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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 BE, DE, EL, NL, AT, SI, SK and FI.

Germany

Industrial Emissions Portal Regulation

Follow up WPE on 23 May 2023

Additional written comments and proposals

Cluster 1 and 2 and the room document

1. General comments:

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

Germany reserves the right for further comments.

2. Specific comments:

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

Article 2.1 (a), 4.1 (aa), 12.1 (g) and 12.2 (definitions and guidance)

- For Germany the guidance plays a central role as it supports a harmonized, European approach and supports lowering the administrative burden through clear requirements.
- The drafting of the guidance document needs to be started as soon as possible and the Member States must be involved as early as possible.

Article 5.2 (nil report)

- Germany still rejects that operators, which don't exceed the threshold of annex II should report that they don't exceed the threshold. This leads to an increase of the administrative burden for SMEs without an obvious added value.

Article 3.c and 5.1 (d) (water, energy and resource consumption) as well as 3.d and 5.1 (e) (contextual information)

- Germany has a scrutiny reservation with regard to the extension of the reporting obligations to cover resource consumption and contextual information. This is due to the circumstance that information which is needed for the evaluation, namely information on the specific criteria as well as the arrangements which will be described in the implementing act according to article 6, are missing.
- Germany thinks that the additions in recital 13 are a step in the right direction. However there are activities under the IEP which are not covered by BREFs or where the BREFs don't contain information about the key raw materials. There it would be useful to have guidance on this aspect.
- Germany thinks that the collection of contextual information can be useful and points to its last comments regarding this topic, especially regarding the importance of operating hours and accidents.
- Companies which use an environmental management system according to (EU) 1221/2009 and are registered in the EMAS register already publish their resource consumption (water, energy and resources), their emissions and waste as well as the context of their organization and the number of employees. To reduce the administrative burden it is important to have a coherence between these reports and the IEP, so that the data can also be used for the IEP.

Annex I, activity 7 (aquaculture) – threshold

- For Germany a threshold of 500 t per year is acceptable.
- Germany welcomes the addition of article 2 (17) where aquaculture is defined.
- Germany suggests to exclude extensive fish aquaculture from the scope of the IEP (see two proposed wording options included in the next point).
- Germany also suggest to exclude bivalves from the scope of the IEP. As bivalves cultures in the marine environment withdraw biomass and eventually nutrients. In a eutrophic area this may actually lead to an improvement of the environment.

Option 1:

7	<u>Feed-based aquaculture systems</u>	exceeding an <u>annual</u> production capacity of 400 500 tonnes per year
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Option 2:

7	Aquaculture	With an <u>annual</u> production capacity of 400 500 tonnes of fish or shellfish excluding bivalves and extensive aquaculture in ponds per year
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Article 5.10 and article X (calculating method):

- Germany supports the introduction of article X. As a common calculation method will help to harmonize the reporting of emissions from agricultural activities and will provide a better comparability among member states (level playing field).
- As this basic data is also important for other national monitoring purposes we suggest to amend article X as follows.

The Commission shall adopt an implementing act to establish the calculation methods used by Member States when quantifying deliberate releases on behalf of operators of installations covered by Activity 2 listed in Annex I and by Activity 7 listed in Annex I. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 16(2). Member states may choose to use the basic data obtained for the quantification also for other environmental monitoring purposes.

Cluster 2: Empowerment to the Commission (Article 7.3, 14 – 16)

- Germany sees the suggested compromise by the presidency as a step in the right direction.
- Germany thinks it is essential to limit the delegated acts to only add activities and substances that have been reviewed in a regulatory process with the involvement of the member states and that have been identified by the member states to be relevant for the environment. Therefore Germany can only support the compromise text if article 14.2b (I) is changed back to the original wording. The original wording referred to a list of substances, the reference now only points to criteria. Thus under the actual wording the

delegated act would identify substances which fulfill these criteria and are relevant for the emissions.

- Germany sees that an adaption to scientific or technical progress is important. This may also include substances 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. We therefore suggest to acknowledge this fact, by including a review clause with co-decision with regard to these aspects. This would oblige the commission to review the annexes regularly, e.g. every five years. This would make sure that the developments are taken into account. If a need to change the annexes is identified this would be done in an ordinary legislative procedure focusing on the annexes and therefore guarantee an adequate involvement of the member states. We kindly ask the legal service to provide a draft for such a review clause with co-decision.

In this context we would like to point to number 23 of the interinstitutional agreement: "The three Institutions agree to systematically consider the use of review clauses in legislation...".

FINLAND

Comments on Industrial emission portal regulation

26.5.2023

After scrutinising the room document (WK 6766/2023 INIT) and the compromise text distributed for the previous meeting (WK 6554/ 2023 INIT) Finland suggests that the Presidency would examine following issues:

- In presidency proposal, recital 15 and article 5.1.e, the number of operating hours would be deleted. Along with key raw materials and production volume, operating hours is of great importance as contextual information. Number of operating hours is also important data reported by combustion plant operators. Therefore, FI suggests that operating hours should be included in the text.
- FI supports amendments made in article 2.2 and as well the new provision in article 2 paragraph 17.
- Presidency proposal in article 5.1.b: it is necessary to make it clear that the reporting threshold is meant for all installations and parts of an installation inside a facility combined. In the room document the Presidency also proposes in article 5.2 that the responsibility to decide on reporting on the so-called nil-values should be left for the member states instead of competent authorities. FI supports amendments made in articles 5.1.b and 5.2.
- As in article 5.10 there would be a new method, where the member states can decide to quantify deliberate releases referred to in Annex I activities 2 and 7 on behalf of the operators, it is necessary to provide the member states with common calculation methods. Therefore Finland supports the amendment made in article 5.10 and the new article X in the room document. Amendments in article 12.1 and the new paragraph ee clarifies these provisions.

In the WPE meetings the Commission has asked for more information on aquaculture activities in the member states. According to information gathered from the data system for supervision and release monitoring there are four aquaculture installations in Finland, which exceed the production capacity threshold of 500 tonnes per year.

BELGIUM

Written Comments on IEPR in follow-up of the WPE 23rd of May:

1. Compromise text presidency (Room document WPE 23 of May)

Belgium has 2 comments on this text.

- **Article 5.10 and new proposal for article X**

Belgium does not agree with the proposal of the presidency for an implementing act determining the calculation method for agricultural emissions. For Belgium it is crucial that the calculation method can be member state or regional specific to adapt to local needs such as a higher level of detail, greater disaggregation of activities, (local) emission factors, accredited local abatement techniques and other.

In our view *guidance* is more suitable, as methodologies can be variable in member states for different reasons. Methodologies of emission calculations are already prescribed in other European guidelines, such as the EMEP (European Monitoring and Evaluation Programme)/EEA pollutant inventory guidebook. Therefore there is no need to impose a specific calculation methodology in an implementing act to the IEP Regulation. On the contrary, this could lower the quality of current applied methodologies in some Member States and lead to contradictions between different pieces of European legislation.

The current methodology regionally used in Belgium (Tier 3 method) is in line with the EMEP/EEA pollutant inventory guidebook as has been subject to, and is approved by, the annual inventory reviews under the NEC Directive and LRTAP convention. Belgium determined agricultural emissions as a key source, therefore uses a region specific approach and more complex and sophisticated model for the emission calculation. The input data are available on a high level of detail (on facility level) and calculation factors are regularly updated to the latest scientific knowledge taking into account the regional situation (management, climatological parameters...). This level of detail is necessary as the results are, besides reporting, also used for environmental policy planning (air, soil/deposition, ...) and subsequent plans to improve local environmental quality.

We fear that an imposed general EU-wide methodology to quantify emissions will be less detailed and therefore less suitable for this purpose

If there is a demand for support from member states in the development of a methodology, we can point out that there is already a (basic) European tool available (AgrEE Tool - Agricultural Emission Estimation tool) on the JRC website and the objective is to assist member states in reporting:

https://edgar.jrc.ec.europa.eu/other_activities.

As a *guidance* for member states, this could be considered as the minimum requirement. As explained, the tool used in Belgium is more detailed and region specific, which is necessary for policy purposes but might be too complex for other member states who only need a tool for emission reporting.

We conclude that an imposed EU-wide accepted methodology (one size fits all) would be very difficult to agree upon as it should take all variables into consideration. Belgium thinks a *guidance* would be the way forward to support members states and therefore we favor the previous proposal from the Presidency to keep article 12.1(g) and do not adopt the new proposal.

- Article 5(1): Reporting by operators to competent authorities
The proposal from Sweden to add 'per facility' in article 5.1(b) is a good way forward. Belgium would favor, as proposed by other member states at the WPE, to include a similar description in article 5.1(a). We think that there should be no difference between the reporting concept of air/water emissions and waste. It would also facilitate comparability between new data and previous reporting years.

2. Comments in line with BE interventions at the WPE

Belgium would like to reemphasize 2 positions

- Article 14: Amendments to the Annexes
Belgium is in favor to amend both annexes with delegated acts. This is in line with current practice and the COM has not misused the delegated powers. Keeping the annexes up to date is essential to ensure the Portal is fit for purpose, namely the gateway for reporting on industrial emissions from member states to the COM.
 - Art. 14.1(a): the text should not be deleted
 - Art.14.2(a): the text should not be deleted. The parameter list should be adaptable when (scientifically) relevant. But it also allows to change the thresholds in the Annex when (scientifically) relevant.
 - Article 14.2(b)(ii): We favor the current proposal, but we heard the Council legal service. If the reference to Annex XVII would be deleted article 14.2(a) is even more relevant.

For example most (if not all) MS agree that PFAS are relevant parameters to report on. If the reference to Annex XVII of REACH and article 14.2(a) are deleted, there is no possibility left to include PFAS in the proposal. As PFAS are not (only very few) article 57 substances.
- Article 18, 19 and 20: repeal, transitional provisions and entry into force
Belgium, together with other member states, stated that the changes to reporting will trigger updating of local digital systems. To do this right it takes time and money, therefor we think more implementation time is needed.

SLOVENIA

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

COMMENTS

Slovenia would like to thank the Presidency for all the efforts put in the dossier to find a balanced compromise. We believe that the proposed changes are going into right direction. However, we still have some comments, in particular on Article 14(2) and the latest proposals included in the Room document.

WK 6554/2023

Cluster 1 - Reporting

Annex I

We welcome raising of the threshold for aquaculture, but we are still considering the last proposed value and would like to keep scrutiny reservation.

Article 14:

We welcome and strongly support the proposed changes in Article 14(1) that limit the empowerment to adopt delegated acts to change Annex I only to alignment with the Kiyv Protocol.

With regard to Article 14(2) we welcome the proposed changes that limit the empowerments. However, we have some additional proposals, related to point (b), sub-point (iii) and (iv), as well as a proposal for a new point (e). We propose to add the reference to the watch list under the new Drinking Water Directive in sub-point (iii), as well as on the new Drinking Water Directive itself in sub-point (iv). The Drinking Water Directive requires to carry out risk assessment of the catchment areas of the drinking water abstraction points and for such analysis the data on emissions are crucial.

We propose the following amendments (in track changes):

'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, 2008/105/EC or 2020/2184/EU;
 - (iv) are subject to limit values or other restrictions under Directives 2008/50/EC, 2004/107/EC, 2006/118/EC or 2020/2184/EU;
- (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;
- (e) to remove pollutants that are removed from the watch lists referred to in point (iii) of point (b) of this paragraph and not designated as priority substances under Directives 2000/60/EC or 2008/105/EC and not subject to limit values or other restrictions under Directives 2006/118/EC or 2020/2185/EU.'

Cluster 3 -Penalties and confidentiality

Articles 17

We welcome the proposed deletion of point (c) in Article 17(3), as in general, Slovenia does not support detailed regulation of penalties at EU level. However, in a spirit of a compromise, we could support the article that would be fully aligned with the relevant article in the IED, which would mean that paragraph (4) should be deleted.

Cluster 4 -Transitional provisions and Entry into force

Articles 18, 19 and 20

We welcome the proposed prolongation of the deadline; however, our proposal would be to define even longer deadline, as proposed in our previous written comments. Therefore, we keep special scrutiny reservation in the deadlines to reconsider them in a view of the final compromise package.

comments with reference to WPE on 23 May 2023, IEPR; WK 6766/2023, 6554/2023

Austria would like to thank the Presidency for the opportunity to provide comments as a follow-up to the discussions at WPE dealing with the IEPR on 23 May. We have the following remarks/proposals:

Art 5 para. 1:

Austria strongly requests that in the introductory paragraph the words "unless that data is already available to the competent authority" be deleted.

Justification:

Due to various reporting obligations of the operators (such as emissions trading, waste incineration, Water Framework Directive), the authorities have data on waste and emission loads at their disposal. It would require a complex process to automatically check whether this data is exactly attributable to the PRTR reporting unit and whether the threshold values are exceeded. In the next step, the operator's PRTR report would have to be automatically supplemented with this data. The operator would also need to be consulted before submitting and publishing this data. This is a very time-consuming and costly procedure, also in terms of IT adjustments. Therefore, we do not see any benefit in it, but only a high burden on the administration.

Secondly, we would like to bring up another subject. The text included in Art. 5 para. 1, second subparagraph of existing Regulation (EC) No. 166/2006 has been deleted in the current text of the IEPR ("The operator of each facility that undertakes one or more of the activities specified in Annex I above the applicable capacity thresholds specified therein **shall communicate to its competent authority the information identifying the facility** in accordance with Annex III unless that information is already available to the competent authority.").

We think that it would be useful to reintroduce a text similar to the one quoted above in a subparagraph to Art. 5 (1) IEPR.

Art. 5 para. 1) (d):

We propose to add a new subparagraph after Art. 5 para. (1) (d):

"Reporting of key raw materials is optional for the 2027 reporting year. As from reporting year 2028, reporting is mandatory for sectors for which the Commission has determined by implementing act adopted in accordance with Article 16 (2) the type and unit of the key raw materials on the basis of the BAT reference documents."

SLOVAKIA

COMMENTS

To the Industrial Emissions Portal Regulation (IEPR) on WPE 23rd May 2023

SK thanks PRES and COM for their efforts in introducing further changes in the creation of the new IEPR.

Article 5 (1) d

Regarding the current version of the IEPR, SK still have concerns regarding the new provision: “Key raw materials”. The Commission with the PRES explained that the list of this *Key raw materials* will be stated in the BREFs. However, we would like to propose the PRES to also consider a situation which could arise, in the event that the BREFs are not yet in force but the reporting obligation will already have been in effect.

Therefore, SK would like to suggest that the Commission should prepare guidance or implementing act, especially for those specific cases, that will be available right on time for the first report. In this regards, SK looks positively on the proposal made by Austria at the last Working Party on Environment.

GREECE

Regarding aquaculture in Greece there are 81 units with a capacity of more than 500 tons (percentage 28.61%), 46 units with a capacity of more than 700 t (16.25% percentage), 42 units with a capacity bigger than 750 t (percentage 14.84%) and 28 units with a capacity greater than 1000 t (percentage 9.89%). Therefore, 69.59% of the units in Greece have already a greater production capacity than the one proposed by the Presidency and, moreover, many units are in the process of expanding their capacity soon, which means that the above percentages will increase. For these reasons we insist in keeping the threshold of 1000 t.

THE NETHERLANDS

Comments on the Presidency compromise text and steering note on the Industrial Emissions Portal Regulation

Article X

Reporting by Member States to the Commission

The Netherlands opposes strongly to an implementing act to establish the calculation methods used by Member States when quantifying deliberate releases (as proposed in the latest room document, Article X).

The main argument against an implementing act is that many of the emission factors, in particular those for livestock farms - are quite country specific, because they are related to climate factors, animal feeding and cattle (farm) management. An implementing act will have the tendency to move to a one size fits all approach, which will not deliver the best available information, which is the main principle of article 5.3. The reason for considering an implementing act was that the guidance as proposed in article 12.1 would be insufficient to guarantee reliable and comparable data. To overcome this fear, the Netherlands would like to propose an alternative for the suggested implementing act and that is that member states have to report and publish the methodologies they used when applying article 5.10. Actually, Member States do have already the obligation to do so in their annual Informative Inventory Report (IIR) under the NEC-Directive (EU/2016/2284). An elegant solution could be to add some clarifying text in recital 19 to refer to the IIR under the NECD. In case this is considered as insufficient, it can be considered to modify Article 6.1 in the following manner:

*6.1 Member States shall provide, each year to the Commission, by electronic means, a report containing all the data referred to in Article 5 **and the calculation methods used for the application of Article 5(10)** 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.*

Annex I and Article 2 (17)

The Netherlands can agree with the proposed threshold for aquaculture of a production capacity of 500 tonnes of fish or shellfish per year.

The Netherlands does not see the added value of adding a definition of aquaculture as already explained during the Council Working Party of 23 May 2023.

The Hague, 25 May 2023