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CONTRIBUTION

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To:	Working Party on the Environment
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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 FR (followed by a courtesy translation) and HU.

FRANCE

Objet : Commentaires des autorités françaises - révision de la directive 2008/50/CE concernant la qualité de l'air ambiant et un air pur en Europe

Les autorités françaises remercient la Présidence espagnole pour le travail mené lors du dernier groupe.

*En préambule, elles souhaitent rappeler que le **niveau d'ambition des seuils proposés par la Commission emporte des implications importantes en matière de surveillance et de gestion** au sujet de la qualité de l'air et qu'il **convient de veiller à l'équilibre d'ensemble du texte indispensable au maintien de l'ambition souhaitée**. Les autorités françaises ont exprimé à plusieurs reprises les **flexibilités attendues** et souhaitent, au regard de la proposition de texte de compromis discutée en groupe, en vue des futurs trilogues et au regard de la position très ambitieuse adoptée par le Parlement européen, **souligner à nouveau auprès de la Présidence ces dernières ainsi que les propositions de formulations associées**.*

Indicateur et obligation de réduction de l'exposition moyenne

Les autorités françaises, à l'instar d'autres Etats membres, demandent que la **définition d'unité territoriale pour l'indicateur d'exposition, et l'obligation de réduction associée, permette la définition d'une zone géographique plus grande que l'échelle NUTS 1** sans que cette définition soit conditionnée à un critère de superficie des NUTS 1 tel que proposé dans le texte de compromis. En effet, les autorités françaises ont indiqué lors du groupe que ce critère arbitraire de superficie permettant d'aller au-delà de NUTS 1, associé à un critère d'influence inter-NUTS1, ne permet pas une gestion suffisamment flexible et surtout équitable de cet indicateur. **Si le besoin d'une échelle géographique plus petite que l'échelle nationale actuelle est souhaité**, tel que rappelé par la Présidence et la Commission, **il est indispensable de trouver une formulation convenant à l'ensemble des Etats membres**. Ainsi, tel que discuté lors du groupe du 15 juin, les autorités françaises proposent de **garder le fait que l'Etat membre puisse définir cette zone en veillant à couvrir a minima l'échelle géographique NUTS 2 tout en précisant que celle-ci ne peut correspondre à l'échelle nationale**. La définition 28 de l'article 4 serait ainsi modifiée : « average exposure indicator' means an average level determined on the basis of measurements at urban background locations throughout **a given territorial unit** ~~the territory of a Member State~~ **including at least territorial unit at NUTS + 2 level as described in Regulation (EC) No 1059/2003 and which cannot go beyond national territory**, or, if there is no urban area located in that territorial unit, at rural background locations, and which reflects population exposure used to calculate check whether the national average exposure reduction obligation target and the average exposure concentration obligation objective for that territorial unit have been met ».

Par ailleurs, les autorités françaises rappellent que **l'approche adoptée dans le cadre de la directive actuelle en ce qui concerne l'exposition moyenne doit être conservée (approche par palier)**. Cette approche, associée à une date d'entrée en application proportionnée, permet de garantir un **traitement plus équilibré de cette question par les Etats membres en tenant compte notamment de la difficulté pour les Etats membres ayant des niveaux d'ores et déjà bas d'exposition à mettre en place des mesures pour aller au-delà**. Elle permet également de **prioriser les efforts des Etats-membres** en ce qui concerne l'atteinte de l'ensemble des objectifs proposés (en particulier les valeurs limites ambitieuses souhaitées pour 2030). Les autorités françaises rappellent ainsi leur proposition émise dans le cadre des commentaires suite au groupe du 4 juillet 2023 pour servir de réflexion et **incitent, à l'instar d'autres Etats membres, de revenir sur cette question notamment dans le cadre d'une nouvelle proposition d'un texte de compromis** :

Réduction de l'exposition moyenne par rapport à l'indicateur d'exposition moyenne d'il y a 10 ans		Année d'application
Concentration initiale en $\mu\text{g}/\text{m}^3$	Réduction en pourcentage	2040
<10 ou = 10	0%	
>10 - = 15	5%	
> 15 - = 20	10%	
> 20	15%	

PM_{2,5}

Réduction de l'exposition moyenne par rapport à l'indicateur d'exposition moyenne d'il y a 10 ans		Année d'application
Concentration initiale en $\mu\text{g}/\text{m}^3$	Réduction en pourcentage	2040
< 5 ou = 5	0%	
> 5 - = 10	5%	
>10 - = 15	10%	
> 15	15%	

Article 7 – régime de surveillance, annexe II – seuils d'évaluation et article 31 - transposition

Les autorités françaises rappellent que la **revue à la baisse des seuils d'évaluation** indiqués à l'annexe II de la proposition de directive conduira à **augmenter de manière conséquente le nombre de zones concernées par des mesures fixes** et donc le nombre de stations sur l'ensemble du territoire. Cette adaptation du dispositif de surveillance, si elle s'inscrit dans la démarche de renforcer la surveillance en matière de qualité de l'air non remise en question par les autorités françaises, doit être **réalisée selon un délai cohérent avec les problématiques liées à la disponibilité du matériel et du personnel compétent** indispensable à l'installation et au suivi des stations.

L'article 32 prévoit une entrée en vigueur des dispositions de l'article 7 le lendemain du jour suivant le délai de transposition indiqué à l'article 31, soit deux ans. **Les autorités françaises considèrent que ce délai de deux ans, bien que standard tel que souligné par la Commission en rappelant les délais de transposition de la directive de 2008 et de 2015, n'est pas suffisant au regard des évolutions plus conséquentes à venir concernant le dispositif de surveillance.** Ainsi, toujours dans l'optique de permettre une mise en œuvre adaptée à l'ambition du texte, les autorités françaises **réitèrent leur demande de porter le délai de transposition de la proposition de 2 à 3 ans**. Cette proposition permet également de maintenir le délai d'entrée en vigueur des dispositions relatives au dispositif de surveillance (article 7 et annexe II en particulier) en même temps que les autres dispositions tout en donnant de la flexibilité aux Etats membres.

Article 8 – Critères d'évaluation

Les autorités françaises soulignent à nouveau que **l'utilisation de la modélisation doit être limitée en tant qu'appui à la détermination de la représentativité spatiale** des stations ainsi qu'à **l'obtention d'informations complémentaires permettant, entre autres, d'adapter les plans qualité de l'air** en cas de dépassement des valeurs et ainsi mettre en place les mesures adaptées.

L'article 7 de la directive de 2008 prévoit l'utilisation de la modélisation mais uniquement pour les cas de réduction à hauteur de 50% des points de prélèvement qui relève d'un choix de l'Etat membre et non d'une application générale tel que proposé au sein de l'article 8 de la proposition de texte de compromis.

Les autorités françaises réfléchissent, en complément des propositions de modifications de l'article 8 transmises lors des groupes du mois de juin, à des **propositions complémentaires de formulation** afin de clarifier l'ensemble des utilisations liées à la modélisation.

Article 10 – super sites et annexe VII section 1

Les autorités françaises souhaitent rappeler leur proposition relative à l'adaptation des mesures au sein des super sites de surveillance suite au groupe du 6 juin en particulier et soulignent de manière appuyée leur demande consistant à laisser le choix aux Etats membres entre la fraction PM_{2,5} et la fraction PM₁ pour la mesure de la composition chimique.

En effet, elles rappellent que la fraction PM₁ permet d'utiliser des méthodes de mesures automatiques permettant un suivi en temps réels sans coûts analytiques et ainsi d'avoir une compréhension en continu des sources et des processus en jeu. Afin de conserver la possibilité de cette mesure en temps réel seule la spéciation chimique des espèces majeures, dont certaines sont cités à la section 2 de l'annexe VII transmise par la Présidence (« measurements of mass concentration and chemical composition of PM_{2,5} ») devrait être obligatoire soit : NH₄, Cl, SO₄, NO₃. Par ailleurs le carbone suie (« black carbon ») ainsi que la matière organique pourraient être suivi en temps réel avec la fraction PM₁. Les autorités françaises soulignent également que, bien qu'il n'existe pas de norme CEN pour la fraction PM₁, le paragraphe 16 de l'annexe VI proposé par la Présidence, prévoit cette situation en indiquant qu'en l'absence d'une telle norme les Etats membres peuvent utiliser des méthodes de mesure et de prélèvement décrites dans des guides de références nationaux ou internationaux.

Article 12, 13, 19 et 20 : gestion de la qualité de l'air

Le point 2 de l'article 12 précise les facteurs selon lesquels les Etats membres n'ont pas l'obligation de mettre en place des mesures pour conserver un niveau mesuré d'ozone inférieur à la valeur cible. **Ces facteurs (nature transfrontalière de l'ozone, précurseurs biogéniques, conditions météorologiques et coûts disproportionnés) sont également applicables aux cas où les niveaux mesurés d'ozone sont supérieurs à la valeur cible** et doivent donc être reportés au sein du **point 2 de l'article 13** précisant cette situation, ainsi qu'au sein **du second paragraphe du point 2 de l'article 19** précisant les cas où un plan qualité de l'air concernant l'ozone ne peut être réalisé par l'Etat membre.

Par ailleurs, les autorités françaises rappellent leur demande de **retrait de la phrase** « *where an air quality plan is not established, Member States shall provide the Commission with 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 concentration* » **au second paragraphe du point 2 de l'article 19 et la phrase** « *where a short-term action plan is not established, Member States shall provide the Commission with a detailed justification, including information on the analysis that has been conducted* » **au paragraphe 1 de l'article 20**. Elles proposent que soit en revanche ajoutée **une information de la Commission concernant l'absence de plan au point 7 de l'article 19 et au point 5 de l'article 20.**

Enfin, les autorités françaises soulignent que **les plans qualité de l'air à établir en cas de dépassement d'une valeur limite ou d'un autre seuil fixé à l'annexe I ne seront pas, tel qu'indiqué par la Commission, une simple déclinaison ou réadaptation des plans qualité de l'air préventifs à réaliser avant l'échéance de 2030** selon le point 4 de l'article 19. En effet, chaque plan qualité de l'air, et en particulier les plans qui seront à revoir en cas de dépassement, **devront faire l'objet d'une révision approfondie pour permettre in fine l'atteinte de l'objectif. A nouveau, cette révision passera par des phases de consultation (notamment consultation du public) et de co-construction avec les parties prenantes à partir du retour d'expérience des mesures passées et ne peuvent être réalisées dans des délais aussi courts que ceux proposés aux points 1, 2 et 3 de l'article 19.** Les autorités françaises souhaitent donc souligner que ces délais doivent d'une part **être impérativement lancés à partir d'un dépassement confirmé post-rapportage pour éviter de perdre à terme les acteurs, et d'autre part être adaptés pour garantir des plans robustes et concertés indispensables au regard de l'ambition des seuils proposés.** Ainsi, elles rappellent leurs précédentes demandes au sujet de l'article 19 à partir de la proposition de texte de compromis :

*Article 19.1 : “ 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 3 years after the calendar year during which that exceedance of any limit value was ~~recorded~~ **validated and 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 4 years from the end of the calendar year in which the first exceedance was recorded~~ **according to the maximum period determined by the assessment of the measures carried out as part of the air quality plan to be drawn up by the Member State**”.*

Article 19.2 : “Where in a territorial unit covering at least one air quality one, the level in ambient air exceed the ozone target value, laid down in Section 2 of Annex Member states shall establish air quality plans for those territorial unit as soon as possible and no later than $\geq$ 3 years after the calendar year during which that exceedance of any limit value was recorded reported”

Article 19.3 : “Where in a given territorial unit, the average exposure reduction obligation laid down in section 5 of Annex I is not achieved, Member States shall establish air quality plans for those given territorial units as soon as possible and no later than $\geq$ 3 years after the calendar year during which the exceedance of the average exposure reduction obligation was recorded”.

Annexe VIII

Le contenu des plans qualité de l'air indiqué à l'annexe VIII est à considérer, tel qu'indiqué lors du groupe, comme étant un contenu minimal. Ainsi, les Etats membres devront traiter l'ensemble des points indiqués et pourront en ajouter de supplémentaires, mais pas en retirer. **Cette standardisation des plans via un contenu minimal déjà très conséquent renforce la charge administrative sans que cela ne soit nécessairement pertinent à l'échelle locale pour améliorer la qualité de l'air.** A titre d'exemple, les autorités françaises soulignent que :

- Le point A.7 intitulé « autres informations générales » liste des informations, telles que les données climatiques ou les données topographiques, qui n'auront pas nécessairement de plus value en fonction de la zone géographique concernée par le plan. Ces informations sont donc à appréhender au cas par cas par les Etats membres à l'échelle locale qui sera en mesure d'identifier si ces dernières apportent un véritable effet de levier au plan ;

- Le point B.2 demande de lister toutes les mesures de lutte contre la pollution atmosphérique dont la mise en œuvre a été envisagée au niveau local, régional ou national en vue d'atteindre les objectifs de qualité de l'air. Sa rédaction actuelle fixe de manière contraignante les typologies de mesures qui seraient à envisager sans que celle-ci soient nécessairement pertinentes au niveau local. Ce degré de précision interroge dans le cadre d'une directive fixant des objectifs aux Etats membres, qui doivent conserver des marges de manœuvre dans le choix des politiques à mettre en œuvre pour y parvenir.

Ainsi, elles réitérent leur proposition d'ajouter une phrase en début d'annexe précisant que ce contenu constitue des points à traiter en fonction des enjeux locaux et qu'il convient que l'Etat membre qui souhaite adapter ce dernier le justifie dûment au sein du plan transmis à la Commission. Cette flexibilité encadrée permettra de garantir l'absence de dérive tout en maintenant l'autonomie des Etats membres quant à l'établissement des plans. En outre, les autorités françaises soulignent, qu'au regard de l'annexe VIII votée par le Parlement, très largement complétée et renforcée, il apparaît opportun que le texte du Conseil intègre davantage de souplesse en vue des trilogues.

Par ailleurs, au point B.2 de cette annexe, il conviendrait de remplacer le terme « including » par l'expression « such as ».

Par ailleurs, les autorités françaises soulignent que le point A.4.d demande d'indiquer au sein du plan la répartition des sources en fonction des secteurs pertinents qui contribuent au dépassement dans le programme national de contrôle de la pollution atmosphérique. Ce plan traitant de la notion d'émission, elles proposent pour clarifier le texte que la formulation suivante soit adoptée : «source apportionment according to the relevant sectors that contribute to the exceedance in **emission** ~~the national air pollution control programme~~»

Les autorités françaises ne sont pas non plus favorables à la modification apportée dans la proposition de compromis au point A.7 de cette annexe. Elles saluent toutefois **les modifications apportées au point A.6 d) de l'annexe VIII concernant l'évaluation des mesures par groupe avec une réserve quant au fait de conserver de manière optionnelle l'évaluation individuelle des mesures (whenever possible).** Elles souhaitent cependant **le retrait du mot « individual » dans la partie de phrase « individual concentration reduction » qui peut semer la confusion.** La nouvelle formulation proposée serait ainsi : « ~~individual~~ concentration reductions for ~~individual~~ or groups of air quality measures shall be estimate, and whenever possible and appropriate, concentration of indivudual air quality measure. » En outre, en cohérence avec ces modifications, le point A.6 b) pourrait également être amendé ainsi : «quantification of emission reduction (in tonnes/year) of each measure under point (a). **Where appropriate, this quantification can also be done by package of measures.** ». En effet, comme les autorités françaises ont déjà eu l'occasion de le rappeler, les différentes actions d'un plan portant sur le même secteur présentent généralement des synergies et sont donc plus facilement évaluables ensemble que séparément.

Annexe I – Seuils de qualité de l'air

Section B : ozone

Les autorités françaises rappellent être **défavorables au fait de fixer un délai pour atteindre les valeurs cibles pour l'ozone indiquées à la section B de l'annexe I égale au délai de transposition de la directive et non 2030 comme pour les valeurs limites de la section 1.** En effet, si une valeur cible, selon la définition donnée au point 27 de l'article 4, doit être respectée dans la mesure du possible elle n'en reste pas moins une valeur contraignante pour l'Etat membre qui doit mettre en place un plan qualité de l'air en cas de dépassement et concerne de surcroît un polluant complexe à appréhender pour la mise en place de mesures de réduction efficaces. Il est donc **nécessaire que l'Etat membre dispose d'un délai adapté pour leur entrée en vigueur au même titre que pour les polluants concernés par une valeur limite.**

Article 18 – report d'échéance

Les autorités françaises **réitèrent leur observation concernant les délais inadaptés pour les demandes de reports d'échéance (5 ans puis 2 ans) ainsi que l'absence de prise en compte de conditions d'ordre socio-économique** pour recourir aux dispositions de l'article 18. Sur ce dernier point, elles proposent que **ces conditions soient ajoutées au sein du premier et sixième paragraphe du point 1 de l'article 18 proposé par la Présidence et d'intégrer une définition permettant de les encadrer. Une première réflexion relative à cette définition serait de préciser que celle-ci ne doivent pas relever d'une situation intrinsèque et pérenne pour l'Etat membre mais doivent davantage s'inscrire dans un contexte ponctuel.** Les autorités françaises réfléchissent à une proposition en vue du prochain groupe de travail.

Au-delà des flexibilités attendues par les autorités françaises, celles-ci souhaitent faire part des commentaires suivants suite au groupe de travail ;

Article 4 – définition

Tel que rappelé par les autorités françaises lors du groupe, la définition 14 relative aux particules ultrafines (PUF) mélange toujours deux concepts : les PUF et la manière de les mesurer. Ainsi, les propositions des autorités françaises à ce sujet sont rappelées ci-dessous, tenant compte des échanges lors du groupe et dans l'optique de clarifier ce sujet en cohérence avec les méthodes de mesure mentionnées à la section D de l'annexe VII :

Ultrafine particles" (UFP) means particles of a size ≤ 100 nm. These particles are measured as particle number concentration (PNC).

Particle Number Concentration (PNC) means the total number of particles per cm³ in a size range with a lower limit of 10 nm and for a size range with no restriction on the upper limit

Particle number size distribution" (PNSD) means the number of particles per cm³ in specific size classes in a size range from at least 10 to 800 nm, which includes the number concentration of ultrafine particles.

Concernant la proposition de définition pour PNSD, les autorités françaises précisent que la gamme de taille comprise entre 10 et 800 nm est issue de la spécification technique TS17434.

Annexe III

Les autorités françaises soulignent à nouveau leur interrogation quant à l'ajout de la mention des meilleures techniques disponibles (MTD) au sein du point A.2 (sources ponctuelles) de l'annexe III :

- **Prise en compte des points de mesure mis en place selon la directive 2010/75/EU pour répondre au nombre minimal de points imposés dans cette annexe :** dans un souci de cohérence, ces points sont-ils également à prendre en compte pour classer les zones par rapport au seuil d'évaluation ?
- **Implantation de ces points liées aux installations industrielles de manière à évaluer l'impact de la réduction en émission des MTD :** l'objectif est-il de suivre l'efficacité des MTD qui relève de contrôle bien spécifique et d'une réglementation propre par l'intermédiaire du réseau de surveillance dédié à la qualité de l'air ?

Elles demandent que ce point soit clarifié en rappelant que, si l'objectif d'évaluation des MTD est confirmé, ceci n'est pas du ressort du réseau de surveillance de la qualité de l'air et qu'il convient d'être vigilant quant à la réglementation applicable dans ce domaine spécifique.

This is a courtesy translation and in the event there are any differences between the French and English texts, the French text governs

Subject : Révision of Directive 2008/50/EC on ambient air quality and cleaner air for Europe : comments from the French authorities in response to the Presidency's request for written comments on the Commission proposal received on 20 september 2023

French authorities thank the Spanish Presidency for the work carried out during the last group.

*They would like first to point out that **the level of ambition of the thresholds proposed by the Commission has major impacts regarding air quality monitoring and management**. So it is important to **ensure the overall balance of the text, which is essential in order to maintain ambition**. French authorities have repeatedly expressed the flexibilities expected and wish, in the light of the proposed compromise text discussed during the group and with a view to future dialogues (taking into account the ambitious text voted by of the European Parliament), to **re-emphasise these flexibilities and the associated wording proposals to the Presidency**.*

Average exposure indicator and reduction obligation

French authorities, like other Member States, request that **the definition associated with the territorial unit for the exposure indicator, and the associated reduction obligation, allow a definition of a geographical area larger than the NUTS 1 scale without condition on a NUTS 1 surface area criterion as proposed in the compromise text.**

Indeed, French authorities indicated during the group that this arbitrary criterion of surface area associated with a criterion of inter-NUTS1 influence does not allow flexibility and above all equitable management regarding average exposure. **If the need for a smaller geographical scale than the current national scale is desired, as indicated by Présidency and Commission, it is essential to find a formulation that suits to all Member States.** Thus, as discussed during the group meeting on 15 June, French authorities propose that **Member state can define this zone ensuring it covers at least the NUTS 2 geographical scale, and to specify in the text that this area cannot correspond to the national scale. Definition 28 of Article 4 would be amended as follows** : « average exposure indicator' means an average level determined on the basis of measurements at urban background locations throughout **a given territorial unit** ~~the territory of a Member State~~ **including at least territorial unit at NUTS + 2 level as described in Regulation (EC) No 1059/2003 and which cannot go beyond national territory**, or, if there is no urban area located in that territorial unit, at rural background locations, and which reflects population exposure used to calculate check whether the national average exposure reduction obligation target and the average exposure concentration obligation objective for that territorial unit have been met ».

Furthermore, French authorities reiterate that the **approach adopted under the current directive regarding average exposure should be retained (stage-by-stage approach)**. This approach, combined with a proportionate date of application, ensures a **more balanced treatment of this issue by Member state, taking into account in particular the difficulty for Member States with already low levels of exposure to put in place measures to go beyond this**. It also makes it possible to **prioritise efforts of Member States to achieve all the proposed objectives** (in particular the ambitious limit values desired for 2030). French authorities thus reiterated their proposal made in the comments following the 4 July group as support and, like other Member states, **insist on reconsidering this issue, particularly in the context of a new compromise text proposal** :

NO2

Reduction average exposure taking into account IEM 10 years before		Year of implementation
Concentration $\mu\text{g}/\text{m}^3$	Percentage of reduction	2040
<10 ou = 10	0%	
>10 - = 15	5%	
> 15 - = 20	10%	
> 20	15%	

PM2,5

Reduction average exposure taking into account IEM 10 years before		Year of implementation
Concentration ($\mu\text{g}/\text{m}^3$)	Percentage of reduction	2040
< 5 ou = 5	0%	
> 5 - = 10	5%	
>10 - = 15	10%	
> 15	15%	

Article 7 – assessment regime, annexe II – assessment threshold and article 31 - transposition

French authorities point out that **reduced assessment thresholds** indicated in Annex II of the proposed directive will lead to a **significant increase of the number of zones covered by fixed measurements** and therefore in the number of stations throughout the country. While this adaptation of the monitoring system is in line with the desire to strengthen air quality monitoring, which is not called into question by French authorities, **there is a need for a timeframe that is consistent regarding availability of the equipment and skilled personnel needed to install and monitor the stations**.

Article 32 provides for the entry into force of the provisions of Article 7 the day after the transposition deadline indicated in Article 31, i.e. two years. **French authorities considers that this two-year period, although standard as pointed out by Commission (recalling the transposition deadlines for the 2008 and 2015 Directive) is not sufficient in view of the major changes to come for the monitoring system.** Therefore, always in a view to ensure directive's implementation without changing ambition of the text, French authorities reiterates their request : **the deadline for transposing the proposal has to be extended from 2 to 3 years.** This proposal also makes it possible to maintain the deadline for entry into force of the provisions relating to the monitoring system (Article 7 and Annex II in particular) at the same time as the other provisions, while giving Member States flexibility.

Article 8 – Assessment criteria

French authorities insist once again on the following point : **the use of modelling must be limited to support the determination of the station's spatial representativeness and to obtain additional information that will make possible, among other things, to adapt air quality plans** in order to implement appropriate measures.

Article 7 of the previous 2008 directive provided for the use of modelling, **but only in the case of a 50% reduction of sampling points depending of the Member state choice and not for general application** as indicated in Article 8 of the proposed compromise text.

French authorities are considering, in addition to the proposed amendments regarding Article 8 submitted in June, additional wording proposals to clarify the uses associated with modelling.

Article 10 – super sites et annexe VII section 1

The French authorities would like to reiterate their proposal concerning the adaptation of measurements for the super sites following the group meeting of 6 June in particular. They strongly emphasise their request to allow Member states to choose between the PM_{2.5} fraction and the PM₁ fraction for the measurement of chemical composition.

They point out that the PM₁ fraction makes it possible to use automatic measurement methods that allow real-time monitoring without analytical costs, thus providing a continuous understanding of the sources and processes involved. In order to retain the possibility of this real-time measurement, only the chemical speciation of the major species, some of which are cited in section 2 of annex VII transmitted by the Presidency ("measurements of mass concentration and chemical composition of PM_{2.5}") should be mandatory, i.e. : NH₄, Cl, SO₄, NO₃. In addition, black carbon and organic matter could be monitored in real time with the PM₁ fraction. The French authorities also point out that, although there is no CEN standard for the PM₁ fraction, paragraph 16 of Annex VI proposed by the Presidency makes provision for this situation by indicating that, in the absence of such a standard, Member States may use measurement and sampling methods described in national or international reference guides.

Article 12, 13, 19 et 20 : air quality management

Point 2 of article 12 specifies factors according to which Member states are not obliged to put in place measures in order to maintain a measured level of ozone below the target value. **These factors (transboundary nature of ozone, biogenic precursors, meteorological conditions and disproportionate costs) are also applicable to the case where the measured level of ozone are higher than the target value.** Thus these factors must therefore be **reported in point 2 of article 13** specifying this situation, as well as in the second paragraph of **point 2 of article 19** specifying the cases where an air quality plan concerning ozone cannot be implemented by Member states.

In addition, French authorities reiterate their **request for the removal of the sentence** : « *where an air quality plan is not established, Member States shall provide the Commission with 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 concentration* » present in second paragraph of **point 2 of article 19**, **as well as the sentence** : « *where a short-term action plan is not established, Member States shall provide the Commission with a detailed justification, including information on the analysis that has been conducted* » in **point 1 of article 20**. They propose that **point 7 of article 19 and point 5 of article 20 should include a requirement to inform the Commission if there is no plan.**

Finally, French authorities emphasise that the **air quality plans to be drawn up in the event of a limit value or other threshold set out in Annex I being exceeded will not only be, as indicated by Commission, a variation or adaptation of the preventive air quality plans to be drawn up before the 2030 deadline in accordance with point 4 of Article 19.** In fact, each air quality plan, and in particular the plans that will have to be revised in the event of exceedances, will require a depth review to ensure that the objective will finally be achieved. **Once again, this review will involve consultation and co-construction phases with stakeholders based on feedback from previous measures, and cannot be carried out within timeframes as short as those proposed in points 1, 2 and 3 of article 19.** French authorities therefore wish to emphasise that these timeframes must be **launched as soon as exceedances are confirmed after reporting (in order to avoid losing stakeholders in the long term), and must also be adapted to guarantee robust and concerted plans, which are essential given the ambition of the proposed thresholds.** They therefore reiterate their previous requests concerning Article 19, based on the proposed compromise text:

*Article 19.1 : “ 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 3 years after the calendar year during which that exceedance of any limit value was ~~recorded~~ **validated and 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 4 years from the end of the calendar year in which the first exceedance was recorded~~ **according to the maximum period determined by the assessment of the measures carried out as part of the air quality plan to be drawn up by the Member State**”.*

Article 19.2 : “Where in a territorial unit covering at least one air quality one, the level in ambient air exceed the ozone target value, laid down in Section 2 of Annex Member states shall establish air quality plans for those territorial unit as soon as possible and no later than $\geq$ 3 years after the calendar year during which that exceedance of any limit value was recorded reported”

Article 19.3 : “Where in a given territorial unit, the average exposure reduction obligation laid down in section 5 of Annex I is not achieved, Member States shall establish air quality plans for those given territorial units as soon as possible and no later than 2 3 years after the calendar year during which the exceedance of the average exposure reduction obligation was recorded”.

Annex VIII

The content of the air quality plans indicated in annex VIII should be considered, as indicated during the group, as a minimum content. Member States will therefore have to deal with all the points indicated and may add additional points, but not remove any. **This standardisation of plans via an already very substantial minimum content increases the administrative burden without necessarily being relevant at local level for improving air quality.** For example, the French authorities point out that :

- **Point A.7** entitled "Other general information" lists information, such as climatic or topographical data, which will not necessarily **have any added value depending on the geographical area covered by the plan**. This information should therefore be considered on a case-by-case basis by the Member States at local level, which will be able to identify whether it will have a real leverage effect on the plan ;
- **Point B.2** calls for a list to be drawn up of all measures to combat air pollution that are planned at local, regional or national level with a view to achieving air quality objectives. **The current wording is restrictive in setting out the types of measures that should be considered, without being necessarily relevant at local level.** This degree of precision is questionable in the context of a directive setting objectives for Member States, which must retain some room for manoeuvre in the choice of policies to be implemented to achieve them.

They therefore reiterate their proposal to **add a sentence at the beginning of the annex specifying that this content constitutes points to be dealt with on the basis of local issues, and that any Member State wishing to adapt it must provide full justification in the plan sent to the Commission.** This controlled flexibility will ensure that there is no drift while maintaining the autonomy of the Member States in drawing up the plans. In addition, the French authorities stress that, **in view of Annex VIII voted by Parliament, which has been very extensively supplemented and strengthened, it would seem appropriate for the Council text to incorporate greater flexibility with a view to the dialogues.**

Furthermore, in point B.2 of this Annex, the word "including" should be replaced by "such as".

In addition, the French authorities point out that **point A.4.d** requires the plan to indicate the distribution of sources according to the relevant sectors contributing to the exceedance in the national air pollution control programme. **As this plan deals with the concept of emissions, they propose that the following wording be adopted to clarify the text :** «source apportionment according to the relevant sectors that contribute to the exceedance in emission ~~the national air pollution control programme~~»

French authorities are not in favour of the amendment made in the compromise proposal to point A.7 of this Annex. They do, however, welcome the changes made to **point A.6 d)** of Annex VIII concerning the assessment of measures by group, with one reservation concerning the optional retention of the individual assessment of measures (whenever possible). **However, they would like to see the word "individual" removed from the phrase "individual concentration reduction"**, which could lead to confusion. The proposed new wording would be as follows : « ~~individual~~ concentration reductions for ~~individual~~ or groups of air quality measures shall be estimate, *and* whenever possible *and appropriate, concentration of indivudual air quality measure.* » **In addition, in line with these changes, point A.6 b) could also be amended as follows** : «quantification of emission reduction (in tonnes/year) of each measure under point (a). *Where appropriate, this quantification can also be done by package of measures.* ». As the French authorities have already had occasion to point out, **the various actions in a plan covering the same sector generally present synergies and are therefore easier to assess together than separately.**

Annex I – Air quality standards

Section B : ozone

French authorities reiterate their **opposition to set a deadline for ozone target values in section B of Annex I equal to the deadline for transposition of the directive and not 2030 as for the limit values in section 1.** According to the definition given in point 27 of article 4, a target value must be achieve as far as possible but keep a binding value for Member state, which must implement an air quality plan if it is exceeded, and moreover concern a pollutant that is complex to understand in order to implement effective reduction measures. It is therefore **necessary for Member state to have an appropriate timeframe for the ozone target value entry into force, in the same way as for pollutants subject to a limit value.**

Article 18 – Postponement of attainment deadline

French authorities **reiterate their observations concerning the inappropriate deadlines for postponement (5 years renewable 2 years) as well as the failure to take account of socio-economic conditions for provisions of Article 18.** On this last point, they propose to **add these conditions in the first and sixth paragraphs of point 1 of article 18 proposed by Presidency and also ask to include a definition of these conditions in order to provide a framework.** An initial consideration in relation to this definition would be to specify that these conditions should not be related to an intrinsic and permanent situation of Member state, but should rather be part of a one-off context. French authorities are considering a proposal for the next working group.

In addition to the flexibilities expected by the French authorities, they would like to make the following comments :

Article 4 – définition

Definition 14 on ultrafine particles (UFP) still mixes up two concepts: UFP and how to measure them. French authorities proposals on this subject are set out below, taking into account the discussions during the group and with a view to clarify this issue in line with the measurement methods mentioned in Annex VII section D :

Ultrafine particles” (UFP) means particles of a size ≤ 100 nm. These particles are measured as particule number concentration (PNC).

Particle Number Concentration (PNC) means the total number of particles per cm³ in a size range with a lower limit of 10 nm and for a size range with no restriction on the upper limit

Particle number size distribution” (PNSD) means the number of particles per cm³ in specific size classes in a size range from at least 10 to 800 nm, which includes the number concentration of ultrafine particles.

With regard to the proposed definition for PNSD, the French authorities specify that the size range between 10 and 800 nm is taken from the TS17434 technical specification.

Annex III – minimum numbers of sampling points for fixed measurement

French authorities reiterate their question about the addition of the reference to BAT in point A.2 (point sources) of Annex III:

- **taking into account the measurement points set up in accordance with directive 2010/75/EU to meet the minimum number of points imposed in this annex:** for the sake of consistency, are these points also to be taken into account when classifying zones in relation to the assessment threshold?
- **location of these points in relation to industrial installations in order to assess the impact of the reduction in BAT emissions:** is the aim to monitor the effectiveness of BAT, which is subject to very specific controls and its own regulations via the air quality monitoring network?

They ask for this point to be clarified, pointing out that, if the objective of assessing BAT is confirmed, this does not fall within the scope of the air quality monitoring network, and vigilance is required with regard to the regulations applicable in this specific area.

HUNGARY

Written comments and drafting suggestions of Hungary to the Presidency compromise text (12848/23) on the proposal for a Directive of the European Parliament and of the Council on ambient air quality and cleaner air for Europe

Article 4

Definitions

If the proposal wanted to define eBC, then we can agree. The question is whether the proposal meant BC or eBC.

- (13) **‘black carbon’** (BC) means ~~equivalent black carbon (eBC) derived from optical methods~~ **graphitic carbon in PM as measured by light absorption** light absorbing carbon measured with optical methods or other suitable methods;

Article 15

Exceedances of alert or information thresholds

1. The alert thresholds for concentrations of sulphur dioxide, nitrogen dioxide, and particulate matter (PM₁₀ and PM_{2.5}) in ambient air shall be those laid down in Section 4, Point A of Annex I.
2. The alert threshold and information threshold for ozone shall be that laid down in Section 4, Point B, of Annex I.
3. Where any alert threshold or any information threshold laid down in Section 4 of Annex I is exceeded **or, when appropriate, if it is predicted to be exceeded based on modelling applications or other forecasting tools**, Member States shall take the necessary steps to inform the public within ~~a few hours at the latest~~ **the shortest possible timeframe, in accordance with point 2 and 3 of Annex IX**, making use of different media and communication channels and ensuring broad public access.
 - 3a. *Where the PM alert threshold or information threshold laid down in Section 4 of Annex I is exceeded and, where applicable, where at least half of the monitoring stations in a city have exceeded the limit values on three consecutive days and the meteorological forecast shows no improvement in the situation and the exceedance is also predicted on the basis of modelling applications or other forecasting tools, Member States shall take the necessary steps to inform the public within a few hours of the occurrence of the exceedance, in accordance with Article IX. The Member States shall take the necessary measures to inform the public as soon as possible, within a period of at least three hours, using the various media and communication channels and ensuring wide public access, in accordance with points 2 and 3 of Annex I.*

~~4. Member States shall ensure that information about actual or predicted exceedances of any alert threshold or information threshold is provided to the public as soon as possible in accordance with points 2 and 3 of Annex IX. [merged with paragraph 3]~~

5. Member States that introduce more stringent alert or information thresholds, in accordance with Article 193 TFEU, shall notify them to the Commission within 3 months after their adoption.

Hungary welcomes the inclusion of the possibility of modelling in the proposed text.

Justification to 3a.

On the Hungarian side, we currently have a PM₁₀ alert threshold. On the basis of this experience, we propose to add to the regulation that for PM₁₀ and PM_{2.5}, the condition for an alert should not only be that exceedances are measured on three consecutive days, but also that meteorological forecasts do not show any improvement. Sometimes the weather situation changes so much in 3 days that it becomes unnecessary to introduce more stringent measures (e.g. banning even or odd numbered vehicles) because the air clears.

We continue to propose to add the meteorological forecast to the text - as it is provided for in the Hungarian legislation. A smog alert may be declared for PM if

- at least half of the measuring stations in a city have exceeded the limit values
- on 3 consecutive days and
- no improvement in the situation is expected according to the meteorological forecast.

Article 16. Contributions from natural sources

Hungary supports that the Commission should be mandated to adopt an implementing act laying down the necessary technical rules to ensure a common methodology for the deduction of excesses attributable to natural resources.

Article 17. Exceedances attributable to winter-sanding or winter-salting of roads

We have the same opinion as to Article 16.

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, **unfavourable socio-economic situation, high proportion of low income households, risk of energy security**, a Member State may postpone that deadline ~~once by a maximum of 5 years~~ 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: ...”*

- (a) an air quality plan is established in accordance with Article 19(4) and meeting the requirements listed in Article 19(5) to (7) for the zone to which the postponement would apply;
- (b) the air quality plan referred in point (a) is supplemented by the information listed in Point B of Annex VIII related to the pollutants concerned and demonstrates how exceedance periods above the limit values will be kept as short as possible;
- (c) the air quality plan referred to in point (a) outlines how the public and, in particular, sensitive population and vulnerable groups will be informed about the consequences of the postponement for human health and the environment;
- (d) the air quality plan referred to in point (a) outlines how additional funding, including via relevant national and Union funding programs, will be mobilized to accelerate the improvement of air quality in the zone to which the postponement would apply;

Where exceedances persist after the postponement, Member States may request a second postponement for a maximum additional period of 2.5 years, provided that it can be demonstrated that unforeseen exceptional circumstances have occurred preventing compliance. The same conditions shall apply as in the first postponement.

Justification:

In Hungary in 2021, the main sources of **PM₁₀** emissions were considered to be **residential heating (57%)**, agriculture (17%) and industrial activities (13%) which originated mainly from construction.

Emissions of **PM_{2.5}** are dominated by the residential sector: residential heating contributed to the total PM_{2.5} emission by 63% in 2005, 85% in 2013 and 78% in 2021. In contrast, the transport sector contributed nearly up to 12% in 2005 of total annual PM_{2.5} emissions, but in 2021 it dropped to 6%.

The environmental impact of residential heating depends on the type of fuel and the equipment used. According to the 2011 census data, in Hungary, nearly 22% of the 3.9 million dwellings are heated only with solid fuels, 16% with gas and firewood. More recent statistics (Hungarian Central Statistical Office) for 2020 also prove that nearly 40% of dwellings still have the potential to heat with solid fuels. Most solid fuel appliances are conventional stoves, unregulated boilers.

Residential PM emissions clearly increased between 2008 and 2013, mainly due to changes in residential fuel use. The price of natural gas more than quadrupled between 2000 and 2012, so **households that were financially constrained by the price increase and had the means to afford it switched to cheaper solid fuels (wood, coal)**. Gas prices dropped by 26% from 2012 to 2017, and natural gas heating started to increase again, while the use of biomass (firewood) decreased.

A clearly identifiable reason for the choice of fuel type is therefore **related to socio-economic conditions**.

In connection with the above, it is worth emphasising that the concentrations of polycyclic aromatic hydrocarbons (PAHs), including **benzo(a)pyrene (BaP), measured in the PM₁₀ fraction are well above the limit value in Hungary**. Potential causes: burning of inappropriate 'fuels', and the use of inefficient and outdated combustion equipment. The imperfect combustion process of biomass (vegetation, plants: wood, reeds, peat, grass, straw) releases pollutants into the air. These are mainly solid particles and aerosols, including known carcinogens such as benzo(a)pyrene and benzene.

Article 19. Air quality plans and Annex VIII.

We welcome the increase of the overrun period from 3 to 4 years. We agree on the introduction of similar wording to that used in the current Directive (2016/2284 NEC) with regard to ozone. However, we have concerns about the effectiveness of documenting this in the plans, considering that little is currently known about the process of ozone formation.

We welcome the amendment as an addition to the content requirements of air quality plans with socio-economic information in Annex VIII. in point 7.

Article 20

Short term action plans

5. Member States shall submit short-term action plans to the Commission ~~within 2 months after their adoption~~ in accordance with the reporting deadline set out in Article 23(2)

Comments

The Hungarian experience does not confirm the effectiveness of short-term action plans. In the case of NO₂ and SO₂, the threshold value has never been exceeded, in the case of ozone, the possibility of intervention is small. Most experience has been gathered in the case of PM₁₀, for which the Hungarian regulations already contain threshold values. Here, we consider it important to introduce the already mentioned weather forecast into the regulation. During three consecutive days, it happens that the intervention becomes unnecessary, a change in the meteorological situation resolves the dilution of the pollution. Another problem was that the population expected an immediate solution from the smog-alert measures. For example, when they could not use even or odd-numbered vehicles for two or three days, and the situation was still not resolved, the restriction was considered unreasonable and dissatisfaction among the population increased. Since small particles do not have a direct, immediate health-damaging effect according to the WHO, the restriction may seem disproportionate. In the case of small particle pollution, the real solution is long-term measures.

Based on all these domestic experiences, we do not see short-term action plans as useful. Instead, we consider timely information important (and long-term plans really effective). With the spread of air quality models, it may be worthwhile to shift the focus from short-term action plans to prevention, to inform the population in the event of a smog situation in advance and to ask the population to limit emissions and oblige the major emitters.

Article 21. Transboundary air pollution

We welcome the greater involvement of the Commission and the possibility of possible technical support.

Article 23. Transmission of information and reporting

We welcome the change in the reporting deadline to 9 months.

Article 27. Access to justice

From the part of Hungary, we would draw attention to the differences between AQD and IED, which differences make the proposed similar application in articles 27-29. inadequate.

In view of the fact that the air quality plans referred to in Article 19 and the short-term action plans referred to in Article 20 are not adopted by a decision of the public authorities – unlike the licensing procedure for projects, fall under the scope of the IED or EIA Directives –, Hungary proposes that the provision of legal remedies be limited to cases where the plans are not drawn up. (Note: Nor does the Aarhus Convention provide for an obligation to ensure the right of appeal in relation to the plans themselves.)

So, Hungary proposes the deletion of the following part:

“1. Member States shall ensure that, in accordance with their the relevant national legal system, members of the public concerned have access to a review procedure before a court of law, or another independent and impartial body established by law, to challenge the substantive or procedural legality of all decisions, acts or omissions concerning air quality plans referred to in Article 19, and short term action plans referred to in Article 20, of the Member State, provided that any of the following conditions is met:

Article 28. Compensation for damage to human health

We welcome the deletion the reversal of the burden of proof and of the paragraphs relating to collective actions.
