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WK 12105/2023 INIT

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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 BE, CZ, DK, HR, CY, NL, AT, PL, SI, FI and SE.

WK 12105/2023 INIT

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BELGIUM

Text suggestions following the presidency proposal st12848

Horizontal

Wherever there is a reference to 'limit values and ozone target values', we suggest for consistency reasons to change the 'ozone target values' by 'target values'. For the other standards, we don't mention to which pollutants they apply either. Moreover, it could very well be that in the course of these negotiations or in a future revision of the directive, target values for other pollutants are introduced, which would then necessitate to change all these references. We therefore suggest to just refer to 'target values'.

Article 4

11 – if methane is excluded in the definition, we think it would be more logical to use the wording 'NMVOC' throughout the text, to be consistent with the wording used in other EU legislation such as IED and NEC (that directive 2008/50 uses the wording 'VOC' is in our view not relevant).

13 – we don't think the reference to graphitic carbon is appropriate, we are open to any alternative that refers to the absorption of light.

14 – the definition of UFP: we understand the rationale after the proposal, but the result is rather confusing, since it first refers to a diameter 'less than or equal to 100 nm' and in the end states 'with no restriction on the upper limit'. We can support the Finnish proposal made during WPE on 18/9 ('ultrafine particles' (UFP) means the particles number concentrations with an aerodynamic diameter less than or equal to 100 nm. *UFP are measured as the particle number concentrations per cm³ for a size range with a lower limit of 10 nm and with no restriction on the upper limit.*).

20 – The new definition of indicative measurements is confusing, in particular the addition of the words "taken at sampling points". This could be interpreted as if indicative measurements should only take place at fixed sampling points. If so, it would undermine the whole point of having indicative measurements. Indicative measurements (for instance, diffusion tubes for NO₂) are very useful to gather adequate information on the spatial distribution of air pollutants in between fixed sampling points and on the spatial representativeness of fixed measurements. We would therefore suggest deleting the words "taken at sampling points". Additionally, we also suggest to replace the 'either continuously or by random sampling' by 'either at regular intervals during a calendar year or by random sampling'.

24 – since rural background locations are also relevant for the critical levels, we suggest to change the definition as follows: '*rural background locations' means places in rural areas with low population density where levels are representative of the exposure of the general rural population, vegetation and natural ecosystems;*'

Article 8

The text on modelling in the directive needs some further clarification. We are absolutely in favour of extending the role of modelling, but when doing so care needs to be taken that a level playing field

between member states is established and the relatively high uncertainty of modelling needs to be taken into account.

In relation to the proposed directive, we distinguish four types of modelling:

- Modelling following a measured exceedance of a limit value (8.3). Since a non-compliance has already been established, whether or not modelling results are taken into account doesn't have any consequences.
- Modelling in a zone where levels are below the AT. It is very unlikely that the model will calculate exceedances of the limit value.
- Modelling in order to reduce the number of monitoring stations (9.3). In this case it is the choice of the member state to replace monitoring by modelling and it goes without saying that these modelling results need to be taken into account when evaluating compliance.
- Modelling that is not obligatory according to the directive, but that is done on the initiative of the member state of regional government: member states that choose to develop (high spatial resolution) modelling on top of the obligations of the directive should not be treated differently than member states that choose not to do so. This means that in this case, the modelling should not be used for compliance checking.

Moreover, since monitoring results are more reliable than modelling, it should be stated explicitly in the directive that for areas within the area of spatial representativeness of a monitoring station, the monitoring data will supersede modelling results.

We therefore suggest to rearrange article 8.5 as follows:

*5. The results of modelling applications **undertaken in accordance with paragraph 3 and 4 of this article or paragraph 3 of article 9** and indicative measurements shall be taken into account for the assessment of air quality with respect to the limit values and ozone target values. . **Member states may choose to include other results of modelling applications in the assessment.***

5aa. If fixed measurements are available with an area of representativeness covering the area of exceedance calculated by the model, the modelled exceedance shall not be considered as an exceedance of the relevant limit values and ozone target values.

5ab. If modelling applications ~~show~~ calculate an exceedance of any limit value or ozone target value in an area of the zone not covered by fixed measurements and their area of spatial representativeness, additional fixed or indicative measurements shall be used. These measurements shall be conducted within 2 calendar years after the exceedance was recorded and shall cover at least 1 calendar year in accordance with the minimum data coverage requirements set out in Point B of Annex V, to assess the concentration level of the relevant pollutant.

Article 9

Art. 7.2 states that the assessment regime has to be reviewed at least every 5 years. This means that in theory, when in a zone the limit values are no longer exceeded, already the next year the number of monitoring stations can be reduced. Whereas for the AT, art. 7.3 makes clear that it needs to be evaluated on the basis of the data for the previous 5 years, no similar disposition is included for the limit values. We therefore suggest to change the first sentence of art. 9.3 as follows: *"For zones where the level of pollutants exceeds the relevant assessment threshold specified in Annex II, but **for at least three calendar years** not the respective (...)"*.

Annex I

Section 5, A : We agree with the idea of the added sentence (leaving 2020 out when calculating the AERO for 2030, 2031 and 2032), but we think it was not introduced correctly. Section 5A is about the AEI, which is the average background concentration for the year x and the 2 previous years. The AEI for 2030 is thus the average concentration for 2030, 2029 and 2028 – 2020 is not of importance here.

We suggest to delete the added sentence in point A and add at the end of point B: *“When calculating the levels not be exceeded for the years 2030, 2031 and 2032, member states may choose to exclude the year 2020 from the calculation of the AEI for the base year.”*

Annex II

We understand why the presidency suggests to increase the AT for BaP, but we think that this is not in line with the objective of the revision of the directive to reduce air pollution to a level that not harmful to human health. For BaP there is no safe level, so we can look at the level associated with a cancer risk of 1 to 100.000, which is 0,12 ng/m³. A first step to achieve this should be to monitor the air quality as long as this objective is not reached so the assessment thresholds should not be higher than the WHO recommendations. Technically, an even lower AT than 0,12 is possible, so we would insist on keeping the AT as close as possible to 0,12 ng/m³.

Annex V

Point A

We have doubts on the introduction of the sentence *“and that have a spatial representativeness area as large as the resolution of the modelling application”*. We need more time to consult with our modelling experts to see whether this addition is in line with the recommendations by Fairmode.

Annex VI

We suggested to include in point A.6 on the reference method for benzene to include also part 4 of EN 14662. This refers to measurement by diffuse sampling. Could you explain why this has not been included?

We suggest to delete A.15, since other methods are being widely used (a.o. as part of the EMEP monitoring programme) and more analysis is needed before a standard can be set. A. 16 should then be adapted accordingly, with the reintroduction of ammonia in the first sentence. For the last sentence, we suggest a minor change: *“Where international, CEN or national standard reference measurement methods or technical specifications are available, these may be used.”*

Annex VII

Section 3

Since the technical specification that is being referred to for UPF uses a different lower limit than the definition in art. 4, we don't agree with the introduction of part D. We think that A.16 of annex VI covers this sufficiently. As soon as the standard is finalised, it can be inserted in the directive.

Annex VIII

In point A.1 add a point (d) that reads:

(d) the results of the modelling or indicative measurements undertaken in accordance with article 8 and article 9.

CZECH REPUBLIC

Comments following up the WPE meeting held on 18th and 19th of September 2023

CZ appreciates the PRES proposal and the work of the PRES. Below we attach CZ comments relating to the PRES compromise text (12848/23). **CZ amendments suggested below are highlighted in red** (strikethrough, bold text and underline text done in black originates from the PRES compromise text).

Art. 1 (Objectives)

CZ welcomes the PRES amendments proposed in art.1 highlighting the ongoing process of air quality improvement and ongoing refinement of air quality standards. CZ views these amendments in the text as necessary since it shows that the health and air protection is not perfect from the beginning which corresponds with reality and is in line with CZ previous comments.

Art. 2 (Subject matter)

No further comments.

Art. 3 (Regular review)

CZ welcomes the postponement of the first review beyond 2028. CZ however reiterates that in order to properly consider in the review socioeconomic impacts and progress made in the implementation of measures, as required in art.3.2 point c) and d), it would be more reasonable to move the first review beyond 2030 since most measures will be targeting the year 2030. CZ is therefore of the opinion that the first review should not overlap with 2030 otherwise there is not sufficient time to analyse 2030 measures and their impact in the review process.

Furthermore, the following reviews could take place as frequently as necessary, CZ sees the frequency of 5 years arbitrary and unjustified.

CZ therefore suggests the following change in art. 3.1:

“1. By 31 December ~~2030~~2032, and ~~every 5 years~~as frequently as necessary thereafter, ~~and more often if substantial new scientific findings point to the need for it~~, the Commission shall review the scientific evidence related to air pollutants and their effects on human health and the environment relevant to achieving the objective set in Article 1 and present a report with the main findings to the European Parliament and to the Council.”

CZ appreciates the PRES proposal in art. 3.2 suggesting that WHO air quality guidelines needs to be “taken into account” rather than “ensured” while assessing the need to further amend the directive based on the results of the review. We support this wording.

Joint responsibility

CZ regrets the fact that the revised directive does not acknowledge that achieving ambitious limit values will require implementation of measures at the Union level, as the impact assessment clearly highlighted. We have expressed multiple times our support the AT proposal.

Nevertheless, we understand the limitations of the directive that is intended to lay down provisions that are binding to MS only. CZ however observes that despite this the revised directive contains multiple provisions that are intended for the Commission, most notably the art. 3. Given this CZ proposes to add new para 5 in art. 3 that would focus on the air quality standards in place at the time of the review. The intention of the new para 5 would be to determine whether there is a need for additional actions at Union level in order to ensure compliance with the current air quality standards.

“5 (new). If the Commission identifies during the review that noncompliance with applicable air quality standards persists and is affecting significant area of the EU territory, the Commission may propose further actions to be taken at the Union level ensuring that all relevant Union institutions are involved in the process of achieving applicable air quality standards. “

Art.4 (Definitions)

CZ could support the VOC definition (4.11), BC definition (4.13) and UFP definition (4.14). We could also be open to other solutions and we are keen to study for example the FI alternative proposal.

CZ welcomes the inclusion of vegetation into art. 4.24. Nevertheless, CZ suggests deletion of ozone from art. 4.24 since rural background locations are intended to measure impact of other pollutants as well (SO₂, NO_x). CZ suggests to generalise the definition as follows; alternatively, SO₂, NO_x could be added to the definition.

*“(24) ‘rural background locations’ means places in rural areas with low population density where levels are representative of the exposure of the general rural population **and vegetation for ozone**; “*

Regarding the territorial units defined in art. 4.28 we welcome the introduced flexibility. CZ could accept also other solution as long as the definition in art. 4.28 makes it possible for CZ to use the whole NUTS 1 unit to assess the average exposure indicator.

Art 5 (Responsibilities)

We welcome the added emphasis on transboundary air pollution. CZ views this issue as very important.

Art. 6 (Establishment of zones)

No further comments.

Art. 7 (Assessment regime)

No further comments.

Art. 8 (Assessment criteria)

CZ supports art. 8, including the broader use of modelling. CZ, however, understands the confusion relating to art. 8.5 since it is not clear whether exceedances identified using modelling applications should be considered as valid from the moment they were recorded (calculated) or whether it is necessary to wait another X years for the exceedance to be verified via additional fixed measurement. This must be clarified before the directive is adopted otherwise it is not clear when to start preparing the air quality plans according to the art. 19. CZ therefore suggests to return to the deleted last sentence from the original Commission's proposal, CZ could, however, be open also to other solutions that would clarify this issue before the directive is adopted:

"5. The results of modelling applications and indicative measurements shall be taken into account for the assessment of air quality with respect to the limit values and ozone target values. [moved from Art. 9(6)]

If modelling applications shows an exceedance of any limit value or ozone target value in an area of the zone not covered by fixed measurements and their area of spatial representativeness, additional fixed or indicative measurements shall be used. These measurements shall be conducted within ~~during~~ at least 1 ~~3~~ 2 calendar years after the exceedance was recorded and shall cover at least 1 calendar year in accordance with the minimum data coverage requirements set out in Point B of Annex V, to assess the concentration level of the relevant pollutant. Where the additional measurements show an exceedance of any limit value or ozone target value, the requirement to establish air quality plans in accordance with Article 19 shall apply."

Relating to the newly introduced para 5.a we welcome the inclusion of delegated acts focusing on spatial representativeness and modelling applications. CZ suggests, however, the following change in para 5a to increase legal certainty for MS:

"5a. The Commission ~~may~~ shall provide, by means of implementing acts, further technical details for: ..."

Art. 9 (Sampling points)

CZ supports the changes in the text.

Art. 10 (Monitoring supersites)

CZ welcomes the intention to add another flexibility, however, it is not clear how could MS benefit from the proposed text in art. 10.4a. Assessment thresholds are analysed with respect to the territory of a whole zone, not individual urban background locations. Therefore, some additional changes to the text are needed.

CZ has a lot of sympathy for MS with smaller area who are expected to have almost excessive number of supersites. CZ is ready to support additional changes in this regard (for example sharing supersites with neighbouring countries, further limiting the number of supersites etc.).

Art. 11 (Reference measurement methods, modelling applications and data quality objectives)

No further comments.

Art. 12 (Requirements where levels are lower than the limit values, ozone target values and average exposure concentration objectives, but above the assessment thresholds)

CZ agrees with the changes made by the PRES.

Art. 13 (Limit values, ozone target values and average exposure reduction obligation for the protection of human health)

CZ agrees with the proposed changes. Nevertheless, CZ could also support deletion of the newly introduced obligation in art. 13.3 to inform the Commission which territorial units MS are going to use to evaluate the average exposure reduction obligation. Deleting this obligation could certainly decrease administrative cost associated with the directive (“...~~Member States shall inform the Commission which territorial units they are going to use to evaluate the average exposure reduction obligation.~~”)

Moreover, CZ supports the inclusion of socioeconomic aspect into the directive as was mentioned several times during the recent WPE meeting. CZ considers art. 13.1 as a suitable place to anchor the principle of protecting citizen (especially vulnerable groups as defined in art. 4.39 that are unfortunately bearing the majority of cost associated with abatement measures), from severe socioeconomic impacts and bankruptcy. CZ therefore proposes to include in art. 13.1 the same condition relating to the cost as the directive contains for ozone in art. 13.2.

“1. Member States shall ensure, by taking all necessary measures not entailing disproportionate cost, that, throughout their zones, levels of sulphur dioxide, nitrogen dioxide, particulate matter (PM₁₀ and PM_{2.5}), ~~lead~~, benzene, carbon monoxide, arsenic, cadmium, lead, nickel and benzo(a)pyrene in ambient air, do not exceed the limit values laid down in Section 1 of Annex I.”

Lastly, CZ reiterates that we are ready to support new limit values proposed by the Commission to be attained by 2030 provided that the directive contains adequate flexibilities and is sufficiently dealing with transboundary air pollution and other pollution that MS cannot influence. Otherwise significant postponement of the attainment period of the limit values will be necessary. In this regard CZ proposes the following amendment of art. 13.4:

“4. Compliance with paragraphs 1, 2 and 3 shall be assessed in accordance with Annex IV. Member states are responsible for pollution originating from their individual territory only excluding pollution from natural sources.”

Art. 14 (Critical levels for the protection of vegetation and natural ecosystems)

CZ welcomes the added reference to the Annex IV Section B 3 which helps to clarify that the critical levels should be assessed on remote monitoring stations only.

Art. 15 (Exceedances of alert or information thresholds)

CZ could support the changes in the text. CZ welcomes the introduced flexibility concerning modelled or forecasted concentrations since we would like to continue assessing exceedances of information and alert thresholds using the measured concentrations only.

Art. 16 (Contributions from natural sources)

We would prefer the following change in the new para 4 to ensure legal certainty for MS:

“The Commission ~~may~~ shall provide, by means of implementing acts, further technical details...”

Art. 17 (Exceedances attributable to winter-sanding or winter-salting of roads)

CZ suggests to amend the new para 4 in to following way to ensure legal certainty:

“The Commission ~~may~~ shall provide, by means of implementing acts, further technical details...”

Art. 18 (Postponement of attainment deadline and exemption from the obligation to apply certain limit values)

The PRES proposal is going in the right direction by adding 2 additional years for postponement, however, CZ still considers para 1 as insufficient. We agree with the points raised by some MS that we can to some extent expect what exceptional circumstances will prevent us from achieving limit values, after all these circumstances are mostly foreseen in art. 18.1. Therefore, it is not practical to use the term “unforeseen”.

We support including socioeconomic reasons and energy poverty as a justification for postponement since it is also one of the main reasons why most MS expect the limit values to be difficult to achieve.

Furthermore, we note that orographic conditions or transboundary air pollution are entirely out of MS influence, it is therefore necessary to assume that these conditions might reappear even after the postponement period. CZ is of the opinion, that the directive cannot predict the time necessary for the postponement, therefore, we propose undefined postponement period that should be justified by the air quality plan.

CZ also does not agree with limiting art. 18 only to particulate matter (PM) and nitrogen dioxide (NO₂) given the fact that the same reasons for postponement are applicable to other pollutants as well. We note that pollutants are intertwined with each other. For example, in CZ PM is linked heavily to benzo(a)pyrene. Therefore, by postponing PM deadline we are in fact influencing benzo(a)pyrene as well since both pollutants are emitted mostly together.

CZ suggests with respect to the above mentioned the following changes of para 1:

“1. Where, in a given zone, conformity with the limit values ~~for particulate matter (PM₁₀ and PM_{2.5}), 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, socioeconomic reasons, energy poverty or transboundary contributions, 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 programmes, will be mobilised 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~~ an additional period of 2 years justified in the air quality plan, provided that it can be demonstrated that ~~unforeseen~~ exceptional circumstances have occurred preventing compliance. The same conditions shall apply as in the first postponement. ~~Exceptional circumstances might coincide with the list in the first Paragraph.~~

Art. 19 (Air quality plans)

We cannot accept the proposed timeframe for creating and implementing air quality plans. We do not agree with the opinion expressed by the Commission and some MS at the recent WPE that all MS can be expected to have all the work ready by 2030 due to art. 19.4 and that starting from 2030, all air quality plans will be just a follow up to the air quality plans issued before 2030. We strongly disagree with such notion. CZ points out that the proposed timeframe is supposed to be applicable at any given moment, and at any given circumstance. However, the role of air quality plan is to properly analyse causes of poor air quality, explore all the possibilities for improvement and ensure involvement of various stakeholders in the process. Once the air quality plan fails to deliver compliance, MS should thoroughly analyse causes of such failure and start drafting the air quality plan with the same effort as in the beginning. It should not be sufficient just to publish almost the same air quality plan once again as an updated version. The fact that MS are almost pushed to choose this rushed approach due to insufficient timeline is unacceptable for us as it will lead to situations where MS will repeat all the mistakes of the past air quality plans. CZ is therefore of the opinion that every failure of air quality plan to achieve compliance should be treated as a unique situation that requires new set of consultations and new analysis. Furthermore, since CZ complies with the Aarhus convention, we usually reserve at least 9 months for the consultations phase (including the SEA process) and 18 months for analysis. Due to the newly introduced art. 19.6 that broadens the public consultation phase, we could probably expect the consultation phase to take even longer than 9 months. We therefore propose to prolong the timeframe for establishing air quality plans and updating the existing air quality plans to 3 years, as was suggested also by other MS. We consider this timeframe as an adequate time to fulfil expectations of the public consultation included in art. 19.6 and to properly prepare all the analysis introduced in Annex VIII.

We have also already expressed the opinion that different measures take different time for implementation. A universal timeframe for implementation that is similar for every MS makes little sense in the context of air quality plans. In our opinion, the timeframe in para 1 should be justified by the air quality plan itself. Similar logic was already proposed by the PRES in art.

18. We would also like to express our concerns that insufficient timeframe could be potentially counterproductive as it offers insufficient time to work on complex measures with sustainable positive impact (transformation of energy production, household heating replacement, behavioural changes).

Lastly, we welcome the possibility to include ozone in the National air pollution control programmes (NAPCP) issued pursuant to the NEC directive instead of creating a separate air quality plan of ozone. We agree with the opinion of some MS that the last sentence in second subparagraph of para 2 could be deleted to prevent administrative costs. Moreover, we propose similar flexibility also for the average exposure reduction obligation since the NAPCP could encompass both ozone and exposure reduction measures.

CZ suggest therefore the following changes to art. 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 ~~2~~ 3 years ~~after from~~ the ~~end of the~~ calendar year during which that exceedance of any limit value was recorded or identified in line with Article 8(5). 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 ~~3~~ 4 years, unless longer period is justified in the air quality plan, from the end of the calendar year during which the air quality plan was adopted in which the first exceedance was recorded ~~reported~~.

Where exceedances of any limit values persist during the third calendar year after the ~~establishment~~ adoption of the air quality plan, unless longer period was justified in the air quality plan, Member States shall update the air quality plan no later than 3 years thereafter ~~and the measures therein~~, and take additional and more effective measures, ~~in the subsequent calendar year~~ to keep the exceedance period as short as possible.

2. Where in a ~~given NUTS-1~~ territorial unit covering at least one air quality zone, the levels ~~of pollutants~~ in ambient air exceed the ozone target value, laid down in Section 2 of Annex I, Member States shall establish air quality plans for those ~~NUTS-1~~ territorial units, as soon as possible and no later than ~~2~~ 3 years after the calendar year during which the exceedance of the ozone target value was recorded or identified in line with Article 8(5). Those air quality plans shall set out appropriate measures in order to achieve the ozone target value and to keep the exceedance period as short as possible.

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 provided that its measures do not entail disproportionate costs, 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.~~

Where exceedances of the ozone target value persist during the fifth calendar year after the ~~establishment~~ adoption of the air quality plan in the relevant ~~NUTS-1~~ territorial unit, Member States shall update ~~the~~ air quality plan no later than 3 years thereafter ~~and the measures therein~~, and take additional and more effective measures, ~~in the subsequent calendar year~~ to keep the exceedance period as short as possible.

For ~~NUTS-1~~ territorial units where the ozone target value is exceeded, Member States shall ensure that the relevant national air pollution control programme prepared pursuant to

Article 6 of Directive (EU) 2016/2284 includes measures addressing ~~those exceedances~~ **ozone precursors covered by that Directive**.

3. Where in a given ~~NUTS-1~~ territorial unit, the average exposure reduction obligation laid down in Section 5 of Annex I is ~~exceeded~~ **not achieved**, Member States shall establish air quality plans for those ~~NUTS-1~~ **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. Those air quality plans shall set out appropriate measures to achieve the average exposure reduction obligation and to keep the exceedance period as short as possible. *Member States may refrain from establishing such air quality plans provided that appropriate measures are included in the relevant national air pollution control programme prepared pursuant to Article 6 of Directive (EU) 2016/2284.*

Where exceedances of the average exposure reduction obligation persist during the fifth calendar year after the ~~establishment~~ **adoption** of the air quality plan, Member States shall update the air quality plan **no later than 3 years thereafter and the measures therein**, and take additional and more effective measures, in the subsequent calendar year to keep the exceedance period as short as possible.

4. Where from [insert year 2 years after entry into force of this Directive], until 31 December 2029 in a zone or ~~NUTS-1~~ territorial unit, the levels of pollutants are above any limit value **or ozone target values** ~~to be attained by 1 January 2030~~ as laid down in Table 1 of Section 1 **and Table B of Section 2** of Annex I, Member States shall establish an air quality plan for the concerned pollutant as soon as possible and no later than ~~2~~ **3** years after the calendar year during which the exceedance ~~of the~~ was recorded **or identified in line with Article 8(5)** to attain the respective limit values or ozone target values by the expiration of the attainment deadline.

Where, for the same pollutant, Member States are required to establish an air quality plan in accordance with this paragraph as well as an air quality plan in accordance with Article 19(1), they may establish a combined air quality plan in accordance with Article 19(5), (6) and (7) and provide information on the expected impact of measures to reach compliance for each limit value it addresses, as required by in Annex VIII, points 5 and 6. Any such combined air quality plan shall set out appropriate measures to achieve all related limit values and to keep all exceedance periods as short as possible.

5. Air quality plans shall contain at least the following information:

- (a) the information listed in Point A, points 1 to 6 of Annex VIII;
- (b) where applicable, the information listed in Point A, points 7 and 8, of Annex VIII;
- (c) where appropriate, information on abatement measures listed in Point B, Point 2 of Annex VIII.

Member States ~~shall~~ **may** consider including measures referred to in Article 20(2) and specific measures aiming at the protection of sensitive population and vulnerable groups, including children in their air quality plans.

Regarding the pollutants concerned, when preparing air quality plans, Member States ~~shall~~ **may** assess the risk of exceeding the respective alert thresholds. That analysis shall be used for establishing short-term action plans where applicable.

Where air quality plans shall be established in respect of several pollutants or air quality standards, Member States shall, where appropriate, establish integrated air quality plans covering all pollutants and air quality standards concerned.

Member States shall, to the extent feasible, ensure consistency of their air quality plans with other plans that have a significant impact on air quality, including those required under Directive 2010/75/ EU of the European Parliament and of the Council¹, Directives (EU) 2016/2284 and 2002/49/EC and under climate, energy, transport and agriculture legislation.

6. Member States shall consult the public, in accordance with Directive 2003/35/EC of the European Parliament and of the Council², and the competent authorities, which, by reason of their responsibilities in the field of air pollution and air quality, are likely to be concerned by the implementation of the air quality plans, on draft air quality plans and any significant updates of air quality plans prior to their finalisation.

When preparing air quality plans, Member States shall ensure that stakeholders whose activities contribute to the exceedance situation are encouraged to propose measures they are able to take to help end the exceedances and that non-governmental organisations, such as environmental organisations, consumer organisations, organisations representing the interests of sensitive population and vulnerable groups, other relevant health-care bodies and the relevant industrial federations are allowed to take part in those consultations.

7. Air quality plans shall be communicated to the Commission within 2 months after their adoption.”

Art. 20 (Short-term action plans)

CZ was sceptical towards the whole art. 20 from the beginning. Typically, smog situations are likely to occur in several MS at once, especially for particulate matters (PM). Smog situations are fundamentally driven by meteorological conditions and exacerbated by the vital need to produce heat in households. Considering that shutdown of household heating is not possible, CZ stresses that there are no effective short-term measures that could end the PM smog situation. CZ believes that in such situations MS should not be forced to issue and enforce short term action plans that have no potential to reduce the pollution and reverse the situation. CZ supports long-term measures such as boiler replacement schemes, however, when it comes to household heating there is nothing that can be done at the moment of the ongoing smog situation.

With respect to the discussions held at the recent WPE, we could also support deletion of the newly introduces sentence in para 1 to prevent administrative costs.

We propose the following amendments of art. 18:

*“1. Where, in a given zone, there is a risk that the levels of pollutants will exceed one or more of the alert thresholds specified in Section 4 of Annex I, Member States shall **establish** ~~draw up~~ short-term action plans indicating the emergency measures to be taken in the short term in order to reduce the risk or duration of such an exceedance.*

*However, ~~where there is a risk of exceedance of that the alert threshold for ozone,~~ Member States may refrain from ~~drawing up~~ **establishing** such short-term action plans when there is no significant potential, taking into account national geographical, meteorological and **socio**economic conditions, to reduce the risk, duration or severity of such an exceedance.*

¹ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17).

² Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ L 156, 25.6.2003, p. 17).

~~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.~~

2. When ~~drawing up~~ **establishing** the short-term action plans referred to in paragraph 1 Member States may, depending on the individual case, provide for effective measures to control and, where necessary, temporarily suspend activities which contribute to the risk of the respective limit values or ozone target values or alert threshold being exceeded. Depending on the share of the main pollution sources to the exceedances to be addressed, those short-term action plans shall consider including, where appropriate, measures in relation to **activities such as** transport, construction works, industrial installations, **agriculture** and the use of products and domestic heating. Specific actions aiming at the protection of sensitive population and vulnerable groups, including children, shall also be considered in the framework of those plans. Measures that could endanger the safety and well-being of citizens, such as measures resulting in insufficient production of heat in households or endangering essential public services, should be avoided; if no other measure could be identified, Member States are not obliged to establish the short term action plan set out in of paragraph 1.

3. Member States shall consult the public in accordance with Directive 2003/35/EC, and the competent authorities, which, by reason of their responsibilities in the field of air pollution and air quality, are likely to be concerned by the implementation of the short-term action plan, on draft short-term action plans and any significant updates thereof prior to their finalisation.

4. When Member States have drawn up a short-term action plan, they shall make available to the public and to appropriate organisations such as environmental organisations, consumer organisations, organisations representing the interests of sensitive population and vulnerable groups, other relevant health-care bodies and the relevant industrial federations both the results of their investigations on the feasibility and the content of specific short-term action plans as well as information on the implementation of these plans.

5. Member States shall submit short-term action plans to the Commission within 2 months after their adoption.”

Art. 21 (Transboundary air pollution)

CZ appreciates the text proposed by the PRES that increases the role of the Commission in solving the transboundary air pollution. However, CZ notes that according to the revised directive MS are still responsible for air pollution originating outside their territory and they are expected to enforce measures outside their jurisdiction.

We suggested to solve this issue in art. 13 and we also proposes the following amendments of art. 21:

“1. Where transboundary transport of air pollution from one or more Member State contributes significantly to the exceedance of any limit value, ozone target value, average exposure reduction obligation or alert threshold in another Member State and thus affecting compliance with Article 1, 12 and 13 in the relevant Member State, the latter shall notify the Member States from which the air pollution originated and the Commission thereof.

The Member States concerned shall cooperate with each other, with the technical support of the Commission to identify the sources of air pollution and the measures to be taken to address those sources, and draw up ~~joint~~ activities, such as the preparation of ~~joint or~~ coordinated air quality plans pursuant to Article 19, in order to remove such exceedances. Member States bear responsibility for drawing up and implementing activities with respect to their individual

territory only. In case of any dispute between Member States with drawing up and implementing activities, the Commission shall assist Member States accordingly.

Member States shall respond to each other in a timely manner, and inform the Commission, ~~and~~ no later than 3 months after being notified by another Member State in accordance with the first subparagraph.

2. The Commission shall be informed of, and invited to be present and to assist in any cooperation referred to in paragraph 1 of this Article. Where appropriate, the Commission shall, taking into account the reports established pursuant to Article 11 of Directive (EU) 2016/2284, consider whether further action shall be taken at Union level in order to reduce precursor emissions responsible for transboundary pollution.

3. Member States shall, if appropriate pursuant to Article 20, prepare and implement ~~joint~~ short-term action plans ~~targeting covering~~ neighbouring zones in other Member States. Member States shall ensure that neighbouring zones in other Member States receive all appropriate information regarding these short-term action plans without undue delay. Member States bear responsibility for preparing and implementing short-term action plans relating to their individual territory only. In case of any dispute between Member States with preparing and implementing short-term action plans, the Commission shall assist Member States accordingly.

4. Where the information threshold or alert thresholds are exceeded in zones close to national borders, information on these exceedances shall be provided as soon as possible to the competent authorities in the neighbouring Member States concerned. That information shall also be made available to the public.

5. In drawing up plans as provided for in paragraphs 1 and 3 and in informing the public as referred to in paragraph 4, Member States shall, where appropriate, endeavour to pursue cooperation with third countries, and in particular with candidate countries. Member States may request technical support from the Commission where appropriate."

Art. 22 (Public information)

CZ could support the proposed changes by the PRES. However, we perceive the requirement to copy the EEA's index as ineffective. It will result in unjustified administrative costs. CZ would prefer to promote the EEA's index or to retain the national index rather than to constantly track and copy the EEA's work. We also suggest to slightly clarify art. 22.2 as follows:

"2. Member States shall ~~establish~~ make available through a public source an air quality index covering hourly updates on at least sulphur dioxide, nitrogen dioxide, particulate matter (PM₁₀ and PM_{2.5}) and ozone, ~~and make it available through a public source providing an hourly update,~~ provided that according to this Directive at relevant monitoring stations there is an obligation to monitor these pollutants. The index may include additional pollutants, when considered relevant. The air quality index shall consider the recommendations by the WHO and might build on the air quality indices at European scale provided by the European Environmental Agency, including the information regarding impacts on health."

Art. 23 (Transmission of information and reporting)

CZ appreciates the PRES proposal especially the fact that the reporting deadline is prolonged and set back to 9 month which is the preferred option for us.

Art. 24 (Amendments to Annexes)

CZ welcomes the PRES proposal to exclude Annex III from delegated acts. CZ is also in favour of excluding Annex VIII and IX since these annexes could also be considered as essential part to the directive.

Art. 25 (Exercise of delegation)

CZ could support the proposed changes aligning the exercise of delegation with standard practice.

Art. 26 (Committee procedure)

CZ could support the proposed changes aligning committee procedure with standard practice.

Art. 27 (Access to justice)

CZ appreciates the PRES effort to amend art. 27, however, CZ is of the opinion that art. 27 has no added value. We would prefer to add reference to Aarhus Convention in the recitals instead of art. 27 as was already proposed by other MS.

We continue to support full deletion of art. 27.

Art. 28 (Compensation for damage to human health)

CZ thanks the PRES for the deletion of reversal burden of proof and collective actions. CZ would, however, prefer to go even further since the remaining text of art. 28 has no added value.

We continue to support full deletion of art. 28.

Art. 29 (Penalties)

CZ would prefer the wording of the current directive 2008/50/EC.

Art. 30 (Repeal and transitional provisions)

No further comments.

Art. 31 (Transposition)

CZ supports the replacement of the word “measures” with “provisions”.

Art. 32 (Entry into force)

No further comments.

Art. 33 (Addressees)

No further comments.

Annex I (AIR QUALITY STANDARDS)

CZ supports the inclusion of additional exceedances for hourly limit values for nitrogen dioxides and sulphur dioxides. We consider this as adequate proposal with respect to the WHO literature that also contains 3-4 exceedances for short term air quality guidelines.

We also support the added flexibility concerning the assessment of exceedances of PM alert thresholds. We currently use 12hour running mean for this purpose and intent to do so also in the future.

Annex II (ASSESSMENT THRESHOLDS)

CZ could support the newly proposed less stringent assessment threshold for benzo(a)pyrene (0,3 ng/m³), however we are also flexible towards the original assessment threshold proposed by the Commission (0,12 ng/m³).

CZ points out that some short term assessment thresholds are missing, for example threshold for PM₁₀ daily limit values or NO₂ hour limit value that are present in the current directive. CZ asks the PRES to add the missing assessment thresholds or to clarify why are they missing.

Annex III (MINIMUM NUMBERS OF SAMPLING POINTS FOR FIXED MEASUREMENT)

We support the changes proposed by the PRES, especially the added flexibility relating to point sources and monitoring of the application of BAT (Best Available Techniques), that we prefer to be optional.

Annex IV, V, VI

No further comment for now.

Annex VII

Section 1 - CZ supports the fact that levoglucosan is not mandatory for supersites. CZ could also support optional measurement of other pollutants with no harmonised methodology, such as UFP and BC, as was proposed by other MS.

Section 2 - CZ interprets the wording “and methane, when relevant” as though methane measurements are optional, that we support.

Annex VIII

CZ welcomes the proposal to assess the concentration reduction cumulatively for all measures included in the air quality plan. We prefer this approach.

Lastly, we do not support the newly proposed text in point 7.e) aiming at promoting environmental equity. We note that environmental equity is not defined and suggest to the PRES to either add definition or to generalise the text in the following way:

“(e) socio-economic information on the related area, ~~in order to promote environmental equity issues and the protection of sensitive groups.~~”

Annex IX, X, XI

No further comments for now.



DENMARK

Comments and suggestions for revision of the Air Quality Directives

Submission for September 22nd, 2023 deadline

Denmark would like to reiterate our support for the proposal in general.

We have summarized the most important comments from Denmark below. Most comments have been coordinated with other MS.

Article	Suggested change
Horizontal	Wherever there is a reference to ‘limit values and ozone target values’, we suggest for consistency reasons to change the ‘ozone target values’ by ‘target values’. For the other standards, we don’t mention to which pollutants they apply either. Moreover, it could very well be that in the course of these negotiations or in a future revision of the directive, target values for other pollutants are introduced, which would then necessitate to change all these references. We therefore suggest to just refer to ‘target values’.
Art. 4 (13)	black carbon’ (BC) means carbonaceous aerosol measured by light absorption
Art. 4 (14)	ultrafine particles’ (UFP) means particles with an aerodynamic diameter less than or equal to 100 nm. UFP are measured as the particle number concentrations per cubic centimeter (cm ³) for a size range with a lower limit of 10 nm and no restriction on the upper limit.
Art. 4. (20)	we will suggest the following change: ‘indicative measurements’ means measurements which meet data quality objectives that are less strict than those required for fixed measurements taken at sampling points, either at regular intervals during a calendar year continuously or by random sampling, to determine the levels in accordance with data quality objectives that are less strict than those required for fixed measurements;
Art. 4 (24)	we will suggest the following change: <i>‘rural background locations’ means places in rural areas with low population density where levels are representative of the exposure of the general rural population, and vegetation for ozone and natural ecosystems</i>
Art. 8.5 first sentence	The results of modelling applications <u>undertaken in accordance with paragraph 3 of this article or paragraph 3 of article 9</u> and indicative measurements shall be taken into account for the assessment of air quality with respect to the limit values and ozone target values. We could add:

	<u>When submitting modelling data for compliance assessment the principles in Annex IV Points B and C for selection of relevant model datapoints should be followed.</u> Question: is there a need to reference 8.3. This is a requirement for a zone that's already in non-compliance?
Art. 8.5 2 nd sentence	We have great concerns about this requirement as I think a number of other MS do. The general monitoring approach is to measure the air pollution at the most polluted sites and at background sites. This requirement seems to imply that you need to cover all pollutant ranges in a zone – this is supported by the definition of spatial representiveness that says it only applies for certain ranges of pollution. In effect its an requirement to have the entire zone covered by fixed measurements and their area of representation. We would prefer a much softer approach: <u>The results of modelling applications undertaken in accordance with paragraph 3 of this article or paragraph 3 of article 9 must also be included when performing the periodic review of the station network.</u>
Art. 9	We still think that the requirement to do indicative measurements under 9.3(c) should be deleted. For zones where the level of pollutants exceeds the relevant assessment threshold specified in Annex II, but <u>for at least three calendar years</u> not the respective limit values specified in Table 1 of Section 1 of Annex I, ozone target values specified in Section 2 of Annex I or critical levels specified in Section 3 of Annex I, the minimum number of sampling points for fixed measurements may be reduced by up to 50 %, in accordance with Tables 3 and 4 of Points A and Point C of Annex III provided that the following conditions are met:
Annex V, A	.. All fixed measurements meeting that meet the data quality objectives (i.e. uncertainty of measurement and data coverage of measurement as specified in Sections A and B of this Annex, respectively) located in the modelling application assessment area and that have a spatial representiveness area <u>as large as that is relevant considering the resolution of the modelling application</u>” shall be used for the evaluation of uncertainty of the modelling application. Note that the maximum ratio shall be interpreted as being applicable over the entire concentration range. We do believe this point needs further thought I might come back with alternative suggestions depending on submission from other delegations.
Annex VI	We think that its premature to include this reference method: <i>15. Reference method for the determination of ammonia.</i> The reference method for the determination of ammonia is that described in EN 17346:2020 ‘Ambient Air — Standard method for the determination of the concentration of ammonia using diffusive samplers’ Add Ammonia back in the list In 16 below.

Annex VII, Sec. 3D	With regard a new point included in the Annex VII D on Methods for the sampling and measurement of UFP and particle number size distribution, we acknowledge the need for harmonization, but we would like to have some clarification if it is possible to have Technical Specifications as required methods. We wish to point out that these Technical Specifications have not gone through the vast validation process as CEN standards have. Also, we wish to point out, as SE did, that CEN/TS 16976 for PNC has a lower size limit of 7 nm, so the proposed TS does not seem applicable here where in the definition a lower limit 10 nm is described (and which should stay that way). The prEN 16976 seems to solve this issue, but it is still being drafted and perhaps unlikely to be published before AQD process. CEN/TS 17434 for PNSD has a lower limit of 10 nm, though. As a conclusion, we believe that we will need to wait until inclusion of methods for UFP, thus, we do not support inclusion of these TSs here, as they have not been included by the COM either. The point A.16 in Annex VI covers this issue already with sufficient manner.
Annex VIII, A	In point A.1 add a point (d) that reads: (d) the results of the modelling or indicative measurements undertaken in accordance with paragraph 3 of article 8.

CROATIA

Revision of Air Quality Directive

Croatian comments on the revised Presidency compromise text (ST 12848/23)

The Proposal defines ambitious goals through stricter air quality limit values by 2030, and it is assumed that significant resources will be required for the implementation of policies and measures to achieve these limit values. For Croatia the cost of compliance with the proposed air quality standards is estimated to be almost 0.3% of GDP, which is significantly higher than the average for the EU, which is below 0.1%. For this reason, we propose a clear link with relevant financial funds and sources dedicated and accessible for financing of adequate and efficient measures that will enable and facilitate the achievement of the proposed goals.

Given the fact that the significant number of Member States still have problems with reaching compliance with the current standards, especially for the particulate matters (PM₁₀ and PM_{2.5}), we suggest reconsidering and take into account the lessons learned from the implementation period of the current Directives in order to avoid repeating of a certain percentage of achieving negative results in terms of compliance.

In concrete terms, in order to be able to consider the proposed stricter and new air quality limit values in Annex I we proposed the changes in the following provisions:

Article 18

In paragraph 1 we request to prolong the period of postponement, at least, by adding the second additional two years (**5+2+2**), while ensuring a regular review of the progress made. Moreover, the conditions for justifying the postponement have to include some reference to socio-economic circumstances in a Member State. The proposal from LV to include *high proportion of low income households, risk of energy poverty and energy security* goes in the right direction. Finally, we request to include **benzo(a)pyrene** in the list of pollutants for which a postponement can be requested.

Article 19

In paragraph 1 we consider it necessary to express the deadlines from the end of calendar year in which the exceedance has been reported, as only officially reported data can trigger budgetary planning for establishing/revising an air quality plan.

Furthermore, from a legal point of view, please provide clarification of the approach to be taken in relation to ongoing infringement cases - further clarification on the correlation between the deadlines for adoption of air quality plans and the deadlines for implementation of the air quality plans and the expected date for achieving compliance.

Art. 19.2 subpara 2. - we request deletion of last sentence to decrease the administrative burden.

Article 20

We express concerns regarding the successful implementation of the short-term action plans, especially in relation to their timely adoption and implementation. The proposed provisions imply the urgent involvement of all stakeholders as well as prompt assessment of air quality, updated emissions data and potential sources of emissions. However, the last sentence of the second para. of Art 20.1. gives the possibility to provide to the Commission a detailed justification where a short-term is not established. We suggest further elaboration on the deadlines of the procedure and exchange of information in such cases.

Article 21

We would emphasize potential problems that may arise in some Member States including Croatia, taking into account the fact that Croatia has specific geographical position on the border of the EU next to non-EU countries that are not obliged to comply with the EU legislation. We propose to revise Art. 21(1) in connection with Art 21(5), for example as follows:

„ (1) Where transboundary transport of air pollution from one or more Member State or third countries and in particular from candidate countries contributes significantly to the exceedance of any limit value ..., the latter shall notify the Member States or candidate countries from which the air pollution originated and the Commission thereof. “

Article 28

Although we are still scrutinizing the Proposal, we believe that the new institute of compensation for damages from the competent authorities responsible for the violation is controversial problematic from the aspect of the procedural autonomy of a Member State. Therefore, we have a negative scrutiny.

It is also not possible to understand clearly from the Proposal to which specific violation of Art 19(1) to 19(4) Article 28(1) applies, besides its non-adoption, does it include situations like breach of deadlines for adopting an air quality plan, content of an air quality plan is incomplete, air quality plan not suitable and effective for achieving compliance, to long deadlines set for achieving compliance etc.

Furthermore, the inclusion of provisions on compensation for damages with regard to health in the AQ Proposal is inconsistent with the directive itself and other source oriented EU legislation. The directive cannot go into the questions of how much non-compliance with the air quality standards and thereof implementation of actions from Art 19, 20, 21 contribute to damages and consequences for health. We are of the opinion that the issue of claims and compensation for impaired health based on the impairment of environmental conditions must be left to other instruments or institutes that are closer to some factual or scientific basis on which the causal link (impairment of the environment - health consequences) can be established.

Article 8

Regarding Art 8, Para 3. and 5. and taking into account the uncertainty of modelling (dependant on emission data and emission inventories and other input data) as well as based on our previous experience in setting up new measurement sites, we would emphasise that it will not be uncommon that the levels of pollution for the area of the zone might be significantly changed (either improved) over the period between modelling application and completion of measurement campaign.

In order to have the application of modelling based on the harmonised framework established in the implementing act provided for in para 5a., we propose to have a mandatory wording *shall* instead of *may* in para 5a. and link the application of modelling for the purpose of Art 8.3. and 8.5. with the date of adoption of the implementing act in para 5a (a similar solution has been provided in the Batteries regulation).

We are open that the common rules on modelling are laid down in an implementing act and accomplished with more technical detail in guidelines.

Art 8 para 5a. – We propose to revise the text as follows:

*5a. The Commission ~~may~~ **shall** provide further technical details, by means of implementing acts...*

Other comments

Article 4

(14) UFP - It would be clearer if the definition consists of 2 sentences as follows:

‘ultrafine particles’ (UFP) means particles with an aerodynamic diameter less than or equal to 100 nm measured as the particle number concentrations per cm³. The size range is from lower limit of 10 nm up to no restricted upper limit.

Art 5

Art 5.d) ensuring the accuracy of modelling applications

We believe that the competent national authority for ensuring the accuracy of the application of air quality modelling can only be determined under the condition of establishing a harmonized system for ensuring the quality of modelling data at the EU level. Otherwise, MS may only contribute to ensuring the accuracy of modelling applications.

Articles 16 and 17

We support the changes in new para 4. of Art 16 and 17 as clear and unambiguous technical details should be given for assessment of contribution from natural sources and winter salting/sanding. Methodology for demonstration of evidence that the exceedances are attributable to natural sources should be the same for all MS.

In preparing these implementing acts (new para 16.4. and 17.4.) and/or updating guidelines, it has to be taken into account that such evaluations will cause additional costs (caused by, for example, additional employment, chemical analysis) as well as that such evaluations might require additional input data (meteorology, emission data, consumption of salt/sand, salting/sanding frequency etc.) which are relatively demanding and not always immediately available for all MS. Furthermore, by applying such evaluations, some exceedances could be artificially exempted from the air quality assessment but remains the fact that people living in that areas are in reality exposed to measured PM concentrations.

ANNEX V i ANNEX VII

Annex V refers also to metals and PAHs in particulate matter **as well as to metals and PAHs in deposited matter**. For that reasons in section A, Table 1 and in table in section B it should be clearly stated (at least as a footnote) when it refers to lead in PM₁₀", arsenic in PM₁₀, nickel in PM₁₀ etc.

The same comment refers to Annex VII, Tables 1 and 2.

Furthermore, Annex V, section B:

- it **should be "OC, EC" instead of "OC/EC"**, because both parameters (OC and EC) are measured and reported, not their ratio

- it should be **"levoglucosan"** instead of "levoglucosan".

In our opinion, for total deposition, **the minimum data coverage for fixed measurements should also be stated.**

Annex VI A. 15.:

EN 17346:2020 „Ambient Air - Standard method for the determination of the concentration of ammonia using diffusive samplers“ is proposed as the reference method for the determination of ammonia.

In Croatia, ammonia concentrations are measured by automatic analysers. The method is chemiluminescence with catalytic conversion of NH_3 into NO_x – “Continuous measurement with an analyzer of ammonia concentrations in the air by chemiluminescence by catalytic conversion of NH_3 into NO_x , developed based on EN 14211:2012 ‘Ambient air — Standard method for the measurement of the concentration of nitrogen dioxide and nitrogen monoxide by chemiluminescence’. We deem that an affordable method that gives good results was chosen. Although, that method includes 2 converters whose efficiency decreases with time, and which will have a greater impact on the accuracy of the measurement at lower concentrations of ammonia. An advantage is the fact that by that automatic method hourly data is obtained, which we consider a better solution than obtaining data on a daily or weekly basis.

There are also other different methods of measuring ammonia: <https://www.petro-online.com/news/measurement-and-testing/14/breaking-news/a-complete-guide-to-ammonia-monitoring/55627>

Proposing a reference method for measuring ammonia using a diffusion sampler, would mean that other methods (conversion of NH_3 into NO_x , photoacoustic method etc.) can be used but 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.

CYPRUS

Comments and questions regarding the new compromise text prepared by the Spanish Presidency regarding the revision of the AQD

General

Cyprus is generally positive for the Presidency compromise text and appreciate the simplification it includes for quite some aspects of the Directive such as the merging of the two existing directives. Cyprus is in favor with the aim to bring the AQ standards more in line with the WHO guidelines. Ambitious air quality standards are necessary to guarantee that all member states move to the same direction and that background pollution and transboundary air pollution are reduced.

However, please find below Cyprus main concerns regarding the provisions of the proposed Directive, that we have already expressed in previous interventions:

- 1) During summer months, ozone concentrations exceed the target value almost every day in areas where there is no pollution from human activities (see forests - EMEP station). Cyprus has an average of 70 exceedances per year. When the new target value is applied (in 2030 it will be 100 instead of the current 120 $\mu\text{g}/\text{m}^3$), the number of exceedances will increase. What is the rationale for using an air quality assessment model when the whole island is known to have exceedances and even the whole Mediterranean is inundated with high ozone concentrations in summer?

Cyprus also expects the Commission to issue guidelines or a methodology on how to demonstrate that high ozone concentrations are due to meteorological conditions and/or transboundary pollution, as is the case for PM_{10} .

- 2) Concerning supersites, Cyprus considers that 2 supersite stations (1 rural and 1 urban) are too many for small countries (Cyprus has an area of less than 10,000 km^2 and a population of less than 1,000,000). Firstly, the difference between the pollutant concentrations of a rural and an urban station in Cyprus is minimal. Cyprus has no place to install, strictly speaking, rural station (a distance of at least 20 km from urban and industrial areas and away from local emissions). Secondly, in addition to the cost of purchasing the additional analyzers (NH_3 , UFP, UFP distribution and particulate oxidation potential), Cyprus will have high administrative and freight costs each time the relevant personnel have to go to the JRC to participate in an intercomparison exercise. Cyprus believes that this type of measurements should be carried out by institutions such as EMEP, ACTRIS, etc.
Taking all the above into account, Cyprus suggests to have only one supersite in Cyprus that will take all the required measurements.

- 3) Cyprus is not in favor with Article 28 concerning compensation for damage to human health due to the difficulty to prove the causes of illness.
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NETHERLANDS

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

Written comments on the compromise text of the Spanish Presidency

21 September 2023

Article 3. Regular Review

- *The Netherlands would like to put back the text in paragraph 1, which was removed by the Swedish Presidency. As stated earlier, we would like to ensure that if the World Health Organisation (WHO) publishes new scientific evidence, this will be a reason for a review. This makes the text of Article 3, paragraph 1:*

By 31 December 2030~~28~~, and every 5 years thereafter, **and more often if substantial new scientific findings point to the need for it**, the Commission shall review the scientific evidence related to air pollutants and their effects on human health and the environment relevant to achieving the objective set in Article 1 and present a report with the main findings to the European Parliament and to the Council.

Article 4. Definitions, number 28:

- *We would like to add the possibility to use air quality zones as established territorial units. The current wording does allow more flexibility, but does not solve the issue of multiple administrative units in this directive. It should be possible for member states to choose the territorial unit that works best, either zones, NUTS-1 units or parts thereof. We would like to change the wording to “the given territorial unit at air quality zone, or NUTS 1 level or a part of the NUTS 1 level”(see **yellow marked wording**):*

‘average exposure indicator’ means an average level determined on the basis of measurements at urban background locations throughout the **given** territorial unit at **air quality zone, or** NUTS 1 level **or a part of the NUTS1-level thereof**, as described in Regulation (EC) No 1059/2003, or, if there is no urban area located in that territorial unit, at rural background locations, and which reflects population exposure, used to check whether the average exposure reduction obligation and the average exposure concentration objective for that territorial unit have been met. **Where the average exposure indicator in a given NUTS1 territorial unit with**

an area below 1000 km² is influenced by other NUTS1 territorial units, a larger territorial unit covering the related NUTS1 units within the same Member State may be used for the average exposure indicator determination;

Annex VI. C. Standardisation.

- The Netherlands would like to change the title of paragraph 15 to “Reference method for the determination of ammonia **by diffusive sampling**”. We would like to make this distinction as we currently use another, more accurate way of measuring ammonia, which we would prefer to continue to use instead of diffusive sampling.

We could also be flexible if other Member States propose to totally leave out a reference method for the determination of ammonia. This will allow Member States to be flexible in their methods.

Article 12. Requirements where levels are lower than the limit values, ozone target values and average exposure concentration objectives, but above the assessment thresholds.

- The Netherlands can agree with the proposed changes, except for one. We do not support the addition of ‘biogenic precursors’. There is no clear definition of those biogenic precursors. Does it also include agricultural emissions? We think that it should not be too easy to get exemptions from the obligation to keep ozone pollution as low as possible.

Article 18. Postponement of attainment deadline and exemption from the obligation to apply certain limit values.

- The Netherlands can agree with the possibility for Member States to request a second postponement for a maximum period of two years in unforeseen exceptional circumstances. However, we think it would be better to better describe or even limit the ‘unforeseen exceptional circumstances’. Would this be the case when source legislation fails to be adopted? If the transition of current industrial installations towards climate neutrality takes longer than expected? Or if there is an economic crisis? We think somehow these circumstances should be limited to direct emission-related factors, and not open the possibilities for everything.

We don’t think that socio-economic situation should be a valid reason to request a second postponement.

Article 19. Air quality plans

- We feel that the added text in paragraph 2 regarding provisions about when Member

States may refrain from establishing air quality plans needs more specific wording.

'...when there is no significant potential, considering national geographical and meteorological conditions ' is too vague, and leaves room for the socio-economic situation to be a reason for not making a plan. We don't agree with that. We think that the only reasons to refrain from making plans to fight high ozone concentrations should be '1) the transboundary nature of the problem and 2) physical landscape and meteorological conditions. We suggest to change the text as follows:

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, the transboundary nature of the problem and physical landscape and meteorological conditions, and provided that its measures do not entail disproportionate costs, 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.

Article 20. Short term action plans

- ➔ *The Netherlands thinks that – like in Article 19 – in Article 20, paragraph 1 the phrase 'national geographical, meteorological and economic conditions' should be changed into 'transboundary, physical geographical, and meteorological conditions'. Economic conditions should be removed.*

This makes the text as follows:

1. Where, in a given zone, there is a risk that the levels of pollutants will exceed one or more of the alert thresholds specified in Section 4 of Annex I, Member States shall **establish** ~~draw up~~ short-term action plans indicating the emergency measures to be taken in the short term in order to reduce the risk or duration of such an exceedance.

However, where there is a risk **of exceedance of** ~~that~~ the alert threshold for ozone, Member States may refrain from ~~drawing up~~ **establishing** such short-term action plans when there is no significant potential, taking into account **national geographical, meteorological and economic conditions** ~~transboundary, physical landscape and meteorological conditions~~, to reduce the risk, duration or severity of such an exceedance. **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.**

Article 27, 28, 29 – Access to justice, compensation to human health, penalties.

➔ *In general, The Netherlands is satisfied to see that these articles are now consistent with the General Approach text of the Industrial Emissions Directive.*

Regarding Article 27, The Netherlands is flexible if there are Member States which propose to leave it out altogether, because what is written in this article is already provided for in the Aarhus Convention.

AUSTRIA

COMMENTS: Air Quality Directive (WK 11825/2023)

Following the request by the Presidency after the WPE meeting on 18 and 19 September, AT submits the following comments on the Presidency compromise text (12848/23):

Horizontal Changes

AT welcomes the intention of the Presidency to add flexibility in relation to specific predefined areas (i.e. NUTS units). However, we think that the approach taken is rather confusing and complicated. Hence, we suggest simplifying the proposed text by introducing a similar approach as already existing for “zones”, in particular by establishing a separate definition in Article 4 for the “given territorial unit” defining it e.g. simply as “region”:

“Article 4

(41) ‘region’ means a part of the territory of a Member State at NUTS 1 level or a part thereof, as described in Regulation (EC) No 1059/2003, as delimited by that Member State for the purposes of air quality assessment and management regarding the average exposure indicator and the average exposure reduction obligation as defined in paragraphs 28 and 29. Where the average exposure indicator in a given NUTS1 territorial unit with an area below 1000 km² is influenced by other NUTS1 territorial units, a larger territorial unit covering the related NUTS1 units within the same Member State may be used for the average exposure indicator determination.

Provisions¹ that currently address the term “(given) territorial unit(s)” should then refer to the simplified new term, i.e. “region”.

In line with the proposed systematic, we also suggest the following changes:

“Article 6

Establishment of zones and regions

1. Member States shall establish zones throughout their territory, including, where appropriate for the purposes of air quality assessment and management, at the level of agglomerations. Air quality assessment and air quality management shall be carried out in all zones.

2. Member states shall establish regions throughout their territory following the criteria laid down in Article 4 paragraph 41 for the assessment of the average exposure reduction obligation and the average exposure concentration objective. If a region coincides with a zone established according to paragraph 1, Member States may refer to that region as zone.

“Article 13

“3. Member States shall ensure that the average exposure reduction obligations for PM2.5 and NO2 laid down in Section 5, Point B, of Annex I, are met throughout their regions given territorial units at NUTS 1 level, where they exceed the average exposure concentration objectives set out in Section 5, Point C, of Annex I. Member States shall inform the Commission which territorial units they are going to use to evaluate the average exposure reduction obligation.”

Regarding the last sentence, we note that there is no similar provision for zones. Hence, the sentence is neither necessary nor does it fit in Art 13. Therefore, we suggest deleting it on the note that it is already laid down in Art 23 that MS shall report their delimited “regions” to the EC.

¹ I.e. Art. 4 para. 28 and 29, Art. 12 para. 3, Art. 13 para. 3, Art 16 para 1 and 2, Article 19 para 3 and 4, Article 23 para 2, Annex I Section 5 Point A, Annex III Section B, Annex VIII Point b lit a.

“Article 23

2. [...]

(a) the changes made in that year to the list and delimitation of zones or regions established under Article 6 ~~or any NUTS 1 territorial unit~~;

(b) the list of zones and ~~NUTS 1~~ and territorial units regions and the levels of pollutants assessed. For zones in which the levels of one or more pollutants are higher than the limit values or critical levels, as well as for ~~NUTS 1~~ territorial units regions where the levels of one or more pollutants are higher than the ozone target values or average exposure reduction obligations: [...]

As a less preferred alternative, we propose at least adding in all provisions that refer to a “given territorial unit” (ref. to footnote 1) the reference “*designated according to Article 4 paragraph 28*” to avoid ambiguity.

Article 1 (Objectives)

AT accepts the changes in the text. We suggest, however, changing the last sentence in para. 2 for editorial purposes:

“~~The~~ These air quality standards set out in Annex I shall be [...]“

Article 3 (Regular Review)

We agree with the modifications, but we suggest again the following editorial changes in lit. 2 c (resubmission):

“(c) air quality situations and associated impacts on human health and the environment as well as the nature and socio-economic impacts of complementary actions to be implemented to achieve ~~new the~~ objectives of Article 1 in Member States, “

We think that a reference to Article 1, where the new objectives are defined, enhances clarity.

We also propose splitting para. 4 into two separate paragraphs, starting the new para. 5 with the following wording:

“4. Where the Commission considers it appropriate, [...] or to cover other air pollutants.
5. Furthermore, where appropriate the Commission ~~deems it necessary~~, it shall also present proposals to [...].”

Article 4 (Definitions)

AT supports most of the proposed changes.

Regarding para. 14, we suggest that the last part of the sentence should be deleted to prevent contradictory wording:

“(14) [...] ~~and for a size range with no restriction on the upper limit.~~”

Regarding para. 28 and 29, we suggest introducing the definition of the term “*region*” in a new para. 41 as proposed above (ref. to horizontal changes) and, therefore, the following changes in line with that proposal:

“(28) ‘average exposure indicator’ means an average level determined on the basis of measurements at urban background locations throughout the region given territorial unit at NUTS 1 level or a part thereof, as described in Regulation (EC) No 1059/2003, or, if there is no urban area located in that territorial unit region, at rural background locations, and which reflects population exposure, used to check whether the average exposure reduction obligation and the average exposure concentration objective for that territorial unit region have been met. ~~Where the average exposure indicator in a given NUTS1 territorial unit with an area below 1000 km² is influenced by other NUTS1 territorial units, a larger territorial unit covering the related NUTS1 units within the same Member State may be used for the average exposure indicator determination;~~

(29) ‘average exposure reduction obligation’ means a percentage reduction of the average exposure of the population, expressed as average exposure indicator, of a **region given territorial unit** at NUTS 1 level as described in Regulation (EC) No 1059/2003 of the European Parliament and of the Council set for the reference year with the aim of reducing harmful effects on human health, to be attained over a given period;”

Annex II, Section 1 (Assessment thresholds for health protection)

AT does not support any further increase of the B(a)P threshold and suggests retaining the EC proposal of 0,12 ng/m³.

Article 8 (Assessment criteria)

We strongly support delegations who voiced that modelling results should be treated with caution and that compliance assessments should focus solely on measurement results.

Regarding para. 5, we suggest using the term “*determined*” instead of “*recorded*” as we are of the opinion that it suits modelling results better.

Regarding the new para 5a, AT welcomes the intention of specifying the technical details of air quality modelling as we are convinced that it is essential to set common requirements. However, we advocate for **guidance documents as the preferred and more flexible approach**. Therefore, EC should be engaged to elaborate and publish such guidance. This view also applies to Articles 16 and 17.

If however, delegated power is chosen as the way forward, we note from a formal point of view that it would be necessary to include references to the Articles that mandate EC to adopt such implementing acts in Art 25 paragraph 2.

Article 9 (Sampling Points)

AT supports the changes.

However, the rationale of the last sentence in para. 4a is not obvious to us. Ozone precursor measurements should yield information about the (regional) ozone formation potential, and provide data on a time resolution of less than one day; passive sampling, which has a sampling time of 2 to 4 weeks, is not useful for this purpose. Therefore, the term “*other assessment methods*” should be specified appropriately.

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

We welcome the efforts of the Presidency to take our concerns regarding the monitoring of the application of BAT in the context of air quality measurements in accordance with the requirements of this Directive into account.

With regard to the proposed text in Annex III, Point A.2 (“Point Sources”), however, we see a need for clarification whether there is an (existing) obligation to carry out ambient air quality measurements under the current IED 2010/75/EU and to whom it is directed (plant operator or competent authority). We do not think that measurement requirements under these two Directives should be intertwined, since they constitute very different pieces of legislation.

Article 10 (Supersites)

AT in principle supports the changes.

However, we think that clarity of the proposed new wording of para. 4a should be enhanced. I.e., it should be clarified that the assessment thresholds refer to PM₁₀, PM_{2.5}, NO₂, O₃, As, Cd, Ni, Pb and B(a)P (i.e. the pollutants listed both in Annex II and Annex VII). Furthermore, it should be clarified that – as we assume – the exemption only applies if the concentration of all pollutants is below the assessment threshold. In addition, it should be clarified that the last sentence refers to the concentrations in relation to the assessment thresholds at urban supersites.

We propose the following simplified wording to enhance clarity:

“4a. Monitoring supersites at urban background locations shall be installed where the levels of at least one of the pollutants for which an assessment threshold is set in Annex II are not below the respective assessment thresholds for the respective urban area. The review of these levels in relation to the assessment thresholds shall be carried out at least every 5 years.

Measurements at monitoring supersites at urban and rural background locations shall include the pollutants listed in Tables 1 and 2 of Section -1 of Annex VII and may also include the pollutants listed in Table 3 of Section -1 of Annex VII.”

The proposed wording would ensure that there is a comparable set of pollutants monitored at urban background supersites throughout the EU that is comparable to the set of pollutants at the rural background supersite.

Annex V (Data Quality Objectives)

The amendment in Section A paragraph 4 below table 2 addresses the issue of small-scale concentration variations, e.g. in street canyons. However, the representativeness area of a kerbside station usually is a network of stripes of some meters in width along roads, the “area” of which is not at all relevant for model evaluation. Therefore, the wording “... *a spatial representativeness area as large as*” is not considered being useful.

Hence, we suggest modifying the text as follows:

“All fixed measurements ~~meeting that meet~~ the data quality objectives (i.e. uncertainty of measurement and data coverage of measurement as specified in Sections A and B of this Annex, respectively) located in the modelling application assessment area and the spatial representativeness of which corresponds to the spatial resolution of the modelling application ~~that have a spatial representativeness area as large as the resolution of the modelling application~~ shall be used for the evaluation of uncertainty of the modelling application.”

Annex I (Air Quality Standards)

We note that the proposed wording “local time” in Section 2 Point A is ambiguous, as it could be understood as the actual time of a certain longitude; it can be assumed that it refers to a time zone. For clarification, it is proposed to change “local time” to “*local time zone*”.

We propose that the wording of the provision in Section 4 Point A “over three consecutive days or less” is changed to “*over three or fewer consecutive days*” or “*over one, two or three consecutive days*” to avoid ambiguity regarding the averaging time.

Finally, we note that the amended sentence in Section 5 Point A (“For 2030, 2031 and 2032, the year 2020 may be excluded of this calculation thus using a two-year running annual mean.”) should most probably read “For **2020, 2021 and 2022**, the year 2020 may be excluded of this calculation thus using a two-year running annual mean.”

Article 16 and 17

We reiterate our preference for guidance documents instead of implementing acts.

Article 18 (Postponement of attainment deadline)

AT accepts the proposed changes and increased flexibilities in order to keep the overall level of ambition in a well-balanced text.

We note that the expression “unforeseen exceptional circumstances” would require a more detailed specification.

On an editorial note, “drawn up” should be replaced by “*established*” in the context of air quality plans throughout the text (i.e. in Art 18 para 1 and Art 20 para 4).

Article 19 (Air quality plans)

AT supports the proposed wording in para. 1, which merely serves the purpose of consistent wording. We point out again that we have proposed several times an extension to the scope of the new update mechanism insofar as to enable a regular evaluation and update of plans and measures as appropriate:

"1. [...]"

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

We also suggest similar language for other paragraphs of Art. 19 regarding updates of plans and measures.

Regarding ozone, AT considers the Presidency's proposal in para 2 as an improvement and we welcome the exemption from the obligation of establishing air quality plans. However, we maintain our plead for retaining the system of the current Directive (i.e. Art. 17 of Directive 2008/50/EC). In case, the Presidency's proposal is kept, we support delegations who suggested deleting the last sentence regarding the provision of detailed justification.

Furthermore, we suggest changing from "territorial units" to "zones" with regard to ozone throughout para 2 (note: without the prefix 'air quality' as the definition is simply 'zone'; same holds true for Annex IV B.5.a regarding "by the borders of the ~~air quality~~ zone under consideration"). We point out in this regard that throughout the rest of the text, ozone is linked to zones when it comes to the territorial unit in question (e.g. Art 7 para 1, Art 8 para 1, Art 9 para 3, Art 12 para 2, Art 13 para 2). We also note that the previous proposed term "region" should not be used here to avoid ambiguities.

"2. Where in a ~~given NUTS 1 territorial unit~~ covering at least one air quality zone, the levels of pollutants in ambient air exceed the ozone target value, laid down in Section 2 of Annex I, Member States shall establish air quality plans for those NUTS 1 territorial units zones, as soon as possible and no later than 2 years after the calendar year during which the exceedance of the ozone target value was recorded. Those air quality plans shall set out appropriate measures in order to achieve the ozone target value and to keep the exceedance period as short as possible.

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 provided that its measures do not entail disproportionate costs, 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.~~

Where exceedances of the ozone target value persist during the fifth calendar year after the establishment of the air quality plan in the relevant NUTS 1 territorial unit zone, Member States shall update the air quality plan and the measures therein **every three years**, and take additional and more effective measures, **starting from** ~~in~~ the subsequent calendar year **to keep the exceedance period as short as possible.**

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

Furthermore, we strongly oppose the new wording in para 4. Our text proposal (WK 5892/2023) aimed in the opposite direction than the Presidency's wording: **We do not want to create an obligation to establish ozone plans, in particular not before 2030.** We point out that para. 4 in the wording of the original proposal is not intended to apply to ozone target values. Hence, the **misplaced reference "territorial unit"** (which might be the remainder of a previous drafting proposal) **is to be deleted.** **We would also like to ask the Commission to clarify on the originally proposed wording.** We emphasize in this regard that an obligation to establish ozone plans ahead of 2030 would not only go beyond the requirements of the current directive (ref. to Art 17 para 2 Directive 2008/50/EC), but **would also go beyond the obligations that would apply from 2030 onwards (ref. to Art 19 para 2 of the proposal and the newly proposed possibility to be exempted from the preparation of ozone plans under certain circumstances!).** Furthermore, we note that the phrase "limit value" is still missing. We reiterate our text proposal vis-à-vis the Presidency's latest modifications that we oppose:

"4. Where from [insert year 2 years after entry into force of this Directive], until 31 December 2029 in a zone ~~or NUTS 1~~ **territorial unit**, the levels of pollutants are above any limit value ~~or ozone target values~~ to be attained by 1 January 2030 as laid down in Table 1 of Section 1 ~~and Table B of Section 2~~ of Annex I, Member States shall establish an air quality plan for the concerned pollutant as soon as possible and no later than 2 years after the calendar year during which the exceedance of the **limit value** was recorded to attain the respective limit values ~~or ozone target values~~ by the expiration of the attainment deadline. [...]"

Article 20 (Short term action plans)

In general, we consider short-term action plans often to be not very effective and linked to rather high administrative burden.

On the substance, it is still not clear to us what would constitute that "there is a risk that the levels of pollutants will exceed one or more of the alert thresholds". In addition, it is not clear what constitutes that there is "no significant potential, taking into account national geographical, meteorological and economic conditions, to reduce the risk, duration or severity of such an exceedance" regarding ozone. In addition, it should be clarified if there is a risk of exceedances of PM₁₀ and PM_{2.5} alert thresholds due to natural sources. We request that these questions be clarified in a guidance document as soon as possible and that the Commission is obliged to do so in the text.

We also suggest deleting the restriction to ozone in the second sentence of para 1. We think that a justified exception to refrain from the establishment of such plans should apply to all pollutants. We also support delegations who asked to delete the last sentence regarding providing a detailed justification :

"However, where there is a risk of exceedance of ~~the an~~ alert threshold ~~for ozone~~, Member States may refrain from ~~drawing up~~ ~~establishing~~ such short-term action plans when there is no significant potential, taking into account national geographical, meteorological and economic conditions, to reduce the risk, duration or severity of such an exceedance. ~~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.~~

Article 21 (Transboundary Air Pollution)

In general, the provisions of Art 21 are not very convincing to us. Therefore, we suggest maintaining the current bilateral approach and refraining from the introduction of new obligations. We would also like to remind in this regard of the set of instruments for transboundary air pollution that is already in place and that we consider as sufficient together with the existing provisions in the AQD (i.e. NEC-Directive 2016/2284/EU and in a wider geographical context the Geneva Convention on Long-Range Transboundary Air Pollution (CLRTAP) for the UNECE region).

Article 22 (Public Information)

We welcome the amended text, but see a need for further clarification on whether the obligation of Art 22 can be also met by providing a link to the EEA Index. This could be included in the text as follows (resubmission):

“2. [...] *Alternatively, Member States may also use the air quality index provided by the European Environmental Agency to fulfil the requirements of this provision.*”

Article 24, 25 and 26 (Amendments to Annexes, exercise of delegation, committee procedure)

We welcome the modifications in the text limited the delegation of power and in particular, the exemption of Annex II from modification through implementing acts.

We additionally propose exempting Annex VIII and Annex IX.

From a formal point of view, we note that it is necessary to extend the list of Articles that mandate EC to adopt implementing acts in Art 25 paragraph 2 if guidance through implemented acts remains the preferred approach:

“2. The power to adopt delegated acts referred to in **[insert missing Articles]** Article 24 shall be conferred on the Commission for [...]”

Chapter VII – Access to Justice, Compensation and Penalties

In principle, AT welcomes a harmonised approach regarding the provisions within this chapter vis-a-vis other legislative proposals that are currently under negotiation.

We emphasize again that in particular regarding access to justice the Industrial Emissions Directive (IED) and the Air Quality Directive (AQD) require different approaches, since different provisions of the Aarhus Convention (AC) and different jurisdiction of the European Court of Justice (ECJ) are to be implemented. We strongly echo EC's plead during the last WPE meeting to treat them as very different pieces of legislation that require different approaches.

Article 27: Access to justice

Because of the fact that IED and AQD are different legal frameworks with different objectives and different perspective (in particular emission vs immission legislation), the respective requirements in the legal acts are not identical.

We emphasize once more that the requirements of Art. 9 para. 3 AC (which applies to the AQD) are less restrictive than the requirements of Art. 9 para. 2 (which applies to the IED). This has been confirmed by various case law of the ECJ (e.g. *Protect*, C-664/15). **Therefore, we oppose the view of the Commission** that was shared during the last WPE meeting and expressed that the original EC proposal only covered what would be necessary according to Art 9 para 3 of the Aarhus Convention and the respective jurisdiction of the ECJ. In this regard, we point to the fact that recital no. 39 is based on ECJ case law that has been developed in relation to Art. 9 para. 2 AC (and, therefore, should be adjusted accordingly), whereas undoubtedly **only Art. 9 para 3 of the Aarhus Convention is relevant as regards air quality plans** (as confirmed by the Commission itself).

Following these arguments, we insist that the provision of Art 27 should only cover what is actually required according to Art. 9 para. 3 of the Aarhus Convention, and taking into account the relevant case law developed by the ECJ (i.e. *Janecek*, C-237/07, and *Client Earth*, C-404/13). We do not see a need to go beyond these requirements.

The Presidency's proposal is already a step in the right direction. However, para. 2 is neither required by Art. 9 para. 3 AC nor by the case law of ECJ with respect to the AQD.

Hence, we request to **delete** Art. 27 para. 2:

~~“2. To have standing to participate in the review procedure shall not be conditional on the role that the member of the public concerned played during a participatory phase of the decision-making procedures related to Article 19 or 20.”~~

We also look forward to the promised analysis of the CLS regarding the question of SI that touches upon possible changes in the representation of the EU and its MS in the respective fora of the Aarhus Convention if a provision such as Art 27 was included in the AQD.

Article 28: Compensation for damage to human health

Although we welcome the proposed changes in the compromise text as a step in the right direction, we still **request the full deletion of the Article**.

We are of the opinion that the amended proposal is still not in line with the principle of procedural autonomy of the MS. Furthermore, we still question in principle that Art 192 TFEU can function as legal basis for a provision of such substance and we have not heard any justification as regards the legal basis yet. We would also like to point again to the fact that the ECJ (case law C-61/21) does not consider any such liability to be justified. Hence, we do not see a justification for including it in the revised Directive.

On the substance, the following concerns remain:

The new wording in para. 1, according to which compensation claims for damages can only be derived from “*a violation of the national rules transposing the provision of Articles*”, represents a deviation from state liability as developed by the ECJ (the classic case of which is precisely the non-compliance with EU law, in particular the lack of transposition of Directives).

In order to sufficiently respect the procedural autonomy of the MS and to not go beyond the criteria for state liability as developed by the ECJ as well as national public liability (tort) law, respectively, at least the following considerations need to be taken into account in addition to the amendments that have already been made:

Para. 1 states that MS shall ensure that natural persons who suffer damage to human health caused by a violation of provisions of the AQD are entitled to compensation “*in accordance with this article*”. Subsequently, however, Art. 28 does not lay down any (further) substantive conditions for that entitlement. In particular, Art. 28 does not contain a provision on whether liability requires fault or at least - in the sense of the ECJ's case law on state liability (ref. to i.e. joint cases *Brasserie du Pêcheur and Factortame*, C-46/93 and C-48/93) - **a sufficiently serious breach of EU law**.

Therefore, if Art 28 is not going to be deleted in its entirety as requested above, we propose inserting at least the following condition concerning fault into para. 1 in order to properly transpose ECJ jurisdiction on state liability and to sufficiently respect national public liability law, which requires four elements (notably damage (“suffer damage to human health”), unlawfulness (“a violation of [...]”), causality (“caused by”) and fault (**missing**)) as common conditions for liability of public authorities, respectively:

„1. Member States shall ensure that, natural persons who suffer damage to human health caused by a violation ~~of the national rules transposing the provisions~~ of the of Articles 19(1) to 19(4), 20(1) and 20(2), 21(1) second sub-paragraph and 21(3) of this Directive **that has been committed intentionally or negligently by the competent authorities, are entitled to compensation in accordance with this article.”**

Furthermore, we support the comment that suggested excluding Art. 19 (2) regarding ozone target values from the list in para 1 during the last WPE meeting. Additionally, we request to further delete the references to Art 21 (1) second sub-paragraph and 21 (3) for the reasons given in our comment on Art. 21 (transboundary air pollution).

Regarding para. 6 we note that it contains a provision regarding the start of limitation periods, which in our view still interferes with the procedural autonomy of the MS. We request that the second sentence of para.6 is deleted:

~~"6. Member States shall ensure that may establish the limitation periods for bringing actions for compensation as referred to in paragraph 1 are not less than 5 years. Such periods shall not begin to run before the violation has ceased and the person claiming the compensation knows, or can reasonably be expected to know, that he or she suffered damage from a violation as referred to in paragraph 1."~~

Article 29: Penalties

AT welcomes the additional modifications.

However, we emphasize again that enforcement authorities usually lack knowledge of the information required to assess certain circumstances (i.e. those of lit. c) or that the respective information can only be determined with disproportionate effort and cost. Therefore, we consider the circumstances laid down in lit. c of the original proposal still not feasible and propose to tailor them more adequately to areas, where authorities have justified reason for assumption that the population or environment is more heavily affected by and/or more vulnerable to an infringement (e.g. schools, hospitals, national parks, etc.).

POLAND

Commentary to the document

“Air Quality Directive: WPE on 18 and 19 September 2023 - Presidency explanatory note”

Horizontal changes

Territorial units

PL appreciates the efforts of the Presidency in reaching out to the comments of Member States. More flexibility in the territories for calculating AEI (AERO and AECO), ozone and air quality plans is a step in the right direction. However, PL would also like to add the possibility to choose the entire Member State's territory for these purposes.

References to target values

PL continues to advocate maintaining the target values for benzo(a)pyrene and for arsenic, cadmium and nickel at current levels. Target values for these substances could be added in Table 1, Section 1 of Annex I and Table 2, Section 1 of Annex I, or alternatively Table 3 (instead modifications in Table 2) could be added to Section 1 of Annex 1 with target values for these pollutants.

Lead

PL supports the changes.

Changes proposed to the Articles and Annexes

1) Article 1. Objectives

Article 1(1)

PL supports the changes made. However PL continues to take the negative view of the zero pollution objective. The wording of the zero pollution objective in Article 1 and the definition of "pollution" in Article 4(2) make the zero pollution objective unattainable and the provisions contain a logical error.

Article 1(2)

PL supports the change proposed by the Presidency.

2) Article 3. Regular review

PL supports the changes made by the Presidency, especially the replacement of "ensuring" with "taking into account" before the phrase "alignment with the WHO guidelines and scientific information."

3) Article 4. Definitions

(8) ‘arsenic’, ‘cadmium’, ‘lead’, ‘nickel’ and ‘benzo(a)pyrene’ (adding the text "expressed as mass concentration in ambient air")

PL supports the changes.

(11) ‘volatile organic compounds’ (referring to Non-Methane Volatile Organic Compounds)

PL welcomes the Presidency's proposal. However methane should also be deleted from Annex VII, section 2 B.

(13) ‘black carbon’

PL raises a scrutiny reservation to the definition of 'black carbon'. Measurements of black carbon should not be obligatory.

(14) 'ultrafine particles' (UFP)

PL raises a scrutiny reservation to the definition of 'UFP'. Measurements of UFP should not be obligatory. Especially when there are substantial questions regarding the subject matter. Some of them were raised during the last AQUILA meeting (13-14 September 2023).

(20) 'indicative measurements'

PL supports the changes.

(24) 'rural background locations' (adding ozone)

PL would like to point out that nitrogen oxides and sulphur dioxide are also measured for vegetation protection purposes. These also have critical values, hence it is unclear to add only ozone.

(27) 'ozone target value' (word "environment" replaced by "vegetation")

PL does not support such a definition of target value. PL proposes to reinstate target values for benzo(a)pyrene, arsenic, cadmium and nickel. There should be a definition of target value with these pollutants (and ozone). Ozone could be further clarified in the definition.

(28) 'average exposure indicator' (reference to territorial unit modified)

As stated earlier, PL supports the introduction of flexibility for the calculation of AEI, while PL proposes also to restore the possibility of calculating AEI for the entire territory of a Member State.

(29) 'average exposure reduction obligation'.

PL supports the changes if the possibility to count AEI for the whole territory of a Member State is added to the definition of AEI (point 28).

(40) 'oxidative potential of particulate matter'.

PL raises a scrutiny reservation to this definition. However, PL is for deletion of this definition and obligation of measurements oxidative potential of particulate matter.

4) Article 5. Responsibilities (mention that cooperation with the other Member States and the Commission shall address also transboundary air pollution, to reinforce Article 21)

PL supports the changes.

Annex II. Section 1 - Assessment thresholds for health protection (BaP threshold of 0.3 ng/m³)

PL thanks the Presidency for this step in the right direction and the partial consideration of Member States' suggestions. However, PL is of the opinion that the assessment threshold for B(a)P should be at least 0.4 ng/m³ (optimally 0.6 ng/m³).

5) Article 8. Assessment criteria

Article 8(4). The word 'techniques' has been deleted.

PL supports the changes.

Article 8(5) [moved from Art. 9(6) of the initial Commission proposal]. In order to ensure that in the event of an exceedance shown by the modelling application it can be verified as soon as possible so that measures can be taken to reduce pollution levels,

PL's position is that in air quality assessments the highest priority should be given to fixed measurements as they have the highest data quality and have the most strict data quality objectives in the directive. It is incomprehensible to give a higher priority to modelling and even indicative measurements (which, by definition in Article 4 point 20 have less strict data quality objectives than

fixed measurements). It should be up to the Member State to decide whether it includes in an air quality assessment inferior methods (other than fixed measurements). There should be a general rule that after careful analysis and expert judgement it is the verified data from fixed measurements that decide the zone class in the annual air quality assessment and the 5-year air quality assessment. Indicative measurements, modelling and objective estimation should be considered as supplementary methods.

Also there is no need and added values to put up a monitoring station in every exceedance area in a zone.

2 years may not be enough to launch a new measuring station, PL advocates 3 years.

Article 8(5a)

PL remains of the view that EC guidance on modelling and possibly indicative measurements is needed, not "implementing acts". We propose 2 years for the EC to publish such guidance from the entry into force of the Directive.

Articles 8(6) and 8(7) were moved to Article 9.

PL supports the changes.

In Article 8(8) ('shall' replaced by 'may')

PL supports this change, but would be even better if that paragraph were deleted. It should be in another law - Annex V of Directive 2016/2284.

6) Article 9. Sampling points

Article 9 (8 and 9) (paragraphs 6 and 7 of Article 8 moved to the end of Article 9 and "level" replaced with "concentration")

PL supports the new paragraph 8 in Article 9. PL takes a negative view on the new paragraph 9 in Article 9. PL does not agree with the introduction of mandatory UFP monitoring, especially as extensive as that proposed in the proposal. Even more so, PL do not support the deletion of the words 'where applicable' in new paragraph 9 of Article 9.

Article 9 (4a) (art 10(4) of the current Directive (EU) 2008/50, which was missing from the recast proposal)

PL supports the changes.

Annex III. Minimum numbers of sampling points for fixed measurement Annex III. A. 1.

Diffuse sources. (the column with the minimum number of sampling points for PM2.5 reinstated)

PL takes a negative view of the increase in the minimum number of sampling points for particulate matter (especially PM2.5) in the proposal. PL sees no justification for increasing the number of sampling points, especially when the measurement networks for the "old" pollutants are already stabilised, it is known where measurements are needed and where not. PL proposes to return to the minimum number of stations in the current directives.

Annex III. A. Point sources.

PL supports the changes.

Annex III. C. 2. ("for the protection of the environment" replaced by "for the protection of vegetation")

PL supports the changes.

Annex III.D.

PL still takes a negative view on this point. UFP measurements should be voluntary.

Annex IV. Assessment of Ambient Air Quality and Location of sampling points.

Annex IV. General. A reference to the ozone target value for the protection of human health has been included in point 2.

PL also proposes to add other pollutants that have currently target values: (B(a)P, arsenic, cadmium, nickel).

Annex IV. B. Macroscale siting of sampling points.

- Point 2. b) the criterion for sampling points measuring the contribution of domestic heating is that it should be representative of at least 25 m x 25 m as 250 m x 250 m

PL sees no basis for such a provision. Firstly, it conflicts with the principle not to monitor micro-environments (indicated in the Presidency's clarification). Secondly, it could be in a conflict with the provision that the zone is to be covered in its entirety by areas of representativeness of sampling points (point g below in Annex IV B 2).

- Point 2. f) "shall" replaced by "may" to make the monitoring of the application of BAT more flexible

PL supports the change.

- Point 2. g). modified to allow other methods such as objective estimation instead of fit-for-purpose modelling applications.

PL supports the change. However PL still sees the need to modify the provision concerning obligation to cover whole zone with representativeness areas of sampling points. In reality the provision will be impossible to achieve in most or all zones.

- Point 4. (The reference to "summits of higher mountains" removed)

PL takes a negative view on the provision. The summits of higher mountains may not be a good location for ozone measurement sites. Stratospheric ozone inflows from higher atmospheric layers sometimes occur at higher altitudes. This is a naturally occurring phenomenon, but not addressed by the proposal. Therefore, PL proposes to return to the original text (also in line with current law).

- 7) Article 10. Supersites (Flexibility in terms of the pollutants to be measured if the concentration levels are below the assessment threshold for urban background stations).

New 4a - PL takes a negative view making the flexibility of the measurement programme at supersites conditional on the normalized concentrations being below the assessment thresholds.

Annex VII. Section 1. Measurements of pollutants at supersites

These changes should be considered together with the introduction of Art. 10(4a). PL collectively opposes these changes.

Annex VII. Section 2- Measurements of ozone precursor substances; methane included in the first paragraph of the substance to be measured as a possible ozone precursor but without including it in the list.

PL proposes to delete methane from Annex VII altogether.

Annex VII section 3

Annex VII C. Siting. (link the location of the sampling points to the wind direction in relation to the sources).

PL does not support the change. There is very little data on UFP in Europe and in most Member States they do not exist at all. It is unclear how will it be known where there are high concentrations of UFP (if the definition is agreed upon) or from where they can be transported by air masses. UFP should remain in scientific domain.

Annex VII D. Methods for the sampling and measurement of UFP and particle number size distribution.
(adding a reference to the existing CEN Technical Specifications for the sampling and measurement of UFP (CEN/TS 16976:2016) and particle number size distribution (CEN/TS 17434:2020).

PL raises a scrutiny reservation to this provision. Furthermore, this still does not address the lack of a reference method in the proposal. PL would like to point out that CEN technical specifications are subject to change and they cannot be treated as substitutes to CEN standards.

Annex V: Data quality objectives

PL supports the changes.

- In paragraph 4 below Table 2, the sentence “All fixed measurements meeting the data quality objectives (i.e. uncertainty of measurement and data coverage of measurement as specified in Sections A and B of this Annex, respectively) located in the modelling assessment area shall be used for the evaluation of uncertainty of modelling” implies the use of all type of stations. Nevertheless, this does not seem to be appropriate for stations with a very small representativeness area. Thus, additional wording is proposed to ensure that the fixed measurements used have an adequate representativeness area for the modelling assessment.

PL takes a negative view on these changes. The tightening of the criteria may cause difficulties in assessing model uncertainty. Theoretically, all stations included in the air quality assessment are taken for the assessment of model uncertainty. A modelling expert should be able to reject stations with specific representativeness from the model evaluation process.

Section B. Data coverage of measurements for ambient air quality assessment.

PL supports the changes.

Annex VI.: Reference methods for assessment of concentrations in ambient air and deposition rates.

Annex VI. A. Reference methods for the assessment. A new reference method for the determination of ammonia.

PL has a scrutiny reservation to this amendment.

Annex VI. B. Demonstration of equivalence. Automated measuring systems for the measurement of the concentration of particulate matter (PM₁₀; PM_{2,5})’ introduced.

PL raises a scrutiny reservation to this provision.

Annex VI. C. Standardisation. Nickel added.

PL supports the change.

8) Article 12.

Article 12(2). Biogenic precursors proposed to be included as an additional factor.

PL supports the change.

Article 12(4).

PL wishes to recall that, according to the proposal, the zero pollution objective is an unachievable goal (as it also assumes the elimination of natural pollution). PL therefore proposes to shorten the inserted text (and adapt the existing text): ~~in line with order to move closer to a zero pollution objective as referred to in Article 1 paragraph 1 taking into account.~~

9) Article 13.

Article 13(3) (informing the Commission which territorial units Member States are going to use).

PL supports the change.

Article 13(7).

PL supports the amendment with the proviso that PL advocates leaving the target values for B(a)P, arsenic, nickel and cadmium, which should be reflected in the text.

Annex I. Air quality standards

Section 1. - limit values for the protection of human health. Table 1.

- For the nitrogen dioxide hour limit value, it is proposed that it should not be exceeded more than three times instead of once per calendar year.
- For the sulphur dioxide hour limit value, it is proposed that it should not be exceeded more than three times instead of once per calendar year.

PL supports the changes. In contrast, PL continues to take a negative view of the proposal to tighten the limit values for the pollutants in Table 1 and the proposal to change the target values to limit values for heavy metals (arsenic, cadmium, nickel) and benzo(a)pyrene in PM10. PL also continues to take a negative view of the proposal to introduce a limit value for daily average PM2.5 concentrations. PL continues to have a scrutiny reservation to this table. PL also proposes again a deadline for the attainment of the limit values in Table 1 of 2035 or 2040 (instead of 2030).

Section 2. Ozone target values and ozone long-term objectives. Section A. For AOT40, Central European Time (CET) has been substituted by local time in coherence with the rest of the standards.

PL proposes to maintain CET time. Local time entails difficulties in the calculation of the AOT40 indicator (missing data and double data on time change dates).

- Inclusion of missing attainment periods:

PL has a negative opinion on this change. This should be the same date (not transposition date) as for Annex 1 Section 1 Table 1 as stricter criteria are also proposed for ozone.

- o In the title of section C. Long-term objectives for ozone. An attainment deadline of 1 January 2050 is proposed.

PL takes a negative view of this change. The long-term objective for ozone is a lenient criterion by definition. Under no circumstances can conditions of the type "to be attained" be set here and by 2050.

- Section 2. B Table. "Protection of the environment" replaced by "Protection of vegetation"

PL supports the change.

Section 4. A. Alert thresholds for pollutants other than ozone.

PL supports the change.

Section 5 - Average exposure reduction obligation for PM2.5 and NO2

Section 5. A. Average exposure indicator. A sentence has been included making it possible to exclude the year 2020 from the calculation of the 3-calendar-year running annual mean concentration in 2030, 2031 and 2032.

PL supports the change.

10) Article 14 Critical levels for the protection of vegetation and natural ecosystems

A reference to Annex IV.B.3 is included as it is focused on protection of vegetation and natural ecosystems.

PL supports the change.

No modifications are proposed to Annex I. Section 3 of the Commission proposal.

11) Article 15. Exceedances of alert or information thresholds

Article 15(3)

PL proposes to modify the inserted text to: *or, when appropriate, if it is predicted to be exceeded based on modelling applications or other forecasting tools and approved by expert judgement.* However, modelling, especially for short-term forecasts, is often unreliable (more unreliable than weather forecasts). Therefore, there must be an expert to check it, including with other data, verify it and decide whether to sound the alarm.

- The term “within a few hours at the latest” (in Article 15(3) is proposed.

PL supports the change.

A new paragraph (5) has been added on information to the Commission on more stringent alert or information thresholds, in coherence with Article 13(7).

PL supports the change.

12) Articles 16 and 17

PL maintains the need for the EC to issue guidelines regarding article 16 and 17, not implementing acts. Guidelines are supposed to clarify the law and make it more precise, and it is also necessary to retain some flexibility in the guidelines. In the current Directive, the EC was obliged to publish guidelines, so it is difficult to understand that this is now impossible. In addition, this proposal has provisions regarding CEN technical specifications (clearly non-binding documents) instead of CEN standards to be used in place of the supposed reference method for UFP. EC guidelines should be published 2 years after the date of entry into force of the Directive.

Article 18. Postponement of attainment deadline and exemption from the obligation to apply certain limit values.

PL proposes (again) to add the possibility to derogate for benzene, sulphur dioxide and in terms of meeting the target values for benzo(a)pyrene and arsenic in PM10. PL also proposes, like several other Member States, to add socio-economic conditions to the list of reasons for derogation.

PL proposes further derogations for a period of 5 years (5 + 5, instead of 5 + 2, PL also supports notion to make available more than two derogations) and without proving "the occurrence of unforeseen exceptional circumstances that prevented compliance" and simplifying the application procedure for obtaining derogations.

13) Article 19. Air quality plans

Article 19(1)

PL supports the changes in the first paragraph of paragraph 1. Also, as PL supports notion of Member States that opted during the last WPE meeting to change 2 to 3 years for allowing more time for establishing air quality plans.

On the other hand, PL still reports the need in the second paragraph to change "third" to "fifth".

Article 19 (2)

PL supports the changes.

- In the last subparagraph, the Presidency suggests adding a reference to ozone precursors to clarify that measures addressed in national air pollution control programs (NAPCC) can only address ozone precursors covered by Directive (EU) 2016/2284, as ozone is not addressed directly in NAPCC.

PL proposes to delete this last paragraph as well as to delete a similar passage in paragraph 4 Section A and paragraph 1 Section B in Annex VIII.

Article 19 (3).

PL supports the change and additionally proposes wording here that would also allow AERO to be calculated for the entire territory of a Member State.

As Article 19 (4) refers to limit values and ozone target values, the Presidency proposes some changes to render the wording more precise..

PL proposes in paragraph 4 to change the transposition deadline from 2 to 3 years and to add target values for B(a)P, arsenic, cadmium and nickel, i.e. to insert "target values" instead of "ozone target values".

Annex VIII. Information to be included in air quality plans for improvement in air quality

A. 1 Localisation of excess pollution. Point b). A minor change is proposed to add the plural *cities* and *maps*.

PL supports the change.

A. 5. Expected impacts of measures to reach compliance. A simplification proposed.

PL supports the change.

A. 6. Annex 1

PL supports the change.

A. 7. Annex 2: Further background information. It is proposed to add a new point e)

PL proposes the following modification to the inserted text: "socio-economic information on the related area, in order to promote environmental equity issues and the protection of sensitive groups as well as to identify excessive costs of implementing the air quality plan that could lead to deepen socio-economic problems in the area, including increase poverty."

14) Article 20. Short term action plans

In Article 20(1) and 20(2), "draw up" replaced by "establish"

PL supports the change.

In Article 20 (1), second subparagraph, the words "of exceedance of" have been added at the beginning of the sentence. Also, a new sentence has been added regarding the exceedances.

PL supports the amendment, but proposes to delete the last sentence in paragraph 1.

In Article 20(2), the wording has been changed to add flexibility in the list of sectors and measures A specific reference is added to "agriculture due to its relevance for PM contribution.

PL supports the amendments with a proviso: in paragraph 2 PL proposes to delete the word 'agriculture'.

15) Article 21. Transboundary air pollution

Articles 21 (1) and 21(5). the Presidency considers that the Commission should play a more prominent role.

PL takes a negative view of the changes. Bilateral arrangements between Member States should not involve the European Commission, as these are delicate talks. PL, on the other hand, supports the addition of text in paragraph 5. Such text should be in the paragraphs dealing also with cooperation between Member States and not only Member States with third countries.

16) Article 22. Public information

Article 22 (1). replacement the term "forest protection" by "the environment"

PL supports the change.

Article 22 (2). flexibility regarding the pollutants to be considered in the calculation

PL supports the changes with the proviso that paragraph 2 on an air quality index based on 1-hour averages still refers to the WHO guidelines, whereas the WHO guidelines do not contain recommended values for 1-hour averages. Furthermore, there isn't much health information presented by the European Environment Agency in the context of the European air quality index.

Annex IX. Public Information

Annex IX. 1. a). adding the condition that the measurement method must be appropriate for UTD data.

PL supports the change.

Annex IX. 1. d) is modified to introduce the word "impacts"

PL supports the change.

Annex IX. 2. d). The wording "from anthropogenic sources" added

PL supports the change.

Annex IX. 3. The reference to "When an exceedance occurs" was deleted

The PL takes a negative view of this amendment. We propose either to delete point 3 or to relax the requirements for information on the risk of exceedance.

17) Article 23. Transmission of information and reporting

maintaining the deadline for reporting at 9 months

PL thanks the Presidency for this change. PL fully supports it.

ensuring that the data quality objectives should at least comply with uncertainties laid down in Annex V A, regardless of the data quality objectives for data coverage laid down in Annex V B

PL takes a negative view on this change. PL points out that reporting any time coverage measurement data to the European Commission/European Environment Agency and then making it public through the European Environment Agency website can lead to a number of misunderstandings. For example, if a measuring station is closed down at the end of the year, but data from the beginning of the year (the holiday season) still fall into the database then such residual data from the following year would have to be sent to the EEA. On their basis, someone could calculate e.g. the annual average (de facto from a few days - incorrectly). The same applies to the beginning of the measurements at the station, where commissioning of the station is in progress, this is technical data and not for reporting.

18) Article 24. Amendments to Annexes

PL supports the amendment, but proposes the ordinary legislative procedure for the adoption of these acts. PL supports Member States that during the last WPE meeting opted for also deletion of annexes VIII and IX in Article 24.

19) Article 25. Exercise of delegation

While PL believes that the changes go in the right direction, PL believes that it would be better to adopt these acts through the ordinary legislative procedure.

20) Article 26. Committee procedure (A standard clause introduced)

PL supports the change. On the other hand, as 'implementing acts' PL understands that there will be acts of the type of 2011/850/EU decision and not a document that should be EC guidelines. As regards the EC documents currently referred to as EC guidelines (and published within the framework of existing directives), these should be issued as guidelines and not as EU decisions, as experience has

shown that the content often cannot be transferred directly to the Member States concerned, because it is e.g. too general or does not go to the heart of the matter. Turning the status of guidelines into decisions would entail that these directly applicable acts could not be introduced directly into the Member States' legal order because of the specific realities in the Member States in question.

21) Article 27. Access to justice

PL proposes to delete this article.

22) Article 28. Compensation for damage to human health

PL proposes to delete this article.

23) Article 29. Penalties

PL proposes the wording of this article as in Directive 2008/50/EC.

24) Article 31. Transposition

Article 31(1) second paragraph. The word "measures" replaced by "provisions"

PL supports the change and at the same time calls for the transposition deadline to be changed to 3 years.

SLOVENIA

COMMENTS: Air Quality Directive

Article 8(5) and 8(5.a) – Assessment criteria

“5. The results of modelling applications and/or indicative measurements shall be taken into account for the assessment of air quality with respect to the limit values and ozone target values.

If modelling applications or indicative measurements shows an exceedance of any limit value or ozone target value in an area of the zone not covered by fixed measurements and their area of spatial representativeness, additional fixed or indicative measurements shall be used. These measurements ...“

Justification: Slovenia suggests that more importance should be put on indicative measurements, as modelling is not always reliable. MS should have possibility to decide for itself what is more reliable and accurate in its own case. Our concern relates to the situation where results of modelling applications would be considered for an assessment of air quality with respect to the limit values and ozone target values. For reliable models, sufficient input data is needed. For the sites where there is insufficient input data on inventoried resources, we would get distorted results. Another concern is, when dealing with topographically complex surface with very specific microclimates, results from modelling applications have high uncertainty. So, natural conditions make modelling of the air close to ground level significantly less predictable.

“5a. The Commission ~~may~~ shall provide, by means of implementing acts, further technical details for: ...“

Justification: if modelling is to be used for assessment of air quality harmonized modelling application needs to be provided for. This is why implementing acts (and not only guidelines) are necessary.

Option 2: As regards article 8.5 and 8.5.a another option would be to delete both two paragraphs as proposed by France.

Article 18(1) – 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}), benzo(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 or transboundary contributions, 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:

...

Where exceedances persist after the postponement, Member States may request a second postponement for a maximum additional period of 25 years, provided ..."

Justification: The predominant sources of PM and benzo(a)pyrene emissions in Slovenia are residential households, primarily attributed to the extensive utilization of wood biomass for heating in outdated small combustion plants, coupled with improper plant operation and the use of unsuitable wood biomass. Hence subsidies and soft loans for environmentally friendly investments are an important instrument for ensuring better air quality. They are implemented through Eco Fund calls for proposals under the adopted Climate Change Fund Programme. Annually, the entire budget allocated for the replacement of old small combustion plants is fully utilized. In addition to subsidies, Slovenia also directs efforts in awareness-raising on appropriate combustion, purchase of suitable wood biomass and the importance of maintaining small combustion plants. When addressing people's habits and changing the way they heat, it is unrealistic to expect quick results. Especially now in times of energy crisis, people are switching back to biomass heating because it is more affordable.

In addition to wood burning, transport is also a source of emissions. The dispersed settlement pattern in Slovenia poses challenges for efficient public transport. It is primarily due to the rugged terrain and polycentric development that automobile usage has become the backbone of mobility in Slovenia. There are still many old, emission-inefficient cars and trucks on the road. It is undeniable that a green transformation of Slovenian transport will require an efficient and innovative public transport system and a shift towards more environmentally friendly vehicles. However, this has not yet been achieved, even though subsidies and low-cost loans are foreseen for the transition to more environmentally friendly vehicles. The nature of all these measures necessitates a longer implementation period, consequently leading to delayed results.

Article 19(2) – Air quality plans

"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 provided that its measures do not entail disproportionate costs, to address the exceedance. "

Justification: It is of utmost importance for Slovenia that the above text is retained. Slovenia is due to its small size and Mediterranean location very limited in its ability to reduce ozone levels in the country by its own measures. The highest levels are typically recorded in the Primorska region. This area experiences not only high air temperatures and increased solar radiation but also a significant impact from ozone precursors originating outside Slovenia.

Article 20 – Short-term action plans

"2. When ~~drawing up~~ **establishing** the short-term action plans referred to in paragraph 1 Member States may, depending on the individual case, provide for effective measures to control and, where necessary, temporarily suspend activities which contribute to the risk of the respective limit values or ozone target values or alert threshold being exceeded. Depending on the share of the main pollution sources to the exceedances to be addressed, those short-term action plans shall consider including,

where appropriate, measures in relation to activities such as transport, construction works, industrial installations, agriculture and the use of products and domestic heating. Specific ...“

Justification: Slovenia suggest that short term action plan at this stage does not include measures in relation to domestic heating, where it is difficult to implement measures with rapid effect.

Article 27 – Access to justice and Article 28 – Compensation for damage to human health

“Article 27

Access to justice

~~1. Member States shall ensure that, in accordance with their 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:~~

~~(a) the members of the public understood as one or more natural or legal persons and, in accordance with national law or practice, their associations, organisations or groups They have a sufficient interest;~~

~~(b) where the applicable law of the Member State requires this as a precondition, the members of the public maintain the impairment of a right They maintain the impairment of a right, where administrative procedural law of a Member State requires this as a precondition.~~

~~Member States shall determine what constitutes a sufficient interest and impairment of a right consistently with the objective of giving the public concerned wide access to justice.~~

~~To this end, tThe interest of any non-governmental organisation promoting environmental protection and meeting any requirements under national law which is a member of the public concerned shall be deemed sufficient for the purposes of the first subparagraph, point (a). Such organisations shall also be deemed to have rights capable of being impaired for the purposes of the first subparagraph, point (b).~~

~~2. To have standing to participate in the review procedure shall not be conditional on the role that the member of the public concerned played during a participatory phase of the decision-making procedures related to Article 19 or 20.~~

~~3. The review procedure shall be fair, equitable, timely and not prohibitively expensive, and shall provide adequate and effective redress mechanisms, including injunctive relief as appropriate.~~

3a. Member States shall determine at what stage the decisions, acts or omissions may be challenged.

4. This Article does not prevent Member States from requiring a preliminary review procedure before an administrative authority and does not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.
5. Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures referred to in this Article.

Article 28

Compensation for damage to human health

1. Member States shall ensure that, natural persons who suffer damage to human health caused by a violation of the national rules transposing the provisions of the of Articles 19(1) to 19(4), 20(1) and 20(2), 21(1) second sub-paragraph and 21(3) of this Directive by the competent authorities, are entitled to compensation in accordance with this article.
2. Member States shall ensure that non-governmental organisations promoting the protection of human health or the environment and meeting any requirements under national law are allowed to represent natural persons referred to in paragraph 1 and bring collective actions for compensation. The requirements set out in Article 10 and Article 12(1) of Directive (EU) 2020/1828 shall mutatis mutandis apply to such collective actions.
3. Member States shall ensure that a claim for compensation for a violation can be pursued only once by a natural person referred to in paragraph 1 and by the non-governmental organisations representing the person referred to in paragraph 2. Member States shall lay down rules to ensure that the individuals affected do not receive compensation more than once for the same cause of action against the same competent authority.
4. Where a claim for compensation is supported by evidence showing that the violation referred to in paragraph 1 is the most plausible explanation for the occurrence of the damage of that person, the causal link between the violation and the occurrence of the damage shall be presumed.

The respondent public authority shall be able to rebut this presumption. In particular, the respondent shall have the right to challenge the relevance of the evidence relied on by the natural person and the plausibility of the explanation put forward.
5. Member States shall ensure that national rules and procedures relating to claims for compensation, including as concerns the burden of proof, are designed and applied in such a way that they do not render impossible or excessively difficult the exercise of the right to compensation for damage pursuant to paragraph 1.

6. ~~Member States shall ensure that may establish the limitation periods for bringing actions for compensation as referred to in paragraph 1 are not less than 5 years. Such periods shall not begin to run before the violation has ceased and the person claiming the compensation knows, or can reasonably be expected to know, that he or she suffered damage from a violation as referred to in paragraph 1."~~

*Justification: Slovenia suggests the deletion of the **Articles 27 on Access to Justice and Article 28 Compensations** for the reasons explained at the WPE. This approach allows for the most effective consideration of national circumstances, encompassing both existing substantive and procedural rules, as well as all the peculiarities of the individual MS systems of determining compensation liability.*

Article 29 – Penalties

Justification: Although the text has been improved, we maintain our position that there is no necessity to change existing Article on Penalties, as it stands in the current Directive (article 30 of the 2008/50/EC Directive). It appropriately and sufficiently addresses obligation of MS to prescribe rules on penalties applicable to infringements of the national provisions adopted pursuant to Directive. MS should have the flexibility to determine penalties in accordance with their respective legal traditions and adopted individual measures.

Annex I (Section 1, Table 1) – Air quality standards

Table 1 – Limit values for the protection of human health to be attained by 1 January 2030

Averaging period	Limit value
PM_{2.5}	
1 day	25 µg/m ³ not to be exceeded more than 18 times per calendar year
Calendar year	15 10 µg/m ³
PM₁₀	
1 day	45 µg/m ³ not to be exceeded more than 18 times per calendar year
Calendar year	30 20 µg/m ³
Nitrogen dioxide (NO₂)	
1 hour	200 µg/m ³ not to be exceeded more than one 3 times per calendar year
1 day	50 µg/m ³ not to be exceeded more than 18 times per calendar year
Calendar year	20 µg/m ³
Sulphur dioxide (SO₂)	
1 hour	350 µg/m ³ not to be exceeded more than one 3 times per calendar year
1 day	50 µg/m ³ not to be exceeded more than 18 times per calendar year
Calendar year	20 µg/m ³
Benzene	
Calendar year	3,4 µg/m ³

Carbon monoxide (CO)	
maximum daily 8-hour mean ⁽¹⁾	10 mg/m ³
1 day	4 mg/m ³ not to be exceeded more than 18 times per calendar year
Lead (Pb)	
Calendar year	0,5 µg/m ³
Arsenic (As)	
Calendar year	6,0 ng/m ³
Cadmium (Cd)	
Calendar year	5,0 ng/m ³
Nickel (Ni)	
Calendar year	20 ng/m ³
Benzo(a)pyrene	
Calendar year	1 1,0 ng/m ³

Justification: Slovenia is concerned about the realistic possibility of reaching some of the limit values, especially for PM10, PM2.5 and benzo(a)pyrene, for the reasons (emission sources) already explained in the justification of the comments for Article 8.5a. Additionally to that, national geographical specificities – the dispersion characteristics of a given site, orographic conditions, adverse climatic conditions or the proportion of pollutants that are transported across borders need to be taken into account.

Slovenia is situated in the south-eastern part of the Alps, whose ridges and peaks reach up to a third of the troposphere or even higher. Due to prevailing west winds in the mid-latitudes of the northern hemisphere, Slovenia's position to the east of this substantial mountain range places it in a sheltered or leeward position. Consequently, wind patterns in the region tend to be mild, with surface-level winds rarely reaching the speeds commonly found on the northern European plains.

Slovenia's terrain is characterized by rugged landscapes, with most towns and cities nestled within valleys and basins. These geographical features frequently experience temperature extremes, which can persist for extended periods without adequate ventilation, particularly during the colder months. In such conditions, even relatively minor pollution emissions can lead to exceedances.

FINLAND

Ambient Air Quality Directive (AAQD) / FI comments after the meetings of the Working Party on the Environment on 18 and 19 September 2023

22.9.2023

Horizontal changes

- FI supports the Pres proposal

Changes proposed to the Articles and Annexes

Article 1 (Objectives), Article 2 (Subject matter), Article 3 (Regular review)

- FI supports the Pres proposal

Article 4. Definitions

- We have the following comments on the definitions:
 - (13) 'black carbon': we understand that Pres has intention to simplify the term 'black carbon' but we see that the inclusion of the term 'graphitic carbon' is not suitable as it refers more to elemental carbon than light absorbing carbon. Our concrete proposal, after discussions with other MSs, is the following: **'black carbon' (BC) means carbonaceous aerosol measured by light absorption.**" As what we have stated before, there is a need to take into account technology neutrality; so to acknowledge that also other emerging and promising techniques exists such as photoacoustic methods and as long as we do not have standards or reference methods, we should not make restrictions to only one technique.
 - (14) 'ultrafine particles' (UFP): in this definition, we support the removing the "smaller than" symbol in the text. However, we feel the text might be easily misleading with both the upper limit of 100 nm and no upper limit in the same sentence, so, we suggest to separate those two. **So, in our opinion, the definition of ultrafine particles should be: "ultrafine particles' (UFP) means particles with an aerodynamic diameter less than or equal to 100 nm. UFP are measured as the particle number concentrations per cubic centimeter (cm³) for a size range with a lower limit of 10 nm and no restriction on the upper limit."** Regarding the phrase we described in the WPE meeting, there is a slight change after consulting several other MSs, and thus "These particles are measured..." was corrected to "UFP are measured..." above.
 - (24) Rural background stations are also relevant for the critical levels, so we suggest the following change to include natural ecosystems: **"rural background locations' means places in rural areas with low population density where levels are representative of the exposure of the general rural population, ~~and vegetation for ozone and natural ecosystems;~~"**

Article 5. Responsibilities

- FI supports the Pres proposal

Annex II. Section 1 - Assessment thresholds for health protection

- FI supports the Pres proposal (to increase the BaP threshold to 0,3 ng/m3.)

Article 8. Assessment criteria

- FI support the Pres proposal on points 1-4 and 8. Regarding point 8.5, we generally support Implementing Acts but for the amendments our national experts and MS colleagues have pointed out concerns after the WPE that we still need to study this further. Same applies to Annex V.A on the amendment on spatial representativeness.

Article 9. Sampling points

- FI supports the Pres proposal
- Art. 7.2 states that the assessment regime has to be reviewed at least every 5 years. This means that in theory, when in a zone the limit values are no longer exceeded, already the next year the number of monitoring stations can be reduced. Whereas for the AT, art. 7.3 makes clear that it needs to be evaluated on the basis of the data for the previous 5 years, no similar disposition is included for the limit values. We would therefore suggest to change the first sentence of art. 9.3 as follows: *"For zones where the level of pollutants exceeds the relevant assessment threshold specified in Annex II, but for at least three calendar years not the respective (...)"*.

Annex III. Minimum numbers of sampling points for fixed measurement

- We support the Pres proposal

Annex IV. Assessment of Ambient Air Quality and Location of sampling points.

- With regard to Annex IV. B Macroscale siting of sampling points, we support the idea of adding a new paragraph concerning domestic heating. We also would like to have clarification on the grounds for the suggested representative area (25 m x 25 m).
- We support other changes made by the Pres with regard to Annex IV.
- With regard to annex IV point D 9, we have heard, that some Member states interpret the directive proposal so that if the levels of pollutants are below the assessment thresholds, there is no obligation to use modelling or indicative measurements application while reviewing every 5 years the adequacy of sampling point. However, we have had a different interpretation on this until now. Therefore we have proposed (several times), that modelling or indicative measurements should not always be mandatory when reviewing every 5 years the adequacy of sampling points under article. Our proposal with regard to annex IV point D 9 is, that objective methods such as an expert evaluation can be used instead of modelling or indicative measurements if the levels of pollutants are low and there is already data available on the emission sources and on the levels of pollutants based on the previous measurements or modelling. **We would like to have clarification on the right interpretation of the requirement in annex IV point D 9, since our comment has not been taking into account.**

Article 10. Supersites

- We support the Pres proposal **on the measurement of pollutants at supersites**. We thank the Pres especially for including flexibility in terms of the pollutants to be measured for urban background stations. However, we would like to have some clarification on the required five year timeperiod – from where would the time be calculated?
- With **regard to the number of supersites**, we note that our proposal has not been taking into account. We have proposed that the number of rural background supersites could be reduced by a half (100 000 km² =>200 000 km²), keeping at least one urban and one rural supersites even in small countries (although we share the sympathy for the 3 miniature countries). We think that our proposal is still relevant, since at the last WPE meetings quite many MS also shared the view that there should be flexibility with regard the number of supersites. We do not mean that the number of rural background stations should be reduced from the current level as required in the EU-legislation, but that all rural background stations do not need to be supersites.

Annex VII. Section 1. Measurements of pollutants at supersites

- We support the Pres proposal. However, we note that total gaseous mercury is missing in Table 2 (which is a current requirement), and deposition of PAHs is missing in Table 3. As an editorial note, in Tables 1 and 2, the reference of PM chemical composition is to Section 1, and there are two Section 1's in this Annex now.

Annex VII. Section 2- Measurements of ozone precursor substances

- FI supports the Pres proposal.

Annex. VII section 3

- With regard Annex VII section 3 on Siting we think that the “main wind” should be replaced by “ down wind”, similarly as changed by the Pres in the Annex IV, Point B.2.d.
- With regard a new point included in the Annex VII D on Methods for the sampling and measurement of UFP and particle number size distribution, we acknowledge the need for harmonization, but we would like to have some clarification if it is possible to have Technical Specifications as required methods. We wish to point out that these Technical Specifications have not gone through the vast validation process as CEN standards have. Also, we wish to point out, as SE did, that CEN/TS 16976 for PNC has a lower size limit of 7 nm, so the proposed TS does not seem applicable here where in the definition a lower limit 10 nm is described (and which should stay that way). The prEN 16976 seems to solve this issue, but it is still being drafted and perhaps unlikely to be published before AQD process. CEN/TS 17434 for PNSD has lower limit of 10 nm, though. As a conclusion, we believe that we will need to wait until inclusion of methods for UFP, thus, we do not support inclusion of these TSs here, as they have not been included by the COM either. The point A.16 in Annex VI covers this issue already with sufficient manner.

Annex V: Data quality objectives

- In addition to the changes made by the Presidency, we would like to reiterate our great concern on the measurement uncertainties before 2030 that we have already expressed in the comments for the WPE meeting March 9th. These were our comments then (shortened partly):
 - The Proposal relaxes measurement uncertainties, and this is needed when limit values are lowered. However, in the Proposal only measurement uncertainties for the new limit values from 2030 onwards is expressed. The measurement uncertainties related to limit values before 2030 (Annex I, Table 2) is fully missing. Also, measurement uncertainties for deposition measurements are fully missing although included in the current legislation.
 - The new measurement uncertainty proposed for PM10 is 20% while the current one is 25%. For other pollutants, it seems that the measurement uncertainties have been increased due to the proposed lower limit values, which makes sense to acknowledge the technical difficulties when lower concentrations are measured. Also, we acknowledge that for PM10 reference methods the proposed uncertainty is achievable. However, we wish to express our concern for tightening the PM10 measurement uncertainty when equivalent methods (the automatic measurement systems) are used, and for which the proposed uncertainty seems unrealistic.
 - In the first table, SO2 is missing.
 - It would be beneficial to indicate the purpose of the absolute values of maximum uncertainties as currently there is no clear explanation for that.
 - In the third table, NO (nitrogen monoxide) is missing, and it should state NO2/NO/NOx, as NO measurement is mentioned in Annex VII (section 2).
- In Section A, we can support the Pres proposal except for the part where spatial representativeness was included, see Art. 8 for more details.
- In Section B, we support the addition on new pollutants in the table for data coverage referring to the Data Quality Objectives. A title and table number should be added, that is "Table 3" and our title suggestion would be "Minimum data coverages for air pollutant measurements". For the data coverages for the added pollutants, we wish to point out that the new ones – meaning nitric acid, levoglucosan, chemical composition of PM2.5 including the anions and cations as well as OC/EC, and PM oxidative potential – are most often measured with offline techniques where a sample is first collected at the site and later analysed in the laboratory. Thus, we feel the data coverage requirement should be similar to the other currently existing offline techniques such as heavy metals and PAHs, and thus we suggest to add a new row for these with either 33% (as for PAHs) or 50% (as for metals) data coverage requirement for fixed measurements to harmonize the data coverage requirements in the Directive. We also note that the data coverage requirement in the current Directive 2008/50 is not explicitly described for the chemical composition of PM2.5.

Annex VI.: Reference methods for assessment of concentrations in ambient air and deposition rates.

- We do not support adding a reference method for ammonia. Although the suggested CEN standard is relevant for passive sampling, there are only some countries that use this method in EU while others use automatic measurements and/or filter methods. Especially

filter methods are widely used in Europe as part of the EMEP Monitoring Programme in the rural sites – there are about 40 sites in 15 countries – and we should not neglect these extensive existing capacities that have been running for several decades already. We note that passive sampling and filter methods are not fully comparable, and both have opposite pros and cons in terms of sampling artefacts and sample resolution.

- Thus, ammonia should be reintroduced in A.16 and our suggestion would also be to slightly adapt the last sentence thereof: “Where international, CEN or national standard reference measurement methods or technical specifications are available, these may be used.”

Article 12. Requirements where levels are lower than the limit values, ozone target values and average exposure concentration objectives, but above the assessment thresholds.

- FI supports the Pres proposal

Article 13. Limit values, ozone target values and average exposure reduction obligation for the protection of human health

- FI supports the Pres proposal

Annex I. Air quality standards

Section 1. - limit values for the protection of human health. Table 1 and Table 2.

- We support the Pres proposal in Table 1 and would like to thank the Pres for taking into account the 1 hour limit value for Sulphur dioxide (SO₂). However, we reiterate our previous comment for Table 2, for which we believe that the target values for metals and benzo(a)pyrene should remain until 2030.

Section 2. Ozone target values and ozone long-term objectives.

- FI supports the Pres proposal

Section 4. A. Alert thresholds for pollutants other than ozone.

- FI prefers the COM proposal, we think that the Pres proposal on the time scope for PM₁₀ and PM_{2.5} is not necessary and is actually confusing in the legal text. We think, that Member States can have more stringent national rules on the time scope, even without the proposed addition.

Section 5 - Average exposure reduction obligation for PM_{2.5} and NO₂

- FI supports the Pres proposal

Article 14 Critical levels for the protection of vegetation and natural ecosystems

- FI supports the Pres proposal

Article 15. Exceedances of alert or information thresholds

- FI supports the Pres proposal

Article 16. Contributions from natural sources

- FI supports the Pres proposal

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

- FI supports the Pres proposal

Article 18. Postponement of attainment deadline and exemption from the obligation to apply certain limit values.

- FI thinks that benzo(a)pyrene should be included in the scope of Article 18 and that the criteria for the postponement should be modified accordingly, for example by adding “adverse weather conditions” or something similar to this, to the list of criteria. This would be justified from our perspective, as the majority of benzo(a)pyrene emissions in Finland originate from small-scale burning of wood in old fireplaces during the cold winters we have. Reducing these emissions through rapid measures is challenging, among other things because of the slowness of the renewal rate of the old fireplaces

Article 19. Air quality plans

- Regarding Article 19.1, we reiterate our comment, that more time is needed for measures included in the air quality plan, to take effect. Two years is not enough with some pollutants, especially for pollutants that the authorities have limited possibilities for sudden constraints (e.g. benzo(a)pyrene). With regard to this we also reiterate our comment that perhaps it would be more realistic to start the calculation of the four years timeperiod from the approval of the air quality plan.

Annex VIII. Information to be included in air quality plans for improvement in air quality

- FI supports the Pres proposal

Article 20. Short term action plans

- FI supports the Pres proposal

Article 21. Transboundary air pollution

- FI can support the Pres proposal, but we would like to have clarification on what is meant by “technical” support in para 1 and 5? Is the term “technical” necessary here?

Article 22. Public information

- FI supports the Pres proposal and would like to thank the Pres for taking into account our comments in para 2 concerning air quality index regarding additional pollutants and hourly time resolution.

Annex IX. Public Information

- With regard to Annex IX. 1. a), we do not support the Pres proposal to add the following condition “if the measurement method is appropriate for up to date data (UDT)”. We think that this addition would be a step back from the current directive. Therefore we support the COM proposal on this.

Article 23. Transmission of information and reporting

- FI supports the Pres proposal

Articles 24 (Amendments to Annexes, Article 25 (Exercise of delegation), Article 26 (Committee procedure)

- FI supports the Pres proposal

Article 27 (Access to justice), Article 28 (Compensation for damage to human health), Article 29 (Penalties)

- FI supports the Pres proposal, where these Articles have been modified to make them consistent with the text agreed within the Council on the IED proposal. We strongly hope that Pres does its best to keep these Articles as they stand currently in the proposal.

Article 31. Transposition

- FI supports the Pres proposal
-

Sweden would like to thank the Presidency for the first compromise text proposal. Following the WPE on the 18th and 19 September Sweden would like to make the following comments.

Key points

- Sweden is fully supportive of the level of ambition in the current proposal. While we would like to see more ambition, particularly regarding the limit value for BaP, we can accept the current version provided that there is no further watering down of the proposed limit values.
- Sweden is against the proposed weakening in Annex IX of requirements to provide up-to-date data (UTD), which could have significant negative consequences for the availability of air quality data for key pollutants.
- Sweden is concerned about the proposed addition of text in Annex V regarding model evaluation, which we believe goes against what has been agreed within the FAIRMODE and CEN expert communities.
- Sweden believes that a lower assessment threshold for BaP, in line with WHO values, is highly justified.
- Sweden is fully supportive of the use of modelling to ensure a more effective and cost-efficient assessment of air quality. Sweden welcomes the addition regarding implementing acts to provide more detailed technical provisions, but can also support further efforts to clarify the role of modelling in the Directive's text.

Horizontal changes

Sweden supports the Presidency's proposed horizontal changes.

Sweden can support the proposed flexibility relating to the average exposure indicator and average exposure reduction obligation, in order to allow Member States to choose the territorial units that are most appropriate considering their implementation of the Directive.

As previously communicated, Sweden supports however the regionalisation of the average exposure requirements and could therefore not support any further flexibility for using territorial units larger than NUTS1.

Article 1 - Objectives

Sweden can support the Presidency's proposed changes to Article 1.

Article 3 – Regular review

Sweden sees the merit of the original wording in the second sub-paragraph of Article 3.2 but can accept the proposed change following the explanation given by the Council legal service. We would, however, like to see a slight change to the text to improve the language by removing the words "with a view to".

"In order to achieve the objectives set in Article 1, the review shall assess whether this Directive needs to be revised ~~with a view to ensuring~~ taking into account

alignment with the World Health Organization (WHO) Air Quality Guidelines and the latest scientific information.”

Article 4 – Definitions

(8) ‘arsenic’, ‘cadmium’, ‘lead’, ‘nickel’ and ‘benzo(a)pyrene’

Sweden does not see the need for the addition of the text “expressed as mass concentration”. This text is not used in other definitions of pollutants that are also expressed as mass concentrations and would therefore create unnecessary inconsistencies in how pollutants are defined in the directive. We therefore propose to remove the added text and revert to the Commission’s proposal, which is also identical to the definition currently used in directive 2004/107/EC.

(13) ‘black carbon’

Sweden is open to further clarification in the definition of black carbon, but we do not agree with the addition of the word “graphitic”.

Sweden proposes to keep the definition simple and to use language from WHO and the Gothenburg protocol as a basis, for example:

‘black carbon’ (BC) means carbonaceous aerosol measured by light absorption.

(14) ‘ultrafine particles’ (UFP)

Sweden is open to further clarification in the definition of UFP but believe that further work is needed since the current proposal in the latest compromise text is considered to be unclear. Sweden can support the proposal put forward by Finland, i.e.:

‘ultrafine particles’ (UFP) means particles with an aerodynamic diameter less than or equal to 100 nm. Ultrafine particles are measured as the particle number concentrations per cubic centimeter (cm³) for a size range with a lower limit of 10 nm and no restriction on the upper limit.

(20) ‘indicative measurements’

Sweden is unsure of the proposed addition of the text “either continuously or by random sampling”, since it seems unclear if this is in line with the required data quality objectives for indicative measurements in Annex V. Random sampling can be used for indicative measurements (in accordance with the second paragraph below the table in Point B of Annex V). However, to measure “continuously” implies that measurements should be carried out continuously during the full calendar year, as is required for fixed measurements of most pollutants. We are also unsure of the value of adding “taken at sampling points”.

A more appropriate definition for indicative measurements would be:

(20) ‘indicative measurements’ means measurements which meet data quality objectives that are less strict than those required for fixed measurements, either at regular intervals during a calendar year or by random sampling, to determine the levels in accordance with data quality objectives that are less strict than those required for fixed measurements;

(24) ‘rural background locations’

Sweden can support the Presidency’s addition but note that rural background locations are not only used for ozone but also for the critical levels for SO₂ and NO_x for the protection of vegetation and natural ecosystems. The definition should therefore be amended as follows:

“‘rural background locations’ means places in rural areas with low population density where levels are representative of the exposure of the general rural population, ~~and vegetation for ozone~~ and natural ecosystems;”

Articles 5 - 7

Sweden supports the proposed Article 5 – 7 and do not see the need for any further changes to these.

Annex II. Section 1 - Assessment thresholds for health protection

Sweden believes that if we are serious about working towards the stated objective in Article 1, to "contribute to a toxic-free environment by the year 2050", then it is important to effectively assess and monitor pollutions when concentrations are above the WHO values. In the case of benzo(a)pyrene (BaP), the assessment threshold should therefore be 0,12 ng/m³ as originally proposed by the Commission. In the spirit of compromise, we could however accept 0,25 ng/m³, but certainly not 0.4 ng/m³ as has been proposed by some delegations.

Sweden supports the rest of the proposed assessment thresholds in Annex II.

Article 8 – Assessment criteria

Sweden can accept the proposed Article 8 and as communicated at the WPE meeting on 18-19 September, Sweden is fully supportive of the use of modelling to ensure a more effective and cost-efficient assessment of air quality.

Sweden welcomes the addition of text regarding implementing acts to provide more detailed provisions on the use of modelling applications and indicative measurements for assessing air quality.

Sweden can, however, support suggestions put forward by Belgium to further clarify the role of modelling in Article 8.5 in compliance checking.

Regarding the second paragraph of Article 8.5 (beginning "If modelling applications show an exceedance...."), Sweden can be flexible on the timeframes for carrying out additional measurements, which has been changed from 3 years to 2 years in the new compromise text. Sweden would also prefer the following formulation of this requirement "These measurements shall be established within 2 calendar years" (i.e. "established within" instead of "conducted within"). This formulation was proposed by other delegations during the WPE on 6th June and Sweden feels that this would bring greater clarity to the provision.

Sweden could also support an addition to the second paragraph of Article 8.5, to allow Member States to declare an exceedance directly based on the results of modelling applications, without the obligation to conduct additional measurements

to confirm the exceedance. Sweden has a long history with air quality models and has models that are well validated. We therefore have a good level of information on potential biases and which pollutants can be over- or underestimated. Where a model has identified an exceedance of a pollutant that is usually underestimated by the model, it does not seem reasonable to delay the declaration of an exceedance and the development of an air quality plan. It seems more reasonable and cost-efficient to focus directly on taking measures rather than on conducting additional measurements.

Article 9 and Annexes III and IV – Sampling points

Sweden supports the proposed Article 9. However, we are open to further clarification in Article 9.3, as put forward by Belgium, regarding the number of years that the limit values need to be met in a zone before the provisions in Article 9.3 can be applied. This can, for example, be done with the following addition:

“For zones where the level of pollutants exceeds the relevant assessment threshold specified in Annex II, but for at least three calendar years not the respective limit values...”

Annex III – Minimum number of sampling points for fixed measurement

Sweden can support the proposed Annex III. However, Sweden would prefer to delete the last part of Annex III Section A.2 on point sources and to only retain the first sentence.

In the case that the majority of delegations support the Presidency’s new text proposal, Sweden would like to point out a small error in the text, which should read:

“...provided that they comply with the requirements set out in this Directive...”

Annex IV - Assessment of Ambient Air Quality and Location of sampling points

Sweden can support the proposed Annex III. However, with regard to the last sentence in Annex IV, Point B.2. g) Sweden would prefer the text as proposed in the previous compromise text (doc. 10007/23), i.e.

“Areas in a zone that are not covered by that zone’s sampling points, shall at least be covered by fit-for-purpose modelling applications”

This would be preferable as it is not clear what “appropriate methods”, as proposed in the new compromise text, could entail. Fit-for-purpose modelling applications are the most appropriate methods in this context and to include a clearer provision on their use would ensure a more effective and harmonised approach within the EU.

Article 10 and Annex VII – Supersites

The purpose of supersites is to get long-term datasets on pollutants relevant to health and ecosystem effects. These effects might even be present where concentrations are lower than the assessment thresholds. Sweden therefore strongly opposes the proposed addition of a new paragraph 4a in Article 10. Such an addition

raises a number of questions and introduces uncertainty on how these provisions should be interpreted. For example, should the assessment thresholds be compared to measurements at the site or at all sites within the same zone? How should pollutants without an assessment threshold be treated? It is also questionable and counter-intuitive to require that measurements of certain pollutants must continue to be measured at regional background locations, regardless of concentrations, but may be stopped at urban background locations where concentrations and public exposure are generally higher.

Sweden believes that the concept of the supersites with a coherent measurement regime should be retained and therefore that the proposed addition of Article 10.4a should be deleted.

Annex VII Section -1

Regarding the changes to Annex VII Section -1, Sweden opposes the removal of total gaseous mercury (TGM) from tables 1 and 2. This requirement is already present in the current directive for rural sites so it should at least be kept at these sites. These measurements are important for monitoring the exposure of mercury and to conduct the effectiveness evaluation in the Minamata convention.

Annex VII Section 3.D

In annex VII, section 3.D, a technical specification has been proposed for the measurement of UFP. Sweden notes that this technical specification, TS 16976:2016, currently states a lower limit of particles of 7 nanometers, and not 10 nanometers as is proposed for the definition of UPF (article 4.14). We therefore think it would be better, while awaiting the standards to be finalized, to remove the reference to the technical specifications and instead refer to the recommendation of Actris (see <https://www.actris.eu/sites/default/files/2021-06/Preliminary%20ACTRIS%20recommendations%20for%20aerosol%20in-situ%20measurements%20June%202021.pdf>).

Article 11

Sweden supports the proposed Article 11 and do not see the need for any further changes.

Annex V

Sweden supports the proposed Annex V, with the exception of the two issues described below.

Measurements for the evaluation of modelling applications

Following discussion with our modelling experts we are informed that the proposed addition in the fourth paragraph under Table 2 in Annex V ("*All fixed measurements... located in the modelling application assessment area **and that have a spatial representativeness area as large as the resolution of the modelling application** shall be used for the evaluation of uncertainty of the modelling application*") goes against what has been agreed within the FAIRMODE and CEN expert communities. If this change is kept it could have significant unintended consequences in the application of the Directive's provisions regarding modelling.

Sweden therefore suggests to delete the added text and urges the Presidency to seek further guidance from experts within the FAIRMODE and CEN expert communities on this issue.

Indicative measurement – minor amendment to the text on random sampling

In line with our comment above on Article 4 (20) regarding the definition of indicative measurements, we suggest to make the following deletion in the third paragraph under the table in Point B of Annex V:

“For the assessment of annual mean values via indicative measurements, Member States may apply random measurements ~~instead of continuous measurements~~ if they can demonstrate that the uncertainty,”

This change would avoid any unnecessary confusion and contradiction on the required monitoring regimes for indicative measurements.

Annex VI

Regarding the method for measuring ammonia: There are several methods in use, among those the EMEP method and automatic method. At this stage it is too early to set a standard method and we look forward to proposals and impact assessment on these.

Article 13 - 15 & Annex 1

Sweden want to keep the ambition in the proposal and we welcome that no amendments are made to the limit values and we can accept the changes made to Table 1 in Annex I. We would like to reiterate that the limit value for BaP is associated to a much higher risk compared to other pollutants e.g. the metals. For this reason, the limit value for BaP could be more ambitious. We would also like to reiterate that the annual limit value for SO₂ can be removed as WHO have only established limit values for short term exposure. We fully support, however, retaining the annual mean SO₂ value as a critical level of protection of vegetation.

Regarding article 15 we would like to draw the attention to the addition of “predicted exceedance” which according to the proposal should lead to “take the necessary steps to inform the public”. We feel that a predicted exceedance not only should trigger information but also measures to reduce the risk of an actual exceedance. This may be added to article 20.2.

Article 16 – 17

Sweden can support the proposed Articles 16 – 17 and welcome the Presidency’s proposal to add text to empower the Commission to adopt an implementing act to provide detailed technical rules relating to these provisions. Sweden considers it crucial to ensure that there are appropriate and robust methods and criteria for these derogations to ensure that they are applied in a fair, proportionate and harmonised manner within the EU.

Article 18

We think there should only be one postponement and thus the second postponement should be removed from the article and the word “once” should be reinstated in the text as was the commission proposal.

In the case that the majority of delegations support the Presidency’s new proposal, Sweden thinks that it can be further clarified in the text that this would mean a maximum 5+2 years of extension (as clarified by the Presidency during the WPE meeting on 18-19 September). We propose therefore to insert the word “once” in the text to avoid any misinterpretations.

“Where exceedances persist after the postponement, Member States may once request a second postponement for a maximum additional period of 2 years...”

As for the conditions that shall apply for the second postponement we propose the following addition:

“In addition to the ~~The same~~ conditions shall apply as in the first postponement Member States must show that the measures in the air quality plan referred in paragraph 1 point (a) has been implemented.”

Article 19 – 21 and Annex VIII

Sweden supports the proposed Article 19 – 21 and Annex VIII and do not see the need for any further changes to these.

Article 22

Sweden supports the proposed changes to Article 22 and is open to changes to make it clear that the EEA index may be used directly by Member States, as long as it is still possible to use a national index where this is more stringent than the EEA’s index.

Annex IX

Sweden strongly opposes the addition of “... if the measurement method is appropriate for up-to-date data (UTD)” in Annex IX.

This change could have significant negative consequences for the availability of air quality data, since it effectively removes requirements for up-to-date data for some key pollutants, that currently have requirements for hourly or daily updated information.

This change would mainly affect data for PM10 and PM2.5, two pollutants that are fundamental when it comes to air quality health effects and are also vital to ensure a functioning Air Quality Index. To potentially reduce the availability of public information for these two pollutants is a step in the wrong direction, particularly considering the increasing use of such data in different applications. If there is less data available from official measurement stations, information on real-time air pollutant concentrations will instead need to rely more on less reliable sources of data such as sensors and regional-scale modelling.

Sweden also notes that the need to provide up-to-date data from as least the minimum number of stations required by the directive was something that was recommended by AQUILA, the expert group responsible for AQ measurements in the EU. Sweden therefore proposes to remove the proposed change and instead

require that the minimum number of sampling points should also apply to the requirement to deliver up-to-date data.

Article 23 – 26

Sweden supports the proposed Article 23 - 26 and do not see the need for any further changes.

Sweden would, in particular, be against any further additions to the list of annexes in Article 24 that cannot be amended through delegated acts. The Annexes listed (Annexes III to IX) are highly technical in nature and benefit from being able to be amended more swiftly and cost-effectively, through discussions between the Commission and experts from the Member States.

Article 27 Access to Justice

Sweden can agree to the suggested changes by the PRES, alternatively making a reference in the recital, as long as the adjustments are in accordance with the Aarhus Convention (UNECE's Convention on Access to Information, Public Participation in Decision-Making Processes and Access to Legal Review in Environmental Matters).

Article 28

Sweden would like to see a softening of the provision so that the limitation rules do not regulate when the limitation period starts to run. Sweden can accept a wording in accordance with the general approach in the IED, article 79a.

Article 29

Sweden supports the suggested change by the PRES. Sweden agrees that the article on penalties should take the form of the agreed general approach in the IED, article 79. Sweden supports the deletion of the reference to “turnover” in this paragraph.

Article 30 – 33

Sweden supports the proposed Article 23 - 26 and do not see the need for any further changes.
