

GERMANY

Comments following WPE 18/19.9.2023

Air Quality Directive: Proposal for a Directive of the European Parliament and of the Council on ambient air quality and cleaner air for Europe (recast) - Information from the Presidency

1. German negotiation goal/general tenor of guidance

Maintain scrutiny reserve, voice comments and unresolved questions, respond to steering note from the Presidency, share general position.

In the new air quality directive, it is essential that, as with climate action, the EU institutions and the member states bear joint responsibility for compliance with future limit values. The proposed air quality limit and target values cannot be reached without sufficient efforts in terms of extending ambitious and, at the same time, implementable emissions reduction requirements at EU level. In emissions legislation, we need to take into account both the health, social and economic impacts and the balance between costs and benefits. This will ensure the coherence of the measures and proposed legislation both at the various administrative levels and in the various sectors.

2. Comments

Germany maintains its general scrutiny reserve.

Horizontal Changes

The added flexibility with regard to the definition of the regions for AERO (Article 4(28)) is welcome. However, Germany finds that limiting the exception to 1,000 km² is too narrow. (Note: Saarland, a small German federal state, has an area of approx. 2,600 km².) The area should be raised to at least 3,000 km² or alternatively it should be possible to group units with neighbouring NUTS 1 units without a limit on size. It should be possible for multiple NUTS 1 units (in Germany this is the federal states) to make up a region. In other words, multiple NUTS 1 units should be able to be brought together as a region as long as the total area is below the NUTS 0 level.

The inclusion of lead in the appropriate parts of the document, as noted by Germany at earlier Council Working Party sessions, is also appreciated.

Article 3

- The **joint responsibility** now derives indirectly from Article 3 (2) and 3 (4). This is a step in the right direction. However, joint responsibility for ensuring achievement of the future limit values should be explicitly enshrined in the text. Germany is now developing draft language that will be submitted following the session.
- Germany agrees with the change in Article 3 (2).
- Article 3 should be expanded to include protection of ecosystems. Germany proposes a new Article 3 (2):

“Concerning the adverse effects of ozone on ecosystems the latest scientific findings shall be taken into account. By the time of the 2030 review, the change from the AOT approach to the POD approach should be considered for risk assessment. To develop a critical value based on the POD approach, supporting scientific studies are necessary. Where appropriate, this should be aligned with the requirements of Directive 2016/2284/EU, Article 9, respectively Annex V.”

Article 4

- On (13):
The black carbon definition should be revised again to take transmission into account.
- On (14): The introduction of an upper limit defining the size range of ultrafine particles is welcome. As a follow-on change, the last part of the sentence, “and for a size range with no restriction on the upper limit”, should be deleted.

In addition, we request review of whether the term “electrical mobility diameter” or simply “diameter” should be used instead of “aerodynamic diameter” because, based on available findings, UFPs cannot be aerodynamically analysed.

- Include definition of “modelling application” according to CEN-TC264-WG43:
(41) *“modelling application means application of a modelling system. The modelling system is a chain of models and sub-models, including all necessary input data, and any post-processing.”*

Article 5

We welcome the clarification in (g).

Annex II Section 1 on Article 7

It is unfortunate that Germany’s suggestions to include mandatory modelling in the planning in Article 7 at least every 5 years have not yet been incorporated. This would offer a basis for inferring the representativeness of fixed sampling points, which plays a major role in multiple parts of the draft directive (Annex IV B 2 (g)). It would make annual modelling in the case of an exceedance of limit or target values obsolete (Article 8 (3) and 8 (5)). By shifting the modelling obligation to

Article 7, the modelling results would flow into planning monitoring networks and determining the representativeness areas IN ADVANCE, i.e. review of whether other regions with exceedances are present that are not covered by sampling points would not be triggered for the first time in response to an exceedance of limit or target values (see Article 8 (5) first draft). Following our proposal would therefore guarantee assessment covering all relevant areas.

Article 8

See comments on Article 7. Germany has made several comments on this issue and made it clear that annual modelling will primarily give insight into meteorological effects. For this reason, mandatory annual modelling is not effective.

Article 9 and Annex III, IV and VII

- In Germany's view, it is unclear whether indicative measurements as defined here can be a sufficient alternative source of information to assess exceedances because spatial and temporal data are generally limited. Scrutiny reserve.
- The directive needs additional clarifications with regard to determining spatial representativeness (see Annex IV B 5). Determining the spatial representativeness of sampling points plays a crucial role in the draft directive and must be described in much greater detail. The FAIRMODE WG8 has already published a description of the issue. It includes a description of suitable methods (modelling, etc.). In the view of Germany, representativeness should be determined on the basis of the annual average concentrations. Appropriate metrics need to be established for pollutants that only have short-term values, e.g. ozone.

Annex IV

A 1

As a clarification or follow-on change after deletion of the clause in B 2, add the following to (a) (i):

“If there is a monitoring obligation in accordance with Article 8(2) for short-term and long-term limit values established in Table 1 of Section 1 of Annex I, both have to be assessed at the same sampling point.”

Annex IV 5

B 1 (a) (i)

Delete “for a period which is significant in relation to the averaging period of the limit value(s)” in connection with its new inclusion in Annex IV A 1. Otherwise there would be a risk that short and long-term values could be taken at different sampling points.

B 1 (g)

Question: Does this mean areas not covered by the measurements and their representativeness areas?

Is the focus here on additional model simulations or on areas of representativeness derived from them?

B 5 (d)

Appropriate tolerance levels should be defined pollutant by pollutant in the directive.

B 5 (e)

We welcome this proposal.

C (a)

As a rule, the minimum distance to buildings of 1.5 m should be maintained. However, in some situations (e.g. when performing measurements on narrow streets/sidewalks), it should still be possible for measurements to be taken at a shorter distance. In the draft directive, there is otherwise no need for sampling points that explicitly represent the air quality at the building line. This is why we propose replacing the text of (a) starting from the word “or...” with the following language:

“If the minimum distance of 1.5 m away from buildings cannot be achieved due to local conditions (e. g. limited space in the street and sidewalk area), a minimum distance of 0.5 m to buildings is permitted;”

Article 10 Annex IV:

- The siting of supersites refers to ANNEX IV. In measuring ammonia at rural supersites, it is important that the sampling points not be located directly next to major agricultural NH₃ emission sources. This is currently not yet covered in ANNEX IV. This should be added to Article 10 (2). Suggested language:

“In addition, rural supersites shall be sited more than 5 km away from major agricultural emission sources to avoid interference with ammonia measurement at those sites.”

- NH₃ measurements are mandatory (fixed measurements) for rural supersites and are only recommended (fixed or indicative measurements) for urban supersites. This is sufficient from an ecosystem standpoint. However, because NH₃ is also important for the occurrence of secondary inorg. PM in urban areas, mandatory measurement would be expedient if

the supersites are meant to support general process understanding and model simulations.

Article 11 - Annex V

A Table 1: Clarification of the requirements to calculate model quality. The content of the different scales should not be intermixed. Therefore we suggest adding footnote 2:

“When calculating the modelling quality indicator of modelling applications, the scale of the modelling application has to match the spatial representativeness of sampling points.”

A Table 2: Clarification of the requirements to calculate model quality. The content of the different scales should not be intermixed.

“When calculating the modelling quality indicator of modelling applications, the scale of the modelling application has to match the spatial representativeness of sampling points.”

B Table

- The short-term values should be deleted, because they are defined in Ba. Criteria for aggregation of data for ambient air quality assessment.
- The data coverage for “special” measurements/new pollutants at supersites (such as levoglucosan) should be lower than 80%. (Note: NW proposes 70%.)

C Addition to ensure that compliance with limit values can only be reported if the data quality objectives are met.

“In contrast to that, compliance with the relevant short-term limit and ozone target values (i.e. less than 19 days for ozone) shall only be reported when data quality objectives are fulfilled.”

Annex VI

13: Unfortunately, the title of DIN EN 16909 does not explicitly mention the particle size under consideration (PM_{2.5}), unlike e.g. EN 16913:2017 for ion measurement. In the scope of application, however, EN 16909:2017 exclusively addresses the EC/OC measurement in PM_{2.5}.

Add “in PM_{2.5}” here, as EN 16909:2017 is only validated for EC/OC measurement in PM_{2.5}. Since this standard is mentioned with regard to the provisions for PM_{2.5} in Annex VII, the addition makes sense, also along the lines of the following point 14 of Annex VI: “14. Reference method for the sampling and measurement of NO₃⁻, SO₄²⁻, Cl⁻, NH₄⁺, Na⁺, K⁺, Mg²⁺, Ca²⁺ in PM_{2.5} in ambient air”

16: Propose addition referring to specific norms/technical standards:

Reference method for the measurement of particle number concentrations

In the absence of a CEN standard method for particle number concentrations of atmospheric aerosol, Member States shall use the method described in CEN/TS 16976 :2016: 'Ambient air - Determination of the particle number concentration of atmospheric aerosol'.

Reference method for the measurement of particle number size distribution

In the absence of a CEN standard method for particle number size distribution of atmospheric aerosol, Member States shall use the method described in CEN/TS 17434 :2020: 'Ambient air - Determination of the particle number size distribution of atmospheric aerosol using a Mobility Particle Size Spectrometer (MPSS)'.

Article 13 and Annex I

- Germany has reservations with regard to the level of ambition and the date from which compliance with the new mandatory limit and target values and exposure reduction obligations is required.
- On the exposure reduction obligation: The exclusion of 2020 as base year for the respective target years is a step in the right direction. As a change, however, it does not go far enough, in particular for fine particles.
 - Particulate matter:
 - Regarding the exposure reduction obligation for particulate matter, we first have several comments about the **approach**:
 - The average exposure reduction obligation should continue to reference a **fixed representative base year**.
 - With a view to the consistency of the existing regulation and to ensure that any reduction measures taken earlier during the period from 2010 to 2020 are rewarded and any reductions achieved before the cut-off date at the beginning of 2030 can also be counted (over and above the existing obligation), it would also seem **advisable** to set the reduction obligation **based on the three-year average 2008-2010 already in force** – taking into account, of course, the existing obligation. This would be consistent with the logic that also applies in the area of climate change mitigation, where new regulations also reference a fixed base year in the past.

- The **percentage by which the average exposure must be reduced** for each decade should continue to be differentiated **depending on the pollution level in the base year** (i.e. if the pollution level is higher initially, the target percentage would have to be higher).
 - In addition, the National Clean Air Programmes under the NEC Directive also make an important contribution to meeting the reduction obligation. It could be clarified in the Air Quality Directive that the Member States must also consider the extent to which additional national measures are required to comply with the exposure reduction obligations when drawing up their National Clean Air Programmes.
- NO₂:
- The framework conditions should be designed along the lines of the above-mentioned changes to PM_{2,5} exposure reduction.
- In the case of this kind of design, AERO should also be included in Article 18 to take into account special situations in urban and industrial regions.

Annex I Section 2 Letter C

To main consistency with other limit and target values (Annex I Section 2 B), the table should only list exceedance days, not the 99th percentiles. Otherwise data quality targets would need to be defined for percentiles. We are therefore requesting deletion of the percentiles, so that the text reads as follows in footnote 1: *“not to be exceeded on more than 3 days per calendar year”*.

Annex I Section 4

Unclear formulation (“or”). Would it be at the discretion of the Member States?

Article 16

We welcome the new Article 16 (4) – because emissions from natural sources cannot be reduced by the MS.

Article 17

We welcome the new Article 17 (4) – because the use of sand or salt on roads is important for road safety.

Article 18

The position of the German government on the details of the postponement of the attainment deadline outside of the scope the following comments is not final. The following comments are being made independently of the comments on Article 13.

General: Added flexibility with regard to exceptions is an important main point for Germany. From Germany's point of view, this version is a step in the right direction, however it is not sufficient. In addition, fulfilling exposure reduction obligations should also be included in Article 18.

On the requirements for postponement: postponements should also be possible in the case of adverse urban planning conditions. There are urban planning conditions that create considerable barriers to compliance with the future limit values, e.g. motorways used for long-distance, international transport, urban canyons that stymie air circulation or ports. Blocking off these motorways or prohibiting diesel or heavy goods vehicles or even modifying the development of the area is neither appropriate nor proportionate.

The reasons for exceptions should therefore be made more general – postponement is allowed if compliance with the limit values is not possible with appropriate and proportionate measures. Follow-on postponements could also be formulated accordingly.

Article 18 (1): The fact that postponements are no longer limited to a single postponement and a period of five years is a step in the right direction, however the time frame is still too narrow in Germany's opinion. The language "unforeseen exceptional circumstances" is also too narrow. It is not clear why the circumstances have to be unforeseen, as pointed out in our first comment. It is also thinkable that the possible and reasonable measures simply are not sufficient to achieve compliance with the limit values within five years. The suggestion here is to add the following language:

"... that it can be demonstrated that compliance could not be achieved with reasonable and proportionate measures".

Article 20

The general reference to limit values or target values seems inappropriate here as short-term action plans are exclusively triggered by exceedances of alert thresholds. They are smog alert plans with the aim of short-term reduction in the event of peak concentrations. In contrast, limit and target values calculated over the course of a year (average values with an allowed number of exceedance days/hours) cannot be effectively addressed with short-term measures like those of smog alert plans.

Article 22 and Annex IX

- We welcome the changes in Article 22 on public information.
- We propose a reference to Annex IX point 1 (a) in the first sentence to reinforce that the air quality index can only cover measurements/pollutants that must be measured and additionally are appropriate for up-to-date data exchange.

“in accordance with Point 1 (a) of Annex IX”

Article 27

- Making the language consistent with the text of the IED proposal is generally good to avoid lack of clarity caused by inconsistencies in EU law.
- However, the ECJ jurisprudence differentiates with regard to the provisions for access to justice on the basis of cases that fall under Article 9 (2) of the Aarhus Convention (AC) and those that fall under Article 9 (3) AC. Access to justice according to the IED falls under Article 9 (2) AC, while access to justice in regard to air quality plans has, to date, been oriented to the standards of Article 9 (3) AC.
- If the intent is to maintain this distinction,
 - the standard of assessment (currently in (1): “to challenge the substantive or procedural legality”) would have to be limited to the infringement of environment-related laws and regulations and
 - paragraph 2 would have to be deleted.

Article 28

- Germany maintains its scrutiny reserve with regard to this provision.
 - Germany takes a very critical view of the compensation provision set out in Article 28 (1), as it is not compatible with the basic rules of liability law, in particular official liability. It lacks a link to provisions protecting third parties, culpability on the part of the obligated authorities and a causal link between the violation and the occurrence of the damage. These criteria would have to be added if the provision is not to be deleted entirely. Strict liability would also not be appropriate for area-based air pollution control. Article 28(1) is also linked to breaches of duty – e.g. failure to draw up an air quality plan (Article 19(1) to (4)) – for which the causal effect of specific harm to human health is generally unlikely to be verifiable.
 - What is the Commission’s view of the ECJ’s judgment of 22 December 2022 (C-61/21) which states that legal obligations on air quality are not subject to third-party protection?
 - Germany supports France’s request to the Legal Service, presented during the Council Working Party meeting, to provide a more

detailed explanation of the correlation of Article 19 et seq. with Article 28 (Compensation), including potential implications.

- Because ozone only has target values, Article 19 (2) should not be referred to in Article 28.
- Germany highly appreciates the deletion of paragraphs 2 to 4. These deletions must absolutely be retained.
- Paragraph 5 must still be deleted. It continues to be unclear what this provision means. The requirement to effectively implement EU law applies regardless.

Article 29

- Germany highly appreciates the fact that the revision by the Presidency included adapting the penalty provision, which contained unimplementable requirements for the establishment of penalties in national law, to match the corresponding provisions in the General Approach to the IED proposal, thus granting the MS greater flexibility in implementing the penalty provisions.
 - Coherent penalty rules in secondary EU law primarily make it easier to implement enforceable solutions in national law and thus strengthen the intended effects of the penalties. In light of this, we would appreciate timely review of whether workable compromises in other dossiers could still be incorporated in the specific language.
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Council of the European Union
General Secretariat

**Interinstitutional files:
2022/0347 (COD)**

Brussels, 26 September 2023

WK 12105/2023 ADD 1

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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 18 and 19 September 2023 - comments from delegations

Following the call for comments on the above set out with WK 11825/2023, delegations will find attached comments from DE, LV and IT.

ITALY

Proposal for a Directive on ambient air quality and cleaner air for Europe (recast)

Presidency compromise text 2022/347 (COD)

WPE 18-19 September 2023 – Follow up

Article 1

In paragraph 1 we suggest deleting the words "air quality" from the first line.

Rationale: The proposal is to avoid the repetition of "air quality" three times in two lines, taking into account that, with reference to the meaning of the paragraph, the word "provisions" seems to be sufficient.

Article 3

In paragraph 1 we suggest to postpone the first review to take into account that the directive will be transposed by Member States presumably in 2027 and it will be necessary to have at least three years of implementation of the new air quality standards before reviewing the text. We propose that the first review should take place "3 years after the entry into force of the new air quality standards" or "by December 31, 2033."

In subsection 2 (c) we ask to delete the word "complementary" which seems unclear.

Article 4

Definition 13 we suggest to delete the term "graphitic".

Definition 14 seems to contain inconsistent guidance on the upper limit of UFPs (Ultra Fine Particles): the initial part of the text refers to an upper limit of 100 nm while at the end it says that there are no upper limits. The text should be harmonized choosing either 100 nm or no limit; according to us the first solution (<100 nm) would be preferable.

Regarding the lower limit, indicating 10 nm would be useful for having a dataset of comparable data on UFP over the territory of EU; while additional measurements with lowerer diameters could be useful for scientific purposes.

We suggest therefore the following formulation for the definition:

'ultrafine particles' (UFP) means the particles number concentrations with a diameter less than or equal to 100 nm measured as the particle number concentrations per cm³

Additional technical specifications can be introduced in Annex VII, Section 3, A – Objectives:

Measured UFP should have at least a minimum diameter of 10 nm; if possible, additional measurements can be done of particles with lower diameters to improve knowledge of the mechanisms of their formation (or for scientific purposes).

In any case, delete the word “aerodynamic” from the definition because it is not correct.

Definition 28 appears difficult to read, we suggest its simplification. One possibility would be to stop the definition at the second line, after the words territorial unit. Then as point 28a a definition of "territorial unit," an expression that is repeatedly taken up in the text of the directive, could be inserted, which would then allow the term NUTS1 to no longer need to be mentioned. The final part added in bold, since it is dispositive and relates to a specific criterion for the application of the average exposure indicator, should be moved to the articles.

Proposed rewording:

(28) ‘average exposure indicator’ means an average level determined on the basis of measurements at urban background locations throughout the **given** territorial unit.

(28bis) “territorial unit” means a portion of territory used with the aim of determining the average exposure indicator; such a unit can be at NUTS 1 level, as described in Regulation (EC) No 1059/2003, **or a part thereof**; if there is no urban area located in that territorial unit, it can contain also rural background locations, reflecting the population exposure, in order to check whether the average exposure reduction obligation and the average exposure concentration objective for that territorial unit have been met.

Definition 37 and Article 20 (action plans): we suggest to delete the word 'emergency', because these are actions with short-term effect rather than actions in response to emergency situations.

Article 5

Introduce in Article 5(d) a reference to Annex V.F, which is not mentioned in the text of the directive.

Article 8

It seems to be an inconsistency between paragraphs 2 and 3 in which the term “level” refers to different concepts. In paragraph 2, reference should be made not to the term *level* but to the classification defined in Article 7. We propose the following amendment:

2. In all zones classified as over the assessment thresholds but below the respective limit values established for those pollutants ...

4. In all zones classified as below the assessment thresholds established for those pollutants...

We suggest to delete the second sentence of paragraph 5.

Rationale: The provision in subsection 5a would seem to make the specification in subsection 5 second paragraph "if modelling application..." unnecessary. The Commission will provide details on how to use model results for air quality assessment; therefore, it is unclear why focus on the case of this paragraph.

In paragraph 5a (a) we suggest replacing the word "potential" with "any" or "possible" and to change the word "may" with "shall":

*The Commission **shall** provide, by means of implementing acts, further technical details for...*

That said, we continue to argue that the directive should explicitly specify that the use of the models for determining compliance will be possible only after the issuance of the guidelines (or delegated acts) referred to in subsection 5a.

Article 9

In order to assure consistency between paragraphs 2 and 3, also in Paragraph 2 "for fixed measurement" should be inserted after the words "the number of sampling points".

Article 10

As part of the measurements of additional parameters provided for in the monitoring supersites, we would like to reiterate the proposal to also consider the determination of ozone flux using the PODY, for scientific and cognitive purposes; initiating this type of monitoring could be useful in order to have a sufficient database to be able to consider its use as a standard for the assessment of ozone damage on vegetation in the future.

Article 12

For the purpose of the correct wording of the paragraph, it seems necessary, as already reported for Article 4, to include the definition of "territorial unit."

We request the deletion of paragraph 4, which, even in the new wording, continues to be a paragraph of principle, as confirmed by the reference to Article 1. The content of the subparagraph appears inconsistent with the contents of Article 12.

Article 13 and Annex I

Again, it appears necessary to introduce the definition of territorial unit for the operation of the article.

We express our concerns about leaving 2030 as the year of entry into force of the new limit values. Once the directive is approved, Member States will have 2 years to transpose the act into their national laws. At best, this will be the end of 2026. Therefore there will be not enough time to see the effects on concentrations of the planned actions.

In Annex I, Table 2: Change the status of the standards set for heavy metals and benzo(a)pyrene which have to remain target values until the year of entry into force of the whole set of new air quality standards.

Rationale: It appears from the current wording of the text that the limit values for benzo(a)pyrene and metals will come into force when the directive enters into force, leaving Member States no time to adopt dedicated plans for this purpose. In fact, it is pointed out that until now, although the target value was equal to the future limit value, planning responded to cost-proportionality dynamics that will disappear with the new directive. It is considered that Table 2 should be reconnaissance of current standards and not innovative.

Article 18

We confirm the doubts previously expressed about paragraph 1(c): we propose to delete this point or at least to add that this provision could be effectively implemented only if and when it will be available a shared methodology for assessing the health effects of the extensions granted.

Regarding (d), we point out the difficulty of providing for the use of resources of a Union or national nature in air quality plans, which in most cases are at the regional or local level. In addition, the terms "additional" and "mobilized" should be better specified.

The last paragraph of subsection 1 provides that, in the case of unforeseeable exceptional conditions, a period of two additional years may be obtained to comply with the requirements of the directive to achieve compliance with the limit values. In view of the fact that the reasons for obtaining the 5-year derogation are related to structural unfavorable conditions (weather climatic, orographic, or transboundary), the possible additional period should not be related to exceptional conditions but to the documented continuation of the unfavorable conditions.

We suggest a different formulation for the last sentence of paragraph 1:

Where exceedances persist after the postponement, Member States may request **further a second postponements for an appropriate period for a maximum additional period of 2 years, provided that it can be demonstrated the persistence of the unfavourable conditions and a decreasing trend of emissions in the related area** ~~provided that it can be demonstrated that unforeseen exceptional circumstances have occurred preventing compliance~~. The same conditions shall apply as in the first postponement.

Article 19

It is suggested to simplify the wording of the new paragraph in subsection 2; the following amendment is suggested:

“However, Member States may refrain from establishing such air quality plans for ozone when there is no significant potential, considering national geographical and meteorological conditions **and the costs of measures**, to address the exceedance. Where an air quality plan is not established, Member States shall provide the Commission with a detailed justification, including information on the

analysis that has been conducted and information on what alternative actions the Member State will take with the aim of reducing ozone concentrations “.

We believe that the timeframe indicated for the preparation of the plans are not realistic; we reiterate the proposals already made at previous meetings, which take into account the real timeframe needed to prepare and approve a plan (including the Strategic Environmental Assessment) and to see the effects on concentrations of the reduction measures. We therefore ask that in the text of paragraph 1 "recorded" be replaced by "reported".

We therefore suggest to go back to the previous formulation in paragraph 1 and substitute “recorded” with “reported”:

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 years after the calendar year during which that exceedance of any limit value was ~~recorded~~ reported. 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 5 years from the end of the calendar year in which the first exceedance was ~~recorded~~ reported.

Article 20

Paragraph 1, second sentence: This could be made consistent with Article 19 by referring to the "cost of the measures" rather than economic conditions: *taking into account national geographical, meteorological conditions and costs of measures*

Paragraph 2, after the second sentence: We propose to consider particulate matter in the same way as ozone in all cases where PM has a relevant secondary component and it is subject to adverse meteorological conditions; we suggest to add the following sentence:

The previous provisions applies also to particulate matter if it is subject to adverse meteorological conditions and if its secondary component is prevalent.

Articolo 24

We believe that the following annexes should not be amended by delegated acts: Annex I, Annex II, Annex V, Annex VIII and Annex IX.

Article 29

Paragraph 3: With reference to the last sentence of paragraph 3, we confirm the request to delete the provision given the difficulty of communicating all the regulatory provisions in the national system regarding sanctions. In most cases the sanctions applicable to the violation of the directive are already provided for in national legal systems and the work of collating them does not seem simple.

Annex I - Air quality standards

- Section 4(A) (alert thresholds).

For PM, the statement "for three consecutive days or less for PM₁₀ and PM_{2.5}" seems to leave room for different applications, and a precise period would be set. We would prefer to delete the expression "or less".

- Section 5 (average exposure indicator)

Regarding the years to be taken into account for the calculation of the average exposure indicator we believe that both 2020 and 2021 should be excluded. Therefore we suggest to consider, as the base triennium, the period 2017-2018-2019 or a two-year annual average calculated on 2019 and 2022.

- Note 1 to table 1: *"the first calculation band for each single day will be the one between 17:00 of the previous day and 01:00 of the same day"*. In analogy with the "User Guide to xml" (see page 328) it would be advisable to specify whether the time refers to the start/end time in order to avoid errors and confusion. In this case it would be *"the first calculation band for each single day will be between 17:00 (start time) of the previous day and 01:00 (end time) of the same day"*.

- Section 2, A., with reference to the AOT 40 and to note 1 of table B, it would be appropriate to specify whether the time refers to the start/end time. In this case the sentence *"using only the hourly values detected every day between 8:00 and 20:00"* would become *"using only the hourly values detected every day between 8:00 (start time) and 20:00 (end time)"* (see also IPR guidance page 77).

Annex II, Section 2

Assessment threshold for NO_x: change into an integer number for consistency with the NO_x critical level

Annex VI

[Section A, points 3, 4: bear in mind that the indicated method on PM (EN 12341:2014) will be probably updated soon since the new technical specifications has been recently approved (August 2023)].

Section A, point 15: The method indicated as a reference is not adequate to be used because diffusive samplers introduce a high uncertainty related to the amount of sampled ammonia. Since there is not a gold standard on this pollutant we would prefer to delete point 15 in Section A. Ammonia should be added in point 16.

In general, for all additional pollutants for which no standard methods are available, we would prefer that no method is indicated in the text of the directive.

Section B, point 1, last paragraph: *“In that event, the results achieved by such other method must be corrected to produce results equivalent to those that would have been achieved by using the reference method”*.

Proposal for amendment: insert “if the equivalence study results require it” and modify as follows: *“In that event **and if the equivalence study require it**, the results achieved by such other method must be corrected to produce results equivalent to those that would have been achieved by using the reference method”*:

Rationale: The last paragraph requires to correct the PM data in case the alternative method demonstrate a consistent relationship to the reference method; it seems it has not been taken in consideration the case in which the alternative PM method gives equivalent results without the need of correction.

Moreover, it's pointed out that the Commission's guidance on the demonstration of equivalence, mentioned in the next point 3, does not treat the issue, related to the fact that the alternative method itself could demonstrate the equivalence, after application of different correction factors, related to the typology of sampling site or related to the seasons and, therefore if it is necessary to apply an average corrective factor or not.

Also in point 4, neither the Directive nor the guidance on the demonstration of equivalence are clarifying the criteria and the terms with which retroactive data correction could be applied (i.e. with which correction factor, for how long in the past, if for all site typologies in which it has been used the same method of equivalence).

Section D, second paragraph, last sentence: evaluate if, to be more clear, it would be better to include “In this case supplementary tests at specific site conditions could be required by competent authority and bodies of a second Member State”

Rationale: It might be necessary to implement additional test to demonstrate that an instrument, already certified as equivalent in one Member State country, is achieving the quality objectives also in the ambient conditions e specific site in another Country, which have not been tested during the certification process.

Annex VIII

Section B: Add a reference to measure in order to reduce emissions related to agricultural and livestock activities.

LATVIA

Comments on Ambient Air Quality Directive compromise text (Doc.12848/23)

Additionally to the comments made at the working party meeting on 18-19 September, we would like to provide further written comments in relation to the Presidency's compromise text.

Article 10, Paragraph 4:

We believe that mandatory requirements for the establishment of one supersite per 10 million inhabitants and 100 000 km² is not reasonable in relation to smaller Member States. We believe that **it will create an uneven coverage of monitoring sites across the territory of the EU and the impact on society will not be adequately reflected**. For example, three neighboring countries with a total population of 10 million inhabitants will need to establish three supersites since every member state has to establish at least one monitoring supersite. At the same time bigger countries with 10 million inhabitants and similar territorial area will have to establish only one monitoring supersite

Therefore, we propose to delete the last sentence in para 4.

Drafting suggestion:

4. A Member State may establish, with one or more neighbouring Member States, one or more joint monitoring supersites to meet the requirements set out in paragraph 1. ~~This does not affect the obligation of each Member State to establish at least 1 monitoring supersite at an urban background location and 1 monitoring supersite at a rural background location.~~

Article 18, Para 1:

In Latvia biomass is widely used for heating purposes in households. Up to 80% of total fuel used in households is solid biomass fuel (the share decreases in latest years). The use of biomass is considered to be a climate-friendly solution. Nevertheless, it may cause air pollution by fine particles. Biomass use for heating is a big source of benz(a)pyrene and PM_{2,5} emissions in Latvia as well as other EU countries where biomass is used for heating.

According to the REPower EU, European Commission is planning to phase out EU's dependency on fossil fuels and supports the uptake of renewables (including biomass) across various sectors of the economy, such as heating sector, industry.

Due to the current geopolitical situation the prices of natural gas and electricity have increased. Therefore, many citizens, as well as small and medium businesses face economic challenges. Generally, in energy and industry sectors in Latvia natural gas is replaced with biomass, since it is easily available in-country fuel that is also financially supported by funding programs.

There are many energy-poor and vulnerable households that spend a high share of their income on energy bills. To facilitate the replacement of old heating appliances with newer ones **there is a need for additional investments and a sufficient transitional period**.

Drafting suggestion:

Article 18

Postponement of attainment deadline and exemption from the obligation to apply certain limit values

1. *Where, in a given zone, conformity with the limit values for particulate matter (PM₁₀ and PM_{2.5}), **benz(a)pyrene** or nitrogen dioxide cannot be achieved by the deadline specified in Table 1 of Section 1 of Annex I, because of site-specific dispersion characteristics, orographic boundary conditions, adverse climatic conditions, transboundary contributions, **high proportion of low income households, risk of energy poverty and energy security**, a Member State may postpone that deadline for that particular zone by the period justified in the air quality plan to be drawn up by the Member State and for maximum of 5 years, if the following conditions are met:...*

Article 24:

We believe that requirements regarding the monitoring are essential elements, however such changes potentially could increase costs and the administrative burden. Thus, the minimum number of sampling points, as well as requirements regarding pollutants that should be measured at supersites should be determined by the ordinary legislative procedure.

Drafting suggestion:

Article 24

Amendments to Annexes

*The Commission is empowered to adopt delegated acts in accordance with Article 25 amending Annexes ~~II~~ **III** to IX to take account of technical and scientific developments regarding assessment of ambient air quality, information to be included in air quality plans, and public information.*

However, the amendments may not have the effect of directly or indirectly modifying either of the following:

(a) the limit values, ozone target values and long-term objectives, critical levels, alert and information thresholds, average exposure reduction obligations and average exposure concentration objectives specified in Annex I

(b) the dates for compliance with any of the parameters referred to in point (a).

(c) minimum number of sampling points as well as requirements regarding pollutants that should be measured at supersites.

Article 32:

Member States will need sufficient time and funding for acquiring new equipment, setting up appropriate procurement procedures, adapting existing legislation to fulfil the requirements regarding the measurements of ultrafine particulate matter, establishment of monitoring supersites and measurements of new pollutants that haven't been measured before. Therefore, Latvia strongly supports additional time for implementing these new requirements.

Drafting suggestion:

Article 32

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Article 4(1), (3) to (12), Article 4(15), (17), (20), (23) and (31) to (35), Article 13(4) and (5), Article 14, Article 16(3) and Article 22(3) shall apply from [the day after the date in the first subparagraph of Article 31(1)].

Article 9(9) and Article 10 shall apply starting from 31 December 2028.

Annexes

Annex I:

Latvia supports most of the standards included in Annex I. Nevertheless, **we can't accept annual average limit values set for PM₁₀ and PM_{2.5}** as the implementation will require more time and additional financial resources. We propose to set additional derogations (See comments on Article 18).

Deadlines for the attainment of *Average exposure concentration objective* in Section C are needed , since such deadlines are not mentioned in the text.

Drafting suggestion:

SECTION 5 - AVERAGE EXPOSURE REDUCTION OBLIGATION FOR PM_{2.5} AND NO₂

C. Average exposure concentration objectives *to be attained by 1 January 2050*

The average exposure concentration objective shall be the following level of the AEI.

<i>Pollutant</i>	<i>Average exposure concentration objective</i>
<i>PM_{2.5}</i>	<i>AEI = 5 µg/m³</i>
<i>NO₂</i>	<i>AEI = 10 µg/m³</i>

Annex III, 2. Point sources:

It is not clear how requirements regarding the monitoring in the framework of the Directive 2010/75/EU correspond to the requirements set in Annex IV and the general criteria for situation of monitoring stations: *Sampling points directed at the protection of human health shall be sited in such a way as to provide data on concentration levels in other areas within the zones which are representative of the exposure of the general population.*

Additionally IED doesn't include all industrial installations that can cause air quality problems (for example, ports)). The same is mentioned in Annex IV point 2 (a) - (b) and (f) and applied for a wider range of installations - *industrial sources, ports and airports*". It is not clear in which cases sampling points should be installed to measure the impact of industrial sources? Is it a mandatory or a voluntary requirement?

Drafting suggestion:

*"For the assessment of pollution in the vicinity of point sources, the number of sampling points for fixed measurement shall be calculated taking into account emission densities, the likely distribution patterns of ambient-air pollution and the potential exposure of the population. Sampling points **measuring the contribution from industrial sites or other sources such as ports or airports, if they comply the requirements set out in this Directive, may be considered in determining compliance with the minimum number of sampling points. However, in the cases where there is only 1 sampling point required, this shall be in the area with the highest concentrations to which the general population is likely to be directly or indirectly exposed.** When possible, sampling points may be sited such that the impact of emission reductions on concentration levels in ambient air due to the application of BAT (Best Available Techniques) as defined by Directive 2010/75/EU can be monitored."*

Annex IV:

We propose to add a reference to "*average exposure reduction obligation*", "*average exposure concentration*" as well as "*alert threshold*". We believe that compliance with these thresholds, targets and values won't be evaluated in the areas where members of the public don't have access to industrial sites:

Drafting suggestion:

*"2. Compliance with the limit values and ozone target value **as well as average exposure reduction obligation, average exposure concentration and alert threshold** directed at the protection of human health shall not be assessed at the following locations:*

- (a) any locations situated within areas where members of the public do not have access and there is no fixed habitation;*
- (b) in accordance with Article 4(1), on factory premises or at industrial sites to which all relevant provisions concerning health and safety at work apply;*
- (c) on the carriageway of roads; and on the central reservations of roads except where there is normally pedestrian access to the central reservation."*

Annex VI:

Latvia **expresses its concerns** about the mandatory measurements for pollutants (UFP and BC), which don't have appropriate measurement methods in Annex IV.

Latvia believes that appropriate measurement methods should, however, be included in the proposal or determined separately in implementing or delegated acts. Moreover, the **directive should specify the date by which such delegated or implementing acts must be adopted**. Member states must have clarity on how to measure the substances specified in the proposal.

In Annex VI we propose to replace term “*PM oxidized potential*” with “*oxidative potential of particulate matter*”.

Annex VIII:

In order to reduce the administrative burden, we propose to delete, point 7 d) in Section A, because point 6) a) already requires providing information on measures that will be implemented.

Drafting suggestion:

A. Information to be provided under Article 19(5)

7. Annex 2: Further background information

- (a) climatic data;
- (b) data on topography;
- (c) information on the type of targets requiring protection in the zone, (if applicable);
- ~~(d) —listing and description of all additional measures, that unfold their full impact on ambient air pollutant concentrations in 3 years or more.~~
- (e) **socio-economic information on the related area, in order to promote environmental equity issues and the protection of sensitive groups.**

The same applies for Section B. **Indicative list of air pollution abatement measures**, Point 2. The list of considered measures can be quite extensive, therefore we suggest excluding such requirements, as the inclusion of such information in the action plan creates unnecessary administrative burden. Moreover, information on measures considered and implemented at a national level is also reported within the NEC framework. We don't see the need to duplicate this information in local air quality plans.
