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COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject: COMMISSION STAFF WORKING DOCUMENT Subsidiarity Grid Accompanying the document 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

Delegations will find attached document SWD(2022) 110 final.

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COMMISSION STAFF WORKING DOCUMENT

Subsidiarity Grid

Accompanying the document

**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**

{COM(2022) 156 final} - {SEC(2022) 169 final} - {SWD(2022) 111 final} -
{SWD(2022) 112 final}

Subsidiarity Grid

1. Can the Union act? What is the legal basis and competence of the Unions' intended action?
1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?
The legal basis for this proposal is Article 192 TFEU. In accordance with Article 191 and 192(1) TFEU, the European Union shall contribute to the pursuit, inter alia, of the following objectives: preserving, protecting and improving the quality of the environment; promoting measures at international level to deal with regional or worldwide environmental problems, and combating climate change.
1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?
In the case of environment, the Union's competence is shared.
2. Subsidiarity Principle: Why should the EU act?
2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2¹:
<ul style="list-style-type: none"> - Has there been a wide consultation before proposing the act? - Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at Union level?
<ul style="list-style-type: none"> - The impact assessment accompanying the combined revision of Directive 2010/75/EU of the European Parliament and the Council on industrial emissions (the Industrial Emissions Directive or IED) and E-PRTR Regulation was subject to a thorough consultation process. This included a variety of different consultation activities aimed at gathering the views of all relevant stakeholders and ensuring that the views of different organisations and stakeholder types were presented and considered. - Firstly, an initial feedback was provided on the published Inception Impact Assessment via the Commission's 'Have Your Say' interactive portal. This was followed by a joint IED and E-PRTR Public Consultation. The survey contained 24 questions, four of which concerned specifically the E-PRTR. - Then, a targeted stakeholder survey (TSS) took place from 8 February to 9 April 2021, which consisted of an online survey of a more detailed nature to enhance further the evidence base through the collection of more specialised feedback from targeted stakeholder groups on six problem areas, grouped by the options under consideration for the impact assessment study. These problem areas were as follows: i) the environment is polluted; ii) a climate crisis is happening; iii) natural resources are being depleted; iv) state of the art techniques cannot respond satisfactorily to problem areas i) to iii); v) private individuals have limited opportunities to get informed about, and take action regarding impacts caused by agro-industrial plants; and vi) excessive

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN>

burdens may affect the efficiency of the policy instrument.

- These feedbacks were also complemented with consultation of so-called focus groups, held in June-August 2021, to engage stakeholders in deeper discussions on key themes. Stakeholders were selected based on their sectoral representation; and a good geographical and stakeholder type distribution between environmental NGOs, industry representatives and Member States' Ministries and Competent Authorities was ensured to enable balanced discussions. Finally, two stakeholder workshops were held remotely on 15 December 2020 and 7-8 July 2021.
- Civil society and environmental NGOs considered all above-mentioned problem areas to be of high relevance, in particular regarding:
 - the environmental impacts being insufficiently addressed by the IED, as well as decarbonisation;
 - the need to have the E-PRTR pollutant list updated more quickly to take account of new threats; and
 - limited access to information on installations' performance levels.
- This limited access to information was perceived by all stakeholder groups as an important element to address.
- However, differences occurred in the feedback from industry and business associations, who were rather neutral (but not negative) in acknowledging resource efficiency and less toxic production issues to address. Industry and business associations were also rather neutral in acknowledging the need to foster decarbonisation, pointing to potential additional reporting costs and risks of overlaps with the ETS. Regarding the limited scope of the Directive, industry and business associations brought into play costs arguments, and claimed that existing national regimes and existing EU legislation were allowing to sufficiently tackle most of the difficulties encountered.
- All stakeholders agreed that the IED contribution to facilitate, harness and promote innovation was too limited.
- The explanatory memorandum and the impact assessment contain a section on the principle of subsidiarity. See also the replies to question 2.2 below.

2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the conformity with the principle of subsidiarity?

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.

Pollution from agro-industrial installations travels across national borders and pollution control cannot be sufficiently achieved by one Member State alone. In addition, the operation of industrial plants is closely linked to the functioning of the internal market. In the absence of a common EU approach for setting environmental

<p>performance standards, the same industries would face different pollution control regulations in each Member State, with the risk of creating an uneven playing field, fragmenting the single market and impeding the Union's efforts in pursuing the Treaty objective of achieving a high level of environmental and human health protection.</p>
<p>2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?</p>
<p>The objectives of the proposed action cannot be achieved sufficiently by the Member States acting alone.</p>
<p>(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?</p>
<p>Pollution from agro-industrial installations travels across national borders and pollution control cannot be sufficiently achieved by one Member State alone.</p>
<p>(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty² or significantly damage the interests of other Member States?</p>
<p>In the absence of a common EU approach for setting environmental rules and performance standards, industrial sectors within the scope of this Directive would face different pollution control regulations in each Member State, with the risk of impeding the Union's efforts in pursuing the Treaty objective of achieving a high level of environmental and human health protection, and of creating an uneven playing field and fragmenting the Union's internal market.</p>
<p>(c) To what extent do Member States have the ability or possibility to enact appropriate measures?</p>
<p>Through a directive, Member States have the ability or possibility to enact appropriate national measures when implementing an EU provision; which they do not have in case of a Regulation. Member States can choose the most appropriate means of implementing the Directive's provisions, in particular as regards permits for installations as well as compliance and enforcement measures.</p>
<p>(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?</p>
<p>The evaluations of the IED showed that, whilst providing sound frameworks, it is not being implemented sufficiently and homogeneously across Member States. Various levels of ambition are exhibited and the frameworks do not yet fully deliver on its existing objectives.</p>
<p>(e) Is the problem widespread across the EU or limited to a few Member States?</p>
<p>Industrial pollution is a problem widespread across the EU.</p>
<p>(f) Are Member States overstretched in achieving the objectives of the planned measure?</p>

² https://europa.eu/european-union/about-eu/eu-in-brief_en

<p>Directive 2010/75/EU is the main EU instrument regulating pollutant emissions from industrial installations. The IED was adopted on 24 November 2010 and is based on a Commission proposal recasting 7 previously existing directives (including in particular the IPPC Directive) following an extensive review of the policy (see here). The IED entered into force on 6 January 2011 and had to be transposed by Member States by 7 January 2013.</p> <p>This means that the EU legislative framework on industrial emissions is already well embedded in the national legislative frameworks of Member States, and that they have had the time to develop the appropriate structure contributing towards the fulfilment of the IED objectives. The current revision proposal can rely on this structure, while containing several elements aimed at its strengthening.</p>
<p>(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?</p>
<p>Considering the harmful impacts of industrial pollution, there is a widespread view at national, regional and local levels that a robust EU legislative framework is necessary to eliminate or reduce those negative impacts; and that further improvements are required to make it fully consistent with the European Green Deal, the zero pollution ambition, and climate, energy and circular economy policies.</p>
<p>2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of scale or effects of that action (EU added value)?</p>
<p>The objectives of the proposed action be better achieved at Union level by reason of scale and effects of that action.</p>
<p>(a) Are there clear benefits from EU level action?</p>
<p>EU level action through a harmonised set of rules and principles to regulate industrial emissions provides for more efficient and more consistent tools to eliminate or reduce the negative impacts of such emissions, including transboundary emissions.</p> <p>The IED BAT-based system and the E-PRTR provide information used by all Member States, through a single EU level information exchange process, replacing the need for each Member State to establish national processes. Operators of industrial plants in all Member States benefit from an EU level playing field, and achieve economic efficiencies by having to adhere only to one EU-wide regulatory approach.</p> <p>The EU system is increasingly being used by third countries, thereby also promoting an international level-playing field.</p>
<p>(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?</p>
<p>Overall benefits of the initiative considerably outweigh costs. Whilst it has not been possible to quantify all impacts,</p> <p>(i) monetised health benefits for the main measure contained in the effectiveness option (see full impact assessment for details of all options) are €860–2 800</p>

<p>million p.a., with business CAPEX/ OPEX costs at c. €210 million p.a.;</p> <p>(ii) wider coverage of livestock farms results in methane and ammonia emission reductions with health benefits of over €5 500 million p.a. and related compliance costs of c. €265 million p.a.</p> <p>The administrative burden increase is c. €250 million p.a. for industrial operators and c. €196 million p.a. for public authorities; this increase is substantially moderated by a lighter permitting system for livestock farms.</p> <p>Overall, the proposal establishes a legislative framework that equips the EU to address the significant environmental challenges expected in coming decades from agro-industrial activities.</p>
<p>(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?</p>
<p>The current EU legislative framework now needs to be modernised and adapted to play its part in the transition set out in the European Green Deal and the EU Industrial Strategy. The Commission’s proposal to revise the IED aims to make this legal instruments fit to foster and accompany the transformation of EU industry.</p> <p>A more homogenous policy and legislative approach will contribute to overall pollution reductions and decarbonisation between today and 2050, delivering healthier ecosystems and improved human health. In parallel, these measures will contribute to securing an EU level playing field and ensuring the future competitiveness of the EU’s industry sectors. This will also support EU operators in becoming first movers and developing innovative world-beating technologies for resource-efficient processes and pollution control.</p>
<p>(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local levels)?</p>
<p>A possible limited loss of competence of Member States in certain areas which may be induced by this proposal is residual, since the latter i) keeps the form of a Directive as the most appropriate tool (see section 2.3(c)); and strengthens and improves an already existing legislative framework. Overall benefits of the initiative outweigh any such possible loss of competence of Member States and local and regional authorities.</p>
<p>(e) Will there be improved legal clarity for those having to implement the legislation?</p>
<p>Yes, as the proposal contains several improvements and clarifications of current legal provisions where further clarity or details appeared necessary, as evidenced by the Directive’s evaluation (such as provisions on compliance assessment, on public access to information and participation, or on enforcement).</p>
<p>3. Proportionality: How the EU should act</p>
<p>3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission’s proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?</p>

The IED design ensures proportionality of outcomes by (i) defining BAT as the most environmentally effective as well as economically viable range of proven techniques used in a sector, and (ii) allowing derogations in individual cases if application of the EU-wide BAT requirements would lead to costs disproportionately higher than the expected environmental/health benefits.

The supporting impact assessment assesses the impacts of all proposed revisions of the IED. Both qualitative and quantitative assessment has been undertaken that shows that the proposals are proportionate, i.e. that societal benefits are significantly higher than the incurred costs.

The measures having the most impacts were identified as the extension of scope to cattle farms and to a larger number of pigs and poultry farms. The monetised health and environmental benefits from reducing methane and ammonia are valued at over €5 500 million/year, while the compliance costs are €265 million and administrative costs for both operators and public administrations, are €223 million, i.e. a very beneficial cost-benefit factor of 11 for the whole livestock sector.

3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?

The proposed action constitutes an appropriate way to achieve the intended objectives.

(a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?

The initiative is limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better.

(b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?

The objectives of this proposal can be best pursued through a Directive, which is the most appropriate instrument to amend an existing directive. It is as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued legal instrument to make amendments to the existing Directive on Industrial Emissions (Directive 2010/75/EU - IED).

A Directive requires Member States to achieve the objectives and implement the measures into their national substantive and procedural law systems. This approach gives the Member States more freedom when implementing an EU measure than does a Regulation, in that Member States are left the choice of the most appropriate means of implementing the measures in the Directive. This allows Member States to ensure that the amended rules are embedded in their substantive and procedural legal framework implementing the EU IED, in particular regulating permits for installations as well as enforcement measures and penalties.

(c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit the European

action to minimum standards or use a less stringent policy instrument or approach?)
The legal basis for this proposal is Article 192 TFEU, which allows Member States to take stricter measures. The Directive leave as much scope for national decision as possible while achieving satisfactorily the objectives set.
(d) Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?
The initiative creates costs that are provided in the answer to question 3.1 above, which also shows that these costs are proportionate.
(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?
The Directive contains provisions on derogations, enabling under certain conditions the taking into account of special circumstances applying in individual Member States, while respecting the Union law.