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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 5 October 2023 - comments from delegations

Following the call for comments on the above set out with WK 12729/2023, delegations will find attached comments from BG and SI.

BULGARIA

Proposal for a Directive of the European Parliament and of the Council on ambient air quality and cleaner air for Europe

Follow-up of the discussions in the WPE on 05.10.2023

Documents: 13377/23 and WK 12475/2023

Bulgaria would like to thank the Presidency for drafting the compromise text, as well as for the prepared explanatory note in view of the discussions at the meeting of the Working Party on the Environment on 5 October 2023.

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

We do not believe that the concept of joint or shared responsibility between the EU and Member States for compliance with future limit values and mitigation efforts is appropriate for the Air Quality Directive. The achievement of the required ambient air quality is often linked to other factors besides the implementation of measures, such as socio-economic conditions, geographical features, transboundary influences from third countries. The influence of these factors requires more effort and time to achieve the objectives for ambient air quality set out in the Directive. In this regard, we express our concerns regarding the listed factors and the expectation of additional „efforts from other Member States and regions “. We agree in principle that the EU-level emissions legislation contributing to the achievement of the ambient air quality objectives needs to be taken into account. At the same time, we draw attention to the fact that the ambition level of this legislation should be realistic and technically feasible – only then it would have an effect on improving air quality. We do not believe that automatic setting of requirements and a continuous spiral of legislative changes is going to lead to real results, especially if they are not assessed from all points of view (cost, socio-economic, technical and technological feasibility, etc.). In addition, the pollution reduction measures must not hinder the economic and social sustainability of the population. (Article 3(2)(f), 3(4) and 3(5) of the text.)

Regular review (Article 3)

We believe that 2032 is realistic for an initial review. With regard to the regular review, we support the words '*as often as necessary*', but they make sense in the following wording:

1. By 31 December ~~2032~~²⁸, and **as frequently as necessary** ~~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.

2. INTERVENTION ROUND 2. Average exposure territorial unit. Article 4 (Definitions), new definition 29a.

We maintain a scrutiny reservation.

Article 5. Responsibilities

We support the replacement of "*ensuring*" with "*promoting*".

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

Assessment criteria (Article 8)

In Article 8(2) – we support the replacement of "*and*" with "*or*".

Article 8(3) – with regard to the addition of the specific date "from 1 January 2030", we maintain our position on the achievability of the new limit values from 2030.

Article 8(5) – we maintain our position – we do not support the use of modelling results for the assessment of compliance with the limit values set by the Directive.

As for the proposal of the Presidency to reduce the time for additional verification measurements to 2 years – we can be flexible.

Article 8(5a) – positive scrutiny reservation.

Annex III. A.2. Point sources.

We support the deletion of the last two sentences.

Annex III.D. – positive scrutiny reservation.

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

Point B.2(f) – we note that the question on how the application of best available techniques can be tracked/measured by the air quality monitoring sites remains open.

Monitoring supersites (Article 10)

Positive scrutiny reservation – these changes have no impact on the requirements concerning our country, but they have implications for smaller Member States.

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

Positive scrutiny reservation, considering the given flexibility for ammonia monitoring.

4. INTERVENTION ROUND 4. Flexibility and level of ambition of the proposal: Article 18 + Annex I.

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

We maintain a scrutiny reservation.

Annex I. Air Quality standards

We welcome the proposed changes (inclusion of additional exceedances for hourly limit values for sulphur dioxide and nitrogen dioxide). However, as we have already stated, the achievement of the new standards by 2030 as proposed in the draft Directive, remains unrealistic. We note once again, that many Member States have serious problems in achieving the current air quality standards. During the current negotiations, there multiple MS have

expressed reservations and concerns with regard to the level of ambition and the date from which compliance is required, which is why we believe the deadline for achieving the ambitious new standards should be postponed in time (preferably 2035). The last few years we have witnessed crises whose development can hardly be foreseen, and it is clear even from now that overcoming them will require additional efforts. It should be kept in mind that the key assumptions for achieving the new air quality standards in 2030 are based on the comprehensive legislative transformation proposed by the European Commission. The implementation of these policies, which directly and indirectly affect air quality and which will only have an impact in the coming years, gives us reason to believe that the achievement of the 2030 targets is unrealistic. In addition, after the approval of the Directive, Member States will need at least 2 years to transpose the act into their national legislation – therefore, there will not be enough time to see the effects of the planned actions until 2030.

Article 15 Exceedances of alert or information thresholds.

In our view, the reference to point 3 of Annex IX should be deleted from article 15(3), and only the reference to point 2 should be kept. Point 2 specifies the information to be provided when alarm and information thresholds are exceeded and/or are predicted to be exceeded.

Article 16. Contributions from natural sources n Article 17. Exceedances attributable to winter-sanding or winter-salting of roads

With regard to the proposed texts in Article 16(4) and Article 17(4), we still consider them as not necessary. The update of the existing guidelines by the Commission is sufficient.

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

We support the inclusion of benzo(a)pyrene, for which postponement of the deadline should be allowed.

We see a need to include sulphur dioxide and heavy metals among the substances for which it will be possible to postpone the deadline for reaching the limit values laid down in Article 18. With the proposed new limit values for these substances, there is a serious risk that the air quality standards cannot be achieved by the deadlines, taking into account the current situation. We also support the German proposal to include the obligations for average exposure reduction in Article 18.

5. INTERVENTION ROUND 5. Air quality plans and transboundary air pollution plans: Article 19 and Article 21.

Article 19. Air quality plans

We thank the Presidency for the clarifications. Bulgaria maintains a scrutiny reservation, as the timelines discussed are a further indication in support of Bulgaria's position on the achievability of the ambitious new limit values in the suggested timeframe.

Article 19(1) – we maintain a positive scrutiny reservation.

Article 19(2) – scrutiny reservation. We reiterate our view, that the main instrument for reducing ozone concentrations in Europe is the Air Pollution Control Programme, pursuant to Directive (EU) 2016/2284, and we believe that measures to address this pollutant should be provided in these programmes, and the inclusion of obligations that lead to additional administrative burdens without added value should be avoided. In this regard, we can be flexible given the changes proposed by the Presidency.

Article 19(3) Bulgaria maintains a negative scrutiny reservation. As we have expressed previously, our concerns relate to the content and the subject of the programme and the measures to be implemented. These pollutants (nitrogen dioxide and PM2.5) are also addressed in the Air Pollution Control Programme pursuant to Directive (EU) 2016/2284 and will also be covered in the air quality programmes to be developed under Article 19 of the proposed Directive if an exceedance is recorded.

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

We support the changes made in point A.6. Annex I, d.

Article 20. Short term action plans

Article 20(1) and (5) – we express a positive scrutiny reservation on the redaction made.

Article 21. Transboundary air pollution

In the context of transboundary pollution, we note that as an external border of the EU, for Bulgaria finding and establishing a clear and effective mechanism within the framework of the proposed Directive remains a priority, taking into account the current lack of real instruments to address these challenges by the affected MS.

As we have noted before, we find much of the proposed text to be non-binding and accordingly, we expect that it will not work in practice. In particular, this relates to the drawing up of joint plans – there is no proposed mechanism for the indisputable determination of transboundary transport, nor we understand the logic by which Member States should draw up the joint plans to reduce pollution in the source MS, given that it is that MS that must invest in solving the problem. We believe that MS cannot effectively influence the enforcement of measures outside their territory. This is particularly true when it comes to neighbouring non-EU countries. We stress that in our view, the problem of cross-border transmission to Member States that are at the EU-border is being frankly ignored, with Member States being left to deal with the problem themselves and consequently, to bear the consequences.

In this context, we would like to know what exactly will be the “*technical support*” from the Commission in article 21(5). We would like to know whether this “technical support” is related to proving the existence of transboundary pollution and, in the event that transboundary pollution is proven, does the support include the setting of conditions for taking into account the pollution in the context of the compliance of MS with the requirements of the Directive. We would appreciate additional information about the exact tools that would be used in order to provide the needed support to MS.

Article 22. Public information

Article 22(2) – we support the amendments made to the text.

We believe the reference to point 3 of Annex IX should be deleted in 22(1)a.

Article 24. Amendments to Annexes n Article 25. Exercise of delegation

In line with the position expressed so far on Article 24, Bulgaria supports the amendments.

We continue to believe that the requirements laid down in Annexes III to VII are essential elements of the Ambient Air Quality Directive which should not be supplemented or amended by delegated acts, and we therefore express a negative scrutiny reservation.

We note again that Bulgaria has a horizontal position on the issue of delegated acts. We would prefer, if possible, an approach based on acts, adopted under the ordinary legislative procedure.

6. INTERVENTION ROUND 6. Chapter VII: Access to justice, compensation and penalties. Articles 27 to 29.

Article 27. Access to justice

We express a negative scrutiny reservation on the provisions of Article 27. Our opinion is that further drafting of these texts is needed in order to adhere as much as possible to what has already been agreed under the general approach of the IED. We believe that keeping the general wording of the text without over-detailing the provisions is sufficient.

Article 28. Compensation for damage to human health

Bulgaria maintains its position in support of full deletion of Article 28, as the texts are not applicable in the field of air quality.

Article 29. Penalties

Scrutiny reservation as the wording is in line with the general approach of the draft IPPC Directive. We can be flexible in case Member States support an approach in line with the text in the current Directive 2008/50/EC.

Article 31. Transposition

Bulgaria considers that the deadline for transposition of the new provisions should be extended to at least three years after the entry into force, in order to allow sufficient time for the establishment of the new monitoring requirements, in particular articles 7, 9 and 10, among others.

SLOVENIA

COMMENTS: Air Quality Directive

Article 27 – Access to justice

Slovenia continues to insist on full deletion of the Article 27. It still believes, that there is no added value of such a provision, since all MS and the EU are already Parties to the Aarhus Convention and therefor have an obligation for the implementation if its provisions.

Article 28 – Compensation for damage to human health

Slovenia proposes to delete the Article 28. We believe that the most favourable approach is to delegate the matter of compensation in article 28 to the discretion of individual MS. 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

1. Without prejudice to the obligations of Member States under Directive 2008/99/EC of the European Parliament and of the Council¹, Member States shall lay down the rules on penalties applicable to infringements ~~violations by natural and legal persons~~, of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they ~~those rules are implemented~~. The penalties provided for shall be effective, proportionate and dissuasive. ~~Member States shall notify the Commission without undue delay of those rules and of any amendment thereof.~~
2. ~~The penalties referred to in paragraph 1 shall include fines proportionate to the turnover of the legal person or to the income of the natural person having committed the violation. The level of the fines shall be calculated in such a way as to make sure that they effectively deprive the person responsible for the violation of the economic benefits derived from that violation. In the case of a violation committed by a legal person, such fines shall be proportionate to the legal person's annual turnover in the Member State concerned, taking account, inter alia, the specificities of small and medium-sized enterprises (SMEs).~~
3. Member States shall ensure that the penalties ~~referred to in paragraph 1~~ established pursuant this article give due regard to the following circumstances, as applicable:
 - (a) the nature, gravity, extent and duration of the ~~violation~~ infringement;
 - (b) ~~the intentional or negligent character of the violation~~ ;

¹ Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ L 328, 6.12.2008, p. 28).

~~“OPTION 1 – TO DELETE POINT (c): (e) — the population, including sensitive population and vulnerable groups, or the environment affected by the violation infringement bearing in mind the impact of the infringement on taking into account the objective of achieving a high level of protection of human health and the environment;”~~

~~“OPTION 1 – TO TO MODIFY POINT (c) as follows: (c) the population, including sensitive population and vulnerable groups, or the environment affected by the violation infringement bearing in mind the impact of the infringement on taking into account the objective of achieving a high level of protection of human health and the environment;~~

Slovenia proposes to delete the point (c) of the Article. In Slovenia, offenses are not defined specifically for sensitive groups. These groups are not explicitly defined anywhere in the legal system, and are not recognised as a distinct category requiring different treatment. Individual circumstances can be considered as mitigating or aggravating factors in judicial proceedings, where the court examines each case individually. To establish new provisions, that would determine fines based on harm to sensitive groups, would be exceptionally challenging. This would exceed the scope of infringement proceedings.

Alternatively, point (c) can be retained, with the deletion of the phrase "including sensitive population and vulnerable groups,". After all, if only the population is addressed in a general sense, this may mean only the number of residents and is easier to regulate.