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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on the Environment

Subject:	IED : Follow- up of the WPE meeting on 14 February 2023 - Comments by delegations
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Following the call for comments (WK 2222/23), delegations will find attached the contribution received from the BE, DK, ES, FI, IT, HU, NL, SI and SK delegations.

Written comments from BELGIUM on cluster 6 (dd 16th of February 2023)

In follow-up to the discussion on the issues set out in WK 1923/2023 and discussed at the WPE on the 14th of February, Belgium would like to make the following additional comment :

Annex Ia:

Belgium favors the LSU to be transposed in animal places in the IED. The reason for this is that current systems in Europe work with animal places instead of LSU. Of course LSU can be used to recalculate animal places, but the animal places would – for some animal types – result in rather strange numbers to be used in our national systems.

We have summarized the information in the table below and used the original 150 LSU as proposed by the COM:

		Current IED	Current IED - LSU	LSU (regulation Annex Ia proposal)	150 LSU to animal places	Animal places – BE proposal
Bovine	< 1 jaar	/	/	0,4	375	375
	1-2 jaar	/	/	0,7	214,2	200
	Male, 2 years old and over	/	/	1	150	150
	Heifers, 2 years old and over	/	/	0,8	187,5	180
	Dairy cow	/	/	1	150	150
	Non dairy cow	/	/	0,8	187,5	180
Pigs	Piglets (< 20 kg)	/	/	0,027	5.555,5	5.000
	Breeding sows, live weight 50 kg and over	750	375	0,5	300	300
	Other pigs	2.000	600	0,3	500	500
Poultry	Broilers	40.000	280	0,007	21.428,6	20.000
	Laying hens	40.000	560	0,014	10.714,3	10.000
	Other					
	Turkeys	40.000	1.200	0,030	5.000	5.000
	Ducks	40.000	400	0,010	15.000	15.000
	Geese	40.000	800	0,020	7.500	7.500
	Ostriches	40.000	/	0,35	428,6	500
	Other Poultry	40.000	/	0,001	150.000	

Comments BE:

- BE wants no rollback of current legislation/practices – specifically because the Chapter VIa foresees a lighter permitting regime. Column 4 in the table has the transposed LSU for the

current IED thresholds (animal places). The current thresholds have very different LSU numbers, the most important in our view is the red number of 280.

To prevent any rollback, the LSU threshold in the future IED can in any case not be higher than 280 (if only 1 LSU threshold is used).

- In the last column (blue text) is our proposal for animal places in the IED. If you look at the second last column, you see that if we would have to calculate the proposed LSU threshold into animal places, it would be very difficult to work with these numbers at the member state level.

For example an installation with 10.700 laying hens would be out of scope, but an installation with 10.720 would be in scope of the IED. A more workable threshold would be, in our view, 10.000 animal places.

Combination rule:

For the combination of multiple animal types we could refer to a similar rule in the Flemish classification system. It can be found using this [link](#) (category 9.5 is for mixed farms).

It works as follows:

Small numbers of animals can be left out (below the regional classification threshold which is about +/- 10 LSU).

For others to following applies:

A = number of poultry

B = number of pigs (> 10 weeks of age)

C = number of veal

D = number of bovine

E = number of piglets

Installations for which the sum $((A/20.000) + (B/1.000) + (C/500) + (D/200) + (E/5000)) > 1$ are classified as class 1

A similar rule could be applied for the IED, using the correct animal types and animal places of the table above, to come to a workable combination rule.



February 16 2023

Questions on 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 and 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)

Comments and proposals following WPE on the 14 February 2023 from Denmark. Please be aware that Danish suggestions for amendments are marked with **red**.

Comments and proposals for cluster 2 – Innovation and industrial transformation

- Denmark believes that bringing forward the implementing act, establishing the format for the transformation plans, are a step closer to making this directive more ambitious and not postponing it far into the future. However, the timing of the actual transformation plans drafted by the operators has to reflect the ambition accordingly with the implementing act as previously stated.
- The provision in 27d(2) relating the inclusion of a transformation plan with the publication of BAT-conclusions implies that the BAT-conclusions would be essential for the development of a transformations plan.
- In our understanding, the transformation plan is a strategic tool for the installations, which will be revised by the installations when new technology and new possibilities arise towards a greener production. There is no need to delay the transformation plans as industry is already on this track.
- We therefore propose moving the dates in art. 27d (1) and 27d(2) forward in a likewise manner.

Article 27d(1)

*“1. Member States shall require that by ~~30 June 2030~~ **1. January 2028** the operator includes in its environmental management system referred to in Article 14a a transformation plan for each installation carrying out any activity listed in points 1, 2, 3, 4, 6.1 a, and 6.1 b of Annex I. The transformation plan shall contain information on how the installation will transform itself during the 2030-2050 period in order to contribute to the emergence of a sustainable, clean, circular and climate-neutral economy by 2050, using the format referred to in paragraph 4. Member States shall*

take the necessary measures to ensure that ~~by 31 December 2031~~ **30 June 2029**, the audit organisation ~~organisation contracted by the operator as part of its environmental management system~~ referred to in Article 14a(3a) assesses the conformity of the transformation plans referred to in the first subparagraph of paragraph 1 with the requirements set out in the implementing act referred to in paragraph 4.”

Article 27d(2)

“2. Member States shall require that, as part of the review of the permit conditions pursuant to Article 21(3) following the publication of decisions on BAT conclusions after ~~1 January 2030~~ **30 June 2027**, the operator includes in its environmental management system referred to in Article 14a a transformation plan for each installation carrying out any activity listed in Annex I that is not referred to in paragraph 1.”

- We propose *inter alia* to delete 27d(2) and cover all annex I activities under the existing IED under 27d (1), while new activities should have a transformation plan as part of the EMS at the time of first permit under a revised IED.

Comments and proposals for cluster 3 - decarbonisation

- First of all we can support Germanys proposal on the following articles: article 9(5); Article 11(i) and Annex II (13).
- **Art. 1(2):** It is stated in the explanatory memorandum that the revision seeks to support decarbonisation as one of the primary objectives, to achieve the goals of the European Green Deal. It is therefore striking that in the Subject Matter this focus isn't replicated.
- We fully support the addition of human health, but believe that it is equally important to add decarbonisation as a part of the subject, which matters in line with reduction of emissions into air, water and land and preventing the generation of waste. We therefore propose the following amendment to article 1:

Article 1.

“It also lays down rules designed to prevent or, where that is not practicable, to reduce emissions into air, water and land, to reduce **greenhouse gas emissions** and to prevent the generation of waste, in order to achieve a high level of protection of human health and the environment taken as a whole.”

Inter alia we would propose to include a recital that emphasises that the directive also should support green transition by including measures for the reduction of greenhouse gas emissions e.g. as a part of the EMS, in transformation plans and by identifying best available techniques.

- **Article 14a(2)(a):** In article 14a section (2) paragraph (a) the environmental policy objectives included are specified, which the installations have to include in their EMS. We do not believe these objectives correctly reflect the rationale and ambition behind the directive, and would propose a more ambitious EMS including reduction of GHG emissions in the environmental policy objectives.
- As article 9(1) remains in the directive, emission limit values for GHG reductions will not be addressed in environmental permits for installations covered by the ETS. To our understanding, it remains priority to work with further GHG emission reduction also on BAT

conclusions, while avoiding overlap to other legislation, most notably with ETS. The linkage to GHG reduction under IED needs to be strengthened in the future, which makes EMS the ideal tool to deliver on such parameters in the short-term, as IED covers more installations and GHG than the ETS. It would also strengthen the EMS as a credible environmental management tool and lay the foundation for the future transformation plans.

- On this background, we suggest amending the environmental policy objectives in art. 14a for the continuous improvement of the environmental performance in the environmental management system, by including a new objective on reducing GHG emissions. We therefore propose to include these criteria in article 14a:

Article 14a(2)

“2. The EMS shall include at least the following:

(a) environmental policy objectives for the continuous improvement of the environmental performance and safety of the installation, which shall include measures to:

-(i) prevent the generation of waste;

(ii) optimise resource and water reuse;

(iii) prevent or reduce risks associated with the use of hazardous substances;

(iiii) reduce greenhouse gas emissions.”

Comments and proposals for cluster 6a – livestock

Article 70b recital 4 a:

- Denmark supports the new recital clarifying that the artificial splitting of farms shouldn't lead to an uneven playing field.
- However we still have concerns regarding the wording "may", as it still leaves room for different approaches in the member states. We therefor support other Member States proposal to change "may" to "shall" to ensure no differences in chosen approach.
- We would still prefer the original proposal by the Commission, but with the addition of the Commission issuing guidelines on this matter.

Article 3(23d)

- Denmark doesn't support a definition of extensive production regimes based on 2 LSU/ha. There are several problems in relation to such a definition.
- A definition based on the amount of hectares would have the potential to facilitate and incentivize owners of livestock farms to buy more land to avoid being within the scope of the directive.
- Secondly, and as a result of above-mentioned, the goals of securing and enhancing more biodiversity and nature would clash with incentives to ensure more land to avoid being within the scope of the directive.

- We therefore support a definition of extensive production regimes based on animals time spend outside the stables rather than LSU pr. hectare. In this regard, we support the Finnish proposal of defining it as cattle staying outdoors more than 9 months pr. year.

Article 3(12a) and 70i

- For Denmark, it is important that the livestock sector also take greenhouse gasses into consideration and the operating rules must reflect that. That is essential for the climate, and it is important to create a level playing field. As the environmental impact assessment on the proposal is indicating a significant impact on reduction of greenhouse gasses, we assume that this is the case.
- That should however be clearly stated in the directive as a matter of principles to avoid discussions of this fundamental subject in the future procedure creating the operating rules.
- We therefore find it very important that article 70i(1a), on the exchange of information and the forthcoming operating rules, clearly meet this challenge. It must be directly expressed in art 70 I (1a), or otherwise in the new definition art. 3(12a). We therefor propose to include it as follows:

Art.3(12a):

*"Operating rules means the description of best available techniques associated to activities referred to in annex I a, information to assess their applicability, the emission levels associated with the best available techniques, the environmental performance levels associated with the best available techniques, associated monitoring requirements, and where relevant land spreading practices, pollution **and greenhouse gases**, prevention and mitigation practices, nutritional management, feed preparation, housing, manure management (collection, storage, processing, land spreading) and storage of dead animals."*

Or as follows in art. 70i(1a):

The exchange of information shall, in particular, address the following:

"The Commission shall organise an exchange of information between Member States, the sector concerned, non-governmental organisations promoting environmental protection and the Commission before establishing uniform conditions for operating rules in accordance with paragraph 2.

*(a) the performance of installations and techniques in terms of emissions, **reduction of greenhouse gases**, consumption and nature of raw materials, water consumption, use of energy and generation of waste; 3*

(b) the techniques used, associated monitoring, cross-media effects, economic and technical viability and developments therein;

(c) best available techniques identified after considering the issues mentioned in points (a) and (b)."

Transitional provision X

- We support the addition made by the presidency, clarifying that the installations have to comply with Directive 2010/75/EU in the intermediate period between the completion of the implementing act referred to in art. 70i (2) and applying the new operating rules.
- We understand the need for some member states to have a longer time period for adjusting to the new rules, but we would argue it is a long time period, especially for farms falling within the new proposed threshold at 250 LSU.
- DK want to stress that farms covered by an LSU of 250 or higher, are not small farms. If the threshold was set at 100 or 150, it would be another scenario and the argument of size could be valid.
- We therefore propose to change the transitional provisions, so no matter the capacity of the installation, the installation has to comply with the operating rules as expressed in art. 70i (2), no later than 4 years after:

*"In relation to installations carrying out activities referred to in Annex I a Member States shall apply the laws, regulations and administrative provisions adopted in accordance with this Directive **within 4 years of the entry into force of the implementing act referred to in Article 70i (2).***

~~*—within 4 years of the entry into force of the implementing act referred to in Article 70i (2), if the installation has a capacity of 600 LSU or more.*~~
~~*—within 5 years of the entry into force of the implementing act referred to in Article 70i (2), if the installation has a capacity of 400 LSU or more.*~~
~~*—within 6 years of the entry into force of the implementing act referred to in Article 70i (2), if the installation has a capacity of 250 LSU or more.*~~

Until that day such installations shall comply with Directive 2010/75/EU. "

Annex Ia

- Denmark finds the new threshold truly unambitious and not reflecting the goals of this directive. When applying the conversion rates for LSU in Annex Ia, it becomes clear, that a uniform threshold at 250 LSU will represent very little improvement due to the livestock farms covered and the fact that emissions from 250 LSU are very different depending on whether it is cattle, pigs or poultry.
- Denmark also wants to stress, that a lower, differentiated threshold does not automatically lead to high administrative burdens, as the directive allows for a tailored approach, a system with registration instead of permission, simplified procedures for simple installations and wide spread use of general binding rules instead of specific permissions. In Denmark, this has led to quite a flexible and swift system.
- The exclusion of rearing of cattle in installations operating under extensive production regimes is also problematic, seeing it in a context with a uniform threshold at 250 LSU. The exclusion of extensive rearing of cattle can only be acceptable if the threshold is lower for intensive cattle.

- We therefore propose the following differentiated thresholds:

Annex Ia point 1

"Rearing of cattle, ~~pigs or poultry~~ in installations of ~~250~~ 150 livestock units (LSU) or more, excluding rearing of cattle in installations operating under extensive production regimes."

Annex Ia point 2

"Rearing of pigs in installations of 200 livestock units (LSU) or more, excluding rearing of cattle in installations operating under extensive production regimes."

Annex Ia point 3

"Rearing of poultry in installations of 150 livestock units (LSU) or more, excluding rearing of cattle in installations operating under extensive production regimes."

Annex Ia point 4

"Rearing of any mix of the following animals: cattle, pigs, poultry, in installations of ~~250~~ 150 LSU or more, excluding rearing of cattle in installations operating under extensive production regimes. The approximate equivalent in LSU is based on the following conversion rates: ~~established in Annex II to Commission Implementing Regulation (EU) No 2018/1091~~ 808/2014."*

- We find the starting point should be 150 LSU for cattle, which could be raised to 200 for pigs, taking into account the lower emissions from pigs. Poultry could also meet a threshold of 150 LSU taking into account that the emissions here are higher than for pigs.

Comments and proposals for cluster 7 - Scope of industrial activities

- **Point 3.6:** Denmark still has concerns on how to understand extraction and treatment of industrial minerals. To avoid any misunderstanding we propose to add definitions of the two types of activities in article 3.
- Firstly we suggest to use the wording “extractive industries” and the definition in the Mining Waste Directive to make a new definition in IED:

Article 3(48)

"(48) 'Extraction' means all establishments and undertakings engaged in surface or underground extraction of mineral resources for commercial purposes, including extraction by drilling boreholes, or treatment of the extracted material"

- Secondly we would suggest to use the wording of “treatment” used in the Mining Waste Directive with slight modifications, to make a new definition in IED:

Article 3(49)

"(49) 'Treatment' means the mechanical, physical, biological, thermal or chemical process or combination of processes carried out on mineral resources, including from the working of quarries, with a view to extracting the mineral, including size change, classification, separation and leaching, but excluding smelting, thermal manufacturing processes and metallurgical processes;"

- We would furthermore like to understand whether installations doing treatment such as comminution, size control, beneficiation and upgrading are covered if they don't extract the industrial minerals? As it is stated now it covers installations that perform extraction *AND* treatment.
- Denmark supports a higher threshold, as proposed by other Member States.

Written comments from the Spanish authorities following the meeting of the Environmental Working Group of February 14, 2023 on the review of the Industrial Emissions Directive (IED)

CLUSTER 1 - MINIMIZATION OF EMISSIONS (Exemption for exceptional situations)

Article 15.5: we consider that the application of this exemption should not be conditioned to the interruption or shortage occurring in at least two member states, since it could be the case, for example, that a catastrophe affecting only one member state, such as an earthquake or a climatic emergency, could cause such a situation of interruption or shortage, compromising the compliance with the ELVs in some installations. Therefore, we propose to delete the bracketed expression "in at least two/several" in the first paragraph.

CLUSTER 6 - Standards and Scope of Agribusiness Activities

Recital 4 a and articles 70b.1 and art. 70.b.2: We support the proposal of the Presidency on the modifications of Art. 70.b.1; and the inclusion of the new art. 70.b.2, which establishes a deadline for COM to publish guidelines for the consideration of several installations as an individual unit.

Article 3.23 d: we consider it appropriate to exclude extensive livestock farming from the scope of application of the Industrial Emissions Directive, as proposed by the Presidency. However, an alternative definition for extensive livestock farming is proposed that seeks a better fit with the different regional production models.

Extensive livestock farming is a production model that provides proven environmental benefits as well as having positive synergistic effects on employment and the rural economy, landscape conservation and local culture. Within extensive livestock farming there are different management models, depending not only on the species in question but also on the orographic and agro-climatic conditions derived from the location of the farms and the availability of land. Therefore, the definition of extensive livestock farming must take into account the specificities and conditions specific to livestock farming in the Member States. Extensive production systems for species other than cattle, such as pigs, must also be considered.

The definition by density proposed by the Presidency does not accommodate this diversity of extensive models in the Member States, where the structure of land ownership determines that pastures are very extensive and communal in nature. For this reason, the following definition of extensive livestock farming is proposed:

Art. 03 (23d) "Installations operating under extensive production regimes for rearing of cattle or rearing of pigs, for the purposes of this regulation, will be defined by the member states using criteria based on the non-permanent housing of the animals, as well as a diet based mainly on grazing or fodder. Member states may complement this definition with more specific additional criteria such as stocking density."

ANNEX Ia:

Accordingly, it is proposed to amend Annex Ia as follows:

ANNEX Ia: Activities referred to in Article 70a

1. *Rearing of cattle, pigs or poultry in installations of (--) livestock units (LSU) or more, excluding rearing of cattle or pigs in installations operating under extensive production regimes.*
2. *Rearing of any mix of the following animals: cattle, pigs, poultry, in installations of (--) LSU or more, excluding rearing of cattle or pigs in installations operating under extensive production regimes.*

Article 70.a. Although the exclusion of the extensive regime from Chapter VIa is proposed, we believe it would be advisable for Member States to register their extensive farms at the national level in order to improve control over extensive regime installations. Therefore, we propose to complete the wording of Article 70a as follows:

*Article 70.a: This Chapter shall apply to the activities set out in Annex Ia which reach the capacity thresholds set out in that Annex. **Member estates shall register installations operating under extensive production regimes.***

ANNEX I section 3.6

We consider that mineral extraction is sufficiently covered by EU regulations related to environmental impact assessment and mining waste management (Directive 2006/21/EC). Therefore, we consider that mining extraction should not fall under the scope of the Industrial Emissions Directive. It is considered necessary to establish a coordination mechanism between both Directives 2006/21/EC and 2010/75/EU to avoid unnecessary double regulation in the prevention of pollution from these activities.

Consequently, we do not support mineral extraction or the proposed lists. Furthermore, these lists do not seem to us to be complete. Some minerals and rare earths are missing.

However, as confirmed by COM, certain mineral treatments in drying, processing and concentration operations, flotation, etc. involve the use of chemical substances which, given their nature and potential danger to the environment or health, should be inventoried, controlled and their discharge prevented.

In this sense, we propose the following wording for section 3.6, which includes treatment activities that involve the use of chemical substances:

3.6 Extractive, beneficiation and upgrading processes by drying, flotation and other chemical processes, not included under other paragraphs of annex I, with a production capacity exceeding 150 tonnes per day”.

Finnish comments to document WK 1923/2023 INIT and Articles 79 and 79a

Proposal for a directive amending Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control) and directive 1999/31/EC on the landfill of waste

Changes of COM proposal in **green bold**.

Changes the CZ Presidency in **red bold**.

Changes the SE Presidency in **blue bold**. For WPE 14 Feb: **blue bold underlined italic**

Comments by Finland in **black** and amendment **bold underlined** or ~~striketrough~~

Cluster 1

<u>Recital Y</u>	<p><u><i>In recent years there have been exceptional situations of crises affecting the European Union and its Member States, like the COVID-19 pandemic and the Russian war of aggression against Ukraine. These crises have suddenly and directly affected the supply of energy and of societally critical resources, materials or equipment, leading to severe shortage and disruption, to which it is necessary to reply swiftly.</i></u></p> <p><u><i>In case of such crises, it may be necessary to set less strict emission limit values and environmental performance limit values than the levels in the BAT-conclusions, in order to maintain energy production or the production of other equipment of critical importance or to allow the continuity of the operations of critical installations.</i></u></p> <p><u><i>The need to set less strict emission limit values and environmental performance limit values is to be balanced with the need to protect the environment and human health as well as to ensure the level playing field and the integrity of the internal market.</i></u></p> <p><u><i>Consequently, less strict limits may be set only as a last resort, when all other less polluting alternative measures have been exhausted. The competent authority should ensure that no significant pollution is caused due to emissions from the installation.</i></u></p> <p><u><i>In order to supervise the impact on the environment and public health, the emissions should be monitored.</i></u></p> <p><u><i>In order to ensure the level playing field and the internal market, the Commission should</i></u></p>
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		<p><u>provide strict guidance regarding the emergencies and their circumstances that could be taken into account.</u></p> <p><u>The Member States should notify the Commission of the decision taken by the competent authority to allow the Commission to take action in case of abuses.</u></p> <p>Comment</p> <p>See the proposals below in Article 15(5).</p>
<u>Z</u>		<p><u>The case law of the Court of Justice acknowledges that in cases of imperative reasons of overriding public interest, such as the security of the energy supply in a Member State, provisions on public participation in decision-making can be derogated from. In any case, the provisions of the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (‘the Aarhus Convention’) regarding access to information, public participation in decision-making, and access to justice in environmental matters, and in particular, the obligations of Member States relating to public participation, remain applicable.</u></p> <p>Comment</p> <p>See proposals below in the Article 15(5)</p>
<i>Art. 15 (5)</i>	<p>5. The competent authority may grant temporary derogations from the requirements of paragraphs 2 and 3 of this Article and from Article 11(a) and (b) for the testing and use of emerging techniques for a total period of time not exceeding 9 months, provided that after the period specified, either the technique is stopped or the activity achieves at least the emission levels associated with the best available techniques.</p>	<p>By way of derogation from paragraph 3 and 3a, the competent authority may set less strict emission limit values or environmental performance limit values in <u>case of a the event of an energy, [security or health] crisis, in the member states,</u> due to extra ordinary circumstances beyond the control of the operator and Member States, leading to severe disruption <u>of energy supplies for shortage</u> <u>fin at least two/several/ Member states</u> of:</p> <p>Comment</p> <p>It is not necessary to specify that the emergency should happen on a MS or multiple MS level. The size of the MS varies greatly and this kind of requirement would not lead to a level playing field between MS.</p>

		<p>a. <u>energy supplies and where there is an overriding public interest in security of energy supply, or</u></p> <p>b. <u>resources, materials and equipment essential for the operator to perform its activities, of public interest, in compliance with the applicable emission limit values or environmental performance limit values, or</u></p> <p>c. <u>essential resources, materials or equipment, that the operator produces in order to compensate such shortage or disruption for reasons of public health or public safety, or other imperative reasons of overriding public interests.</u></p> <p><u>essential resources, materials or equipment in case there is an overriding need to maintain energy supplies for other imperative reasons of public interests of particular importance.</u></p> <p>As soon as the supply conditions are restored, <u>the Member State shall ensure that the decision to set less strict emission limit values and environmental performance limit values ceases to have effect, and</u> the installation shall comply with permit conditions set in accordance with paragraph 3 and 3a.</p> <p>The Member State competent authority shall in any case ensure that no significant pollution is caused and <u>set less strict limit values only that a derogation only is granted</u> when all other less polluting measures have been exhausted.</p> <p><u>Comment</u></p> <p>We propose that reference to “Member States” is used in consistent manner to ensure effective national implementation. We do not understand why this paragraph is addressing Competent Authorities, but the paragraphs above and below address Member States, while the requirements imposed are quite similar in nature.</p> <p>The Members States shall take measures to ensure that the emissions are monitored.</p> <p>The derogation shall not be granted for more than 3 months. If the reasons justifying the derogations persists the derogation may be prolonged, prolonged for a period of maximum 3 months.</p>
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		<p><u><i>In duly justified cases of urgency and imperative reasons of overriding public interests, Member States may take measures to derogate from Article 24(1) when the competent authority sets less strict values under this paragraph.</i></u></p> <p><u>Comment</u></p> <p>We do not think that the Article 15(5) needed to specify the link to Article 24(1). As the Article 15(5) is (mostly) addressed to Member States and all MS are parties to the Aarhus Convention, it should be left to the Member States to decide how to implement the requirements of the Aarhus Convention in case of Article 15(5) derogations.</p> <p><u>The Member State shall ensure that the competent authority shall document the temporary conditions in an Annex to the permit conditions, including the justification for make the derogation and the conditions imposed. That annex to the permit shall be made are made publicly available in accordance with Art. 24(2).</u></p> <p><u>On the basis of information provided by Member States in accordance with Article 72(1), in particular concerning the application of this paragraph.</u> The Commission may, where necessary, assess and further clarify, through guidance, the criteria to be taken into account for the application of this paragraph.</p> <p><u>Comment</u></p> <p>We do not think that this kind of guidance is necessary. The Commission could in any case give guidance on all issues in the scope of the IED, so the additional text is not necessary.</p> <p><u>Member states shall inform notify the Commission, within one month, of any derogation granted under this paragraph, including the reasons for justifying the derogation and the conditions imposed.</u></p> <p><u>Comment</u></p> <p>We would propose that the requirement for notifications would be coherent with other similar notifications, such as the one in MCP Directive.</p>
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Cluster 6

Article	COM proposal	PRES proposal
<u>Art. 03 (23d)</u>		<p><i><u>'Installations operating under extensive production regimes' means installations with rearing of cattle where the stocking density is less than 2 LSU/hectare used for grazing or fodder.</u></i></p> <p><u>Comment</u></p> <p>In principle, we are not against the exclusion of extensive rearing of cattle from the scope of the Directive. However, we would ensure that exclusion is limited to only that. As we read the definition, it would not include also the intensive rearing of the cattle in cases where the farms has enough land for fodder production to meet the 2 LSU/hectare requirement, so it would be appropriate to delete the fodder from the definition. Please not also our additional comments related to extensive cattle rearing under Annex Ia. Also, any language on extensive rearing should be carefully drafted so that it does not encourage towards practices where farmers would acquire more land in order not to be in the scope of the IED.</p>
<u>Art. 70b (1)</u>	<p>If two or more installations are located close to each other and if their operator is the same or if the installations are under the control of operators who are engaged in an economic or legal relationship, the installations concerned shall be considered as a single unit for the purpose of calculating the capacity threshold referred to in Article 70a.</p>	<p>Member States may opt to provide <i><u>shall adopt measures to ensure</u></i> that if two or more installations are located close to each other and if their operator is the same or if the installations are under the control of operators who are engaged in an economic or legal relationship, the <i><u>competent authority may consider those installations concerned shall be considered</u></i> as a single unit for the purpose of calculating the capacity threshold referred to in Article 70a.</p> <p><u>Comment</u></p> <p>We support the text proposed by the Presidency and would not want to see any further amendments to it.</p>

ANNEX Ia Activities referred to in Article 70a

	COM proposal	PRES proposal
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1.	Rearing of cattle, pigs or poultry in installations of 150 livestock units (LSU) or more.	<p>Rearing of cattle, pigs or poultry in installations of 250-450 livestock units (LSU) or more, <u>excluding rearing of cattle in installations operating under extensive production regimes, where the cattle stays outdoors more than nine months per year.</u></p> <p>Comment</p> <p>To our understanding the rationale for excluding the extensive rearing of cattle would be based on the fact that the cattle stays outdoors most of the year on a grazing land with low stocking density. We would propose to add language to ensure that this rationale is captured either in here or in the definition of extensive production regimes. However, we would flexible on the actual wording which would ensure this.</p> <p>In general, we would support a single LSU value for all animals in the scope of the IED. However, we would want to see a reasonable level of environmental ambition of the text and in order to achieve this, we propose LSU 200 at least for cattle and mixed farms.</p>
2.	<p>Rearing of any mix of the following animals: cattle, pigs,poultry, in installations of 150 LSU or more.</p> <p>The approximate equivalent in LSU is based on the conversion rates established in Annex II to Commission Implementing Regulation (EU) No 808/2014*.</p>	<p>Rearing of any mix of the following animals: cattle, pigs, poultry, in installations of -250 450 LSU or more, <u>excluding rearing of cattle in installations operating under extensive production regimes, where the cattle stays outdoors more than nine months per year.</u></p> <p>The approximate equivalent in LSU is based on the following conversion rates: established in Annex II to Commission Implementing Regulation (EU) No 2018/1091-808/2014*.</p>

Cluster 7

ANNEX I Categories of activities referred to in Article 10

	COM proposal	PRES proposal
	<p>3.6. Extraction and treatment (operations such as comminution, size control, beneficiation and upgrading) of the following non-energy minerals:</p> <p>(a) industrial minerals, including barite, bentonite, diatomite, feldspar, fluorspar, graphite, gypsum, kaolin, magnesite, perlite, potash, salt, sulphur and talc;</p> <p>(b) metalliferous ores, including bauxite, chromium, cobalt, copper, gold, iron, lead, lithium, manganese, nickel, palladium, platinum, tin, tungsten and zinc.</p>	<p>3.6. Extraction and treatment (operations such as comminution, size control, beneficiation and upgrading) of the following non-energy minerals and ores on an industrial scale:</p> <p>(a) industrial minerals, including barite, bentonite, diatomite, feldspar, fluorspar, graphite, gypsum, kaolin, magnesite, perlite, phosphate, potash, salt, sulphur and talc with a capacity exceeding [50 100] tonnes per day;</p> <p>(b) metalliferous ores, including bauxite, chromium, cobalt, copper, gold, iron, lead, lithium, manganese, nickel,</p>

	COM proposal	PRES proposal
		<p>palladium, platinum, silver, tin, tungsten and zinc.</p> <p><u>Comment</u></p> <p>As there are large scale phosphate (apatite) and silver mining in Finland, we believe that adding these two to the list would create a more level playing field for mining activities covered in the scope of the Directive. As for silver, we would like to note additionally that the Commission has recently proposed to add silver and related EQS under Priority Substances Directive.</p> <p>Also, we would also propose to add similar qualification in the heading as is used for point 4. In Finland there are artisanal scale gold mining activities, typically operated by single person or small group of persons, which should not be included in the scope of the Directive.</p> <p>Finally, in order to make sure that all existing tools under IED are fit for purpose for mining sector, we would propose to add a following sentence in the end of Recital 3: <u>“In order to achieve this, the Commission should also ensure that existing guidance developed under Directive 2010/75/EU, such as the guidance under Article 22, take into account the specific nature of the extractive industries.”</u></p>

Article 79

Article	COM proposal	PRES proposal
<i>Art. 79 (2)</i>	<p>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 having 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 violation of the economic benefits derived from that violation. The level of the fines shall be gradually increased for repeated infringements. In the case of a violation committed by a legal person, the maximum</p>	<p>2. The penalties referred to in paragraph 1 shall include fines <u>proportionate to the annual turnover of the legal person in the Member State concerned or to the income of the natural person having committed the infringement, taking into account, inter alia, the specificities of small and medium-sized enterprises (SMEs).</u> 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.</p>

	<p>amount of such fines shall be at least 8 % of the operator's annual turnover in the Member State concerned.</p>	<p>The level of the fines shall be gradually increased for repeated infringements. In the case of a violation committed by a legal person, the maximum amount of such fines shall be proportionate to at least 8 % of the operator's annual turnover in the Member State concerned., taking into account, inter alia, the specificities of small and medium-sized enterprises (SMEs).</p> <p>Comment</p> <p>We propose to delete the sentence that the fines should effectively deprive the economic benefits of the infringement. This sentence would blur the relationship between fines and confiscation, which would cause serious practical problems. As a background, we would recall that the Commission proposed similar language for the ECD, but it was deleted in the Council General Approach. We propose that the Council takes an identical approach under IED. Also, we would like to point out that other methods than fines should be possible to use for confiscation of the benefits derived from the infringements and the proposed text would now limit the use of these methods. The confiscation of the benefits derived from the infringements is regulated under separate Confiscation Directive (2014/42/EU), which is currently under review in the Council. The Commission proposal for the review of the Confiscation Directive (Proposal for a Directive on asset recovery and confiscation, COM(2022) 245 final) describes the complex nature of confiscation action and its implementation. Binding EU rules on confiscation should only be based on Confiscation Directive and its upcoming amendment. If a binding requirement for confiscation is added under IED, it would add a major additional administrative burden to penalty system and work as an effective barrier to issue penalties under the infringements in the scope of the IED.</p>
Art. 79 (3)	<p>3. Member States shall ensure that the penalties referred to in paragraph 1 give due regard to the following, as applicable:</p> <p>(a) the nature, gravity, and extent of the violation;</p>	<p>3. Member States shall ensure that the penalties established pursuant to this Article give due regard to the following, as applicable:</p> <p>(a) the nature, gravity, and extent of the infringement;</p>

	<p>(b) the intentional or negligent character of the violation;</p> <p>(c) the population or the environment affected by the violation, bearing in mind the impact of the infringement on the objective of achieving a high level of protection of human health and the environment.</p> <p>Member States shall determine penalties applicable to infringements of the national provisions adopted pursuant to this Directive. The penalties thus provided for shall be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by 7 January 2013 and shall notify it without delay of any subsequent amendment affecting them.</p>	<p>(b) the intentional or negligent character of the infringement;</p> <p>(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;</p> <p>d) the repetitive or singular character of the infringement.</p> <p><u>e) economic benefits derived from the infringement</u></p> <p><u>Comment</u></p> <p>As a compromise proposal to the current text of Article 79(2), we could accept that the economic benefits derived from the infringing is added under paragraph 3 in a similar manner as was done for the text concerning repetitive infringements.</p>
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Article 79a

	COM proposal	PRES proposal
<i>Art. 79a (1)</i>	<p>1. Member States shall ensure that, where damage to human health has occurred as a result of a violation of national measures that were adopted pursuant to this Directive, the individuals affected have the right to claim and obtain compensation for that damage from the relevant natural or legal persons and, where appropriate, from the relevant competent authorities responsible for the violation.</p>	<p>1. Member States shall ensure that, where damage to human health has occurred as a result of a violation of national measures that were adopted pursuant to this Directive, the individuals affected have the right to claim and obtain compensation for that damage from the relevant natural or legal persons and, where appropriate, from the relevant competent authorities responsible for the violation.</p> <p><u>Comment</u></p> <p>To start with, we have had national rules for compensation in place since the 1990s and these rules cover also the damage to health.</p> <p>In general we support a horizontal approach towards compensations, rather than addressing the issue individually in specific Directives and Regulations. Also, if the compensation are to be addressed separately in individual Directives, identical language should be used in order to ensure proper implementation of these provisions. We would like to also note that during the past years a number of important Directives concerning human health effects have been adopted without such a provision for compensation. It remains unclear to us how these matters are to be</p>

		<p>dealt in the manner, which covers compensation to all damage to health in the future.</p> <p>Finally, if the Council majority supports that the compensation is to be dealt in individual Directives, we propose that provisions at the EU level would address only the relevant natural and legal persons and any provisions for competent authorities would be dealt at the national level, if deemed necessary based on the national rules.</p>
<i>Art. 79a (2)</i>	<p>2. Member States shall ensure that, as part of the public concerned, non-governmental organisations promoting the protection of human health or the environment and meeting any requirements under national law are allowed to represent the individuals affected and bring collective actions for compensation. Member States shall ensure that a claim for a violation leading to a damage cannot be pursued twice, by the individuals affected and by the non-governmental organisations referred to in this paragraph.</p>	<p>2. Member States shall ensure that, as part of the public concerned, non-governmental organisations promoting the protection of human health or the environment and meeting any requirements under national law are allowed to represent the individuals affected and bring collective actions for compensation. Member States shall ensure that a claim for a violation leading to a damage cannot be pursued twice, by the individuals affected and by the non-governmental organisations referred to in this paragraph.</p> <p><u>Comment</u></p> <p>From our viewpoint, the class action suits would fall under the procedural autonomy of Member States and the paragraph 2 should be deleted.</p> <p>If the Council majority supports that such an options is to be kept at part of the compensation rules, we would propose to make this an optional requirement for Member States, so that the provision would be „may“ or „shall consider“ provision. We have considered this kind of provision previously and found it is not useful addition to the currently applicable compensation rules.</p>
<i>Art. 79a (5)</i>	<p>5. Member States shall ensure that the limitation periods for bringing actions for compensation referred to in paragraph 1 are not shorter than 5 years. Such periods shall not begin to run before the violation has ceased and the person claiming the compensation knows or can reasonably be expected to know that he or she suffered damage from a violation pursuant to paragraph 1.</p>	<p>5. Member States shall ensure that the limitation periods for bringing actions for compensation referred to in paragraph 1 are not shorter than 3 5 years. Such periods shall not begin to run before the violation has ceased and the person claiming the compensation knows or can reasonably be expected to know that he or she suffered damage from a violation pursuant to paragraph 1.</p> <p><u>Comment</u></p> <p>We believe that the details of limitation period should not be regulated in such a detail and these kind of details should be left for the Member States to define.</p>

		<p>Thus, we suggest deleting this provision from the directive as a whole.</p> <p>If the Council majority supports that such provisions are to be kept as part of the compensation rules, we propose that the provision concerning minimum time is either deleted or at least shortened to three years, which we believe is reasonable limitation time. We propose also to delete the requirement for ceased violation as it seems redundant. From the health viewpoint only the second requirement for the start of the limitation period is relevant and additional requirement would merely complicate the litigation efforts and work against the requirements of paragraph 3.</p>
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ITALIAN POSITION IN WPE 14 FEBRUARY 2023

The steering note gives an effective contribution to improve the text, however Italy wants to share some considerations on it.

Cluster 6

As yet focused in writing comments, Italy:

- proposes a syntactic correction in Recital 4a and Article 70b, taking in account that the entities to be considered are "units" or "farms", while the resulting complex will be the "installation" (not vice versa);
- regarding Recital 4a and Article 70b proposes to delete the reference to family or economic relations between operators, as they are irrelevant. Even operators who do not have relations can be forced to take synergistic actions to protect the environment, if this is easily feasible;
- proposes a correction in recital 29 since the health issue and the new scope are new aspects and therefore it does not seem correct to speak of "continues meeting", but rather of "meets" (ex novo). In the same recital it should also be noted that the reference must be to health and the environment "as a whole", to recall the need for an integrated approach.
- on the further proposals of the cluster an examination reserve is maintained, in particular on thresholds and article 3 (23d), because the definition of extensive livestock farming could be critical.

Cluster 7

As yet focused in writing comments, Italy:

- is against the amendments to point 3.5, which Italy asks to be maintained as in the current directive;
- with regard to the production of hydrogen, the proposal made by the Presidency is also acceptable;
- for further proposals, a scrutiny reserve is maintained.

CRISIS MANAGEMENT

The proposal is generally acceptable, but a more general wording of recital X is appropriate, referring to the derogation from emission or performance requirements as an example, and not as the sole case. For example, in the pandemic period, the unavailability of personnel and the greater burden (of time and resources) has made it critical to comply with other requirements, both authorization (adaptation times) and control (frequency of inspections) and procedural (compliance with the 4 years to ensure the BATC review, compatibility of public participation procedures and other administrations with the necessary reaction times). We therefore suggest to have a more generic formulation of recital X.

Article 15(5) addresses adequately the case of a crisis that does not allow compliance with emission or performance requirements. This case, however, is not the most frequent one in Italy. The crises we have faced in recent years, in fact, have shown that the difficulties are rather linked to lengthy procedures.

For example, some gas-thermoelectric plants have requested the use of liquid fuels, in full compliance with the limits applicable to this different structure. The ordinary procedures to process such requests (ensuring public participation and involvement of other administrations) take from 6 months up to one year, and are therefore not compatible with the time needed to respond to a crisis.

Italy therefore would like to include one more derogation, to be inserted as a new paragraph in Article 11, in order to allow a one-off temporary derogation, in cases of particular urgency and public necessity, to be able to derogate for six months from the provisions of Article 14(1) second sentence (involvement of other administrations) and Article 24(1) (public participation) where the other requirements of the Directive are guaranteed, and in particular the obligations of disclosure and the right of access to justice. Considering the limited time of the derogation and the absence of relevant effect on technical side, those temporary derogation could also be considered as “no substantial” modification.

Hungarian proposals to the revision of Directive 2010/75/EU of the European Parliament and the Council of 24 November 2010 on industrial emissions

Hungary is grateful for having the recent Proposals of the Presidency. We believe that the amendments are heading the right direction, and we hope that a common Council position can be reached by March.

We are still scrutinizing the proposed LSU numbers in order to define the scope properly, until our final assessment we would like to point out our position on the following issues.

We agree with Presidency's proposal that the rearing of cattle in installations operating under extensive production regimes should be excluded from the scope, since the environmental impact of such activity differs from other intensive rearing activities.

We are still convinced that different LSU numbers should be applied for different species. Thus, we can support the proposal of the Presidency on the stepwise approach on the transitional periods; however, we believe that using common LSU numbers for different animals, would require a higher single LSU number. We propose to having 800 LSU within 4 years, 600 LSU within 5 years, and 450 LSU within 6 years of entry into force of the Directive.

Furthermore, we propose a derogation for those Member States which can achieve the designated goals of the Directive with higher LSU rates, and also the exclusuin of small-scale family farms from the scope in order to reduce their administrative burdens.

Legislative proposals on the derogation and on excluding small-scale family farms:

I. Derogation

According to the explanatory memorandum of the proposal the *"increased scope will enhance the IED coverage from 18 to 60% of emissions of ammonia by rearing of cattle, pigs and poultry; and from 3% to 43% of methane emissions."* We believe that this goal should be reflected in the proposal itself, and those Member States, who are able to comply with these thresholds with higher LSU-s, than they should be provided with a derogation to do so.

Amendment to recital (4)

- (4) Rearing of pigs, poultry and cattle cause significant pollutant emissions into the air and water. In order to reduce such pollutant emissions **and increase the coverage of the directive to 60% of emmissions of ammonia by rearing of cattle, pigs and poultry, and 43% of methane emissions including ammonia, methane, nitrates and greenhouse gas emissions** - and thereby improve air, water and soil quality - it is necessary to **adjust** lower the **LSU** threshold **to the** above **coverage percentages which** **pigs and poultry installations are included within the scope of Directive 2010/75/EU** **and to include also cattle farming within that scope.** **Member States may derogate**

from the LSU threshold defined in Annex Ia and establish such threshold(s), which allow them to cover installations responsible for 60% of ammonia and 43% of methane emissions.

- (4b) Relevant BAT requirements take into consideration the nature, size, density and complexity of these installations, including the specificities of pasture based cattle rearing systems, where animals are only seasonally reared in indoor installations, and the range of environmental impacts they may have. The proportionality requirements in BATs aim to incentivise farmers to implement the necessary transition towards increasingly environmentally friendly agricultural practices.

Proposal for Article 1 new para (7a)

Article 1 new para (7a)

In Article 10, new para (2) and (3) is added:

Article 10

Scope

- (1) This Chapter shall apply to the activities set out in Annex I and, where applicable, reaching the capacity thresholds set out in that Annex.
- (2) **By way of derogation from para (1) Member States may set such different threshold(s) for agri-industrial activities, which result in covering installations responsible for 60% of ammonia and 43% of methane emissions.**
- (3) **The Commission is empowered to adopt implementing act establishing the methodology for the calculation and verification of the thresholds set by Member States in order to cover installations responsible for 60% of ammonia, and 43% of methane emissions.**

II. Exemption of small-scale family farms

Hungary believes that the proposal would put disproportionate administrative burden on small-scale family farms with relatively low environmental benefits, therefore we propose to exclude small-scale family farms from the scope of the directive.

Amendment to recital (29)

(29) In order to ensure that Directive 2010/75/EU continues meeting its objectives to prevent or reduce emissions of pollutants and achieve a high level of protection of human health and the environment, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission to supplement that Directive in order to establish operating rules containing requirements for activities relating to **industrial-scale** rearing of poultry, pigs and cattle and to amend Annexes I and Ia to that Directive by adding an agro-industrial activity to ensure that it meets its objectives to prevent or reduce pollutants emissions and achieve a high level of protection of human health and the environment. **Small-scale family farming should be excluded from the scope of this Directive. General definitions of small-scale family**

farming should be laid down in this Directive, and detailed national definitions should be established, reflecting national and regional particularities. In the preparation of the operating rules, the Commission should also ensure that sustainable forms of industrial-scale farming, respecting animal welfare principles and local traditions in sustainable farming, will benefit from either a registration regime or simplified administrative procedures. 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 on Better Law-Making of 13 April 2016⁷⁷. 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.

Proposal for a modification to Article 1 para (3) point e)

Article 1 para (3) point e)

(e) the following points (23a), (23b), ~~and~~ (23c) **and (23ca)** are inserted:

...

(23cb) ‘small-scale family farming’ means animal rearing in small and very small or semi-subsistence farms as laid down in national definitions. Those definitions shall be based on the following criteria: self-ownership, partnership or family ownership of the livestock in which case the owner or the owner’s immediate family exclusively bears the business risk, combined with the owner or the owner’s immediate family, or both, carrying out a predominant share of the farm labour.

Proposal for modification of the Presidency’s text in Annex Ia point 2

Rearing of any mix of the following animals: cattle, pigs, poultry, in installations of 250 LSU or more, excluding rearing of cattle in installations operating under extensive production regimes **and small-scale family farms.**

Written comments from the Netherlands on the revision of the Industrial Emissions Directive

16 February 2023

In follow-up to the discussion on the issues set out in Steering note 1923/2023 and discussed at the WPE on 14 February, the Netherlands would like to make the following written comments.

Cluster 1 – Minimisation of emission

(Art. 1, 14, 15(1), 15(3), 15(4), 15a, 16(3), 18, 21(5) c) and Annex II)

Art. 15.5 Limited derogation in the event of an exceptional situation

By way of derogation from paragraph 3 and 3a, the competent authority may set less strict emission limit values or environmental performance limit values in case of a crisis due to extraordinary circumstances beyond the control of the operator and Member States, leading to severe disruption or shortage [in at least two/several] Member states of:

- a) energy supplies and where there is an overriding public interest in security of energy supply, or
- b) resources, materials and equipment essential for the operator to perform its activities, of public interest, in compliance with the applicable emission limit values or environmental performance limit values, or
- c) essential resources, materials or equipment, that the operator produces in order to compensate such shortage or disruption for reasons of public health or public safety, or other imperative reasons of overriding public interests.

As soon as the supply conditions are restored or when an alternative can be used for the long-term, the Member State shall ensure that the decision to set less strict emission limit values and environmental performance limit values ceases to have effect, and the installation shall comply with permit conditions set in accordance with paragraph 3 and 3a.

The competent authority shall ensure that no significant pollution is caused and set less strict limit values only when all less polluting measures have been exhausted.

Members States shall take measures to ensure that the emissions are monitored.

The derogation shall not be granted for more than **6** months. If the reasons justifying the derogations persists the derogation may be prolonged, prolonged for a period of maximum 3 **6** months ...

Cluster 6 – Rules and scope of agro-industrial activities

(Art. 2 (1), 3 (3), 3 (23a), 3 (23b), 3 (23c), 4 (1), 70a – 70i, Annex Ia)

General

The Netherlands is positive with regard to the threshold of 150 LSU - as proposed before by the Commission - because of the expected gains for the environment, the reductions of emissions and the improvement of level playing field for livestock farmers in Europe. The threshold may also benefit the National Climate Policy.

- The Netherlands still has a scrutiny reservation, however, as we are performing an impact assessment with regard to the livestock sector and the competent authorities. Only after we have received the results of the impact assessment will the Netherlands take its final stand on the proposals for livestock in the Industrial Emissions Directive.
- We consider it important that the new regulations on Industrial Emissions and operating rules are flexible, to enable compliance with national policy, existing law enforcement mechanisms and with national and local practices in livestock.
- With regard to the idea of linking *livestock density* to the threshold, this is, in our opinion, very complicated as one should be certain that only the land is counted, that is really used for cattle, and not for other purposes. Therefore we would like to ask the following questions:
 - How to ensure and control (monitor) that the livestock actually uses the space that it is claimed to have?

- What is the right density per Ha? We wonder whether the number of 2 LSU for each Ha is the right number.
 - How to ensure that fodder is used for livestock and not as biomass?
 - And finally, does land use for fodder have an impact on the reduction of emissions?
- With regards to *family farms* we would like to remark that for emissions and reduction of emissions it is not relevant how a farm is being staffed. In the Netherlands, most farms (also the larger farms) are family farms with a maximum of 1 or 2 employees or the farms are even fully automated.
- Finally, we want to emphasize that it is important that smaller farms have a low and proportional administrative burden and we hope this can be achieved in the operating rules

Recital

- Art. 4a
The Netherlands considers it important that this article will be implemented in the same way in all member states, as it is an important elaboration of the definition of an installation. It is positive that the recital makes it clear that it is important to prevent splitting farms. However, the current proposal mentions that the competent authority 'may consider'. This can be implemented (or interpreted) as optional. Therefore, the Netherlands wants 'may' changed into 'shall', to ensure that it isn't interpreted as an option. Thus:
- *In order to prevent the artificial splitting of farms, which could result in the reduction of the farm LSU capacity to a threshold below the one established for the application of this Directive, the Member State should adopt measures to ensure that if two or more installations are located close to each other and if their operator is the same or if the installations are under the control of operators who are engaged in an economic or legal relationship, the competent authority ~~may~~ shall consider those installations as a single unit for the purpose of calculating the capacity threshold for livestock.*

29

- Can the presidency explain what is meant with this article?
- The Netherlands is wondering why the last part of this recital is deleted and only experts are mentioned?
- How will the member states be involved in the development of the transition act?
- The Netherlands considers it important that there is sufficient time to translate the transition act in national regulations.
- In the Netherlands, it takes at least 18 months to get a proposal approved. 2 years (24 months) is therefore the minimum time for implementation of the adaptation of the national laws and regulations

Articles

Article 3 (12a) – neutral

Article 3 (23d) – negative

- The Netherlands is in favour of a simple threshold. The idea of linking livestock density to the threshold is, in our opinion, very complicated. The number of emissions, for example, differs for different types of cattle and depends on how manure is handled. We also think that the amount of land used for fodder does not influence the level of emissions. And how to ensure that fodder is actually used for the animals and not for for instance biomass. Furthermore, how should this be enforced? How can it be controlled?
- Another aspect is the administrative burden for both the sector and the competent authorities. Land use may change over time. Land that once was meant for food for the animals may change into land for other crops and vice versa.
- We believe that the exception of extensive livestock farming should be taken into account in the development of the rules, where it is easier to assess whether best available techniques for extensive livestock farming should be excluded. This can therefore be further specified

according to the type of cattle (milk or meat). Therefore, the Netherlands is against this proposal.

Art. 70B (1)

- The Netherlands considers it important that this article will be implemented in the same way in all member states, as it is an important elaboration of the definition of an installation. The current proposal mentions that the competent authority 'may consider'. This can be implemented (or interpreted) as optional. Therefore, the Netherlands wants to see that 'may' is changed into 'shall', to ensure that it isn't interpreted as an option.

- **If two or more installations are located close to each other and if their operator is the same or if the installations are under the control of operators who are engaged in an economic or legal relationship, the competent authority may shall consider those installations concerned ~~shall be~~ considered as a single unit for the purpose of calculating the capacity threshold referred to in Article 70a.**

- ...

Art. 70B (2) – positive

Art. 70C (4) – positive

Art. 70i, dec. 2 (adopting operating rules)

- We noticed that art. 70i was missing in the steering note. The Netherlands earlier suggested to replace "shall" with "may", as it is important that the process is pursued with the necessary care. There should be sufficient time to draw up the operating rules and the Netherlands thinks that 24 months are not sufficient.
- *The Commission ~~shall~~ may by [OP please insert date = the first day of the month following 24 months after the date of entry into force of this Directive] adopt an ~~delegated~~ implementing act ~~in accordance with Article 76 to supplement this Directive by~~ to establish uniform conditions for operating rules for each of the activities referred to in Annex Ia. Such uniform conditions for operating rules shall be consistent with the use of best available techniques for the activities listed in Annex Ia and shall take into account the nature, type, size and density of these installations and the specificities of pasture based cattle rearing systems, where animals are only seasonally reared in indoor installations. [Text moved from paragraph 1] That implementing act shall be adopted in accordance with the examination procedure referred to in Article 75(2)*

Art. 70i (3) and X

- The Netherlands welcomes the proposal for the transitional periods and a provision for the current IPPC installations. We think a provision is needed for new livestock farms (not existing yet). Furthermore, we have a text suggestion, for the provision for current installations:

- Transitional periods, article XX:

- In relation to installations that are in operation before [OP please insert the date = the first day of the month following 24 months after the date of entry into force of this Directive], carrying out activities referred to in Annex I a Member States shall apply the laws, regulations and administrative provisions adopted in accordance with this Directive
- - within 4 years of the entry into force of the implementing act referred to in Article 70i (2), if the installation has a capacity of 600 LSU or more or is a new livestock farm.
- - within 5 years of the entry into force of the implementing act referred to in Article 70i (2), if the installation has a capacity of 400 LSU or more.
- - within 6 years of the entry into force of the implementing act referred to in Article 70i (2), if the installation has a capacity of 250 LSU or more.

- Until that day installations that were covered by Directive 2010/75/EU carrying out activities referred to in Annex I, point 6.6 of Directive 2010/75/EU shall comply with Directive 2010/75/EU.

Proposed amendment: : derogation for innovations

- The Netherlands would like a derogation provision for innovations, so that the competent authority can grant temporary derogations for the testing of new techniques for 24 months. This is similar to art. 27 B in chapter 2

- **NEW Art. 70@@ (based on art. 27 (B))**
- The competent authority may grant temporary derogations for the testing of emerging techniques for a total period of time not exceeding 24 months.

Proposed amendment: stricter conditions environmental quality standard

- The proposed amendment is the same as Art. 15 for IPPC. The same provision is needed for livestock.

• **New article (Same as Art. 18)**

• **Environmental quality standards**

- Where an environmental quality standard requires stricter conditions than those achievable by the use of the best available techniques, additional measures shall be included in the permit with a view to reducing the specific contribution of the installation to the pollution occurring in the relevant area.
- Where stricter conditions have been included in the permit in accordance with the first paragraph, regular monitoring of the concentration of relevant pollutants in the receiving environment resulting from operations of the installations concerned shall be required from the operator, and the results of such monitoring shall be transmitted to the competent authority. Where monitoring and measurement methods for the concerned pollutants are set out in other relevant Union legislation, such methods shall be used for the purpose of the monitoring referred to in this paragraph.

•

ANNEX Ia Activities referred to in Article 70a

1 - negative

- In principle, the Netherlands is in favour of the threshold of 150 LSU.
- Therefore, we cannot support this proposal of a higher threshold.
- The Netherlands still has a scrutiny reservation, however. Only after receiving the results of an impact assessment on the impact of the changes in the IED on the livestock sector and the competent authorities, will The Netherlands take its final position.
- Also we find it important that the threshold is simple and clear. Therefore, we can't agree with the introduced changes.

2 - rearing cattle - negative

- With regard to the idea of linking *livestock density* to the threshold is, in our opinion, very complicated. It is important to be certain that only the land counts that is actually used for cattle, and no other purposes.
- So we would like to ask the following questions:
 - how to ensure and control (monitor) if the livestock actually uses the space they have?
 - We wonder whether the number of 2 LSU for each Ha is the right numbers.
 - How to ensure that fodder is used for livestock and not as biomass?
 - And does land use for fodder have an impact on the emission reduction?

- With regards to *family farms* we would like to remark that for emissions and reduction of emissions it is not relevant how a farm is staffed. In the Netherlands, most farms (also the larger farms) are family farms with 1 or 2 employees or are even fully automated.
- We want to emphasize that it is important that smaller farms have a low and proportional administrative burden and we hope this can be achieved in the operating rules.
- We believe that the exception of extensive livestock farming should be taken into account in the development of the operating rules, where it is easier to assess whether best available techniques for extensive livestock farming should be excluded. This can therefore be further specified according to the type of cattle (milk or meat). Therefore, the Netherlands is against this proposal.

Cluster 7 – Scope of industrial activities

(Art. 3 (48), 3 (49), 42, Ann. I Pt. 1.4, 2.3, 2.7, 3.5, 3.6, 5.3, 6.2, 6.5)

Annex I – 1. Energy industries / 6. Other activities (hydrogen)

The Netherlands welcomes the proposal to place the production of hydrogen with electrolyse under activity 6 instead of activity 1. As far as the 20-tonnes threshold is concerned, there is no clear justification for this threshold. We would like to ask the presidency how this threshold is justified. How do we know that 20-tonnes is the right number given the innovation in this sector?

The Netherlands is positive about the Commission's addition of pyrolysis. In the Netherlands we have at least two of such installations. We are told by the relevant competent authorities that it is unclear which BREF applies (WI or Chemical BREF). One installation has a permit on the basis of the BREF WI and the other one on the basis of a chemical BREF. We think it's important to provide more clarity about which BREF applies.

Annex I - 5. Waste management

- In addition to incineration, shouldn't pyrolysis also be mentioned as a form of waste processing?

Annex I – 2.7 Battery factories

No remarks. (NL position on steering note 16 jan 2023: We can agree with the proposal of adding the text '12 000 tons'. However, the proposal doesn't add anything and could be left out.)

Annex I – 3.6 Extraction and treatment of minerals

No remarks.

Appendix – clarification

Changes of COM proposal in **green bold**.

Changes of the CZ Presidency in **red bold**.

Changes of the SE Presidency in **blue bold**.

Changes of the NL in **bold underlined**.

Art / Recital	COM proposal	PRES proposal
<u>Recital Y</u>		<p><u>In recent years there have been exceptional situations of crises affecting the European Union and its Member States, like the COVID-19 pandemic and the Russian war of aggression against Ukraine. These crises have suddenly and directly affected the supply of energy and of societally critical resources, materials or equipment, leading to severe shortage and disruption, to which it is necessary to reply swiftly. In case of such crises, it may be necessary to set less strict emission limit values and environmental performance limit values at the levels in the BAT-conclusions, in order to maintain energy production or the production of other equipment of critical importance or to allow the continuity of the operations of critical installations. The need to set less strict emission limit values and environmental performance limit values is to be balanced with the need to protect the environment and human health, as well as to ensure the level playing field and the integrity of the internal market. Consequently, less strict limits may be set only as a last resort, when all other less polluting alternative measures have been exhausted. The competent authority should ensure that no significant pollution is caused due to emissions from the installation. In order to supervise the impact on the environment and public health, the emissions should be monitored. In order to ensure the level playing field in the internal market, the Commission should provide strict guidance regarding the emergencies and their circumstances that could be taken into account. The Member States should notify the Commission of the decision taken by the competent authority to allow the Commission to take action in case of abuse.</u></p>
<u>Z</u>		<p><u>The case law of the Court of Justice acknowledges that in cases of imperative reasons of overriding public interest, such as the security of the energy supply in a Member State, provisions on public participation in decision making can be derogated from. In any case, the provisions of the United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision making and Access to Justice in Environmental Matters ('the Aarhus</u></p>

		<p><u>Convention') regarding access to information, public participation in decision making, and access to justice in environmental matters, and in particular obligations of Member States relating to public participation, remain applicable.</u></p>
<p>Art. 15 (5)</p>	<p>5. The competent authority may grant temporary derogations from the requirements of paragraphs 2 and 3 of this Article and from Article 11(a) and (b) for the testing and use of emerging techniques for a total period of time not exceeding 9 months, provided that after the period specified, either the technique is stopped or the activity achieves at least the emission levels associated with the best available techniques.</p>	<p>By way of derogation from paragraph 3 and 3a, the competent authority may set less strict emission limit values or environmental performance limit values <u>in case of a the event of an energy, [security or health] crisis, in the member states,</u> due to extraordinary circumstances beyond the control of the operator and Member States, leading to a severe disruption <u>of energy supplies [or a shortage [in at least two/several] Member states of:</u></p> <ul style="list-style-type: none"> <u>a. energy supplies and where there is an overriding public interest in security of energy supply, or</u> <u>b. resources, materials and equipment essential for the operator to perform its activities, of public interest, in compliance with the applicable emission limit values or environmental performance limit values.</u> <u>c. essential resources, materials or equipment, that the operator produces in order to compensate such shortage or disruption for reasons of public health or public safety, or other imperative reasons overriding public interests.</u> <p>essential resources, materials or equipment in case there is an overriding need to maintain energy supplies [or other imperative reasons of public interests of particular importance].</p> <p>As soon as the supply conditions are restored, <u>the Member State shall ensure the decision to set less strict emission limit values and environmental performance limit values ceases to have effect, and the installation shall comply with permit conditions set in accordance with paragraphs 3 and 3a.</u></p> <p>The competent authority shall in any case ensure that no significant pollution is caused and <u>set less strict limit values only that a derogation only is granted</u> when all other less polluting measures have been exhausted.</p> <p>The Member States shall take measures to ensure that the emissions are monitored and the derogation shall not be granted for more than 3 months. If the reasons justifying the derogations persists the derogation may be prolonged, prolonged for a period of maximum 3 months.</p> <p><u>In duly justified cases of urgency and imperative reasons of overriding public interests, Member States may take measures to derogate from Article 24(1) when the competent authority sets less strict values under this paragraph.</u></p>

		<p>The competent authority shall <u>document temporary conditions in an Annex to the permit conditions, including the justification for make the derogation and the conditions imposed. That annex to the permit shall be made publicly available in accordance with Art. 24(2).</u></p> <p><u>On the basis of information provided by Member States in accordance with Article 72(1), in particular concerning the application of this paragraph,</u> The Commission may, where necessary, assess and further clarify, through guidance, the criteria to be taken into account for the application of this paragraph.</p> <p>Member states shall notify the Commission of any derogation granted under this paragraph, including the reasons for <u>justifying the derogation and the conditions imposed.</u></p>
Recital 4a		<p><u>In order to prevent the artificial splitting of farms, which could result in the reduction of the farm LSU capacity to a threshold below the one established for the application of Directive, the Member State should adopt measures to ensure that if two or more installations are located close to each other and if their operator is the same or if the installations are under the control of operators who are engaged in an economic or legal relationship, the competent authority may consider those installations as a single unit for the purpose of calculating the capacity threshold for livestock.</u></p>
Recital 29		<p><u>In order to ensure that Directive 2010/75/EU continues meeting its objectives to prevent or reduce emission of pollutants and achieve a high level of protection of human health and the environment, Member States have to the power to adopt measure to establish acts in accordance with Article 290 1 TFEU should be conferred on delegated to the Commission to supplement that Directive in order to establish uniform conditions for operating rules containing requirements for activities relating to rearing of poultry, pigs and cattle and to amend Annexes I and Ia to that Directive by adding an agro-industrial activity to ensure that it meets its objectives to prevent or reduce pollutants emission and achieve a high level of protection of human health and the environment. In order to take into account the specificity of each</u></p>

		sector of activity, and to ensure uniform conditions for the implementation of such operating rules, implementing powers shall be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council 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 on Better Law-Making of 13 April 2016 ⁷⁷ . 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.
Art. 03 (12a)		(12 a) Operating rules means <u>a document describing the description</u> of best available techniques associated to activities referred to in annex I a, information to assess the applicability, the emission levels associated with the best available techniques, the environmental performance levels associated with the best available techniques, associated monitoring requirements, and, where relevant land spreading practices, pollution prevention and mitigation practices, nutritional management, feed preparation, housing, manure management (collection, storage, processing, land spreading) and storage of dead animals. [Text moved from article 70i.1]
Art. 03 (23d)		<u>'Installations operating under extensive production regimes' means installations rearing of cattle where the stocking density is less than 2 LSU/hectare used for grazing or fodder.</u>
Art. 70a	This Chapter shall apply to the activities set out in Annex Ia which reach the capacity thresholds set out in that Annex.	This Chapter shall apply to the activities set out in Annex Ia which reach the capacity thresholds set out in that Annex
Art. 70b (1)		Member States may opt to provide <u>shall adopt measures to ensure</u> that if two or more installations are located close to each other and if their operator is the same or the installations are under the control of operators who are engaged in an economic or legal relationship, the competent authority may consider those installations

		concerned shall be considered as a single unit for the purpose of calculating the capacity threshold referred to in Article 7
Art. 70b (2)		By [OP please insert the date = the first of 48 months following the date of entry into force of this Directive], the Commission shall publish guidelines, after consulting the Member States, on the criteria to consider different installations as a single unit under paragraph 1.
Art. 70c (4)	4. Member States shall take necessary measures to ensure that the operator informs the competent authority, without delay, of any planned substantial change to the installations falling within the scope of this Chapter which may have consequences for the environment. Where appropriate, the competent authority shall reconsider and update the permit.	4. Member States shall take necessary measures to ensure that the operator informs the competent authority, without delay, of any planned substantial change to the installations falling within the scope of this Chapter which may have consequences for the environment. Where appropriate, the competent authority shall reconsider and update the permit or request the operator to <u>apply for a permit</u> or make a new the registration .
Art. 70i (2)	The Commission shall by [OP please insert date = the first day of the month following 24 months after the date of entry into force of this Directive] adopt a delegated act in accordance with Article 76 to supplement this Directive by establishing the operating rules referred to in paragraph 1.	2. The Commission shall adopt by [OP please insert date = the first day of the month following 24 months after the date of entry into force of this Directive] [adopt a delegated act in accordance with Article 76 to supplement this Directive by establishing the operating rules referred to in paragraph 1.]
Art. 70i (3)	3. Member States shall ensure that all the permit conditions for the installations concerned are in compliance with the operating rules referred to in paragraph 1 within 42 months of the entry into force of the delegated act establishing those rules.	3. Member States shall ensure that all the permit conditions for the installations concerned are in compliance with the operating rules referred to in paragraph 1 within 42 48 months of the entry into force of the implementing delegated act under paragraph 2 establishing those rules. [Text moved to transitional provision X]
<u>70@@</u>		

Transitional provisions

	COM proposal	PRES proposal	NL position
X		<u>In relation to installations carrying out activities referred to in Annex I a</u>	

		<p><u>Member States shall apply the laws, regulations and administrative provisions adopted in accordance with this Directive</u></p> <p><u>- within 4 years of the entry into force of the implementing act referred to in Article 70i (2), if the installation has a capacity of 600 LSU or more.</u></p> <p><u>- within 5 years of the entry into force of the implementing act referred to in Article 70i (2), if the installation has a capacity of 400 LSU or more.</u></p> <p><u>- within 6 years of the entry into force of the implementing act referred to in Article 70i (2), if the installation has a capacity of 250 LSU or more.</u></p> <p><u>Until that day such installations shall comply with Directive 2010/75/EU.</u></p> <p>[Text partly moved from Article 70i (3)]</p>	
<u>XX</u>			<p><u>In relation to installations that are in operation before [OP please insert the date = the first day of the month following 24 months after the date of entry into force of this Directive], carrying out activities referred to in Annex I a, a Member States shall apply the laws, regulations and administrative provisions adopted in accordance with this Directive and the operating rules</u></p> <p><u>- within 4 years of the entry into force of the implementing act referred to in Article</u></p>

			<p><u>70i (2), if the installation has a capacity of 300 LSU or more.</u> <u>Or a new livestock farm.</u> <u>- within 6 years of the entry into force of the implementing act referred to in Article 70i (2), if the installation has a capacity of [LOWEST LSU] LSU or more.</u></p> <p><u>Until that day installations that were covered by Directive 2010/75/EU carrying out activities referred to in Annex I, point 6.6 of Directive 2010/75/EU shall comply with Directive 2010/75/EU.</u></p>
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ANNEX Ia Activities referred to in Article 70a

	COM proposal	PRES proposal			NL Posi
1.	Rearing of cattle, pigs or poultry in installations of 150 livestock units (LSU) or more.	Rearing of [cattle,] pigs or poultry in installations of <u>250</u> 150 livestock units (LSU) or more, <u>excluding rearing of cattle in installations operating under extensive production regimes.</u>			<u>Rearing installations or more</u>
2.	Rearing of any mix of the following animals: cattle, pigs, poultry, in installations of 150 LSU or more. The approximate equivalent in LSU is based on the conversion rates established in Annex II to Commission Implementing Regulation (EU) No 808/2014*.	Rearing of any mix of the following animals: cattle, pigs, poultry, in installations of <u>250</u> 150 LSU or more, <u>excluding rearing of cattle in installations operating under extensive production regimes.</u> The approximate equivalent in LSU is based on the following conversion rates: <u>established in Annex II to Commission Implementing Regulation (EU) No 2018/1091</u> 808/2014* .			<u>Rearing animals installations</u>
		Type of animal	Characteristic of animal	Coefficient	
		Bovine animals	Less than 1 year old	0,400	
			1 to less than 2 years old	0,700	
			Male, 2 years old and over	1,000	

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Cluster 7

ANNEX I Categories of activities referred to in Article 10

	COM proposal	PRES proposal	NL Position
1. Energy industries	1.4. Gasification or liquefaction or pyrolysis of: (a) coal; (b) other fuels in installations with a total rated thermal input of 20 MW or more.		
			1.5 Electrolysis of water for production of hydrogen with electrical input of 20 MW or more with the electricity [stemming from renewable sources] [where the production capacity exceeds 5 tonnes per day]
2. Production and processing of metals	2.3. Processing of ferrous metals: (a) operation of hot-rolling mills with a capacity exceeding 20		

	<p>tonnes of crude steel per hour;</p> <p>(aa) operation of cold-rolling mills with a capacity exceeding 10 tonnes of crude steel per hour;</p> <p>(ab) operation of wire drawing machines with a capacity exceeding 2 tonnes of crude steel per hour;</p> <p>(b) operation of smitheries with hammers the energy of which exceeds 20 50 kilojoule per hammer, where the calorific power used exceeds 20 MW;</p> <p>(ba) operation of smitheries with forging presses the force of which exceeds 10 mega-newton (MN) per press;</p> <p>(c) application of protective fused metal coats with an input exceeding 2 tonnes of crude steel per hour.</p>		
	<p>2.7. Manufacture of lithium-ion batteries (including assembling battery cells and battery packs), with a production capacity of 3,5 GWh or more per year.</p>	<p>2.7. Manufacture of [lithium-ion] batteries, other than exclusively assembling, (including assembling battery cells and battery packs), with a production capacity of 3,5 GWh 12 000 tons of battery cells (cathode, anode, electrolyte, separator, capsule) or more per year.</p>	
3. Mineral industry	<p>3.5. Manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain with</p> <p>(a) a production capacity exceeding 75 tonnes per day; and/</p> <p>or with</p>		

	(b) a kiln capacity exceeding 4 m ³ and with a setting density per kiln exceeding 300 kg/m ³ .		
	<p>3.6. Extraction and treatment (operations such as comminution, size control, beneficiation and upgrading) of the following non-energy minerals:</p> <p>(a) industrial minerals, including barite, bentonite, diatomite, feldspar, fluorspar, graphite, gypsum, kaolin, magnesite, perlite, potash, salt, sulphur and talc;</p> <p>(b) metalliferous ores, including bauxite, chromium, cobalt, copper, gold, iron, lead, lithium, manganese, nickel, palladium, platinum, tin, tungsten and zinc.</p>	<p>3.6. Extraction and treatment (operations such as comminution, size control, beneficiation and upgrading) of the following non-energy minerals and ores:</p> <p>(a) industrial minerals, including barite, bentonite, diatomite, feldspar, fluorspar, graphite, gypsum, kaolin, magnesite, perlite, potash, salt, sulphur and talc with a capacity exceeding [50 100] tonnes per day;</p> <p>(b) metalliferous ores, including bauxite, chromium, cobalt, copper, gold, iron, lead, lithium, manganese, nickel, palladium, platinum, tin, tungsten and zinc.</p>	
4. Chemical industry		<p>4.2 Production of inorganic chemicals, such as:</p> <p>(a) gases, such as ammonia, chlorine or hydrogen chloride, fluorine or hydrogen fluoride, carbon oxides, sulphur compounds, nitrogen oxides, hydrogen except when produced by electrolysis of water, sulphur dioxide, carbonyl chloride;</p> <p>(b) acids, such as chromic acid, hydrofluoric acid, phosphoric acid, nitric acid, hydrochloric acid, sulphuric acid, oleum, sulphurous acids;</p>	

		(c) bases, such as ammonium hydroxide, potassium hydroxide, sodium hydroxide; (d) salts, such as ammonium chloride, potassium chlorate, potassium carbonate, sodium carbonate, perborate, silver nitrate; (e) non-metals, metal oxides or other inorganic compounds such as calcium carbide, silicon, silicon carbide.	
5. Waste management	5.3. (a) Disposal of non-hazardous waste with a capacity exceeding 50 tonnes per day involving one or more of the following activities, and excluding activities covered by Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment (39): (i) biological treatment (such as anaerobic digestion) ; (ii) physico-chemical treatment; (iii) pre-treatment of waste for incineration or co-incineration; (iv) treatment of slags and ashes; (v) treatment in shredders of metal waste, including waste electrical and electronic equipment and end-of-life vehicles and their components. (b) Recovery, or a mix of recovery and disposal, of non-hazardous waste with a capacity exceeding 75 tonnes per day involving one or more of the following activities, and excluding activities covered by Directive 91/271/EEC:		

	<p>(i) biological treatment (such as anaerobic digestion);</p> <p>(ii) pre-treatment of waste for incineration or co-incineration;</p> <p>(iii) treatment of slags and ashes;</p> <p>(iv) treatment in shredders of metal waste, including waste electrical and electronic equipment and end-of-life vehicles and their components.</p> <p>When the only waste treatment activity carried out is anaerobic digestion, the capacity threshold for this activity shall be 100 tonnes per day.</p>		
6. Other activities	<p>6.2. Pre-treatment (operations such as washing, bleaching, mercerisation), or dyeing or finishing of textile fibres or textiles where the treatment capacity exceeds 10 tonnes per day</p>		
	<p>6.5. Disposal or recycling of animal carcasses or animal by-products waste with a treatment capacity exceeding 10 tonnes per day</p>		
	<p>6.6. Intensive rearing of poultry or pigs: (a) with more than 40 000 places for poultry; (b) with more than 2 000 places for production pigs (over 30 kg), or (c) with more than 750 places for sows.</p>	<p>Electrolysis of water for production of hydrogen with electrical input of 20 MW or more with the electricity [stemming from renewable sources where the production capacity exceeds 20 tonnes per day.</p>	

Steering note of the Presidency WK 1923/2023 from 9 February 2023
WPE on 14 February 2023
Proposal for a Directive on Industrial Emissions

COMMENTS BY SLOVENIA

Slovenia would like to thank the Presidency for very useful Steering note WK 1923/2023 from 9 February 2023, for the efforts put in this dossier to find a compromise text and for the structured discussion held at the WPE on February 14. We would like to keep scrutiny reservation; however, below, please find some preliminary comments on certain provisions.

We support the intention for General Approach at the March ENVI Council and we will do our best to show as much flexibility as possible.

In general, we are of the opinion that the proposed changes in the WK 1923/2023 are going into right direction; however, some of the provisions still have to be examined and/or clarified.

Cluster 1 – Limited derogation in the event of an exceptional situation

Article 15(5)

Slovenia supports the Presidency's Presidency's proposed way forward regarding Article 15(5) on the possibility to derogate from BAT and set less strict emission limit values or environmental performance limit values in case of a crisis. We support inclusion of more precise conditions for the use of the derogation, and we also welcome additional possibility for further clarification, if necessary, of the criteria for application of this paragraph in a harmonised manner in the EU.

However, some provisions still need to be clarified.

In recital (Y) it is said, that '[In case of crises, it may be necessary to set less strict emission limit values AND environmental performance limit values than the levels in the BAT-conclusions](#)'. However, in the Article 15(5) the provision includes possibility to set less strict emission limit values OR environmental performance limit values. We would like to have confirmed, that there is a possibility to:

- set less strict emission limit values OR
- set less strict environmental performance limit values OR
- set less strict limit values for both – emissions and environmental performance levels.

We sympathise with the concerns expressed at the WPE, that other requirements could be endangered to be met, as mentioned by IT.

In Article 15(5), third subparagraph, we have a question regarding the obligation that first all less-polluting measures have to be exhausted. We would appreciate clarification, if we are talking about all technically and economically feasible measures in the crisis in question; by referring to ALL measures there might be a situation that such measures (especially in crisis) would be disproportionately costly or technically not feasible, depending of the nature of

crisis. We would propose to have reference to 'all economically and technically feasible less polluting measures'; or at least refer to 'technically feasible' measures.

Finally, we would like to point out livestock farms as important elements in ensuring the security of food supply, even in case of a crisis. So, we would appreciate explanation how the possibility of derogations applies for livestock farms in relation to operating rules, meaning for chapter VI.a, in case of the need to ensure food security in crisis. In this respect, we support a proposal sent by Finland (WK 1447/2023 ADD 1 from February 1) that the provisions on the possibility for derogation should be extended to cover the uniform conditions of the Chapter VI.a, which currently does not have any possibilities to derogate from the conditions in case of exceptional situations (including derogation from operating rules).

Cluster 6 – Rules and scope of agro-industrial activities

Slovenia supports the Presidency's proposed way forward regarding Chapter VI.a. However, we are still analysing some of the proposed compromise provisions and we also have some questions for clarification.

Recital (29)

We would appreciate clarification of the provision that '*Member States have to adopt measure to establish operating rules for activities relating to rearing of poultry, pigs and cattle*'. Does it mean, that each Member State have to adopt general binding rules at national level; and if this is the intention of this paragraph, we would appreciate clarification of such national rules in relation to the operating rules adopted as an implementing act by the Commission. We would also appreciate clarification on the expected timing of both actions.

Transitional provisions

Slovenia welcomes the proposed approach on gradual inclusion of the livestock farms, depending on their size. We also welcome the proposed linking of the start of application of the relevant provisions to the date of entry into force of the implementing act adopting operating rules for farming.

But, regarding **recital X**, we would like to have confirmed, that by referring to '*laws, regulations and administrative provisions adopted in accordance with this Directive*' implementing act on operating rules is included; although we are not sure on the role of the national measure mentioned in recital (29), as stated above.

We also have reservations regarding the last sentence; we are of the opinion, that farms, not falling under the scope of the current IED, cannot ensure compliance with the Directive 2010/75/EU, as proposed. Such requirement can only apply for those farms that are already in the scope of current directive. The sentence should therefore be reformulated accordingly, similarly as mentioned in our comments for other transitional provisions for other installations, sent in written on February 10.

We propose redrafting, for example, as follows:

'Until that day such installations shall comply with the current Directive 2010/75/EU if they fall under its scope, or with other national requirements applicable for the installations not falling under the scope of the current Directive 2010/75/EU.'

Annex Ia

In relation to Annex Ia, we welcome its structure and the inclusion of the table with conversion rates; however, we are still analysing and discussing the coefficients themselves. We would like to emphasise that it is crucial to define unified coefficients throughout the EU. Moreover, we are of opinion that the proposed coefficients for calculation of LSU should be re-examined in terms of their appropriateness.

We would also like to keep scrutiny on the definition (23d) and proposed wording in points 1 and 2 of Annex Ia.

Regarding the threshold for inclusion of farms, we are still of the opinion that the threshold of 300 LSU is the lowest acceptable for us.

We also support the proposal by PL, expressed at the last WPE, to clarify and/or include some criteria to decide on the farm to be considered as mixed.

Cluster 7 – Scope of industrial activities

Hydrogen

Slovenia can support the Presidency's proposal to move electrolysis of water for production of hydrogen from point 1 (Energy industries) to point 6 (Other activities) of Annex I.

Battery factories

Slovenia can support the Presidency's proposed way forward regarding manufacture of batteries in point 2.7 of Annex I.

Extraction and treatment of minerals

Slovenia can support the Presidency's proposed way forward regarding point 3.6 of Annex I.

COMMENTS – SLOVAKIA

To the Proposal for Industrial Emissions Directive Follow - up on WPE 14th February 2023

Cluster 6 – Art. 3 (23a), Annex Ia - Point 2.

SK welcomes the effort of the Swedish Presidency to find a compromise on the question of the scope of the agro-industrial activities and the LSU threshold. We would like to thank the Presidency to take on board one of our concerns to exempt smaller farms from the scope of the Directive, that would also take into account the density of the livestock. We can therefore look positively on the proposal to exclude extensive rearing of cattle in installations operating under extensive production regime from the scope of the Directive.

On the question of LSU threshold, we are aware that we need to find a right balance between the ambition and our targets under the National Emissions Ceilings (NEC) Directive, food security, environmental and health benefits. Considering the above, and if this exemption for extensive rearing of cattle would prevail, and we can consider a lower threshold than 600 LSUs and, in a spirit of compromise, we can move closely to suggested Presidency compromise, but we cannot accept any number below the 250 LSUs.

Art. 70b

SK would like to express the need to have this aggregation rule clear and with mandatory character.

Cluster 5 – Annex I point 3.6. (a)

SK considers the Presidency proposal to increase capacity threshold for minerals and ores in letter a) to 100 tonnes/day as step into good direction, nevertheless SK would like to propose to further increase this threshold, ideally to 500 tonnes/day.