



Council of the European Union  
General Secretariat

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**Interinstitutional files:**

**2022/0104 (COD)**

**2022/0105 (COD)**

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**MEETING DOCUMENT**

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**From:** General Secretariat of the Council  
**To:** Working Party on the Environment

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**Subject:** Industrial Emissions Directive and Industrial Emissions Portal: WPE meeting on 13 November - Steering note by the Presidency

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In view of the WPE meeting on 13 November delegations will find in the Annex a steering note for the Industrial Emissions Directive and Industrial Emissions Portal.

## WORKING PARTY ON THE ENVIRONMENT

**Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/75/EU on industrial emissions and Council Directive 1999/31/EC on the landfill of waste and 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**

### BACKGROUND

1. On 5 April 2022, the Commission presented two related proposals to update and modernise the rules on industrial emissions in the EU:
  - Proposal for a Directive revising the Industrial Emissions Directive and the Landfill Directive (IED); and
  - Proposal for a Regulation on reporting of environmental data from industrial installations and establishing an Industrial Emissions Portal (IEPR) and repealing the Regulation (EC) No 166/2006 on European Pollutant Release and Transfer Register – E-PRTR).
2. At the meeting of 16 March 2023, the Environment Council adopted the General Approach on the Industrial Emissions Directive. On 7 June 2023, COREPER broadly supported the mandate for negotiations with the Parliament on the IEPR proposal.
3. The European Parliament adopted its position on the Industrial Emissions Directive (IED) and the Directive on the landfill of waste on 11 July 2023 by MEPs with 396 votes in favour, 102 against and 131 abstentions. The Parliament's position entails 263 amendments to the Commission proposal. Parliament's position on the Industrial Emissions Portal Regulation was adopted with 563 votes in favour, 51 against and 18 abstentions. The Parliament's position entails 58 amendments.
4. A joint kick off trilogue on the two proposals took place on 19 July 2023. Both the Council and Parliament expressed their willingness to reach an agreement under the current Spanish Presidency. The Parliament presented the main elements of its position, and the Council presented the main elements of the General Approach of the Industrial Emissions Directive and the COREPER mandate of the Industrial Emissions Portal.
5. Two further trilogues were agreed with the European Parliament: on 10 October 2023, and on 28 November 2023.
6. The working party met on 1 September 2023 to discuss for the first time the Parliament's amendments. 18 delegations sent written comments.

7. Ahead of the second trilogue, seven interinstitutional technical meetings (ITMs) were held. The institutions discussed five out of a total of eight plus a cluster on the Portal – in which the negotiations have been divided. :
8. There was swift progress to reach preliminary compromises on technical provisions and to identify issues to be discussed at political level.
9. The working party on 27 September 2023 met to prepare the ground for the second trilogue. Based on the interventions of the delegations, a COREPER discussion, which took place on 4 October, agreed with the revised mandate for the Presidency (13346/23).
10. The second trilogue took place on 10 October 2023 in the European Parliament. The discussions helped to progress on all four clusters on the agenda: enforcement, scope of industrial activities, public information and participation, and innovation and industrial transformation. The trilogue laid ground for further technical discussions in view of finding a global agreement in the third trilogue on 28 November.
11. The Presidency debriefed COREPER on the outcomes of the second trilogue on 13 October 2023.
12. Following the second trilogue, five additional ITMs have been held. In those meetings, the institutions have covered all remaining clusters – in total eight clusters concerning the Industrial Emissions Directive and one concerning the Industrial Emissions Portal. The clusters focused on the following topics:
  - a. Minimisation of emissions and related transitional provisions
  - b. Enforcement (including sanctions and compensation)
  - c. Public information & participation
  - d. Innovation and industrial transformation
  - e. Non-toxic circular economy, resource efficiency and decarbonisation
  - f. Standard provisions, including reporting by Member States and the Commission
  - g. Rules and scope of agricultural activities
  - h. Scope of industrial activities
  - i. Industrial Emissions Portal
13. In the technical discussions, the institutions have reached preliminary compromise on a large number of issues, which allowed for clear identification of outstanding political sensitivities to be resolved at the political level.
14. The working group of 13 November 2023 is asked to review the outlined progress achieved at technical level on the two files and the potential landing zone organised in four clusters in this note.
15. A COREPER discussion is foreseen for 22 November 2023, ahead of the third trilogue – and potentially the last one – scheduled on 28 November 2023.
16. In addition to this steering note, the updated four-column document for the Industrial Emissions Directive together with a document on penalties (*WK 14479/2023 ADD1*) and the updated four-

column document for the Industrial Emissions Portal (*WK 14479/2023 ADD2*) were distributed to delegations via the Delegates Portal.

## **PREPARATION FOR THE TRILOGUE – POTENTIAL LANDING ZONE**

The Presidency proposes to organise the discussion along four clusters described below. The first three clusters outline the flexibilities sought by the Presidency in view of the upcoming discussions regarding the agricultural sector and the remaining technical provisions under the IED, and the outstanding issues in the IEP. The fourth cluster outlines the many provisional compromises discussed on technical clauses for both files.

Delegations are invited to review the proposed package of compromise proposals in each of the clusters and to express whether they can back the proposed approach or, alternatively, whether there is any item in the package that they cannot accept.

Technical work has progressed at a fast pace in the technical meetings for both the Industrial Emissions Directive and the Industrial Emissions Portal. A potential landing zone in the third trilogue can already be foreseen.

The landing zone would consist of:

- a) Keeping mining in the scope (with metals following the General Approach and the potential deletion of industrial minerals from the initial scope, subject to review and legislative proposal);
- b) Keeping cattle in the scope (with thresholds for agricultural activities somewhat higher than in the General Approach);
- c) Keeping penalties within the limits of the revised COREPER mandate (13346/23), with mandatory fines based on company turnover and a voluntary representative action clause for compensation;
- d) Mandatory e-permitting at a late date (2030-2035) but no summary of the permit and no fast-tracking process;
- e) Environmental Performance Limit Values (EPLVs) either indicative or binding only for water (not for other resources), if the Parliament accepts cattle in the scope;
- f) On the Portal, a limited number of PFAS in Annex II based on existing EU rules, in exchange for keeping reporting obligations and the penalties as close as possible to the General Approach.

The points of the IED would likely be addressed at political level in the third trilogue scheduled for 28 November 2023, while the compromise on the Portal could be endorsed – rather than directly discussed – in the trilogue following discussions at the technical level.

## **CLUSTER 1 – FLEXIBILITIES SOUGHT ON THE IED FOR THE AGRICULTURAL SECTOR**

The agricultural sector and the inclusion of cattle in the revised Directive (as proposed by the Commission and endorsed by the Council's General Approach, but rejected by the Parliament) is the most prominent political item at stake in the negotiations.

Defending the General Approach and maintaining cattle inside the scope in the final agreement with the Parliament is the top priority for the Presidency.

The inclusion of cattle is an extremely efficient method to tackle agro-industrial emissions as compared to poultry and pigs and would therefore bring substantial environmental benefits. The current threshold for cattle of the GA (350 LSU) covers around 2.3% of cattle farms in the EU.<sup>1</sup> A threshold of 500 LSU would only encompass 1% of EU cattle farms, while still accounting for approximately 12% of cattle heads – and a disproportionately bigger share of methane and ammonia emissions from the animal farming sector in the EU. The rearing of cattle emits about eight times more methane than the rearing of pigs and represent about half of the ammonia emissions.

In order to achieve this, the Presidency asks Delegations to grant the following flexibilities:

- 1. Thresholds (447 to 448):** In order to move towards the Parliament to make the inclusion of cattle more palatable, there is a need to increase the thresholds of inclusion in the scope. The Presidency asks Delegations to grant flexibility along the following lines:
  - a. **Cattle:** Rising the threshold up to 450 LSU as necessary.
  - b. **Pigs:** Rising the threshold up to 450 LSU only if required to reach a deal.
  - c. **Mixed farms:** Rising the threshold up to 450 LSU only if required to reach a deal. In addition, the Parliament has raised concerns about the situation where mixed farms could be included in the scope only due to a small number of non-primary animals (for instance chicken) for domestic consumption. The Presidency asks Delegations to grant flexibility to introduce a technical solution for those situations.
  - d. **Poultry:** No need to rise the threshold of the GA (280 LSU equals 40,000 broilers, which is the threshold of the Parliament), but the Parliament has signalled that for animals other than broilers (and specifically for laying hens), the conversion rates have *de facto* lowered the threshold of inclusion in the revised Directive (for instance, from 40,000 to 20,000 for laying hens). The Presidency asks Delegations to grant flexibility to move towards the Parliament by slightly changing the *de facto* threshold of inclusion for some poultry categories.
- 2. Conversion rates (449):** Move slightly towards the Parliament by accepting the deletion of the “piglet” category and using 30 kg as the cutting size for “other pigs.”
- 3. Transitional provisions (387I):** Maintain the GA with a phased approach depending on the farm size starting at 2030, but accept slight changes depending on the final compromise on thresholds.
- 4. Extensive animal farming (447 to 448):** Defend the GA by maintaining the original text, but move towards Parliament by accepting an alternative exemption based on organic farming and adding the condition that animals need to spend part of the year outside.
- 5. Mirror clause for imported products (269a):** Some groups in the Parliament are adamant to include the mirror clause for imported products and make its inclusion in the text a condition for the acceptance of cattle in the scope of the Directive. The Commission is expected to table a proposal for a review clause and a recital that will guarantee that the issue is carefully

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<sup>1</sup> Figures provided by the European Commission

studied. If the text is available this week, it will be distributed via the Delegates Portal so that it can be discussed in the working party of 13 November 2023.

## **CLUSTER 2 – FLEXIBILITIES SOUGHT ON THE IED FOR THE REMAINING CHAPTERS**

- 1. Mining (422 to 424):** The Presidency proposes to maintain the General Approach on metals and, if necessary, move towards the Parliament on industrial minerals by deleting them from the initial scope of the Directive and mandating the Commission to conduct a review and, if appropriate, a legislative proposal by the regular procedure.

Given the concerns of some delegations about the compatibility of the mining scope with the Critical Raw Materials Act, the Presidency has asked the Commission to analyse the situation – and outline the potential benefits of maintaining the General Approach on this sector. The document is expected to be distributed via the Delegates Portal as soon as available.

- 2. Penalties and compensation (368 to 382b):** The Presidency proposes to stick to the revised COREPER mandate (13346/23), with mandatory fines based on company turnover and a voluntary representative action clause for compensation, with some additional clarifications – for instance, on what are to be considered the most serious infringements – in recitals and some small changes included in the operative part. New text has been distributed via the Delegates Portal.

- 3. E-permitting (88b):** Move towards the Parliament by accepting a mandatory e-permitting system (MS “shall develop” rather than “shall aim to”) at a late date (for instance, from 2030 to 2035) which would provide enough flexibility for MS. This should be in exchange for the Parliament’s agreement to drop demands on the permit summary (all references to be deleted as per the GA) and fast-tracking.

- 4. Environmental Performance Limit Values (175):** The Presidency suggests moving towards the Parliament, only if the Parliament accepts cattle in the scope, and grant flexibility to:
  - a. As a first choice, make Environmental Performance Limit Values indicative for all resources except for water, which could still be binding.
  - b. Only if necessary to reach a deal, make Environmental Performance Limit Values wholly indicative, introducing the necessary technical adaptations in the text, as the difference with benchmarks would not be relevant anymore.

## **CLUSTER 3 – FLEXIBILITIES SOUGHT ON THE IEP**

- 1. PFAS (Annex II):** The Presidency has maintained that the amendment of Annex II needs to be done systematically, that the Commission is empowered to do so via delegated act under certain conditions, and that there is currently a restriction procedure under the REACH Regulation for around 10,000 Per- and Polyfluorinated Substances (PFAS). Nonetheless, the Parliament has signalled the issue as a priority. Rather than adding an undefined category of PFAS, as per its original report, the Parliament has counter-proposed to add only

Perfluorooctanoic Acid (PFOA) and its salts, Perfluorohexane-1-sulfonic acid (PFOS) and its salts, and Dicofol – all three substances with values 1kg/year in the thresholds for air, water and land. The Commission has already analysed those substances, as well as the proposed thresholds (PFAS for water and land only), in a preparatory report<sup>2</sup> and, subject to their inclusion, will need to develop a methodology for monitoring and reporting them. The Presidency proposes therefore to show flexibility towards the Parliament to accept those changes in the Annex II. The Parliament also insists on expanding category 63 of the Annex II (Brominated diphenylethers (HEXA, HEPTA and OCTA PBDE)) via its footnote number 12. These substances are included in the Stockholm Convention.

**2. Alignment with Kiev Protocol (106b, 149, 149b):** Some Delegations had warned that the transition from facility-level to installation-level reporting in combination with the lack of changes on Annex II could lead to misalignment with the Kiev Protocol, because some of the thresholds of the Annex II are adapted to facility-level. The Presidency has put forward some technical changes to correct the problem. The changes consist of:

- a. A new transitional clause that applies the thresholds to facility level until the revised Annex II has entered into force.
- b. An amendment to empower the Commission to adapt the Annex II to the Protocol even when the Protocol's annexes have not been changed.
- c. A deadline for Commission to come up with a review of the Annex II by 2026 at the latest.

**3. Penalties (162 and 165):** The Presidency proposes to maintain General Approach but move slightly towards the Parliament and the Commission position by introducing the following changes:

- a. Mandatory fines decoupled from turnover of the company (162): "The penalties referred to in paragraph 1 shall include fines that effectively deprive the person responsible for the infringement of the economic benefits derived from that infringement."
- b. A qualifier of sanctions based on "the degree of the fault" (165), in line with the IED.

**4. Aquaculture (Annex I):** The Parliament had introduced the word "intensive" in the definition of aquaculture activities to be covered, in line with the Kiev Protocol, and adopted a threshold of 500 tons per year exactly as the Council's mandate. The compromise proposal consists of "feed-based aquaculture" with the same threshold. This provides legal certainty as to what activities are covered and includes the most relevant activities in terms of size and environmental impact.

**5. Mirror clause for reporting obligations under the IED (70a):** The Presidency asks Delegations to grant flexibility to set a mirror clause in the Portal that would align the information available in the Portal with the information supplied by MS to the Commission annually according to Article 72 of the IED.

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<sup>2</sup> <https://circabc.europa.eu/ui/group/f80de80b-a5bc-4c2b-b0fc-9c597dde0e42/library/95139dd8-0ec0-40aa-a561-ec97b4dd4df3/details>

- 6. General review clause (new):** The Commission has tabled a proposal for a general review clause that would also replace the empowerment to amend Annex II in view of scientific progress (in row 142, deleted by Council.) The text reads: “The Commission shall conduct a review of the implementation of this Regulation and its Annexes at least every five years from the date of its application. The review shall be aimed at, but not limited to, ensuring the alignment of this Regulation and its Annexes with scientific and technical progress. The review process shall take due account of international initiatives addressing pollutant releases from industrial activities and their impact on health or the environment, Member States’ best practices and advancements in this regard, and progress in research and technology. Where appropriate, the Commission shall submit a legislative proposal to amend this Regulation and its Annexes.” The Presidency proposes to show flexibility to accept the review clause.

## **CLUSTER 4 – REMAINING TECHNICAL ISSUES**

Delegations are invited to go through all compromise proposals (both in green and yellow) contained in the four-column documents distributed via the Delegates Portal and to express whether they can back the proposed approach or, alternatively, whether there is any item in the package that they cannot accept.

Some of the most relevant changes are listed below:

- 1. Sector-specific chapters (IED):** The Presidency has worked on a balanced compromise that maintains the main features of the General Approach and moves towards the Parliament in some of their demands in a technically-sound manner, while convincing the Parliament to drop some of their AMs.
  - a. **Combustion plants:** 258d, 258f, 258h, 258b+258j, 474k, 474l
  - b. **Waste incineration and co-incineration plants:** 262b, 262d, 262f, 474m, 474n
  - c. **Installations and activities using organic solvents:** 262j
  
- 2. Transitional provisions (IED; 387h, 387i):** The compromise text respects the General Approach. However, some delegations have flagged that, as things stand in the transitional provisions, Member States using General Binding Rules (GBR) could be forced to update all their GBR by the date of transposition of the Directive. The Presidency is to find a technical solution to the problem.
  
- 3. Confidential information (IED; 125, 86e, 160):** The Presidency proposes to accept the compromise text tabled by the Commission, in exchange for the Parliament dropping its AM on row 86e and accepting Council text on row 160. The compromise text is in line with current practices of the Sevilla process.
  
- 4. Environmental Management Systems and environmental verifier (IED; 160a, 159b, 149):** The Presidency proposes to accept the compromise text tabled in row 160a that merges Parliament AM in row 159b and 149, and Council text on 160a. The obligation to have in place an EMS by the date of transposition is restricted to installations that already have an EMS according to existing BAT conclusions. The EMS revision will follow the latest published sectoral BAT Conclusions. The language on auditing ensures flexibility in line with the General Approach.



- 5. Life-cycle environmental performance (IED; 119):** The Presidency proposes to show flexibility towards the Parliament and delete the provision in view of difficulties of assessment.
- 6. Change of name (IED; 54b):** The Presidency proposes to show flexibility by counter proposing the following change to the name of the Directive, as suggested by some Delegations: “Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial **and agro-industrial** emissions (integrated pollution prevention and control)”.
- 7. Entry into application (IEP; 169, 172, 175):** The Presidency proposes to strike a compromise with the Parliament by accepting 2027 as the year of entry into application (the Parliament and the Commission advocated for 2026, while the Council defended 2028), and adapt the transitional provisions accordingly.