GERMANY

Written comments - Original comments and courtesy translation **following** Council **Working Party on the Environment on 5 October 20**23 on Air Quality Directive

Intervention Round 1: Joint Responsibility clause: Article 3 Regular view (Chapter I: General provisions), new paragraph 5, new provisions in relation to joint responsibility.

Artikel 3: Der **neue Absatz 5** ist ein weiterer Schritt in die richtige Richtung, allerdings nach wie vor noch nicht ausreichend um klarzustellen, dass die MS und die EU eine gemeinsame Verantwortung für die Einhaltung tragen.

Die gemeinsame Verantwortung für die Erreichung der künftigen Grenzwerte sollte auch ausdrücklich im Text verankert werden. Auch im neuen Kompromisstext bleibt die alleinige Verantwortung für die Einhaltung bei den Mitgliedstaaten, was aus hiesiger Sicht nicht sachgerecht ist. Die Gründe haben wir bereits vielfach dargelegt:

- In vielen Fällen könnten **lokale Minderungen alleine nicht ausreichen**, um eine hinreichende Reduzierung der Luftbelastung zu erreichen.

- Die Mitgliedstaaten sind – neben nationalen und lokalen Maßnahmen – auf eine anspruchsvolle und zugleich umsetzbare Emissionsgesetzgebung der EU angewiesen, für die die Kommission das alleinige Initiativrecht hat: die **Emissionsgesetzgebung ist bei den meisten Emittenten zwischenzeitlich auf EU-Ebene geregelt.**

    - Beispiele hierfür sind die IED- Industrieemissionsrichtlinie, MCPD – Mittelgroße Feuerungsanlagen-Richtlinie, Ökodesign-Verordnungen, Emissionsgesetzgebung für Pkw, leichte und schwere Nutzfahrzeuge.

    - Die Mitgliedstaaten können in diesen Bereichen nicht mehr bzw. nur sehr eingeschränkt eigenständig agieren.

- Eine gemeinsame Verantwortung hätte zudem den Vorteil, dass die Luftqualität flächendeckend besser wird und nicht nur an Belastungsschwerpunkten. Dabei ist auf Angemessenheit und eine ausgewogene Kosten/Nutzen-Abwägungen der Emissionsgesetzgebung zu achten.

- Maßnahmen überwiegend technischer Natur, die im Rahmen der EU-Emissionsgesetzgebung festzulegen sind, spielen hier eine entscheidende Rolle. Diese Maßnahmen sind für die Betroffenen oftmals verhältnismäßiger und damit auch kostengünstiger als Maßnahmen, die die Aktivitätsraten reduzieren, also bspw. ein Verwendungsverbot von Einzelraum-Holzfeuerungsanlagen oder Maßnahmen zur Verringerung des Verkehrsaufkommens (z.B. Fahrverbote). Dies bedeutet nicht, dass mögliche zukünftige Maßnahmen zur Einhaltung der vorgeschlagenen Grenzwerte, die langfristig wirken, z.B. auf die Veränderung des Mobilitätsverhaltens, oder zur Senkung lokaler Emissionen an Belastungsschwerpunkten notwendig sind außer Acht gelassen werden. Diese Maßnahmen müssen jedoch im Hinblick auf die genannten Kriterien genauer bewertet werden.

- Nichtsdestoweniger brauchen die MS auch ausreichend Spielraum, um die nationalen oder lokalen Gegebenheit ausreichend berücksichtigen zu können.

- **Reaktiv:** DEU spricht sich aber nicht dafür aus, aus der AAQD eine Verordnung zu machen, da die nationale Umsetzung ausreichend Platz bietet, um nationale Gegebenheiten zu berücksichtigen.

Deutschland erarbeitet derzeit einen Textvorschlag, der im Nachgang zur Sitzung übermittelt werden soll.

Auch die Änderung zum Review in **Absatz 2** geht in die richtige Richtung. DEU schlägt vor, die Passage in Punkt (c) noch um einen Einschub zu ergänzen, der vorsieht, dass die Umstellung auf den POD-Ansatz geprüft wird:

> *„(c) air quality situations and associated impacts on human health and the environment, including the effects of ozone on ecosystems* ***and a possible change from the AOT approach to the POD approach for the critical levels****, as well as the nature and socio-economic impacts of complementary actions to be implemented to achieve new objectives in Member States,"*

Intervention Round 2: Average exposure territorial unit. Article 4 (Def.), new definition 29a

Artikel 4

Die Flexibilisierung in der Definition der Regionen für den Expositionsminderungsverpflichtung (AERO) in **Absatz 28 bis 29a** wird unterstützt. Deutschland dankt der Präsidentschaft für den neuen Vorschlag. Zur weiteren Klarstellung sollte in Absatz 29a die Formulierung *„where the average exposure indicator in a NUTS 1 territorial unit is shown to be influenced by other NUTS 1 territorial units within a Member State,"* als Voraussetzung gestrichen werden, da diese Voraussetzung aufgrund des Ferntransports von Luftschadstoffen immer erfüllt ist und insoweit nicht jedes Mal geprüft warden muss. Die Zusammenlegung von NUTS1-Gebieten unterhalb der NUTS0-Ebene sollte immer möglich sein.

Deutschland hat darüber hinaus noch Anmerkungen zur Systematik und zum Ambitionsniveau der Expositionsminderungsverpflichtung, die in Interventions-Runde 4 vorgetragen werden.

Wir danken der Präsidentschaft für die die Anpassung der Definition von Black Carbon (**Absatz 13**) sowie die Aufnahme der Definition für "modelling applications" (**neuer Absatz 21a**). Wir sind mit beiden Fassungen einverstanden.

Zu **Absatz 14 (UFP):** Die vorgeschlagene Änderung bezüglich des Durchmessers geht in die richtige Richtung. Da der Entwurf seit der letzten Fassung ein oberes Limit für die Größenverteilung von ultrafeinen Partikeln enthält, sollte der letzte Satzteil „*and for a size range with no restriction on the upper limit*" gestrichen werden, damit dieser Schadstoff in der gesamten EU einheitlich gemessen wird als Grundlage für spätere epidemiologische Studien.

Intervention Round 3: Chapter II Assessment of Ambient Air Quality: Article 8 (Assessment criteria) on modelling applications and Article 10 (Monitoring supersites) + Annex VII

Artikel 7 / Annex II

DEU regt weiterhin an, die Modellierung verpflichtend in der Planung in Artikel 7 mindestens alle 5 Jahre aufzunehmen. Dies böte eine gute Grundlage für die Ableitung der Repräsentativität von ortsfesten Messstationen (siehe auch Annex IV B 2 (g)).

Bei Aufnahme dieses Ansatzes würde die derzeit in Artikel 8 Absatz 3 und 5 vorgesehene jährliche Modellierung im Falle einer Grenz- oder Zielwertüberschreitung obsolet, da die Modellierungsergebnisse bereits vorab in die Messnetzplanung sowie die Ableitung der Repräsentativitätsbereiche einfließen. Eine flächendeckende Beurteilung wäre von Beginn an gewährleistet. Im Falle einer Grenz- oder Zielwertüberschreitung muss trotzdem geprüft werden, ob weitere Bereiche mit Überschreitung vorliegen, die nicht durch Messstationen abgedeckt sind.

Artikel 8

Der Einschub in **Absatz 3** „from 1 January 2030" widerspricht dem Ansatz der Luftreinhalteplanung, dass Maßnahmen (hier mit Anwendung von Modellen und orientierenden Messungen), damit die Einhaltung der Grenzwerte vor Ablauf der gesetzten Frist erreicht wird und sollte gestrichen werden. Das Datum, zu dem die neuen Grenzwerte gelten, geht bereits aus Anhang I hervor.

Wenngleich Deutschland der Modellierung grds. positiv gegenüber steht, kann **Absatz 5 zweiter Unterabsatz** in der vorliegenden Form nicht mitgetragen werden. Hier ist eine Klarstellung wichtig und erforderlich, dass eine Grenzwertüberschreitung ausschließlich auf Basis von Messungen festgestellt werden kann, d.h. eine modellierte Überschreitung durch eine Messung verifiziert werden muss.

Die Änderung in **Absatz 5a** wird von Deutschland unterstützt. DEU weist darauf hin, dass es essentiell ist, dass die KOM diesem Auftrag so schnell wie möglich nachkommt.

DEU hat bereits dargelegt, dass eine jährliche Modellierung im Wesentlichen meteorologische Effekte deutlich machen wird. Deshalb erscheint eine verpflichtende jährliche Modellierung weiterhin nicht zielführend.

Artikel 9 and Annex III, IV and VII

Es ist aus DEU Sicht weiterhin unklar, ob orientierende Messungen - so wie hier definiert – für sich genommen eine adäquate, alternative Informationsquelle zur Beurteilung von Überschreitungen darstellen können, da in der Regel die räumliche Information sowie die zeitliche Abdeckung eingeschränkt sind. Prüfvorbehalt.

Annex IV: Die Ableitung der räumlichen Repräsentativität von Messstationen in **Annex IV Abschnitt B.5** muss wesentlich detaillierter beschrieben werden. Die FAIRMODE WG8 hat hierzu bereits eine Beschreibung veröffentlicht, die als Grundlage dienen kann. Hierzu zählt eine Beschreibung geeigneter Methoden (Modellierung usw.).

Aus DEU Sicht sollte die Repräsentativität auf Basis der jahresmittleren Belastung abgeleitet werden. Für Schadstoffe, die für nur Kurzzeitwerte existieren, z.B. Ozon, sind geeignete Metriken festzulegen.

Unter **Punkt (d)** sollten geeignete Toleranzlevel sollten für jeden Schadstoff in der Richtlinie definiert werden.

Artikel 10 / Annex IV: Die Änderungen in den **Absätzen 1 und 4** sind für Deutschland **akzeptabel**. In **Absatz 4a** sollte das Wort „shall not" durch „do not need to" ersetzt werden, um für die Mitgliedstaaten die notwendige Flexiblität zu erhalten.

Bei Messungen von Ammoniak an den „rural supersites" ist es wichtig, dass diese nicht direkt neben großen NH_3-Emittenten aus der Landwirtschaft stehen. Durch **Anhang IV** ist dies momentan

noch nicht abgedeckt. Daher sollte dies in Artikel 10 unter Absatz 2 noch ergänzt werden. Textvorschlag:

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

Intervention Round 4: Flexibility and level of ambition of the proposal: Article 18 + Annex I

Artikel 13 and Annex I: Deutschland hat Vorbehalte hinsichtlich des Ambitionsniveaus und des Einführungsdatums, ab dem die neuen Verpflichtungen zu den Grenz- und Zielwerten sowie zur Expositionsminderungsverpflichtung einzuhalten sind.

Zur **Expositionsminderungsverpflichtung**: Die weitere Klarstellung zur Herausnahme des Jahres 2020 als Basisjahr geht zwar in die richtige Richtung, ist als Änderung jedoch nicht weitgehend genug, insbesondere bei Feinstaub. Diese Punkte sind für uns und die Bundesländer sehr wichtig, auch im Hinblick auf die Einhaltbarkeit der neuen Anforderungen.

Feinstaub:

- Hinsichtlich der Expositionsminderungsverpflichtung für Feinstaub haben wir zunächst mehrere Anmerkungen zur **Systematik**:

- Die Expositionsminderungsverpflichtung sollte **nicht als gleitende Minderungsverpflichtung** festgelegt werden, sondern sich weiterhin auf ein **festes repräsentatives Basisjahr** beziehen und feste Minderungen pro Dekade vorsehen. Auch die Zeitpunkte, zu denen die Minderungsverpflichtungen einzuhalten sind, sollten fest vorgegeben werden, um die Einhaltbarkeit zu gewährleisten. Deutschland hat hier noch einen Prüfvorbehalt.

- Damit frühzeitige Minderungsmaßnahmen belohnt werden, sollten bereits erbrachte Minderungen (über die bisherige Verpflichtung bei $PM_{2,5}$ in der geltenden Richtlinie hinaus) angerechnet werden können. Daher **sollte als Basiszeitraum weiterhin das bereits geltende dreijährige Mittel 2008-2010 festgelegt werden** – natürlich unter Berücksichtigung der bereits bestehenden Verpflichtung. Dies würde der Logik folgen, die auch im Bereich des Klimaschutzes gilt, wo auch bei neuen Regelungen auf ein festes Basisjahr in der Vergangenheit Bezug genommen wird.

- Die **Höhe der prozentualen Minderungsverpflichtung** pro Dekade sollte weiterhin differenziert **in Abhängigkeit von der Höhe der Belastung im Basisjahr** festgelegt werden (d.h. im Fall einer höheren Ausgangsbelastung wäre eine höhere prozentuale Minderung zu erbringen).

- Zudem leisten auch die nationalen Luftreinhalteprogramme unter der NEC-Richtlinie einen wichtigen Beitrag zur Einhaltung der Minderungsverpflichtung.

NO_2:

- Die Randbedingungen sollten grds. entsprechend der o.g. Anpassungen bei der $PM_{2,5}$-Expositionsminderung ausgestaltet werden.

Ergänzend hierzu sollte für die Expositionsminderung auch die Möglichkeit einer Fristverlängerung in Art. 18 vorgesehen werden, siehe unten.

Artikel 18: Die Positionierung der Bundesregierung zu den Details der Fristverlängerung ist über das folgende hinaus noch nicht abgeschlossen. Folgende Anmerkungen werden unabhängig von den zu Artikel 13 vorgebrachten Anmerkungen gemacht.

Zu den Voraussetzungen für Fristverlängerungen: Eine **deutlich weitergehende Flexibilisierung zu Ausnahmen ist für DEU von überragender Bedeutung**. Die Regelung geht aus DEU Sicht zwar in die richtige Richtung, ist jedoch weiterhin nicht ausreichend. Zudem muss auch die Erfüllung der Expositionsminderungsverpflichtung mit in den Artikel 18 aufgenommen werden.

Daher ist es für Deutschland sehr wichtig, dass die Gründe für Ausnahmen allgemeiner formuliert werden: eine Verlängerung (einschl. Folgeverlängerung) sollte dann möglich sein, wenn die Einhaltung der Grenzwerte mit angemessenen und verhältnismäßigen Maßnahmen nicht möglich ist. Denkbar ist jedenfalls, dass die möglichen und zumutbaren Maßnahmen schlichtweg nicht ausreichen, um rechtzeitig eine Grenzwerteinhaltung zu erzielen. Es wird vorgeschlagen, die folgende Formulierung zu ergänzen:

> *„… if it can be demonstrated that compliance could not be achieved with reasonable and proportionate measures".*

In den Erwägungsgründen sollte klargestellt werden, dass Produktionsdrosselungen von Industrieanlagen oder Gewerbe keine angemessenen und verhältnismäßigen Maßnahmen in diesem Sinne darstellen.

Auch im Falle von „adverse urban planning conditions" sollten Fristverlängerungen möglich sein. Es gibt städtebauliche Situationen, in denen die Einhaltung der künftigen Grenzwerte auf erhebliche Hindernisse trifft – z.B. bei Autobahnen, die dem internationalen Fernverkehr dienen, Häuserschluchten, die die Luftzirkulation behindern, oder Häfen. Solche Autobahnen zu sperren oder mit einem Dieselfahrverbot bzw. Lkw-Verbot zu belegen, sowie auch eine Änderung der Bebauung ist weder angemessen noch verhältnismäßig. Daher sollte auch hierzu eine entsprechende Klarstellung in den Erwägungsgründen erfolgen, dass Fahrverbote keine angemessenen und verhältnismäßigen Maßnahmen in diesem Sinne darstellen.

Für die von uns geforderte Ausnahme für Sondersituationen an Häfen werden wir einen Textvorschlag im Nachgang zur Sitzung vorlegen. Hier sollte eine Regelung vorgesehen werden, dass eine Anzeige bei der KOM für die Fristverlängerung ausreichend ist.

Die Streichung des Begriffs *„unforeseen"* wird unterstützt, ebenso der Verweis auf Absatz 1 hinsichtlich der Definition von *„exceptional circumstances"*.

Der Zeitrahmen der zusätzlichen zwei Jahre in der Folgeverlängerung ist aus DEU Sicht jedoch weiterhin zu eng. Es sollte eine Fristverlängerungsmöglichkeit von 10 Jahren vorgesehen werden.

Die Streichung des Begriffs „unforeseen" wird unterstützt.

Internvention Round 5: Air quality plans and transboundary air pollution plans: Article 19 and Article 21

Artikel 19 Absatz 4: Der Verweis auf den Zielwert für Ozon sollte gestrichen werden, da ein lokaler Luftreinhalteplan – jedenfalls auf Grundlage der hier bekannten wissenschaftlichen Erkenntnisse – keinen sinnvollen Beitrag zur Einhaltung der Zielwerte leisten kann, auf der anderen Seite aber erheblichen Aufwand auf regionaler und lokaler Ebene verursacht.

Artikel 20 Absatz 2: Der allgemeine Verweis auf *„limit values or target values"* in Absatz 2 sollte gestrichen werden.

Begründung: Short-term Action Plans werden durch Überschreitungen des Alert Thresholds ausgelöst und sollen eine sehr kurzzeitige Minderung von Belastungsspitzen herbeiführen. Grenz- und Zielwerte, die über ein Jahr berechnet werden (oder Werte mit erlaubter Anzahl von Überschreitungstagen/-stunden) können mit smogalarmartigen kurzzeitigen Maßnahmen eines short-term Action Plans nicht sinnvoll bekämpft werden.

Internvention Round 6: Chapter VII: Access to justice, compensation and penalties. Articles 27 to 29

Artikel 27: Eine Angleichung an den Text der IED ist grundsätzlich sinnvoll, um Unklarheiten durch Inkohärenzen im EU-Recht zu vermeiden.

Die Rechtsprechung des EuGH unterscheidet allerdings bei den Maßgaben für Rechtsschutzmöglichkeiten nach Fällen, die unter Artikel 9 Absatz 2 der Aarhus-Konvention (AK) fallen, und solchen, die unter Artikel 9 Absatz 3 AK fallen. Rechtsschutz nach der IED fällt unter Artikel 9 Absatz 2 AK, während der Rechtsschutz in Bezug auf die Luftreinhaltepläne sich bisher an den Maßstäben des Artikels 9 Absatz 3 AK orientiert.

Sofern diese Unterscheidung beibehalten werden sollte, müsste

- der Prüfmaßstab (derzeit in Absatz 1: „to challenge the substantive or procedural legality") auf die Verletzung umweltbezogener Rechtsvorschriften begrenzt werden und
- Absatz 2 gestrichen werden.

Artikel 28: Deutschland dankt der Präsidentschaft für das Entgegenkommen, insb. die geforderte Streichung von Absatz 5 und die Aufnahme von „fault and negligence" in Abs. 1.

Zusätzlich sollten wir am Ende von Abs. 1 noch die Worte „in accordance with national law" ergänzen. Damit stellen wir klar, dass sich die Geltendmachung von Schadensersatzansprüchen nach den bekannten und bewährten Vorschriften des nationalen Rechts richtet. Außerdem gleichen wir den Text damit der Abwasser-RL an, wo eine entsprechende Formulierung in der letzten Textfassung aufgenommen worden ist.

Es verbleiben wenige Anmerkungen:

Da es sich bei Ozon lediglich um einen Zielwert handelt, sollte Artikel 19 Absatz 2 von der Regelung in Artikel 28 ausgenommen werden.

DEU begrüßt die Streichung der Absätze 2 bis 5. Diese Streichungen müssen in jedem Fall beibehalten werden.

Es wird begrüßt, dass die Ausgestaltung der Verjährungsregelungen weitegehend den Mitgliedstaaten überlassen werden. Es sollten auch keine Vorgaben zum Beginn der Verjährung gemacht werden, insbesondere sollte dieser nicht daran geknüpft werden, dass der Verstoß beendet wurde.

Mit Blick auf die derzeit parallel in Verhandlung befindlichen Dossierts hält Deutschland den Prüfvorbehalt hinsichtlich dieser Regelung aufrecht.

Artikel 29: Es wird nachdrücklich begrüßt, dass bei der Überarbeitung durch die PRÄS die bislang vorgeschlagene Sanktionsregelung, die nicht umsetzbare Vorgaben für die Schaffung von Bußgeldvorschriften im nationalen Recht enthält, an die entsprechenden Regelungen der Allgemeinen Ausrichtung der IED angepasst wurde und den MS bei der Umsetzung der Sanktionsregelungen damit eine größere Flexibilität eingeräumt wird.

Vor allem kohärente Sanktionsregelungen im EU-Sekundärrecht erleichtern eine vollzugstaugliche Umsetzung in nationales Recht und verstärken damit die beabsichtigte Wirkung der Sanktionen. Vor diesem Hintergrund sollte zu gegebener Zeit geprüft werden, ob tragfähige Kompromisse in anderen Dossiers noch bei der konkreten Formulierung berücksichtigt werden können.

Sonstige Anmerkungen (reaktiv):

Annex V: In **Abschnitt A** sollte bzgl. **Tabellen 1 und 2** zu den Vorgaben zur Berechnung der Modellqualität klargestellt werden, dass keine Vermischung unterschiedlicher Skalen erfolgen darf (z.B. in einer Fußnote). Unser Formulierungsvorschlag ist:

> *"When calculating the modelling quality indicator of modelling applications the scale of the modelling application has to match the spatial representativeness of sampling points."*

In der Tabelle in **Abschnitt B** sollte die Datenverfügbarkeit („Minimum data coverage") für neue Schadstoffe an Supersites (wie z.B. Levoglucosan, BC, NH3, UFP) von 80% sollte deutlich herabgesetzt werden auf die Höhe des Wertes für Metalle (45 %). Dies wäre nach wie vor anspruchsvoll, aber machbar.

Annex VI: DE kann zur Verweisung auf konkrete Normen/Technical Standards das im Kompromisstext vorgeschlagene Wording in Punkt 15 mittragen, sofern im letzten Satz zur Vereinheitlichung der Messmethoden das Wort „may" durch „shall" ersetzt wird:

> *"Where international, CEN or national standard reference measurement methods or technical specifications are available, these ~~may~~ **shall** be used."*

Artikel 16: Die Änderung in Artikel 16 (4) wird unterstützt. DEU weist darauf hin, dass es essentiell ist, dass die KOM diesem Auftrag so schnell wie möglich nachkommt.

Artikel 17: Die Änderung in Artikel 17 (4) wird unterstützt. DEU weist darauf hin, dass es essentiell ist, dass die KOM diesem Auftrag so schnell wie möglich nachkommt.

Artikel 22: Es wird in **Absatz 2** ein Verweis auf Annex IX vorgeschlagen, um sicherzustellen, dass der Luftqualitätsindex nur Messungen / Schadstoffe berücksichtigen kann, die gemessen werden müssen und zudem für up-to-date Austausch geeignet sind:

> *"Member States shall establish an air quality index covering sulphur dioxide, nitrogen dioxide, particulate matter (PM10 and PM2.5) and ozone, and make it available through a public source providing an hourly update **in accordance with Point 1 (a) of Annex IX**."*

- Germany maintains its general scrutiny reserve.

Intervention Round 1: Joint Responsibility clause: Article 3 Regular view (Chapter I: General provisions), new paragraph 5, new provisions in relation to joint responsibility.

Article 3

The **new paragraph 5** is another step in the right direction, but still does not sufficiently clarify that the Member States and the EU have a shared responsibility for compliance.

Joint responsibility for ensuring achievement of the future limit values should be explicitly enshrined in the text. Also in the new compromise text, sole responsibility for compliance remains with the Member States, which is not appropriate from our point of view. We have already explained the reasons many times:

- In many cases, **local mitigation efforts alone may not be sufficient** to attain appropriate reduction of air pollution.

- In addition to national and local measures, the Member States need ambitious and implementable emissions legislation from the EU, for which the Commission has sole right of initiative. **Emissions legislation is currently regulated at EU level for most emission sources.**

    - Examples include the Industrial Emissions Directive (IED), the Medium Combustion Plant Directive (MCPD), the Ecodesign regulations, emissions legislation for passenger vehicles and light and heavy commercial vehicles.

    - In these areas, Member States can no longer act on their own or only in a very limited way.

- Joint responsibility would also have the advantage of improving air quality everywhere and not only at pollution hotspots. At the same time, it is necessary to ensure that emissions legislation is appropriate and strikes a balance between cost and benefit.

- Measures mainly of a technical nature play a crucial role here. These measures are to be defined by EU emissions legislation. Such measures are often more proportionate for those affected and are therefore also less costly than measures that reduce activity rates, such as a ban on single-

room wood burning installations or traffic reduction measures (e.g. driving bans). This does not mean ignoring potential future measures that ensure compliance with the proposed limit values in the long term, e.g. by changing mobility behaviour or that are needed to reduce local emissions at pollution hotspots. These measures must, however, be evaluated more closely with regard to the mentioned criteria.

- Nonetheless, Member States also need sufficient scope to adequately take into account national or local circumstances.

- **Reaktiv:** Germany is not, however, in favour of turning the AAQD into a regulation, as there is sufficient room for national implementation to take national circumstances into account.

Germany is now developing draft language that will be submitted following the session.

The change regarding review in **paragraph 2** is also going in the right direction. Germany proposes adding that a change to the POD approach is being considered to the passage in item (c):

> *"(c) air quality situations and associated impacts on human health and the environment, including the effects of ozone on ecosystems* ***and a possible change from the AOT approach to the POD approach for the critical levels****, as well as the nature and socio-economic impacts of complementary actions to be implemented to achieve new objectives in Member States,"*

Intervention Round 2: Average exposure territorial unit. Article 4 (Definitions), new definition 29a

Article 4

We support the flexibility in the definition of regions for the average exposure reduction obligation (AERO) in **paragraphs 28 to 29a**. Germany thanks the Presidency for the new proposal. For further clarification, the wording *"where the average exposure indicator in a NUTS 1 territorial unit is shown to be influenced by other NUTS 1 territorial units within a Member State,"* should be deleted as a prerequisite in paragraph 29a, since this prerequisite is always fulfilled due to the long-distance transport of air pollutants and therefore does not need to be checked every time. It should always be possible to merge NUTS1 regions below the NUTS0 level.

Germany also has comments on the approach and level of ambition of the average exposure reduction obligation, which will be presented in Intervention Round 4.

We thank the Presidency for modifying the definition of black carbon (**paragraph 13**) and adding the definition of "modelling applications" (**new paragraph 21a**). We can accept both versions.

Paragraph 14 (UFP): The proposed change related to the diameter is a step in the right direction. Since the draft contains an upper limit for the size distribution of ultrafine particles since the previous version, the last part of the sentence "*and for a size range with no restriction on the upper limit*" should be deleted so that this pollutant is measured uniformly throughout the EU as a basis for subsequent epidemiological studies.

Intervention Round 3: Chapter II Assessment of Ambient Air Quality: Article 8 (Assessment criteria) on modelling applications and Article 10 (Monitoring supersites) + Annex VII

Article 7/Annex II

Germany still proposes making modelling mandatory in planning in Article 7 at least every 5 years. This would offer a good basis for inferring the representativeness of fixed sampling points (see also Annex IV B 2 (g)).

If this approach were to be included, the annual modelling currently provided for in Article 8 (3) and (5) would become obsolete in the event of an exceedance of limit or target values, since the modelling results would already be incorporated in advance into the monitoring network planning as well as the derivation of the representativeness areas. An assessment covering all relevant areas would be guaranteed from the outset. In the event of an exceedance of the limit or target values, it must still be determined whether there are other areas with exceedances that are not covered by sampling points.

Article 8

The addition to **paragraph 3** "from 1 January 2030" contradicts the approach of air quality plans that measures (here with the use of models and orienting measurements) must be put into effect before the limit values come into force to ensure that compliance with the limit values is achieved before the set deadline and should be deleted. The date starting on which the new limit values apply is already indicated in Annex I.

Although Germany is generally in favour of modelling, the **second subparagraph of paragraph 5** cannot be supported in its present form. Here it is important and necessary to clarify that an exceedance of a limit value can only be determined on the basis of measurements, i.e. a modelled exceedance must be verified by a measurement.

The change in **paragraph 5a** is supported by Germany. Germany emphasises that it is essential that the Commission fulfils this mandate as soon as possible.

Germany has already explained that annual modelling will essentially show meteorological effects. For this reason, mandatory annual modelling still does not appear to be expedient.

Article 9 and Annexes III, IV and VII

In Germany's view, it is continues to be unclear whether indicative measurements as defined here can be – can, on their own, be an alternative source of information to assess exceedances because spatial and temporal data are generally limited. Scrutiny reserve.

Annex IV:

How the spatial representativeness of sampling points in **Annex IV Section B.5** is derived needs to be described in much more detail. The FAIRMODE WG8 has already published a description that could serve as a basis. It includes a description of suitable methods (modelling, etc.).

In the view of Germany, representativeness should be determined on the basis of the annual average concentrations. Appropriate metrics need to be established for pollutants that only have short-term values, e.g. ozone.

Appropriate tolerance levels should be defined under **point (d)** for each pollutant in the Directive.

Article 10/Annex IV:

The changes in **paragraphs 1 and 4** are **acceptable** for Germany.

In **paragraph 4a**, the words "shall not" should be replaced by "do not need to" so as to maintain the necessary flexibility for the Member States.

In measuring ammonia at rural supersites, it is important that the sampling points not be located directly next to major agricultural NH_3 emission sources. This is currently not yet covered in **Annex IV**. This should be added to Article 10 (2). Suggested wording:

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

Intervention Round 4: Flexibility and level of ambition of the proposal: Article 18 + Annex I

Article 13 and Annex I

Germany has reservations with regard to the level of ambition and the date from which compliance with the new mandatory limit and target values and exposure reduction obligations is required.

Average exposure reduction obligation: The further clarification on the exclusion of 2020 as base year for the respective target years is a step in the right direction. However, the change does not go far enough, in particular for fine particles. These points are very important for us and for the Länder (federal states), also with regard to compliance with the new requirements.

Particulate matter:

- Regarding the average exposure reduction obligation for particulate matter, we first have several comments about the **approach**:

- The exposure reduction obligation should not be set as a **phased reduction obligation**, but should continue to be based on a **fixed representative base year** and set fixed reductions for each decade. The dates by which the reduction obligations must be met should also be stipulated to ensure compliance. Germany also has a scrutiny reservation here.

- To reward reduction measures taken earlier, it should be possible to credit reductions already achieved (beyond the existing obligation for $PM_{2,5}$ in the current Directive). The **reference period should therefore continue to be the 2008-2010 three-year average already in place** – taking into account, of course, the obligation already in place. This would be consistent with the logic that also applies in the area of climate change mitigation, where new regulations also reference a fixed base year in the past.

- The **percentage by which the average exposure must be reduced** for each decade should continue to be differentiated **depending on the pollution level in the base year** (i.e. if the pollution level is higher initially, the target percentage would have to be higher).

- In addition, the National Clean Air Programmes under the NEC Directive also make an important contribution to meeting the reduction obligation.

NO_2:

- The framework conditions should generally be designed along the lines of the above-mentioned changes to $PM_{2,5}$ exposure reduction.

In addition, an option for postponing the deadline should also be included in Article 18 for exposure reduction, see below.

Article 18

The German government's position on the details of postponing the deadline has not yet been finalised beyond the following comments, which are made independently of the comments made on Article 13.

Requirements for postponement: **Significantly more flexibility on exceptions is extremely important for Germany**. From Germany's point of view, this version is a step in the right direction, but is still not sufficient. In addition, compliance with the average exposure reduction obligation must also be included in Article 18.

It is therefore very important for Germany that the reasons for exceptions are formulated in more general terms: a postponement (including a subsequent postponement) should be possible if compliance with the limit values is not possible with appropriate and proportionate measures. In any case, it is conceivable that the possible and reasonable measures are simply not sufficient to achieve compliance with the limit values submitted on time. The suggestion here is to add the following language:

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

It should be clarified in the recitals that production slowdowns of industrial plants or manufacturing do not constitute appropriate and proportionate measures in this sense.

Postponements should also be possible in the case of adverse urban planning conditions. There are urban planning conditions that create considerable barriers to compliance with the future limit values, e.g. motorways used for long-distance, international transport, urban canyons that stymie air circulation or ports. Blocking off these motorways or prohibiting diesel or heavy goods vehicles or even modifying the development of the area is neither appropriate nor proportionate. For this reason, it should also be clarified in the recitals that driving bans do not constitute appropriate and proportionate measures in this sense.

We will submit a proposal for the wording of the exception we requested for special situations at ports after the meeting. Here, a provision should be included to the effect that notifying the Commission is sufficient to postpone the deadline.

We support deletion of the word *"unforeseen"*, as well as the reference to paragraph 1 on the definition of *"exceptional circumstances"*.

However, the time frame of the additional two years in the subsequent postponement is still too short from Germany's point of view. An option of 10 years for the deadline postponement should be stipulated.

We support deletion of the word "unforeseen".

Intervention Round 5: Air quality plans and transboundary air pollution plans: Article 19 and Article 21

Article 19 (4)

The reference to the target value for ozone should be deleted, since a local air quality plan – at least on the basis of the scientific findings known here – cannot make any meaningful contribution to compliance with the target values, but on the other hand causes considerable effort at regional and local level.

Article 20 (2)

The general reference to *"limit values or target values"* in paragraph 2 should be deleted.

Reason: Short-term action plans are triggered by exceedances of the alert threshold and are intended to bring about a very short-term reduction in peak loads. Limit and target values calculated over the course of a year (or values with an allowed number of exceedance days/hours) cannot be addressed with short-term measures like those of smog alert plans.

Intervention Round 6: Chapter VII: Access to justice, compensation and penalties. Articles 27 to 29

Article 27

Making the language consistent with the text of the IED proposal is generally good to avoid lack of clarity caused by inconsistencies in EU law.

However, the ECJ jurisprudence differentiates with regard to the provisions for access to justice on the basis of cases that fall under Article 9 (2) of the Aarhus Convention (AC) and those that fall under Article 9 (3) AC. Access to justice according to the IED falls under Article 9 (2) AC, while access to justice in regard to air quality plans has, to date, been oriented to the standards of Article 9 (3) AC.

If the intent is to maintain this distinction,

- the standard of assessment (currently in (1): “to challenge the substantive or procedural legality”) would have to be limited to the infringement of environment-related laws and regulations and
- paragraph 2 would have to be deleted.

Article 28

Germany thanks the Presidency for the concession, in particular the requested deletion of paragraph 5 and the inclusion of “fault and negligence” in paragraph 1.

In addition, we should add “in accordance with national law” at the end of paragraph 1. This would clarify that the assertion of claims for compensation is governed by the known and established provisions of national law. This would also bring the text into line with the Wastewater Directive, where similar wording has been included in the latest version of the text.

We just have a few comments remaining:

Because ozone only has target values, Article 19 (2) should be removed from the provision in Article 28.

Germany appreciates the deletion of paragraphs 2 to 5. These deletions must absolutely be retained.

We welcome the fact that it is largely left to the Member States to formulate the provisions on the limitation period. There should also be no requirements as to the start of the limitation period; in particular, this should not be linked to the fact that the violation has ended.

In view of the dossiers currently being negotiated in parallel, Germany is maintaining its scrutiny reservation with regard to this provision.

Article 29

Germany highly appreciates the fact that the revision by the Presidency included adapting the penalty provision, which contained unimplementable requirements for the establishment of penalties in national law, to match the corresponding provisions in the General Approach to the IED proposal, thus granting the MS greater flexibility in implementing the penalty provisions.

Coherent penalty rules in secondary EU law primarily make it easier to implement enforceable solutions in national law and thus strengthen the intended effects of the penalties. In light of this, we would appreciate timely review of whether workable compromises in other dossiers could still be incorporated in the specific language.

Other comments (reactive):

Annex V: In **Section A**, it should be clearly stated that different scales must not be mixed (e.g. in a footnote) with regard to **Tables 1 and 2** on the requirements for calculating the model quality. Our suggested wording:

> *"When calculating the modelling quality indicator of modelling applications the scale of the modelling application has to match the spatial representativeness of sampling points."*

In **Section B** of the table, data availability ("minimum data coverage") for new pollutants at supersites (such as levoglucosan, BC, NH3, UFP) of 80% should be significantly lowered to the level of the value for metals (45%). This would still be ambitious but possible.

Annex VI: Germany can support the proposed wording in point 15 in the compromise text for the reference to specific standards/technical standards, provided that the word "may" is replaced by "shall" in the last sentence to standardise the measurement methods:

> *"Where international, CEN or national standard reference measurement methods or technical specifications are available, these ~~may~~* ***shall*** *be used."*

Article 16: We support the change in Article 16 (4). Germany emphasises that it is essential that the Commission fulfils this mandate as soon as possible.

Article 17: We support the change in Article 17 (4). Germany emphasises that it is essential that the Commission fulfils this mandate as soon as possible.

Article 22: A reference to Annex IX is proposed in **paragraph 2** to reinforce that the air quality index can only cover measurements/pollutants that must be measured and additionally are appropriate for up-to-date data exchange:

> *"Member States shall establish an air quality index covering sulphur dioxide, nitrogen dioxide, particulate matter (PM10 and PM2.5) and ozone, and make it available through a public source providing an hourly update* ***in accordance with Point 1 (a) of Annex IX****."*

DENMARK

Deliberations and suggestions for revision of the Air Quality Directives

Submission for October 10th, 2023 deadline

Article	Suggested change
Art. 4	We would support to change 29a in any way that would secure a more harmonized approach across the EU.
Art. 10 4a.	We propose to delete the exemption for pollutant under the AT, or at least link it to pollution levels in a wider area (zone, NUTS1 or country). It could lead to main pollutants not being measured at supersites, while it do not address our previous concerns about some more expensive measurements in some cases that might bring little additional value. We instead propose to add some footnotes to Table 1 in Annex VII, -1, or any other change that would reduce measurements that provides little additional data, but with out weakening the idea behind a supersite. We could also support text that would meet the FR proposal on the PM_1 fraction (ACSM) without compromising the wish to have uniform results across the union.
Annex VII, -1, Table 1 Add footnote	Arsenic, cadmium, lead and nickel As, Cd, Ni, Pb, total gaseous mercury — Fixed or indicative[1] measurements Chemical composition of PM2.5 in accordence with Section 1 of Annex VII — Fixed or indicative[1] measurements **[1]<u>If it can be demonstrated that concentrations are at the same level as at a background supersite in the same regional area measurements can be omitted.</u>**
Annex VII, -1, Table 2 Add footnote	• **Total gaseous mercury** — • **Fixed or indicative measurements[2]** **[2]Member States may, by agreement, set up one or several common measuring stations, covering neighbouring zones in adjoining Member States, to achieve the necessary spatial resolution.** Rationale – Mercury is a hemispheric polutant and its not really needed on all supersites. Footnote is based on current legislation from Directive 2004/107.

Art. 18 and 19	We aknowledge that several MS can have specific challenge to meet the proposed limit values, but we find it important that extensions are given on objective conditions and based on comprehensive air quality plans. A revised air quality plan should be required to get a second extension. The plan should include an analysis of the measures adopted in the first plan.

CROATIA

Revision of Air Quality Directive
Comments on the revised Presidency compromise text (ST 1337/23)

In order to be able to consider the proposed stricter and new air quality standards 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 in paragraph 1 have to include reference to socio-economic circumstances in a Member State. Finally, we support the proposal to include average exposure reduction obligation for $PM_{2,5}$ and NO_2 in the list of pollutants for which a postponement can be requested.

In the second sentence of new paragraph below 18(d) it is not completely clear what means the following: ***"Exceptional circumstances shall be those referred to in paragraph 1. In addition to the conditions as in the first postponement …".*** *D*oes this mean that the circumstance(s) for the second postponement must be identical to the circumstance(a) stated in the first postponement or they can be new and/or additional circumstances but exclusively listed in paragraph 1?

If Art 18 of the proposal is compared with Art. 22 of the current directive it can be assumed that the conditions, procedures and deadlines in Art 18 are not clear enough.

Article 19
In paragraph 1 we consider it necessary to express the deadlines for establishing the air quality plan 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.

We are of the opinion that the proposed maximum deadline in paragraph 1 – "…*no later than 3 years after the calendar year during which that exceedance of any limit value was recorded*.", is too long. The proposed deadline in paragraph 1 is one year longer than the deadline in the current directive we are of the opinion that at least this flexibility is inconsistent with the principles and general objectives of this proposal.

Furthermore, from a legal point of view, we reiterate the following: 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.

Article 21
We reiterate our concern regarding 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 27 and 28
We believe that the new institute of compensation for damages from the competent authorities responsible for the violation is problematic from the aspect of the procedural autonomy. Therefore, we propose to delete this Article.

It is also not possible to understand clearly from the Proposal to which specific violation of Art 19(1), 19(3) and 19(4) is Article 28(1) applicable. Besides non-adoption of an air quality plan, does it include situations like breach of deadlines for adopting an air quality plan, incomplete content of an air quality plan, air quality plan not suitable and effective for achieving compliance, to long deadlines set for achieving compliance etc.

The same applies to Article 27 on access to justice which, given the explanation from the Council Legal Service that it is redundant, should be also deleted. In any case, para 2 of the Article should be deleted.

Other comments

Please consider defining in the proposal for which fraction of particulate matter "**oxidative potential**" should be determined.

Article 10(4a) – first sentence of subpara 2:
New subparagraph says that Annex II pollutants **shall not** be measured if they are below the relevant assessment threshold. We support the proposed change, but we propose to replace "shall" with "may" (not be measured or exempted from measurement). The reason for such approach is to enable flexibility of MS to continue extensive measurements of the pollutants below assessment thresholds and enable the use of monitoring equipment procured within the EU funded projects which must be in use and regularly maintained for 7 years after the project completion.

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.

POLAND

Commentary to the document
"Air Quality Directive: WPE on 5 October 2023 - Presidency steering note"

Horizontal changes

Territorial units.

Poland appreciates the efforts of the Presidency in addressing the comments of Member States and the inclusion of a new definition of territorial units. However, as stressed on several occasions, Poland would like more flexibility, i.e. to add also the possibility to count AEI, AERO and AECO for the whole territory of a whole country (NUTS0).

Changes proposed to the Articles and Annexes

Article 1. Objectives

Article 1(1).

No comments on the changes. Poland maintains its doubts about the wording of the "zero pollution objective".

Article 3. Regular review

Article 3(1).

Like several other Member States Poland proposes to revert to reviews at an interval of 5 years because of the need to stabilise the air quality monitoring and assessment systems so that they function well. Also, it should be stressed that network changes, equipment purchases, etc. require several years of preparation and planning.

We also reiterate the need to postpone the 1st review to beyond 2030.

Article 3(2.c).

The steering note refers to ozone's effect on vegetation, whereas the proposal Article 3 refers to ozone effects on ecosystems. Poland proposes to add "vegetation and".

Also Poland has a negative view on introducing POD in Article 3 or anywhere else.

Article 3(5).

Poland proposes to delete par. 5. Poland takes a negative view on the concept of joint responsibility. The purpose of Article 3 is a possible proposal to amend the AAQD, not for the European Commission to propose unspecified measures.

Article 4. Definitions

(8) 'arsenic', 'cadmium', 'lead', 'nickel' and 'benzo(a)pyrene'.

Poland supports the changes.

(13) 'black carbon'.
(14) 'ultrafine particles' (UFP).

Poland raises scrutiny reservation for these two definitions (UFP and BC). We would like to point out once again here how much difficulty there is in defining a new pollutant, and what will be the case when selecting equipment and carrying out measurements without a reference methodology. Therefore, Poland is still of the opinion that the measurement of new pollutants should be optional.

(20) 'indicative measurements'.
(21a) 'modelling application'.
(24) 'rural background locations'.
(28) 'average exposure indicator'.
(29) 'average exposure reduction obligation'.

Poland agrees with the changes do definitions 20, 21a, 24, 28 and 29.

(29a) 'average exposure territorial unit'.

Poland supports the changes. However, as noted above, Poland would like to see even more flexibility in terms of territorial unit solutions - to add the possibility to choose NUTS0 - the whole country.

Article 5. Responsibilities

Article 5(d). The word "promoting" is proposed instead of "ensuring".

Poland points out that if the intention of the directive is to increase the importance of modelling, also to require modelling in some cases and to place great trust in the results of modelling (which Poland doesn't support - priority should be given to fixed measurements), then the word 'ensuring' should be reinstated instead of 'promoting'.

Article 6. Establishment of zones

Poland supports the changes. However, a change from the current directive is clearly indicated here. Such provisions lead to assessments being made in de facto two zone systems, which will place an additional burden on public administration. Therefore, we are all the more in favour of introducing the possibility of selecting NUTS0 territorial units, i.e. the whole country - as before.

Article 8. Assessment criteria

Poland wishes to propose changes in Articles 8, 9, 19 and Annex IV done together with Denmark regarding certain issues connected to measurements, modelling and assessment. The proposed changes are in the attachment.

Annex III. Minimum numbers of sampling points for fixed measurement

Annex III. A. Point sources.

Poland supports the changes.

Annex III. D.

Poland supports the changes, although it would be better if Annex III D were removed in its entirety for all.

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

Annex IV, point D.

Poland supports the changes.

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.

Poland supports the changes.

Article 10(4a) has also been clarified.

Poland takes a negative view on linking measurement programme at supersites with the 5-year air quality assessment (checking compliance with assessment thresholds). Such provisions could lead to a situation that in a given zone, there would be no data from fixed measurements to estimate what the concentration of a pollutant in the zone is. And this, in turn, would determine the measurement programme at super stations. Air quality assessments are for zones, not for supersites. Therefore, we propose to delete the changes.

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.

Poland supports the changes.

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.

Poland supports the changes.

The proposed VII D.

Poland supports the changes, but considers that point A 15 in Annex VI is not enough in the absence of reference methods for new pollutants. We recall that the definitions of new pollutants are still being recast, a fundamental issue.

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.

Poland supports the changes.

The term 'PM oxidate potential' has been replaced by 'oxidative potential of particulate matter'.

Poland supports the changes, although it still calls for the removal of the obligation to measure oxidative potential completely.

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

Poland supports the changes.

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).

Poland supports the changes.

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

Article 13(3).

Poland supports the changes.

Annex I. Air quality standards

Poland continues to advocate for a relaxation of the air quality standards in Annex I, especially in Annex I, Section I, Table 1. We advocate postponing the deadline of the standards in Table 1 until at least 2035.

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.

Poland proposes to stay with CET time for the calculation of AOT40. The addition of the word 'zone' is also not clear. The definition of AOT40 refers to the time at which the indicator is calculated, not the time zone.

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.

Poland supports the changes.

Article 16. Contributions from natural sources

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

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'.

Poland supports the changes.

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

Poland thanks the Presidency for the change concerning the inclusion of B(a)P. At the same time, we propose reinstating for B(a)P the target value instead of the limit value (as well as for the heavy

metals As, Cd, Ni). We also propose adding SO_2 and benzene to the list of substances for which derogations may be sought.

Poland supports numerous Member States that wish to include socio-economic conditions. Socio-economic conditions could be included as such or for example as low income households and low GDP per capita.

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.

Poland supports the change.

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.

Poland proposes to delete the new text. This is because it can be interpreted differently. Some actions are soft, staggered, etc.

Article 19. Air quality plans

Poland supports the changes.

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

Poland supports the changes.

Article 20. Short term action plans

Poland supports the changes.

Article 21. Transboundary air pollution

Poland supports the change.

Article 22. Public information

Poland supports the changes.

Article 24. Amendments to Annexes

Poland welcomes the changes made by the Presidency. Poland proposes even further, that all amendments to the Directive be made on the basis of the ordinary legislative procedure.

In relation to the changes, Poland proposes to reword the first sentence, i.e. to remove "information to be included in air quality plans, and public information."

Article 27. Access to justice

Poland proposes to delete Article 27.

Article 28. Compensation for damage to human health

Poland proposes to delete Article 28.

Article 29. Penalties

As stated before Poland proposes to reinstate the wording of the Article on penalties from the existing Directive.

Article 31. Transposition

Poland proposes 3 years for transposition instead of 2.

SLOVENIA

COMMENTS: Air Quality Directive

Article 8(5) subparagraph 3 – Assessment criteria

"5. ……

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 …"

As a follow-up to the discussion an the WPE 5 October, we propose slightly modified amendment as already sent in previous written comments. As explained at the WPE, the paragraph 5 third subparagraph needs to be further clarified in order to make it absolutely clear, that indicative measurements are envisaged as an option in addition to the use of modelling applications.

BELGIUM

Text suggestions following the presidency proposal st13377

General appreciation

We want to thank the Spanish presidency for its efforts in drafting new compromise proposals. We can generally agree with the changes proposed by the presidency and the text that was presented in document st13377. There are however some remaining issues that we would like to share. While some of the issues are merely editorial, others also relate to the content.

Art. 3

Regarding art. 3.1, we prefer the original Commission-proposal, both on timing for the first review and on the frequency, but we can accept the proposed changes as a compromise. We support the changes in the rest of the article.

Art. 4

We support most of the suggestions put forward by the presidency, with the exception of the new definition 29a. We also have some editorial suggestions for the definitions 28 and 29.

We think it is a good idea to introduce the new definition 29a. With regards to the definition itself, we can definitely support flexibility in the way the territorial units for the evaluation of the AERO are designed, but we fear that this proposal might be somewhat too flexible. Since practically all NUTS 1 units are influenced by other NUTS 1 units, the conditionality in the definition is superfluous and the definition basically leaves total flexibility to member states, as long as they do not use the NUTS 0 level. So a large member state can choose to simply use two parts of the country. In that way, there is no more level playing field between the larger and the smaller countries, that do not have that same flexibility. We therefore suggest to limit the possibility of grouping NUTS1-territories by reintroducing the surface criterium that was in the previous version of the text, or something similar.

Since member states are completely free to designate zones, this might lead to abuse as well. We would therefore prefer to delete the reference to zones. If however this is maintained, a disposition limiting the way the zones are designated would be useful, so that their size is similar to that of the NUTS 1 territories.

We also would like to point out that we think that both definitions 28 and 29 can be simplified by deleting the parts starting from respectively 'used to check whether' and 'set for the reference year' without any impact on its meaning. For 28 we thus support the suggestion by IE in doc wk12105-ad03.en23.

28) 'average exposure indicator' means an average level determined on the basis of measurements at urban background locations throughout the average exposure territorial unit, 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~~.

(29) 'average exposure reduction obligation' means a percentage reduction of the average exposure of the population, expressed as average exposure indicator~~, of an average exposure~~

~~*territorial unit set for the reference year with the aim of reducing harmful effects on human health, to be attained over a given period*~~;

(29a) 'average exposure territorial unit' means a territorial unit ~~at the air quality zone level, or~~ at NUTS 1 level or a part thereof as described in Regulation (EC) No 1059/2003 of the European Parliament and of the Council, used to determine the average exposure indicator, ~~or where the average exposure indicator in a NUTS 1 territorial unit is shown to be influenced by other NUTS 1 territorial units within a Member State~~, Where the NUTS 1 territorial unit is has an area below xxxx km2, it may be combined with a larger NUTS 1 unit to establish the average exposure territorial unit ~~a larger territorial unit covering the related units, provided that it is below the NUTS 0 unit for that Member State~~.

Art. 6

We think that for clarity and consistency the reference to territorial units should also be included in the first sentence and that for reasons of consistency the wording 'average exposure territorial unit' should be used throughout the text:

Member states shall establish zones and average exposure territorial units 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 and average exposure territorial units.

Art. 8

We support the CZ suggestion during WPE to clarify the second part of para 5 as follows:

If fixed measurements below the limit value are available with an area of…

Moreover, it needs to be clarified that the additional monitoring requested under 8.5 is only needed when a member states chooses not to use the modelling for compliance assessment (it can do so according to the last sentence of the first subparagraph of 8.5). We therefore suggest to change the first sentence of the last subparagraph of 8.5 as follows:

If modelling applications show~~s~~ 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 and the modelling is not used for compliance assessment, additional fixed or indicative measurements shall be used.

Art. 10

As expressed by several delegations during WPE, It is inappropriate that the first sentence in the second part of para 4a says 'shall not be measured', which implies that there is an interdiction of measuring these pollutants. We suggest to reformulate that first sentence as follows: "At urban background stations Annex II pollutants ~~shall~~ do not need to be measured if they are below the relevant assessment threshold."

On an editorial basis: we think that in the second part of para 1, it would be clearer if the order of the sentences is reversed and propose some other small changes with the aim of clarifying the text:

Member States whose territory is ~~between~~ more than 10 000 km2 and less than 100 000 km2 shall establish at least one monitoring supersite at a rural background location. ~~Each~~ Member States whose territory is over 100 000 km2 shall establish at least one monitoring supersite per 100 000 km2 at a rural background location.

Art. 18

Although we are of the opinion that the proposal already foresees in generous possibilities for postponing the deadlines for attaining the limit values, we understood from the discussions during the WPE that there is a strong plea for the possibility to extend the deadline based on socio-economic circumstances. If this would be introduced in the text, it is important that strict, clear and quantifiable criteria are used in order to avoid abuse of this possibility. Rather than referring to socio-economic circumstances in general, it could be useful to refer to energy poverty (and for this we could refer to Commission recommendation (EU) 2020/1563 of 14 October 2020 on energy poverty).

Art. 19

Regarding the deadlines for drafting air quality plans, we generally prefer the COM-proposal, that is in line with the current directive (with 2 and 4 years instead of 3 and 5 years). Nevertheless, we still have doubts on some practicalities.

Art. 19.1

If we read the text correctly, the timeline that is currently in the text of 19.1 is as follows:

X: recording of exceedance

X+1: reporting of exceedance (30/9)

X+3: deadline for drafting of AQP

X+5: final year in which the drafted AQP covers the exceedance

X+6: if there is still an exceedance, the AQP needs to be updated

X+7: reporting of the exceedance in X+6

X+7: update of the AQP and measures.

Whereas the timing for the first part is quite generous, we question the feasibility of updating the plan in the subsequent year of recording the exceedance in X+6. Since it is merely an update of a plan, a shorter deadline is justified, but one additional year is required to do so.

Art. 19.4

If the directive is published in 2024, it enters into force in the course of 2026. The yearly limit value can only be evaluated in 2027. If it is exceeded, an AQP needs to be drafted by the end of 2030. If the limit value is still exceeded in 2030, another AQP needs to be drafted by the end of 2033 according to 19.1 (if no postponement is granted).

We don't question the use of drafting an AQP well before the new limit values enter into force, but we think this timeline leads to a too high administrative burden without any added value.

According to our arguments above, we think the validity for an AQP should be 5 years (if the update under 19.1 is deferred to year x+8). That should also be the case for an AQP drafted under 19.4. In order to achieve this, we suggest to include in 19.1:

If no additional exceedances are recorded, an air quality plan for a specific pollutant and for a specific zone will remain applicable for 5 years, starting from the end of the year of the recording of the exceedance, unless a member states chooses to update it more frequently.

This would imply that if an AQP is drafted under 19.4 and no postponement is granted, the AQP needs to be updated only if the exceedance persists in 2033.

Furthermore, we would like to have the reference to section 2 deleted in this paragraph. This is not in line with the possibility to opt out of a plan for ozone foreseen in 19.2.

Art. 23

The references to *territorial unit(s)* in the second paragraph should be changed by references to *average exposure territorial unit(s)* (3 times).

Art. 24

We support the removal of the reference to annex II in this article, but we oppose the removal of the reference to annexes VIII and IX.

Annex I, section 5

We think the added sentence at the end of the first subparagraph of point A would be better placed at the end of point B (since point A is about the AEI and the AEI for 2030 doesn't have anything to do with the year 2020).

Annex III, A, 2

Since the deleted sentence offers the possibility to member states to maximise synergies between monitoring under this directive and under the IED, without imposing obligations (use of 'may', not 'shall'), we don't see the need for deleting the last part of this point and would like to see it reintroduced.

Annex V

In table 1, SO_2 has to be added.

Annex VIII

The reference to *territorial unit* in A.2 should be changed by a reference to *average exposure territorial unit*.

Annex IX

We support Sweden's plea during the WPE to delete the added '*if the measurement method is appropriate for up-to-date data (UTD)*', since this risks that no more hourly data for PM will be available for some regions or member states. As a compromise, we would suggest to limit this obligation to half of the sampling points in cases where the reference method does not allow for UTD:

This shall apply to information from all sampling points where up-to-date information is available, and at least to information from the minimum number of sampling points required under Annex III. ~~i~~If the measurement method is not appropriate for up-to-date data (UTD), this shall apply to information from at least half of the sampling points required under Annex III.

SWEDEN

Comments from Sweden following WPE meeting on 5th October 2023

Sweden would like to thank the Presidency for the new compromise text proposal. Following the WPE on the 5th October Sweden would like to make the following comments.

Joint responsibility and article 3.

We can accept the new article 3.5.

We think the wording in article 3.2 can be improved by replacing the words "with a view to taking into account alignment with" with a clearer and simpler formulation, i.e. "taking into account". The whole sentence would therefore read:

"… the review shall assess whether this Directive needs to be revised taking into account the World Health Organization (WHO) Air Quality Guidelines and the latest scientific information."

Article 4 – definitions

Sweden accepts all proposed changes to article 4 with the exception of definition 29a. Sweden supports the proposal to add a definition of average exposure territorial unit but have some concerns on the formulation. The new proposal enables air quality zones to be used instead of NUTS1 or parts of the NUTS1 units. This risks to undermine the objective of regionalising the average exposure reduction approach. It also further increases the risk of unharmonized implementation of the average exposure reduction approaches within the EU. We propose the following definition but are open to wordings which clearly keeps the territorial unit at similar sizes across the union.

(29a) 'average exposure territorial unit' means a territorial unit ~~at the air quality zone level, or~~ at NUTS 1 level or a part thereof as described in Regulation (EC) No 1059/2003 of the European Parliament and of the Council, used to determine the average exposure indicator~~, or where the average exposure indicator in a NUTS 1 territorial unit is shown to be influenced by other NUTS 1 territorial units within a Member State, a larger territorial unit covering the related units, provided that it is below the NUTS 0 unit for that Member State~~ Where NUTS1 territorial units have an area below 3000 km2, these may be combined with one larger NUTS1 territorial unit within the same Member State for determining the average exposure indicator;

In the case that the majority of delegations support the proposal to use air quality zones for this purpose, it is important that this is restricted in an appropriate manner to ensure that the objective of regionalisation is not completely lost. For example, it should be stated that the zones used as average exposure territorial units shall be the same as the zones used for the assessment of the limit values for the same pollutant. There should also be a limitation on the size of the zones, by stating that the zones used must be equivalent to or smaller than the size of the Member State's NUTS1 territorial units.

Article 8

Sweden can support Article 8 with the presidency's proposed changes.

Regarding Article 8.5, Sweden thinks that the first paragraph is now clear and well balanced. We see limited scope for further changes to this paragraph within the confines of the recast.

We accept the rest of Article 8.5, but can still be flexible regarding the timeframes for conducting additional measurements. We could also support suggestions to remove the requirement to carry out additional measurements, where a modelled exceedance is reported and treated as an exceedance (for example in the AQ plan), without the need to confirm the exceedance with measurements.

Annex IV

Sweden does not agree to the addition in Point D.9 of Annex IV, where objective estimations have been added as a method that can be used to review network design, site selection criteria and monitoring site locations. It is difficult to see how objective estimation is relevant here or what this change would mean in practice. Objective estimation is done in zones where concentrations are low and no measurements are required. The data quality objectives for objective estimation are low and it is therefore not an appropriate method to provide relevant information to evaluate monitoring networks and station locations.

Article 10

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

Additionally, the assessment thresholds are used at zone level and are assessed against concentrations at locations where public exposure is highest. This is rarely at the urban background locations where supersites are to be located. There could therefore be cases where countries that have exceedances of the assessment thresholds or even limit values for a certain pollutant at hotspot locations, have no requirement to measure the same pollutant at the urban background supersites. If the proposal is kept to only require measurements at urban supersites when the assessment thresholds are exceeded, Sweden proposes that this evaluation should be conducted on a national level i.e. compare the assessment threshold to the highest levels that the public is exposed to within the Member State (rather than only evaluating this at the urban background supersite locations).

Regarding the flexibility for small Member States, Sweden can support the proposed relaxation for the three smallest EU Member States, to only require one supersite rather than two in these countries.

Sweden also share some of the concerns raised by Finland regarding the lack of balance between requirements for the number of urban vs rural background supersites, particularly for some of the Nordic countries. Sweden could support proposals to give some flexibility to substitute rural supersites with urban supersites, as long as the total number of supersites in the country remains the same. This could for instance be used where the ratio of urban and rural sites are more than a factor of 2 or less than ½.

Article 18 and Annex I

We support the current formulation in Annex I and don't want to see any further changes to it. Any necessary flexibilities should be limited and dealt with in Article 18.

Regarding Article 18 we can accept the proposed text although we still believe that one prolongation of five years is sufficient. We further support the addition of the condition for the second prolongation.

Regarding the circumstances that justify a postponement, we want to limit the list to circumstances which cannot be influenced by the specific Member State. We do therefore not accept the inclusion of socio-economic conditions in the list.

Article 19

Sweden does not support the proposal to extend the deadlines for developing and implementing AQ plans. The deadline for adopting AQ plans according to EU legislation has, since at least 1998, been 2 years. To delay requirements for implementing measures to 3 years at this stage, after 25 years' experience with developing and implementing AQ plans, is neither appropriate nor in the interest of public health.

In practice, the proposed change means that AQ plans according to Article 19.1 do not need to be adopted until 31 dec 2033. It is difficult to understand why so much time will be needed, particularly considering the fact that AQ plans according to 19.4 should already be in place in zones that exceed the limit values before 2030.

Sweden also questions the proposal to extend the period for keeping exceedances as short as possible from 4 to 5 years after the exceedance was observed. This will also increase the risk that necessary measures will be delayed, which has clear negative consequences for public health.

Sweden proposes to revert to the timeframes originally proposed by the Commission, i.e. 2 years for adopting a plan, and 4 years after an exceedance is observed for the measures in the plan to deliver the required improvements.

We also note that a change has been made in the second sub-pararaph of Article 19.2 to only require MS to inform the Commission of decisions not to develop AQ plans for ozone. Sweden is of the opinion that a justification of such decisions should be made available in a transparent manner, and prefer therefore the formulation in the previous compromise text.

Article 20

For the same reasons as above on Article 19.2, Sweden would prefer the formulation in the previous compromise text to require a clear justification when short-term action plans for ozone are not established in a Member State.

Sweden also questions the value of the proposed change in Article 20.5, to allow up to one year to report short-term action plans. The original proposal from the Commission of 2 months, or a slight extension to 3 or 4 months, seems much more reasonable.

Article 24

Sweden would like to remark on the fact that Annexes VIII and IX are of technical nature and it is unfortunate that these have been removed from Article 24. It would be beneficial, not to mention more cost and time effective, if these annexes could be altered without having to go through the whole co-decision process. We have a good experience of working with the Commission and other Member State experts during the development and adoption

of the delegated act from 2015 which amended some of the annexes in the current air quality directives.

Article 27

Sweden could support the deletion of the article. It is sufficient with a reference to Aarhus convention in the recitals.

Article 29

Sweden would like to ask for a clarification on article 29. Who would be the target of these sanctions? Since the rules in the directive are primarily aimed at ensuring that the Member States do not exceed the levels that the directive establishes, we would like to ask for a clarification on this.

Annex V

Prior to the upcoming WPE meeting on 20th October 2023, Sweden would like to reiterate our concern, as raised in our written comments following WPE 18-19th Sep, on the proposed addition of text in Annex V regarding model evaluation. This addition goes against what has been agreed within the FAIRMODE and CEN expert communities. It is of vital importance that this issue is discussed with the relevant experts to make sure that the Council do not propose changes that are not in line with requirements of the standard which will be developed during the coming years.

Annex IX

Sweden would like to express surprise at the seeming willingness to accept the proposed change in Annex IX, which significantly weakens requirements to provide up-to-date data in comparison with current requirements. We need to be very clear about the potential consequences of such a change.

The current directive from 2008 states clearly that up-to-date data on pollutant concentrations shall be routinely made available to the public. It also specifies that data for the main pollutants shall be updated at least daily, and where possible on an hourly basis.

It seems highly questionable that in a new directive that will likely be in place for the next 10 – 20 years, the Council would propose weakening these requirements on up-to-date data. In practice, the proposed change would mean that MS are able to choose manual or semi-manual methods and have no requirement to publish data from these measurements before September the following year. This is particularly problematic for Sweden, and likely also for other MS with a decentralised implementation of the directive, where we have limited control over which instruments are used and where the cheapest options are often the most attractive.

Sweden therefore strongly opposes the addition of "… if the measurement method is appropriate for up-to-date data (UTD)" in Annex IX and proposes instead to consider the recommendations from AQUILA and make it clear that the minimum number of sampling points should also apply to the requirement to deliver up-to-date data.

In that way we can ensure that a reasonable amount of up-to-date data is available within the EU and also ensure that we have functioning Air Quality Indices.

Minor comment

Annex I, section 2, table 2. ”ozone” is missing before “target value” in footnote (2).

AUSTRIA

COMMENTS: Air Quality Directive (WK 12729/2023)

AT thanks the ES Presidency for the revised compromise text and the efforts that have been undertaken during the last weeks. We support the level of ambition of the proposal as it stands. We can accept the proposed modifications regarding extended flexibilities for MS that have raised concerns and will examine closely any further changes to i.e. Art 18 with a view to achieving a well-balanced compromise, but we cannot support any further changes to the proposed limit values in Annex I.

Following the request by the Presidency after the last WPE meeting on 5 October, AT submits the following comments on the compromise text (13377/23), which are still of high relevance and importance to us and that we want to emphasize again:

Article 8. Assessment criteria

We strongly support the newly proposed wording in para 5 regarding modelling.

Article 10 para 4a (Supersites)

AT welcomes the attempts to clarify the provision. However, we are of the opinion that it should not be forbidden ("*shall not*") to monitor pollutants, for which concentration levels are below the respective assessment threshold. We think that there might be good reasons to monitor pollutants even if levels are below the relevant thresholds. If a MS deems so, it should be encouraged to monitor. Furthermore, we consider "*annex II pollutants*" not a suitable term and would prefer the wording "*pollutants for which an assessment threshold is set in Annex II*".

Hence, we propose the following wording for the second sentence in para 4a:

„4a. Measurements at monitoring supersites […] of Annex VII.

For pollutants for which an assessment threshold is set in Annex II, measurements at urban background locations are only obligatory if the level of that pollutant is above the respective assessment threshold."

Article 19 para 4 (Air quality plans)

We reiterate that we strongly oppose the proposed 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 any obligation to establish ozone plans, in particular not ahead of 2030.

We point out again that para. 4 in the wording of the original proposal is not intended to apply to ozone target values. Following EC's confirmation during the last WPE, we therefore suggest to at least **revert back to the original wording of the EC proposal** (i.e. remove passages that are highlighted in ~~**white**~~):

"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 to attain the respective limit values or ozone target values by the expiration of the attainment deadline.

[…]

Chapter VII – Access to Justice, Compensation and Penalties

Although AT supports alignment of Chapter VII provisions with the respective provisions contained in the general approach of the IED to the best extent possible, we reiterate that the IED and the AQD require different approaches if different legal requirements necessitate.

Article 27: Access to justice

AT thanks the CLS for their opinion provided in more detail and clarity during the last WPE meeting. We also wish to remind delegations that the EC has confirmed in their intervention during the WPE meeting on 19 September that only Art 9 para 3 of the Aarhus Convention is relevant for the provision in Art 27. **Consequently, para 2 has to be deleted** (since it aims at transposing requirements that are relevant for Art 9 para 2 of the Aarhus Conventions, which is outside the scope of the AQD).

Article 28: Compensation for damage to human health

AT welcomes the addition of the missing "fault" condition in para 1 to bring the content of the Article in line with national public liability law and state liability of MS, respectively.

However, we would still prefer that the **Article be removed from the proposal** for the reasons that we have provided in detail so far.

FINLAND

Ambient Air Quality Directive / FI text proposals and justifications after Working Party on the Environment on 5 October 2023

Proposal

Article 10

Monitoring supersites

1. Each Member State shall establish at least one monitoring supersite per 10 million inhabitants at an urban background location. Member States that have fewer than 10 million inhabitants shall establish at least one monitoring supersite at an urban background location.

   Each Member State **whose territory is over 10 000 km²** shall establish at least one monitoring supersite per 100 000 km² at a rural background location. Member States whose territory is **between 10 000 and** ~~less than~~ 100 000 km² shall establish at least one monitoring supersite at a rural background location. **Member states whose geographical area is large in relation to population may decide that the measurements on those rural background supersites ecxeeding a ratio of 1:2 between urban and rural supesites can be limited to pollutants listed in Annex VII Table 4.**

…

ANNEX VII

SECTION -1 – measurements of Pollutants at supersites

Table 4 - Pollutants to be measured at supersites at those rural locations exceeding a ratio of 1:2 as described in Article 10.1 (new)

Pollutant	Type of measurement
O3	Fixed measurements
PM2.5	Fixed measurements
Chemical composition of $PM_{2.5}$ in accordence with Section 1 of Annex VII	Fixed or indicative measurements
Benzo(a)pyrene, polycyclic aromatic hydrocarbons (PAH)[1],	Fixed or indicative measurements
Arsenic, cadmium, lead and nickel	Fixed or indivative measurements
Total gaseous mercury	Fixed or indicative measurements
Total deposition of arsenic, cadmium, lead, nickel and mercury	Fixed or indicative measurements
Total deposition of benzo(a)pyrene, polycyclic aromatic hydrocarbons (PAH)	Fixed or indicative measurements

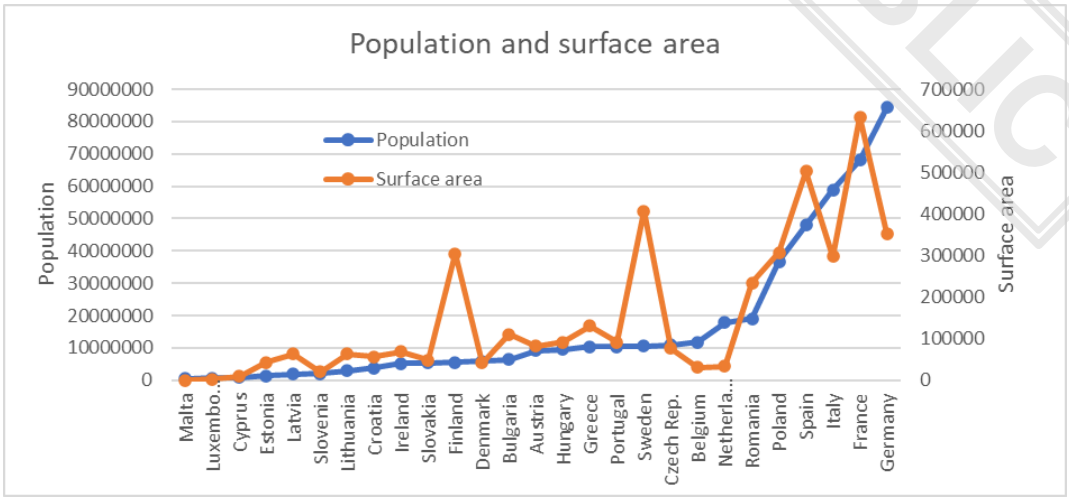
[1] benzo(a)pyrene and the other polycyclic aromatic hydrocarbons referred to in Article 9(8)

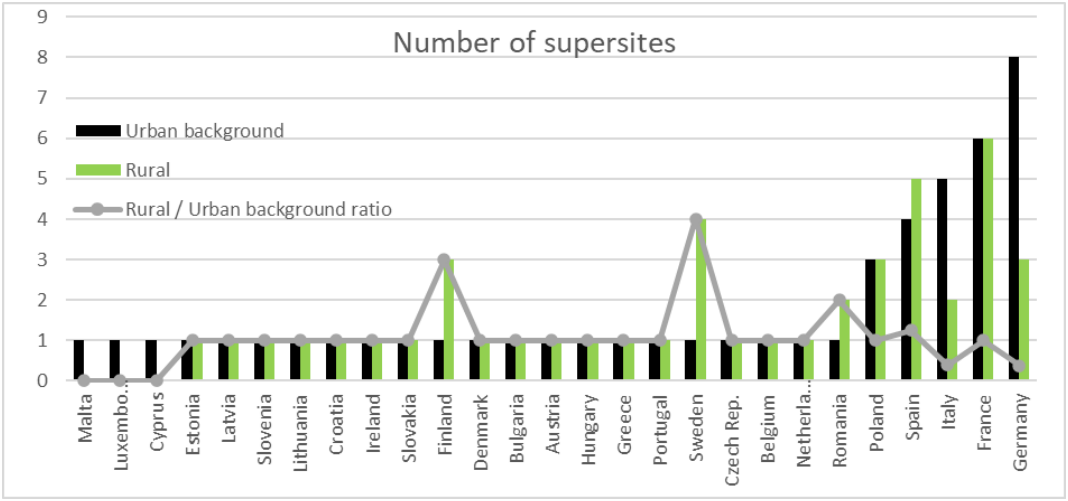
Justification

We support the number of urban supersites, as these are the places where people are exposed to pollutants and are very much health relevant, but note that for rural supersites, especially the ratio of urban and rural

sites is unfavorable at least in Finland. For Finland the current supersite text would mean one urban and three rural sites, which is disproportionate and would mean relocation of several measurement instruments and ending of valuable, long time series. We also wish to stress that we do not mean that the number of rural background stations should be reduced from the current level of rural stations as required in the current EU legislation, thus, we propose to include a new Table 4 in the Annex.

Below you find two figures of population and georaphical are in Membes States and of number of supersites in Member States to justify the disproportionate situation.





Proposal

Article 10

Monitoring supersites

4a. ~~Where the levels of pollutants are not below the assessment thresholds of Annex II for urban background supersites for at least 5 years, and irrespective of the levels at rural background supersites,~~ **M**easurements at ~~all~~ monitoring supersites at urban background locations 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.

At urban background stations Annex II pollutants may ~~shall~~ not be measured if they are below the relevant assessment threshold. The review of these levels shall be carried out at least every 5 years.

Justification

Regarding the measurement obligations at the urban background stations in Article 10 4a, it is important for us that there is not going to be an obligation to measure metals in PM at those sites when concentration level is low. However, the wording of the compromise text might however be too strict, and therefore we think, that the word "shall" should be replaced by the word "may".

Proposal

Article 6

Establishment of zones and average exposure territorial units

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 **and average exposure territorial units**.

Justification

We propose the terminological change in the light of the new definition 29 a.

Proposal

Article 9

Sampling points

3. For zones where the level of pollutants exceeds the relevant assessment threshold specified in Annex II, but not the respective limit values **at least during three calendar years** 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 Point~~s~~ A and Point C of Annex III provided that the following conditions are met:

Justification

Article 7(2) provides 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 assessment thresholds, Article 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.

Proposal

ANNEX IX

PUBLIC INFORMATION

1. Member States shall provide to the public at least the following information:

   (a) hourly up-to-date data per sampling point of sulphur dioxide, nitrogen dioxide, particulate matter (PM_{10} and $PM_{2.5}$), carbon monoxide and ozone. This shall apply to information from all sampling points where up-to-date information is available, and at least to information from the minimum number of sampling points required under Annex III ~~if the measurement method is appropriate for up-to-date data (UTD)~~. When available, up-to-date information resulting from modelling applications shall also be provided;

Justification

On our view, the additional text would be a step back from the current Directive and we propose to delete the text.

Technical comments

On Annev V, we wish to point out that in the first table, uncertainty for SO_2 (annual) is missing. In the third table, NO (nitrogen monoxide) is missing, and it should state $NO_2/NO/NO_x$, as NO measurement is mentioned in Annex VII (section 2). We also think that it would be beneficial to indicate the purpose of the absolute values of maximum uncertainties as currently there is no clear explanation for that. We note that for the daily SO_2 uncertainty, the absolute uncertainty of 7,5 µg/m^3 is given, which is actually only 6 % before 2030 (with daily limit value of 125 µg/m^3). Similarly for annual $PM_{2.5}$ and PM_{10} uncertainties, the absolute uncertainties (3 and 4 µg/m^3, respectively) are only 12 % and 10 % before 2030 for the annual limit values of 25 and 40 µg/m^3 (compared to 25 % in 2008/50/EC). These changes do not seem to be in line with AQUILA recommendations and should be perhaps reconsidered.

Other comments

Concerning new definition 29a in Article 4 for us it is important for us to have the possibility to use NUTS 1 level. We share the concerns that some MS stated during the meeting to widen the area.

As for Article 10, we also give recognition for the French proposal for including the possibility to use PM1 measurements with the ACSM method, which would be a good step forward in gaining data with high resolution and is supported by the ACTRIS community.

Council of the European Union
General Secretariat

Interinstitutional files:
2022/0347 (COD)

Brussels, 12 October 2023

WK 13003/2023 INIT

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CONTRIBUTION

From: To:	General Secretariat of the Council 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 BE, CZ, DK, DE (followed by a courtesy translation), EE, HR, IT, LV, HU, AT, PL, SI, FI and SE.

DENMARK and POLAND

Proposal for changes in Articles 8, 9, 19 and Annex IV of the proposal for a Directive of the European Parliament and of the Council on ambient air quality and cleaner air for Europe (recast) - Revised Presidency compromise text (29 September 2023)

Article 8

Assessment criteria

1. Member States shall assess ambient air quality with respect to the pollutants referred to in Article 7 in all their zones, in accordance with the criteria laid down in paragraphs 2 to 6 of this Article and in accordance with Annex IV.

2. In all zones where the level of pollutants exceeds the assessment threshold established for those pollutants, fixed measurements shall be used to assess the ambient air quality. Those fixed measurements may be supplemented by modelling applications and/or indicative measurements to assess air quality and to provide adequate information on the spatial distribution of air pollutants and on the spatial representativeness of fixed measurements.

3. In all zones where the level of pollutants, from 1 January 2030, exceeds a limit value established for those pollutants in Table 1 of Section 1 of Annex I or [an ozone] target value established in Section 2 of Annex I, modelling applications ~~or indicative measurements~~ shall be used as a supplementary method ~~in addition~~ to fixed measurements to assess the ambient air quality. For pollutants and situations where modelling applications may not be appropriate fixed measurement may be supplemented by indicative measurements and/or objective estimation.

   Those modelling applications, ~~or~~ indicative measurements and/or objective estimation shall provide information on the spatial distribution of pollutants. Where modelling applications are used they shall also provide information on the spatial representativeness of fixed measurements.

4. In all zones where the level of pollutants is below the assessment threshold established for those pollutants, modelling applications, indicative measurements, objective estimations, or a combination thereof shall be sufficient for the assessment of the ambient air quality.

5. When assessing air quality the results of fixed measurements obtained according to annex IV, V and using reference methods in accordance with annex VI or equivalent to reference methods with proven equivalence take precedence over the results of supplementary methods – modelling applications, indicative measurements and objective estimation. The results of modelling applications undertaken in accordance with paragraphs 2~~3 and~~ 4 of this Article should be taken into account for the assessment of air quality with respect to the limit values, [ozone] target values, long-term objectives and critical levels. ~~or~~ The results of modelling applications undertaken in accordance with 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, long-term objectives and critical levels. ~~Member states may choose to include other results of modelling applications in the assessment.~~

~~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.~~

If modelling applications show~~s~~ 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 and the exceedance is not reported due to concerns regarding uncertainty of the modelled results, ~~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

Sampling points

3. For zones where the level of pollutants exceeds the relevant assessment threshold specified in Annex II, but not the respective limit values specified in 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:

(a) ~~indicative measurements and~~ modelling applications provide sufficient information for the assessment of air quality with regard to limit values, [ozone] target values, critical levels, information thresholds and alert thresholds, as well as adequate information for the public, in addition to the information provided by the sampling points for fixed measurements;

(b) the number of sampling points to be installed and the spatial resolution of ~~indicative measurements and~~ modelling applications are sufficient for the concentration of the relevant pollutant to be established in accordance with the data quality objectives specified in Points A and B of Annex V and enable assessment results to meet the requirements specified in Point D of Annex V;

(c) ~~the number of indicative measurements is the same as the number of fixed measurements that are being replaced~~;

(d) for ozone, nitrogen dioxide is measured at all remaining sampling points measuring ozone except at rural background locations for ozone assessment as referred to in Point B of Annex IV.

…..

7. Sampling points at which exceedances of a relevant limit value specified in Section 1 of Annex I were recorded within the previous 3 years shall not be relocated, unless a relocation is necessary due to special circumstances, including spatial development. Relocation of such sampling points shall, wherever possible, be done within their area of spatial representativeness. The relocation should be based on relevant data on pollutant's concentrations, such as ~~and be based on~~ modelling results, emission inventory, data from nearby stations, data from the relocated station from previous years. A detailed justification of any relocation of these sampling points shall be fully documented in accordance with the requirements set out in Point D of Annex IV.

Art. 19

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.

Modelling applications shall, where feasible, be used to assess the situation and the effect of potential and adopted measures.

Member States shall 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 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 Council[1], Directives (EU) 2016/2284 and 2002/49/EC and under climate, energy, transport and agriculture legislation.

Annex IV

A

1. Ambient air quality shall be assessed at all locations except those listed in paragraph 2.

[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).

Points B and C shall apply to the location of sampling points. The principles established by Points B and C shall also apply in so far as they are relevant in identifying the specific locations in which concentration of the relevant pollutants are ~~established where ambient air quality is~~ assessed through indicative measurements or where modelling applications are used to assess ambient air quality.

B.2.

~~(ba) sampling points, where the objective is to measure the contribution of domestic heating, must be sited in such a way that the air sampled is representative at least 25 m × 25 m.~~

(g) sampling points shall, where possible, also be representative of similar locations not in the immediate vicinity of the sampling points. In the zones where the level of air pollutants is above the assessment threshold, the area which each sampling point is representative of shall be clearly defined. Sampling points shall be located in such a way so that concentrations of the pollutants can be appropriately assessed in the whole zone. ~~The whole zone shall, where possible, be covered by the different areas of representativeness defined for these sampling points~~. Concentrations in areas in a zone that are not covered by ~~that zone's~~ the areas of the representativeness of the sampling points, shall be assessed with appropriate methods.

B 5. Criteria for determining the spatial representativeness area of sampling points

When determining the spatial representativeness area the following characteristics shall be considered:

(a) the geographical area may include non-contiguous domains ~~but shall be limited in its extension by the borders of the air quality zone under consideration~~;

(b) if assessed via modelling applications, ~~a fit-for-purpose modelling system shall be used and~~ modelled concentrations shall be used at station location to prevent systematic model-measurement biases from distorting the assessment;

(c) other metrics than absolute concentrations may be considered (e.g. percentiles);

(d) the tolerance levels and possible cut-offs for the different pollutants may vary depending on the station characteristics;

(e) the annual average of the observed pollutant concentration shall be used as the air quality metric for a specific year.

ITALY

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

Presidency compromise text 2023/13377

WPE 5 October 2023 – Follow up

Article 3

In order to distinguish provisions established by paragraph 4 and 5 and to foresee additional useful actions taken at European level to address any future non-compliance extended problems, we suggest to change the text as follows:

4. Where the Commission considers it appropriate, as a result of the review, it shall present a proposal to revise air quality standards or to cover other air pollutants. ~~Furthermore, where the Commission deems it necessary, it shall also present proposals to introduce or revise any relevant source legislation in order to contribute to achieving the proposed revised air quality standards at Union level.~~

5. If during the review the Commission identifies that non-compliance with applicable air quality standards persists and is affecting a significant area of the Union territory, the Commission ***shall*** *propose further* ***legislative and financial*** *action**s*** *to be taken at Union level* ***on sectors identified as more impacting on air quality, in order to contribute to achieving the proposed revised air quality standards at Union level.***

Article 4

Definition 28: It seems that there are still elements to be clarified in the text regarding the definition of territorial unit; if "average exposure territorial unit" is referred to the calculation of the AEI while "territorial unit" is referred to ozone maybe a definition of "ozone territorial unit" is needed. In this way it will be possible to distinguish the two concepts everywhere in the text of the directive. As it is now, sometimes "territorial unit" is indicated for both concepts (e.g. article 6).

Suggestion for the new definition:

29b) 'ozone territorial unit' means a territorial unit covering at least one air quality zone, used for air qualiy assessment and management in relation to ozone;

Definition 37 and Article 20.1: we reiterate our proposal to delete the word 'emergency', because these are actions with short-term effect rather than actions in response to emergency situations.

Article 8

We reiterate our proposal of changes in article 8. It seems to be an inconsistency between paragraphs 2 and 3 in which the term "level" refers to different concepts. In paragraph 2, reference should be made not to the term *level* but to the classification defined in Article 7. We propose the following amendment:

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

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

Article 13 and Annex I

The timelines given in the text appear to be unrealistic. In the best case scenario, the directive will be adopted in 2024 and transposed by Member States in 2026, at which point Countries can immediately begin procedures to establish an air quality plan aimed at avoiding exceeding the new limit values in 2030, under Article 19(4). Such a plan would presumably be adopted in 2029, leaving only 1 year to see the effects of the measures adopted. We suggest, therefore, to change the year of entry into force of the new standards to 2035 or at least 2033. This would give the first plan a chance to have a noticeable effect.

In Annex I, Table 2: we reiterate our proposal to change the status of the standards set for heavy metals and benzo(a)pyrene which have to remain target values until the year of entry into force of the whole set of new air quality standards. The table should be divided into two different tables: the first referring to the current limit values and the second relating to the current target values for heavy metals and benzo(a)pyrene.

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

Article 18

Regarding the possibility of postponements of the deadlines due to site-specific dispersion characteristics, orographic boundary conditions, adverse climatic conditions or transboundary contributions, we propose a change in the text of paragraph 1 that would put the focus of the postponement on the technical assessment made in order to plan the necessary actions to reduce concentrations and be in compliance with the new limit values as soon as possible.

The duration of the postponement should be defined with respect to the actual needs and scientific assessments of the plan; that means that it would be the preliminary investigation of the plan that defines how many years are needed to reach the limit values. During the derogation period, periodic comparisons with the European Commission could be imposed in order to illustrate the actions implemented and the progress achieved and in order to verify that the Member State is ensuring the greatest possible effort.

This change, of course, then includes the elimination of a second request for derogation provided at the end of the paragraph.

The first paragraph will read as follows:

1. Where, in a given zone, conformity with the limit values for particulate matter (PM10 and PM2.5), or nitrogen dioxide or benzo(a)pyrene 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 for that particular zone by the period justified in the air quality plan to be established by the Member State, if the following conditions are met:

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

Article 19

We believe that the timeframe indicated for the preparation of the plans are not realistic; we reiterate the proposals already made at previous meetings, which take into account the real timeframe needed to prepare and approve a plan (including the Strategic Environmental Assessment) and to see the effects on concentrations of the reduction measures. We therefore ask that in the text of paragraph 1 "recorded" be replaced by "reported". In addition, we suggest to replace 5 years with 6 years, so that there will be at least 3 years to see the effects of the reduction measures, after they come into effect.

*Where, in given zones the levels of pollutants in ambient air exceed any limit value, laid down in Section 1 of Annex I, Member States shall establish air quality plans for those zones as soon as possible and no later than **2** years after the calendar year during which that exceedance of any limit value was ~~recorded~~ **reported**. Those air quality plans shall set out appropriate measures to achieve the concerned limit value and to keep the exceedance period as short as possible, and in any case no longer than **6** years from the end of the calendar year in which the first exceedance was ~~recorded~~ **reported**.*

Article 20

Paragraph 2, we reiterate our proposal to consider particulate matter in the same way as ozone in all cases where PM has a relevant secondary component and it is subject to adverse meterological conditions; we suggest to add the following sentence:

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

Annex I - Air quality standards

- Section 4(A) (alert thresholds); for PM, the statement "for three consecutive days or less for PM10 and PM2.5" seems to leave room for different applications. We would prefer to delet the expression “or less” in order to have a harmonized period.
- Note 1 to table 1: "*the first calculation band for each single day will be the one between 17:00 of the previous day and 01:00 of the same day*". In analogy with the "User Guide to xml" (see page 328) it would be advisable to specify whether the time refers to the start/end time in order to avoid errors and confusion. In this case it would be "*the first calculation band for each single day will be between 17:00 (start time) of the previous day and 01:00 (end time) of the same day”.*
- Section 2, A., with reference to the AOT 40 and to note 1 of table B, it would be appropriate to specify whether the time refers to the start/end time. In this case the sentence "*using only the hourly values detected every day between 8:00 and 20:00" would become "using only the hourly values detected every day between 8:00 (**start time**) and 20:00 (**end time**)*" (see also IPR guidance page 77).

Annex II, Section 2

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

Annex VI

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

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

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

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

Also in point 4, neither the Directive nor the guidance on the demonstration of equivalence are clarifying the criteria and the terms with which retroactive data correction could be applied (i.e. with

which correction factor, for how long in the past, if for all site typologies in which it has been used the same method of equivalence).

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

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

Annex VIII

Section B, point 2: Add a reference to measures to reduce emissions from agricultural and livestock activities with an additional letter saying "reduction of emissions from livestock and use of nitrogen fertilizers in the agricultural sector".

ESTONIA

Annex 1 section 5 B

Where Member States identify exceedances attributable to natural sources, contributions from natural sources shall be deducted before calculating the AEI. <-- does that imply that we need to prove each year that exeedance came from natural sources?

We continue our efforts to reduce PM2.5 levels, but according to current knowledge, 5 µg/m3 seems to be the background of the Estonian region, and Estonia cannot reduce this level alone, only with its own measures.

Annex VI

Throughout the text standard EN12341:2014 is used as a reference. This seems to be a mistake since there is already 2023 version of the standard available.

CZECH REPUBLIC

Comments following up the WPE meeting held on 5th of October 2023

CZ thanks the Presidency for the compromised text. Below we send CZ written comments concerning the additional changes made by the PRES. CZ also adds below further suggestions for amendments of the directive that should in our opinion be reflected in the text.

Art. 3 (Regular review)

CZ welcomes and thanks the PRES for the changes in para 1 and the inclusion of the new para 5 that both reflect our written comments. **We consider the new para 5 as crucial instrument to incentivise actions on the EU level if exceedances persist after the attainment deadline**. We also view the **new para 5 as a possibility to include joint responsibility respecting the Council legal service objections** on the one hand, and reflecting the AT original comment that was supported by many MS on the other hand.

Art. 4 (Definitions)

We can support the proposed changes by the PRES and the inclusion of new definitions concerning modelling applications and the average exposure territorial unit.

Art. 5 (Responsibilities)

Relating of the accuracy of modelling applications we support substituting the word "ensuring" with "promoting".

Art. 6 (Establishment of zones and territorial units)

We support the inclusion of "and territorial units" that is in line with the newly introduced definition in art. 4.29a.

Art. 8 (Assessment criteria)

We support the enforced modelling that was proposed by the COM in the original revised directive. However, we could also support inclusion of some flexibility as many MS are not using modelling applications. Nevertheless, the proposed changes in para 5 force MS not to consider modelling results within the area of spatial representativeness of a fixed measurement even if they would be willing to do so. We understand the need to highlight that fixed measurement is superior to modelling, however, we are of the opinion that MS should not be forced to ignore the modelling results.

We would see this as a step back. We also read the modified art. 8 as though the modelling applications are not expected to be reflected in the air quality plans which is confusing.

We therefore propose the following change and we could also be flexible towards changes enforcing the modelling applications even more.

"5. ... ~~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.~~

If modelling applications show 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. ***If a Member State chooses not to conduct any aditional measurements, the exeedance shown by modeling aplications shall be considered as valid and shall be used for air quality assessment.***

Exceedances calculated by a modelling application within the area of spatial representativeness of a fixed measurement may be considered by Member States as subordinate to the fixed measurement and may not be taken into account in the air quality assessment, especially if the fixed measurement within the area of spatial representativeness shows level of pollution below the assessment threshold in accordance with Annex II."

Art. 10 (Monitoring supersites)

CZ is flexible regarding the proposed flexibility aimed at smaller MS.

We could also support the flexibility not to measure pollutants below their assessment thresholds. Nevertheless, we propose following clarifying changes:

"4.a ... ***Pollutants that are below their respective assessment threshold*** *~~At urban background stations Annex II pollutants shall~~* ***may*** *not be measured* ***at urban background supersites*** *~~if they are below the relevant assessment threshold~~.* ***Exceedances of the assessment thresholds*** *~~The review of these levels~~ shall be ~~carried out~~* ***assessed at such supersites*** *at least every 5 years."*

Annex VII

We would like to reiterate that we support voluntary measurement of BC, UFP and other pollutants without CEN methodology. We would like to avoid the need to set up expensive sampling points prior CEN methodology and after the CEN methodology is finally published.

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

CZ could support PRES amendments regarding art. 13.

CZ also welcomed the tremendous acknowledgement of socioeconomic impacts of the ambitious air quality standards expressed by many MS at the recent WPE with respect to art. 18. We are of the opinion that art. 13 is a suitable place to anchor principles for protecting citizens from disproportionate cost that could, at least in medium term, overweigh the cost associated with poor air quality. **Below we propose slightly modified changes of the art. 13.1 that we believe could resonate with MS that were supporting socioeconomic aspects at the recent WPE.**

*"1. Member States shall ensure****, by taking all necessary measures aiming at air pollution sources on their territory and not entailing disproportionate costs, especially for sensitive population and vulnerable groups****, that, throughout their zones, levels of sulphur dioxide,*

nitrogen dioxide, particulate matter (PM_{10} 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."

We also reiterate that we are ready to support new limit values proposed by the Commission to be attained by 2030, **however, we strongly disagree with the established practice in which MS are responsible for pollution sources outside their territory.** We have already proposed the following amendment of art. 13.4. We ask the PRES to consider our proposal.

"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 territory, only excluding pollution from natural sources****."*

Alternatively, we propose the following:

"4. Compliance with paragraphs 1, 2 and 3 shall be assessed in accordance with Annex IV. ***Anthropogenic pollution originating outside Member States' territory is not taken into account in such assessment****."*

Art. 18 (Postponement…)

CZ welcomes the inclusion of benzo*[a]*pyren to the list of pollutants. We would prefer to add also other pollutants as well, but since benzo*[a]*pyren was our main issue, we could support such compromise. Nevertheless, we remain flexible towards inclusion of all of the remaining pollutants into art. 18.1.

We noted with great regret that art. 18 does not include socioeconomic aspects that are supported by many MS. **Inclusion of socioeconomic aspects is very important to us since it is influencing our ability to attain even the current air quality standards.** We cannot ignore the fact that energy poverty is a reality in some regions. In such circumstances we need more flexibility to address this issue without the risk of worsening the well-being for low-income households (especially in short and medium term). We therefore reiterate our previous suggestion:

"1. Where, in a given zone, conformity with the limit values for particulate matter (PM10 and PM2.5), nitrogen dioxide or benzo(a)pyrene [we could support other pollutants as well] *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 for that particular zone by the period justified in the air quality plan to be established up by the Member State and for maximum of 5 years, if the following conditions are met:…"*

Furthermore, we welcome the deletion of the word "unforeseen" in para 1 and we welcome the added clarification that exceptional circumstances are the circumstances mentioned in para 1. However, given the fact that many of such circumstances will prevail despite any effort of individual MS we must insist on linking the second postponement to the analysis of the air quality plans that may conclude that longer period is needed for postponement. We therefore repeat our previous proposal:

*"Where exceedances persist after the postponement, Member States may request a second postponement for a****n*** ~~***maximum***~~ *additional period* ~~***of 2 years***~~ ***justified by the air quality plan****, provided that it can be demonstrated that exceptional circumstances have occurred preventing compliance. Exceptional circumstances shall be those referred to in paragraph 1. In addition*

to the conditions as in the first postponement, Member States must show that the measures in the air quality plan referred in point (a) of the first subparagraph of this paragraph have been implemented."

Art. 19 (Air quality plans)

CZ appreciates the prolongation of the period for establishing the air quality plans. However, this does not resolve all our concerns regarding timeframes. We noted the explanation given by the PRES that the extra year for air quality establishment could be used for the implementation phase. In our opinion, however, timeframes should not compete with each other. Otherwise, the quality of output of either phase could be compromised.

As a compromise text, we propose to link the implementation phase to the end of the year in which the exceedance was reported to gain one extra year for implementation. Such change would give more sense also with respect to art. 8.5 that does not contain any tangible link to the air quality plans. To our understanding, art. 8.5 requires MS to confirm modelled exceedances. Therefore the expression "recorded" used in art. 19.1 is very confusing with respect to art. 8.5.

We also find the timeframe for updating the air quality plans as unsatisfactory. As we pointed out in our previous comments, we need more time in order to proceed with all mandatory administrative steps, such as public consultation, otherwise the update is not feasible**. Also, we noticed that the first subparagraph of para 1 is inconsistent with para 1. On one hand, the para 1 gives MS 5 years to achieve limit values and such timeframe is considered as "as soon as possible". On the other hand, the first subparagraph foresees that after 3 years MS must prepare update of air quality plan with more effective measures that in our opinion negates the 5 year period mentioned in para 1.** Moreover, the directive requires that the updated air quality plan is similarly complex as the original air quality plan. Therefore, it is not reasonable to require from Member States to issue updated air quality plan "in the subsequent calendar years". We do not see in the directive any indication that the updated air quality plan could be significantly simplified, therefore we insist on the 3 year period for the creation of the updated air quality plan. We propose the following:

"1. Where, in given zones the levels of pollutants in ambient air exceed any limit value, laid down in Section 1 of Annex I, Member States shall establish air quality plans for those zones as soon as possible and no later than 3 years after the calendar year during which that exceedance of any limit value was ***reported*** ~~***recorded***~~*. Those air quality plans shall set out appropriate measures to achieve the concerned limit value and to keep the exceedance period as short as possible, and in any case no longer than 5 years from the end of the calendar year in which the first exceedance was* ~~*recorded*~~ ***reported****.*

Where exceedances of any limit values persist during the ~~*third*~~ ***sixth*** *calendar year* ***from the end of the calendar year in which the first exceedance was reported*** ~~***after the establishment of the air quality plan***~~*, Member States shall update the air quality plan and the measures therein, and take additional and more effective measures,* ~~***in the subsequent calendar year***~~ ***no later than 3 years thereafter*** *to keep the exceedance period as short as possible."*

We view the above mentioned amendments as a compromise, however, we would still prefer to link the implementation period to the analysis of the air quality plan that might conclude that longer implementation period is needed.

Furthermore, we insist on the possibility to link the air quality plan with National Air Pollution Control Programme. The NAPCP could in our opinion easily replace the air quality plan since the analysis done in this program is very similar to the air quality plans.

Art. 20 (Short-term action plans)

We noticed with regret that our comments were not taken into consideration. We support the acknowledgement of socioeconomic aspects of the revised directive, however, **we are of the opinion that socioeconomic aspect should be acknowledged also for alert threshold**. We therefore ask the PRES to reflect in the text that we cannot ban household heating during the smog situation. We therefore refer to our previous suggestions. Alternatively, we could also support the following:

"1. ... 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. Where a short-term action plan is not established, Member States shall* ***at least inform the public about such exceedance in line with Article 15 and*** *inform the Commission."*

Art. 21 (Transboundary air pollution)

CZ appreciates the text proposed by the PRES which suggests to use "coordinated" activities instead of "joint" activities. **We would welcome if the PRES could specify the term "technical support" in the text so that we can use it properly during the implementation phase. Otherwise this term means everything and anything at the same time.**

However, we disagree with the notion 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 are of the opinion that even with coordinated actions the transboundary air pollution might still be seriously affecting the air pollution for which we refuse to bear any responsibility. **We therefore insist on the amendment of art. 13.4 that we included above in this document.**

Art. 22 (Public information)

We welcome the possibility to fulfil the obligation to create air quality index using the EEA index. We support such change and we continue to believe that there is no point in copying the EEAs work.

Art. 24 (Amendments to Annexes)

We strongly support the exclusion of the selected Annexes from delegated acts proposed by the PRES.

Art. 27 (Access to justice)

We continue to insist on full deletion of art. 27. We could also tolerate reference to Aarhus Convention in the recitals as a substitute for art. 27. We also refer to our previous comments.

Art. 28 (Compensation for damage to human health)

We continue to insist on full deletion of art. 28. We could also tolerate reference to Aarhus Convention in the recitals as a substitute for art. 27. We also refer to our previous comments.

Art. 29 (Penalties)

We would still prefer the wording of the current Directive 2008/50/EC. However, we could tolerate the proposed text by the PRES.

Annex I – VI

We have no further comments, **we might come back to them if necessary based on the changes done in the articles of the revised directive. We note that our support for ambitious limit values depends on art. 13, 18, 19 and 21.**

Annex VIII

We are still confused with the inclusion of environmental equity into point 7.e and we propose to ament the text as follows: *„(e) socio-economic information on the related area, in order to promote* ***~~environmental equity issues and the~~*** *protection of sensitive groups."*

Annex IX – XI

We have no further comments.

LATVIA

Comments on Ambient Air Quality Directive compromise text (Doc.13377/23 29.09.2023.)

Article 3 and Article 5

If we want to reach zero pollution objective in the EU, action should be taken at all levels – EU, MS and local level. Therefore, we propose further amendments in Article 3 and Article 5 based on already adopted regulations in the field of climate policy and energy efficiency[1]. Such approach can ensure consistency between adopted legislation in different sectors and avoid contradictions between various policies, as well as provide support to MS in order to meet the new EU air quality standards.

In Article 3 we suggest adding a new task to analyze investments needed in case new air quality standards are proposed. We also suggest deleting Article 3, paragraph 5, while proposing new paragraph 2 and 3 in Article 5 regarding additional responsibilities for Commission to assess the consistency of any legislative proposal with the *zero pollution objective* and air quality standards.

Article 3
Regular review

"2. The review shall assess whether applicable air quality standards are still appropriate to achieve the objective of avoiding, preventing or reducing harmful effects on human health and the environment and whether additional air pollutants should be covered.

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.

For the purposes of the review, the Commission shall take into account, inter alia, the following:

…

(g) adequate instruments and incentives to mobilize the investments available for Member States to implement provisions set in this Directive."

~~**5. If during the review the Commission identifies that non-compliance with applicable air quality standards persists and is affecting a significant area of the Union territory, the Commission may propose further action to be taken at Union level."**~~

Article 5
Responsibilities

1. Member States shall designate at the appropriate levels the competent authorities and bodies responsible for the following:

(a) assessment of ambient air quality;

[1] Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') and Directive (EU) 2023/1791 European Parliament and of the Council of 13 September 2023 on energy efficiency and amending Regulation (EU) 2023/955 (recast)

(b) approval of measurement systems (methods, equipment, networks and laboratories);
(c) ensuring the accuracy of measurements;
(d) ~~ensuring~~ **promoting** the accuracy of modelling applications;
(e) analysis of assessment methods;
(f) coordination on their territory if Union-wide quality assurance programmes are being organised by the Commission;
(g) cooperation with the other Member States and the Commission, including on transboundary air pollution;
(h) establishment of air quality plans;
(i) establishment of short-term action plans.

2. The Commission shall assess the consistency of any draft measure or legislative proposal, including budgetary proposals, with the zero pollution objective and air quality standards set out in Annex I. When making its draft measures and legislative proposals, the Commission shall endeavour to align them with the objectives of this Directive. In any case of non-alignment, the Commission shall provide the reasons and, if possible, compensatory measures.

3. The Commission shall, where appropriate, provide financial support to Member States through the resources allocated in the Union budget and assist Member States in setting up financing support programs at national, regional or local level with the aim of increasing investments to move the Union closer to zero pollution objective."

Article 18, Para 1

Latvia supports most of the standards included in Annex I. Nevertheless, **the annual average limit values set for PM_{10} and $PM_{2,5}$ are very problematic for Latvia,** as the implementation will require time and additional financial resources.

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

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

There are many energy-poor and vulnerable households that spend a high share of their income on energy bills. To facilitate the replacement of old heating appliances with newer ones there is a need for additional investments and sufficient transitional period. Given Latvia's situation, reference to MS with **high proportion of low-income households, low GDP or high share of biomass used in household heating sector must be added in Article 18, Para 1.**

Article 32

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

Drafting suggestion:

"Article 32

Entry into force

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

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

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

Annex VI

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

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

Article 27 and 28

Latvia proposes **to delete Article 27 and Article 28**.

Latvia forsees challenges regarding the practical implementation of **Article 28.** Taking into account Latvia's administrative system, the requirements set out in Article 28 of this Directive will be impossible to transpose into our national legal system.

HUNGARY

Written comments and drafting suggestions
to the revised Presidency compromise text (13377/23) on the proposal for a Directive of the European Parliament and of the Council on ambient air quality and cleaner air for Europe

Article 8

Assessment criteria

1. Member States shall assess ambient air quality with respect to the pollutants referred to in Article 7 in all their zones, in accordance with the criteria laid down in paragraphs 2 to 6 of this Article and in accordance with Annex IV.

2. In all zones where the level of pollutants exceeds the assessment threshold established for those pollutants, fixed measurements shall be used to assess the ambient air quality. Those fixed measurements may be supplemented by modelling applications and~~or~~ indicative measurements to assess air quality and to provide adequate information on the spatial distribution of air pollutants and on the spatial representativeness of fixed measurements.

3. In all zones where the level of pollutants, from 1 January 2030, exceeds a limit value established for those pollutants in Table 1 of Section 1 of Annex I or an **[**ozone**]** target value established in Section 2 of Annex I, modelling applications and~~or~~ indicative measurements shall be used as a supplementary method ~~in addition~~ to fixed measurements to assess the ambient air quality. For pollutants and situations where modelling applications may not be appropriate fixed measurement may be supplemented by indicative measurements and/or objective estimation.

   Those modelling applications, ~~or~~ indicative measurements and/or objective estimation shall ~~also~~ provide information on the spatial distribution of pollutants. Where modelling applications are used they shall also provide information ~~and~~ on the spatial representativeness of fixed measurements.

4. In all zones where the level of pollutants is below the assessment threshold established for those pollutants, modelling applications, indicative measurements, objective estimations ~~techniques~~, or a combination thereof shall be sufficient for the assessment of the ambient air quality.

5. When assessing air quality the results of available fixed measurements obtained according to Annex IV, V and using reference methods in accordance with Annex VI or equivalent to reference methods with proven equivalence take precedence over the results of supplementary methods – modelling applications, indicative measurements and objective estimation. The results of modelling applications **undertaken in accordance with paragraphs 2 ~~3~~ and 4 of this Article and paragraph 3 of Article 9 and indicative measurements** ~~shall~~ should be taken into account for the assessment of air quality with respect to the limit values and ozone target values, long-term objectives and critical levels. **Member states may choose to include other results of modelling applications in the assessment.**

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.

If modelling applications shows an exceedance of any limit value or ozone target value in 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.~~

Article 15

Exceedances of alert or information thresholds

1. The alert thresholds for concentrations of sulphur dioxide, nitrogen dioxide, and particulate matter (PM_{10} and $PM_{2.5}$) in ambient air shall be those laid down in Section 4, Point A of Annex I.

2. The alert threshold and information threshold for ozone shall be that laid down in Section 4, Point B, of Annex I.

3. Where any alert threshold or any information threshold laid down in Section 4 of Annex I is exceeded or, when appropriate, if it is predicted to be exceeded based on modelling applications or other forecasting tools, Member States shall take the necessary steps to inform the public within ~~a few hours at the latest~~ the shortest possible timeframe, in accordance with point 2 and 3 of Annex IX, making use of different media and communication channels and ensuring broad public access.

3a. Where the PM alert threshold or information threshold laid down in Section 4 of Annex I is exceeded and, where applicable, where at least half of the monitoring stations in a city have exceeded the limit values on three consecutive days and the meteorological forecast shows no improvement in the situation and the exceedance is also predicted on the basis of modelling applications or other forecasting tools, Member States shall take the necessary steps to inform the public within a few hours, in accordance with Annex IX. The Member States shall take the necessary measures to inform the public as soon as possible, within a period of at least three hours, using the various media and communication channels and ensuring wide public access, in accordance with points 2 and 3 of Annex I.

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

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

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

Justification to 3a.
We currently have a PM_{10} alert threshold in Hungary. On the basis of this experience, we propose to add to the regulation that for PM_{10} and $PM_{2.5}$, the condition for an alert should not only be that exceedances are measured on three consecutive days, but also that meteorological forecasts do not show any improvement. Sometimes the weather situation changes so much in 3 days that it becomes unnecessary to introduce more stringent measures (e.g. banning even or odd numbered vehicles) because the air clears.

Article 18

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

1. Where, in a given zone, conformity with the limit values for particulate matter (PM_{10} and $PM_{2.5}$), ~~or~~ nitrogen dioxide **or benzo(a)pyrene** 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, high proportion of low income households, low GDP or high share of biomass used in household heating sector, 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~~ **established** by the Member State and for a 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 ~~2~~ 5 years, provided that it can be demonstrated that ~~unforeseen~~ exceptional circumstances have occurred preventing compliance. ~~The same conditions shall apply as in the first postponement.~~ **Exceptional circumstances shall be those referred to in paragraph 1. In addition to the conditions as in the first postponement, Member States must show that the measures in the air quality plan referred in point (a) of the first subparagraph of this paragraph have been implemented.**

Justification:
In Hungary in 2021, the main sources of **PM_{10}** emissions were considered to be **residential heating (57%)**, agriculture (17%) and industrial activities (13%) which originated mainly from construction.
Emissions of **$PM_{2.5}$** are dominated by the residential sector: residential heating contributed to the total $PM_{2.5}$ emission by 63% in 2005, 85% in 2013 and 78% in 2021. In contrast, the transport sector contributed nearly up to 12% in 2005 of total annual $PM_{2.5}$ emissions, but in 2021 it dropped to 6%.

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

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

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

In connection with the above, it is worth emphasising that the concentrations of polycyclic aromatic hydrocarbons (PAHs), including **benzo(a)pyrene (BaP), measured in the PM_{10} fraction are well above the limit value in Hungary**. Potential causes: burning of inappropriate 'fuels', and the use of inefficient and outdated combustion equipment. The imperfect combustion process of biomass (vegetation, plants: wood, reeds, peat, grass, straw) releases pollutants into the air. These are mainly solid particles and aerosols, including known carcinogens such as benzo(a)pyrene and benzene.

Article 27

Access to justice

Hungary proposes the deletion of the Article 27.

Justification:
We draw attention to the differences between AQD and IED, which make the similar application proposed in Articles 27-29 inappropriate.

Considering that the air quality plans referred to in Article 19 and the short-term action plans referred to in Article 20 are not adopted by public authority decision - unlike the permitting procedure for projects, they are subject to the IED or EIA Directives - Hungary proposes that, if the Article is maintained, the provision of a right of appeal should be limited to cases where the plans are not adopted (Note: The Aarhus Convention does not provide for an obligation to provide a right of appeal in relation to the plans themselves).