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#### NOTE

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From: General Secretariat of the Council

To: Delegations

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Subject: Current legislative proposals:  
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

– Information from the Presidency

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Delegations will find in the Annex draft compromise proposal for the revised Directive as prepared by the Presidency on the above subject to be dealt with under "Any other business" at the Council (Environment) meeting on 20 December 2022.

Changes compared to the Commission proposal are marked in ***bold / italics***.

**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**

2022/0104 (COD)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular  
Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure,

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

Whereas:

- (1) The European Green Deal<sup>3</sup> is Europe's strategy to ensure, by 2050, a climate-neutral, clean and circular economy, optimising resource management, minimising pollution while recognising the need for deeply transformative policies. The Union is also committed to the 2030 Agenda for Sustainable Development<sup>4</sup> and its Sustainable Development Goals<sup>5</sup>. The EU Chemicals Strategy for Sustainability<sup>6</sup> of October 2020 and the Zero Pollution Action Plan<sup>7</sup> adopted in May 2021 specifically address pollution aspects of the European Green Deal. In parallel, the New Industrial Strategy for Europe<sup>8</sup> further emphasises the potential role of transformative technologies. Other particularly relevant policies for this initiative include the 'Fit for 55' package<sup>9</sup>, the Methane Strategy<sup>10</sup> and the Glasgow methane pledge<sup>11</sup>, the Climate Adaptation Strategy<sup>12</sup>, the Biodiversity Strategy<sup>13</sup>, the Farm to Fork strategy<sup>14</sup> and the

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<sup>3</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions The European Green Deal; COM(2019) 640 final.

<sup>4</sup> [https://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E)

<sup>5</sup> <https://sdgs.un.org/goals>

<sup>6</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Chemicals Strategy for Sustainability Towards a Toxic-Free Environment COM(2020) 667 final.

<sup>7</sup> 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' COM(2021) 400 final.

<sup>8</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, A New Industrial Strategy for Europe COM(2020) 102 final.

<sup>9</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 'Fit for 55': delivering the EU's 2030 Climate Target on the way to climate neutrality COM/2021/550 final.

<sup>10</sup> [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on an EU strategy to reduce methane emissions COM\(2020\) 663 final.](#)

<sup>11</sup> <https://www.globalmethanepledge.org/>

<sup>12</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Forging a climate-resilient Europe - the new EU Strategy on Adaptation to Climate Change COM(2021) 82 final.

<sup>13</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions EU Biodiversity Strategy for 2030 Bringing nature back into our lives COM(2020) 380 final.

Sustainable Products Initiative<sup>15</sup>. Besides, as part of the EU response to the 2022 Russia-Ukraine war, REPowerEU<sup>16</sup> proposes a Joint European Action to support the diversification of energy supplies, accelerate the transition to renewable energy and improve energy efficiency.

- (2) The European Green Deal announced a revision of Union measures to address pollution from large industrial installations, including reviewing the sectoral scope of the legislation and how to make it fully consistent with climate, energy and circular economy policies. In addition, the Zero Pollution Action Plan, the Circular Economy Action Plan and the Farm to Fork Strategy also call for reducing pollutant emissions at source, including sources not currently within the scope of Directive 2010/75/EU of the European Parliament and of the Council<sup>17</sup>. Addressing pollution from certain agro-industrial activities thus requires their inclusion within the scope of that Directive.

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<sup>14</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system COM(2020) 381 final.

<sup>15</sup> COM(2022) 142

<sup>16</sup> Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions REPowerEU: Joint European Action for more affordable, secure and sustainable energy; COM(2022) 108 final.

<sup>17</sup> Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control); OJ L 334, 17.12.2010, p. 17-119.

- (3) The Union's extractive industry is key to achieving the aims of the European Green Deal and the EU industrial strategy, including its update. Raw materials are of strategic importance for the digital and green transition, the energy, materials and circular economy transformation and to strengthen EU economic resilience. In order to achieve these objectives, sustainable domestic capacities need to be further developed. This requires effective, tailored and harmonised measures to ensure that the best available techniques are established and employed, thus applying processes that are both the most efficient and have the lowest possible impacts on human health and the environment. The governance mechanisms of Directive 2010/75/EU that closely associate industry experts to the development of consensual and tailored environmental requirements will support the sustainable growth of those activities in the Union. The development and availability of commonly agreed standards will level the Union's playing field while ensuring a high level of protection of human health and the environment. It is therefore appropriate to include those activities within the scope of Directive 2010/75/EU.
- (4) Rearing of pigs, poultry and cattle cause significant pollutant emissions into the air and water. In order to reduce such pollutant emissions, including ammonia, methane, nitrates and greenhouse gas emissions and thereby improve air, water and soil quality, it is necessary to lower the threshold above which pigs and poultry installations are included within the scope of Directive 2010/75/EU and to include also cattle farming within that scope. Relevant BAT requirements take into consideration the nature, size, density and complexity of these installations, including the specificities of pasture based cattle rearing systems, where animals are only seasonally reared in indoor installations, and the range of environmental impacts they may have. The proportionality requirements in BATs aim to incentivise farmers to implement the necessary transition towards increasingly environmentally friendly agricultural practices.

- (5) A significant increase in the number of large-scale installations for the production of batteries for electric vehicles will likely take place within the Union up to 2040, increasing the Union's share of the global battery production. Whilst several of the activities of the batteries value chain are already regulated by Directive 2010/75/EU and batteries are regulated as products by Regulation (EU) .../... of the European Parliament and of the Council\* +., it is still necessary to include in the scope of the Directive large installations manufacturing batteries, ensure that they are also covered by the requirements set out in Directive 2010/75/EU and therefore contribute to a more sustainable growth of batteries manufacturing. Including large installations manufacturing batteries in the scope of Directive 2010/75/EU will improve in a holistic way the sustainability of batteries and minimise their impact on the environment throughout their life cycle.
- (6) With a view to further strengthening public access to environmental information, it is necessary to clarify that permits for installations granted pursuant to Directive 2010/75/EU are to be made available to the public on the Internet, free of charge and without restricting access to registered users. A uniform summary of permits should also be made available to the public under the same conditions.
- (7) The impact of pollution, including when caused by incidents or accidents, may extend beyond the territory of a Member State. In such cases, without prejudice to Directive 2012/18/EU of the European Parliament and of the Council<sup>18</sup>, limiting the consequences for human health and the environment of incidents or accidents and preventing further possible incidents or accidents requires prompt information and close coordination between the competent authorities of the Members States which are or may be affected by such events. Therefore, in the event of any incident or accident significantly affecting the environment or human health in another Member State, information and transboundary and multidisciplinary cooperation between the affected Member States should be fostered to limit the consequences for the environment and human health and to prevent further possible incidents or accidents.

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<sup>18</sup> +OP: Please insert in the text the number of the Regulation contained in document 2020/0353(COD) and insert the number, date, title and OJ reference of that Regulation in the footnote."

Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances (OJ L 197, 24.7.2012, p. 1).

- (8) Member States should also adopt compliance assurance measures to promote, monitor and enforce compliance with obligations placed on natural or legal persons under Directive 2010/75/EU. As part of compliance assurance measures, competent authorities should be able to suspend the operation of an installation where a continued breach of the permit conditions and the non-implementation of the findings of the inspection report pose or risk causing a danger to human health or a significant adverse effect upon the environment, in order to stop that danger.
- (9) In order to foster energy efficiency of installations within the scope of Directive 2010/75/EU which are carrying out activities listed in Annex I to Directive 2003/87/EC, it is appropriate to submit those installations to energy efficiency requirements in respect of combustion units or other units emitting carbon dioxide on the site.
- (10) The evaluation of Directive 2010/75/EU concluded that there is a need to strengthen the links between that Directive and Regulation (EC) No 1907/2006<sup>19</sup>, to better address the risks of the use of chemicals in installations within the scope of Directive 2010/75/EU. In order to develop synergies between the work carried out by the European Chemicals Agency (ECHA) on chemicals and the preparation of BAT reference documents under Directive 2010/75/EU, ECHA should be given a formal role in such preparation of BAT reference documents.

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<sup>19</sup> Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency (ECHA) (OJ L 396, 30.12.2006, p.1).

- (11) In order to facilitate the exchange of information supporting the determination of emission levels and environmental performance levels associated with best available techniques (BAT), while maintaining the integrity of confidential business information, the procedures for the handling of information qualifying as confidential business information or sensitive commercial information, and as collected from the industry in the context of the exchange of information organised by the Commission for the purpose of drafting, reviewing or updating BAT reference documents should be specified. It should be ensured that individuals participating in the exchange of information do not share information qualifying as confidential business information or sensitive commercial information with any representative of undertakings or trade associations having an economic interest in the concerned industrial activities and related markets. Such exchange of information is without prejudice to Union competition law, in particular Article 101 of the Treaty on the Functioning of the European Union (TFEU).
- (12) To ensure the protection of human health and the environment as a whole, synergies and coordination with other relevant Union environmental legislation are necessary, at all stages of its implementation. Therefore, all relevant competent authorities that ensure compliance with relevant Union environmental legislation should be duly consulted before the granting of a permit under Directive 2010/75/EU.
- (13) With a view to continuously improving the environmental performance and safety of the installation, including by preventing waste generation, optimising resource use and water reuse, and preventing or reducing risks associated with the use of hazardous substances, the operator should establish and implement an environmental management system (EMS) in accordance with relevant BAT conclusions, and should make it available to the public. The EMS should also cover the management of risks related to the use of the hazardous substances and an analysis of the possible substitution of hazardous substances by safer alternatives.



- (14) It is necessary to specify further the conditions under which the competent authority, when setting emission limit values applicable to pollutant releases to water in a permit granted under Directive 2010/75/EU, may take account of the downstream treatment processes in a waste water treatment plant, in order to ensure that such releases do not lead to an increased load of pollutants in receiving waters when compared to a situation where the installation applies BAT and meets emission levels associated with the best available techniques for direct releases.
- (15) Providing a high level of protection of human health and the environment as a whole requires inter alia the establishment in permits of emission limit values at a level that ensures compliance with the applicable emission levels associated with the best available techniques set out in the BAT conclusions. Emission levels associated with the best available techniques (BAT-AELs) are usually expressed as ranges, rather than as single values, to reflect the differences within a given type of installations that result in variations in the environmental performances achieved when applying BAT. For example, a given BAT will not deliver the same performance for different installations, some BATs may not be suitable for use in certain installations, or a combination of BATs may be more effective on some pollutants or environmental media than others. The achievement of a high level of protection of human health and the environment as a whole has been jeopardised by the practice of setting emission limit values at the laxest end of the range of emission levels associated with the best available techniques, without considering the potential of a given installation to achieve lower emission levels through the application of best available techniques. Such practice discourages frontrunners from implementing more effective techniques, and hinders the achievement of a level-playing field at a high level of protection of human health and the environment. Competent authorities should therefore be required to set in permits the lowest possible emission limit values which reflect the performance of BAT for the specific installations, taking into consideration the whole range of BAT-AELs and aiming at the best environmental performance possible for the installations; unless the operator demonstrates that applying best available techniques as described in the BAT conclusions only allows the concerned installation to meeting less strict emission limit values.

- (16) The contribution of Directive 2010/75/EU to resource and energy efficiency and circular economy in the Union should be made more effective, taking into consideration the ‘Energy Efficiency First’ as a guiding principle of the Union energy policy. Therefore, the permits should establish, where possible, mandatory environmental performance limit values on consumption and resource efficiency levels, including on the use of water, energy and recycled materials, based on the environmental performance levels associated with the best available techniques (BAT AEPLs) set out in decisions on BAT conclusions.
- (17) With a view to preventing or minimising the emission of pollutants by installations within the scope of Directive 2010/75/EU and to levelling the playing field across the Union, the conditions under which derogations from emissions limit values can be granted should be better framed through general principles, in order to ensure a more harmonized implementation of such derogations throughout the Union. Moreover, derogations from emissions limit values should not be granted where they may put at risk compliance with environmental quality standards.
- (18) The evaluation of Directive 2010/75/EU concluded that there was some discrepancy in compliance assessment approaches for installations covered by Chapter II of that Directive. In order to achieve a high level of protection of the environment as a whole, ensure a consistent implementation of Union law and a level-playing field throughout the Union, while minimising the administrative burden on businesses and public authorities, the Commission should set common rules for assessing compliance with emission limit values and validation of measured levels for both air and water emissions based on best available techniques. Those compliance assessment rules should take precedent over the rules set out in Chapters III and IV on assessment of compliance with emission limit values contained in Annexes V and VI to Directive 2010/75/EU.

- (19) Environmental quality standards refer to all the requirements set out in Union law, such as Union legislation on air and water; which must be fulfilled at a given time by a given environment or particular part thereof. Therefore it is appropriate to clarify that when granting a permit to an installation, competent authorities should not only set out conditions to ensure compliance of the installation's operations with the best available techniques conclusions, but should also, where appropriate with a view to reducing the specific contribution of the installation to the pollution occurring in the relevant area, include specific additional conditions in the permit stricter than those set in relevant BAT conclusions, so as to ensure the installation's compliance with environmental quality standards. Such conditions may consist in setting stricter emission limit values or limiting the operation or capacity of the installation.
- (20) Permit conditions should be regularly reviewed and, where necessary, updated by the competent authority to ensure compliance with relevant legislation. Such review or update should also take place where it is necessary for the installation to comply with an environmental quality standard, including in the case of a new or revised environmental quality standard or where the status of the receiving environment requires a revision of the permit in order to achieve compliance with plans and programmes set under Union legislation, such as the river basin management plans under Directive 2000/60/EC of the European Parliament and of the Council<sup>20</sup>.

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<sup>20</sup> Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000).

- (21) Parties to the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, at their seventh Meeting session, endorsed the Convention's Compliance Committee's findings in case ACCC/C/2014/121, according to which, by putting in place a legal framework that does not envisage any possibility for public participation in relation to reconsiderations and updates under Article 21 (3), (4) and (5)(b) and (c) of Directive 2010/75/EU, the European Union fails to comply with article 6 (10) of the Convention. These findings have been endorsed by the Union and its Member States, and with a view to reaching full compliance with the Aarhus Convention, it is necessary to specify that the public concerned should be given early and effective opportunities to participate in the granting or updating of permit conditions set by the competent authority also when permits conditions are reconsidered following the publication of decisions on BAT conclusions relating to the main activity of the installation; when developments in the best available techniques allow for the significant reduction of emissions; when the operational safety requires other techniques to be used; and where it is necessary to comply with a new or revised environmental quality standard.
- (22) As clarified by the case-law of the Court of Justice<sup>21</sup>, Member States may not restrict legal standing to challenge a decision of a public authority to those members of the public concerned who participated in the preceding administrative procedure to adopt that decision. As also clarified by the case-law of the Court of Justice<sup>22</sup>, effective access to justice in environmental matters and effective remedies requires inter alia that members of the public concerned should have the right to ask the court or an incompetent independent and impartial body to order interim measures to prevent a given instance of pollution, including, where necessary, through the temporary suspension of the disputed permit. Therefore, it should be specified that legal standing should not be made conditional on the role that the concerned member of the public played during a participatory phase of the decision-making procedures under this Directive. In addition, any review procedure should be fair, equitable, timely and not prohibitively expensive, and provide for adequate and effective redress mechanisms, including injunctive relief as appropriate.

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<sup>21</sup> Case C–826/18, Judgment of the Court (First Chamber) of 14 January 2021; *LB and Others v College van burgemeester en wethouders van de gemeente Echt-Susteren*; paragraphs 58 and 59.

<sup>22</sup> Case C-416/10 Judgment of the Court (Grand Chamber), 15 January 2013; *Jozef Križan and Others v Slovenská inšpekcia životného prostredia*. Križan, paragraph 109.

- (23) Transboundary cooperation should take place prior to the granting of permits where more than one Member State may be affected by the operation of an installation, and should include prior information and consultation of the public concerned and competent authorities in the other Member States which may be affected.
- (24) The evaluation of Directive 2010/75/EU found that, even if it should foster the transformation of European industry, it is not dynamic enough and does not sufficiently support the deployment of innovative processes and technologies. It is therefore appropriate to facilitate the testing and deployment of emerging techniques with improved environmental performance, to facilitate cooperation with researchers and industries in publicly funded research projects subject to the conditions foreseen in the relevant European and national funding instruments, as well as to set up a dedicated centre to support innovation by collecting and analysing information on innovative techniques, including emerging techniques, relevant to activities within the scope of that Directive and to characterise their level of development from research to deployment (technology readiness level or ‘TRL’) and their environmental performance. This will also inform the exchange of information on drawing up, reviewing and updating BAT reference documents. Innovative techniques to be collected and analysed by the centre should be at least at the level of technology demonstrated in relevant environment (industrially relevant environment in the case of key enabling technologies) or system prototype demonstration in operation environment (TRL 6-7).

- (25) Achieving Union objectives regarding a clean, circular and climate neutral economy by 2050 calls for a deep transformation of the Union economy. Consistently with the 8th Environmental Action Programme, operators of installations covered by Directive 2010/75/EU should therefore be required to include transformation plans in their environmental management systems. Such transformation plans will also complement the Corporate Sustainability Reporting requirements under Directive 2013/34/EU of the European Parliament and of the Council<sup>23</sup> by providing a means for concrete implementation of these requirements at installation level. The first priority is the transformation of energy-intensive activities listed in Annex I. Therefore, the operators of energy-intensive installations should produce transformation plans by 30 June 2030. Operators of installations carrying out other activities listed in Annex I should be required to produce transformation plans as part of the permit reconsideration and update following the publication of decisions on BAT conclusions published after 1 January 2030. Whilst the transformation plans should remain indicative documents prepared under the responsibility of the operators, the audit organisation contracted by the operators as part of their environmental management systems should check that they contain the minimum information to be set by the European Commission in an implementing act, and the operators should make the transformation plans public.
- (26) Further clarity is needed regarding the criteria to assess whether the cleaned gases or liquids resulting from the gasification and pyrolysis of waste are sufficiently purified to such an extent that they are no longer waste prior to their incineration.
- (27) In light of the high number of rearing installations that should be included within the scope of Directive 2010/75/EU, and the relative simplicity of the processes and emissions patterns of such installations, it is appropriate to set out specific administrative procedures for issuing permits and for the operation of the relevant activities which are adapted to the sector, without prejudice to requirements related to public information and participation, monitoring and compliance.

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<sup>23</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC; OJ L 182, 29.6.2013, p. 19–76.

- (28) Innovative techniques coming on the market are expected to increasingly reduce both emissions of pollutants and of greenhouse gases from installations within the scope of both Directive 2010/75/EU and Directive 2003/87/EC of the European Parliament and of the Council<sup>24</sup>. Whilst this will allow for the building of further synergies between those Directives, it may affect their operation, including on the carbon market. Directive 2003/87/EC contains in this regard a provision to review the effectiveness of synergies with Directive 2010/75/EU, and calling for environmental and climate relevant permits to be coordinated to ensure efficient and speedier execution of measures needed to comply with Union climate and energy objectives. In order to take into account the dynamics of innovation in this regard and the review referred to in Article 8 of Directive 2003/87/EC, the Commission should submit a report reviewing the implementation of Directive 2010/75/EU to the European Parliament and to the Council by 2028 and every 5 years thereafter.
- (29) In order to ensure that Directive 2010/75/EU continues meeting its objectives to prevent or reduce emissions of pollutants and achieve a high level of protection of human health and the environment, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement that Directive in order to establish operating rules containing requirements for activities relating to rearing of poultry, pigs and cattle, and to amend Annexes I and Ia to that Directive by adding an agro-industrial activity to ensure that it meets its objectives to prevent or reduce pollutants emissions and achieve a high level of protection of human health and the environment. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016<sup>25</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

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<sup>24</sup> Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community (OJ L 275, 25.10.2003, p. 32).

<sup>25</sup> Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making; OJ L 123, 12.5.2016, p. 1–14.

- (30) In order to ensure uniform conditions for the implementation of Directive 2010/75/EU, implementing powers should be conferred on the Commission as regards the establishment of (i) the format to be used for the permit summary; (ii) a standardised methodology for assessing the disproportionality between the costs of implementation of the BAT conclusions and the potential environmental benefits, (iii) the measuring method for assessing compliance with emission limit values set out in the permit with regard to emissions to air and water, (iv) the detailed arrangements necessary for the establishment and functioning of the innovation centre for industrial transformation and emissions, and (v) the format to be used for transformation plans. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>26</sup>.
- (31) In order to ensure the effective implementation and enforcement of the obligations set out in Directive 2010/75/EU, it is necessary to specify the minimum content of effective, proportionate and dissuasive penalties. Disparities in penalties regimes, the fact that imposed penalties are deemed in many cases too low to truly have a deterrent effect on illegal behaviours, and the lack of uniform implementation across Member States, undermine the level playing field on industrial emissions throughout the Union. Account should be taken of Directive 2008/99/EC on the protection of the environment through criminal law where a detected infringement under this Directive constitutes an offence within the scope Directive 2008/99/EC.

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<sup>26</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).



(32) Where damage to human health has occurred as a result of a violation of national measures adopted pursuant to Directive 2010/75/EU, Member States should ensure that the individuals affected are able to claim and obtain compensation for that damage from the relevant natural or legal persons and, where appropriate, from the relevant competent authorities responsible for the infringement. Such rules on compensation contribute to pursuing the objectives of preserving, protecting and improving the quality of the environment and protecting human health as laid down in Article 191 TFEU. They also underpin the right to life, integrity of the person and health care laid down in Article 2, 3 and 35 of the Charter of Fundamental Rights of the European Union and the right to an effective remedy as laid down in Article 47 of the Charter. Moreover, Directive 2004/35/EC of the European Parliament and of the Council does not give private parties a right of compensation as a consequence of environmental damage or of an imminent threat of such damage.

- (33) It is therefore appropriate for Directive 2010/75/EU to address the right for compensation for damages suffered by individuals. To ensure that individuals can defend their rights against damages to health caused by violations of Directive 2010/75/EU and thereby ensure a more efficient enforcement of that Directive, non-governmental organisations promoting the protection of human health or the environment, including those promoting the protection of consumers and meeting any requirements under national law, as members of the public concerned, should be empowered to engage in proceedings, as the Member States so determine, either on behalf or in support of any victim, without prejudice to national rules of procedure concerning representation and defence before the courts. Member States usually enjoy procedural autonomy to ensure an effective remedy against violations of Union law, subject to the respect of the principles of equivalence and effectivity. However, experience shows that 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. As a result, 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. To strengthen the rights of individuals to obtain compensation for violations of Directive 2010/75/EU and to contribute to a more efficient enforcement of its requirements throughout the Union, it is necessary to adapt the burden of proof applicable to such situations. Therefore, when an individual can provide sufficiently robust evidence to give rise to a presumption that the violation of Directive 2010/75/EU is at the origins of the damage caused to the health of an individual, or has significantly contributed to it, it should be for the defendant to rebut that presumption in order to escape his liability.
- (34) The impact of Directive 2010/75/EU on the procedural autonomy of the Member States should be limited to what is necessary to ensure the objectives of protection of human health through a safe environment pursued by it and should not affect other national procedural rules establishing the right to seek compensation for violations of that Directive. Such national rules should however not hamper the effective functioning of the mechanism for seeking compensation required by Directive 2010/75/EU.

- (35) The implementation of Directive 2010/75/EU has shown divergent applications across Member States concerning the coverage of installations for the manufacturing of ceramic products by firing, because the wording of the definition of this activity allowed Member States to decide whether to apply both or only one of the two criteria on production capacity and kiln capacity. With a view to ensuring a more consistent implementation of that Directive and securing a level-playing field throughout the Union, such installations should be included within the scope of that Directive whenever any one of those two criteria is met.
- (36) When setting emission limit values for polluting substances, the competent authority should consider all substances, including substances of emerging concern, which may be emitted from the concerned installation and may have a significant impact on the environment or human health. In doing so, the hazard characteristics, quantity and nature of the substances emitted and their potential to pollute any environmental media should be considered. The BAT conclusions, where relevant, are the reference point for selecting the substances for which emission limit values are to be set, although the competent authority may decide to select additional substances. Currently, individual polluting substances are listed in a non-exhaustive way in Annex II to Directive 2010/75/EU; which is not compatible with the holistic approach of that Directive and does not reflect the need for competent authorities to take into account all relevant polluting substances, including those of emerging concern. The non-exhaustive list of polluting substances should therefore be deleted. Instead, reference should be made to the list of pollutants in Annex II to Regulation (EC) No 166/2006<sup>27</sup>.

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<sup>27</sup> Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 establishing a European Pollutant Release and Transfer Register (OJ L 33, 4.2.2006, p. 1).

- (37) Although landfills are included within the scope of Directive 2010/75/EU, no BAT conclusions exist for landfills since that activity falls within the scope of Council Directive 1999/31/EC<sup>28</sup> and the requirements of the latter Directive are deemed to constitute BAT. Due to the technical developments and innovation that have taken place since the adoption of Directive 1999/31/EC, more effective techniques for protecting human health and the environment are now available. The adoption of BAT conclusions under Directive 2010/75/EU would allow addressing the key environmental issues related to the operation of waste landfills, including significant emissions of methane. Directive 1999/31/EC should therefore allow for the adoption of BAT conclusions on landfills under Directive 2010/75/EU.
- (38) Directives 2010/75/EU and 1999/31/EC should therefore be amended accordingly.
- (39) Since the objectives of this Directive, namely to ensure a high level of environmental protection and the improvement of environmental quality, cannot be sufficiently achieved by Member States and can, therefore, by reason of the transboundary nature of pollution from industrial activities, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (40) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of ensuring a high level of environmental protection and the improvement of environmental quality to lay down rules on integrated prevention and control of pollution arising from industrial activities. This Directive does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with Article 5(4) of the Treaty on European Union.

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<sup>28</sup> Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ L 182 16.7.1999, p. 1).

- (41) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents<sup>29</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

*Amendments to Directive 2010/75/EU*

Directive 2010/75/EU is amended as follows:

- (1) In Article 1, the second paragraph is replaced by the following:

‘This Directive lays down rules on integrated prevention and control of pollution arising from industrial activities.

It also lays down rules designed to prevent or, where that is not practicable, to reduce emissions into air, water and land and to prevent the generation of waste, in order to achieve a high level of protection of human health and the environment taken as a whole.’

- (2) In Article 2, paragraph 1 is replaced by the following:

‘1. This Directive shall apply to the industrial activities giving rise to pollution referred to in Chapters II to VIa.’

- (3) Article 3 is amended as follows:

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<sup>29</sup> OJ C 369, 17.12.2011, p. 14.

- (a) point (3) is replaced by the following:

‘(3) ‘installation’ means a stationary technical unit within which one or more activities listed in Annex I, in Annex Ia or in Part 1 of Annex VII are carried out, and any other directly associated activities on the same site which have a technical connection with the activities listed in those Annexes and which could have an effect on emissions and pollution;’;

- (b) point (12) is replaced by the following:

‘(12) ‘BAT conclusions’ means a document containing the parts of a BAT reference document laying down the conclusions on best available techniques, their description, information to assess their applicability, the emission levels associated with the best available techniques, the environmental performance levels associated with the best available techniques, the *minimum* content of an environmental management system including *benchmarks associated with the best available techniques*, associated monitoring, associated consumption levels and, where appropriate, relevant site remediation measures;’;

- (c) the following point (13a) is inserted:

‘(13a) ‘environmental performance levels associated with the best available techniques’ means the range of environmental performance levels, except emission levels, obtained under normal operating conditions using a BAT or a combination of BATs;’.

- (d) point (17) is replaced by the following:

‘(17) ‘the public concerned’ means the public affected or likely to be affected by, or having an interest in, the taking of a decision on the granting or the updating of a permit or of permit conditions; for the purposes of this definition, non-governmental organisations promoting the protection of human health or the environment and meeting any requirements under national law shall be deemed to have an interest;’.

(e) the following points (23a), (23b) and (23c) are inserted:

‘(23a) ‘pigs’ means pigs as defined in Article 2 of Council Directive 2008/120/EC\*;

(23b) ‘cattle’ means domestic animals of the species *Bos taurus*;

(23c) ‘livestock unit’ or ‘LSU’ means the ~~grazing equivalent of one adult dairy cow producing 3 000 kg of milk annually, without additional concentrated foodstuffs, which is unit~~ used to express the size of farms rearing different categories of animals, using the conversion rates, ~~with reference to actual production within the calendar year~~, set out in Annex *III* to Commission Implementing Regulation (EU) No 2018/1091 808/2014\*\*’.

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\* Council Directive 2008/120/EC of 18 December 2008 laying down minimum standards for the protection of pigs (OJ L 47, 18.2.2009, p. 5).

\*\* Commission Implementing Regulation (EU) No 808/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ L 227 31.7.2014, p. 18).’;

(f) the following points (48) to (53) are added:

~~‘(48) ‘industrial minerals’ means minerals used in industry for the production of semi-finished or finished products, with the exception of metalliferous ores, energy minerals, construction minerals and precious stones;~~

~~‘(49) ‘metalliferous ores’ means ores that yield metals or metallic substances;~~

(50) ‘emission levels associated with emerging techniques’ means the range of emission levels obtained under normal operating conditions using an emerging technique or a combination of emerging techniques, expressed as an average over a given period of time, ~~environmental protection~~ under specified reference conditions;

(51) ‘environmental performance levels associated with emerging techniques’ means the range of environmental performance levels, except emission levels, obtained under normal operating conditions using an emerging technique or a combination of emerging techniques;

(52) ‘compliance assurance’ means mechanisms for securing compliance using three categories of intervention: compliance promotion; compliance monitoring; follow-up and enforcement.’;

(53) ‘‘benchmarks’ means the indicative ~~range of~~ environmental performance levels associated with best available techniques, ~~other than emission levels, and may include:~~

~~(a) consumption levels;~~

~~(b) resource efficiency levels and reuse levels covering materials, water and energy resources;~~

~~(c) waste and other levels obtained under specified reference conditions.’.~~

(4) In Article 4(1), the second subparagraph is replaced by the following:

‘1. Member States shall take the necessary measures to ensure that no installation or combustion plant, waste incineration plant or waste co-incineration plant is operated without a permit.

By way of derogation from the first subparagraph, Member States may set a procedure for the registration of installations covered only by Chapter V or Chapter VIa.

The procedure of registration shall be specified in a binding act and include at least a notification to the competent authority by the operator of the intention to operate an installation.’



(5) In Article 5, the following paragraph (4) is added:

~~‘4.— Member States shall ensure that permits granted pursuant to this Article are made available on the Internet, free of charge and without restricting access to registered users. In addition, a summary of each permit shall be made available to the public under the same conditions. That summary shall include at least the following:~~

~~(a) — an overview of the main permit conditions;~~

~~(b) — the emission limit values and environmental performance limits values;~~

~~(c) — any derogations granted in accordance with Article 15(4);~~

~~(d) — the applicable BAT conclusions;~~

~~(e) — the provisions for reconsideration and updating of the permit.~~

~~The Commission shall adopt an implementing act to establish the format to be used for the summary referred to in the second subparagraph. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 75(2).’~~

(6) Articles 7 and 8 are replaced by the following:

*‘Article 7*

### **Incidents and accidents**

Without prejudice to 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, in the event of any incident or accident significantly affecting human health or the environment, Member States shall take the necessary measures to ensure that:

(a) the operator informs the competent authority immediately;

(b) the operator immediately takes the measures to limit the **environmental** consequences **on human health or the environment** and to prevent further possible incidents or accidents;

(c) the competent authority requires the operator to take any appropriate complementary measures that the competent authority considers necessary to limit the **environmental** consequences *on human health or the environment* and to prevent further possible incidents or accidents.

In the event of any incident or accident significantly affecting human health or the environment in another Member State, the Member State in whose territory the accident or incident has occurred shall ensure that the competent authority of the other Member State is immediately informed. Transboundary and multidisciplinary cooperation between the affected Member States shall aim at limiting the consequences on the environment and human health and to prevent further possible incidents or accidents.

#### *Article 8*

#### **Non-compliance**

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 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.

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 first subparagraph, points (b) and (c), the operation of the installation, combustion plant, waste incineration plant, waste co-incineration plant or relevant part thereof shall be suspended without any delay.

3. Where the breach of the permit conditions continues to cause a danger to human health or 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) have 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.

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\* Directive 2004/35/CE 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 (OJ L 143, 30.4.2004, p. 56).'.

- (7) In Article 9, paragraph (2) is deleted.
- (8) In Article 11, the following points (fa), (fb) and (fc) are inserted:
  - (fa) material resources and water are used efficiently, including through re-use;
  - (fb) the overall life-cycle environmental performance of the supply chain is taken into account as appropriate;
  - (fc) an environmental management system is implemented as referred to in Article 14a';

(9) Article 13 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. In order to draw up, review and, where necessary, update BAT reference documents, the Commission shall organise an exchange of information between Member States, the industries concerned, non-governmental organisations promoting environmental protection, the European Chemicals Agency and the Commission.’

(b) In paragraph 2, the following subparagraph is added:

‘Without prejudice to Union competition law, information considered as confidential business information or commercially sensitive information shall only be shared with the Commission and with the following individuals having signed a confidentiality and non-disclosure agreement: civil servants and other public employees representing Member States or Union agencies, and representatives of non-governmental organisations promoting the protection of human health or the environment. The exchange of information considered as confidential business information or sensitive commercial information shall remain limited to what is required to draw up, review and, where necessary, update BAT reference documents, and such confidential business information or sensitive commercial information shall not be used for other purposes.’.

(10) Article 14 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the first subparagraph is replaced by the following:

‘Member States shall ensure that the permit includes all measures necessary to comply with the requirements of Articles 11 and 18. To that effect, Member States shall ensure that permits are granted further to consultation of all relevant authorities who ensure compliance with Union environmental legislation, including with environmental quality standards. Those measures shall include at least the following’;

(ii) in the second subparagraph, point (a) is replaced by the following:

‘(a) emission limit values for polluting substances listed in Annex II of Regulation (EC) No 166/2006\*, and for other polluting substances, which are likely to be emitted from the installation concerned in significant quantities, having regard to their nature and their potential to transfer pollution from one medium to another;

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\* Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC (OJ L 33, 4.2.2006, p. 1).’;

(iii) the following point (aa) is inserted:

‘(aa) environmental performance limit values *in accordance with Article 15(3a)*’;

(iv) point (b) is replaced by the following:

‘(b) appropriate requirements ensuring protection of the soil, ~~and~~ groundwater and surface water, and measures concerning the monitoring and management of waste generated by the installation;’;

(v) the following point (ba) is inserted:

‘(ba) appropriate requirements for an environmental management system as laid down in Article 14a;’;

(vi) the following point (bb) is inserted:

‘(bb) suitable monitoring requirements for the consumption and reuse of resources such as energy, water and raw materials;’;

(vii) in point (d), the following subpoint (iii) is added:

(iii) information on progress towards fulfilment of the environmental policy objectives referred to in Article 14a. Such information shall be made public;’;

(viii) point (h) is replaced by the following:

‘(h) conditions for assessing compliance with the emission limit values and environmental performance limit values or a reference to the applicable requirements specified elsewhere.’

(11) The following Article 14a is inserted:

*‘Article 14a*

### **Environmental management system**

1. Member States shall require the operator to prepare and implement, for each installation falling within the scope of this Chapter, an environmental management system (‘EMS’). The EMS shall comply with the provisions included in relevant BAT conclusions that determine aspects to be covered in the EMS.

~~*The EMS shall be reviewed periodically to ensure that it continues to be suitable, adequate and effective.*~~

2. The EMS shall include at least the following:
  - (a) environmental policy objectives for the continuous improvement of the environmental performance and safety of the installation, which shall include measures to:
    - (i) prevent the generation of waste;
    - (ii) optimise resource use and water reuse;
    - (iii) prevent or reduce risks associated with the use of hazardous substances.
  - (b) objectives and performance indicators in relation to significant environmental aspects, which shall take into account benchmarks set out in the relevant BAT conclusions and the life-cycle environmental performance of the supply chain;

- (c) for installations covered by the obligation to conduct an energy audit or implement an energy management system pursuant to Article 8 of Directive 2012/27/EU, inclusion of the results of that audit or implementation of the energy management system pursuant to Article 8 and Annex VI of that Directive and of the measures to implement their recommendations;
- (d) a chemicals inventory of the hazardous substances present in the installation as such, as constituents of other substances or as part of mixtures, a risk assessment of the impact of such substances on human health and the environment and an analysis of the possibilities to substitute them with safer alternatives;
- (e) measures taken to achieve the environmental objectives and avoid risks for human health or the environment, including corrective and preventive measures where needed;
- (f) a transformation plan as referred to in Article 27d.

*The level of detail of the EMS shall be consistent with the nature, scale and complexity of the installation, and the range of environmental impacts it may have.*

*Where elements of the EMS, or the related performance indicators, objectives, measures and analysis have already been developed elsewhere and comply with this paragraph and paragraph 1, reference may be made in the EMS to the relevant documents.*

3. *The non-confidential summary of the EMS, including the performance indicators, objectives, measures, analysis and transformation plan referred to in Article 14a(1) and (2) ~~The EMS of an installation~~ shall be made available on the Internet, free of charge and without restricting access to registered users.*

*The content of the summary of EMS shall allow comparison with information referred to in Art. 14(1) d) (iii).*

3a. *Member States shall take the necessary measures to ensure that at least every 3 years:*

- (a) *the audit organisation contracted by the operator verifies the conformity of the EMS and of its implementation with this article,*
- (b) *the operator reviews its EMS to ensure that it continues to be suitable, adequate and effective.*

*The first review and the first audit of the existing EMS shall take place at the latest 36 months after [OP please insert the date = the first day of the month following 18 months after the date of entry into force of this Directive].*

(12) Article 15 is replaced by the following:

*‘Article 15*

**Emission limit values, environmental performance limit values, equivalent parameters and technical measures**

- ‘1. The emission limit values for polluting substances shall apply at the point where the emissions leave the installation, and any dilution prior to that point shall be disregarded when determining those values.

With regard to indirect releases of polluting substances into water, the effect of a waste water treatment plant outside the installation may be taken into account when determining the emission limit values of the installation concerned, provided that the operator ensures that all of the following requirements are fulfilled:

- (a) the released polluting substances do not impede the operation of the waste water treatment plant;
- (b) the released polluting substances do not harm the health of the staff working in collecting systems and waste water treatment plants;
- (c) the waste water treatment plant is designed and equipped to abate the released polluting substances;



- (d) the overall load of the concerned polluting substances eventually released into the water is not increased compared to the situation where the emissions from the installation concerned remained compliant with emission limit values set for direct releases in accordance with paragraph (3) of this Article, without prejudice to stricter measures required pursuant to Article 18.

The competent authority shall set out in an annex to the permit conditions the reasons for the application of the second subparagraph, including the result of the assessment by the operator of the fulfilment of the required conditions.

The operator shall provide an updated assessment in cases where the permit conditions should be changed to ensure that the requirements set out in the second subparagraph, points (a) to (d) are fulfilled.

2. Without prejudice to Article 18, the emission limit values and the equivalent parameters and technical measures referred to in Article 14(1) and (2) shall be based on BAT, without prescribing the use of any technique or specific technology.
3. The competent authority shall set the strictest possible emission limit values ~~that are consistent with the lowest emissions~~ achievable by applying BAT in the installation, and that ensure that, under normal operating conditions, emissions do not exceed the emission levels associated with the best available techniques (BAT-AELs) as laid down in the decisions on BAT conclusions referred to in Article 13(5). The emission limit values shall be based on an assessment by the operator analysing the feasibility of meeting the strictest end of the BAT-AEL range and demonstrating the best performance the installation can achieve by applying BAT as described in BAT conclusions. The emission limit values shall be set through either of the following:
  - (a) setting emission limit values expressed for the same or shorter periods of time and under the same reference conditions as the emission levels associated with the best available techniques; or
  - (b) setting different emission limit values than those referred to under point (a) in terms of values, periods of time and reference conditions.

Where the emission limit values are set in accordance with point (b) the competent authority shall, at least annually, assess the results of emission monitoring in order to ensure that emissions under normal operating conditions have not exceeded the emission levels associated with the best available techniques.

***General binding rules referred to in Article 6 may be applied provided these rules taking into account the best achievable performance while setting relevant emission limit values.***

- 3a. The competent authority shall set environmental performance limit values that ensure that, under normal operating conditions, such performance limits values do not exceed the environmental performance levels associated with BATs as laid down in the decisions on BAT conclusions referred to in Article 13(5).
- 3b. ***By way of derogation from paragraph 3a, the competent authority may, in specific cases, set less strict environmental performance limit values. Such a derogation may apply only where an assessment shows that that, due to:***

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

***(b) the technical characteristics of the installation concerned,***

***the achievement of performance levels associated with the best available techniques as described in BAT conclusions may lead to significantly negative environmental or economical impact.***

***The competent authority shall document in an annex to the permit conditions the reasons for the application of the first subparagraph including the result of the assessment and the justification for the conditions imposed.***

***The competent authority shall in any case ensure that operating under less strict environmental performance limit value shall not cause any significant pollution and shall achieve a high level of protection of the environment as a whole.***

*The Commission shall establish, by means of implementing acts, a standardised methodology for undertaking the assessment referred to in the first subparagraph. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 75(2).*

4. By way of derogation from paragraph 3, and without prejudice to Article 18, the competent authority may, in specific cases, set less strict emission limit values. Such a derogation may apply only where an assessment shows that the achievement of emission levels associated with the best available techniques as described in BAT conclusions would lead to disproportionately higher costs compared to the environmental benefits due to:
- (a) the geographical location or the local environmental conditions of the installation concerned; or
  - (b) the technical characteristics of the installation concerned.

The competent authority shall document in an annex to the permit conditions the reasons for the application of the first subparagraph including the result of the assessment and the justification for the conditions imposed.

The emission limit values set in accordance with the first subparagraph shall, however, not exceed the emission limit values set out in the Annexes to this Directive, where applicable.

Derogations referred to in this paragraph shall respect the principles set out in Annex II. 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. Derogations shall not be granted where they may put at risk compliance with environmental quality standards referred to in Article 18.

The competent authority shall re-assess whether the derogation granted in accordance with this paragraph is justified every 4 years or as part of each reconsideration of the permit conditions pursuant to Article 21, where such reconsideration is made earlier than 4 years after the derogation was granted.

The Commission shall adopt an implementing act, to establish a standardised methodology for assessing the disproportionality between the costs of implementation of the BAT conclusions and the potential environmental benefits referred to in the first subparagraph. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 75(2).’.

(13) The following Article 15a is inserted:

*‘Article 15a*

**Compliance assessment**

1. For the purpose of assessing compliance with emission limit values in accordance with Article 14(1), point (h), the correction made to measurements to determine the validated average emission values shall not exceed the measurement uncertainty of the measuring method.
2. The Commission shall by [OP please insert date = the first day of the month following 24 months after the date of entry into force of this Directive] adopt an implementing act establishing the measuring method for assessing compliance with emission limit values set out in the permit with regard to emissions to air and water. This implementing act shall be adopted in accordance with the examination procedure referred to in Article 75(2).

The method referred to in the first subparagraph shall address, as a minimum, the determination of validated average emission values and shall set out how measurement uncertainty and the frequency of exceedance of emission limit values are to be taken into account in the compliance assessment.

3. Where an installation falling within the scope of this Chapter also falls within the scope of Chapter III or IV and compliance with emission limit values set in accordance with this Chapter is demonstrated pursuant to paragraph 1 of this Article, the installation shall be deemed to also comply with the emission limit values set pursuant to Chapter III or IV for the pollutants concerned.’.

(14) In Article 16, the following paragraph 3 is added:

- ‘3. Where a derogation referred to in Article 15(4) has been granted, Member States shall ensure that the operator ~~monitors the concentration of the pollutants concerned by the derogation which are present in the receiving environment.~~ *provides an assessment of the impact of the derogation on the concentration of the pollutants concerned in the receiving environment.*

*Where the derogation referred to in Article 15(4) would have a quantifiable or measurable effect on the environment, the competent authority shall ensure that an appropriate monitoring system is put in place and require the operator to monitor the concentration of the pollutants concerned in the receiving environment.*

The results of the monitoring shall be transmitted to the competent authority. Where relevant, monitoring and measuring methods for each concerned pollutant set out in other relevant Union legislation shall be used for the purpose of the monitoring referred to in this paragraph.

(15) Article 18 is replaced by the following:

‘Article 18

### **Environmental quality standards**

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 with a view to reducing the specific contribution of the installation to the pollution occurring in the relevant area.

Where stricter conditions have been included in the permit in accordance with the first paragraph, *the competent authority shall assess impact of these stricter conditions on the concentration of the pollutants concerned in the receiving environment.*

*Where the stricter conditions included in the permit in accordance with the first paragraph have a quantifiable or measurable effect on the environment, the competent authority may require the operator to monitor the concentration of the pollutants concerned in the receiving environment.*

~~*regular monitoring of the concentration of relevant pollutants in the receiving environment resulting from operations of the installations concerned shall be required from the operator, and*~~

†The results of such monitoring shall be transmitted to the competent authority. Where monitoring and measurement methods for the concerned pollutants are set out in other relevant Union legislation, such methods shall be used for the purpose of the monitoring referred to in this paragraph.’

(16) In Article 21(5), point (c) is replaced by the following:

‘(c) where it is necessary to comply with an environmental quality standard referred to in Article 18, including in the case of a new or revised quality standard or where the status of the receiving environment requires a revision of the permit in order to achieve compliance with plans and programmes set under Union legislation.’

(17) Article 24 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (d) is replaced by the following:

‘(d) the updating of a permit or permit conditions for an installation in accordance with Article 21(5) points (a), (b) and (c);’;

(ii) the following point (e) is added:

‘(e) the updating of a permit in accordance with Article 21(3) or Article 21(4).’

(b) paragraph 2 is amended as follows:

(i) the first subparagraph is replaced by the following:

‘2. When a decision on granting, reconsideration or updating of a permit has been taken, the competent authority shall make available to the public, including systematically via the Internet, free of charge and without restricting access to registered users, in relation to points (a), (b) and (f), the following **information**:

**(a) systematic information:**

(i) ~~(d)~~ the title of the BAT reference documents relevant to the installation or activity concerned;

(ii) *the title of the BAT conclusions relevant to the installation or activity concerned;*

(iii) *whether any derogation is granted in accordance with Article 15(4);*

(iv) *the emission limit values and environmental performance limit values;*

(v) *the provisions for the reconsideration and updating of the permit.*

**(b) documents and information:**

(i) *the summary of the decision with an overview of the main permit conditions*

(ii) ~~(a)~~ the content of the decision, including a copy of the permit and any subsequent updates;

(iii) ~~(b)~~ the reasons on which the decision is based;

(iv) ~~(e)~~ the results of the consultations held before the decision was taken, including consultations held pursuant to Article 26, and an explanation of how those consultations were taken into account in that decision;

(v) ~~(e)~~ how the permit conditions referred to in Article 14, including the emission limit values, have been determined in relation to the best available techniques and emission levels associated with the best available techniques;

(vi) ~~(f)~~ where a derogation is granted in accordance with Article 15(4), the specific reasons for that derogation based on the criteria laid down in that paragraph and the conditions imposed.?’;

***The Commission shall adopt an implementing act by [insert date] to establish the format to be used for the information and documents referred to in this paragraph. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 75(2).***

***The publication of the documents and information referred to in points (a)(iv) and (b)(i) shall only be required after the adoption of that implementing act.***

(c) paragraph 3 is replaced by the following:

‘3. The competent authority shall also make available to the public, including systematically via the Internet, free of charge and without restricting access to registered users, the following:

- (a) relevant information on the measures taken by the operator upon definitive cessation of activities in accordance with Article 22;
- (b) the results of emission monitoring as required under the permit conditions and held by the competent authority;
- (c) the results of the monitoring referred to in Article 16(3) and in Article 18, second subparagraph.

(18) In Article 25(1), the following subparagraphs are added:

‘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 *may shall* not be conditional on the role that the concerned member of the public 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 redress mechanisms, including injunctive relief as appropriate.’



(19) In Article 26, paragraphs 1 and 2 are replaced by the following:

- ‘1. Where a Member State is aware that the operation of an installation may have significant negative effects on the environment of another Member State, or where a Member State which may be significantly affected so requests, the Member State in whose territory the application for a permit pursuant to Article 4 or Article 20(2) was submitted shall forward to the other Member State any information required to be given or made available pursuant to Annex IV at the same time as it makes it available to the public. On the basis of that information, consultations shall be carried out between the two Member States, while ensuring that the comments from the Member State that may be significantly affected are provided before the competent authority of the Member State in whose territory the application for a permit was submitted reaches its decision. Should no comments be provided by the Member State which may be significantly affected within the period for consultation of the public concerned, the competent authority shall proceed with the permitting procedure.
2. Member States shall ensure that, in the cases referred to in paragraph 1, the application for a permit is also made available for comments to the public of the Member State which may be significantly affected and remains available for the same period of time as provided in the Member State where the application has been made.

(20) The following heading is inserted after Article 26:

‘CHAPTER IIa

**PROMOTING INNOVATION’**

(21) Article 27 is replaced by the following:

*‘Article 27*

**Emerging techniques**

Member States shall, where appropriate, encourage the development and application of emerging techniques, in particular where such techniques have been identified in the BAT conclusions, the BAT reference documents or the findings of the innovation centre for industrial transformation and emissions referred to in Article 27a.’

(22) The following Articles 27a to 27d are inserted:

*[Article 27a]*

**Innovation centre for industrial transformation and emissions**

1. The Commission shall establish and operate an innovation centre for industrial transformation and emissions (the ‘centre’ or ‘INCITE’).
2. The centre shall collect and analyse information on innovative techniques, including emerging techniques relevant to activities within the scope of this Directive, and characterise their level of development and their environmental performance. The Commission shall take into account the findings of the centre when preparing the work programme for the exchange of information referred to in Article 13(3), point (b), and when drawing up, reviewing and updating the BAT reference documents referred to in Article 13(1).
3. The centre shall be assisted by:
  - (a) representatives of Member States;
  - (b) relevant public institutions;

- (c) relevant research institutes;
  - (d) research and technology organisations;
  - (e) representatives of the industries concerned;
  - (f) technology providers;
  - (g) non-governmental organisations promoting environmental protection;
  - (h) the Commission.
4. The centre shall make its findings public, subject to the restrictions laid down in Article 4(1) and (2) of Directive 2003/4/EC.

The Commission shall adopt an implementing act setting out the detailed arrangements necessary for the establishment and functioning of the centre. This implementing act shall be adopted in accordance with the examination procedure referred to in Article 75(2).

#### *Article 27b*

### **Testing of emerging techniques**

Without prejudice to Article 18, the competent authority may grant temporary derogations from the requirements set out in Article 15(2) and (3) and from the principles set out in Article 11, points (a) and (b), for the testing of emerging techniques for a total period of time not exceeding 24 months.

#### *Article 27c*

### **Emission levels associated with emerging techniques**

By way of derogation from Article 21(3), the competent authority may set emission limit values that ensure that, within 6 years of publication of a decision on BAT conclusions in accordance with Article 13(5) relating to the main activity of an installation, emissions shall not, under normal operating conditions, exceed emission levels associated with emerging techniques as laid down in the decisions on BAT conclusions.

### **Transformation plan for a clean, circular and climate neutral industry**

1. Member States shall require that by 30 June 2030 the operator includes in its environmental management system referred to in Article 14a a transformation plan for each installation carrying out any activity listed in points 1, 2, 3, 4, 6.1 a, and 6.1 b of Annex I. The transformation plan shall contain information on how the installation will transform itself during the 2030-2050 period in order to contribute to the emergence of a sustainable, clean, circular and climate-neutral economy by 2050, using the format referred to in paragraph 4.

Member States shall take the necessary measures to ensure that by 31 December 2031, the audit ~~organisation contracted by the operator as part of its environmental management system referred to in Article 14a(3a)~~ assesses the conformity of the transformation plans referred to in the first subparagraph of paragraph 1 with the requirements set out in the implementing act referred to in paragraph 4.

2. Member States shall require that, as part of the review of the permit conditions pursuant to Article 21(3) following the publication of decisions on BAT conclusions after 1 January 2030, the operator includes in its environmental management system referred to in Article 14a a transformation plan for each installation carrying out any activity listed in Annex I that is not referred to in paragraph 1. The transformation plan shall contain information on how the installation will transform itself during the 2030-2050 period in order to contribute to the emergence of a sustainable, clean, circular and climate-neutral economy by 2050, using the format referred to in paragraph 4.

Member States shall take the necessary measures to ensure that the audit ~~organisation contracted by the operator as part of its environmental management system referred to in Article 14a(3a)~~ assesses the conformity of the transformation plans referred to in the first subparagraph of paragraph 2 with the requirements set out in the implementing act referred to in paragraph 4.

3. The operator shall make its transformation plan as well as the results of the assessment referred to in paragraphs 1 and 2 public, as part of the publication of its environmental management system.

4. The Commission shall by 30 June 2028, adopt an implementing act establishing the format for the transformation plans. This implementing act shall be adopted in accordance with the examination procedure referred to in Article 75(2).’.

(23) In Article 42(1), the second subparagraph is replaced by the following:

‘This Chapter shall not apply to gasification or pyrolysis plants, if the gases or liquids resulting from such thermal treatment of waste are treated prior to their incineration to such an extent that:

- (a) the incineration does not cause emissions higher than the combustion of the least polluting fuels available on the market that could be combusted in the installation;
- (b) for emissions other than nitrogen oxides, sulphur oxides and dust, the incineration does not cause emissions higher than emissions from incineration or co-incineration of waste.’.

(24) The following heading is inserted after Article 70:

‘CHAPTER VIa

**SPECIAL PROVISIONS FOR REARING POULTRY, PIGS AND CATTLE’**

(25) The following Articles 70a to 70i are inserted after the heading ‘CHAPTER VIa’:

*‘Article 70a*

**Scope**

This Chapter shall apply to the activities set out in Annex Ia which reach the capacity thresholds set out in that Annex.

## Article 70b

### Aggregation rule

**Member States may provide that** If two or more installations are located close to each other and if their operator is the same or if the installations are under the control of operators who are engaged in an economic or legal relationship, the installations concerned shall be considered as a single unit for the purpose of calculating the capacity threshold referred to in Article 70a.

## Article 70c

### Permits

1. Member States shall take the necessary measures to ensure that no installation falling within the scope of this Chapter is operated without a permit **or registration** and that its operation complies with the operating rules referred to in Article 70i.

Member States may include requirements for certain categories of installations falling within the scope of this Chapter in the general binding rules referred to in Article 6.

Member States shall specify the procedure for granting a permit **or registration** in respect of installations falling within the scope of this Chapter. Those procedures shall include at least the information listed in paragraph 2.

2. Applications for permits **or registrations** shall include at least a description of the following elements:
  - (a) the installation and its activities
  - (b) the animal type
  - (c) the capacity of the installation;
  - (d) the sources of emissions from the installation;
  - (e) the nature and quantities of foreseeable emissions from the installation into each medium.

3. Applications shall also include a non-technical summary of the information referred to in paragraph 2.
4. Member States shall take necessary measures to ensure that the operator informs the competent authority, without delay, of any planned substantial change to the installations falling within the scope of this Chapter which may have consequences for the environment. Where appropriate, the competent authority shall reconsider and update the permit *or the registration*.

#### *Article 70d*

#### **Obligations of the operator**

1. Member States shall ensure that the operator carries out monitoring of emissions and of associated environmental performance levels in accordance with the operating rules referred to in Article 70i.

*Monitoring data shall be obtained by means of measurement methods or, where not practicable, by calculation methods such as the use of emission factors; both methods shall be described in the operating rules.*

The operator shall keep a record of, and process, all monitoring results, for a period of at least **65** years, in such a way as to enable the verification of compliance with the emission limit values and environmental performance limit values set out in operating rules referred to in Article 70i.

2. In the event of non-compliance with the emission limit values and environmental performance limit values set out in the operating rules referred to in Article 70i, Member States shall require that the operator takes the measures necessary to ensure that compliance is restored within the shortest possible time.

3. The operator shall ensure that any land spreading of waste, animal by-products or other residues generated by the installation is undertaken in accordance with the best available techniques, as specified in the operating rules referred to in Article 70i, and other relevant Union legislation and that it does not cause significant pollution of the environment.

#### *Article 70e*

### **Monitoring**

1. Member States shall ensure that suitable monitoring is carried out in accordance with the operating rules referred to in Article 70i.
2. All monitoring results shall be recorded, processed and presented in such a way as to enable the competent authority to verify compliance with the operating conditions, emission limit values and environmental performance limit values which are included in the general binding rules referred to in Article 6 or in the permit.
3. The operator shall, without delay, make available the data and information listed in paragraph 2 of this Article to the competent authority upon request. The competent authority may make such a request in order to verify compliance with the operating rules referred to in Article 70i. The competent authority shall make such a request if a member of the public requests access to the data or information listed in paragraph 2 of this Article.

#### *Article 70f*

### **Non-compliance**

1. Member States shall ensure that the values for emissions and environmental performance levels monitored in accordance with the operating rules referred to in Article 70i do not exceed the emission limit values and environmental performance limit values set out therein.
2. Member States shall set up an effective compliance monitoring system, based on either environmental inspections or other measures, to check compliance with the requirements set out in this Chapter.



3. In the event of non-compliance with the requirements set out in this Chapter, Member States shall ensure that the competent authority requires the operator to take any measures, in addition to the measures taken by the operator under Article 70d, that are necessary to ensure that compliance is restored without delay.

Where non-compliance causes a significant degradation of local air, water or soil conditions, or where it poses, or risks to pose, a significant danger to human health, the operation of the installation shall be suspended by the competent authority until compliance is restored.

#### *Article 70g*

#### **Public information and participation**

1. Member States shall ensure that the public concerned are given early and effective opportunities to participate in the following procedures:
  - (a) preparation of general binding rules as referred to in Article 6 on permits for installations falling within the scope of this Chapter;
  - (b) the granting of a permit for a new installation falling within the scope of this Chapter;
  - (c) the granting of an updated permit in accordance with article 70c.4 for any substantial change to an existing installation falling within the scope of this Chapter.
2. The competent authority shall make available to the public, including systematically via the Internet, free of charge and without restricting access to registered users, the following documents and information:
  - (a) the permit *or the registration*;
  - (b) the results of the consultations held in accordance with paragraph 1;
  - (c) the general binding rules referred to in Article 6 applicable to installations falling within the scope of this Chapter;
  - (d) the reports of inspections of the installations falling within the scope of this Chapter.

## *Article 70h*

### **Access to justice**

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 this Chapter 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 may not be conditional on the role that the concerned member of the public 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 redress mechanisms, including injunctive relief as appropriate.

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

## *Article 70i*

### **Operating Rules**

1. The Commission shall establish operating rules containing requirements consistent with the use of best available techniques for the activities listed in Annex Ia, which shall include the following:
  - (a) emission limit values;

*(b) environmental performance limit values;*

*(b)(c) monitoring requirements;*

*(c) —land spreading practices;*

*(d) —pollution prevention and mitigation practices;*

*(e) —environmental performance limit values;*

*(f)(d) pollution prevention, mitigation practices and other measures consistent with Annex III, such as nutritional management, feed preparation, housing manure management (collection, storage, processing, land spreading) and storage of dead animals.*

The operating rules shall take into account inter alia the nature, type, size and density of these installations and the specificities of pasture based cattle rearing systems, where animals are only seasonally reared in indoor installations.

*1a. In order to draw up, review and, where necessary, update operating rules, the Commission shall organise an exchange of information between Member States, the sector concerned, non-governmental organisations promoting environmental protection and the Commission.*

*The exchange of information shall, in particular, address the following:*

- (a) the performance of installations and techniques in terms of emissions, consumption and nature of raw materials, water consumption, use of energy and generation of waste;*
- (b) the techniques used, associated monitoring, cross-media effects, economic and technical viability and developments therein;*
- (c) best available techniques identified after considering the issues mentioned in points (a) and (b).*

2. The Commission shall by [OP please insert date = the first day of the month following 24 months after the date of entry into force of this Directive] adopt *[a delegated act in accordance with Article 76 to supplement this Directive by establishing the operating rules referred to in paragraph 1]*.
3. Member States shall ensure that all the permit conditions for the installations concerned are in compliance with the operating rules referred to in paragraph 1 within **428** months of the entry into force of the *[delegated act]* establishing those rules.?

(26) In Article 73(1), the first and the second subparagraphs are replaced by the following:

By 30 June 2028 and every 5 years thereafter, the Commission shall submit to the European Parliament and to the Council a report reviewing the implementation of this Directive. The report shall take into account the dynamics of innovation and the review referred to in Article 8 of Directive [2003/87/EC](#).

That report shall include an assessment of the need for Union action through the establishment or updating of Union-wide minimum requirements for emission limit values and for rules on monitoring and compliance for activities within the scope of the BAT conclusions adopted during the previous **five**-year period, on the basis of the following criteria:

- (a) the impact of the activities concerned on the environment as a whole and on human health;
- (b) the state of implementation of best available techniques for the activities concerned.

That assessment shall consider the opinion of the forum referred to in Article 13(4).

Chapter III and Annex V of this Directive shall be considered to represent the Union-wide minimum requirements in the case of large combustion plants.

The report shall be accompanied by a legislative proposal where appropriate. Where the assessment referred to in the second subparagraph identifies such a need, the legislative proposal shall include provisions establishing or updating Union-wide minimum requirements for emission limit values and for rules on monitoring and compliance assessment for the activities concerned

(27) Article 74 is replaced by the following:

*Article 74*

**Amendments of Annexes**

1. In order to allow the provisions of this Directive to be adapted to scientific and technical progress on the basis of best available techniques, the Commission shall adopt delegated acts in accordance with Article 76 as regards the adaptation of Parts 3 and 4 of Annex V, Parts 2, 6, 7 and 8 of Annex VI and Parts 5, 6, 7 and 8 of Annex VII to such scientific and technical progress.
2. ~~*In order to allow the provisions of this Directive to meet its objectives to prevent or reduce pollutants emissions and achieve a high level of protection of human health and the environment, the Commission shall be empowered to adopt a delegated act, in accordance with Article 76, to amend Annex I or Annex Ia by including in those Annexes an agro-industrial activity that meets the following criteria:*~~
  - ~~*(a) it has or is expected to have an impact on human health or the environment, in particular as a consequence of pollutant emissions and use of resources;*~~
  - ~~*(b) its environmental performance diverges within the Union;*~~
  - ~~*(c) it presents potential for improvement in terms of its environmental impact through the application of best available techniques or innovative techniques;*~~
  - ~~*(d) its inclusion within the scope of this Directive is assessed, on the basis of its environmental, economic and social impacts, to have a favourable ratio of societal benefits to economic costs.*~~
3. The Commission shall carry out appropriate consultation with stakeholders before adopting a delegated act in accordance with this Article.

The Commission shall make public relevant studies and analyses used in the preparation of a delegated act adopted in accordance with this Article, at the latest at the adoption of the delegated act.’.

(28) Article 75 is replaced by the following:

*Article 75*

**Committee procedure**

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
  2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.
- (29) Article 76 is replaced by the following:

*Article 76*

**Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 48(5), *[Article 70i]* and Article 74 shall be conferred on the Commission for a period of 5 years from ... **[OP please insert the date = the first day of the month following the date of entry into force of this Directive]**. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Articles 48(5), *[Article 70i]* and Article 74 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Articles ~~15(4) or~~ 48(5) or Article 74 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.’

(30) Articles 77 and 78 are deleted.

(31) Article 79 is replaced by the following:

*‘Article 79*

#### **Penalties**

1. Without prejudice to the obligations of Member States under 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, Member States shall lay down rules on penalties applicable to violations of national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are applied. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall without delay notify the Commission of those rules and of those provisions, and shall notify without delay any subsequent amendment affecting them.

2. The penalties referred to in paragraph 1 shall include fines proportionate to the turnover of the legal person or to the income of the natural person having committed the infringement. The level of the fines shall be calculated in such a way as to make sure that they effectively deprive the person responsible for the violation of the economic benefits derived from that violation. ~~The level of the fines shall be gradually increased for repeated infringements.~~ In the case of a violation committed by a legal person, ~~the maximum amount~~ of such fines shall be proportionate to ~~at least 8 % of~~ the operator's annual turnover in the Member State concerned, *taking into account, inter alia, the specificities of small and medium-sized enterprises (SMEs).*
3. Member States shall ensure that the penalties referred to in paragraph 1 give due regard to the following, as applicable:
- (a) the nature, gravity, and extent of the violation;
  - (b) the intentional or negligent character of the violation;
  - (c) the population or the environment affected by the violation, bearing in mind the impact of the infringement on the objective of achieving a high level of protection of human health and the environment. '.

(32) The following Article 79a is inserted:

*'Article 79a*

**Compensation**

1. Member States shall ensure that, where damage to human health has occurred as a result of a violation 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 and, where appropriate, from the relevant competent authorities responsible for the violation.



2. Member States shall ensure that, as part of the public concerned, non-governmental organisations promoting the protection of human health or the environment and meeting any requirements under national law are allowed to represent the individuals affected and bring collective actions for compensation. Member States shall ensure that a claim for a violation leading to a damage cannot be pursued twice, by the individuals affected and by the non-governmental organisations referred to in this paragraph.
  3. 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 a violation pursuant to paragraph 1.
  4. ~~*Where there is a claim for compensation in accordance with paragraph 1, supported by evidence from which a causality link may be presumed between the damage and the violation, Member States shall ensure that the onus is on the person responsible for the violation to prove that the violation did not cause or contribute to the damage.*~~
  5. Member States shall ensure that the limitation periods for bringing actions for compensation referred to in paragraph 1 are not shorter than 5 years. Such periods shall not begin to run before the violation has ceased and the person claiming the compensation knows or can reasonably be expected to know that he or she suffered damage from a violation pursuant to paragraph 1.<sup>7</sup>.
- (33) Annex I is amended as set out in Annex I to this Directive.
- (34) Annex Ia as set out in Annex II to this Directive is inserted.
- (35) Annex II is replaced by the text in Annex III to this Directive.

## Article 2

### Amendments to Directive 1999/31/EC

In Article 1 of Directive 1999/31/EC, paragraph 2 is deleted.

### *Article 3*

#### *Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [OP please insert the date = the first day of the month following 18 months after the date of entry into force of this Directive]. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

### *Article 4*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

### *Article 5*

This Directive is addressed to the Member States.

Done at Strasbourg,

*For the European Parliament*

*The President*

*For the Council*

*The President*

(1) **ANNEX I**

Annex I to Directive 2010/75/EU is amended as follows:

(a) point 1.4 is replaced by the following:

‘1.4. Gasification, liquefaction or pyrolysis of:

(a) coal;

(b) other fuels in installations with a total rated thermal input of 20 MW or more.’;

***Electrolysis of water for production of hydrogen with electrical input of 20 MW or more with the electricity [stemming from renewable sources]***

(b) point 2.3 is replaced by the following:

‘2.3. Processing of ferrous metals:

(a) operation of hot-rolling mills with a capacity exceeding 20 tonnes of crude steel per hour;

(aa) operation of cold-rolling mills with a capacity exceeding 10 tonnes of crude steel per hour;

(ab) operation of wire drawing machines with a capacity exceeding 2 tonnes of crude steel per hour;

(b) operation of smitheries with hammers the energy of which exceeds 20 50 kilojoule per hammer;

(ba) operation of smitheries with forging presses the force of which exceeds 10 mega-newton (MN) per press;

(c) application of protective fused metal coats with an input exceeding 2 tonnes of crude steel per hour.’

(c) the following point 2.7 is inserted:

‘2.7. Manufacture of [~~lithium-ion~~] batteries, *other than exclusively assembling, (including assembling battery cells and battery packs),* with a production capacity of 3.5 GWh or more per year.’

(d) point 3.5 is replaced by the following:

‘3.5. Manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain with

(a) a production capacity exceeding 75 tonnes per day; or

(b) a kiln capacity exceeding 4 m<sup>3</sup> and a setting density per kiln exceeding 300 kg/m<sup>3</sup>.

(e) the following point 3.6. is inserted:

‘3.6. Extraction and treatment (operations such as comminution, size control, beneficiation and upgrading) of the following ~~non-energy~~ minerals *and ores*:

(a) ~~industrial minerals, including~~ barite, bentonite, diatomite, feldspar, fluorspar, graphite, gypsum, kaolin, magnesite, perlite, potash, salt, sulphur and talc *with a capacity exceeding [50] tonnes per day*;

(b) ~~metalliferous ores, including~~ bauxite, chromium, cobalt, copper, gold, iron, lead, lithium, manganese, nickel, palladium, platinum, tin, tungsten and zinc.’

(g) point 5.3 is replaced by the following:

‘5.3. (a) Disposal of non-hazardous waste with a capacity exceeding 50 tonnes per day involving one or more of the following activities, and excluding activities covered by Council Directive 91/271/EEC \*:

(i) biological treatment (such as anaerobic digestion);

(ii) physico-chemical treatment;

(iii) pre-treatment of waste for incineration or co-incineration;

- (iv) treatment of slags and ashes;
  - (v) treatment in shredders of metal waste, including waste electrical and electronic equipment and end-of-life vehicles and their components.
- (b) Recovery, or a mix of recovery and disposal, of non-hazardous waste with a capacity exceeding 75 tonnes per day involving one or more of the following activities, and excluding activities covered by Directive 91/271/EEC:
- (i) biological treatment (such as anaerobic digestion);
  - (ii) pre-treatment of waste for incineration or co-incineration;
  - (iii) treatment of slags and ashes;
  - (iv) treatment in shredders of metal waste, including waste electrical and electronic equipment and end-of-life vehicles and their components.

When the only waste treatment activity carried out is anaerobic digestion, the capacity threshold for this activity shall be 100 tonnes per day.

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\* Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment (OJ L 135, 30.5.1991, p. 40).’;

- (h) point 6.2 is replaced by the following:

‘6.2. Pre-treatment (operations such as washing, bleaching, mercerisation), dyeing or finishing of textile fibres or textiles where the treatment capacity exceeds 10 tonnes per day.’.

- (i) point 6.5 is replaced by the following:

‘6.5. Disposal or recycling of animal carcasses or animal by-products with a treatment capacity exceeding 10 tonnes per day.’.

- (j) point 6.6 is deleted.

(2) **ANNEX II**

**‘ANNEX Ia**

**Activities referred to in Article 70a**

1. Rearing of cattle, pigs or poultry in installations of **[150]** livestock units (LSU) or more.

Rearing of any mix of the following animals: cattle, pigs, poultry, in installations of **[150]** LSU or more.

The approximate equivalent in LSU is based on the conversion rates established in Annex II to Commission Implementing Regulation (EU) No 808/2014\*.

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\* Commission Implementing Regulation (EU) No 808/2014 of 17 July 2014 laying down rules for the application of Regulation (EU) No 1305/2013 of the European Parliament and of the Council on support for rural development by the European Agricultural Fund for Rural Development (OJ L 227, 31.07.2014, p.18).

(3) ANNEX III

‘ANNEX II

**Principles to be complied with when granting a derogation referred to in Article 15(4)**

Derogations provided in accordance with Article 15(4) shall respect the following principles:

**1. Costs**

- 1.1. Costs referred to in Article 15(4) shall be the costs of complying with the emission levels ~~or~~ *environmental performance levels* associated with best available techniques and include both capital costs and operating costs. Wider social or economic costs shall not be included.
- 1.2. The evaluation of the costs shall be quantitative, and supported by a qualitative assessment.
- 1.3. Costs taken into account in the evaluation shall:
  - (a) represent net value costs, after deduction of any financial benefits from applying best available techniques;
  - (b) include the cost of accessing financial capital required to finance the best available techniques;
  - (c) be calculated using a discount rate to take account of differences in monetary value over time.
- 1.4. The application for a derogation shall clearly identify the source of the costs and the methods used to calculate them, including the discount rate mentioned in point 1.3(c) and the estimation of uncertainties associated with the costs evaluation.
- 1.5. Costs evaluated by the operator shall be assessed by the competent authority, based on information from other sources such as technology providers, expert judgements or data from other plants where best available techniques were recently installed.

## **2. Environmental benefits**

- 2.1. Environmental benefits referred to in Article 15(4) shall be environmental benefits of complying with the emission levels ~~or environmental performance levels~~ associated with best available techniques.
- 2.2. The evaluation of environmental benefits shall be quantitative (in monetary terms) and supported by a qualitative assessment. Established pollutant damage costs shall be used where available.
- 2.3. The evaluation of environmental benefits shall consider a discount rate applied to any monetised benefits which addresses differences in values to society over time.
- 2.4. The application for a derogation shall clearly identify the source of the environmental benefits information and the methods used to calculate the environmental benefits, including the discount rate mentioned in point 1.3(c) and the estimate of uncertainties associated with the evaluation of the environmental benefits.
- 2.5. Environmental benefits evaluated by the operator shall be assessed by the competent authority, based on expert judgement or data from other plants where the best available techniques were recently installed.

## **3. Disproportionality of costs compared to environmental benefits**

- 3.1. For the purpose of determining if there is a disproportionality, the costs of complying with the emission levels ~~levels or environmental performance levels~~ associated with best available techniques, and the benefits of such compliance, shall be compared.
- 3.2. The comparison mechanism shall include the following elements:
  - (a) a method to address uncertainties in evaluating costs and environmental benefits;
  - (b) a specification of the margin by which the costs should exceed the environmental benefits.?