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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 BE, IT and FI.

FINLAND

Written comments on the proposal of the Industrial Emissions Portal Regulation 15 May 2023

In general, Finland supports the Presidency's amendments to the proposal for the IEP Regulation. In the Presidency compromise text 5 May 2023 the Presidency has taken into account many issues that FI commented on its written comments in document WK 5623/2023 INIT, 2 May 2023. FI still finds few details on which more consideration needs to be given as follows.

Article-specific amendments

Art. 2 (1a) 'facility' means one or more installations or parts of an installation on the same site that are ~~owned or~~ operated by the same natural or legal person;

- Ownership is not a relevant factor and including it in the article as "owner or " would only make implementation more cumbersome.

Art. 5 (1e) information allowing contextualisation of the data reported under points (a) to (d), including production volume, **number of operating hours, and information on accidents that have led to releases;**

- Keeping operating hours in the text would have value as contextual information. As accidental emissions and releases are already reported annually information on accidents has added value here. At least the number of accidents is relevant information.

Article 14: In the proposal for a regulation, the Commission would be given a fixed term of five years to decide to amend the list of activities under the reporting obligation as well as the emissions to be reported and their threshold values. FI has reservations as regards Annex I to the delegation of powers to the Commission in respect of activities falling within its scope, as these are key requirements of the Regulation which should be laid down in the ordinary legislative procedure. Legislative powers could be delegated to the Commission if they applied to certain sectors in a clearly more precise manner than in the proposal. In addition, the amendment of Annex I should allow, in addition to adding additional activities, the possibility to remove them from the reporting obligation if, due to their limited environmental impact, it would no longer be necessary to keep the activities within the scope of the Regulation (Article 14 (1a)). The amendment of Annex II to the Regulation on the list and thresholds for emissions and shipments of waste could be flexible on the basis of scientific and medical knowledge and possible amendments to other Union legislation and the Kiev Protocol. Finland welcomes the delegation of powers with regard to Annex II (Article 14 (2)). In order to improve the coverage of Annex II and to align it with the IED, paragraph 14 (2b (i)) should be supplemented to reflect the general approach reached on the IED, adding substances fulfilling the criteria of Article 57 or substances addressed in restrictions in Annex XVII to Regulation (EC) No 1907/2006. FI also supports the Presidency's addition to paragraph 14 (2d).

ITALY

Italian contribution to the valuation of the EU Commission proposal to substitute the Regulation CE/166/2006 (E-PRTR) and relate compromise text proposed for the 11th May 2023 WPE

Italy welcomes the Presidency proposal and the accompany steering note.

Italy considers that the proposal correctly identifies the main developments necessary to improve the collection of environmental data by industrial operators, to ensure effective public access to such information and to coordinate data collection with the provisions of the IED directive.

The Presidency's compromise text addresses most of the issues identified in the original proposal, but some improvements to the text still seem appropriate.

- CONSISTENCY WITH THE KYIV PROTOCOL

One of the main concern regards the consistency with the Kyiv protocol. The self-executive nature of the Regulation leaves no room for further adjustments by means of a delegated act, guidance or implementing acts. For this reason, Italy welcomes the introduction in the text of the term "facility". But some improvements to increase the consistency with the Kyiv protocol are still needed.

Relationship between "facility" and "installation". According to the current definitions, there is no hierarchical relationship between these two. We are not in favour in changing those definitions in this Regulation, as they derive from other regulatory instruments. However, in the compromise text this leads to coherence problem in Recital 11 and 15 and in article 5(1, 6, 8), in which the use of the word "facility" and "installation" should be revised.

A possible solution could be to introduce a hierarchical relationship only for reporting purpose, for example adding in art. 3, 4 or 5 something like ***"If parts of an installation are operated by different natural or legal persons, they will be considered, solely for reporting purposes, separate installations."***

It should be clear that these hierarchical relationships do not affect the IED obligations, which remain the responsibility of all the installation operators regardless of the layout of the "facilities" on the site.

Another inconsistency with the Kyiv protocol regards the possibility to **avoid reporting obligation for some operator** as foreseen in art. 5(10). In fact, according to art. 7(2) of the Kyiv protocol, the operator and not the Member State, has to provide the required information.

In practice to fulfill Kyiv protocol obligation, the operator must communicate any year to the Competent authority at least a minimal set of information (confirming administrative data, the accuracy to apply in the year the standard "emission factors" and the yearly production) to allow the Competent authority to fill in the IEPR.

Otherwise, for these installations/facilities the data will no longer refer to the actual yearly emissions, but rather to rough estimates based on permit data and average sector performance, losing a large part of the added value of the inventory of emissions and it is against the Kyiv protocol.

To avoid this risk **Italy suggest to eliminate paragraph 5(10) and the related recital 19**, perhaps specifying that for those installations the use of a roughly estimate by the operator could be acceptable.

- Avoid unnecessary administrative burden

Italy welcomes the Presidency's intervention on art. 5(2) that significantly reduces the impact of the provision in terms of unnecessary administrative burden, but nevertheless **the art. 5(2) provision remains redundant** (information already known is required), ineffective (in the light of Article 5(1) which recognise the possibility to avoid communication of information already known) and unnecessary.

The operator is already obliged to send the communication if the plant exceeds the thresholds, and he is sanctioned in case of non-compliance (failure to communicate). Therefore, the absence of a communication is still an explicit declaration, which the Member State could manage without further unnecessary involvement of the operator.

Indeed, according to art. 5 (1), the operator could communicate the requested information to public authorities without having to respect the communication formats. This would make it impracticable to challenge the operator for violating this paragraph.

Incidentally, the experience made during the first application of the EPER inventory (the ancestor of the E-PRTR, required by directive 96/61/EC), has shown that "null" declarations are often made by operators of industrial activities well below the thresholds, resulting in a significant overestimation of the potential impact of the regulatory instrument.

Therefore, **Italy strongly suggests the deletion of this paragraph and the related recital 17.**

- **Clarify guidance value**

There is still concern about the value of the guides referred to in art. 12(1.g), since seems incongruous to provide a guide related to legal definitions, in force since 1996 in implementation to others legislative instruments.

Perhaps it should be better clarified that (as mentioned in paragraph 2) the guide will report examples, not specifications of what should be considered a facility or an installation.

Therefore, **Italy suggests reformulating art. 12, paragraph 1g, replacing the words "what are to be considered" with "reference examples of what are considered"**

- **Delegated acts**

Given the importance of the annexes to define the scope and administrative burden of the Regulation, Italy proposes to grant the Commission the possibility to amend these annexes by delegated acts only where this is necessary to ensure consistency with the protocol of Kyiv, amending recitals 27 and 28 and 29 accordingly.

In other words, **Italy is in favour of the use of a delegated act only for the cases referred to in paragraph 14(1)(b) and Article 14(2)(d).**

Taking in consideration the clarifications provided by the Legal Service of the Presidency on the difficulties of using implementing acts for the modification of the annexes, for the other cases the modifications of the annexes should be foreseen only by ordinary legislative process.

BELGIUM

Written comments:

Belgium wants clarify our comments made at the IEPR WPE of 11th May 2023.

Article 2: definitions

Belgium has made comments to improve some definitions in the proposal. For Facility and Site we want to share our proposal

Facility: the level of facility is generally re-introduced to comply more with the Kiev protocol. The difference of merely adding different installations is that the Kiev protocol also takes into account emissions and waste transfers on the same site that are not necessarily linked with the installation. BE thinks also that 'part of an installation' is not the right terminology as it can be confused with the installationpart in the EU-registry.

BE proposes to change the definition as follows:

'facility' means one or more installations ~~or parts of an installation~~ **and other technical units relevant for waste transfers or emissions**, on the same site *that are owned or operated by the same natural or legal person*;

On the part '*that are owned or operated by the same natural or legal person*' we support the proposal made by the COM at the WPE

Site: For the definition of Site, BE thinks that a referral to facility is sufficient, there is no need to refer to the installation level in the definition.

BE proposes to change the definition as follows:

'site' means the geographical location of the of the ~~installation and~~ **facility(s)**, including the common infrastructure and equipment

Linked with the definition changes we propose to slightly change article 4:

As the Facility level is kept in the proposal we think the operator should be linked with the facility level. This is current practice and the operator of more than 1 installation within the facility would be the same operator.

BE proposes to change the articles 4.1(a) and 4.1(aa) as follows:

4.1.(a) ~~facility installation~~, including the **facility's installation's** parent company where applicable, **including owner or operator** and its geographical location, including the river basin;

4.1.(aa) ~~installation, including owner or operator~~

Article 5 and article 6:

We thank the presidency for the clarification in article 1, that the relevancy of the Portal is to collect and report on environmental data of industrial installations. The Portal is to be an EU registry for industrial installations and relevant thematic data (including PRTR).

As discussed at the last WPE we think the current proposal for articles 5 and 6 should be drafted differently and be more aligned with article 1.

Article 5 describes what information operators must report to competent authorities. The current proposal focusses mainly on PRTR reporting, whereas the Portal is broader. The proposal is also potentially very restrictive on what member states can ask from operators (bold phrase in Article 5.1 proposal). Therefore we think a different built up of article 5 might be a way forward:

1. General (administrative) information – all installations in Annex I
2. Specific information linked with EU legislation – relevant Annex I installations (e.g. MCP, IPPC, ... but in the future maybe also UWTTD)
3. Specific information linked with international requirements – relevant Annex I installations (PRTR, ...)

This would support member states to develop a system to receive relevant information, any restrictions (e.g. the bold phrase in the current article 5.1) could be assigned to the correct level.

Article 6 describes what information MS have to report to the Portal and links with relevant implementing decisions. As described above not necessarily all information to be reported is the same for all installations, we therefore suggest a small change

BE proposal:

Article 6: Reporting by Member States to the Commission

1. Member States shall provide, each year to the Commission, by electronic means, a report containing ~~all~~ the **relevant** data referred to in Article 5 in a format and by a date to be established by the Commission by means of implementing acts ...

Article 14: Amandments to annexes

Belgium wants to emphasize that alignment with the IED, where possible, should be

Therefore Belgium, supported by several member states, proposes a change in article 14.

Article 14.2.(b)(i): are designated as substances of very high concern in Annex XIV **or substances fulfilling the criteria of article 57 or substances addressed in restrictions in annex XVII** to Regulation (EC) No 1907/2006;

Article 15: Exercise of the delegation

Belgium would like to emphasize that we are in favor that the COM is empowered to adopt both annexes with delegated acts, as is already possible in the current e-PRTR regulation.

- Adopting Annex I is needed to ensure the effectiveness of the Portal, not only for potential Kiev protocol changes but also for alignment of EU reporting with other EU legislative acts.
- Adopting Annex II is very technical and necessary to keep the reported information relevant (e.g. information on substances like PFAS) and useful to support development of BREF's under the IED

Recitals:

Belgium thinks some recitals need to be updated in line with other changes (e.g. Article 1)

Recital 8:

The Portal should provide the public with free-of-charge and online access to a further integrated and coherent dataset on key environmental pressures generated by industrial installations since such data constitute a cost-effective tool for drawing comparisons and taking decisions in environmental matters, encouraging better environmental performance, tracking trends, demonstrating progress in pollution reduction, **BAT compliance**, benchmarking installations **and installation performance**, monitoring compliance with relevant international agreements, setting priorities and evaluating progress achieved through Union and national environmental policies and programmes.

Recital 10:

The reporting requirements should apply at the **most relevant reporting installation** level in order to implement synergies between the Portal and databases on environmental pressures from industrial installations, including those covered by **e.g.** Directive 2010/75/EU, ... and to ensure coherence with, and support to, the implementation of ~~that~~ Directive.

Recital 11:

with a view to achieving synergies with related Union environmental legislation affecting industrial installations, the scope of this Regulation should also align **with other relevant European Directives e.g.** the industrial activities under Annexes I and Ia to Directive 2010/75/EU and with selected activities covered by Directive (EU) 2015/2193 of the European Parliament and of the Council. To comply with requirements of the Protocol **and other relevant Directives on industrial emissions**, reporting requirements should apply to **all** activities listed in its Annex I ~~and it should be indicated which facility the installation is part of.~~

Recital 13:

The Portal should also include data on the use of water, energy and raw materials **and the production of waste** by the concerned installations to allow monitoring of progress towards a circular, highly resource-efficient economy. **The data to be included in the Portal should cover key raw materials that have significant effect or impact on the environment**

Recital 15:

Operators of installations should also report information concerning the production volume, ~~number of employees and~~ operating hours of the concerned installation as well as information on accidents that have led to releases, in order to enable the contextualisation of reported data on pollutant releases and off-site transfers of waste and waste water.