



Council of the European Union
General Secretariat

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

Brussels, 02 October 2023

WK 12475/2023 INIT

LIMITE

ENV

ENER

IND

TRANS

ENT

SAN

AGRI

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on the Environment
N° Cion doc.:	ST 14217/22 + ADD 1
Subject:	Air Quality Directive: WPE on 5 October 2023 - Presidency steering note

With a view to the meeting of the WPE on 5 October 2023 on the abovementioned Commission proposal, delegations will find attached steering note prepared by the Presidency.

Commission proposal on the revision of the Ambient Air Quality Directives (AAQD)

Presidency Steering note with a view to the meeting of the Working Party on the Environment on 5 October 2023.

This steering note accompanies a revised Presidency compromise text (doc. 13377/23) on the abovementioned Commission proposal, which will serve as a basis for the discussion at the WPE on 5 of October. The discussion will be focused on the parts of the text where the Presidency considers that there is still a need for further debate.

In the Annex to this note, delegations will find detailed explanation of the proposed changes contained in the revised Presidency compromise text.

The Presidency would like to point out that Annex V has not yet been revised. It will be discussed at the next WPE which is planned on 20 October.

All proposed changes are explained in the attached explanatory note. As for any remaining minor technical issues, delegations are invited to address them in written comments after the WPE.

The Presidency intends to structure the discussions as follows:

1. INTERVENTION ROUND 1. Joint Responsibility clause: Article 3 Regular view (Chapter I: General provisions), new paragraph 5, new provisions in relation to joint responsibility.
2. INTERVENTION ROUND 2. Average exposure territorial unit. Article 4 (Definitions), new definition 29 a.
3. INTERVENTION ROUND 3. Chapter II Assessment of Ambient Air Quality: Article 8 (Assessment criteria) on modelling applications and Article 10 (Monitoring supersites) + Annex VII
4. INTERVENTION ROUND 4. Flexibility and level of ambition of the proposal: Article 18 + Annex I.
5. INTERVENTION ROUND 5. Air quality plans and transboundary air pollution plans: Article 19 and Article 21.
6. INTERVENTION ROUND 6. Chapter VII: Access to justice, compensation and penalties. Articles 27 to 29.

ANNEX - explanation of the proposed changes contained in the revised Presidency compromise text

This note aims to provide clarifications on the additional amendments proposed by the Presidency after the Working Party on the Environment (WPE) on 18 and 19 September.

Horizontal changes

Territorial units. As suggested by many delegations, a new definition in Article 4(29a) for “average exposure territorial unit” is proposed. Definitions (28) and (29) have been modified accordingly, as well as the whole text on the related references. In addition to the possibility to use NUTS 1 level or a part thereof (so that, NUTS1, NUTS2 or other territorial units within a NUTS1 unit can be used), the possibility of using larger territorial units within the same Member State is possible if needed due to the influence of emissions from one NUTS1 to another. An explicit reference to air quality zones has also been incorporated for further flexibility. The average exposure territorial units must be always below the NUTS0 level.

Changes proposed to the Articles and Annexes

Article 1. Objectives

Article 1(1). A slight modification is proposed to avoid repetition.

Article 2. Subject matter

No new modifications.

Article 3. Regular review

Article 3(1). A modification has been introduced considering the different points of view of the delegations in relation to the periodic timing for subsequent reviews by the Commission. The proposal seeks to accommodate some concerns about the rigidity in the timing of the reviews as well as to enable subsequent reviews to be carried out if needed in light of substantial new scientific findings without needing to wait for the stipulated deadline.

Article 3(2.c). As requested by some delegations, an addition has been introduced to make more explicit that the impacts associated with the effects of ozone on vegetation shall be included in the Commission's review, thus enabling better evaluation of the effects of air pollution on vegetation to be considered in the future. The Presidency considers that this wording will help in future revisions of the Directive to achieve a better alignment of the Directive with the Ceilings

Directive, so that the POD can also be taken into account together with the AOT for the evaluation and risk assessment of ozone on vegetation.

Article 3(5). Regarding the concept of joint responsibility, a new paragraph 5 is proposed to respond to the requests of delegations, as in past WPEs it has been argued that, in addition to local mitigation measures, compliance with AQ standards will depend on sufficiently ambitious emission legislation at EU level as well as on mitigation efforts in other Member States and regions. The paragraph explicitly mentions that, in the framework of the reviews, the Commission should consider the need for additional action at EU level to ensure compliance with the current air quality standards.

Article 4. Definitions

(8) ‘arsenic’, ‘cadmium’, ‘lead’, ‘nickel’ and ‘benzo(a)pyrene’. The added text in the previous Presidency compromise proposal has been deleted as some delegations pointed out that 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. Now the definition reverts to the Commission’s proposal, which is also identical to the definition currently used in directive 2004/107/EC.

(13) ‘black carbon’. The term graphitic was deleted as not suitable since it refers more to elemental carbon than light absorbing carbon. The new proposal refers to carbonaceous aerosol, as suggested by some delegations.

(14) ‘ultrafine particles’ (UFP). The sentence has been separated in two parts for clarity. The first part is the definition itself, aligned with the WHO definition. The second part refers to how UFP should be measured for the purposes of this Directive, with a lower limit of 10 nm and no restriction on the upper limit. Additionally, the word ‘aerodynamic’ has been deleted as some delegations pointed out that UFPs cannot be aerodynamically analyzed.

(20) ‘indicative measurements’. The term ‘continuously’ has been replaced by ‘at regular intervals during a calendar year’. The term ‘taken at sampling points’ has been deleted as it had no added value.

(21a) ‘modelling application’. A new definition of “modelling application” according to CEN-TC264-WG43 has been introduced in the text.

(24) ‘rural background locations’. As rural background locations are also used for the critical levels for SO₂ and NO_x for the protection of vegetation and natural ecosystems and not only for ozone, the definition has been modified accordingly.

(28) ‘average exposure indicator’. As explained at the beginning of this note, the definition has been modified to allow coherence with the proposed new definition (29a).

(29) ‘average exposure reduction obligation’. As explained at the beginning of this note, the definition has been modified to allow coherence with the proposed new definition (29a).

(29a) ‘average exposure territorial unit’. As requested by some delegations, a new definition is proposed for the territorial units that could be used for determining the average exposure indicator and the average exposure reduction obligation, aiming to provide flexibility.

Article 5. Responsibilities

Article 5(d). The word “promoting” is proposed instead of “ensuring” to reflect some concerns on this wording: the term “promoting” is more aligned with Annex V.F on the "promotion of harmonized air quality modelling approaches".

Article 6. Establishment of zones

The term “territorial units” is included in the title and in the text of the article, as territorial units are also considered for the purposes of air quality assessment and management.

Article 7. Assessment regime

No modifications.

Annex II. Section 1 - Assessment thresholds for health protection

No modifications.

Article 8. Assessment criteria

Article 8(2). The word ‘and’ has been substituted by ‘or’ for better coherence with Article 8(3), where the text refers to use of modelling applications or indicative measurements.

Article 8(5) has been modified to clarify the role of modelling applications and the additional provisions in case they show an exceedance, explaining explicitly the two possible situations depending on the area where the exceedance occurs.

It is also important to recall that Article 7(3) of Directive 2008/50/EC already requires that the results of modelling and/or indicative measurement shall be taken into account for the assessment of air quality with respect to the limit values when fixed measurement sampling

points are supplemented by information from modelling and/or indicative measurement. Therefore, this obligation is part of the recast and must be maintained.

In Article 8(5a), based on written comments from delegations, the word "may" has been replaced by "shall".

Article 9. Sampling points

No modifications.

Annex III. Minimum numbers of sampling points for fixed measurement

Annex III. A. Point sources. Some comments were received concerning the Presidency proposal on the possibility of taking into account the Industrial Emissions Directive sampling points in the framework of the Air Quality Directive, provided they complied with the requirements of the latter. Concerns were raised with regard to the different aims and authorities involved when it comes to sampling points established under the AQ Directive and the IED. For this reason, it is proposed to delete the last two sentences of Annex III. A. Point sources.

Annex III. D. Minimum number of sampling points for fixed measurements of ultrafine particles where high concentrations are likely to occur. Flexibility is proposed for Member States with less than 2 million inhabitants, so that monitoring supersites at urban background or rural background locations established in accordance with Article 10 may be in such cases be taken into account for the purpose of meeting the requirements on the minimum number of sampling points for UFP.

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

Annex IV, point D. Site selection, its review and documentation. Objective estimations have been added to point 9 to be used along with modelling applications and indicative measurements for the review of the network design.

Article 10. Supersites

The new wording of Article 10(1) and 10(4) exempts small Member States with a territory below 10.000 km² from the installation of rural supersites. This exemption does not apply to urban supersites as it is important that there should be at least one urban supersite per Member State, even for small ones, to assess the levels of pollution to which its population is exposed for newly emerging pollutants, for future regulation.

Article 10(4a) has also been clarified. Pollutants with an assessment threshold may be exempted from measurement if their levels are below the assessment threshold. The situation shall be assessed every 5 years.

Annex VII. Section 1. Measurements of pollutants at supersites

Total gaseous mercury has been included in table 2 as this is already an existing obligation. It is also kept in table 3 to make it recommended for urban supersites.

Total deposition of Benzo(a)pyrene and polycyclic aromatic hydrocarbons (PAH) has been included in table 3 to be recommended for urban supersites.

Annex VII section 3

With regard Annex VII section 3.C. 'main wind' was replaced by 'down wind', similarly to the changes in Annex IV, Point B.2.d.

The proposed VII D. Methods for the sampling and measurement of UFP and particle number size distribution was deleted. Even if there is need for harmonization, some delegations pointed out that these Technical Specifications have not gone through the same vast validation process as CEN standards. At the moment, CEN/TS 16976 for PNC has a lower size limit of 7 nm, so the proposed TS does not seem applicable here, where the definition specifies a 'lower limit 10 nm'. Moreover, the Presidency considers that Point A.15 in Annex VI covers this issue already sufficiently.

Article 11. Reference measurement methods and data quality objectives

No modifications.

Annex V: Data quality objectives

No modifications. The text will be revised for the next WPE following detailed analysis of written comments.

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

Annex VI. A. Reference methods for the assessment.

The reference method for the determination of ammonia, 17346:2020 'Ambient Air — Standard method for the determination of the concentration of ammonia using diffusive samplers' was

deleted as some delegations are using automatic measurements and/or filter methods. At this stage the Presidency believes that it is better not to include any reference, allowing Member States to decide themselves which method to use for ammonia assessment. Ammonia has been reinserted in Annex VI. A. 15. concerning other pollutants.

The term 'PM oxidate potential' has been replaced by 'oxidative potential of particulate matter' for coherence with the rest of the proposal and the definition in Article 4(40).

The last sentence has been slightly adapted to include a reference to CEN.

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

Article 12(2). Biogenic precursors were proposed to be included as an additional factor to consider in zones where ozone levels are to be maintained below the ozone target values. In the light of comments received and taking into account the fact that there is no definition of biogenic precursors in the proposal, the Presidency proposes an addition which refers more clearly to organic volatile compounds from biological sources. Note that this clarification is linked to definition of VOC in Article 4(11).

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

Article 13(3). As requested by some delegations, the requirement to inform the Commission of the territorial units Member States are going to use to evaluate AERO has been deleted for better coherence with the provisions regarding the choice of other territorial units/zones.

Annex I. Air quality standards

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

A. Definitions and criteria. An addition regarding the time zone is proposed for the sake of clarity.

B. Ozone target values. A title is included for the existing table, where the values are proposed to be attained by 2030 instead of the transposition deadline, as requested by some delegations, considering that the number of occasions not to be exceeded for the Target Value proposed for the protection of human health is more stringent than the current value. An additional table 2 has been included for the values in force, which will apply from the date of entry into force to 2030.

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

A. Average exposure indicator. As requested by some delegations, a modification regarding the exclusion of 2020 is proposed for more clarity.

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

No modifications.

Article 15. Exceedances of alert or information thresholds

No modifications.

Article 16. Contributions from natural sources

Based on delegations' written comments, Article 16(4) the word 'may' has been replaced by 'shall'.

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

Based on the delegations' written comments, in Article 17(4) the word 'may' has been replaced by 'shall'.

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

Based on the discussion at the latest WPE, there is a need to introduce further flexibilities. Benzo(a)pyrene is added to the list of pollutants for which a postponement can be requested as it is linked to PM and most delegations are in favour of its inclusion.

The word 'drawn up' has been replaced by 'established' for coherence with the rest of the text.

The word 'unforeseen' has been deleted for more clarity while the reference to exceptional circumstances is maintained. The exceptional circumstances are the same as included in the first paragraph.

For the second postponement, Member States must show that the measures in the air quality plan referred in paragraph 1 point (a) have been implemented.

Article 19. Air quality plans

The new wording of the article proposes a maximum period of 3 years for the preparation of the air quality plan, and a total period of 5 years for compliance. This means that an additional year is not proposed for the elaboration of the plan or for the time needed for the measures in the plan to become effective. Article 19(1), 19(2), 19(3) and 19(4) have been modified accordingly. Article 19(2), second subparagraph. As requested by some delegations, a modification is proposed regarding the requirement to inform the Commission when an air quality plan is not established for ozone.

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

A.6. Annex 1. Details of measures to reduce air pollution under point 5. Point c). As requested by delegations, a modification is proposed to clarify that concentration reductions of each air quality measure or by groups are estimated when appropriate.

Article 20. Short term action plans

Article 20(1), second subparagraph. As requested by some delegations, a modification is proposed regarding the requirement to inform the Commission when a short-term action plan is not established for ozone.

Article 21. Transboundary air pollution

In the new wording of the Presidency proposal, the word 'joint' has been replaced by 'coordinated'.

This means that Member States shall draw up individual air quality plans, which include measures that have been identified in coordination with the Member State(s) concerned and for which they have competence in their own territory. These coordinated plans may lower the administrative burden that joint plans may imply, as their procedure and approval will be the same as for national or regional plans.

It is important to recall that 'joint plans' are already an obligation in Article 25(1) of current Directive 2008/50/CE.

Article 22. Public information

The new revised Presidency text includes an explicit reference to the possibility to use the EEA AQI directly to fulfil the obligations of Article 22(2), if Member States so decide.

Annex IX. Public Information

No modifications.

Article 23. Transmission of information and reporting

No modifications.

Article 24. Amendments to Annexes

Based on the discussion at the WPE on 19 September, ANNEX VIII, Information to be included in air quality plans for improvement in ambient air quality and Annex IX, Public information, have also been excluded from the scope of Article 24, as several delegations consider that their modification may imply a cost for Member States and should therefore only be modified through the ordinary legislative procedure. Hence, in the proposed new text in Article 24, the empowerment of the Commission to adopt delegated acts is limited to Annexes III to VII.

Article 25. Exercise of delegation

No modifications.

Article 26. Committee procedure

No modifications.

Article 27. Access to justice

No new modifications.

Article 28. Compensation for damage to human health

During the WPE discussion on 18-19 September, some delegations expressed their concern about the implications of this Article. For this reason, the Presidency suggests modifying the Commission proposal as follows:

- Paragraph 1: Deleting the reference to articles 19(2), 21(1) second subparagraph, and 21(3) to reduce the scope of the Article.
- Paragraph 1: Including 'fault and negligence' as criteria for public liability.
- Paragraph 5: Deleting this paragraph as the requirement to effectively implement EU law applies anyway.

Article 29. Penalties

No modifications.

Article 30. Repeal and transitional provisions

No modifications.

Article 31. Transposition

No modifications.

Article 32. Entry into force

No modifications.

Article 33. Addressees

No modifications.

