

EUROBAT feedback on proposal for a Directive revising Directive 2010/75/EU (Industrial Emissions Directive) (23 June 2022)

EUROBAT, the Association of European Automotive and Industrial Battery Manufacturers, thanks the Commission for the opportunity to comment on the proposal for a Directive revising Directive 2010/75/EU (Industrial Emissions Directive).

EUROBAT calls on policy-makers to ensure that the Sevilla process and the permitting regime under the Directive properly take cross-policy processes and wider societal and economic impacts into account, in particular the wider objectives of the EU Green Deal and its zero pollution action plan for water, air, and soil.

Batteries are critical to the fight to decarbonise our economy and thus tackle climate change and reduce air pollution. All battery technologies - lead, lithium, nickel and sodium-based batteries — are needed to support the decarbonization of the transport, energy, logistics, and telecommunications sectors. Europe must indeed take the lead in designing and building the most environmentally sustainable energy storage solutions and supporting the development of its battery industry.

EUROBAT thus opposes any changes to the legislation which would disproportionately lengthen the permitting process, reduce regulatory predictability and, therefore, drive relocation of production to non-EU countries and disincentivise investments in battery manufacturing in Europe.

EUROBAT objects to establishing the lower ends of the best available techniques-associated emissions limits (BAT-AELs) as a basis for setting emission limit values, and to setting binding environmental performance limits in permits. EUROBAT also raises concerns about certain elements of the environmental management system (EMS).

The extension of the scope of the Directive to large-scale lithium-ion battery manufacturing and to the extraction and treatment of metalliferous ores is rejected in favour of further consolidation of a Sevilla process centered on processes rather than sectors.

Conversely, EUROBAT supports the proposal's emphasis on innovation, specifically the establishment of a new dedicated centre to support innovation (INCITE) which would collect and analyse information on innovative techniques and characterise their state-level of development.

The ambitious timeline for the review of existing BAT reference documents (BREFs) (2024-2027) is also welcomed.

Inclusion of large-scale lithium-ion batteries manufacturing and extraction and treatment of non-energy raw materials as sectors in the scope of the Directive

As noted in the Staff Working Document (SWD) on the impact assessment, much of the battery value chain is already covered through one or several entries to Annex I to the Directive: production and processing of non-ferrous metals, manufacturing of chemicals, use of organic solvents, and waste treatment.

All processes at risk of causing releases of pollutants to the environment for the production and recycling of batteries are already captured in the list of activities subject to permitting requirements.

Activities falling under the definition of “processing of non-ferrous metals” (point 2.5 of Annex I, BREF of non-ferrous metals industries¹) are key processes for the manufacturing and recycling of all batteries. In the case of lead-based batteries, this is typically an integrated part of the manufacturing site. In the case of lithium-based batteries, this process (production of copper and aluminum foils) typically is allocated to the supply chain and not integrated into the battery manufacturing site.

Likewise, the production of metal oxides, which are used as cathode (positive electrode) materials, falls under permitting requirements through point 4.2 of Annex I (Production of inorganic chemicals, such as (e) non-metals, metal-oxides or other..., BREF on Large Volume Inorganic Chemicals – Solids and Others industry²).

With regards to lithium-ion battery manufacturing, the assembly step of batteries may often take place in a separate installation as the manufacture of battery cells, with imported cells being grouped into battery modules before integration in a battery system. Lithium-ion battery modules typically comprise 40 to 60 cells per module, with the average battery systems comprising 2 to 8 modules supported with a battery management system and cooling system.

EUROBAT considers that the impact assessment does not define which specific environmental concerns associated with the manufacture (and specifically the assembly step) of lithium-ion batteries make permit requirements necessary. Risks associated with the presence of large volumes of metals and metal alloys classified for environmental, physical or health hazards in installation with a capacity of 3,5 GWh of more per year should be addressed under the SEVESO III Directive and occupational health and safety legislation.

At the same, the Commission acknowledges that key environmental impacts from battery production (irrespective of chemistries) are already covered by the IED, specifically the processes surrounding the electrode manufacturing step and the use of chemical substances.

During a presentation of the proposal during the meeting of the IED Article 13 expert group held on 10 May 2022, the Commission explained that certain important sectors for green transition are facing public acceptability issues, with a need for better definition for environment standards in a way that support better public acceptance, in particular for lithium-ion batteries.

However, the mandatory publication of the EMS on the internet, which includes a chemicals inventory of hazardous substances, would offset any possible benefits stemming from the inclusion of the manufacture of lithium-ion batteries as a sector in the scope of the Directive.

In addition, the SWD on the impact assessment notes that extending the current sectoral coverage to also include battery production within the scope of the Directive would contribute to levelling the playing field across the EU. However, discrepancies between Member States in the capabilities of staff responsible for the granting of permits would cause any additional workload on the permitting process to weaken the cohesion of the single market.

Furthermore, EUROBAT fears that several additional elements to be considered in the permitting process and BAT conclusions would overlap and possibly conflict with the provisions of the new Battery Regulation should the scope of the IED be extended to battery manufacturing.

¹ Gianluca Cusano, Miguel Rodrigo Gonzalo, Frank Farrell, Rainer Remus, Serge Roudier, Luis Delgado Sancho; Title; Best Available Techniques (BAT) Reference Document for the main Non-Ferrous Metals Industries, EUR 28648, doi:10.2760/8224

² Integrated Pollution Prevention and Control Reference Document on Best Available Techniques for the Manufacture of Large Volume Inorganic Chemicals - Solids and Others industry August 2007

Sustainability requirements for batteries and their re-purposing under the Batteries Regulation may not fully be aligned with measures on suitable monitoring requirements for the consumption and reuse of resources such as energy, water and raw materials (Art. 14(1)(bc)) in permits or the need for operators to consider the overall life-cycle environmental performance of the supply chain (Art. 11(fb)).

While the impact assessment contends that the measure would lead to weakly negative impacts on businesses in terms of administrative burden and compliance costs, consequences for the length and complexity of the permitting process for new installations are not explicitly specified.

In an Opinion adopted in November 2021³, the Fit for the Future Platform concluded that the IED permitting process can take a significant amount of time with negative consequences for investment decisions.

Underpinning the granting of permits on sector-specific BAT conclusions existing alongside relevant process-specific BATs would add further hindrances to the permitting process, all the more since, as highlighted in the Fit for the Future Platform Opinion of 2021, several Member States do not comprise a system for training staff responsible for permits, which already leads to longer permit deadlines.

The Platform's Opinion noted that the maximum 8 years-review cycle for the review of BREFs is usually not respected, with stakeholders observing a doubling of the timing compared with the recommended review timeline set out in the Commission Implementing Decision 2012/119/EU⁴

Therefore, resources allocated for the development of BREFs stemming from the extension of the Directive to the manufacture of batteries (lithium-ion or other chemistries if the scope gets further extended via Article 74(1) or during the legislative process) should be allocated to the revision of existing BREFs instead of being captured by additional workflows under the already burdened Sevilla process.

Investing a proper amount of resources in the Sevilla process and the update of existing processes-specific BREFs and, when relevant, development of new ones, would enable a more granular and efficient approach to the control of pollution from installations in Europe.

EUROBAT thus encourages the Commission to proceed with the review of the BREF documents applying to entries 2.5 of (Non-Ferrous Metals Industries), 4.2 (Specialty Inorganic Chemicals and Large Volume Inorganic Chemicals), 5.1 and 5.3 (Waste Treatment) and 6.7 (organic solvents) of Annex I.

Should the Commission decide to adopt a Roadmap describing a provisional timeline for extending the scope of the Directive to further agro-industrial activities, then EUROBAT would encourage the Commission to explicitly exempt battery manufacturing in order to ensure regulatory predictability.

EUROBAT stresses that policy-makers should rather create a framework enabling the identification of any risky process not properly covered under Annex I instead of adding parallel sector-specific workflows under the Sevilla process.

Similar concerns arise from the extension of the scope of the Directive to the extraction and refining of non-ferrous metals.

Such an extension would contradict Europe's policies on building strong raw material supply chains, something which rising prices of lithium and the Ukraine-Russian war have made more urgent.

³ [2021/SBGR1/02](#)

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012D0119&from=FR>

The environmental footprint of mining activities is already controlled by a comprehensive set of EU legislations, including Directive 2006/21/EC on the management of waste from extractive industries, Council Directive 92/43/EEC (Habitat Directive), and Directive 2000/60/EC (Water Framework Directive).

EUROBAT notes that the impact assessment does not properly define the form that BREFs covering the extraction sector as a whole could take in light of the wide diversity of geological and geographical conditions that characterise mining sites in Europe.

Defining harmonised environmental performance standards applicable for resource extraction is therefore not likely to be applicable in practice.

Revision of the permitting process

Should the scope of the Directive be further extended in the coming years to cover the manufacturing and assembly of all types of rechargeable batteries, irrespective of production capacities, then obliging competent authorities to set the strictest possible emission limit values that are applicable by applying BATs in installations would put many small to medium-scale battery manufacturing plants at risk of non-compliance.

For example, with regards to waste management, several techniques listed in the BREFs on Non-Ferrous Metals Industries and Waste Treatment may lead to a reduction of emissions of certain polluting substances to a particular environmental compartment while at the same time causing rising emissions of the same or other pollutants to other environmental compartments.

Therefore, it will be extremely challenging to ensure that all processes under the scope of the Directive can achieve the lowest limit value of the BAT-range for each environmental parameter.

Besides, it is understood that competent authorities would need to perform case-by-case assessments of the feasibility of meeting the strictest end of the BAT-AEL range and demonstrating the best performances the installation can achieve by applying BATs as described in BAT conclusions. This would place a considerable burden on operators and competent authorities, and therefore further hobble the permitting process.

The problem is compounded by the provisions of the new Article 15(3)(a), under which environmental performance limit values (BAT-AEPL) would be made binding in the permitting process.

Certain processes operating at relatively high temperatures may perform well under the pollutant emissions reduction parameter while failing to meet average energy consumption values from BAT conclusions and therefore no longer be compatible with permit provisions.

EUROBAT consider that greenhouse gas emissions reduction, energy efficiency and circular economy goals should be incentivised, but not become mandatory requirements in the permitting process.

We fear that the provisions of the new Articles 15(3) and 15(3)(a) would jeopardize the integrated approach concept where due consideration is given to interactions between different techniques set in BAT conclusions.

Environmental management system and transformation plan

Article 14(d) duplicates several provisions of the REACH Regulation and of OSH legislation.

The Chemical Agents Directive (CAD) and Carcinogens, Mutagens and Reprotoxics Directive (CMRD) oblige employers to draw up an inventory of hazardous substances present in installations and to perform an assessment of the risks posed by these substances for workers.

As for the assessment of alternatives, the REACH Authorisation Title provides for a mandatory assessment of alternatives for each application for authorisation. This includes a consultation of third parties at the beginning of the European Chemicals Agency's (ECHA) Opinion-making phase.

Likewise, restriction proposals on industrial uses of harmful chemicals and the corresponding Opinion-making phase within ECHA's scientific committees usually cover an analysis of alternatives to the use of the substances in scope.

The CAD and CMRD also oblige employers to consider substitution of any hazardous substances present in installations.

EUROBAT also fears that Article 14(d) would pre-empt the outcome of the revision of the REACH Regulation, which is expected to lay out extended requirements for exposure scenarios and supply chains communication, with possibly additional requirements for downstream users to provide exposure data to their suppliers or to ECHA itself.

For example, according to CARACAL document CA/12/2022, the new version of REACH could establish a requirement for downstream users to report the use of (any or certain types of) hazardous/classified substances to ECHA as identified to them in the Safety Data Sheet (SDS).

Lastly, EUROBAT rejects the binding transformation plan. The lack of clarity of Article 27(d) would weaken regulatory certainty. The drafting of the plans is expected to consume a massive amount of resources, with unclear environmental benefits given the scale and ambition of the Fit for 55 package for the transition to a sustainable, clean, circular and climate-neutral economy by 2050.

About EUROBAT

EUROBAT is the association for the European manufacturers automotive, industrial and energy storage batteries. EUROBAT has more than 50 members from across the continent comprising more than 90% of the automotive and industrial battery industry in Europe. The members and staff work with all stakeholders, such as battery users, governmental organisations and media, to develop new battery solutions in areas of hybrid and electro-mobility as well as grid flexibility and renewable energy storage.

