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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 Italy.

ITALY

CONTRIBUTION TO THE VALUATION OF THE EU COMMISSION PROPOSAL TO SUBSTITUTE THE REGULATION CE/166/2006 (E-PRTR) AND RELATE COMPROMISE TEXT PROPOSED IN THE 23TH MAY 2023 WPE

Italy welcomes the proposal.

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, as amended in the meeting, resolves almost all the problems of the original proposal, but some assessments and improvements to the text still seem appropriate.

VERIFY THE CONSISTENCY WITH THE KYIV PROTOCOL

- Definition of facility (Art. 3.1a)

There is no definition of "installation" in the Kyiv Protocol, and therefore in that context the meaning of this term could be broader than that contained in this Regulation.

In particular, emissions from small plants close to an installation, but not technically connected to it (e.g., a sub-threshold aquaculture or small industrial plant not technically connected to a large combustion plant, but managed by the same operator on the same site), are clearly excluded from this Regulation, while they could be considered included in the same facility according Kyiv Protocol.

Italy can accept the proposed text, but a reflection is suggested.

- Thresholds for pollutant emission (Article 5(1.a))

According art. 7(1.a.i) of the Kyiv protocol, the value to confront with the emission threshold (as for the threshold for off-site waste transfer) should be detected at facility level, and not at installation level. In practice it is unlikely that this misalignment could cause problems (i.e. many small different and independent installation managed by the same operator in the same site), but in principle a reflection on the matter seems appropriate.

Perhaps adding the words "per facility" to the end of Article 5(1.a) as well, would resolve the issue.

- Reduce the reporting obligation for aquaculture and rearing (Article 5(10))

In Art- 5(10) there is a possible problem of consistency with the Kyiv Protocol, which clearly places the burden to carry out communications on operators, and not on States.

GRANT INTERNAL CONSISTENCY

- Recital 11

In line with the changes introduced in art. 5(1), in the recital 11 it would be more precise to refer not only to the installation, but also to its part, to contemplate the case in which different parts of the installation relate to different facilities.

Therefore, Italy suggests, in the text added to recital 11, to replace the words "which facility the installation is part of" with "which facility the installation, or the part of installation, is part of"

- **Recital 17**

Italy considers that legal certainty is guaranteed even without a null declarations.

The intention of such declarations appears to make checks on non-compliant operators more effective, but even in the absence of such declarations, it is legally clear that the operators of facilities exceeding the thresholds are required to send the report.

It should also be noted that the text does not seem entirely consistent with the proposed wording of Article 5(2), which allows the Member State to limit this obligation. It would even seem that this would mandate the MS to introduce legal uncertainty.

Italy doubts the effectiveness of null declarations, and therefore it is considered appropriate to delete this recital 17 and the corresponding art. 5(2). Otherwise, Italy suggests substituting the opening words "for the purpose of legal certainty" with "in order to make compliance controls more effective".

- **Object of publication (art. 4.1.aa)**

For consistency with the interventions carried out in Article 5(1), Article 4 must consider that the communication can be made per installation part. We are aware that this may lead to complications in the IT architecture, but precisely for this reason it is considered appropriate that the issue is clarified in the formulation of point 1.aa, acknowledging which is the main key of the database.

Therefore, Italy suggests rewording Article 4(1)(aa) as follows: "the operator, with identification of the corresponding installation, or part of the installation".

- **guides (Article 12(1.g))**

There is still concern about the wording of the content of the guides referred to in point 12(1)(g), since the definition of installation and facility cannot be decided in a guide, even considering that these definitions have been applied for more than two decades.

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

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

REMAINING PROBLEMS

- Null notifications (Article 5(2))

The information referred to in this paragraph is not required under the Kyiv Protocol. Despite the improvements introduced, Article 5(2) remains redundant (information already known is required, as it is contained in the authorisation), ineffective (in the light of Article 5(1) which makes it possible to avoid communications relating to information already known by the CA) and difficult to apply (to contest the infringement the CA should admit that it knows that the communication is due, and therefore already has the information it requires). The paragraph introduces unnecessary administrative burdens (both for operators and for the competent authorities) and the risk of numerous "false positives", because many installations, as a precaution, could do "null declaration" despite they can never reach the thresholds.

Italy requests the deletion of this paragraph and recital 17 thereof.

As alternative, Italy proposes to allow the Member State to decide whether to comply with the updating of the list of installations potentially affected by the Regulation by attributing this burden to competent authorities, on the basis of the authorisation data, and not to the operators.