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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on the Environment
N° Cion doc.:	8121/22 + ADD 1
Subject:	Industrial Emissions Portal Regulation: Follow-up to the WPE meeting on 23 May 2023: Comments from delegations

Following the above WPE meeting and the call for comments (WK 6766/23 INIT), delegations will find attached comments from PL and PT.

POLAND

Response to the call for comments: Industrial Emissions Portal Regulation: Follow-up to the WPE meeting on 23 May 2023

Following the WPE meeting held on 11th May 2023 and 23rd May 2023 please find below Polish written reactions on issues covered by the Presidency Steering note WPE 9066/23 IEPR and WK 6554/2023 INIT, PREZ compromise text 9066/23 and IEPR proposal 8121/2022 + ADD 1-2

Reporting

5 (1)

Poland remains its position to not to change the reporting level from facility to installation. In our opinion reporting at the installation level will cause a heavy burden both for the operators and public administration. It will be disproportionate to the environmental benefits to be achieved from adopting such a solution. **Also there is a risk that some of the pollutant releases/transfers will not be included in the report as below the threshold, while in total (facility level) it would exceed the thresholds in Annex II of the Regulation.** The proposal to add a mandatory field in the report indicating which facility the installation comes from does not solve this problem.

We would like to also point out that the change in reporting level may result an inconsistency between EU regulations and the PRTR Protocol. According to the PRTR Protocol, operators should report at the facility level and not at the installation level.

5 (1) b

Poland is not convinced to the modification Article 5 (1) b of the regulation. One of the biggest changes in the regulation is the proposal to reporting at the installation level and now reporting at the facility in this aspect raised doubt because of the inconsistency of the releases and transfers.

We recommend keeping reporting at facility level for all releases and transfers.

5 (1) d

Poland would like to suggest reporting additional information such as use of water resources, energy and raw materials would be always optional. However, we can support AT proposal on art. 5 (1) d which is a good compromise and a way forward.

5 (2)

Poland can accept the proposal for a compromise Article 5 (2), nevertheless, in our opinion, no matter if releases exceeds the thresholds or not, operator will be forced to report to the authority. This will be an additional burden for both the administration and operators.

5 (10)

Poland may accept proposal to modify Article 5 (10) and introduce new Article X, but we believe this changes might just as well have been specified in the guidelines, instead of by executive act. We remain flexible in this aspect.

Poland supports the proposal to modify Article 1 of the regulation and also supports adding Article 1a to the regulation. Poland supports amendments proposed by the Presidency aiming to unify the definition of installation, facility and site and also introduce definitions of aquaculture.

Poland welcomes proposal made by the Presidency to modify preambles 13 and 15.

Empowerment to the Commission

Poland welcomes proposal made by the Presidency to modify Annexes I (list of activities) and II (list of pollutants) in the form of delegated acts only in certain cases. These cases must be defined in the regulation.

Poland considers the changes to the annexes to be important, in particular because the expansion of the list of activities to include new activities will have significant consequences for operators that were not reported at all. Compromise Article 14 is a satisfactory solution.

ADD 1 of the regulation

Concerning aquaculture, Poland supports the proposal to modify ANNEX I by lowering the capacity threshold for this type of activity from 1 000 tonnes to 500 tonnes.

In addition

ADD 1 of the regulation

Poland does not support extending the list of activities to combustion plants with a rated thermal input of at least 20 MW and below 50 MW. In our opinion it will be an additional burden for both the administration and the operators. Based on preliminary estimates, the reporting obligation for the scope covered by the proposed regulation will cover approximately 100 installations nationwide.

PORTUGAL

Follow-up to the meeting of the Working Party on the Environment on 23 May 2023 – Industrial Emissions Portal (Comments and suggestions)

PT would like to thank the work of the PRES, COM and the Secretariat on the Industrial Emissions Portal Regulation.

We believe that the Presidency's compromises on the proposal of the Industrial Emissions Portal Regulation are heading in the right direction. We feel there is some room for improvement and therefore propose some minor amendments.

Our proposed changes are highlighted in **blue** in the following text.

1 – Recitals

Recital 13

- In our view the link between key raw materials and BREFs applicable to the sector must be clearer.

*(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 in the operating rules established in that Directive and in the implementing acts establishing uniform conditions for their implementation***

Recital 17

- We suggest deleting this recital since it is redundant after the change of wording of Article 5(2).

~~*(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.*~~

Recitals 34 and 35

- Recitals (34) and (35) should be aligned with the revised Articles 20 and 19.

(34) The reporting requirements established by this Regulation should apply as from the reporting year **2025 2026** 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 **2024-2025**.

2 – Articles

Article 2(1b) new – definition of parts of an installation

Regarding the definitions of Installation, Facility and Parts of installation, we consider these could be based on the ones already in use for EU-Registry (see https://cdr.eionet.europa.eu/help/euregistry/Documents/EU%20Registry_Manual%20for%20Reporters_v1.12.pdf).

2(1) Installation ...

2(1a) Facility...

2(1b) Parts of installation - Large combustion plants (LCPs) as defined by Chapter III of the IED and Waste incineration and co-incineration plants as defined by Chapter IV of the IED (new)

Article 2(18) new – definition of key raw materials

- A definition of key raw materials would be very useful and a clarification of what is to be considered a key raw material could help some MS to decide to support the proposal. We hope that the proposed definition makes it clear that the material must be described on the applicable BREF in order to be considered as a key raw material.

2(18) “key raw materials” – raw materials that have a negative impact on the environment, as described on the BREF applicable to the activity of the installation. (new)

Article 5(10) – releases from accidental or non-routine activities

- Considering Article 5(10) we propose a small clarification, to make sure that the accidental emissions are reported by the operator, even when the MS decides to quantify the “normal” emissions on behalf of the operator.

*5 (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 **by using the calculation methods established by the Commission in accordance with Article X.** In these cases, paragraphs 1 to 9 shall not apply to those operators in respect of such releases, **except when there is the need to quantify emissions from accidental or non-routine activities.***

Article 12(2) – guidelines

- With regard to the publishing of guidelines we would like stress these are needed for the procurement of IT services. In order to be able to produce these guidelines in a short time, one can make use of the work previously developed for the EU-Registry, which can be found at:

https://cdr.eionet.europa.eu/help/euregistry/Documents/EU%20Registry_Manual%20for%20Reporters_v1.12.pdf

We acknowledge some adjustments may be needed but the basis/structure should be kept as unchanged as possible so that the databases currently in use do not need to be completely rewritten.

We would also like to recall that these definitions and structure, developed during 2018 and 2019, meet the INSPIRE Directive, and therefore any changes introduced should not compromise this objective.

We are convinced this added time is essential to responsibly enable MS to fulfil their obligations and we attach great importance to this issue.

a) 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 January 2025, after consulting the Member States.