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CONTRIBUTION

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| From: | General Secretariat of the Council |
| To: | Working Party on the Environment |
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| Subject: | Air Quality Directive: Follow-up to the WPE on 11 July 2023 - comments from a delegation |

Following the call for comments on the above set out with WK 9695/2023, delegations will find attached comments from PL.

POLAND

Commentary of the Republic of Poland to the document " Air Quality Directive: WPE on 11 July 2023 Presidency Steering note"

INTERVENTION ROUND 1. Article 19: Air quality plans

A. Timeframe for establishing and implementing air quality plans (Article 19(1))

The PL appreciates the efforts of the Presidency to extend the deadline for implementation of the air quality plans from 2 to 3 years after the first exceedance is identified.

However, PL continues to state that this is too short a period of time to implement the measures set out in the air quality plans (2 years from the date of adoption of the plans), which are expected to result in the attainment of air quality standards.

The PL therefore proposes to amend Article 19(1) as follows:

"1. Where, in given zones the levels of pollutants in ambient air exceed any limit value or target value, laid down in Section 1 of Annex I, Member States shall establish air quality plans for those zones as soon as possible and no later than 2 years after the calendar year during which that exceedance of any limit value was recorded. Those air quality plans shall set out appropriate measures to achieve the concerned limit value and to keep the exceedance period as short as possible, and in any case no longer than ~~64~~ years from the end of the calendar year in which the first exceedance was recorded.

*Where exceedances of any limit values persist during the **fifth** calendar year after the establishment of the air quality plan, Member States shall update the air quality plan and the measures therein, and take additional and more effective measures, in the subsequent calendar year to keep the exceedance period as short as possible."*

The proposed postponement of the deadline from 4 to 6 years, when exceedances of the air quality standards are allowed to persist, will in effect allow the Member States to effectively implement the measures set out in the air quality plans within 4 years of the adoption of the said plans.

B. Air Quality Plans for ozone (Article 19(2))

The PL supports the Presidency's proposal to change the wording of Article 19(2) with following amendments:

~~“2. Where in a given NUTS 1 territorial unit covering at least the air quality zone, the levels of pollutants in ambient air exceed the ozone target value, laid down in Section 2 of Annex I, Member States shall establish air quality plans for those zones territorial units as soon as possible and no later than 2 years after the calendar year during which the exceedance of the ozone target value was recorded. Those air quality plans shall set out appropriate measures in order to achieve the ozone target value and to keep the exceedance period as short as possible. Where exceedances of the ozone target value persist during the fifth calendar year after the establishment of the air quality plan in the zone relevant NUTS 1 territorial unit, Member States shall update air quality plan and the measures therein, and take additional and more effective measures, in the subsequent calendar year to keep the exceedance period as short as possible. Member States shall inform the Commission which territorial unit they are going to use to establish air quality plans for ozone.~~

Member States may refrain from establishing air quality plans for ozone for a given territorial unit zone when there is no significant potential, taking into account orographic, meteorological and economic conditions, to address the exceedance.

If Member States do not establish an air quality plan in accordance with paragraph 1, the Member State shall notify the Commission with the necessary information justifying that there is no significant potential to address the exceedance and an action plan is not the appropriate measure to address this exceedance.

~~For NUTS 1 territorial units where the ozone target value is exceeded, Member States shall ensure that the relevant national air pollution control programme prepared pursuant to Article 6 of Directive (EU) 2016/2284 includes measures addressing those exceedances.”~~

C. Territorial units most appropriate for AERO AQ plans (Article 19(3))

PL has a negative view on the introduction of an obligation to develop air quality plans for additional areas of territorial units other than the zones established so far or a country. The introduction of a new (additional) division of the country into territorial units, i.e. NUTS1, will not only cause a serious financial burden on the state budget in the system of air quality assessment and management, but also serious problems in air quality management, including, in particular, those relating to the responsibility for the preparation and implementation of the aforementioned plans.

Therefore PL proposes the following wording of Article 19(3):

~~“3. Where in the territory of a Member State given NUTS 1 territorial unit covering at least NUTS2 level, the average exposure reduction obligation laid down in Section 5 of Annex I is exceeded, Member States shall establish air quality plans for the territory of a Member State those NUTS 1 territorial units as soon as possible and no later than~~

2 years after the calendar year during which the exceedance of the average exposure reduction obligation was recorded. ~~This~~ ~~ese~~ air quality plans shall set out appropriate measures to achieve the average exposure reduction obligation and to keep the exceedance period as short as possible. Where exceedances of the average exposure reduction obligation persist during the fifth calendar year after the establishment of the air quality plan, Member States shall update the air quality plan and the measures therein, and take additional and more effective measures, in the subsequent calendar year to keep the exceedance period as short as possible."

Alternatively, PL proposes full flexibility in designating areas for calculating AEI and compliance checking with AERO, etc. so that each Member State could choose areas for it: NUTS1, NUTS2, zones or the whole territory of a Member State.

INTERVENTION ROUND 2 CHAPTER V: INFORMATION AND REPORTING

A. Article 22: Public information

The Presidency invites delegations to indicate their positions on this Article and to send concrete drafting proposals if needed.

The PL has long experience in publishing an air quality index calculated from 1-hour mean concentrations of pollutants including sulphur dioxide, PM2.5 and PM10.

The PL will accept the solution for the air quality index to be worked out in a spirit of compromise in the WPE.

The PL only proposes that Article 22(2) should not refer to the WHO air quality guidelines, as the WHO guidelines do not provide recommended values for 1-hour mean concentrations of most of the pollutants for which it has issued recommendations and are therefore not appropriate to guide the design of an air quality index based on 1-hour mean concentrations of pollutants.

In addition, PL reiterates a comment on Article 22(1)(e) - public disclosure, regarding additional information and assessments on forest protection as part of the aggregated air quality assessment. PL proposes to delete this requirement.

B. Annex IX: Information to citizens

Several delegations have made specific proposals, on which the Presidency would like to invite other delegations to comment:

1. *Maintain the Commission proposal.*
2. *Amend the sentence as follows: "and, at least to information from the minimum number of sampling points required under annex III" to " and, at least to information from the minimum number of sampling points required under annex III **except for PM10 and***

PM2.5 for at least half of the minimum number of sampling points required under Annex III“.

3. Amend the sentence as follows: *"and, at least to information from the minimum number of sampling points required under annex III"* to *" and, at least to information from the minimum number of sampling points required under annex III if the measurement method is appropriate for up-to-date data (UTD) "*.

PL prefers option 3.

Annex IX (2)(c). Information of possible health effects and recommended behaviour.

PL prefers option 2.

INTERVENTION ROUND 3 CHAPTER VII: ACCESS TO JUSTICE, COMPENSATION AND PENALTIES

PL has a negative view on the introduction in the draft directive of new provisions defining access to justice, enabling the substantive or procedural legality of all decisions, actions or omissions with regard to air quality plans and short-term action plans to be challenged and giving a right for individuals to compensation for damage to human health and providing for penalties which should be proportionate to the turnover of the legal person or to the income of the natural person who has committed the infringement.

A. Article 27: Access to justice

PL has a scrutiny reservation to the Presidency's proposal regarding art. 27. PL will send comments to this article later (around the end of July).

B. Article 28: Compensation for damage to human health

PL has a scrutiny reservation to the Presidency's proposal regarding art. 28. PL will send comments to this article later (around the end of July).

C. Article 29: Penalties

PL has a scrutiny reservation to the Presidency's proposal regarding art. 29. PL will send comments to this article later (around the end of July).

INTERVENTION ROUND 4

A. Annex III.A.2 and Annex IV.B. 2(f) references to Best Available Techniques (BAT)

PL prefers option 1.

PL devotes a lot of attention to the interpretation of the provisions of the air quality directives in the process of siting sampling points, including the one on BAT monitoring.

PL notes that for Option 2, some of the sampling points may be located in the area of an industrial plant and therefore not within the scope of the proposal for the air quality directive (conflicts with Annex IV, Section A(2)(a) and (b) of the proposal). In addition, these sampling points may be generally under the supervision of the industrial site and outside the control of the national reference laboratories, hence they may not fulfil a number of requirements of the draft directive, such as quality assurance/quality control requirements (e.g. Annex V and VI of the proposal).

B. Annex I, section 4. Representativeness of stations for alert threshold exceedances for PM10 and PM2.5

PL prefers option 1.

C. Article 15(4) Prediction of the risk of exceeding thresholds:

PL proposes not to modify Article 15(4). PL makes the results of such forecasts available, inter alia, on a publicly available air quality portal, in a mobile application for smartphones and even through an API for further (re)use. However modelling for short-term forecasts of pollutant concentrations is still a challenge and is being improved.

INTERVENTION ROUND 5. Article 31(1) and Article 32. Transposition and dates for entry into force

1. On the wording of Articles 31 and 32:

The explanation provided by the Presidency is sufficient.

However, in PL's view, the very idea of interpreting the provisions of Article 31(1) and Article 32(2) together is unclear. Once the provisions of the new air quality directive enter into force, it will be necessary to analyse the entire directive due not only to the need to transpose the new provisions into the national legal order, but also to amend the existing ones. This is due to the fact that one provision in the proposal follows from another, without which no proper transposition can take place.

2. Regarding the transposition date of the draft AAQD:

PL proposes to change the date in Article 31(1) from "*two years after entry into force*" to "***three years after entry into force***".

PUBLIC