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NOTE

From: General Secretariat of the Council

To: Delegations

Subject: Current legislative proposals:
Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) and Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste

– Information from the Presidency

Delegations will find in the Annex an information note from the Presidency, on the above subject, to be dealt with under "Any other business" at the Council (Environment) meeting on 20 December 2022.

Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) and Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste

- Information from the Presidency on the state of play -

I. INTRODUCTION

1. The aim of this document is to outline the overall state of play on the proposal for the revision of the Industrial Emissions Directive (IED), and to provide an overview of the progress made. The IED proposal was adopted by the European Commission on 5 April 2022. The main objective of the revision is to make progress towards the EU's zero pollution ambition for a toxic-free environment and to support climate, energy and circular economy policies by accompanying the upcoming transformation of industry.
2. Furthermore, as the EU's main tool for controlling emissions from industrial installations, the IED is an important element of the European Green Deal. Specifically, the new rules aim to:
 - ensure full and consistent implementation and enforcement of the IED across Member States, with tighter permit controls on air and water emissions;
 - increase investment in new, cleaner technologies taking into account energy use, resource efficiency and water reuse whilst avoiding lock-in of obsolete technologies;
 - support more sustainable growth of sectors that are key to building a clean, low-carbon and circular economy;
 - cover additional intensive livestock farming and industrial activities, ensuring that sectors with significant potential for high resource use or pollution also curb environmental damage at source by applying Best Available Techniques (BAT);

- establish an Innovation Centre for Industrial Transformation and Emissions (INCITE);
 - integrate previously separate requirements for depollution and decarbonisation so that future pollution control investments take better account of greenhouse gas emissions, resource efficiency and water reuse;
 - enhance data transparency and online public access to environmental information and provide more opportunities for public participation in the setting and review of permits.
3. At the European Parliament, the proposal is being examined by the Committee on the Environment, Public Health and Food Safety (ENVI), with the Industry and the Agriculture Committee associated. The draft report was issued on 14 November 2022. The vote in the committee is scheduled for 25 April 2023, followed by a debate in the May II Plenary.
 4. The Committee of the Regions and the Economic and Social Committee were consulted. The Committee of the Regions adopted its report on 12 October 2022. The European Economic and Social Committee adopted its report on 13 July 2022.

II. WORK IN THE COUNCIL

5. Within the Council, the Working Party on the Environment (WPE) is responsible for examining the proposal. Under the Czech Presidency, the WPE held a total of nine meetings on the issue of industrial emissions.
6. The agricultural aspects of the proposal for a revision of the Directive and the impact assessment were presented by the Commission at the Agriculture Council meeting on 26 September under ‘Any other business’. The majority of Ministers of Agriculture asked for an increase of the thresholds in animal production and stressed the importance of the food security and competitiveness of the agriculture sector.
7. At the Environment Council meeting on 24 October, a policy debate took place on issues relevant to agriculture and on penalties and a compensation mechanism. The WPE meetings provided an opportunity for detailed discussion on all provisions of the proposal as well as an opportunity to examine a set of compromise proposals from the Presidency. The examination of the substance of the Directive was divided into several clusters.

8. The main elements stemming from this examination are as follows:

Minimisation of emissions

9. The WPE examined Presidency suggestions to amend Article 15(3). These suggestions aim to provide a better understanding when setting emission limit values, based on feasibility and best performance. Furthermore, the Presidency suggested clarifying the option to replace the case-by-case assessment by adopting general binding rules in accordance with Article 6. This would allow for a simplified approach, whilst maintaining a high level of environmental ambition.

Innovation and industrial transformation

10. The main aim of the provisions in this cluster is to foster innovation, facilitate the testing and deployment of emerging techniques with improved environmental performance, and to set up a dedicated centre to support innovation by collecting and analysing information on innovative techniques. Additional work will be needed to define its set up and its functioning,

11. The WPE focused its work on the concept of the transformation plan, which is a new tool to be used by operators for the purpose of long-term decarbonisation and industrial transformation. In particular, the WPE focused on their content, status and relation to the environmental management system (EMS).

Non-toxic circular economy, resource efficiency and decarbonisation

12. The work under this cluster concerned two elements: the EMS and the environmental performance levels associated with the best available techniques (BAT-AEPLs).

13. The Presidency has proposed that work be continued on the basis of a simplified wording related to the new elements in BAT conclusions and related benchmarks. The Presidency has further proposed the introduction of changes to the concept of the EMS to avoid duplication of requirements and to enhance the streamlining of procedures. The Presidency has also made proposals to introduce a derogation mechanism for the BAT-AEPLs, similar to the existing principles in Article 15(4), with further details to be provided via an implementing act.

Public participation, Access to information, Penalties and compensations, Standard provisions

14. The areas covered by these clusters are strongly interlinked. In relation to access to information, the Presidency has proposed further streamlining the provisions by utilising, where possible, existing sources of information, mainly via existing reporting obligations. Discussion are still needed on the text in light of the international commitments in the area.
15. In relation to the provisions dedicated to penalties, compensations and other procedures of competent authorities related to breaches of permit conditions, the Presidency has proposed a simplification of the procedures with a greater focus on the subsidiarity principle. These proposals follow on from the political debate at the Environment Council meeting on 24 October.

Rules and scope of agricultural activities

16. The WPE discussed in detail the provisions dealing with new simplified rules for permitting and operating regulated agricultural activities, as well as their extension. The discussion focused on the introduction of a simplified system of requirements and on the change in the scope in Annex I and directly associated definitions.
17. The Presidency proposal introduces further clarifications in relation to the permit and registration procedures, and elaborates in greater detail on the process of developing operating rules, including their adoption via an implementing act. The Presidency has not, for the purpose of this note, proposed introducing any changes to the threshold for agricultural activities, but notes the general concern regarding the extension of the scope in this area. The Presidency is of the opinion that further work is necessary.

Scope of industrial activities

18. One of the major changes proposed by the Commission concerns the extension of the scope to include the extraction of industrial minerals and metallic ores (extraction of energy minerals, construction minerals and precious stones is not covered by the proposal). Another important proposal by the Commission concerns the batteries sector, with large installations manufacturing batteries being included in the scope of the IED in order to cover all stages of the life cycle of batteries.
19. The Presidency explored clarifications regarding the changes related to scope, including further changes related to the extractive industry and the production of batteries. In the case of the extractive industry, the Presidency has proposed changes to definitions in order to clarify the impact and installations covered. On the production of batteries, the Presidency has proposed a more general definition and suggests excluding installations dealing solely with the assembly of batteries.

Transitional Periods

20. As the proposal by the Commission did not include provisions related to the transitional periods, the Presidency has suggested on a working level a draft of transitional requirements related to the proposal. The inclusion of such provisions was considered necessary by a majority of delegations and the works on this issue will continue.

Delegated and implementing acts

21. At the WPE meetings, the Presidency proposed certain changes to the Commission text related to the shift from a delegated to an implementing act. In some instances, i.e. for the drawing up of operating rules under Article 70i, the change in empowerment necessitates further specification and legal clarification of the provisions. The Presidency has therefore marked those areas in square brackets.

CONCLUSION

22. Based on the discussions in the WPE and written comments from the delegations, the Presidency has prepared draft compromise proposals for the revised Directive on all the clusters outlined above. These compromise proposals are included in the consolidated text in doc. 16017/22 ADD 1 and marked by ***bold/italics***. Despite substantive progress, there is still a need for further discussions before the position of the Council can be finalised.
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