Position paper – July 2022

Industrial Emissions Directive revision and E-PRTR recast: Glass industry's views

The European glass industry is an innovative and highly strategic sector from which the EU benefits greatly. Glass Alliance Europe supports the EU Green Deal and actively pursues pathways to reduce emissions.

Glass products have a crucial societal contribution insofar as they are feeding important value chains (energy, building, transport, food & drink, medical, etc.). Glass is also a key enabling material for the transition in other sectors, which have the highest emissions reduction potential (energy, building, transport).

The on-going industrial transformation process requires important investments in the coming years. The regulatory framework needs to allow for an investment-conducive environment, which is key to the materialisation of the EU policy objectives. It needs to carefully combine on one hand the incentives for the reduction of pollution and on the other hand to provide for sufficient flexibility for the integration of new technologies, including potentially disruptive.

Glass Alliance Europe appreciates that the European Commission is considering how the Industrial Emissions Directive could contribute to the green transition and transformation of the industry. However, some of the proposed measures go against the proportionality and/or subsidiarity principles and raise serious concerns regarding their compatibility with competition rules and confidentiality of business information. Moreover, these proposals would exert a significant regulatory pressure on EU industry, in a limited timeframe, at a time of crises, where the Covid-19 waves are being followed by the impact of war on the European continent.

Glass Alliance Europe takes this opportunity to comment on the proposals for the revision of the Industrial Emissions Directive (IED) and for the recast of the European Pollutant Release and Transfer Register (E-PRTR), looking at them from the industrial reality perspective and focusing on three aspects:

- **The IED and E-PRTR contribution to the Green Deal objectives, to innovation and to industrial transformation,**
- **The compatibility of the measures proposed by the European Commission with competition rules and confidentiality of business information,**
- **The need to preserve a coherent set of legislation.**

About Glass Alliance Europe - EU Transparency Register N° 74505036439-88

Europe is the world leader in glass making. The EU glass industry comprises more than 500 plants providing 500,000 direct and indirect jobs. Glass is a unique and inert material made from abundant natural resources and fully recyclable. It is a key contributor to the EU objectives of a low-carbon, energy efficient and circular economy, and a key enabling material for essential supply chains, such as the pharmaceutical and health sector, the food and drink industry, buildings and construction, automotive, luxury goods and perfumes, electronics, etc.

For more information http://www.glassallianceeurope.eu/

Position paper – July 2022

Recommendations for the Industrial Emissions Directive revision and the E-PRTR recast

1. The IED contribution to the Green Deal objectives, innovation and industrial transformation

Glass Alliance Europe is extremely concerned by the impact of the suggested revision of the IED. Part of the proposed regulatory changes contain unrealistic requirements which would make compliance impossible in practice. Other suggested provisions would over-complicate the regulatory compliance framework and add administrative burden. Altogether, the provisions in the IED revision proposal listed hereafter would hinder industrial transformation rather than support it.

- **Strictest end of BAT-AEL range**

The BAT definition process laid down in the Industrial Emissions Directive ensures that the best available techniques for industrial installations are regularly reviewed and updated. The definition of '*emission levels associated with the best available techniques*' is '*the range of emission levels obtained under normal operating conditions using a best available technique or a combination of best available techniques, as described in BAT conclusions, expressed as an average over a given period, under specified reference conditions*' (Article 3 §13, IED revision proposal).

It is essential for BAT-AELs to be associated with a range for reasons pertaining both to the industrial reality in which plants are operating and to the technical feasibility in reducing pollutants under an integrated approach.

The BAT-AELs must remain anchored in **industrial reality and local conditions**. The BAT-AELs are based on real-life data collected by plants and verified by authorities. In practice, the same technology applied in two different installations shows a variation in its impact on emissions. This is due to installation specific parameters and conditions such as the plant operating mode, the raw materials used, as well as the maintenance, design and age of the installation. Local conditions have an impact as well, for example some glass producers use natural gas mined locally that has higher nitrogen content compared to a typical fuel on the EU market, which usually results in higher NOx emissions from their installations. The range in BAT-AELs reflects the industrial reality and should be kept in the legislation.

The **integrated approach of the IED** must be preserved. In practice, pollutants are not reduced all together to the minimum possible for each one of them. Some pollutants are mutually exclusive, such as NOx and CO for instance. This means that a measure reducing one will generally increase the other. A good example illustrating this effect in the glass sector is an increase of recycled glass in a glass furnace. This measure is overall positive, as it will lead to a lower consumption of virgin materials and energy, but it will generally also go together with higher SOx emissions.

The proposed obligation to implement the lower range value of BAT-AELs (Article 15 §3, *ibid.*) by default would be impossible to achieve in practice for all pollutants. Therefore, Glass Alliance Europe does not support the European Commission's proposal to impose an implementation of the strictest BAT-AELs range end.

In addition, the IED revision proposal does not specify how the feasibility assessment (Article 15 §4, *ibid.*) should be conducted. In any case, it bears the risk of **adding to the administrative burden** of industrial operators and national, regional and local authorities.

- **Environment Management System and Transformation Plan**

The new draft requirements linked to the preparation and implementation of an Environment Management System (new Article 14a, IED revision proposal) and of a Transformation Plan (new Article 27d, *ibid.*) are contrary to the proportionality principle, overlap with other legislation and existing instruments, and do not provide sufficient flexibility in terms of industrial innovation and transformation.

The introduction of a mandatory **Environment Management System** appears as redundant. Industrial operators already widely implement the ISO 14001 and ISO 50001 standards, under which they map activities and identify risks, conceive a plan, monitor progress, and adjust when and where necessary. There would be **no room for such adjustments** under the European Commission's proposal which paves the way for a strict reporting scheme, without the benefits of a management tool. In addition, a number of the proposed requirements would constitute an **overlap and hence a confusion with other legislation** (e.g. REACH). The proposal also ignores the scope of the installation activities. For instance, environmental due diligence is performed at group level and cannot be implemented at installation level. The same applies to the overall life-cycle environmental performance of the whole supply chain which is not in the hands of the operator and is therefore **disconnected from the permit at installation level** (Article 11(fb) and Article 14a §2(b), *ibid.*). The new system also bears the risk that new/different management systems emerge, which would lead to non-comparability of the certifications. Last but not least, the suggested obligations would be contrary to the proportionality principle. **Glass Alliance Europe recommends avoiding the multiplication of policy implementation tools and rather relying on the instruments already in place, such as the abovementioned standards.**

The new requirement for a **Transformation Plan** says nothing about its content, which is to be defined at a later stage, in a delegated act, and therefore brings **uncertainty for industrial operators**. Such a potentially impactful new measure should not be left out of the normal political decision process and its content should be defined in cooperation with the industry representatives. In the absence of any content, except for the two year-period given to operators to draw their plan (2028-2030) which is *a priori* much too short, the glass industry cannot support this proposal.

When it comes to its potential implementation, it is **impossible to make a link between the Transformation Plan and the permit procedures**. The transformation efforts of industrial operators are subject to a series of **external factors**, mainly technological developments, the national energy mix, as well as the availability of renewable energy sources. A Transformation Plan can therefore only be **indicative by nature** and offer the required flexibility to test and implement new technologies. Consequently, **Transformation Plans should not be made mandatory**.

Furthermore, there is a concern regarding an inconsistency within the European Commission's IED revision proposal which concerns auditing the Transformation Plan for conformity (such a requirement is mentioned in Article 27d §1 *ibid.*, but not in Article 14), as well as regarding the expected additional administrative burden falling on national authorities.

Finally, the crucial issue of **confidentiality of business information** must also be ensured – as described in section 2 of this paper.

- **Environment Performance Values**

The new concept of mandatory environmental performance limit values (Article 15 §3a, *ibid.*), to be included in the BAT conclusions, is **contrary to the innovation and industrial transformation objectives** set under the Green Deal. The concept does not allow to capture specificities linked to decarbonisation technologies (e.g. some technologies with an important emissions abatement potential may also be more energy-intensive) or to waste treatment (e.g. recycling taking place outside of the installation remits). **Glass Alliance Europe cannot support this concept in its mandatory form.**

- **Innovation centre for industrial transformation and emissions (INCITE)**

Glass Alliance Europe appreciates that the proposal acknowledges in principle the need for flexibility for innovation (such as the extension of testing period for emerging techniques, new Article 27b, IED revision proposal). Industrial transformation does indeed go along with uncertainties in terms of technology performance and securing input supplies, and requires sometimes long testing procedures.

The creation of the INCITE (Article 27a, *ibid.*) is understood by Glass Alliance Europe as the recognition of the important role to be played by innovation for industrial transformation. However, it should be borne in mind that projects in view of the industrial transformation are well underway in the European glass sector and are organised in coordination with a wide variety of institutions and other actors. These decentralised structures enable a **high level of dynamism and flexibility, which are necessary to innovation**, but which would not be offered by a centralised organisation. The glass industry considers that the subsidiarity principle should apply here, and **decentralised structures be favoured**.

In addition, when it comes to the participation to such structures, it should be noted that **the input by technology providers should be considered with care**, as they have an individual interest in creating business cases for the solutions they propose.

Finally, there is already a legal mechanism in place in the EU to identify emerging techniques, namely the BREF revision process in Seville. Duplicating the work of the Seville process in the future INCITE would create a confusion and provoke a legal debate on the **methodology to identify emerging techniques in a sector**, especially in the discussions on permits and change of permits with competent authorities.

Glass Alliance Europe believes that it should be left to industrial operators to adopt emerging techniques and innovative technologies. It is in the operators' competitive interest to move in the fastest way possible towards industrial transformation, and they are in the best position to evaluate the possibilities to implement new technologies in practice, especially when their performance depends on local factors (e.g. availability and quality of inputs, environment, and workers safety considerations). Glass Alliance Europe strongly opposes the new Article 27c (*ibid.*) which allows Member States to set BAT-AELs at the level of an emerging technique 6 years after its publication. By definition, an emerging technique is tested only in individual cases and not 100% demonstrated. Therefore, an emerging technique cannot be automatically generalised to a broad application. Moreover, the 6 year-period ignores the investment cycles in the glass industry, where a furnace lifetime is typically 15 years and refurbishments can only take place at the end of a cycle. The definition

of '*available techniques*' (Article 3 §10(b), *ibid.*) includes the mention of '*economically and technically viable conditions*'. Cost should be considered as a criterion, compared to the investment capacity of an installation. The availability of the emerging technique, be it in terms of input and/or equipment, should also be a criterion for its uptake. In addition, patenting in this way would no longer be conceivable.

Another critical issue is the need to **preserve confidential business information** related to the competitiveness of the installations under the IED – as described in section 2 of this paper.

- **Investment cycles in the glass industry**

Glass-making is a **continuous production process**, which requires that the melting furnace is always maintained hot, i.e. between 1,100 to 1,600°C depending on glass sectors, throughout the **furnace's lifetime of generally 10 to 20 years**, depending on the products. Redesigning the furnace can only be done in a 'cold repair' phase, after the furnace is cooled and emptied. This typically takes place at the end of an investment cycle. The continuity of glass production is a characteristic which is well-known for the European Commission and competent authorities at national, regional and local level. It is duly taken into account for the introduction of BAT in the glass sector.

The IED should continue making reference to this industrial reality which helps guiding the decisions of national, regional and local authorities on this matter. Recital 22 of the current IED states that '*specific cases where permit reconsideration and updating identifies that a longer period than 4 years after the publication of a decision on BAT conclusions might be needed to introduce new best available techniques*' and allows competent authorities to '*set a longer time period in permit conditions where this is justified*'. **This clarification on the adaptation possibility needs to be kept in the IED to support the competent authorities.**

Glass Alliance Europe's recommendations to ensure contribution to the Green Deal objectives, innovation and industrial transformation

- **Strictest end of BAT-AEL range**: Glass Alliance Europe does not support the unrealistic requirement, which would be impossible to achieve in practice.
- **Environment Management System and Transformation Plan**: Glass Alliance Europe recommends avoiding the multiplication of policy implementation tools. The proposal of Transformation Plans cannot be supported in the absence of information on its content and outside of the ordinary political decision process. In any case, Transformation Plans cannot be linked to compliance and should therefore not be made mandatory. Moreover, confidentiality of business information must be preserved.
- **Environment Performance Values**: Glass Alliance Europe does not support this concept in its mandatory form.
- **Innovation centre for industrial transformation and emissions (INCITE)**: Decentralised structures, offering a high level of dynamism and flexibility, which are necessary to innovation, should be favoured. It should be left to industrial operators to adopt emerging techniques and innovative technologies. Preserving confidentiality of business information is of utmost importance.
- **Investment cycles in the glass industry**: The competent authorities need to keep taking into account the continuous production process specificity of the glass industry.

2. The compatibility of the measures proposed by the European Commission with the competition rules and confidentiality of business information

Evolving in a competitive business environment goes hand in hand with preserving the **confidentiality of business information**. Furthermore, the same is also prescribed by EU competition rules under very strict conditions. While our industry values transparency, **Glass Alliance Europe finds several requirements under the proposal for revision of the Industrial Emissions Directive and the recast of the E-PRTR to raise serious concerns with regard to EU competition rules.**

Under the revision proposal, access to confidential business information would be granted not only to European Commission officials, but also to **non-governmental organisations** (Article 13 §2, IED revision proposal). This requirement is contrary to the nature of business operations and poses significant competition issues.

The draft provisions on '*information allowing contextualisation of reported data*' (Article 5 §1 (e), E-PRTR recast proposal) asking the industrial operators to provide production volume, number of employees and number of operating hours raise concerns with regard to **EU competition rules** since they would publicly disclose sensitive information **on individual operators**. This type of information, combined with the information on energy and raw materials elsewhere requested, would allow any competitor, be it EU or non-EU based, to **calculate operating costs**. It is a practice to publish only aggregated values in order to prevent access to confidential business information: the data for at least three producers are presented together, thus averting the possibility for one to deduce the other's costs. This is for example the case when reporting under the Environmental product Declaration (ISO 14025). **Glass Alliance Europe therefore opposes to the publication of such sensitive individual data.**

Glass Alliance Europe's recommendations to ensure compatibility with competition rules and confidentiality of business information

- **Access to confidential business information** should be restricted for competition issues, including to NGOs.
- The requirements for **information allowing contextualisation of reported data** would allow to calculate operating costs. Glass Alliance Europe opposes to the publication of such sensitive individual data.

3. The need to preserve a coherent set of legislation

The revision of the Industrial Emissions Directive **and the recast of the E-PRTR** are put forward at a time when **several major pieces of legislation are also being revised or adopted**, including the EU Emissions Trading Scheme Directive, the Carbon Border Adjustment Mechanism Regulation, the Energy Efficiency Directive, the Energy Taxation Directive, the Effort Sharing Regulation, and when additional revision proposals are expected, including of the REACH Regulation and the Waste Framework Directive. While the European glass sector understands and supports the willingness to operate a strong move towards reducing pollution in the EU, it is also **faced with a tremendous number of new and very challenging requirements that it needs to comply with in a short period.**

The simultaneity of revisions and recasts can prove challenging in terms of ensuring **coherence between and efficiency of the different legislative proposals**, which are being put forward in parallel but without a global impact assessment.

Glass Alliance Europe gives a **positive evaluation to the decision to maintain Article 9 §1** (IED revision proposal) and to avoid an overlap with the EU Emissions Trading Scheme (EU ETS) Directive. Indeed, while the ETS is a market-based instrument incentivising investments in a cost-efficient manner, the IED is a 'command-and-control' instrument based on emission limit values, making the two approaches incompatible. However, a **risk of overlap** remains beyond this provision. For instance, in its amendments to the EU ETS Directive proposal, the European Parliament has added requirements in terms of **decarbonisation plans**, which have the potential to cover similar objectives and include comparable content as the Transformation Plans under the IED. As per the revision proposal, both instruments would remain to be defined through secondary legislation. Not only must such instruments leave sufficient flexibility (as explained in section 1 of this paper), but also be conceived in complementarity, with neither contradictions nor double regulation.

An overlap has been created between the IED revision proposal and the **Energy Efficiency Directive** – EED (Article 9 §2, IED revision proposal), which is problematic, raises confusion and can lead to counterproductive effects. The IED revision proposal asks for the inclusion of the results of energy audits and energy management systems pursuant to the EED in the Environmental Management Systems, including their recommendations and the measures to implement the latter (Article 14a §2(c), *ibid.*). Despite the possibility that those recommendations may not be appropriate in some cases (e.g. not adapted to the local conditions, not taking into account the investment capacity of the installation), the European Commission proposes *de facto* to make them mandatory through another legislative vehicle to which the EED does not even make reference. In addition, beyond the complex and questionable legislative imbrication, including energy efficiency provisions in the IED could have unintended consequences in terms of industrial transformation. Some solutions may require additional energy input to the benefit of greater gains in terms of emissions reduction (e.g. Carbon Capture and Storage/Use). In this instance again, more flexibility is necessary. **Glass Alliance Europe therefore recommends maintaining the current Article 9 §2 of the IED.**

Finally, as already mentioned, overlaps with other pieces of legislation such as REACH should also be avoided.

Glass Alliance Europe's recommendations to preserve a coherent set of legislation

- The **impact** from the tremendous number of new and very challenging requirements falling on industrial operators under a series of legislative texts should be **considered in a cumulative manner**.
- Glass Alliance Europe gives a positive assessment to the avoidance of an overlap with the EU ETS Directive. However, **problematic overlaps** are created with the Energy Efficiency Directive and REACH.

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