that the operator in question immediately informs the competent authority, and immediately takes the measures necessary to ensure that compliance is restored within the shortest possible time.[41] In addition, Member States shall ensure that the competent authority requires the operator to take any appropriate complementary measures necessary to restore compliance.[42]

The revised provision emphasises the responsibility of Member States with regards to ensuring compliance: they are required to adopt compliance assurance measures and mechanisms using three categories of intervention: compliance promotion, compliance monitoring, and follow-up and enforcement.[43] Member States therefore have an active and continuous role aimed at achieving compliance: the work of competent authorities is not limited to permitting. To the contrary, a permit is only the beginning – competent authorities have to act to ensure that all installations under their supervision comply with their permit conditions. For example, Member States' authorities could issue injunctions for operators to remedy a breach with automatic daily penalties for continued non-compliance.

Suspension

A specific measure available to competent authorities in case of non-compliance is suspension of the operation of an IED installation. The 2010 IED provision already contains a suspension clause: where a permit breach poses an immediate danger to human health or threatens to cause an immediate significant adverse effect on the environment, the operation of the installation in question or a relevant part of it shall be suspended, until compliance is restored.[44]

[41] 2010 IED, Art. 8(2)(a) and (b)
[42] 2010 IED, Art. 8(2)(c)
[43] 2024 IED, Art. 8 8(1) and Art. 3 (50)
[44] 2010 IED, Art.8(2)

In a case concerning a steelworks in Italy, the CJEU reiterated the mandatory nature of the suspension provision - where installation's activity presents serious and significant risk to the integrity of the environment and human health, there is a requirement on the competent authority to suspend operation.[45] The Court did not accept the Italian Government's arguments in this case that ensuring that the installation in question, a steel plant, complies with its permit would require an interruption of its activity for several years, and that the installation is an important regional source of employment.[46]

The revised IED maintains the existing suspension provision and adds an additional basis for suspension, essentially creating two categories of suspension powers.

Immediate danger/significant adverse effect

Under the first category, operation of an installation is suspended where the breach of permit conditions poses an immediate danger to human health or threatens to cause an immediate significant adverse effect upon the environment, until compliance is restored.[47] The use of the term "shall" indicates that this is not a discretion, but an obligation for the competent authority. The revised provision also explicitly states that suspension has to occur "without any delay" – highlighting the urgency of suspension and the responsibility of the competent authorities. This is also clearly required by the IED's objective to achieve a high level of protection of human health and the environment.[48]

The conclusion from the CJEU's judgment in C-626/22 above would continue to be applicable to this provision: once the criteria set out are fulfilled, suspension is an obligation on the authorities, not a mere option.

Persistent breach causing danger/significant adverse effect

While the danger or significant adverse effect created by non-compliance may not always be immediate, a breach may nonetheless represent a situation where suspension is required to achieve the objectives of the IED. This is now covered as a separate category under the revised provision. Under this second category, competent authorities have the discretion to suspend an operation where a persistent breach of permit conditions poses a danger to human health or causes a significant adverse effect on the environment, and where the necessary action for restoring compliance identified in an inspection report has not been implemented.[49]

Effective enforcement of suspension measures

The revised provision also emphasizes explicitly that all suspension measures are required to be enforced in an effective manner.[50] In practice, this provision would for example not be compatible with operators being able to cease the effect of suspension measures by simply challenging them before courts. Given the importance of what is at stake, an immediate danger to human health or threat of immediate significant adverse effect on the environment, any interim measures by courts need to be proportionate. Allowing the operation to continue should only be possible once compliance is achieved.

[45] CJEU, judgment in C-626/22 Ilva SpA, para. 132
[46] CJEU, judgment in C-626/22 Ilva SpA, para. 129
[47] 2024 IED, Art. 8(3)
[48] 2024 IED, Art. 1
[49] 2024 IED, Art. 8(4)
[50] 2024 IED, Art. 8(5)

Penalties

Article 79
Penalties[51]
Member States shall determine penalties applicable to infringements of the national provisions adopted pursuant to this Directive. The penalties thus provided for shall be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by 7 January 2013 and shall notify it without delay of any subsequent amendment affecting them.
1. Without prejudice to the obligations of Member States under Directive 2008/99/EC of the European Parliament and of the Council*, Member States shall lay down rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.
2. The penalties referred to in paragraph 1 shall include administrative financial penalties that effectively deprive those that committed the infringement of the economic benefits derived from their infringements.
For the most serious infringements committed by a legal person, the maximum amount of the administrative financial penalties referred to in the first subparagraph shall be at least 3 % of the annual Union turnover of the operator in the financial year preceding the year in which the fine is imposed.
Member States may also, or alternatively, use criminal penalties, provided that they are equivalently effective, proportionate and dissuasive to the administrative financial penalties referred to in this Article.
3. Member States shall ensure that the penalties established pursuant to this Article give due regard to the following, as applicable:
(a) the nature, gravity, and extent of the infringement;
(b) the population or the environment affected by the infringement, bearing in mind the impact of the infringement on the objective of achieving a high level of protection of human health and the environment;
(c) the repetitive or one-off character of the infringement.
4. Member States shall without undue delay notify the Commission of the rules and measures referred to in paragraph 1 and of any subsequent amendments affecting them.
* 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).;

The 2010 IED required Member States to determine effective, proportionate and dissuasive penalties for infringements of the national provisions transposing the IED.[52] The revision of the penalties provision was necessary because there are currently disparities in the penalties regime across Member States and in many cases imposed penalties are deemed too low to truly have a deterrent effect.[53] For example, the European Commission sent a letter of formal notice to Romania for its failure to guarantee the implementation of the IED due to its very low and inadequate penalties.[54] Fines for operators running coal

[51] 2024 IED, Art. 79. Bold and struck out text indicates the changes from the 2010 IED.
[52] 2010 IED, Art. 79
[53] 2024 IED, Recital (50)
[54] European Commission, February 2021, February infringements package: key decisions

power plants without an IED permit had been capped at a one-off payment from EUR 6,440 to 12,880, reducible to EUR 3,220 if the fine was paid within 15 days.[55]

The revised penalties provision establishes additional criteria for the penalties to be imposed:

Administrative financial penalties shall effectively deprive the relevant operator of the economic benefits derived from their infringements.[56] In practice this should include direct and indirect economic benefits to ensure a deterrent effect.

Penalties have to give due regard to the "nature, gravity and extent of the infringement", as well as the repetitive character of the infringement.[57] Member States' authorities should adopt a wider approach to assessing the repetitive nature of an infringement and take into account not only repetitions of the exact same infringement, but infringements more generally. This can also be explicitly mentioned in the transposing legislation.

Penalties also have to give due regard to the "population or environment affected by the infringement, bearing in mind the impact of the infringement on the objective of achieving a high level of protection of human health and the environment".[58] The CJEU has provided relevant guidance in cases concerning other environmental legislation: "*As regards the penalties imposed for infringement of the provisions of Regulation No 1013/2006 [on shipments of waste], which aims to ensure a high level of protection of the environment and human health, the national court is required, in the context of the review of the proportionality of such penalty, to take particular account of the risks which may be caused by that infringement in the field of protection of the environment and human health*."[59] The "impact of the infringement" shall therefore be interpreted to include not only materialised impact but also risk.

For the most serious infringements, the maximum amount has to be at least 3% of the annual EU-wide turnover of the operator in the financial year preceding the year in which the fine is imposed.[60] The provision thus sets a "minimum maximum" and it is possible for Member States to set a higher maximum amount. The main consideration should be the objective of an effective, proportionate and dissuasive penalty – where a higher penalty amount is required to achieve this objective, the higher amount should be the reference. The revised IED does not contain a definition of the "most serious infringements", but indicates that these may be "of a high level of gravity due to their nature, extent and repetition, or where those infringements pose a significant risk to human health or the environment".[61] While the orientation towards the turnover is not explicitly required for other infringements it may still provide a useful reference point to ensure effective penalties and Member States should consider including this in their implementing legislation.

An effective way of transposing the new penalty rules could be to refer to a suitably high range with a minimum and maximum fine in absolute terms as well as the turnover-based fine, requiring the relevant authorities to apply the higher one in each case. A similar approach has been taken by the General Data Protection Regulation : "*Infringements of the following provisions shall […] be subject to administrative*

[55] ClientEarth, press release, November 2023, Legal action ends immunity for illegal Romanian coal plants – and prompts reform
[56] 2024 IED, Art. 79(2)
[57] 2024 IED, Art. 79(3)
[58] 2024 IED, Art. 79(3)
[59] CJEU, judgment in C-487/14 Total Waste Recycling, para. 55; also referred to in CJEU, judgement in C-69/15 Nutrivet, para. 53
[60] 2024 IED, Art. 79(2)
[61] 2024 IED, Recital (51)

fines up to 20 000 000 EUR, or in the case of an undertaking, up to 4% of the total worldwide annual turnover of the preceding financial year, whichever is higher […].”[62]

Criminal penalties may also or alternatively be used, if they are equivalently effective, proportionate and dissuasive to the administrative financial penalties.[63]

Compensation right

Article 79a
Compensation[64]
1. Member States shall ensure that, where damage to human health has occurred as a result of an infringement 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.
2. 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 an infringement pursuant to paragraph 1.
3. Member States may establish limitation periods for bringing actions for compensation referred to in paragraph 1. Such periods shall not begin to run before the infringement has ceased and the person claiming the compensation knows or can reasonably be expected to know that he or she suffered damage from an infringement pursuant to paragraph 1.

The revised IED introduces a compensation right for individuals whose health has been damaged as a result of an infringement of national measures adopted pursuant to the revised IED.[65] More precisely, individuals have the right to claim and obtain compensation for their health damage from the relevant natural or legal persons.

Introducing an IED compensation right was necessary because, as found by the European Commission, “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.” [66] According to the Commission’s assessment, this was because “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”. The general civil liability regimes of Member States were thus found to be insufficient to guarantee compensation in these cases, which required additional guarantees to be put in place as part of the IED compensation right.

The basis for the IED compensation right is the objective of preserving, protecting and improving the quality of the environment and the protection of human health, as set out in Article 191 of the Treaty on the

[62] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), Art. 83(5)
[63] 2024 IED, Art. 79(2)
[64] 2024 IED, Art. 79a. Bold and struck out text indicates the changes from the 2010 IED.
[65] 2024 IED, Art. 79a(1)
[66] 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, Recital (33)

Functioning of the European Union.[67] It is also linked to the right to life, integrity of the person and health care as well as the right to an effective remedy in Articles 2, 3, 35 and 47 of the Charter of the Fundamental Rights.[68]

The IED compensation right integrates the principle of effectiveness under EU law. Individuals do not only have the right to claim compensation, but also to "obtain" such compensation.[69] In transposing the IED compensation right Member States will need to ensure that it is effective in practice, as required by the wording of the provision. National rules and procedures relating to IED compensation claims have to be "designed and applied in such a way that they do not "render impossible or excessively difficult the exercise of the right to compensation". [70] Therefore, in order to comply with the obligation under Article 79a, Member States need to assess the situation in their national legal systems, consider possible barriers to effective compensation for individuals, and address these. Examples for substantive and procedural measures required to guarantee an effective IED compensation right in law and practice will be considered in the sections below.

Similarly to access to justice, Member States may choose to regulate this issue as part of their general civil liability regime, rather than legislation specific to industrial emissions. In that case, Member States must consider the general rules as well and ensure they are suitable to ensure effective compensation in the claims covered by the IED compensation right, possibly by additional substantive and/or procedural guarantees. Alongside potential legislative changes, compliance by the courts with the new EU law will be essential. Member States and particularly their Ministries of Justice may choose to issue an administrative notice to national courts to inform them of the new IED compensation right and how this may affect IED compensation cases.

For a claim under the IED compensation right to arise three elements have to be present:

- Existence of health damage
- Violation of national measures adopted pursuant to the IED
- Link between health damage and violation

The elements are cumulative, i.e. a compensation claim can only be granted if all three elements are fulfilled.

Existence of health damage

The first element required for a claim under the IED compensation is that "damage to human health" has occurred to an individual. There is no limitation on the type or seriousness of health damage indicated. A wide range of health conditions have been associated with pollution: according to the European Commission, pollution can cause cancer, ischaemic heart disease, obstructive pulmonary disease, strokes, mental and neurological conditions, diabetes and more.[71]

[67] 2024 IED, Recital (52)
[68] 2024 IED, Recital (52)
[69] 2024 IED, Art. 79a
[70] 2024 IED, Art. 79a(2)
[71] European Commission, May 2021, 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"

It should be noted that the IED does not grant a right for compensation for pure environmental damage, such as damage to protected species, natural habitats, water and land. This type of damage is covered by the EU Environmental Liability Directive.[72]

Effective compensation right: Evidence on health damage

The European Court of Human Rights has a rich case law on industrial and other environmental pollution cases and its effects on health, which provides useful guidance. The Court has taken into account a wide range of evidence on health effects, including medical reports and certificates on health damage[73], evidence on increased vulnerability of individuals to health damage[74]. impact assessments/studies[75] and personal accounts of events by claimants[76].

Effective compensation right: Collective actions

Potential claimants suffering from health damage may find themselves in a particularly vulnerable situation, which in and of itself can constitute a barrier to effective compensation. Member States can remedy this by providing for the possibility of collective actions in the context of the IED compensation right.

In **France**, the possibility of class actions is explicitly foreseen in environmental matters including compensation claims: When several persons in a similar situation suffer damage caused by the same person, having as their common cause a breach of the same nature of legal obligations, a class action may be brought on the basis of the individual cases presented by the claimant.[77]

Under the Representative Actions Directive (RAD), EU Member States are required to put into place mechanisms for collective actions in relation to consumer harm by 2023. The Directive currently applies to 66 EU legal acts listed in the Annex, such as the General Data Protection Regulation.[78]

Violation of national measures adopted pursuant to the IED

The second element of the IED compensation right is that there is an "infringement of national measures that were adopted pursuant to the [IED]".[79] The scope extends to all such measures – there is no restriction of scope or subject matter in terms of the IED obligations which the relevant national measures aim to transpose. There is also no level of gravity of infringement prescribed. Therefore, any infringement of a national measure implementing any IED obligation would satisfy this element of the IED compensation right. It should be noted that the provision does not require any intent on behalf of the infringing party. A mere infringement on the facts will thus be sufficient.

The range of infringements where a compensation claim may arise is wide, so it is only possible to give some examples for illustrative purposes. Relevant violations by industrial operators may be the

[72] Directive 2004/35/EC 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 (Environmental Liability Directive)
[73] European Court of Human Rights, López Ostra c. Espagne, 1994, §19
[74] European Court of Human Rights, Fadeyeva v. Russia, 2005, §§80, 87-88; Jugheli et autres c. Géorgie, 2017, §71
[75] European Court of Human Rights, Cordella et autres c. Italie, 2019, §§163-166; Taşkın et autres c. Turquie, 2004, §§26, 112; Tătar c. Roumanie, 2009, §96; Pavlov v. Russia, §62
[76] European Court of Human Rights, Fadeyeva v. Russia, 2005, §107; Pavlov v. Russia, 2022, §62
[77] LOI n° 2016-1547 du 18 novembre 2016 de modernisation de la justice du XXIe siècle, Titre V L'action de groupe, Art. 60 and 62
[78] Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC
[79] 2024 IED, Art. 79a(1)

exceedance of emission limit values for critical pollutants (IED, Articles 11, 14 and 15) or operating an installation without a permit altogether (Article 4). Member States might be suitable defendants where authorities have not conducted any or only insufficient inspections (Article 23) or neglected to set essential public health-preserving permit conditions (Articles 14 and 15).

Compensation under the IED compensation right may be claimed from "the relevant natural or legal persons"[80]. In line with the polluter pays principle, industrial operators will often be relevant defendants. However, the wording of the IED compensation right is not limited to operators: depending on the circumstances, Member States and their authorities may be possible defendants alongside operators, or sole defendants where operators acted lawfully.[81] The broad wording "the relevant natural or legal persons" indicates the legislators' intention to cover all possible scenarios for IED compensation claims. Member States should ensure that transposing legislation is also kept sufficiently broad with regards to possible defendants; to include not only operators, but also other natural or legal persons where relevant. Categorically excluding Member States and their authorities as potential defendants in compensation claims would not be in line with the object and purpose of the revised IED to "achieve a high level of protection of human health"[82] and lead to a vacuum in those cases where the health damage of an individual results from a violation by a Member State and/or their authorities. This is especially significant given that the IED in its essence addresses the Member States and their authorities, requiring them to take measures vis-à-vis industrial operators.

In practice it may be difficult for individuals to bring evidence of a violation before court, in particular where information regarding a potential permit violation lies within the control of the industrial operator. To address information asymmetry and ensure an effective compensation right, Member States can include provisions on disclosure and a right to information as part of their general procedural law or in the national legislation transposing the IED compensation right:

Effective compensation right: Disclosure obligation
Member States can opt to integrate a disclosure obligation in the transposed IED compensation right, such as the following:
Where the claimant has provided reasonably available evidence to support a claim for compensation and has shown that additional evidence lies in the control of the defendant, the court is able to order that such evidence be disclosed.

A presumption can also be integrated to incentivise the defendant to comply:
A violation by the defendant shall be presumed where the defendant has failed to comply with an order to disclose relevant requested evidence at its disposal.
The presumption remains rebuttable: The defendant can simply rebut the presumption of violation by presenting evidence to the contrary, i.e. proving their compliance.

The disclosure obligation could also assist claimants in establishing the third element of the link between the health damage and the violation (see below).

[80] 2024 IED, Art. 79a(1)
[81] The interpretation that infringements by Member States and their authorities also fall within the IED compensation right is also confirmed by other provisions in the revised IED. For example, the revised Article 8 requires Member States to adopt compliance assurance measures regarding obligations placed on natural or legal persons. Recital (17) refers to this obligation and then includes further specifications on compliance assurance measures regarding national authorities, indicating a clear understanding that national authorities form part of "natural or legal persons".
[82] 2024 IED, Art.1

Example: The **German Environmental Liability Act**[83] (not linked to the EU Environmental Liability Directive) grants a compensation right to individuals affected by the acts of industrial operators. It includes a right to information from the operator and authorities:

Section 8
Right to information of the damaged party against an installation operator
(1) If there are facts that form the basis for the presumption that an installation caused the damage, the damaged party may demand information from the installation operator insofar as this is necessary in order to establish that a claim for damages exists under this Act. Only information about the facilities used, the type and concentration of the substances used or released and the other effects of the installation as well as the specific operating obligations under section 6 (3) may be requested. [...]

Section 9
Right of the damaged party to information from authorities
If there are facts that form the basis for the presumption that an installation caused the damage, the damaged party may demand information from authorities that authorised or monitor the installation or whose task it is to record impacts to the environment insofar as this is necessary in order to establish that a claim for damages exists under this Act. [...]

Link between health damage and violation

The third element of the IED compensation right is the link between health damage and violation: The health damage has to have "occurred as a result" of the infringement of national measures adopted pursuant to the IED. It is ultimately a question of the causal link, which national courts will need to consider based on the facts of the individual case before them.[84] In order to evaluate the causal link, national courts may consider a wide range of evidence, including but not limited to: medical evidence, epidemiological studies, and statistical evidence associating the relevant health condition at hand with the relevant pollutants.

The CJEU has not expressed itself on the expression "occurred as a result" yet, but the standard seems to be lower than that of "direct causal link" which is one of three conditions for state liability for a breach of EU law laid down by the CJEU.[85]

The rich case law of the European Court of Human Rights on industrial and other environmental pollution also provides useful guidance on how to assess the link between health damage and violation.

Effective compensation right: Presumption of the causal link in European Court of Human Rights case law
The European Court of Human Rights acknowledges the "evidentiary difficulties usually presented by cases concerning the environment"[86] and has relied on presumptions to establish a causal link between health damage and pollution:

- Pavlov v. Russia concerning air emissions from a industrial site including steel, cement and pipe plants: "*Even though it cannot be said, owing to the lack of medical evidence, that the industrial air pollution necessarily caused damage to the applicants' health, the Court considers it*

[83] Environmental Liability Act (Umwelthaftungsgesetz)
[84] CJEU, judgment in C-420/11 Leth v. Austria, para. 47
[85] CJEU, judgment in C-46/93 and C-48/93 Brasserie du Pêcheur and Factortame [1996] ECR I-1029
[86] European Court of Human Rights, Fadeyeva v. Russia, 2005, §107; Pavlov v. Russia, 2022, §62

established, on the basis of the ample evidence submitted by both parties, including the official reports and the domestic courts' decisions, that living in the area marked by pollution in clear excess of applicable safety standards exposed the applicants to an elevated risk to health."[87]

- Fadeyeva v. Russia concerning dust, carbon disulphide and other emissions from a steel plant: "*In the instant case, however, the very strong combination of indirect evidence and presumptions makes it possible to conclude that the applicant's health deteriorated as a result of her prolonged exposure to the industrial emissions from the Severstal steel plant. Even assuming that the pollution did not cause any quantifiable harm to her health, it inevitably made the applicant more vulnerable to various illnesses*[...]".[88]

Several Member States already use presumptions, both in their general civil legal regimes, such as civil codes, and in specific compensation provisions. Some examples will be provided below. Establishing presumption rules in national legislation may provide a good starting point for Member States in transposing the IED compensation right effectively.

Example: The **Italian Civil Code** contains a presumption of liability for anyone who causes damages to others while performing an activity that is dangerous by its nature.[89] The presumption can be disproved by providing evidence that all necessary precautions were taken to prevent the damage.

Example: The above-mentioned compensation right in the **German Environmental Liability Act**[90] also provides an example of a presumption of cause provision:

Section 6

Presumption of cause

(1) If an installation is likely to cause the damage that occurred on the basis of the given facts of the individual case, it is presumed that the damage was caused by this installation. The likelihood in the individual case is to be evaluated on the basis of the operating procedures, the facilities used, the type and concentration of the substances used and released, the meteorological factors, the time and place the damage occurred and the type of damage as well as all the other given facts that speak for or against the causing of damage in the individual case. [...]

Effective compensation right: Burden of proof

To address the likely evidentiary difficulties in IED compensation cases, Member States could also foresee an adapted burden of proof, whereby once the claimant has made a prima facie case that their health damage was caused by the IED violation in question, the defendant has to show that their violation did not cause or contribute to the damage.

[87] European Court of Human Rights, Pavlov v. Russia, 2022, §68
[88] European Court of Human Rights, Fadeyeva v. Russia, 2005, §88
[89] Codice civile, Libro IV, Titolo IX, Dei fatti illeciti, Art. 2050
[90] Environmental Liability Act (Umwelthaftungsgesetz), section 6

Selin Esen
Lawyer, Emissions Reduction
sesen@clientearth.org