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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on the Environment
N° prev. doc.:	8250/23
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Subject:	Industrial Emissions Portal Regulation: WPE meeting on 20 April 2023: Steering note

Delegations will find attached a steering note prepared by the Presidency with a view to the meeting of the Working Party on the Environment on 20 April 2023.

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Working Party on the Environment

Presidency Steering note for the WPE on 20 April 2023 Industrial Emissions Portal Regulation

The Working Party on the Environment (WPE) will at the meeting on 20 April continue the examination of the proposed Industrial Emissions Portal Regulation. The WPE will continue the discussions of the previous meeting held during the CZ Presidency (4 October 2022). The Presidency has identified some issues in need of clarification or change. Those are explained in the steering note below, accompanied by text proposals in the document 8250/23 for MS considerations.

The Presidency's changes are marked in "**bold underlined**" while the deleted text compared with the Commission's proposal in "~~strikethrough~~".

Reporting

At the last WPE on 4 of October 2022 many Member States raised concerns and had questions regarding the proposal on changing the reporting level from "facility" to "installation". Some Member States supported the change of reporting level in Article 5 from "facility" to "installation" in order to align the reporting obligations of IED and IEPR, but several Member States also expressed the need for consistency with the Kiev Protocol and maintenance of the time series. Other Member States highlighted the need of limiting the administrative burden.

Against this background the Presidency proposes to keep installation as reporting level for the operators but require a reference to which facility the installation is part of (Article 2 (1a), Article 5 (1)(g), recital 11). This will enable presenting data on both installation and facility level in the portal (Article 4 (1) (aa)) in a way that keeps the administrative burden as low as possible. This would also ensure consistency with the Kiev Protocol, maintain the time series and make the information useful for different stakeholders (for example the general public, decision makers, and scientists). It would also facilitate a better matching of data to individual activities, e.g., for assessing impacts of different BAT conclusions. Furthermore, the hierarchical structure with site, facility, installation and installation part is compliant with the INSPIRE directive which is already implemented in the European Industrial Emissions Portal.

Some Member States also raised the risk of differing interpretations between Member States of what are considered facilities and installations. According to the Presidency's analysis of the data within the EU Registry, Member States today assess comparable facilities and installations differently. This affects the reliability and usefulness of statistics on the European level. If the current variation in interpretation between Member States were to remain, the change in reporting level will likely result in challenges for the comparability and reliability of data. Consequently, the Presidency sees a need for alignment and proposes that the Commission shall adopt guidelines in cooperation with Member States on what is considered facilities and installations (Article 12 (1) (g) and 12 (2)).

One of the objectives with the proposal is to implement synergies between the Portal and IED, and to ensure coherence with, and support to, the implementation of the latter. The Presidency therefore proposes to change the definition of "installation" so that it is aligned with the definition in IED (Article 2 (1)).

Some Member States have expressed a need for a possibility to use the method of obtaining data that results in best available information. The reason for this is that measurements are not always considered as more reliable or accurate than calculations for all pollutants. For example, when determining the amount of CO₂ released from fuel combustion from a point source, the direct measurement of the CO₂ emission may be dependent on a set of intervening variables. Each of these variables introduces a new uncertainty and adds to the total uncertainty of the measurement of the CO₂ emission. In these cases, calculations based on for example robust emission factors can result in more reliable, accurate and comparable data. The Presidency therefore proposes to adjust Article 5 (3) so that also obtaining the best available information is a factor when choosing between measurement and calculation. This in order to align to the Kiev Protocol, reduce the administrative burden and ensure comparability with other reporting obligations.

According to the proposal the operator of each installation that undertakes one or more of the activities specified in Annex I, which meet the applicable capacity thresholds specified in that Annex, shall report data (Article 5 (1)). Some Member States expressed a need for clarifying if an installation that is covered by Annex I and not exceed any of the pollutant or waste thresholds specified in Annex II and 5 (1) (b) shall report data on use of water, energy, raw materials and production volumes etc (Article 5 (1) (d) and (e)) or not. To make this clear and to limit the administrative burden the Presidency proposes to adjust the text in Article 5 (1). This adjustment clarifies that it is only activities exceeding the thresholds in Annex I as well as Annex II or Article 5 (1) (b) that have to report the data referred to in Article 5.1 a–g.

Confidentiality

During the discussion of the Council on 4 October 2022 several Member States expressed a need for the possibility of keeping information confidential. According to the Member States this needs to be expressed in a more explicit and clear way. An additional text is therefore introduced in Article 10 (2). This specification comes from the case law on transparency, based on Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents.

Empowerment to the Commission

The Presidency proposes to adjust the empowerment in Article 14 (2) (a) and (d) to increase legal certainty and to better reflect recital 28 and 29.

Penalties

The Commission has proposed articles regarding penalties in several environmental directives that are now being discussed in the Council. Member States have in these files expressed a wish to deal with the matter on penalties in a horizontal way. Member States have also requested that the Article on penalties in IEPR should be drafted in the same way as in IED. Since the Council already has adopted a general approach on IED, the Presidency proposes to change the text on Penalties in Article 17 so that it is in line with the wording in IED.

Some adjustments have been made in the text compared to IED since the IEPR is a regulation and not a directive and since the IEPR is not regulated in the Environmental Crime Directive.

We are looking forward to seeing delegations on 20 April!

The SE Presidency IEPR Team
