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CONTRIBUTION

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

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Subject: Industrial Emissions Directive and Industrial Emissions Portal: Follow-up to the WPE meeting on 13 November - Comments from delegations

Following the WPE meeting on 13 November, delegations will find attached the comments received from DE, FR (followed by a courtesy translation), HU, NL and SK delegations.

WK 14983/2023 INIT

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EN

Germany

Industrial Emissions Directive Follow up WPE on 13 November 2023 **Written comments and proposals**

Industrial Emissions Portal

The numbers of the lines refer to document WK 14479/2023 ADD 2 REV 1 (4CT of IEP from 10th November)

General review clause (new) → in favour

[Steering Note Cluster 3 Number 6]

GER supports the proposal for a general review clause, which requires the Commission at regular intervals to review the Annexes and subsequently submit a legislative proposal for updates. GER only agrees to amend the Annexes by means of a delegated act within the framework of the compromise set out in the General Approach.

Mirror clause for reporting obligations under the IED, line 70a → scrutiny reservation

[Steering Note Cluster 3 Number 5]

In principle, GER supports a mirror clause for publication obligations under the IED. Since it has not yet been conclusively clarified which information is to be reported under Article 72 of the IED, the GER position depends on the outcome of the negotiations on the IED. GER refers to its respective written comments on the IED. In any case, it must be ensured that sensitive data and in particular confidential business information remains protected.

Article 5 (Contextual information), line 95

GER remains in favour of maintaining the Council position. In the sense of a compromise, operating hours could be levied but not published. In the case of emissions caused by accidents, a “yes or no” query could be used to determine whether the reported emissions include proportions of accidents.

Alignment with Kiev Protocol, line 106b, 149, 149b → in favour

[Steering Note Cluster 3 Number 2]

GER welcomes that a proposal for a transitional arrangement has been tabled to ensure compliance with the Kiev Protocol and supports the proposed text. GER welcomes in particular that in line 149b the Council proposes a specific date by which Annex II must be adapted to align it to the Kiev Protocol

Article 10, (Objection to publication), line 122 → in favour

GER still supports the EP proposal with reference to the new Article 3a of the IED ("confidential business information") to give operators the opportunity to object to the publication of confidential data.

Article 12 (Guidance document), line 134a, and 134c → in favour

GER in principle supports the compromise proposal submitted by the COM. Yet, a specific date for the first submission of the document should be maintained. The drafting of the guidance document needs to be started as soon as possible and the Member States must be involved early on in the process.

Penalties, lines 162, and 165 → in favour

[Steering Note Cluster 3 Number 3]

GER in principle remains in favour of maintaining the Council position, but can support the proposal of the Presidency within the framework of an overall compromise.

Entry into application (169, 172, 175) → against

[Steering Note Cluster 4 Number 7]

Germany again reiterates the need for a later entry into force as proposed in the Council's General Approach. This seems appropriate due to the change in reporting level and the higher number of installations covered.

Annex I, activity 7, line 191 (aquaculture) → in favour

[Steering Note Cluster 3 Number 4]

GER supports the Presidency's proposal and welcomes the clarification.

Annex I, activity 9 (Electrolysis of water for production of hydrogen) → against

For harmonization with the IED, GER advocates not to include electrolyzers separately in Annex I of the IEP, but to include them through the reference to Annex I of the IED.

Annex II (PFAS)

[Steering Note Cluster 3 Number 1]

GER would like to repeat its support for a comprehensive adaptation of Annex II on the basis of the requirements adopted in the general approach and in the relevant procedures set out in Articles 14-16 in a timely manner. To this end, the Commission is invited to present a first proposal as soon as possible and to involve the Member States intensively in the preparation of the proposal.

GER does not consider it useful to include substances for which there are no monitoring and reporting requirements at this stage. Should this approach be taken, these requirements must be clarified at an early stage.

GER rejects the full inclusion of the group of PFAS in the IEP, as proposed by the European Parliament, in the context of the current legislative procedure.

Industrial Emissions Directive

The numbers of the lines refer to document WK 14479/2023 ADD 1 (4CT of IED and draft penalty table from 8th November)

Recital 29a (oil and gas), line 39a → proposal for amendment

We see the need to amend recital 29a with the following text at the end of the second sentence of the recital: “... and Directive 2013/30/EU of the European Parliament and of the Council of 12 June 2013 on safety of offshore oil and gas operations.”

Rationale: The review that has to be done by the Commission must also take into account Directive 2013/30/EU to get the full scale of relevant EU legislation for offshore exploration and production of mineral oil and gas. In 2022, KOM DG has published the “Study on Decommissioning of offshore oil and gas installations: a technical, legal and political analysis” with regard to Directive 2013/30/EU. It covers aspects of long term monitoring of oil and gas wells in the offshore sector and suggestions for amendments of Directive 2013/30/EU.

Change of name (line 54b) → in favour

[Steering Note Cluster 4 Number 5]

GER is in favour of the changing of the name of the directive as part of the joint compromise package.

E-Permitting (line 88b) → in favour

[Steering Note Cluster 2 Number 3]

GER can accept the demand of the EP to establish an e-permitting system. In return, the EP has to drop the demand on the permit summary and fast tracking.

Confidential information (line 125, 86e, 160) → in favour (if implementing act)

[Steering Note Cluster 4 Number 3]

GER still supports the EP proposal with reference to the new Article 3a of the IED (“confidential business information”) to give operators the opportunity to object to the publication of confidential data.

GER welcomes that the access to non-anonymised information shared in the BREF Process for Member States and their Representatives is preserved. Only with this access they can fulfil their obligation of thoroughly and transparent participation in the Sevilla process and the derivation of BAT will be traceable and appropriate.

The determination which information of the EMS and the transformation plan have to be published should be carried out by an implementing act like it was settled in the General Approach.

Environmental Management Systems and environmental verifier (line 160a, 159b, 149) → in favour

[Steering Note Cluster 4 Number 4]

GER supports the compromise text for EMS and welcomes the opening of the EMS audit for environmental verifiers accredited either under EMAS or under ISO.

Environmental performance levels¹ (line 175) → in favour

[Steering Note Cluster 2 Number 4]

In principle, GER still prefers binding environmental performance levels associated with BAT, as it is described in the General Approach: In order to support decarbonisation, resource efficiency and a circular economy the BAT-conclusions should include binding environmental performance levels associated with BAT, for processes that have a high degree of homogeneity across the EU, when the data made available in the exchange of information supporting the determination of BAT are sufficiently robust. The BAT conclusions should also include indicative benchmarks for other cases, in particular where environmental performance is highly dependent on specific circumstances of the processes.

As part of a joint compromise package, GER supports the proposal of the presidency to drop the binding EPLVs partly or completely.

Article 15(4) (re-assessment of derogation) (line 182) → against

GER would like to underline its position that reconsidering derogations according to Article 15 Paragraph 4 every four years is an unnecessary administrative burden for the permitting authorities. This holds true especially when derogations are granted for technical reasons of the installation. Anyways, derogations will be reconsidered already under the present legislation under the conditions of Article 20 Paragraph 2 or when new BAT conclusions regarding the installation are published.

Article 15 Paragraph 5 (objection of Commission) (line 183b) → against

GER welcomes the draft agreement and that it is based on the crisis exception rule of the Council mandate. However, DEU rejects the COM's right of veto.

Rationale: The already envisaged right of the COM for criteria and guidelines as well as the obligation of the Member States to notify any derogation already lead to the same goal.

A right of veto must not suspend the urgent use of the crisis exception (no suspensive effect) and must be limited to a minimum period of time (e.g. 1 month). In addition, a veto right must not lead to the avoidance of investments into the transitional technology required in the crisis situation due to economic uncertainty. Therefore, in the event of a veto, an appropriate phase-out period is required.

Combustion plants (line 258d, 258f, 258h, 258b+258j, 474k, 474l) → in favour

[Steering Note Cluster 4 Number 1a]

GER supports the compromise proposal for combustion plants.

¹ General Approach: environmental performance levels associated with the best available techniques (BAT AEPLs); Presidency: Environmental Performance Limit Values (EPLVs)

Waste incineration and co-incineration plants (line 262b, 262d, 262f, 474m, 474n) → against

[Steering Note Cluster 4 Number 1a]

From the German perspective there is no need to add prescriptions for the monitoring of emissions of dioxin and furan in Chapter IV and Annex VI. Relevant amounts of emissions are not expected. Such a prescription would lead to double regulation as the Implementing Decision (EU) 2019/2010 stipulates advanced obligations.

Mirror clause for imported products (cattle) (line 269a) → against

[Steering Note Cluster 1 Number 5]

GER sees legal concerns with this clause. We doubt that this approach would be in accordance with WTO standards. There could be substantial disadvantageous effects regarding ongoing negotiations of free trade agreements.

Operating rules (line 332) → in favour (if implementing act)

The conditions for operation rules should be stipulated via an implementing act and not – as EP demands – via a delegated act.

Penalties and compensation (line 368 to 382b) → scrutiny reservation/proposal for amendment

[Steering Note Cluster 2 Number 2]

GER continues to support the General Approach of the Council, which should be maintained. If a deviation from the General Approach should be unavoidable for an agreement with the EP and COM, this could be considered if necessary, provided that the following points in particular are observed:

(lines 378, 42):

In particular, the liability of public authorities (official liability) must stay deleted. The PCY's-Proposal for amending the corresponding recital 32 with the wording "without prejudice to the application of the Union and national rules on State liability" cannot be supported, as it could create misunderstandings.

Furthermore, liability must be limited to cases where there is a causal link between the violation and the damage. Hence, the wording of the EP ("caused or contributed to the damage") is not acceptable.

Furthermore, we suggest to add the words "in accordance with national law" at the end of Article 79a Paragraph 1 (line 378) to clarify that the liability basically follows the well-known and established liability provisions of the national law in the MS. This wording is already being used in other recent proposals, see for example Art. 26 Paragraph 1 of the General Approach on the proposal for a Directive combating violence against women and domestic violence, council doc. 10717/23 of 15 June 2023 or Art. 26 Paragraph 1 of the General Approach on the Proposal for a Directive concerning urban wastewater treatment, council doc. 13857/23.

In the corresponding recital 32 (line 42), it should be clarified that the term "individuals affected" only refers to persons who fall within the scope of protection of the violated regulation. Only if there is a breach of a duty of care, which was specifically intended to protect the injured party, there can be liability. This complies with the principle of third-party protection at EU-level.

(line 380):

The scope of this regulation remains unclear, especially considering the already existing principle of effective enforcement of Union law. Therefore, it should be deleted.

(lines 381, 382a)

From the German point of view, courts would be obliged to take into account scientific data anyway. This provision as well as Paragraph 5a (new) and the associated recital 32a (new) would be highly unusual and might lead to uncertainties for courts applying these rules. The taking of evidence is not harmonized in Union law and should be left to the MS. Therefore, the corresponding provisions in Paragraph 4 and 5a as well as recital 32a (new) should be avoided. However, if it seems absolutely necessary to reach a compromise, we could accept this text if it is clarified in Paragraph 1 that it will be left to MS to ensure that the new liability rules will fit their national civil liability regimes. Therefore, the words "in accordance with national law" should be added in Paragraph 1.

In any case, Germany could not accept any reversal of the burden of proof or presumption as proposed in Paragraph 4 of the Commission's text, including the corresponding recital 33 (line 43).

Transitional provisions (line 387h, 387i) → in favour

[Steering Note Cluster 4 Number 2]

GER strongly welcomes the willingness of the Presidency and the Commission to find a solution for the transitional provisions in Article 15 Paragraph 3 that will enable Member States to implement the requirements of future Implementing Decisions as general binding rules with regard to Article 6. Due to the existing administrative system, this is of high importance for GER in terms of facing adjustments of existing installations for the transformation of the industry.

It is therefore of the utmost importance that the application of general binding rules remains possible also in the transitional period. Germany will not support an IED which restricts the application of general binding rules in any way, even temporarily until new BVT-conclusions are published.

Transitional provisions – livestock breeding (line 387l) → noted item

[Steering Note Cluster 1 Number 3]

GER supports the phased approach regarding animal husbandry installations. The transitional provisions have to be aligned with the final thresholds.

Forging presses (line 413):

As regards the processing of ferrous metals (Annex I Point 2.3), GER would like to underline its position that smitheries with forging presses (Annex I Point 2.3 (ba), line 413 in Presidency document) should not be included in the IED.

Rationale: An inclusion of these smitheries in the IED is in our view disproportionate. Unjustified bureaucratic burden should absolutely be avoided.

Mining (422 to 424) → in favour

[Steering Note Cluster 2 Number 1]

With regard to a joint compromise package, GER supports the negotiating position proposed by the Presidency (inclusion of ore mining in the scope). The future inclusion of the mining of industrial minerals must not be carried out in a delegated act, as the EP demands. Based on a further impact assessment by the Commission, an extension of the scope could be done namely an ordinary legislative procedure based on a further impact assessment by the Commission as already proposed by the Presidency.

Thresholds for livestock breeding (447 to 448) → in favour

[Steering Note Cluster 1 Number 1]

1. cattle: As cattle cause a significant share of the emissions of ammonia and methane, GER would prefer the threshold of 350 LSU. This should only be raised to 450 LSU if absolutely necessary for a compromise.
2. pigs: GER supports the threshold proposed by the Presidency. However it has to be made sure that no deterioration regarding sows and other pigs in comparison to the current IED occurs.
3. mixed farms: The threshold should only be raised if absolutely necessary for a compromise. In case of a technical solution, only really small numbers of non-primary animals for domestic consumption should be incorporated.
4. poultry: GER wants to stick with the threshold of 280 LSU of the General Approach.

Extensive animal farming (447 to 448) → in favour

[Steering Note Cluster 1 Number 4]

From the German point of view, it is important to preserve the general orientation requirement regarding land use (land is used only for grazing or growing fodder or forage used for feeding the animals in the installation). With regard to an overall compromise package, additional criteria such as the fulfilment of the EU-Eco-Regulation and mandatory grazing could be agreed. Here, attention should be paid to a clear legally compliant formulation.

Conversion rates (livestock) (line 449):

[Steering Note Cluster 1 Number 2]

Piglets of 10 to 30 kilograms should be retained as a category, but the cutting criterion for “other pigs” can be increased to 30 kilograms.



RÉPUBLIQUE
FRANÇAISE

Liberté
Égalité
Fraternité

Paris, le 14 novembre 2023

NOTE DES AUTORITÉS FRANÇAISES

Objet : Commentaires écrits des autorités françaises à la suite du Groupe de Travail Environnement du 13 novembre 2023 sur la directive sur les émissions industrielles (IED) et sur le portail des émissions industrielles (IEP)

CLUSTER 2 : Flexibilités recherchées sur l'IED

Les autorités françaises soutiennent globalement les propositions de compromis de la Présidence espagnole.

1) Mining (422 to 424 et 347a et 347b)

La France est favorable à un rapprochement de la position du Parlement et à la suppression des minéraux industriels du périmètre de la directive, en donnant mandat à la Commission pour travailler sur le sujet et proposer ultérieurement, si besoin, une procédure législative sur ces minéraux industriels.

Cette modification doit se faire par une procédure législative et non par acte délégué.

Cette position est susceptible d'évoluer au vu de l'analyse que doit mener la Commission sur la compatibilité du périmètre des mines avec le « Critical raw materials act ».

La France rappelle qu'elle veut que la notion « **d'échelle industrielle** » figure dans le texte.

3) E-permitting (88b)

La France souhaite rappeler sa ferme **opposition au résumé du permis** ; ainsi qu'à la procédure de « fast-tracking ».

La France est favorable à la date de **2035** pour la mise en place du e-permitting.

Elle demande pour ce système de retenir la formulation « **shall aim to** », à la place de « shall to ».

La France est fermement opposée à tout système de e-permis dont le cadre serait rendu obligatoire.

4) Environmental Performance Limit Values (175)

La France estime que les niveaux de performance environnementale doivent être obligatoires. Dans un souci de convergence avec le Parlement, elle pourrait cependant accepter un caractère indicatif, à l'exception de celui associé à l'eau qui doit rester obligatoire.

CLUSTER 3 : Flexibilités recherchées sur l'IEP

1) PFAS (annexe II)

Les autorités françaises sont favorables à l'ajout des 3 polluants mentionnés (PFAS et dicofol). Toutefois, il faut, au préalable, disposer de méthodes normées établies pour l'analyse de ces substances, notamment pour les mesures dans l'air. Aussi les autorités françaises demandent

que l'obligation de déclaration de ces substances ne commence qu'après la mise en place d'une norme européenne pour chaque substance concernée.

2) Alignement avec le protocole de Kiev

S'agissant de la proposition de la présidence d'opérer une transition du niveau de l'« établissement » vers le niveau des « installations », les autorités françaises y restent fermement opposées.

Si les seuils venaient à être modifiés dans l'annexe II du protocole, ils s'appliqueraient aux rejets de l'établissement et non aux rejets des installations, ce qui impliquerait une incohérence entre le protocole et le règlement européen.

La déclaration au niveau de l'installation n'est pas réalisable pour le milieu eau car les rejets sont mutualisés et quantifiés en sortie d'établissement. Pour le milieu air, ces nouvelles contraintes impliqueront une charge administrative très forte et un coût démesuré pour les Etats Membres, puisqu'aujourd'hui les outils de collecte des données d'émissions sont établis par établissement et non par installation, sauf pour ce qui est des installations de combustion.

D'autre part, en matière d'accès à l'information environnementale, la sensibilisation du public ne serait pas plus claire si les données étaient publiées par installation plutôt que par établissement.

Si la Commission devait modifier le règlement pour l'aligner sur le Protocole, cela doit être **exclusivement par acte d'exécution. La France est opposée aux actes délégués.**

Les autorités françaises rappellent que le rapportage doit continuer de se faire au niveau de l'établissement, comme cela est fait aujourd'hui, et non au niveau de l'installation ou de l'activité.

5) Mirror clause for reporting obligations under the IED (70a)

La France est très fermement opposée au rapportage de données et d'informations supplémentaires à celles aujourd'hui requises par le Règlement E-PRTR, du fait de la charge administrative que cela représente. Il s'agit d'une ligne rouge.

Elle est donc totalement opposée à cette mesure miroir.

Elle rappelle qu'elle est également fermement opposée au rapportage des données contextuelles et des données relatives à l'utilisation des ressources.

6) General review clause

La France demande que cette clause de révision générale soit **strictement limitée à l'annexe II** (liste des substances et seuils) et qu'elle se fasse systématiquement par procédure législative.

Ligne 108 (article 6)

La France rappelle qu'elle est **opposée au rapportage des installations non-conformes et à la modification du délai de rapportage mentionné dans l'Orientation générale.**

Annexe I

La France est opposée à l'ajout de la ligne n° 9 qui serait spécifique à l'**activité de production d'hydrogène par électrolyse de l'eau**. Cette activité est déjà visée à la ligne n° 1 et la France ne souhaite pas faire de rapports qui iraient plus loin que le seuil fixé dans la directive IED.

CLUSTER 4 : Autres problèmes techniques

1) Chapitres III à V de la directive IED

La France soutient les propositions de la Présidence visant à modifier plusieurs articles des chapitres III à V de la directive IED.

2) Dispositions transitoires (lignes 387h et i)

Dans l'esprit, la France était d'accord avec l'orientation générale mais avait signalé que des ajustements rédactionnels pour rendre la formulation plus limpide restaient nécessaires et qu'ils

pourraient utilement être réalisés pendant la phase de trilogie.
S'il y a un risque d'être dans l'obligation de ré-écrire des règles générales contraignantes à la publication de la directive, la France soutient une proposition à venir de la Présidence pour l'éviter.

3) Informations à caractère confidentiel (lignes 125, 86e, 160)

La France soutient la suppression de la ligne 86e ainsi que la modification de la ligne 125.
L'adoption des informations importantes pour la publication du SME doit être faite par acte d'exécution et non par acte délégué.

4) Système de management de l'environnement et vérificateur environnemental (lignes 160a, 159b, 149)

Le tableau 4 colonnes indique que la ligne 149 est supprimée, toutefois ces éléments sont partiellement repris à la ligne 160a.

La ligne 160a renvoie à deux sortes de vérificateurs : les vérificateurs EMAS et les organismes d'accréditation issus du règlement n° 765/2008.

Par rapport aux vérificateurs EMAS, il ne semble pas pertinent d'y faire référence car, à ce jour, les vérificateurs EMAS vérifient des déclarations environnementales (ils recherchent, examinent et critiquent l'origine des données) mais ils ne vérifient pas, au titre du règlement EMAS, qu'un système de management environnemental est opérationnel et effectivement mis en place.

La France demande donc d'indiquer que l'audit du SME doit être réalisé par un vérificateur environnemental accrédité à réaliser un audit, que cet audit se base par exemple sur l'EMAS ou sur la norme ISO 14001 (etc.).

Aussi, la France propose la formulation suivante : « *EMS shall be audited [...], by a conformity assessment body accredited for auditing EMS IED, as defined in the current article, in accordance with Regulation (EC) No 765/2008* »

7) Entry into application

La France demande le maintien de la date d'effet de ce règlement au 1^{er} janvier 2028, comme cela est prévu dans l'orientation générale.

Ligne 113a (article 8, paragraphe 3a)

Cette nouvelle disposition prévoit qu'en cas de problème affectant la ressource en eau potable, l'autorité compétente doit informer l'exploitant qui produit l'eau potable. La France estime que, si cette information doit être transmise, elle ne doit pas systématiquement être faite par l'autorité compétente.

Nous proposons la rédaction suivante :

*"3a. In the event of a breach of compliance affecting drinking water resources, including transboundary resources, or affecting wastewater infrastructure in the case of an indirect discharge, **the competent authority shall inform** the drinking water and wastewater operators, and all relevant authorities that ensure compliance with environmental legislation affected, of the breach **shall be informed** and the measures taken to prevent or remedy the damage caused to human health and the environment.*

Ligne 197d :

La France demande la suppression de la phrase :

« Member States shall take the necessary measures to ensure that the competent authority reacts in due time to the information provided by the operator. »

Ligne 208:

La France demande de reprendre la proposition du Parlement, (ou de garder celle de l'OG) :

« ~~in a manner which is easy to find~~ » >> « on a webpage which is easy to find ».

Ligne 212 :

La France demande de reprendre la proposition du Parlement, (ou de garder celle de l'OG) :

« ~~in a manner which is easy to find~~ » >> « on a webpage which is easy to find ».

Ligne 247 :

La Présidence, en lien avec les demandes du Parlement, a modifié la proposition de la Commission en ajoutant d'une part que la dérogation temporaire aux NEA-MTD des conclusions MTD publiées permettant de tester une technique émergente est accordée pour 30 mois (au lieu de 24 mois) et d'autre part qu'à l'issue de ces 30 mois, l'exploitant devra soit mettre fin à la technique testée soit être en mesure de respecter les NEA-MTD « classiques » des conclusions MTD. La France ne soutient aucun de ces deux ajouts, dans le sens où cela revient à accorder un délai supplémentaire de 6 mois au délai de 6 ans déjà prévu et certains industriels pourraient profiter de cette dérogation pour avoir 6,5 années pour respecter les NEA-MTD « classiques » quand leurs concurrents auraient 4 ans pour les respecter après la publication des conclusions MTD.

Ligne 253 :

Le plan de transformation semble devenir indicatif or celui-ci est une avancée majeure de la révision IED, la France demande que ce plan soit obligatoire.

Ligne 258 :

La France propose de garder la date du 31 décembre 2025 proposée dans l'OG pour que la Commission définisse le contenu des plans de transformation, afin de laisser suffisamment de temps aux opérateurs pour en prendre connaissance.

Ligne 338c :

Dans un souci de simplification, la France demande de supprimer cet alinéa 4 sur l'examen du besoin de contrôle des émissions des mines énergétiques et de la nécessité de réviser le seuil de la production d'hydrogène par électrolyse de l'eau.

Ligne 378 :

La France souhaite que la rédaction de l'OG soit retenue et que la mention « *where appropriate, from the relevant competent authorities responsible for the violation* » soit supprimée.

Ligne 474g :

La France propose de reprendre la même formulation que celle des lignes 208 et 212 : « *in-a manner which is easy to find* » >> « *on a webpage which is easy to find* ».

D'une manière générale, la France souhaite que les actes délégués soient remplacés par des **actes d'exécution** lorsqu'ils sont mentionnés dans le texte.

Courtesy translation

This is a courtesy translation and in the event there are any differences between the French and English texts, the French text governs”

Subject: Written comments from the French authorities following the November 13, 2023 Environment Working Group on the Industrial Emissions Directive (IED) and the Industrial Emissions Portal (IEP)

CLUSTER 2: Flexibilities sought on IED

The French authorities broadly support the Spanish Presidency's compromise proposals.

2) Mining (422 to 424 and 347a and 347b)

France is in favour of moving closer to the Parliament's position and removing industrial minerals from the scope of the directive, by giving the Commission a mandate to work on the subject and subsequently propose, if necessary, a legislative procedure on these industrial minerals.

This change must be made by legislative procedure and not by delegated act.

This position is likely to evolve in the light of the analysis to be carried out by the Commission on the compatibility of the scope of mines with the Critical Raw Materials Act.

France reiterates that it wants the notion of "**industrial scale**" to be included in the text.

3) E-permitting (88b)

France wishes to reiterate its **firm opposition to the summary of the permit**, as well as to the "fast-tracking" procedure.

France is in favour of the date of **2035** for the introduction of e-permitting.

It requests that the wording "**shall aim to**" be used instead of "shall to".

France is firmly opposed to any e-permitting system whose framework would be made compulsory.

4) Environmental Performance Limit Values (175)

France believes that environmental performance levels should be mandatory. However, in the interests of convergence with the Parliament, it could accept an indicative level, except for that associated with water, which should remain mandatory.

CLUSTER 3: Flexibilities sought on the IEP

1) PFAS (Annex II)

The French authorities are in favour of adding the 3 pollutants mentioned (PFAS and dicofol).

However, established standardized methods must first be available for analyzing these substances, particularly for air measurements. The French authorities therefore request that the obligation to declare these substances should only begin once a European standard has been established for each substance concerned.

2) Alignment with the Kiev Protocol

The French authorities remain firmly opposed to the Presidency's proposal to make a transition from the "establishment" level to the "facility" level.

If the thresholds were to be modified in Annex II of the Protocol, they would apply to releases from the establishment and not to releases from the installations, which would imply an inconsistency between the Protocol and the European Regulation.

Reporting at installation level is not feasible for the water environment, as discharges are pooled and quantified at the plant outlet. For the air environment, these new constraints will entail a very heavy administrative burden and a disproportionate cost for Member States, since today's emission data collection tools are established by establishment and not by installation, except in the case of combustion plants.

On the other hand, in terms of access to environmental information, public awareness would not be any clearer if data were published by installation rather than by establishment.

If the Commission were to amend the regulation to bring it into line with the Protocol, this would have to be done **exclusively by implementing act. France is opposed to delegated acts.**

The French authorities reiterate that reporting should continue to be at establishment level, as it is today, and not at installation or activity level.

5) Mirror clause for reporting obligations under the IED (70a)

France is firmly opposed to the reporting of data and information additional to that currently required by the E-PRTR Regulation, due to the administrative burden this would represent. This is a red line. It is therefore totally opposed to this mirror measure.

It recalls that it is also firmly opposed to the reporting of contextual data and data relating to the use of resources.

6) General review clause

France requests that this general review clause be **strictly limited to Annex II** (list of substances and thresholds) and that it be systematically carried out by legislative procedure.

Line 108 (article 6)

France reiterates its **opposition to the reporting of non-compliant installations and to the modification of the reporting deadline mentioned in the General Approach.**

Annexe I

France is opposed to the addition of line 9, which would be specific to the **activity of hydrogen production by water electrolysis**. This activity is already covered by line no. 1, and France does not wish to report beyond the threshold set in the IED Directive.

CLUSTER 4: Other technical issues

5) Chapters III to V of the IED Directive

France supports the Presidency's proposals aiming to amend several articles in Chapters III to V of the IED Directive.

6) Transitional provisions (lines 387h and i)

In spirit, France agreed with the general approach, but pointed out that drafting adjustments to make the wording clearer were still necessary and could usefully be made during the dialogue phase.

If there is a risk of having to rewrite binding general rules when the directive is published, France supports a forthcoming Presidency proposal to avoid this.

7) Confidential information (lines 125, 86e, 160)

France supports the deletion of line 86e and the modification of line 125.

The adoption of important information for the publication of the EMS should be done by implementing act and not by delegated act.

8) Environmental management system and environmental verifier (lines 160a, 159b, 149)

The 4-column table shows that line 149 has been deleted, but these elements are partially included in line 160a.

Line 160a refers to two types of verifier: EMAS verifiers and accreditation bodies under Regulation 765/2008.

With regard to EMAS verifiers, it does not seem relevant to refer to them, as EMAS verifiers currently check environmental declarations (they research, examine and criticize the origin of the data), but they do not verify, under the EMAS regulation, that an environmental management system is operational and effectively set up.

France therefore requests that it be stated that the EMS audit must be carried out by an environmental verifier accredited to carry out an audit, regardless of whether this audit is based on EMAS or ISO 14001 (etc.).

France therefore proposes the following wording: “*EMS shall be audited [...], by a conformity assessment body accredited for auditing EMS IED, as defined in the current article, in accordance with Regulation (EC) No 765/2008*”

7) Entry into application

France requests that the effective date of this regulation be maintained at January 1, 2028, as provided for in the general approach.

Line 113a (article 8, paragraph 3a)

This new provision stipulates that in the event of a problem affecting the drinking water resource, the competent authority must inform the operator who produces the drinking water. France believes that, while this information must be passed on, it should not systematically be provided by the competent authority.

We propose the following wording: “*3a. In the event of a breach of compliance affecting drinking water resources, including transboundary resources, or affecting wastewater infrastructure in the case of an indirect discharge, ~~the competent authority shall inform~~ the drinking water and wastewater operators, and all relevant authorities that ensure compliance with environmental legislation affected, of the breach shall be informed and the measures taken to prevent or remedy the damage caused to human health and the environment.*”

Line 197d:

France requests the deletion of the sentence:

“*Member States shall take the necessary measures to ensure that the competent authority reacts in due time to the information provided by the operator.*”

Line 208:

France asks that the Parliament's proposal be adopted (or that the one of the General Approach be retained): “*~~in a manner which is easy to find~~*” >> “*on a webpage which is easy to find*”.

Line 212:

France asks that the Parliament's proposal be adopted (or that the one of the General Approach be retained): “*~~in a manner which is easy to find~~*” >> “*on a webpage which is easy to find*”.

Line 247:

The Presidency, in line with Parliament's requests, has amended the Commission's proposal by adding that the temporary derogation from the BAT-NEA of the published BAT conclusions, allowing an emerging technique to be tested, is granted for 30 months (instead of 24 months), and that at the end of these 30 months, the operator must either discontinue the tested technique or be in a position to comply with the “classic” BAT-NEA of the BAT conclusions. France does not support either of these two additions, in the sense that it amounts to granting an additional 6 months to the 6-year period already provided for, and some manufacturers could take advantage of this derogation to have 6.5 years to comply with the “classic” BAT-AELs, while their competitors would have 4 years to comply with them after publication of the BAT conclusions.

Line 253:

The transformation plan seems to have become indicative, although it is a major step forward in the IED revision. France calls for the plan to be made compulsory.

Line 258:

France proposes to keep the December 31, 2025 date proposed in the General Approach for the Commission to define the content of the transformation plans, in order to give operators sufficient time to become familiar with them.

Line 338c:

In the interests of simplification, France requests that paragraph 4 on the need to control

emissions from energy mines and the need to revise the threshold for hydrogen production by water electrolysis be deleted.

Line 378 :

France would like the wording of the general approach to be retained and the phrase "*where appropriate, from the relevant competent authorities responsible for the violation*" to be deleted..

Line 474g :

France proposes using the same wording as in lines 208 and 212: "~~*in a manner which is easy to find*~~" >> "*on a webpage which is easy to find*".

Generally speaking, France would like delegated acts to be replaced by **implementing acts** when they are mentioned in the text.

COMMENTS – SLOVAKIA

To the Industrial Emissions Directive (IED) and Industrial Emissions Portal Regulation (IEPR) on WPE
13th November 2023

Cluster 1

Rows 447 and 448 of the IED (Thresholds): Understanding the importance of environmental protection within activities related to livestock breeding, as well as the importance to ensure the country's food security, the Slovak Republic can give maximum flexibility to the Presidency to increase the threshold of livestock units for cattle as much as necessary to reach an agreement with the European Parliament and can be flexible to the EP amendments to exclude cattle from the scope of the Directive.

Row 387l of the IED (Transitional provisions): The Slovak Republic would like to thank the Presidency for maintaining the phased approach depending on the size of the farm and fully supports its introduction. However, we are aware that some modifications to the text might be necessary depending on the final outcome of the negotiations.

Cluster 2

Row 88b of the IED (E-permitting): Regarding the introduction of the electronic permit system, the Slovak Republic supports the obligation to set its introduction at a later date, namely 2035.

Row 175 of the IED (Environmental Performance Limit Values): The Slovak Republic is in favour of option b) to make the Environmental Performance Limit Values indicative as a whole, while introducing the necessary technical adaptations in the text, as the difference with benchmarks would not be relevant anymore.

Cluster 4

Row 258h of the IED (Sector-specific chapters, Combustion plants): On approach concerning combustion plants the Slovak Republic would like to propose to keep the original wording as in Article 30(9).

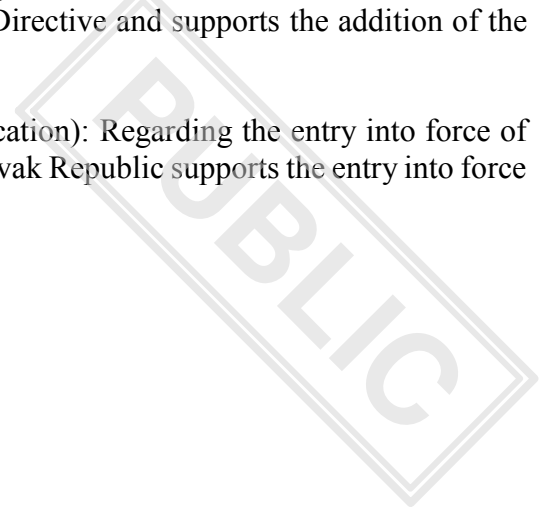
Row 474k of the IED (Sector-specific chapters, Combustion plants): Concerning the period of informing the competent authority about the results of the checking the automated measuring systems the Slovak Republic supports the position of the EP to set the 3 months deadline.

Row 262b of the IED (Sector-specific chapters, Waste incineration and co-incineration plants): On provisions related to waste incineration and co-incineration plants we agree that this should be handled differently and that is why we support the Presidency intention to keep it as part of the sector-specific clauses package.

Rows 262d and 262f of the IED (Sector-specific chapters, Waste incineration and co-incineration plants): On provision regarding monitoring of emissions we support the Presidency intention to keep it as part of the sector-specific clauses package.

Row 54b of the IED (Change of name): Regarding the name of the Directive, the Slovak Republic is flexible in determining the name of the Directive and supports the addition of the part "and agro-industrial".

Rows 169, 172 and 175 of the IEP (Entry into application): Regarding the entry into force of the Regulation on Industrial Emissions Portal, the Slovak Republic supports the entry into force year of 2027 instead of 2026.



THE NETHERLANDS

Herewith the remarks of the Netherlands with regard to steering note WK 14479/2023 INIT, and documents WK 14479/2023 ADD 1 and WK 14479/2023 ADD 2.

The Netherlands would like to thank you for all the work done and the constructive negotiations in the trilogues.

With regard to the **Industrial Emissions Portal (IEP) and annexes**, the Netherlands supports the presidency in its proposals.

- With regard to line **149b**: the Netherlands prefers the amendment of the EP without changes.
- With regard to **PFAS**, the Netherlands supports the fact that PFAS are being reported to the IEP as this whole group is very relevant to monitor. However, we do not support the suggestion to include only PFOS and PFOA and would like to suggest a broader view. PFOS and PFOA are already out of production and the threshold of 1 kg/year is far too high and will not result in much reporting. We would like to suggest to include PFAS that are more relevant at this moment and report it at a threshold of **100 gr./year for each individual PFAS and 20 PFAS cumulative** at 1 kg/year. We support the proposal from the Commission and the Presidency to allow Annex II to be updated through a general review clause. We think the first general 5-year review should follow the first update of Annex II as proposed by the presidency (2026 see point 2 in steering note). In **support** of the **proposal of Belgium**: we think it would make sense to broaden the study described in point 2 of the steering note ensuring that all relevant sunset parameters are included in Annex II starting already in 2026. This way more relevant parameters and thresholds can be included in Annex II taking into account available scientific and technological progress. If, however, the presidency thinks it is needed to include a relevant parameter in Annex II for PFAS-like substances, we would suggest to add organic fluorine. In our opinion 'adsorbable organic fluorine' (AOF) instead of PFAS would be the way forward. To ensure the threshold is sufficiently relevant we would suggest maximum 100 grams/year (to start with).

With regard to the **Industrial Emissions Directive**, the Netherlands supports nearly all proposals of the presidency with regard to **cluster 2**.

Only with regard to environmental performance limit values, the Netherlands finds it very important that in the negotiations we keep to the general approach. **EPLV's have to be binding**. EPLV's have no use if they are indicative. It will only increase the administrative burden (and law suits) and it would water down the IED significantly. So we would like to ask you to keep the EPLV's binding.

With regard to agro-industry, the Netherlands has always supported an ambitious IED with low LSU's. To the Netherlands the following points are important:

- The NL advocates the **lowest possible LSU** levels. As the NL has already compromised in the level of ambition in the General Approach, it is important to us that in the negotiations you keep to the General Approach.
- The NL does **not** support a **roll back** in any way.
- Furthermore, **including cattle** is essential for NL (and is a red line), again with a LSU threshold as low as possible but we do realise that the presidency needs flexibility in the negotiations and we support that.
- For rearing installations for pigs, NL advocates for **350 LSU** as agreed upon in the general approach.
- For mixed farms, NL advocates for **350 LSU** as agreed upon in the general approach.
- NL accepts the option to not rise the threshold of the GA for poultry, since **280 LSU** is the existing threshold and under no circumstance a rollback can be allowed.
- The Netherlands does **not support** the possibility of **notifications** (instead of permits). For the IPCC-installations this would be a roll back.
- With regard to the **conversion rates** - the Netherlands does **not support** the proposal of new definitions. All weight categories of pigs are included in the current IED. Adding a new threshold level is a rollback to the existing IED and the Netherlands cannot agree with this. Furthermore, the NL sees a significant increase of the administrative burden if the present

definitions are changed and new thresholds are introduced: existing licenses would have to be revised and it is impossible for the authorities to check upon the weight of animals. Last but not least, a new threshold level for breeding sows would exclude significant emissions of this industry.

- With regard to **transitional provisions (387I)** - The Netherlands acknowledges that if other threshold values are agreed upon, adjustments in the transitional provisions are required.
- With regard to **extensive animal farming (447 to 448)**: The Netherlands is **in favour** of the EP proposal **to replace extensive farming by organic farming** for pigs. We think furthermore that cattle should be part of 447 section 2 and have section 1 (exemption of extensive cattle) removed entirely.
- Additionally, the NL **supports** the condition that **animals** need to spend part of the year **outside**, however, this should be specified / defined.
- With regard to the **mirror clause for imported products (269a)**: in principle, the Netherlands **support** a **mirror clause** as it ensures a level playing field for the EU farmers. However, it is important that it could work in practice so look forward to a proposal for a good mirror clause.

If you have any questions, please do contact us.

Written comments of Hungary

Follow-up to the WPE on 13 November 2023 on the Industrial Emissions Directive and the Industrial Emissions Portal Regulation

Cluster 1 (Flexibilities sought on the IED for the agricultural sector)

We have two main priorities for regulation in the agricultural sector. The first is the repeal of the cattle sector and the second is to continue to support the use of implementing act for the operation rules.

Before the consultation process started, we did not support the extension of the scope (neither the reduction of the number of animals nor the extension of the Regulation to the cattle sector). The reason for this was that we considered that extending the scope of the IED in this way would cover much wider range of livestock activities and would impose a significant additional burden on both the livestock sectors and the authorities, while the benefits of the amendment would be small. We believe that at least the repeal of the cattle sector is an issue where in our view the Council could move towards the EP position. We therefore continue to support the exemption of cattle from the scope of the legislation.

We support the compromise proposal to increase the thresholds for pigs and mixed farms to 450 LSU and are curious about the new thresholds for the different categories of poultry.

We accept the deletion of the category “piglets” and the application of a 30 kg slaughter size for “other pigs”.

As regards transitional measures, we support a phased-in approach starting in 2030, depending on the size of the farm.

We consider it important to include a mirror clause for imported products in order to avoid competitive disadvantages on the market vis-à-vis countries outside the EU and to ensure that these countries are required to meet similar environmental standards on the basis of reciprocity.

We have also previously called for the definition of extensive livestock farming to be extended to include organic livestock farming, because we considered it important to exclude these farms from the scope of the Directive.

Cluster 2 (Flexibilities sought on the IED for the remaining chapters)

Overall, we agree with the Presidency’s compromise proposal: covering issues related to mining, the way fines are set in proportion to turnover, the later introduction of electronic permitting as proposed by the EP, and the indicative nature of BAT environmental performance values (instead of their mandatory introduction).

Cluster 3 (Flexibilities sought on the IEPR)

We support all Presidency’s compromises on the Industrial Emissions Portal.

The EP amendment to include “intensive aquaculture” and the 500 tonnes per year threshold is acceptable. However, the replacing of the term “intensive” with “feed-based” aquaculture in the compromise draft agreement of the Annex 1 table should be avoided, as this is perceived problematic for extensive carp-based pond farms. A larger pond farm can easily reach the 500 tonnes production threshold even in semi-intensive production, in which case we believe it would be wrong to apply the rules on industrial emissions.

Cluster 4 (Remaining technical issues relating to IED and IEPR)

We have previously supported the entry into force of the IEPR in 2027; therefore, we can accept this compromise proposal. Any earlier date cannot be supported. Otherwise, we support the Presidency's compromise proposals.

