



Council of the
European Union

Brussels, 11 April 2022
(OR. en)

**Interinstitutional File:
2022/0105(COD)**

**8121/22
ADD 2**

**ENV 341
COMER 43
SAN 218
AGRI 150
MI 282
COMPET 234
CONSOM 91
IND 114
ENT 49
CODEC 482
IA 41**

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	6 April 2022
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2022) 113 final
Subject:	COMMISSION STAFF WORKING DOCUMENT Subsidiarity Grid Accompanying the document Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on reporting of environmental data from industrial installations and establishing an Industrial Emissions Portal

Delegations will find attached document SWD(2022) 113 final.

Encl.: SWD(2022) 113 final



EUROPEAN
COMMISSION

Strasbourg, 5.4.2022
SWD(2022) 113 final

COMMISSION STAFF WORKING DOCUMENT

Subsidiarity Grid

Accompanying the document

Proposal for a

**REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on reporting of environmental data from industrial installations and establishing an
Industrial Emissions Portal**

{COM(2022) 157 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. The Proposal for a Regulation on reporting of environmental data from industrial installations and establishing an Industrial Emissions Portal ('IEPR') will replace and repeal Regulation 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 ('E-PRTR').
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:
- 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?
- The impact assessments accompanying the combined revision of the E-PRTR and Directive 2010/75/EU of the European Parliament and the Council on industrial emissions ('IED') was subject to thorough consultation processes. These included a variety of different consultation activities that aimed at gathering the views of all relevant stakeholders and ensuring that these views 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 March to 14 May 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 activities covered by the E-PRTR and accompanying activity thresholds vis-à-vis

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

IED activity coverage; ii) the pollutants covered by the E-PRTR and accompanying thresholds for reporting pollutant releases; iii) the reporting of additional information on resource use (energy, water, raw materials) as useful information to track progress towards the circular economy and the decarbonisation of industry; iv) improvements to reporting modalities e.g. flexibility for top-down E-PRTR reporting for certain industrial sectors; v) access to E-PRTR information e.g. the shift of reporting at individual installation level to further increase alignment with the IED; vi) options for reporting releases from diffuse sources and products.

- This feedback was complemented by consultation with two focus groups, held in August 2021, to engage stakeholders in deeper discussions on a few 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.
- Targeted telephone interviews, to complement the online TSS survey, took place with representatives of regional and national competent authorities, European institutions, representatives of non-EU PRTRs, representatives of the Kyiv Protocol Bureau, industry associations, civil society and other key stakeholders. Stand-alone interviews commenced in March 2021 while the targeted survey was still open. Follow-up interviews mainly took place after the closure of the targeted stakeholder survey between May and August 2021. In total, 36 interviews were conducted.
- Finally, two stakeholder workshops were held remotely on 15 December 2020 and 7-8 July 2021.
- Civil society and environmental NGOs considered the above-mentioned problem areas to be of high relevance, in particular regarding:
 - the need to have the 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.
- 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?

The objective of the IEPR consists in implementing the UNECE Protocol on Pollutant Release and Transfer Registers to which both the EU and individual Member States are Parties and, in doing so, in informing and facilitating public participation in environmental decision-making and contributing to the prevention and reduction of environmental pollution.

Those objectives cannot be sufficiently achieved by Member States as there is a need to ensure, across the EU, consistent application of and compliance with the above-cited international Protocol and to guarantee that all legal and natural persons in the EU benefit from a similar level of access to concerned environmental information and, concomitantly, of public participation in relevant decision-making and considering the transboundary nature of pollution from IEPR activities. In this respect, the IEPR allows data consistency, and hence comparability, between Member States and provides cumulative release data for the whole of Europe, which would be much harder to derive from 27 separate national databases. Accordingly, those objectives can be better achieved at Union level and the Union may therefore adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.
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)?
The objectives of the proposed action cannot be achieved sufficiently by the Member States acting alone.
(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?
As pollution from IEPR installations can travel across national borders and therefore affect the environment and the health and well-being of residents located in a Member State other than the one hosting the polluting activity, the IPDR enables access to relevant environmental information, including on pollutant releases, which would not be sufficiently assured with no EU action.
(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?
In the absence of a common EU approach on reporting on <i>inter alia</i> pollutant releases from relevant activities, there would be a high risk of discrepancy between Member States in terms of access to concerned environmental information. In turn, this may impede the Union's efforts in pursuing the Treaty objective of achieving a high level of environmental and human health protection and in ensuring consistent application of the UNECE Protocol on Pollutant Release and Transfer Registers.
(c) To what extent do Member States have the ability or possibility to enact appropriate measures?
A Regulation is of general application and is binding upon and directly applicable in all Member States. Nevertheless, the proposal enables Member States to choose to report or not on pollutant releases from a limited number of well-defined agro-industrial activities on behalf of concerned operators.
(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?

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

The evaluation of the E-PRTR Regulation showed that, whilst providing a sound framework, there were opportunities for refinement with regard to, <i>inter alia</i>, harmonisation with closely-related environmental reporting obligations and by complementing with contextual data
(e) Is the problem widespread across the EU or limited to a few Member States?
Pollutant releases from EPRTR activities is a problem widespread across the EU.
(f) Are Member States overstretched in achieving the objectives of the planned measure?
Regulation (EC) No 2006/166 is currently the main EU instrument on reporting environmental impacts from industrial activities in the EU. The E-PRTR was adopted on 18 January 2006 and entered into force and became applicable on 24 February 2006. This means that the EU legislative framework on E-PRTR activity reporting is already well implemented at national level as Member States have had the time to develop national PRTRs in compliance with the E-PRTR. The current IEPD proposal can rely on those national registers, while containing several elements aimed at its strengthening.
(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?
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 monitor negative environmental 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.
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)?
The objectives of the proposed action be better achieved at Union level by reason of scale and effects of that action.
(a) Are there clear benefits from EU level action?
EU level action through a harmonised set of rules and principles to report on <i>inter alia</i> pollutant releases from IEPD activities ensures consistent and comparable reporting across the EU. This consistency and comparability objectives would be at risk in the absence of EU action.
(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?
Whilst it is notoriously difficult to quantify the value of access to environmental information, the overall benefits of the initiative are considered to outweigh the costs. Whilst it has not been possible to quantify all impacts, it is to be noted that:

• The increase in administrative burden is c. €63 million p.a. for industrial operators, due mainly to monitoring and reporting environmental data, and c. €4.1 million p.a. for public authorities, due to data collection, verification, management, reporting and enforcement activities. • Costs increase for existing operators because of new pollutants, parameters and lower reporting thresholds are adopted. However, this increase is substantially moderated by the adoption of top-down reporting for the livestock and aquaculture sectors.
(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?
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 replace the E-PRTR by the IEPR aims to make this instrument fit to foster and accompany the transformation of EU industry.
(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)?
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 Regulation 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.
(e) Will there be improved legal clarity for those having to implement the legislation?
Yes, as the proposal contains several improvements and clarifications of current legal provisions where further clarity or details appeared necessary, as evidenced by the Regulation's evaluation (such as activity definitions).
3. Proportionality: How the EU should act
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?
The supporting impact assessment assesses the impacts of all proposed legislative revisions. 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.
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 Regulation, which is the most appropriate instrument to replace an existing regulation. The proposal is as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued by the legal instrument to replace the existing E-PRTR. This choice of instrument is appropriate to ensure the uniform and consistent application of the UNECE Protocol on Pollutant Release and Transfer Registers.
(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 Regulation leaves as much scope for national decision as possible (see reply to below question (e) 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 increase in administrative burden is c. €63 million p.a. for industrial operators, due mainly to monitoring and reporting environmental data, and c. €4.1 million p.a. for public authorities, due to data collection, verification, management, reporting and enforcement activities. Costs for the European Environment Agency, due primarily to data collection, reviews, management and website activities, are c. €0.06 million p.a. The reply to question 3.1 above establishes that these costs are proportionate.
(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?
The proposal contains a provision enabling Member States to report pollutant releases from certain agro-industrial activities on behalf of concerned operator to take into account the possible difficulties in assessing such releases, while respecting the Union law.