

Factsheet 3.13 - Cessation of operations, bankruptcy and site closure

This Factsheet provides practical guidance on the requirements and provisions in the Industrial Emissions Directive (IED) concerning the cessation of operations of installations and site closure. There may be several different reasons why operations are terminated and these are often difficult to foresee. The guidance is aimed at helping regulators recognise the signals and then to take appropriate action. It also covers the role of financial guarantees and cessation/ decommissioning plans. Where there is a risk of soil and groundwater contamination, there is also a requirement in the IED for the operator to produce a Baseline Report and to take remedial action to restore the site to its former condition. This is covered in factsheet 2.07

Article 11(h) requires that the operator takes the necessary measures upon definitive cessation of activities to avoid any risk of pollution and return the site of operation to the satisfactory state defined in accordance with Article 22.

Article 14(f) relates to permit conditions and requires that measures are taken relating to conditions other than normal operating conditions such as start-up and shut-down operations, leaks, malfunctions, momentary stoppages and definitive cessation of operations.

Article 22 covers the provisions for site closure, including the requirement for the production of a Baseline Report in cases where there is a possibility of soil and groundwater contamination. It requires the operator to assess the state of soil and groundwater contamination by hazardous substances and to take remedial action where significant pollution has been caused.

Article 24(3) refers to access to information and public participation in the permit procedure. It requires the competent authority to make available to the public relevant information on the measures taken by the operator upon definitive cessation of activities in accordance with Article 22

The guidance in this Factsheet was developed as part of the [IMPEL project on IED implementation](#). Further details and examples of practices in individual countries can be found in the [2015 report of this project](#)¹.

How to find out whether a company is heading towards bankruptcy

Bankruptcy is difficult to foresee. Usually the competent authority doesn't receive information about difficulties in operations from companies.

¹ IMPEL Project on Supporting IED Implementation. Project No. 2016/01. 6 December 2015.

The following 'weakness signals' can be taken in account in assessing whether a company is at risk of imminent bankruptcy:

No annual reports being produced.

Temporary closure of the company or simplification of operations, significant changes in amount of staff and reduction in salaries.

Many non-compliances and no effort from the company to tackle them (because they don't have the money).

Problems in day-to-day operation.

Weakness signals be reflected in the risk assessment of the company.

No payment of required fees, for example, the annual inspection fee.

Financial guarantees

Experience shows that in the case of bankruptcy and/or site closure there are not enough resources to finance all measures needed to safeguard the environment. In such cases, early preservation of financial resources through insurance, financial guarantees, bank guarantees or other means (such as environmental funds) could help both operators and competent authorities in rehabilitation of the environment, closure of installations and after-care measures.

The financial guarantee is not obligatory but should be seen as be a good tool to take care of problems arising when companies have to close down, especially in bankruptcy cases; examples of good practices can be found in many countries, for example:

Environmental fund – funded by fines (50%) issued to companies because of infringements of environmental law (Portugal).

Financial guarantee is mandatory in Italy upon IED implementation for all IED plants– national decision (awaiting decree); up to now financial guarantee is required for waste treatment plants but it will be mandatory for IED sites which manage and discharge hazardous substances (Baseline report).

In Xunta de Galicia (Spain) a financial guarantee is needed for:

Companies producing waste and waste management companies

All IED installations will need to have a guarantee in 2 years' time.

In Finland, a financial guarantee is mandatory only for waste management sites:

The amount of money is calculated based on the size of the site and the cost of the cessation operations (monitoring of the site for 30 years).

In The Netherlands, a financial guarantee is mandatory for underground storage tanks containing petrol or gasoline type of liquids and landfills.

In the Czech Republic, a financial guarantee is mandatory only for landfills (both IED installations and smaller sites).

In Austria, financial guarantees can be mandatory or optional measures or they may not be possible, depending on the type of installation and the relevant material law; under the mining

law financial guarantees are foreseen for mining activities schedule, mining installations and waste facilities of category A.

In Croatia, a financial guarantee is needed before granting a permit for waste management installations and before granting notifications for trans-frontier shipments of waste.

In Iceland, the guarantee is requested before a permit for waste management installations is issued. Also, an insurance of up to 1 million Special Drawing Rights (1 US\$ is approximately 0,72 SDR) is needed for installations that can possibly cause pollution in the ocean or on the coastline.

In Germany (Bremen), financial guarantees are required for Windmills on public ground and for waste treatment installations dealing with waste that cannot be sold on the market, especially waste incineration plants.

In Romania, financial guarantees are required for landfills (both IED and smaller sites) and for mining activities.

In Cyprus, financial guarantees are required before granting the permit; the guarantees are used to cover possible environmental damage or to handle untreated waste (for example after bankruptcy) and are mandatory for IED Installations and for waste management.

In Slovenia, financial guaranties are used for very limited types of installations and are mandatory only for landfills of waste.

More detailed information on these examples can be found in Part 2 of the IMPEL 2015 IED Implementation Project report. The report also documents a survey of methodologies, guidance and tools for determination of financial guarantees used in different countries.

To encourage the competent authorities to use such tools the Member States can make use of art. 14 of Environmental Liability Directive (this provides an encouragement to Member States to put up a financial security system). IED installations are included in the Annex III of the Environmental Liability Directive.

In the transposition of the Environmental Liability Directive, seven member states (Bulgaria, Romania, Hungary, Czech Republic, Slovenia, Portugal and Spain) decided to establish in their national legislation on Environmental Liability a system of mandatory financial security provided in article 14 of the Directive. In some countries, actual implementation of the system is still to be developed in regulation which shall specify the form and the extent of the security, conditions for using the security, rules of accounting and keeping the records of it, and rules of the environmental protection insurance.

Definitive cessation of operations

The 2015 IED Implementation Project report provides arrange of examples of how to implement the requirements of the IED on definitive cessation. These include Finland, Romania and Xunta de Galicia (Spain). The Finnish examples illustrated the cessation and demolition of a Large Combustion Plant while the Romanian examples referred to a cessation plan included in an IED permit. The case of Xunta de Galicia (Spain) referred to a chemical plant (squalane production).

Cessation conditions included in an IED permit granted to a refinery in Romania are:

- Operational permits are very detailed
- In each permit, there is an obligation for cessation plan – the plan must be agreed by the EPA and is a part of the permit
- Contains both general and particular conditions
- The particular conditions for a refinery:
 - Preliminary activities
 - Cessation of the installation
 - Leakage flow from pipes, hazardous substances
 - Maintenance/conservation
 - Dismantling of installation/equipment
 - Demolition
 - Remediation actions

Minimum content of a cessation/decommissioning plan

To avoid the contamination of the environment in the case of definitive cessation of operation, the permit granted by the competent authority shall contain conditions and measures that the operator must comply with. As good practice, the permit shall contain a cessation/decontamination plan and not only conditions (in most cases a few lines in the permit). In this way, the permit will be more enforceable.

The IMPEL 2015 IED Implementation Project report provides examples of decommissioning plans in different countries. An example of a decommissioning plan for an IED chemical plant was given by Sardinia Region (Italy). This plan consists of:

- Risk analysis and risk management
- Activity description, including storage of raw materials and wastes, treatment of waste water, etc.
- Health, security and environment monitoring
- Waste management plan and plan for recoverable materials.

No guidelines have been identified at EU level on the minimum content of a cessation/decommissioning plans. Therefore, as good practice, it is recommended that the following items should be considered in drafting such plans:

- The cessation/decommissioning plan is usually prepared in the permit phase (permit recast)
- It must be approved by the relevant authorities
- Minimum aspects that the cessation of the plant must contain:
 - History of the activity of the company
 - Operational time
 - Evolution of plant engineering, structural expansions, new equipment etc.
 - Information about remediation or similar activities
 - Information about accidents
 - The context in which the plant is running
 - Identification of possible sources of environmental pollution (reservoirs / tanks / pipes / underground facilities)

- Procedures provided for the disposal of pollution sources identified
- Pollution prevention and reduction for the protection of the environmental compartments (Air, Water, Soil)
- Additional criteria could be:
 - Waste management and management of hazardous materials during closure
 - Focus on hazardous waste
 - Recovery or disposal
 - Foreseen production of waste
 - Demolition waste and storage
 - Monitoring of emissions to the environment during and after the closing of installations
 - Frequency of sampling and what parameters should be monitored
 - Remediation actions on contaminated compartments
 - Quantified comparison with baseline report
 - Assessment of the state of the environment - soil and groundwater
 - Information about the maintenance/demolition of the site (buildings, etc.)
 - Measures for landscaping (does not always apply).

IED Article 23 (6) obliges Member States to take the following actions:

Following each site visit, the competent authority shall prepare a report describing the relevant findings regarding compliance of the installation with the permit conditions and conclusions on whether any further action is necessary.

The report shall be notified to the operator concerned within 2 months of the site visit taking place. The report shall be made publicly available by the competent authority in accordance with Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information within 4 months of the site visit taking place.

Article 23 (6) also requires that the competent authority should ensure that the operator takes all the necessary actions identified in the report within a reasonable period (this is relevant to the provisions on action to be taken in the case of non-compliance covered in Article 8(2) of the IED).