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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on the Environment
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Subject:	Industrial Emissions Portal Regulation: Follow-up to the WPE meeting on 11 May 2023: Comments from delegations

Following the above WPE meeting and the call for comments (WK 6286/23 INIT), delegations will find attached comments from FR (accompanied by a courtesy translation) and DE.

GERMANY

Industrial Emissions Portal Regulation

Follow up WPE on 11 May 2023

Additional written comments and proposals

Cluster 1 and 3

1. General comments:

Germany welcomes that the examination of the proposed Industrial Emissions Portal Regulation (IEP) is continued and thanks the Swedish presidency for the compromise text.

Germany has a scrutiny reservation and reserves the right for further comments.

2. Specific comments:

Cluster 1: reporting (article 1–9 and 11–13, annex I and II)

Article 1

- Germany supports that the function of the portal isn't limited to the reporting obligations under the UNECE Protocol on Pollutant Release and Transfer Registers. To make the text easier to understand we suggest to merge the articles. Furthermore, in the light of the discussion during the WPE we further suggest to slightly modify the wording.

Article 1

Subject matter and objectives

This Regulation ~~implements the UNECE Protocol on Pollutant Release and Transfer Registers ('the Protocol')~~ by laying down rules on the collection and reporting of environmental data on industrial installations and establishes an Industrial Emissions Portal ('Portal') at Union level in the form of an online database giving **public** access to such data. **By enhancing the public access to information, it facilitates public participation in environmental decision-making. Furthermore, it contributes through monitoring to the prevention and reduction of pollution of the environment. This Regulation implements the UNECE Protocol on Pollutant Release and Transfer**

Registers ('the Protocol').

~~Article 1a~~

Objectives

~~The objective of this Regulation is to enhance public access to information through the establishment of the Portal and thereby facilitate public participation in environmental decision-making, as well as contribute to the prevention and reduction of pollution of the environment~~

Article 2.1a and 2.2 (definitions)

- Germany generally supports the adaption of the definitions. However, it is not clear what is meant by „parts of an installation” and worries about additional uncertainties.
- Is it possible that different parts of one installation belong to different facilities? How should this case be dealt with?

Article 5.10, 12.1 (g) and (h) and 12.2 (guidance)

- For Germany the guidance plays a central role as it supports a harmonized, European approach and supports lowering the administrative burden through clear requirements. Germany supports the earlier date for the finalization of the guidance and asks the commission to involve the Member States as early as possible in the drafting of the document.
- The definitions of the terms „installation“ and „facility“ are essential for the regulation and have to be defined before the regulation is adopted.

Article 3.c and 5.1 (d) (water, energy and resource consumption), 3.d and 5.1 (e) (contextual information) and 5.2 (zero emissions)

- Especially with regard to collection and provision of data, there has to be the correct balance between efforts and benefits. Undue Burdens especially for SMEs should be avoided wherever possible.
- It is essential to protect confidential company and business information.
- Germany has a scrutiny reservation with regard to the extension of the reporting obligations to cover resource consumption and contextual information. This is due to the circumstance that information which is needed for the evaluation, namely information on the specific criteria as well as the

arrangements which will be described in the implementing act according to article 6, are missing.

- Not all activities that are reported in the IEP are part of the industrial emission directive. Therefore, there won't be BREF documents for all activities. Thus the term "key raw materials" must be defined before it can be assessed if it is a useful addition.
- The deletion of the number of employees is comprehensible as it is not primarily used to classify environmental data. The collection of data regarding operation hours is useful as it makes a difference in which timeframe the emissions occurred. If this data is deemed a confidential business information, it could be collected but not be published. The information that an emission is caused by an accident is useful. In order to reduce administrative burdens it could be asked with a simple "yes or no" question if the emissions contain emissions from accidents. This is the only way to know if the emission reported is caused by normal operation of the installation.
- With regard to the goal to reduce bureaucracy, costs and benefits need to be balanced. Therefore in a first step already existing data registers should be used. Companies which use an environmental management system according to (EU) 1221/2009 and are registered in the EMAS register already publish their resource consumption (water, energy and resources), their emissions and waste as well as the context of their organization and the number of employees. Companies should have the possibility to use this data as much as possible for the IEP.
- Germany still rejects that operators, which don't exceed the threshold of annex II should report that they don't exceed the threshold. This leads to an increase of the administrative burden for SMEs without an obvious added value.

Fallback position: If the reporting is kept the text needs to be clarified:

Article 5.2:

This shall only be done in the first report after the entry into force of this regulation **or in the first report after the installation starts running, releases or off-site transfers of waste no longer exceed the applicable threshold values. If an installation exceeded the applicable threshold values in the past, but no longer exceeds the applicable threshold values, it shall be done in the first report after the omission of the regular reporting obligation.**

Article 5.3 and 5.5:

- When evaluating which method is chosen not only the cost, but also the effort should be taken into account. This should be clarified in the text:

Article 5.3:

Where measurement **does not result in the best available information**, is not practicable **or leads** to disproportionate **effort** or costs, operators shall use calculation.

Cluster 3: penalties and confidentiality (article 18-20)

Germany supports the suggested changes.

NOTE DES AUTORITÉS FRANÇAISES

Objet : Commentaires écrits des autorités françaises à la suite du groupe de travail environnement du 11 mai 2023 sur le portail des émissions industrielles (IEP)

Les autorités françaises remercient la Présidence suédoise pour l'opportunité de formuler des commentaires écrits. Elles souhaitent faire part des commentaires ci-dessous.

Les autorités françaises rappellent qu'elles sont évidemment **favorables à une meilleure transparence et information du public**, mais elles constatent la très forte augmentation des données qui doivent être transmises et mises à disposition du public, avec **une augmentation associée de la charge administrative** pour les exploitants qui devront les renseigner, mais aussi pour l'autorité compétente qui devra vérifier leur véracité. Cette augmentation des données à fournir s'accompagne par ailleurs d'une extension des établissements couverts par le règlement, du fait de l'extension du champ de la directive IED.

Les autorités françaises remercient la présidence suédoise pour ses efforts pour proposer une version plus équilibrée en terme de charge administrative dans sa note de cadrage. La nouvelle version du 4 mai va dans le bon sens, mais elle reste encore largement insuffisante.

Les autorités françaises considèrent toujours, qu'à ce stade, l'équilibre du texte entre charge administrative et plus-value environnementale n'est pas encore satisfaisant et qu'elles ne peuvent le soutenir en l'état.

Des évolutions du texte sont attendues sur les points suivants :

Articles 3 et 5

Les autorités françaises saluent la suppression de certaines **données contextuelles** concernant le nombre d'employés, le nombre d'heures de fonctionnement et les informations relatives aux accidents. Mais cela reste insuffisant.

Elles demandent de supprimer également toutes les références aux données contextuelles et de supprimer :

- le (d) du paragraphe 1 de l'article 3 ;
- le (e) du paragraphe 1 de l'article 5.

Les autorités françaises sont fermement opposées au rapportage de données contextuelles.

Articles 3, 4 et 5

Le renseignement des **données relatives à l'utilisation des ressources** en eau, de l'énergie et des matières premières, indépendamment là encore de la charge administrative très forte qu'elles représentent, posent de nombreuses difficultés, dont celles de la confidentialité des données, ou de la difficulté de les obtenir car elles sont généralement communes à un établissement et non à une installation en particulier, aussi les autorités françaises sont opposées à ce qu'elles soient rapportées.

Elles demandent de supprimer :

- le (c) du 1 de l'article 3 ;
- les mots « ou ressource » au (d) du paragraphe 1 de l'article 4 ;
- le (d) du paragraphe 1 de l'article 5.

Article 5 (notifications par les exploitants aux autorités compétentes)

1) S'agissant de l'obligation pour les opérateurs de faire une déclaration même lorsque les **rejets sont inférieurs aux seuils**, les autorités françaises sont favorables à la proposition faite au paragraphe 2.

Elles souhaitent cependant que cette déclaration, lorsque les données sont en dessous des seuils, soit strictement limitée à une attestation par l'exploitant qu'il est en dessous des seuils et en aucun cas à renseigner des valeurs d'émissions quelles qu'elles soient.

2) **S'agissant de la possibilité laissée aux États membres au paragraphe 10 de l'article 5 de quantifier les émissions du secteur de l'élevage, les autorités françaises y sont fermement opposées.** La seule suppression du terme « *themselves* » n'est pas suffisante. **Les méthodes de calcul à utiliser doivent obligatoirement être harmonisées au niveau européen** et être communes à l'ensemble des Etats-membres pour éviter toute différence de mise en œuvre.

Les autorités françaises proposent la rédaction suivante

« *Les États membres peuvent décider ~~de quantifier eux-mêmes que~~ les rejets volontaires visés au paragraphe 1, point a), ~~au nom des exploitants des installations concernées par l'activité 2 mentionnée à l'annexe I~~ **soient quantifiés sur la base de méthodes de calcul élaborées par la Commission et par l'activité 7 mentionnée à l'annexe I.** En pareils cas, les paragraphes 1 à 9 ne s'appliquent pas à ces exploitants en ce qui concerne ces rejets. »*

Article 2 (définitions)

Les autorités françaises restent opposées au remplacement du terme « établissement » par le terme « installation », qui viendra encore augmenter le nombre de données à communiquer, et ce même si, dans 94 % des cas, un établissement correspondrait à une installation.

Notant que cette modification proposée par la Commission génère tellement de complexité et de difficultés que la Présidence est obligée de proposer la rédaction d'un guide pour éclaircir le sujet, les autorités françaises demandent de rester sur les dispositions du règlement actuel sur ce sujet.

Article 6 (rapport des États membres à la Commission)

Les autorités françaises remercient la présidence des précisions apportées concernant la **date de rapportage**, qu'elles accueillent très favorablement. En effet, la date de rapportage doit être mentionnée directement dans le règlement.

Les autorités françaises sont fermement opposées à ce que cette date puisse être changeante. Elles refusent qu'elle soit modifiée par acte délégué.

Article 14 (modification des annexes)

Les autorités françaises sont opposées à ce que les informations mentionnées au (a) du paragraphe 1 soient modifiées par acte délégué.

Elles acceptent cependant que l'alignement avec le Protocole puisse se faire par acte délégué. S'agissant de la modification de l'annexe II (sur les substances polluantes et les seuils), elles sont ouvertes à une solution facilitatrice et s'en remettent à la sagesse de la Présidence.

Article 17 (sanctions)

Les autorités françaises saluent les améliorations apportées qui vont dans le bon sens. Cependant, elles considèrent que les sanctions proposées restent disproportionnées, s'agissant d'un outil de rapportage.

Elles proposent de maintenir la rédaction de l'article 20 actuel.

Article 20 (entrée en vigueur)

Les autorités françaises remercient la Présidence d'avoir proposé une date d'entrée en vigueur plus adaptée aux changements proposés par le règlement. Les autorités françaises pourraient accepter la proposition, tout en demandant si la date du 1^{er} janvier 2028 n'est pas plus appropriée.

Courtesy translation

Subject: Written comments from the French authorities following the environmental working group of 11th may on the industrial emissions portal (IEP).

The French authorities thank the Swedish Presidency for the opportunity to provide written comments.

They wish to make the following comments:

The French authorities reiterate that they are obviously in favour of greater transparency and public information, but they note the very large increase in the amount of data that must be transmitted and made available to the public, with an associated increase in the administrative burden for the operators who will have to provide the information, but also for the competent authority, which will have to verify their veracity. This increase in the data to be provided is also accompanied by an extension of the facilities covered by the regulation, due to the extension of the scope of the IED directive.

The French authorities thank the Swedish presidency for its efforts to propose a more balanced version in terms of administrative burden in its steering note. The new version of 4th of may is a step in the right direction, but it is still largely insufficient.

The French authorities consider that, at this stage, the balance of the text between administrative burden and environmental added value is not yet satisfactory and that they cannot support it as it stands.

Changes to the text are expected on the following points:

Articles 3 and 5

French authorities welcome the removal of some contextual data concerning the number of employees, operating hours and information on accidents. However, this is not enough.

All references to contextual data should also be deleted including:

- Article 3 § 1–d;
- Article 5 § 1–e.

French authorities are strongly opposed to the reporting of contextual data.

Articles 3, 4 and 5

Providing data on the use of water resources, energy and raw materials, above the inherent significant administrative burden, raises several issues, including the confidentiality of data, or the difficulty of obtaining them because they are generally common to a facility and not to a particular installation, thus **French authorities are opposed to their reporting** by requesting the removal of:

- Article 3§ 1–c;
- the words "or resource" in (d) of paragraph 1 of Article 4;
- (d) of paragraph 1 of Article 5.

Article 5 (reporting by operators to competent authorities)

1) Regarding the obligation for operators to make a declaration also even when releases are below the thresholds, **French authorities are in favour of the presidency's proposal made in paragraph 2.**

However, French authorities wish that this report, when the data are below the thresholds, **to be strictly limited to a statement by the operator that he is below the thresholds and in no case to provide any information on emission values.**

2) French authorities are strongly opposed to the possibility given to Member States in Article 5 § 10 to quantify emissions from the livestock rearing sector. Removal of the term "themselves" is not satisfying.

The calculation methods must be harmonised at European level and be common to all Member States in order to avoid any differences in implementation.

French authorities propose the following wording:

*"Member States may decide ~~to quantify themselves~~ **that the** deliberate releases referred to in paragraph 1, point (a), ~~on behalf of operators of~~ **from the** installations covered by Activity*

*2 listed in Annex I ~~and by Activity 7 listed in Annex I~~ **be quantified on the basis of calculation methods developed by the Commission.** In these cases, paragraphs 1 to 9 shall not apply to those operators in respect of such releases.”*

Article 2 (definitions)

French authorities remain opposed to the replacement of the term "facility" by the term "installation", which will further increase the amount of data to be reported, despite the fact that in 94% of cases a facility would correspond to an installation.

Taking into consideration that this amendment proposed by the Commission generates complexity and so many difficulties that the Presidency has to propose the edition of a guide to clarify the point, the French authorities ask to maintain the provisions of the current regulation on this topic.

Article 6 (reporting by Member States to the Commission)

French authorities thank the Presidency for and welcome the clarifications made concerning the **reporting date**. Indeed, the reporting date must be mentioned directly in the regulation.

French authorities are not only firmly opposed to this date being variable and but also to be changed by delegated act.

Article 14 (amendments to the annexes)

French authorities are opposed to the information mentioned in § 1(a) being amended by delegated act.

However, French authorities accept that harmonization with the Protocol might be done by delegated act.

Regarding Annex II modification (on polluting substances and thresholds), French authorities are open to a facilitating solution and rely on the wisdom of the Presidency.

Article 17 (penalties)

French authorities welcome the improvements, which are a step forward in the right direction. However, French authorities consider that the penalties proposal is still disproportionate, taking into consideration that this is a reporting tool.

They propose to maintain the wording of the current Article 20.

Article 20 (entry into force)

French authorities thank the Presidency for proposing a date of entry into force fitting the changes proposed by the Regulation. The French authorities could accept the proposal, while asking whether the date of 1st January 2028 is more relevant.