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CONTRIBUTION

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

Subject:	IED : Follow- up to 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 BG and FR delegations.

Comments by Bulgaria on IED Proposal

Cluster 5 - Sanctions and compensations

Bulgaria reiterates its position concerning the need of an optimal solution regarding the issues of sanctions and compensations. The relevant national circumstances should be taken into account in the best possible way, as well as the material and procedural legal rules already in force and, accordingly, the existing judicial regimes for seeking responsibility, including in case of pollution or other damage to the environment.

Therefore, we have reservations regarding the introduction of detailed rules on sanctions to be included in EU environmental acts. We are still of the view that the provisions on penalties should remain a national responsibility.

Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage defines a framework for environmental liability based on the "polluter pays" principle. We believe that the more appropriate way to address the identified legal gap regarding private damages is horizontally within the Environmental Liability Directive rather than the Industrial Emissions Directive.

Based on the above Bulgaria proposes the following:

Paragraphs 2 and 3 of **article 79** (as proposed by the Presidency in document WK 1574/2023) **to be deleted.**

Deletion of article 79a.

Cluster 6 - Agro-industrial activities

Lowering the threshold for livestock units (LSU) below the current requirements for pig and poultry farms falling within the scope of the Directive, as well as the addition of cattle farms in the scope will have a strong impact on a large number of livestock farms, creating a significant financial burden.

The proposed threshold of 250 LSU covers a large number of family farms in rural areas, as well as farms with medium production capacity - the backbone of food production, and thus they are threatened with ceasing their activity, i.e. the effect of changing the thresholds will be extremely negative for the Livestock and food sector. This would lead to serious social, economic and financial consequences against the background of high inflation, the trend of increasing prices of animal feed, fuels, energy and all other consumables and services used in livestock farms. This situation will have a direct impact on the country's food security. Extensive and organic livestock production is a key to climate change adaptation and mitigation, while also playing an essential role in providing healthy, safe and quality food and contributing to maintaining a sustainable and efficient food system.

Therefore, Bulgaria proposes the following revision:

Annex Ia “Activities referred to in Article 70a” (as proposed in document WK 1923/2023 REV 1):

1. Rearing of ~~cattle~~, pigs, poultry, in installations of ~~250~~ **600** LSU or more, **excluding rearing carried out in the context of small and middle scale family farming, extensive farming and organic farming as defined in this Directive.**

2. Rearing of any mix of the following animals: ~~cattle~~, pigs and poultry, in installations of ~~250~~ **600** LSU or more, **excluding rearing carried out in the context of small and middle scale family farming, extensive farming and organic farming as defined in this Directive.**

We believe that the inclusion of bovine animals in the scope of the Directive should be reconsidered and discussions on this inclusion should continue only if there is a lasting positive change in the economic situation.

Bulgaria finds it appropriate and expedient to follow and apply an individual approach for the Member states, given their sectoral and other specificities, as well as the possibility of applying a derogation.

Cluster 7 - Scope of industrial activities

Hydrogen

As regards to the proposed inclusion of hydrogen production in the scope of the Directive, Bulgaria is skeptical of the added value, due to the lack of clear arguments for their environmental impact. Bulgaria is on the opinion that the production of hydrogen by electrolysis as a relatively new industrial activity which requires sufficient time for the operators as well as the competent authorities in the MS to gain enough information and experience. Sufficient research and observations should be carried out as to whether and to what extent the production has an impact on the environment, including emissions, raw materials, etc.

Given the above, Bulgaria proposes the following revision of Annex I “Categories of activities referred to in Article 10” (as proposed in document WK 1923/2023 REV 1):

“6. Other activities

~~6.6. Electrolysis of water for production of hydrogen where the production capacity exceeds 20 tonnes per day.”~~

Mineral industry

As regards to the proposed inclusion the mining of minerals in bullet 3.5. to Annex I of the Directive (as proposed in document WK 1923/2023 REV 1), **Bulgaria supports a significant increase in the threshold for these installations to a minimum of 500 t/day, due to their limited impact on the environment in terms of emissions and the rules already in place.**

Production and processing of metals

Bulgaria supports the exclusion of wire drawing and forging activities from the scope, given the lack of sufficient arguments for their environmental impact.

Paris, le 17 février 2023

NOTE DES AUTORITÉS FRANÇAISES

Objet : Commentaires écrits des autorités françaises à la suite du groupe de travail environnement du 14 février 2023 sur la révision de la directive sur les émissions industrielles (IED)

Les autorités françaises remercient la Présidence suédoise pour l'opportunité de formuler des commentaires écrits.

Elles souhaitent faire part des commentaires suivants.

Groupe 1 – Dérogation limitée en cas de situation exceptionnelle

Art. 15.5 :

Les autorités françaises estiment que la portée de la dérogation doit être limitée à des situations d'interruptions totales d'approvisionnement et soudaines, et non seulement à une pénurie. Nous considérons que les termes « perturbation grave » et « pénurie » (« severe disruption » et « shortage » en anglais) restent flous. Tant qu'il reste encore la possibilité d'acheter un combustible ou une matière première par exemple – même à un prix plus élevé que celui habituel, la dérogation ne peut pas être sollicitée par l'opérateur. Seules des conséquences vraiment exceptionnelles doivent conduire à dispenser de respecter des valeurs limites d'émission.

La dérogation doit également être limitée dans le temps : une période plus courte, limitée à un mois, renouvelable une fois, est proposée.

Sous ces conditions, la situation dérogatoire relève d'un cas exceptionnel, qui nécessite une réponse rapide de l'autorité compétente. Cette situation ne permet pas d'élaborer des valeurs limites adaptées. Aussi, sur la base de ce qui est prévu aux articles 30.5 et 30.6 du chapitre III, la dérogation devrait dispenser de respecter les valeurs limites d'émission. De plus, vue l'urgence de cette situation, ni l'exploitant ni les autorités compétentes n'ont la possibilité de s'assurer qu'il n'y aura pas de pollution significative.

La France propose donc le mécanisme suivant :

L'opérateur justifie sa demande de dérogation, auprès de l'autorité compétente et, si la dérogation est accordée, c'est cette justification qui sera mise à disposition du public.

La nouvelle rédaction propose 3 cas pour préciser les cas exceptionnels. Or, si les cas « a » (interruption de l'approvisionnement en énergie) et « b » (interruption des réactifs nécessaires au système de traitement des effluents) sont bien pertinents, le cas « c » vise l'interruption d'une ressource ou matériel ou équipement produit par le site IED qui serait d'intérêt public. Le point « c » est à supprimer car il apporte de la confusion par rapport aux points précédents.

Les autorités françaises proposent la rédaction suivante (ajouts et suppressions en souligné) :

~~“By way of derogation from paragraph 3 and 3a,~~ The competent authority may grant a derogation from the obligation to comply with ~~set less strict~~ emission limit values or environmental performance limit values set in accordance with paragraph 3 and 3a in cases where operator cannot comply with these limit values in case of ~~a~~ an energy crisis due to extra ordinary circumstances beyond the control of the operator and Member States, leading to ~~severe disruption or shortage~~ sudden interruption [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.~~

The costs of energy, substances, materials or equipment for the operator, taken alone, shall not be a criterion for determining a crisis.

As soon as the supply conditions are restored, the Member State shall ensure that the decision to ~~set less strict~~ grant a derogation from the obligation to comply with 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 Member State shall ensure ~~that no significant pollution is caused~~ to grant a derogation only and set less strict emission limit values when all polluting measures have been exhausted and justified by the operator.

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

The derogation shall not be granted for more than 13 months. If the reasons justifying the derogations persists the derogation may be prolonged, prolonged for a period of maximum 13 months.

In duly justified cases of urgency and imperative reasons of overriding public interests, Member States may take measures to derogate from Article 24(1) 1) when the competent authority ~~sets less strict~~ grants a derogation from the obligation to comply with values under this paragraph.

The competent authority shall make the derogation ~~and the conditions imposed~~ publicly available with the justifications provided by the operator. ~~in accordance with Art. 24(2).~~

The Commission may, where necessary, assess and further clarify, through guidance, the criteria to be taken into account for the application of this paragraph.

Member States shall notify the Commission of any derogation granted under this paragraph, including the reasons for justifying the derogation and the conditions imposed.”

Groupe 7 : périmètre des activités industrielles

Transformation des métaux (activité 2.3) :

Au vu des faibles impacts sur l'environnement des activités de forgeage à l'aide de presses à forger ou à l'aide de marteaux, les autorités françaises ne comprennent pas la pertinence de l'inclusion de ces activités avec les seuils proposés.

Les autorités françaises ne souhaitent pas que le libellé de l'activité 2.3 soit modifié.

Si elles devaient vraiment être intégrées, les autorités françaises proposent de retenir les seuils suivants :

- 35 kJ pour les pilons ;
- 20 MN pour les presses.

Batteries (activité 2.7) :

La France soutient la proposition de la Présidence. Elle propose cependant de préciser que l'unité doit être exprimée en « tonnes » et non en « tons ».

Les autorités françaises se demandent si le recyclage ne devrait pas également être explicitement intégré :

« 2.7 Manufacture **or recycling** of batteries, other than exclusively assembling, with a production capacity of 12 000 tonnes of battery cells (cathode, anode, electrolyte, separator, capsul) or more per year. »

Extraction et traitement des minéraux (activité 3.6) :

Les autorités françaises demandent que les petites exploitations qui ne génèrent que des impacts environnementaux limités et **les exploitations artisanales soient exclues de la directive**.

Aussi, elles proposent que l'activité 3.6 ne concerne que les activités menées « à une échelle industrielle » et d'exclure l'extraction artisanale et à petite échelle.

Les autorités françaises ne veulent **pas classer les minéraux industriels** dans le champ de la directive et proposent que la liste « a » et les substances associées soient supprimées.

Le seuil proposé de 100 tonnes n'est pas acceptable et, si cette activité devait être maintenue, il doit au moins être relevé à 600 tonnes par jour.

Elles proposent la rédaction suivante :

« 3.6. *Extraction and treatment (operations such as comminution, size control, beneficiation and upgrading), **except artisanal and small-scale activities**, of the following **minerals and** ores :*

a) barite, bentonite, diatomite, feldspar, fluorspar, graphite, gypsum, kaolin, magnesite, perlite, potash, salt, sulphur and talc with a capacity exceeding [100] tonnes per day;

b) bauxite, chromium, cobalt, copper, gold, iron, lead, lithium, manganese, nickel, palladium, platinum, tin, tungsten and zinc. »

Production d'hydrogène par électrolyse de l'eau :

La France soutient la proposition de la Présidence.

La France est opposée à toute prise en compte de critères sur la provenance de l'électricité. En effet, la qualité environnementale de la production électrique est gérée par son propre classement IED et par les BREF associés.

Courtesy translation

Subject: Written comments from the French authorities following the environmental working group of 14th of February on the industrial emissions directive (IED).

The French authorities thank the Swedish Presidency for the opportunity to provide written comments.

They wish to make the following comments:

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

Art. 15.5: The French authorities thank the Presidency for its drafting proposal and would like to point out the following elements:

The scope of the derogation should be limited to situations of sudden and total interruptions of supply, and not only to a disruption of energy supplies. We consider that the terms "severe disruption" and "shortage" remain unclear. As long as there is still the possibility of buying a fuel or raw material for example - even at a higher price than usual, the derogation cannot be requested by the operator. Only truly exceptional consequences should lead to a derogation from the obligation to comply with emission limit values.

The derogation must also be limited in time: a shorter period, limited to one month, renewable once, is proposed.

Under these conditions, the derogation situation is an exceptional case, which requires a rapid response from the competent authority. This situation does not allow the development of appropriate and dedicated limit values. Therefore, on the basis of the provisions of Articles 30.5 and 30.6 of Chapter III, the derogation should dispense with compliance with the emission limit values. Moreover, given the urgency of the situation, neither the operator nor the competent authorities have the possibility to ensure that there will be no significant pollution.

France therefore proposes the following mechanism:

The operator justifies his request for derogation to the competent authority and, if the derogation is granted, this justification will be made available to the public.

The new wording proposes 3 cases to specify the exceptional cases. However, while cases "a" (severe disruption or shortage of energy supply) and "b" (interruption of reagents necessary for the effluent treatment system) are relevant, case "c" refers to the interruption of a resource or material or equipment produced by the IED installation which would be of public interest. Point "c" should be deleted as it is confusing in relation to the previous points.

The French authorities propose the following wording (addition and deletion underlined):

~~"By way of derogation from paragraph 3 and 3a,~~ The competent authority may grant a derogation from the obligation to comply with ~~set less strict~~ emission limit values or environmental performance limit values set in accordance with paragraph 3 and 3a in cases where operator cannot comply with these limit values in case of ~~a~~ an energy crisis due to extra ordinary circumstances beyond the control of the operator and Member States, leading to ~~severe disruption or shortage~~ sudden interruption [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.~~

The costs of energy, substances, materials or equipment for the operator, taken alone, shall not be a criterion for determining a crisis.

As soon as the supply conditions are restored, the Member State shall ensure that the decision to ~~set less strict~~ grant a derogation from the obligation to comply with 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 Member State shall ensure ~~that no significant pollution is caused~~ to grant a derogation only and set less strict emission limit values when all polluting measures have been exhausted and justified by the operator.

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

The derogation shall not be granted for more than 13 months. If the reasons justifying the derogations persists the derogation may be prolonged, prolonged for a period of maximum 13 months.

In duly justified cases of urgency and imperative reasons of overriding public interests, Member States may take measures to derogate from Article 24(1) 1) when the competent authority ~~sets less strict~~ grants a derogation from the obligation to comply with values under this paragraph.

The competent authority shall make the derogation ~~and the conditions imposed~~ publicly available with the justifications provided by the operator.~~in accordance with Art. 24(2).~~

The Commission may, where necessary, assess and further clarify, through guidance, the criteria to be taken into account for the application of this paragraph.

Member States shall notify the Commission of any derogation granted under this paragraph, including the reasons for justifying the derogation and the conditions imposed."

Cluster 7: scope of industrial activities

Metal processing (activity 2.3):

In view of the low environmental impacts of forging activities using forging presses or hammers, France does not understand the relevance of including these activities with the proposed thresholds.

France does not want the wording of activity 2.3 to be changed.

If they were really to be included, the French authorities propose to retain the following thresholds:

- 35 kJ per hammer;
- 20 MN per press;

Batteries (Activity 2.7):

France supports the Presidency's proposal. However, France proposes to specify that the unit should be expressed in "tonnes" and not in "tons".

The French authorities wonder whether recycling should not also be explicitly included:

"2.7 Manufacture or recycling of batteries, other than exclusively assembling, with a production capacity of 12 000 tons (cathode, anode, electrolyte, separator, capsule) or more per year."

Extraction and processing of minerals (activity 3.6):

The French authorities request that small-scale operations with limited environmental impacts and artisanal operations be excluded from the Directive.

Therefore, they propose that activity 3.6 should only concern activities carried out "on an industrial scale" and to exclude artisanal and small-scale mining.

The French authorities do not want to classify industrial minerals in the scope of the Directive and propose that list "a" and the associated substances be deleted.

The proposed threshold of 100 tonnes is not acceptable and, if this activity is to be maintained, it must at least be raised to 600 tonnes per day.

They propose the following wording:

" 3.6. Extraction and treatment (operations such as comminution, size control, beneficiation and upgrading), except artisanal and small-scale activities, of the following minerals and ores :

a) barite, bentonite, diatomite, feldspar, fluorspar, graphite, gypsum, kaolin, magnesite, perlite, potash, salt, sulphur and talc with a capacity exceeding [100] tonnes per day;

b) bauxite, chromium, cobalt, copper, gold, iron, lead, lithium, manganese, nickel, palladium, platinum, tin, tungsten and zinc.

Electrolysis of water for production of hydrogen:

France supports the Presidency's proposal.

France is opposed to taking into account any criteria on the origin of electricity. Indeed, the environmental quality of electricity production is managed by its own IED activities classification and by the associated BREFs.