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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on the Environment
N° Cion doc.:	ST 14217/22 + ADD 1
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 PT.

PORTUGAL

Recast of the Ambient Air Quality Directive (AAQD)

Follow-up to the WPE on the 11th of July 2023

PT comments

(Based on document - WK WK 9263/2023 INIT)

I - Article 19: Air quality plans

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

We regard the wording proposed by the Presidency for article 19(1) as an improvement to the original proposal. Nevertheless, we would favour extending the period to eliminate the exceedance to 6 years, in order to ensure the effective implementation of the measures and the due time to produce results.

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

Considering the Presidency's proposals on the scope for air quality plans for ozone and the establishment of air quality plans to achieve ozone target values, we can support the compromises drafted by the Presidency.

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

On the territorial units and the compromises presented by the Presidency, PT supports the suggested amendments to this provision as proposed by the Presidency to introduce some flexibility as regards the territorial unit's management.

II - CHAPTER V: INFORMATION AND REPORTING

A. Article 22: Public information

When it comes to the air quality index (AQI) PT is in favor of the harmonization of the AQI considering the recommendations by the WHO to update the bands that define the index categories. Where measured concentrations of a pollutant are low (e.g. SO₂ and CO) the index may include this information, where available.

B. Annex IX: Information to citizens

Portugal supports option 2 suggested by the Presidency regarding Annex IX(1a) to amend the sentence recognizing the specificities of PM₁₀ and PM_{2,5}. In our understanding this option balances several interests: UTD data and data according with the reference methods.

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

We support maintaining the Commission proposal.

III - CHAPTER VII: ACCESS TO JUSTICE, COMPENSATION AND PENALTIES

A. Article 27: Access to justice

PT maintains a scrutiny reserve on this issue. Provisions on the access to justice are being introduced in the AAQD with the recast and have no precedent, contrary to other files where such provisions occur (i.e. the Industrial Emissions Directive since 2010 and other legal instruments from this time).

We agree there is questionable added value in replicating commitments that MS are already bound to under the Aarhus Convention, and we are very mindful of the legal consequences as mentioned by the Council Legal Service, whereby these provisions could become EU competence.

Therefore, in cases where there is no precedent, we favour an approach consistent with the one adopted in the great majority of general approaches and recently negotiated agreements with the European Parliament, such as the Drinking Water Directive, the EU Climate Law and the files within the Fit for 55 Package to mention a few.

B. Article 28: Compensation for damage to human health

We would like to echo the information that was presented by the Council Legal Service, which made it clear that, so far, there is no precedent in the EU Environment legislation establishing the reversal of the burden of proof.

Without prejudice to other pertinent observations made by the Council Legal Service (notably the lack of legal certainty that stems from the fact that Air Quality Action Plans are effort based and not results based) we can not support the inclusion a provision on the reversal of the burden of proof.

We strongly underline the need to have a horizontal stand on this issue, avoiding ad-hoc decisions in the negotiation of individual files, that could create a precedent that so far does not exist in the mentioned legislation.

C. Article 29: Penalties.

We uphold a scrutiny reserve on these provisions. We understand the Presidency's proposal to better harmonise with the general approach reached under the Industrial Emissions Directive.

IV – BAT, Representativeness of stations, Prediction of the risk of exceeding thresholds

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

PT prefers option 2 of the PRES, to amend the last sentence of Annex III.A.2 as proposed.

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

Portugal is flexible to option 2 (amend sentence in Annex I, section 4 as suggested) or 3 of the PRES (delete the phrase “at locations representative of air quality over at least 100 km² or an entire zone, whichever is smaller”).

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

We support the Presidency's suggestion to modify number 4 of article 15.

V - Article 31(1) and Article 32. Transposition and dates for entry into force

We consider the Presidency's explanation is adequate.
