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**WK 10074/2023 ADD 6**

**LIMITE**

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## **CONTRIBUTION**

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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

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

## Malta's Written Comments on the Ambient Air Quality Directive

Following the call for written comments during the WPE of 11<sup>th</sup> July (documents reference WK09695.en23), Malta would like to submit the following comments:

### **INTERVENTION ROUND 1. Article 19: Air quality plans**

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

MT appreciates the proposed amended text under Article 19(1); however, MT believes that the 2-year timeframe for the establishment of an air quality plan is rather short. Considering the administrative work related to the drafting of such plans and the consultations needed with the public and major stakeholders, as well as the quantification of measures within the plan, we believe that this timeframe should be extended to at least 3 years from recorded exceedance (Year of exceedance+3). With regards to the implementation of the measures laid out in such plans, we believe that the time-frame being proposed (4 years) should start following the submission of the AQP (up to Year of exceedance+6 or Year of exceedance +7 depending on whether the time frame for submission of an AQP is extended to 3 years), in order to allow for the implementation of measures having different implementation time-frames based on the nature of measures. As a result of the requested extension, MT is also requesting an extension to the timeframe assessing the effectiveness of the AQP and updating it as necessary. In this context, MT is suggesting that the update of the AQP is carried out on the fifth calendar year after the establishment of the AQP.

In this context MT is proposing the below:

*1. Where, in given zones the levels of pollutants in ambient air exceed any limit 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~~ **3** 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 4 years from the end of the calendar year in which the first exceedance was ~~recorded~~ **reported**.*

*Where exceedances of any limit values persist during the ~~third~~ **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."*

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

On territorial units, MT can support the omission of NUTS levels and the introduction of the term **covering at least the air quality zone**, as well as the new text on informing the CION on which territorial unit is being used.

Concerning the second paragraph of Article 9(2), MT supports the PRES text, however, would appreciate if geographic location is also taken into consideration for such an exemption to provide Air Quality Plans for ozone. As already communicated during past WPEs, MT does not have any major industrial activities that generate ozone precursors, and the majority of its ozone is transboundary, which ultimately, is of concern in MT. In this context, we believe that in such cases, MS should also be exempt from establishing AQPs for ozone when there is evidence that the geographical location of the MS is a considerable parameter. Below proposed amendments refer:

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

MT also supports para 3 of Article 19(2) as proposed.

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

As highlighted in previous WPEs MT is in favour of allowing flexibility when it comes to using different kinds of NUTS levels. The proposed text does not really provide any form of flexibility as MS have to monitor the average exposure reduction obligation for at least NUTS 2.

Can the Presidency clarify whether the text proposed is also allowing for MS to monitor at NUTS 1 level as it is our understanding that NUTS 2 or beyond can be used under this Article?

The proposed text as is, is not preferred by MT, and we would rather opt to keep the CION proposal, however, in the spirit of compromise we are proposing the following text to allow for more flexibility:

*'3. Where in a given territorial unit ~~covering at least NUTS2 level~~ covering either NUTS 1 or NUTS 2 level, the average exposure reduction obligation laid down in Section 5 of Annex I is exceeded, Member States shall establish air quality plans for ~~those that~~ 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. Those 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.'*

## **INTERVENTION ROUND 2 CHAPTER V: INFORMATION AND REPORTING**

### **A. Article 22: Public information**

MT has no additional input to provide on Article 22, other than one minor cosmetic addition for clarity. On Article 22(1), indent (a) would be better understood if laid down as follows:

*'(a) air quality in accordance with points 1 and 3 of Annex IX'.*

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

### **A. Article 27: Access to justice and B. Article 28: Compensation for damage to human health**

Following the WPE and the clarifications provided by the CION, CLS and the position of several MS, MT would like to propose the complete deletion of both Articles as they go above and beyond what is required under the Aarhus Convention.

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

MT would like to thank the PRES for the explanation provided on the transposition dates and dates of entry into force and believes that the explanation provided is sufficient. As it was also clarified by the CION, Article 31(1) refers to new articles that this recast has amended which will be transposed within 2 years from entry into force of the Directive, whereas Article 32 refers to articles that have not been amended by this recast, which would apply the day after the transposition of the other articles. As clarified further by the CION, such articles have not changed and therefore there is no need for an actual transposition as they already apply under Directive 2008/50/EC. To echo other MS concerns, MT would also appreciate if the transposition date of the new articles is extended to at least 3 years from entry into force, to allow enough time for the setting up of new monitoring requirements, inter alia.