

ANNEX

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on reporting of environmental data from industrial installations and establishing an
Industrial Emissions Portal

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,
Having regard to the proposal from the European Commission,
After transmission of the draft legislative act to the national parliaments,
Having regard to the opinion of the European Economic and Social Committee¹,
Having regard to the opinion of the Committee of the Regions²,
Acting in accordance with the ordinary legislative procedure,
Whereas:

- (1) The Eighth Environment Action Programme of the European Union adopted by Decision No XXX/202X/EU of the European Parliament and of the Council³ requires the Commission, Member States, regional and local authorities and stakeholders, to effectively apply high standards of transparency, public participation and access to justice in accordance with the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters⁴ ('the Aarhus Convention'), both at Union and Member State level.
- (2) The Aarhus Convention, ratified by the European Community on 17 February 2005 by Council Decision 2005/370/EC, recognises that increased public access to environmental information and the dissemination of such information contribute to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment.

¹ OJ C , , p. .

² OJ C , , p. .

³ Decision XXX/XXX/XX of the European Parliament and of the Council on a General Union Environment Action Programme to 2030 (OJ L XXX, XX.XX.XX, p. XX)

⁴ OJ L 124, 17.5.2005, p. 4.

- (3) On 2 December 2005, the European Community ratified the UNECE Protocol on Pollutant Release and Transfer Registers ('the Protocol') by Council Decision 2006/61/EC .
- (4) Regulation (EC) No 166/2006 of the European Parliament and of the Council⁵, established a European Pollutant Release and Transfer Register in order to implement the Protocol.
- (5) The Commission's second report⁶ on implementation of Regulation (EC) No 166/2006 concluded that reporting obligations should be streamlined by further exploring synergies with other related Union environmental legislation on pollution from industrial installations, including in particular Directive 2010/75/EU of the European Parliament and of the Council⁷ and Council Directive 91/271/EEC⁸. The report also highlighted the need to explore options for additional contextual information to make reported data more effective.
- (6) Commission communication 'Towards Zero Pollution for Air, Water and Soil'⁹, **described** ~~established~~ a Union action plan on zero pollution, energy, decarbonisation and circular economy, and promoted the effective use of reported information in the wider zero pollution monitoring and outlook framework and under the monitoring framework provided for in the Eighth Environmental Action Programme.
- (7) In line with the conclusions of the Commission's second report on implementation of Regulation (EC) No 166/2006, the Commission, supported by the European Environment Agency ('the Agency'), developed in June 2021 an Industrial Emissions Portal ('the Portal')¹⁰ to replace the European Pollutant Release and Transfer Register and therefore improve synergies with reporting under Directive 2010/75/EU.
- (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, benchmarking installations, monitoring compliance with relevant international agreements, setting priorities and evaluating progress achieved through Union and national environmental policies and programmes.
- (9) The Portal should present the data it contains in aggregated and non-aggregated forms to permit users to undertake targeted searches.
- (10) The reporting requirements should apply at 'installation level' in order to implement synergies between the Portal and databases on environmental pressures from industrial installations, including those covered by Directive 2010/75/EU, and to ensure coherence with, and support to, the implementation of that Directive.

⁵ Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC (OJ L 33, 4.2.2006, p.1).

⁶ COM(2017) 810 final.

⁷ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17).

⁸ Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment (OJ L 135, 30.5.1991, p. 40).

⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Pathway to a Healthy Planet for All EU Action Plan: 'Towards Zero Pollution for Air, Water and Soil' of 12 May 2021 (COM(2021) 400 final).

¹⁰ <https://industry.eea.europa.eu/>

- (11) To comply with requirements of the Protocol, reporting requirements should apply to all activities listed in its Annex I **and it should be indicated which facility the installation is part of**. In addition, and with a view to achieving synergies with related Union environmental legislation affecting industrial installations, the scope of this Regulation should also align with 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 Council¹¹.
- (12) In order to monitor the environmental performance of industrial installations, the data to be included in the Portal should cover, above quantitative thresholds, releases to the environment of certain pollutants, off-site transfers of waste water containing these pollutants and off-site transfers of waste.
- (13) The Portal should also include data on the use of water, energy and raw materials 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 are used in the production process and have significant effect or impact on the environment. What is considered key raw materials should as far as possible be based on the work done in the BREF-process and the decisions on BAT-conclusions adopted pursuant to Directive 2010/75/EU as well as as in the operating rules established in that Directive and in the implementing acts establishing uniform conditions for their implementation.**
- (14) ~~The Aarhus Convention, ratified by the European Community on 17 February 2005 by Council Decision 2005/370/EC¹², recognises that increased public access to environmental information and the dissemination of such information contribute to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment.~~
- (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.
- (16) The overall benefit of the Portal for access to environmental information concerning industrial installations should be maximised by including links to other information flows that stem from Union environmental legislation on climate change, air, water and land protection and on waste management, including reporting under Directive 2012/18/EU of the European Parliament and of the Council¹³, Directive 2008/98/EC of the European Parliament and of the Council¹⁴ and Directive 2010/75/EU. Moreover, in order to maximise the Portal's value to users, it should be designed to facilitate future integration with other relevant environmental data flows.

¹¹ Directive (EU) 2015/2193 of the European Parliament and of the Council of 25 November 2015 on the limitation of emissions of certain pollutants into the air from medium combustion plants (OJ L 313, 28.11.2015, p. 1).

¹² Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (OJ L 124, 17.05.2005, p. 1).

¹³ Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC (OJ L 197, 24.7.2012, p. 1).

¹⁴ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).

- (17) For the purpose of legal certainty, operators of installations should be required to enter a nil return when releases and off-site transfers of waste and of waste water from their installations are below reporting thresholds.
- (18) To improve the quality of reported data and to ensure their comparability, it is appropriate to harmonise quantification methods to be used by operators when reporting releases, off-site transfers of waste, off-site transfers of waste water and resource use. Operators should therefore be required to use, as a priority, measurement as the most accurate quantification method and, if not practicable, calculation, whereas estimation should only be used as a last resort.
- (19) As the operators of livestock production and aquaculture installations may lack the necessary resources to accurately quantify their deliberate releases of pollutants, Member States should be entitled to quantify them on their behalf.
- (20) In order to ensure uniform conditions for the implementation of the provisions of this Regulation regarding reporting by Member States, implementing powers should be conferred on the Commission to establish the type and format of information to be provided and the reporting deadlines. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹⁵.
- (21) Given the importance for the Union citizens of quick access to environmental information, it is essential that Member States and the Commission make data publicly available as fast as technically feasible. To that end, whereas the precise reporting deadline is to be established in an implementing act, it should be no later than 11 months after the end of the reporting year.
- (22) Where appropriate, the Portal should also facilitate access to information on releases from diffuse sources in order to enable decision-makers to better put into context those releases and to choose the most effective solution for pollution reduction.
- (23) Data reported by the Member States should be of high quality in particular as regards their accuracy, completeness, consistency and credibility. Competent authorities should therefore assess the quality of the data provided by operators.
- (24) Public access to environmental information reported by Member States should be unrestricted and exceptions from this rule should only be possible in accordance with Directive 2003/4/EC of the European Parliament and of the Council¹⁶ or with Regulation (EC) No 1049/2001 of the European Parliament and of the Council¹⁷, as appropriate.
- (25) Public participation should be ensured in further development of the Portal by providing early and effective opportunities to submit comments, information, analysis and opinions for the decision-making process.
- (26) In order to enhance the usefulness and impact of the Portal, the Commission, supported by the Agency, should develop guidance supporting the implementation of this Regulation.
- (27) It should be possible for the Commission to update the list of industrial or agricultural activities in relation to which reporting requirements apply. The Commission should

¹⁵ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

¹⁶ Directive 2003/4/EC of the European Parliament and of the Council on access to environmental information and repealing Council Directive 90/313/EEC (OJ L 41, 14.2.2003, p. 26).

¹⁷ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

therefore be empowered to adopt delegated acts in accordance with Article 290 of the Treaty amending Annex I to this Regulation to add activities that have, or are expected to have, an impact on health or the environment and to align the Annex with amendments to the Protocol.

- (28) The Commission should also be empowered to adopt delegated acts in accordance with Article 290 of the Treaty to amend Annex II to this Regulation to determine reporting thresholds, to add pollutants which are subject to specific regulatory measures under Union law on water and air quality and on chemicals, including Regulation (EC) No 1907/2006 of the European Parliament and of the Council¹⁸, Directives 2000/60/EC¹⁹, 2004/107/EC²⁰, 2006/118/EC²¹, 2008/50/EC²² and 2008/105/EU²³ of the European Parliament and of the Council, to reflect changes made to the Protocol with regard to the pollutants to be reported or their reporting thresholds, and to adapt that Annex to scientific or technical progress.
- (29) ~~The Commission should also be empowered to adopt delegated acts in accordance with Article 290 of the Treaty to amend Annex II to this Regulation to determine reporting thresholds, to add pollutants which are subject to specific regulatory measures under Union law on water and air quality and on chemicals, including Regulation (EC) No 1907/2006 of the European Parliament and of the Council²⁴, Directives~~

¹⁸ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

¹⁹ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

²⁰ Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air (OJ L 23, 26.1.2005, p. 3).

²¹ Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration (OJ L 372, 27.12.2006, p. 19).

²² Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ L 152, 11.6.2008, p. 1).

²³ Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy, amending and subsequently repealing Council Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and amending Directive 2000/60/EC of the European Parliament and of the Council (OJ L 348, 24.12.2008, p. 84).

²⁴ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

~~2000/60/EC²⁵, 2004/107/EC²⁶, 2006/118/EC²⁷, 2008/50/EC²⁸ and 2008/105/EU²⁹ of the European Parliament and of the Council, to reflect changes made to the Protocol with regard to the pollutants to be reported or their reporting thresholds, and to adapt that Annex to scientific or technical progress.~~

- (30) When adopting delegated acts, it is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making³⁰. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (31) In order to ensure effective implementation of this Regulation, Member States should lay down rules on penalties applicable to its infringements and should ensure that they are implemented.
- (32) Since Regulation (EC) No 166/2006 needs to be substantially modified, it should be repealed and replaced by this Regulation for reasons of legal certainty, clarity and transparency.
- (33) Since the objective of this Regulation, namely to enhance public access to environmental information through the establishment of an integrated, coherent Union-wide electronic database, cannot be sufficiently achieved by the Member States as the need for comparability of data in Member States argues for a high level of harmonisation, but can rather be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (34) The reporting requirements established by this Regulation should apply as from the reporting year 2025 in order to provide sufficient time for Member States and concerned operators to take the necessary measures.
- (35) In order to ensure data continuity and legal certainty, Regulation (EC) No 166/2006 should continue to apply for the reporting year 2024.

²⁵ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1).

²⁶ Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air (OJ L 23, 26.1.2005, p. 3).

²⁷ Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration (OJ L 372, 27.12.2006, p. 19).

²⁸ Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ L 152, 11.6.2008, p. 1).

²⁹ Directive 2008/105/EC of the European Parliament and of the Council of 16 December 2008 on environmental quality standards in the field of water policy, amending and subsequently repealing Council Directives 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC, 86/280/EEC and amending Directive 2000/60/EC of the European Parliament and of the Council (OJ L 348, 24.12.2008, p. 84).

³⁰ OJ L 123, 12.5.2016, p. 1.

HAVE ADOPTED THIS REGULATION:

Article 1
Subject matter

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. **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 identifying sources of industrial pollution and to enable monitoring in order to contribute to the prevention and reduction of pollution of the environment.

Article 2
Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (1) ‘installation’ means a stationary technical unit ~~where~~ **within which** one or more activities listed in Annex I are carried out, and any other directly associated activities **on the same site** which have a technical connection with the activities **listed in that Annex** ~~carried out on that site~~ and which could have an effect on emissions and pollution;
- (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;**
- (2) ‘site’ means the geographical location of the installation **and the facility, including their common infrastructures and equipment;**
- (3) ‘the public’ means the public as defined in Article 3, point (16), of Directive 2010/75/EU;
- (4) ‘release’ means any introduction of pollutants into the environment as a result of any human activity, whether deliberate or accidental, routine or non-routine, including spilling, emitting, discharging, injecting, disposing or dumping, or through sewer systems without final waste water treatment;

- (5) 'pollutant' means a substance or a group of substances that may be harmful to the environment or to human health on account of its properties and of its introduction into the environment;
- (6) 'substance' means a substance as defined in Article 3, point (1), of Directive 2010/75/EU;
- (7) 'operator' means an operator as defined in Article 3, point (15), of Directive 2010/75/EU;
- (8) 'off-site transfer' means the movement beyond the boundaries of an installation of waste destined for recovery or disposal and of pollutants in waste water destined for waste water treatment;
- (9) 'waste' means waste as defined in Article 3, point (1), of Directive 2008/98/EC of the European Parliament and of the Council³¹;
- (10) 'waste water' means urban, domestic and industrial waste water, as defined in Articles 2, points (1), (2) and (3), of Directive 91/271/EEC, and any other used water which is subject, due to the substances or objects it contains, to regulation by Union law;
- (11) 'diffuse sources' means the many smaller or scattered sources from which pollutants may be released to land, air or water, whose combined impact on those media may be significant and for which it is impractical to collect reports from each individual source;
- (12) 'competent authority' means the national authority or authorities, or any other competent body or bodies, designated by Member States;
- (13) 'hazardous waste' means hazardous waste as defined in Article 3(2) of Directive 2008/98/EC;
- (14) 'recovery' means any of the operations referred to in Annex II to Directive 2008/98/EC;
- (15) 'disposal' means any of the operations referred to in Annex I to Directive 2008/98/EC;
- (16) 'reporting year' means the calendar year for which data must be gathered.

Article 3

Content of the Portal

1. The Portal shall include data on:

- (a) releases of pollutants as referred to in Article 5(1), point (a);
- (b) off-site transfers of waste as referred to in Article 5(1), point (b), and of pollutants in waste water as referred to in Article 5(1), point (c);

³¹ Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).

- (c) use of water resources, energy and raw materials as referred to in Article 5(1), point (d);
- (d) contextual information as referred to in Article 5(1), point (e);
- (e) where available, data on releases of pollutants from diffuse sources as referred to in Article 7(1).

2. The Portal shall include links to the following:

- (a) national pollutant release and transfer registers established by Member States in accordance with the Protocol;
- (b) other existing publicly accessible registers, databases or websites, established at Member State or Union level, that provide access to the reporting requirements set out in Union legislation on climate change, air, water and land protection, and on waste management.

Article 4

Design and structure of the Portal

1. The Commission shall make the Portal publicly accessible, presenting the data in both aggregated and non-aggregated forms with a view to enabling **at least** searches by:

- (a) ~~facility installation~~, including the ~~facility's installation's~~ parent company where applicable, and its geographical location, including the river basin;
- (aa) installation, **including owner or operator** **[Moved from point (i)]**
- (b) activity;
- (c) occurrence at Member State or Union level;
- (d) pollutant, waste or resource, as appropriate;
- (e) the environmental medium (air, water, land) into which the pollutant is released;
- (f) off-site transfers of waste and, as appropriate, their destination;
- (g) off-site transfers of pollutants in waste water;
- (h) diffuse sources;
- ~~(i) — installation owner or operator.~~

2. The Portal shall be designed for maximum ease of public access to allow the data, under normal operating conditions, to be continuously and readily accessible on the internet. Its design shall take into account the possibility of its future expansion and shall include all data reported for previous reporting years, up to at least the previous ten reporting years.

Article 5

Reporting by operators to competent authorities

1. ~~Each~~**The** operator of ~~each an~~ installation **or part of an installation** that undertakes one or more of the activities specified in Annex I, which meet the applicable capacity thresholds specified in that Annex **and releases any of the pollutants in Annex II beyond the applicable thresholds or exceeds the waste thresholds set out in point (b) below**, shall report annually, to its competent authority, **at least** the following data, unless that data is already available to the competent authority:
 - (a) releases to air, water and land of any pollutant specified in Annex II for which the applicable threshold value specified in Annex II is exceeded;
 - (b) off-site transfers of hazardous waste exceeding 2 tonnes per year or of non-hazardous waste exceeding 2 000 tonnes per year, for any operations of recovery or disposal with the exception of the disposal operations of land treatment and deep injection disposal operations, as specified in Annex I to Directive 2008/98/EC, indicating with 'R' or 'D' respectively whether the waste is destined for recovery or disposal and, for transboundary movements of hazardous waste, the name and address of the recoverer or the disposer of the waste and the actual recovery or disposal site. Waste which is subject to land treatment or deep injection disposal operations shall be reported as a release to land only by the operator of the installation from which the waste originates;
 - (c) off-site transfers of any pollutant specified in Annex II in waste water destined for waste water treatment for which the threshold value specified in Annex II, column 1b, is exceeded;
 - (d) use of water, energy and **key** raw materials;
 - (e) information allowing contextualisation of the data reported under points (a) to (d), including production volume, ~~number of employees, number of operating hours, and information on accidents that have led to releases~~;
 - (f) information on whether the installation is also covered by Directive 2003/87/EC of the European Parliament and of the Council³², Directive 91/271/EEC, Directive 2010/75/EU, Directive 2012/18/EU, Directive (EU) 2015/2193 or any other Union environmental legislation identified in the reporting format referred to in Article 6;
 - (g) **Information on what facility the installation is part of.**
2. Where the releases referred to in paragraph 1, point (a), or off-site transfers of pollutants referred to in paragraph 1, point (c), do not exceed the applicable threshold values specified in Annex II, or where off-site transfers of waste do not exceed the thresholds set out in paragraph 1, point (b), the operator of the installation concerned shall declare, in its report, that releases or off-site transfers are below those values or thresholds. **The competent authority may decide that this shall only be done in the first report by an operator after the entry into force of this Regulation or in the**

³²

Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

first report after the releases or off-site transfers of waste no longer exceed the applicable threshold values.

3. **When preparing the report referred to in paragraph 1, operators shall make use of the best available information.** Operators shall obtain the data ~~referred to in paragraph 1~~ by means of measurement. Where measurement **does not result in the best available information**, is not practicable **or lead to disproportionate costs**, operators shall use calculation. Where neither measurement nor calculation is practicable, operators may obtain the data by estimation. **The information may include monitoring data, emission factors, mass balance equations, indirect monitoring or other calculations, engineering judgements and other methods in line with Article 8(1) and in accordance with internationally approved methodologies, where these are available.**
4. Operators shall specify in the report the methods used for obtaining the data. Where the data were obtained by measurement, the analytical method shall be indicated. Where the data were obtained by calculation, the method of calculation shall be indicated.
5. ~~When preparing the report referred to in paragraph 1, operators shall make use of the best available information, which may include monitoring data, emission factors, mass balance equations, indirect monitoring or other calculations, engineering judgements and other methods in line with Article 8(1) and in accordance with internationally approved methodologies, where these are available.~~ **[Moved to paragraph 3]**
6. The releases referred to in Annex II reported under paragraph 1, point (a), shall include all releases from all sources included in Annex I at the site of the installation.
7. The data referred to in paragraph 1 shall include releases and transfers reported as totals of all deliberate, accidental, routine and non-routine activities. In providing this data, operators shall specify, where available, any data that relate to accidental releases.
8. The operator of each installation shall collect with appropriate frequency the data needed to determine which of the installation's releases and off-site transfers are subject to reporting requirements under paragraph 1.
9. The operator of each installation concerned shall keep available for its competent authority the records from which the reported data were derived for a period of 5 years, starting from the end of the reporting year concerned. These records shall also describe the methodology used for data gathering.
10. Member States may decide to quantify ~~themselves~~ deliberate releases referred to in paragraph 1, point (a), on behalf of operators of installations covered by Activity 2

listed in Annex I and by Activity 7 listed in Annex I. In these cases, paragraphs 1 to 9 shall not apply to those operators in respect of such releases.

11. Having regard to the requirements set out in Article 6, Member States shall determine a date by when operators shall provide the data referred to in this Article to its competent authority.

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 data referred to in Article 5 in a format ~~and by a date to be established by the Commission by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 167(2). The reporting date shall be provided to the Commission in any case,~~ no later than 11 months after the end of the reporting year.
2. The Commission services, assisted by the European Environment Agency ('the Agency') shall incorporate the data reported by Member States into the Portal within 1 month of completion of reporting by Member States in accordance with paragraph 1.

Article 7

Data on releases of pollutants from diffuse sources

1. The Commission, assisted by the Agency, shall include in the Portal data on releases of pollutants from diffuse sources where such data exists and has already been reported by Member States.
2. The data available on the Portal shall allow users to search for and identify releases of pollutants from diffuse sources according to an adequate geographical disaggregation and shall include information on the type of methodology used to derive the data.
3. Where it determines that no data on the releases from diffuse sources exist, the Commission is empowered to adopt delegated acts in accordance with Article 15 in order to supplement this Regulation by initiating reporting on releases of relevant pollutants from one or more diffuse sources using, where appropriate, internationally approved methodologies.

Article 8

Quality assurance and assessment

1. The operators of the installation subject to the reporting requirements set out in Article 5 shall ensure the quality of the data that they report.

2. The competent authorities shall assess the quality of the data provided by the operators of the installations referred to in paragraph 1, in particular as to their accuracy, completeness, consistency and credibility.

Article 9

Access to information

1. The Commission, assisted by the Agency, shall make the data contained in the Portal publicly accessible and free of charge on the internet within 1 month of completion of reporting by Member States in accordance with Article 6(1).
2. Where the data contained in the Portal is not easily accessible to the public on the internet, the Member State concerned and the Commission shall facilitate electronic access to the Portal in publicly accessible locations.
3. Each Member State shall make available to the public its data, reported in accordance with Article 5 and, where available, Article 7(1), in a continuous manner, free of charge and without restricting access to registered users.

Article 10

Confidentiality

When data is considered confidential by a Member State in accordance with Article 4(2) of Directive 2003/4/EC, the report referred to in Article 6(2) of this Regulation for the reporting year concerned shall indicate separately for each installation which data cannot be made public and provide the reasons for this.

Article 11

Public participation

1. The Commission shall provide the public with early and effective opportunities to participate in the further development of the Portal, including capacity-building and the preparation of amendments to this Regulation.
2. The public shall have the opportunity to submit comments, information, analyses and opinions within a reasonable timeframe.
3. The Commission shall take due account of such input and shall inform the public about the outcome of the public participation.

Article 12

Guidance

1. The Commission, assisted by the Agency, shall draw up and periodically update guidance supporting the implementation of this Regulation, addressing at least the following:
 - (a) reporting procedures;
 - (b) the data to be reported;
 - (c) quality assurance and assessment;
 - (d) indication of type of withheld data and reasons why they were withheld in the case of confidential data;
 - (e) reference to internationally approved methods for release determination, analysis and sampling;
 - (ee) the practicability of releases quantification using measurement, calculation and estimations and a methodology for assessing whether the costs of obtaining data by means of measurement is disproportionately high compared to the quality of the data;**
 - (f) indication of parent companies;
 - (g) what are to be considered as sites, facilities, installations and parts of installations;**
 - (h) calculation methods, including emission factors per abatement technology, for livestock production and aquaculture.**
2. **The guidelines concerning point (g) shall include examples of what is to be considered sites, facilities, and installations and parts of installations and be drawn up for the first time no later than 1 June 2025, after consulting the Member States.**

Article 13

Awareness raising

Member States and the Commission shall promote public awareness of the Portal and understanding and use of the data contained in it.

Article 14

Amendments to the Annexes

1. The Commission is empowered to adopt delegated acts in accordance with Article 15 in order to amend Annex I **for one or more of the following purposes:**

- (a) ~~to add an industrial or agricultural activity which has, or is expected to have, an impact on health or the environment as a consequence of its pollutant releases, waste or waste water transfers or resource use; releases or transfers above the respective reporting thresholds, as set out in Article 5(1), point (b) and in Annex II, will be a primary factor in determining impact on health or the environment;~~
- (b) to align it with the Protocol following the adoption of amendment to its annexes.
2. The Commission is empowered to adopt delegated acts in accordance with Article 15 in order to amend Annex II for one or more of the following purposes:
- (a) ~~to adapt it to scientific or technical progress;~~
- (b) to add pollutants, **where** their release **of which** to air, water and land has, or may have, an adverse impact on the environment or human health, including those that are released from activities referred to in Annex I to this Regulation, and that meet one of the following conditions:
- (i) are ~~designated as substances of very high concern fulfilling the criteria laid down in Article 57 in Annex XIV to of~~ Regulation (EC) No 1907/2006 **or substances listed in restrictions in annex XVII thereto;**
- (ii) are designated as priority substances under Directives 2000/60/EC or 2008/105/EC,
- (iii) are included in the watch lists established in the framework of Directives 2006/118/EC or 2008/105/EC;
- (iv) are subject to limit values or other restrictions under Directives 2008/50/EC, 2004/107/EC or 2006/118/EC;
- (c) to set and update thresholds for releases so as to achieve the goal of capturing at least 90% of releases of each pollutant to air, water and land from activities referred to in Annex I; including thresholds of zero for substances displaying a particularly high hazard to the environment or human health;
- (d) **to add or remove pollutants and, where necessary, amend the applicable threshold, in order to** align it with the Protocol following the adoption of amendment to its annexes.

Article 15

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 7(3) and Article 14 shall be conferred on the Commission for a period of five years from ... [Office of Publication: please insert the date = the date of entry into force of this Regulation]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be

tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 7(3) and Article 14 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 7(3) and Article 14 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 16 **Committee Procedure**

1. The Commission shall be assisted by a committee.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 17 **Penalties and compliance assurance measures**

1. Member States shall lay down the rules on penalties applicable to infringements of ~~national measures adopted pursuant to this Regulation~~ and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. ~~Member States shall without delay notify the Commission of those rules and of those measures and shall notify it without delay of any subsequent amendment affecting them.~~

2. ~~The penalties referred to in paragraph 1 shall include fines proportionate to the turnover of the legal person or to the income of the natural person who has committed the infringement. The level of the fines shall be calculated in such a way as to make sure that they effectively deprive the person responsible for the infringement of the economic benefits derived from that infringement. The level of the fines shall be gradually increased for repeated infringements.~~
3. Member States shall ensure that the penalties **established pursuant to this Article** ~~referred to in paragraph 1~~ give due regard to the following, as applicable:
- (a) the nature, gravity, and extent of the infringement;
 - ~~(b) the intentional or negligent character of the infringement;~~
 - ~~(c) the population or the environment affected by the infringement, bearing in mind the impact of the infringement on the objective of achieving a high level of protection of human health and the environment.~~
 - (d) **the repetitive or singular character of the infringement;**
- 3 a. **Member States shall without undue delay notify the Commission of the rules and measures referred to in paragraph 1 and of any subsequent amendments affecting them.**
4. Member States shall adopt compliance assurance measures to prevent and detect the infringements referred to in paragraph 1.

Article 18

Repeal

Regulation (EC) No 166/2006 is repealed with effect from 1 January ~~2026~~ **2027**.

References to the repealed Regulation (EC) No 166/2006 shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex III.

Article 19

Transitional provisions

Notwithstanding Article 18, first paragraph, Regulation (EC) No 166/2006 shall continue to apply as regards reporting for the year ~~2024~~ **2025**.

Article 20

Entry into force

This Regulation shall enter into force on the twentieth day following its publication in *the Official Journal of the European Union*.

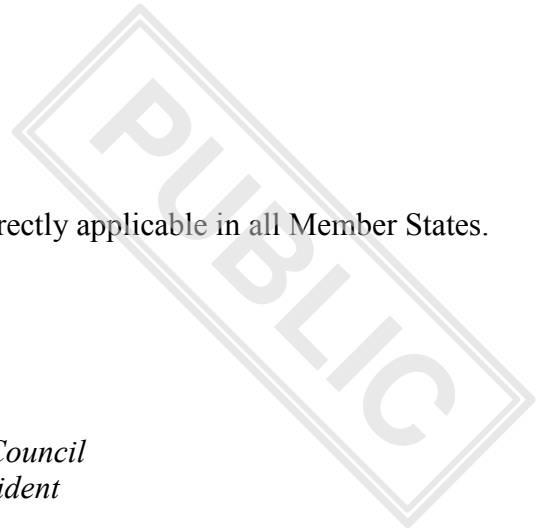
It shall apply from 1 January ~~2026~~ **2027**.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg,

For the European Parliament
The President

For the Council
The President



ANNEX I

Activities

Activity		Capacity Threshold
1	Activities listed in Annex I to Directive 2010/75/EU	Above the applicable capacity thresholds set out in Directive 2010/75/EU
2	Activities listed in Annex Ia to Directive 2010/75/EU	Above the applicable capacity thresholds set out in Directive 2010/75/EU
3	Activities referred to in Article 2 of Directive (EU) 2015/2193 (where not covered by Annex I to Directive 2010/75/EU)	Combustion plants with a rated thermal input of at least 20 MW and below 50 MW
4	Underground mining and related operations, including the extraction of crude oil or gas either onshore or offshore (where not covered by Annex I to Directive 2010/75/EU)	No capacity threshold (all installations are subject to reporting)
5	Opencast mining and quarrying (where not covered by Annex I to Directive 2010/75/EU)	Where the surface of the area effectively under extractive operation equals 25 hectares
6	Urban waste water treatment plants	With a capacity of 100 000 population equivalents or more
7	Aquaculture	With a production capacity of 100 300 tonnes of fish or shellfish per year
8	Installations for the building and/or dismantling of ships, and for the painting or removal of paint from ships	With a capacity for ships 100 m long

ANNEX II
Pollutants ^(*)

No	CAS number	Pollutant ⁽¹⁾	Threshold for releases (column 1)		
			to air (column 1a) kg/year	to water (column 1b) kg/year	to land (column 1c) kg/year
1	74-82-8	Methane (CH ₄)	100 000	— ⁽²⁾	—
2	630-08-0	Carbon monoxide (CO)	500 000	—	—
3	124-38-9	Carbon dioxide (CO ₂)	100 million	—	—
4		Hydro-fluorocarbons (HFCs) ⁽³⁾	100	—	—
5	10024-97-2	Nitrous oxide (N ₂ O)	10 000	—	—
6	7664-41-7	Ammonia (NH ₃)	10 000	—	—
7		Non-methane volatile organic compounds (NMVOC)	100 000	—	—
8		Nitrogen oxides (NO _x /NO ₂)	100 000	—	—
9		Perfluorocarbons (PFCs) ⁽⁴⁾	100	—	—
10	2551-62-4	Sulphur hexafluoride (SF ₆)	50	—	—
11		Sulphur oxides (SO _x /SO ₂)	150 000	—	—
12		Total nitrogen	—	50 000	50 000
13		Total phosphorus	—	5 000	5 000
14		Hydrochlorofluorocarbons (HCFCs) ⁽⁵⁾	1	—	—
15		Chlorofluorocarbons (CFCs) ⁽⁶⁾	1	—	—
16		Halons ⁽⁷⁾	1	—	—
17		Arsenic and compounds (as As) ⁽⁸⁾	20	5	5
18		Cadmium and compounds (as Cd) ⁽⁸⁾	10	5	5
19		Chromium and compounds (as Cr) ⁽⁸⁾	100	50	50
20		Copper and compounds (as Cu) ⁽⁸⁾	100	50	50
21		Mercury and compounds (as Hg) ⁽⁸⁾	10	1	1
22		Nickel and compounds (as Ni) ⁽⁸⁾	50	20	20
23		Lead and compounds (as Pb) ⁽⁸⁾	200	20	20

24		Zinc and compounds (as Zn) (8)	200	100	100
25	15972-60-8	Alachlor	—	1	1
26	309-00-2	Aldrin	1	1	1
27	1912-24-9	Atrazine	—	1	1
28	57-74-9	Chlordane	1	1	1
29	143-50-0	Chlordecone	1	1	1
30	470-90-6	Chlorfenvinphos	—	1	1
31	85535-84-8	Chloro-alkanes, C ₁₀ -C ₁₃	—	1	1
32	2921-88-2	Chlorpyrifos	—	1	1
33	50-29-3	DDT	1	1	1
34	107-06-2	1,2-dichloroethane (EDC)	1 000	10	10
35	75-09-2	Dichloromethane (DCM)	1 000	10	10
36	60-57-1	Dieldrin	1	1	1
37	330-54-1	Diuron	—	1	1
38	115-29-7	Endosulphan	—	1	1
39	72-20-8	Endrin	1	1	1
40		Halogenated organic compounds (as AOX) (9)	—	1 000	1 000
41	76-44-8	Heptachlor	1	1	1
42	118-74-1	Hexachlorobenzene (HCB)	10	1	1
43	87-68-3	Hexachlorobutadiene (HCBd)	—	1	1
44	608-73-1	1,2,3,4,5,6-hexachlorocyclohexane(HCH)	10	1	1
45	58-89-9	Lindane	1	1	1
46	2385-85-5	Mirex	1	1	1
47		PCDD + PCDF (dioxins + furans) (as Teq) (10)	0,0001	0,0001	0,0001
48	608-93-5	Pentachlorobenzene	1	1	1
49	87-86-5	Pentachlorophenol (PCP)	10	1	1
50	1336-36-3	Polychlorinated biphenyls (PCBs)	0,1	0,1	0,1
51	122-34-9	Simazine	—	1	1
52	127-18-4	Tetrachloroethylene (PER)	2 000	10	—
53	56-23-5	Tetrachloromethane (TCM)	100	1	—
54	12002-48-1	Trichlorobenzenes (TCBs) (all isomers)	10	1	—

55	71-55-6	1,1,1-trichloroethane	100	—	—
56	79-34-5	1,1,2,2-tetrachloroethane	50	—	—
57	79-01-6	Trichloroethylene	2 000	10	—
58	67-66-3	Trichloromethane	500	10	—
59	8001-35-2	Toxaphene	1	1	1
60	75-01-4	Vinyl chloride	1 000	10	10
61	120-12-7	Anthracene	50	1	1
62	71-43-2	Benzene	1 000	200 (as BTEX) (11)	200 (as BTEX) (11)
63		Brominated diphenylethers (PBDE) (12)	—	1	1
64		Nonylphenol and Nonylphenol ethoxylates (NP/NPEs)	—	1	1
65	100-41-4	Ethyl benzene	—	200 (as BTEX) (11)	200 (as BTEX) (11)
66	75-21-8	Ethylene oxide	1 000	10	10
67	34123-59-6	Isoproturon	—	1	1
68	91-20-3	Naphthalene	100	10	10
69		Organotin compounds(as total Sn)	—	50	50
70	117-81-7	Di-(2-ethyl hexyl) phthalate (DEHP)	10	1	1
71	108-95-2	Phenols (as total C) (13)	—	20	20
72		Polycyclic aromatic hydrocarbons (PAHs) (14)	50	5	5
73	108-88-3	Toluene	—	200 (as BTEX) (11)	200 (as BTEX) (11)
74		Tributyltin and compounds (15)	—	1	1
75		Triphenyltin and compounds (16)	—	1	1
76		Total organic carbon (TOC) (as total C or COD/3)	—	50 000	—
77	1582-09-8	Trifluralin	—	1	1
78	1330-20-7	Xylenes (17)	—	200 (as BTEX) (11)	200 (as BTEX) (11)
79		Chlorides (as total Cl)	—	2 million	2 million
80		Chlorine and inorganic compounds (as HCl)	10 000	—	—

81	1332-21-4	Asbestos	1	1	1
82		Cyanides (as total CN)	—	50	50
83		Fluorides (as total F)	—	2 000	2 000
84		Fluorine and inorganic compounds (as HF)	5 000	—	—
85	74-90-8	Hydrogen cyanide (HCN)	200	—	—
86		Particulate matter (PM ₁₀)	50 000	—	—
87	1806-26-4	Octylphenols and Octylphenol ethoxylates	—	1	—
88	206-44-0	Fluoranthene	—	1	—
89	465-73-6	Isodrin	—	1	—
90	36355-1-8	Hexabromobiphenyl	0,1	0,1	0,1
91	191-24-2	Benzo(g,h,i)perylene		1	

(¹) Unless otherwise specified, any pollutant specified in this Annex shall be reported as the total mass of that pollutant or, where the pollutant is a group of substances, as the total mass of the group.

(²) A hyphen (—) indicates that the parameter and medium in question do not trigger a reporting requirement.

(³) Total mass of hydrogen fluorocarbons: sum of HFC23, HFC32, HFC41, HFC4310mee, HFC125, HFC134, HFC134a, HFC152a, HFC143, HFC143a, HFC227ea, HFC236fa, HFC245ca, HFC365mfc.

(⁴) Total mass of perfluorocarbons: sum of CF₄, C₂F₆, C₃F₈, C₄F₁₀, c-C₄F₈, C₅F₁₂, C₆F₁₄.

(⁵) Total mass of substances including their isomers listed in Group VIII of Annex I to Regulation (EC) No 1005/2009 of the European Parliament and of the Council of 16 September 2009 on substances that deplete the ozone layer (OJ L 286, 31.10.2009, p. 1).

(⁶) Total mass of substances including their isomers listed in Groups I and II of Annex I to Regulation (EC) No 1005/2009.

(⁷) Total mass of substances including their isomers listed in Groups III and VI of Annex I to Regulation (EC) No 1005/2009.

(⁸) All metals shall be reported as the total mass of the element in all chemical forms present in the release.

(⁹) Halogenated organic compounds which can be adsorbed to activated carbon expressed as chloride.

(¹⁰) Expressed as I-TEQ.

(¹¹) Single pollutants are to be reported if the threshold for BTEX (the sum parameter of benzene, toluene, ethyl benzene, xylenes) is exceeded.

(¹²) Total mass of the following brominated diphenylethers: penta-BDE, octa-BDE and deca-BDE.

(¹³) Total mass of phenol and simple substituted phenols expressed as total carbon.

(¹⁴) For reporting releases to air, polycyclic aromatic hydrocarbons (PAHs) are to be measured as benzo(a)pyrene (50-32-8), benzo(b)fluoranthene (205-99-2), benzo(k)fluoranthene (207-08-9) and indeno(1,2,3-cd)pyrene (193-39-5) as specified in Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (OJ L 169, 25.6.2019, p. 45).

(¹⁵) Total mass of tributyltin compounds, expressed as mass of tributyltin.

(¹⁶) Total mass of triphenyltin compounds, expressed as mass of triphenyltin.

(¹⁷) Total mass of xylene (ortho-xylene, meta-xylene, para-xylene).

ANNEX III
Correlation table

Regulation (EC) No 166/2006	This Regulation
Article 1	Article 1
Article 2(1)	Article 2(3)
Article 2(2)	Article 2(12)
Article 2(3)	Article 2(1)
Article 2(4)	-
Article 2(5)	Article 2(2)
Article 2(6)	Article 2(7)
Article 2(7)	Article 2(16)
Article 2(8)	Article 2(6)
Article 2(9)	Article 2(5)
Article 2(10)	Article 2(4)
Article 2(11)	Article 2(8)
Article 2(12)	Article 2(11)
Article 2(13)	Article 2(9)
Article 2(14)	Article 2(13)
Article 2(15)	Article 2(10)
Article 2(16)	Article 2(15)
Article 2(17)	Article 2(14)
Article 3, point (a)	Article 3(1), point (a)
Article 3, point (b)	Article 3(1), point (b)
Article 3, point (c)	Article 3(1), point (e)

Article 4(1)	Article 4(1)
Article 4(2)	Article 3(2)
Article 5(1), point (a)	Article 5(1), point (a)
Article 5(1), point (b)	Article 5(1), point (b)
Article 5(1), point (c)	Article 5(1), point (c)
Article 5(1), second subparagraph	-
Article 5(1), third subparagraph	Article 5(4)
Article 5(1), fourth subparagraph	Article 5(6)
Article 5(2)	Article 5(7)
Article 5(3)	Article 5(8)
Article 5(4)	Article 5(5)
Article 5(5)	Article 5(9)
Article 6	Article 5(1), point (b)
Article 7(1)	Article 5(11)
Article 7(2)	Article 6(1)
Article 7(3)	Article 6(2)
Article 8(1)	Article 7(1)
Article 8(2)	Article 7(2)
Article 8(3)	Article 7(3)
Article 9(1)	Article 8(1)
Article 9(2)	Article 8(2)
Article 9(3)	-
Article 9(4)	-
Article 10(1)	Article 9(1)

Article 10(2)	Article 9(2)
Article 11	Article 10
Article 12(1)	Article 11(1)
Article 12(2)	Article 11(2)
Article 12(3)	Article 11(3)
Article 13	Article 9(4)
Article 14	Article 12
Article 15	Article 13
Article 18	Article 14
Article 18a	Article 15
Article 19	Article 16
Article 20	Article 17
Article 21	-
Annex I	Annex I
Annex II	Annex II



Council of the European Union
General Secretariat

**Interinstitutional files:
2022/0105 (COD)**

Brussels, 16 May 2023

WK 6554/2023 INIT

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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on the Environment
N° Cion doc.:	8121/22 + ADD 1
Subject:	Industrial Emissions Portal Regulation: WPE meeting on 23 May 2023: Steering note with Annex

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 23 May 2023.

Working Party on the Environment

Presidency Steering note for the WPE on 23 May 2023 Industrial Emissions Portal Regulation

The Working Party on the Environment (WPE) will at the meeting on 23 May continue the examination of the proposed Industrial Emissions Portal Regulation (IEPR).

It is the Presidency's understanding that the proposal is getting close to a balanced compromise text reflecting the different preferences of Member States. Based on the discussion in WPE on 11 May, the Presidency has identified some elements where there is a need for further clarification or changes. These remaining elements are specified and explained in the steering note below accompanied by text proposals in the annex to the steering note for MS considerations. The Presidency proposes to focus the discussions on those remaining issues and invites Member States to indicate whether they have any major outstanding issues at this stage.

The Presidency's changes compared with the Commission's proposal are marked in "**bold**" while deleted text is "~~struck through~~" and the latest changes compared to the steering note from the meeting on 11 May are marked in "**bold underlined**".

Cluster 1 - Reporting

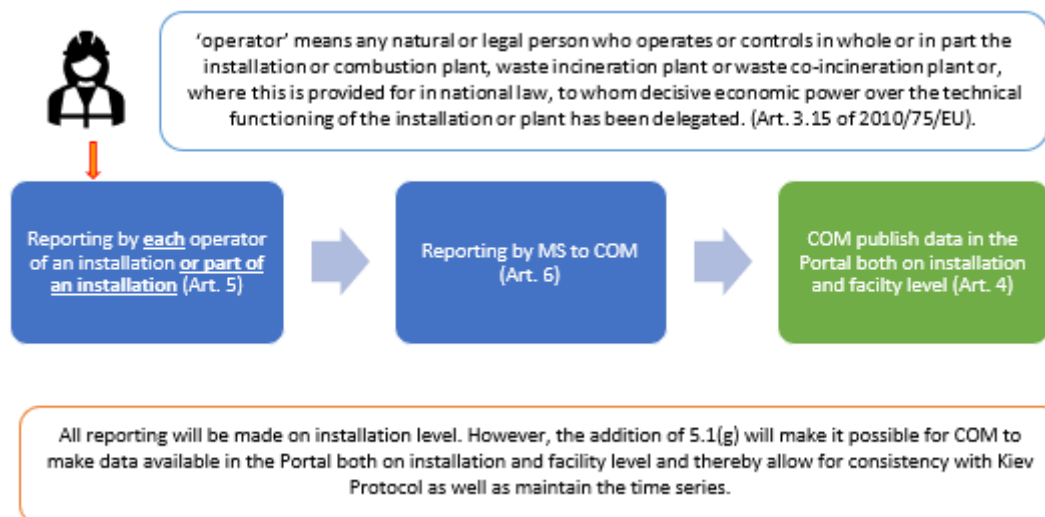
Cluster 1 consists of Article 1–9 and 11–13, Annex I and II.

At the WPE on 11 May some Member States suggested that the issue of monitoring should be reflected in the objectives. The Presidency therefore proposes to include the aspect of monitoring in the objectives (Article 1a).

Many Member States stated that there was no need for the proposed addition of owner in the definition of facility, as the aspect of ownership already is included in the definition of operator. Therefore, the Presidency proposes to delete owner in Article 2.(1a). Furthermore, the Presidency suggests deleting owner in in Article 4.1(aa).

Several Member States highlighted the need for further clarification regarding operators' reporting obligations according to Article 5.1. Since the definition of operator (Article 2.7

with a reference to Article 3.15 in IED) explicitly mentions “*in whole or in part the installation or combustion plant, waste incineration plant or waste co-incineration plant*”, an installation could be operated by two or more natural or legal persons. The Presidency would also like to make a reference to document WK 12930/2022 INIT that includes an extract from the existing guidance (Q&A) on practical aspects of the term “operator” under the Industrial Emissions Directive of 18 January 2019. The guidance clarifies that the wording “*in whole or in part*” in the definition of operator in IED (i.e. Article 3.15) indicates that a single installation could be operated by two or more natural or legal persons. Therefore, the Presidency proposes to adjust Article 5.1 to the definition of operator by clarifying that *each operator of an installation or part of an installation* is subject to the obligation of reporting. To ensure that data is comparable between Member States, the Presidency notices the need of further guidance regarding part of an installation and therefore suggests adding “part of an installation” in Article 12.1(g) and 12.2. The reporting process is illustrated in the figure below.



Some Member States also expressed the need for flexibility for the competent authorities to request further information from the operators in relation to Article 5.1 and 5.2. The Presidency therefore proposes to add “*at least*” in Article 5.1 and by adding “*The competent authority may decide*” in Article 5.2.

The Presidency also proposes to add “*by operator*” in article 5.2 to make it clearer that the data shall be included in the first report done by an operator regardless of when in time an operator issues its first report.

Some Member States expressed concerns about the proposed addition of disproportionate costs in Article 5.3. It was highlighted that it was unclear how this aspect should be assessed, and this could potentially lead to increased administrative burden and misuse. In order to achieve comparable data by the Member States, as well as to limit the

administrative burden and the risk of misuse, the Presidency notes the need of further guidance and therefore suggests adding the aspect of disproportionate costs in Article 12.1(ee).

At the last WPE the Presidency had proposed to clarify and limit the reporting requirements concerning raw materials. This was done by making it clear that the requirement only applies to “key” raw materials. What was understood by key raw materials was further explained in recital 13. It is the Presidency’s view that most Member States welcomed the clarification regarding raw materials. However, several Member States requested further explanations of what is meant by “key” raw materials. The Presidency therefore proposes to add text in recital 13 aiming at further clarifying the concept of “key” raw materials. It is clarified that key raw material should be raw materials used in the production process. The recital also clarifies that what is considered key raw materials should as far as possible be based on the work done in the BREF-process and the decisions on BAT-conclusions adopted pursuant to IED as well as in the operating rules established in that Directive, and in the implementing acts establishing uniform conditions for their implementation.

Some Member States have expressed concerns regarding the lowered threshold for aquaculture to a production capacity of 100 tonnes of fish or shellfish per year. The purpose of the Commission’s proposal is to collect information on such activities as the current threshold of 1000 tonnes covers less than 30 installations in all (Annex I point 7 b Regulation (EC) No 166/2006). The lack of data makes it difficult to assess the environmental impact of these operations. Member States have pointed out that the proposed threshold is too low and would result in a disproportionate administrative burden for rather small companies. Aiming at finding a balance between the need for more data on the one hand and keeping the administrative burden low for smaller companies on the other, the Presidency proposes to raise the threshold to 300 tonnes (Annex I point 7).

Cluster 2 -Empowerment of the Commission

Cluster 2 consists of Article 7.3, 14–16.

During the WPE meeting on 11 May there were different views among Member States on the use of Delegated Acts for amending the Annexes. Some Member States could accept the Commission’s proposal, some could accept the use of Delegated Acts only if the conditions for changing the Annexes were more limited, and some Member States wanted to use the ordinary legislative procedure for changing the Annexes.

At the meeting, the presidency highlighted that delegated acts is the current legislative approach used to change the Annex containing pollutants (Article 18 Regulation (EC) No 166/2006). It was also stressed that the use of the ordinary legislative procedure for

changing the Annex containing pollutants (Annex II) would raise practical considerations, since it will be more suitable if pollutants and thresholds were discussed by experts and not in the WPE and between the Council and the European Parliament. Using the ordinary legislative procedure would also probably mean that Annex II would not be changed as often as needed – if at all – which would strongly limit the ambition of the proposal.

The main task for the Working Party will be to explore a possible compromise proposal balancing the abovementioned aspects and the reluctance of a number of Member States to use delegated acts to change the annexes. The Presidency puts forward a proposal where it has tried to find a balance between these different aspects. The proposal consists of a mix where both Delegated Acts and the ordinary legislative procedure are used for changing the Annexes.

The Presidency proposes to delete the possibility to use Delegated Acts to add new activities in Annex I for other reasons than aligning the Annex to the Kiev-Protocol (Article 14.1 a). The Presidency also proposes to delete the possibility to use Delegated Acts to amend Annex II with new pollutants to adapt the Annex to scientific and technical progress (Article 14.2 (a)). This means that such changes to the Annexes would have to be done by the ordinary legislative procedure.

The possibility to amend Annex II through Delegated Acts are kept provided that the release of the pollutant has, or may have, an adverse impact on the environment or human health and that the pollutant meets the conditions set in other environmental legislations, for example are included in the watch lists established in the framework of Directives 2006/118/EC or 2008/105/EC (Article 14.2 (b)). As suggested by some Member States, the reference to REACH (regulation (EC) No 1907/2006) is changed in the same way as was done in the general approach on IED (Article 14.2 (b) i).

These changes proposed by the Presidency mean that the possibility of adding new pollutants in Annex II through Delegated Acts is strictly limited to pollutants that fulfil these specified criteria. The Presidency also proposes to keep the possibility to add pollutants in Annex II through Delegated Acts to align it with the Kiev-Protocol. Moreover, it is proposed to add a possibility to *remove* pollutants from Annex II to align it with the Protocol. Other changes in Annex II can be made only through the ordinary legislative procedure.

The wording in the beginning of Article 14.1 (b) is also slightly changed to make the text clearer.

Cluster 3 -Penalties and confidentiality

Cluster 3 consists of Articles 10 and 17.

No further changes are suggested in this cluster.

We are looking forward to seeing delegations on 23 May!

The SE Presidency IEPR Team

