

BULGARIA

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

Follow-up of the discussions in the WPE on 20.10.2023

Documents: 13947/23, WK 13656/2023 INIT and WK 13351/2023 INIT

Bulgaria would like to thank the Presidency for the compromise text and comprehensive steering note, as well as the overall efforts on this important and sensitive file. Bulgaria maintains its position expressed during the meetings, as well through written comments.

Regular review (Article 3)

We maintain our position, namely that 2032 is realistic for the initial review, as well as for the regular review – we support a more general wording “*as often as necessary* thereafter, *if substantial new scientific findings point to the need for it...*”.

As for the concept of *shared/joint responsibility*, Bulgaria maintains its negative position and shares many of the arguments expressed by the Commission and Council legal service. We believe that such an approach is not suitable for the Ambient Air Quality Directive (Article 3(2)(e), 3(4) and 3(5) of the text)

Article 4 Definitions

(29a) – we support the suggestions made by Poland regarding the need of additional flexibility for MS for the use of NUTS0.

(38) – scrutiny reservation.

1. Round 1. Assessment of Ambient Air Quality and Monitoring supersites: Article 8 and Article 10, Annex VII and related recitals: 8, 9, 10, 11 12, 13, 26, 27 and 41

Article 8(3) – we support the replacement of the word “shall” by “may”. We believe that the words “from 1 January 2030” should be deleted.

Article 8(5) – we maintain our position already expressed – we do not support the approach the results of the modelling of ambient air quality to be taken into account when assessing compliance with the limit values set by the Directive. In this regard, we do not support the last sentence of 8(5):

„If a Member State chooses not to conduct any additional fixed or indicative measurements, the exceedance shown by modelling applications shall be considered as valid and shall be used for air quality assessment.“

Article 8 (5a) – we support the text.

Article 10 Monitoring supersites

We maintain a scrutiny reservation.

Annex VII MONITORING AT SUPERSITES, AND OF MASS CONCENTRATION, AND CHEMICAL COMPOSITION OF PM_{2.5}, OZONE PRECURSOR SUBSTANCES AND ULTRAFINE PARTICLES

We support the amendments related to the total deposition, namely only indicative measures shall be done in coherence with annex V.

Recitals: 8, 9, 10, 11 12, 13, 26, 27 and 41

Recitals 8, 9, 10, 11, 12, 13, 26 and 27 – positive scrutiny reserve.

Recital 41 – we maintain a negative scrutiny reserve.

2. Round 2. Data quality objectives: Annex V and related recital: 14

Scrutiny reservation.

Article 13

Bulgaria maintains its position as well as written comments on the level of ambition and timeframe (2030).

Article 13 (7) – we believe that the amendment made is in the right direction.

Recital 14 – negative scrutiny reservation. We would like to point out that the current Directive does not contain the words “sensor systems”, thus we suggest their deletion in order to maintain consistency.

3. Round 3. Average exposure calculation: Annex I Section 5 and related recital: 18

Positive scrutiny reservation. We are positive towards the proposed staged approach for AERO, but the proposed percentage values are still too high.

4. Round 4. Flexibility and level of ambition of the proposal: Article 18 and related recital: 30

Article 18

We support the proposed extension of the text to energy poverty for postponement of the attainment deadline for the obligations, but we believe the changes are insufficient.

We reiterate our support for the inclusion of sulphur dioxide and heavy metals in the list of pollutants, given the serious risks that the air quality standards cannot be achieved within the set timeframes, taking into account the situation at the moment as well.

In this sense we support the proposal of Germany to include in Article 18 the average exposure reduction obligations.

We agree with the arguments of MS expressed during the WPE and we also believe that the specific conditions in a wider sense have to be taken into account, not only the risks of energy poverty – socio-economic development, transport specificities, GDP and purchasing power.

5. Round 5. Air quality plans, Article 19 and related recitals: 31, 32

Article 19(1) – we agree with the question raised by Croatia and we would also like to receive clarifications on the approach to be applied in cases where there is an ongoing infringement procedure, because Article 19(1) makes reference to Section I and to Table 2, which contain the current norms. Clarification is needed on the relationship between the timelines for adoption of air quality plans and the timelines for implementation of air quality plans and the expected date for compliance.

Article 19(3) – we do not understand the added value of the proposed provision, which includes the development of air quality plans in different territorial units in relation to the average exposure reduction obligation. The proposed provision makes the air quality plans more numerous and complex, and also introduces additional administrative burden. In our opinion, flexibility should be given to MS in terms of the development of plans for the average exposure reduction indicator, as given in Article 19(2).

We also reiterate that the National Air Pollution Control Programme according to Directive (EU) 2016/2284, should have important contribution towards the fulfillment of the PM2.5 reduction obligations, as well as nitrogen dioxide. We therefore still think that it will be appropriate to include text which allows the use of the NAPCP and its measures to achieve the objectives of this provision.

Article 19(4) – the deadlines for the development, adoption and implementation of the measures from the plans under Article 19 are directly dependent on the deadlines for the achievement of the obligations in Article 13. We maintain our position, and as we have indicated before, we find the deadlines in Article 13 and Table 1 of Annex I unrealistic.

Depending on the negotiation progress, at best, the Directive will be adopted in 2024, and therefore should be transposed by 2026. After the transposition, Member States must immediately start the procedures for the development of air quality plans according to Art. 19(4), aimed at avoiding the exceedance of the norms that come into force in 2030. This plan should be prepared no later than 2029 which in reality provides only one year for its adoption and application of measures, which certainly will not lead to the required effects. In practice, 2029 is the year in which the Member State will submit the necessary information for the application of Art.18, and the deadline for the Commission's ruling is 9 months (Art. 18(2)) or that is almost at the end of 2029.

We reiterate our support for the deletion of the words "*or ozone target values*" and "*Table B of Section 2*" from the first paragraph of Article 19(4). As expressed before, the requirement for development of air quality plans for ozone is questionable, given the global scale of the problem, the large impact of transboundary pollution and given the complex nature of the ongoing chemical processes involved.

Further clarity is needed regarding the application of the requirements in Article 19(1) and 19(4) in terms of the timeframe.

Recital (31) – we maintain a negative scrutiny reservation.

6. Round 6. Access to justice, compensation and penalties: Art. 27 to 29 and related recitals: 39, 40

Article 27

We maintain a negative scrutiny reservation on Art.27. In our view, additional revision of these texts is necessary in the direction of sticking as close as possible to the general approach on the IED. We reiterate our support for setting texts that are as general as possible, without over-detailing the provisions.

Article 28. Compensation for damage to human health

Bulgaria maintains its position in support of the full deletion of Article 28, given that these texts are inapplicable in the field of air quality.

Annex IX

The proposed text by the Presidency and explanations given confirm Bulgaria's concerns that additional automatic monitoring stations will be needed. The requirement for providing of hourly up-to-date data from at least the minimum number of sites would lead to the need to purchase additional automatic equipment for new sampling points. It should be clearly stated that compliance with the requirement to provide hourly data applies to, and must be fulfilled by automatic monitoring stations, regardless of whether the MS fulfills the minimum number of sampling points requirement of Annex III.

Article 29. Penalties

We maintain a scrutiny reservation. Bulgaria maintains its position in support a text, reflecting the general approach on the Industrial emissions/IPPC Directive. In case there is support by MS, we can show flexibility towards an approach in line with the text in the current Directive 2008/50/EC.

Article 31. Transposition

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

GERMANY

**Comments made during the Council Working Party on the Environment on
20/10/2023**

**Air Quality Directive: Proposal for a Directive of the European Parliament
and of the Council on ambient air quality and cleaner air for
Europe (recast)**

General Comments

- Germany maintains its general scrutiny reserve.
- Specific language for the proposed changes will be submitted by Germany in writing following the session.
- Three issues are extremely important for Germany:
 - Joint responsibility of EU and MS
 - More flexibility under Article 18 with possibilities for postponing deadlines by up to 10 years
 - Ensuring compliance with the average exposure reduction obligation

**Intervention Round 1: Assessment of Ambient Air Quality and Monitoring
supersites: Article 8 and Article 10, Annex VII and related recitals: 8, 9, 10, 11
12, 13, 26, 27 and 41.**

Article 8

Although Germany is generally in favour of modelling, **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.

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 and should be deleted, as the effort in the Länder and municipalities is too high in relation to the benefit.

Proposed wording for an amendment with changes to Articles 7 and 19 to this effect will be forwarded after the meeting.

Article 10/Annex IV.B .3 3.:

In measuring ammonia at rural supersites, it is important that the sampling points not be located directly next to major agricultural NH₃ 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 2. Data quality objectives: Annex V and related recital: 14

Annex V Section A (4) (under Table 2, p. 89)

Deleting the text “*and that have a spatial representativeness area as large as the resolution of the modelling application*” would mean that all fixed measurements would have to be used when calculating model quality, i.e. also transport-related measurements in modelling for the urban or rural background. For this reason, we reject deleting this text.

From Germany’s perspective, the following should be added to Tables 1 and 2 to clarify the specifications for calculating the model quality to prevent different scales from being mixed.

“When calculating the modelling quality indicator of modelling applications the scale of the modelling application has to match the spatial representativeness of sampling points.”

Annex V Section B

Columns 3 and 5 in the table with the short-term values can be deleted, as these are now listed in the separate Table Ba. However, the new requirements in B (85% and 50%) from Table B should be transferred to Table Ba.

Addition p. 92 (“*and, via fixed measurements for pollutants with a minimum data coverage below 80%,*”): The addition would allow fixed measurements to continue to be used if they do not meet the availability criteria. In the past, if data availability was too low, fixed measurements were downgraded to indicative measurements if there was no other information available. This should essentially be maintained, the amendment is therefore rejected.

Intervention Round 3. Average exposure calculation: Annex I Section 5 and related recital: 18

Annex I Section 5 Point A (Average exposure indicator):

To account for special local circumstances, for example in and around ports, targeted and reliable regulations should be established to ensure that air quality objectives are achieved efficiently and proportionately. For this reason, a longer transitional period should also be created in paragraph 2 for the calculation of the AEI:

“Where Member States identify exceedances attributable to natural sources or sea port related emissions, contributions from natural sources and sea port related emissions shall be deducted before calculating the AEI, sea port related emissions until the end of year 2035.”

Annex I Section 5 Point B (Average exposure reduction obligations):

Germany has not yet finalised its position 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 and enters a scrutiny reservation here.

Average exposure reduction obligation: The changes made are a step in the right direction, but not far-reaching enough, especially with regard to particulate matter. These points are very important for us and for the Länder (federal states), also with regard to compliance with the new requirements.

Particulate matter:

- 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 the next two decades until 2030 and 2040**. A phased obligation leads to significant risks for the affected regions, as both early action and fluctuations in individual years can result in non-compliance later on. The dates by which the reduction obligations must be met should also be stipulated to ensure compliance.
- Our understanding of the proposal is that reduction measures taken earlier should be rewarded in the form of staggered percentages. We can support this approach in principle. However, at least one further level of 10% reduction should be specified for cases where the AEI is $\leq 10 \mu\text{g}/\text{m}^3$, as otherwise compliance is not guaranteed according to our estimates.

- Specifications for the period beyond 2040 should be defined in the next amendment of the Directive, as no reliable estimates for this period are currently available.

We propose the following text:

“The AEI shall not exceed a level that is:

1. for PM_{2.5},

(a) when the AEI for a particular year is $\leq 10 \mu\text{g}/\text{m}^3$, for 2030 10 % lower than the AEI was 10 years before, for 2040 10 % lower than the AEI was required 10 years before, unless it is already no higher than the average exposure concentration objective for PM_{2.5} defined in Section C.

(b) When the AEI for a particular year is > 10 and $< 12 \mu\text{g}/\text{m}^3$, for 2030 15 % lower than the AEI was 10 years before, for 2040 15 % lower than the AEI was required 10 years before. ~~*unless it is already no higher than the average exposure concentration objective for PM_{2.5} defined in Section C.*~~

(c) When the AEI for a particular year is $\geq 12 \mu\text{g}/\text{m}^3$, for 2030 25 % lower than the AEI was 10 years before, for 2040 25 % lower than the AEI was required 10 years before.

2. for NO₂,

(a) When the AEI for a particular year is $< 20 \mu\text{g}/\text{m}^3$, for 2030 15 % lower than the AEI was 10 years before, for 2040 15 % lower than the AEI was required 10 years before, ~~*unless it is already no higher than the average exposure concentration objective for NO₂ defined in Section C.*~~

(b) When the AEI for a particular year is $\geq 20 \mu\text{g}/\text{m}^3$, for 2030 25 % lower than the AEI was 10 years before, for 2040 25 % lower than the AEI was required 10 years before.”

NO₂:

- The boundary conditions should generally be aligned with the above-mentioned changes to the PM_{2.5} exposure reduction, but a third level is not necessary here.

In this context, Germany would like the Directive to clarify the form in which rounding off should take place.

In addition, Article 18 should include an option for postponing the deadline for exposure reduction, see below.

Article 4 (29)(a)

Since the Article is not addressed separately, we will take the liberty of addressing the definition of regions in Article 4 here:

To further clarify the definition of regions for the average exposure reduction obligation (AERO), 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 since air pollutants can be transported over a long distance and this does not therefore need to be checked every time. It should always be possible to merge NUTS1 regions below the NUTS0 level.

Intervention Round 4. Flexibility and level of ambition of the proposal: Article 18 and related recital: 30

Article 18

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.**

The current compromise proposed by the Council Presidency is not yet acceptable to Germany.

It is therefore of paramount importance 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.

We would suggest the following wording:

*“1. Where, in a given zone, conformity with the limit values for particulate matter (PM₁₀ and PM_{2.5}), nitrogen dioxide or benzo(a)pyrene **or the exposure reduction obligation for particulate matter (PM_{2.5}), or nitrogen dioxide** cannot be achieved by the deadline specified in Table 1 of Section 1 of Annex I, **or Section 5 of Annex***

I because of site-specific dispersion characteristics, including inner-city ports with marine shipping, orographic boundary conditions, adverse climatic conditions, lack of reasonable and proportional national, regional or local measures, or transboundary contributions, energy poverty as defined in Directive (EU) 2023/1791 of the European Parliament and of the Council or if modelling applications results, including all reasonable and proportional measures, as performed for the purposes of Annex VIII, Section A, point 6(d), show that the limit values cannot be attained within the attainment date specified in Annex I, 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 and for maximum of ~~5~~7 years, if the following conditions are met:

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

Where exceedances persist after ~~the~~ a first-time postponement, Member States may request a second postponement for a maximum additional period of ~~3~~3 years, up to a maximum postponement of 10 years in total, provided that it can be demonstrated that exceptional circumstances site-specific characteristics, orographic boundary conditions, adverse climatic conditions, transboundary contributions or energy poverty as referred to in paragraph 1 continue to have occurred preventing compliance. Exceptional circumstances shall be those referred to in paragraph 1. 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.”

Recitals

Recital 30: It should be clarified in the **recitals** that **production slowdowns of industrial or manufacturing sites 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.

“(30) For zones where conditions are particularly difficult, it should be possible to postpone the deadline for compliance with the air quality limit values in cases where, notwithstanding the implementation of appropriate, reasonable and proportional pollution abatement measures, acute compliance problems exist in specific zones and agglomerations. Pollutions abatement measures should be not considered to be proportional in this sense, if they depend on production restraints or on a partial or full shutdown of installations or businesses, or zonal driving bans. Postponements should also be possible in the case of adverse urban planning conditions. Any postponement for a given zone or agglomeration should be accompanied by a comprehensive plan to be assessed by the Commission to ensure compliance by the revised deadline.”

An exemption should also be created for the special conditions at ports. We would propose the following text in Article 18:

“1bis. Where Member States identify exceedances of limit values for particulate matter (PM₁₀ and PM_{2.5}) or nitrogen dioxide attributable to Union sea port related emissions, the sectoral additional pollution load from maritime shipping and related port operation is not considered in the air quality assessment proportionally until 2035.”

Here, a provision should be included to the effect that notifying the Commission is sufficient to postpone the deadline.

It should be possible to postpone the deadline for a total of 10 years, if Germany's proposal to extend the first period to 7 years is followed, i.e. 3 years in the second period.

Intervention Round 5: Air quality plans: Article 19 and and related recitals: 31, 32

Article 19 (3)

With regard to the average exposure reduction obligation, we propose the following addition, as large-scale measures in particular can contribute to reducing background exposure:

“Where the average exposure reduction obligation is exceeded, Member States shall ensure that the national air pollution control programme prepared pursuant to Article 6 of Directive (EU) 2016/2284 includes measures aimed at contributing to the abatement of those exceedances.”

Article 19 (4)

Germany has already pointed out several times that 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.

It should therefore be added – as in paragraph 2 – that in such cases it is not necessary to draw up a air quality plan. This is not yet sufficiently clear from the newly added reference.

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.

Access to justice according to the IED falls under Article 9 (2) of the Aarhus Convention, while access to justice in regard to air quality plans has, to date, been oriented to the standards of Article 9 (3) of the Aarhus Convention.

If the intent is to maintain this distinction, the assessment standard (currently in paragraph 1: “to challenge the substantive or procedural legality”) would also have to be limited to the violation of environmental legislation.

We propose the following text:

“1. Member States shall ensure that, in accordance with their national legal system, members of the public concerned have access to a review procedure before a court of law, or another independent and impartial body established by law, to challenge the substantive or procedural legality, limited to law related to the environment, of all decisions, acts or omissions concerning air quality plans referred to in Article 19,...”

Article 28

The addition of *“~~in accordance with national procedures~~”* at the end of Art. 28(1) is not acceptable to us. As in other EU legal acts, it should read: **“in accordance with national law”**. 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:

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.

Intervention Round 7. Remaining recitals not discussed above:

1, 2, 3, 4, 5, 6: introduction and objectives (Art. 1)
4,7: review (Art 3)15-22: air quality standards (Art. 2, 13, Annex I)
23: alert and information thresholds (Art. 15)
24: more stringent measures (Art. 13 and 15)
25: maintaining air quality status (Art. 12)
28: critical levels for protection of vegetation (Art. 14, Annex IV)
29: contributions from natural sources, winter-sanding, winter-salting (Art. 17)
33: short-term plans (Art. 20)
34: transboundary pollution (Art. 21)
35, 36, 37: information and reporting (Art. 23)
38: amendments to annexes (Art. 24)
41, 42: implementing and delegated acts (Art. 25 and 26)
43, 44: transposition (Art. 31)
45: subsidiarity and proportionality

Recital 45 The explanation in Recital 45 essentially corresponds to Recital 25 of the currently valid Directive. Unfortunately, experience from the infringement proceedings before the ECJ has shown that the text was not taken into account in the EEC before the ECJ and that the Member States were solely responsible for compliance with the objectives, despite the common objectives already mentioned here now. It is therefore very important for Germany that joint responsibility is clearly enshrined in the **legal text** of the Directive on the issue of joint responsibility.

Apart from the legal aspects, joint responsibility also has 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. Here we refer to our arguments on the appropriateness and proportionality of measures, which we have already submitted several times.

Taking into account the positions of the Commission and the Council Legal Service on the legal clarity and definiteness of such a provision, we propose adding the provision to Article I ("General Provisions") so that no operative provisions are listed. This would protect the Commission's right to present legislative proposals and highlights the intention behind the proposed joint responsibility. We consider Article 1 in particular to be particularly suitable for this, but are also open to an addition in Article 3. We propose the following text:

"3bis. To enable the collective achievement of the zero pollution objective for air quality set out in paragraph 1 and the air quality standards referred to in paragraph 2, the

Directive aims at ensuring that the relevant Union institutions and the Member States take the necessary measures at Union and national, regional and local level, respectively, taking into account the need to promote cost-effectiveness, notably including the introduction and regular update of any relevant legislation for sectors and activities such as transport, industry, agriculture, energy and climate that contribute to air pollution, in particular setting appropriate emissions standards for key sources of air pollution, such as road transport vehicles, domestic heating installations and industrial installations.”

Additional comments:

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.

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 31

Germany proposes extending the implementation period to three years. Two years is not sufficient given the complexity of the envisaged regulations.

CZECH REPUBLIC

Further comments relating to the PRES steering note (WK 13351/2023 INIT)

1. Round 1. Assessment of Ambient Air Quality and Monitoring supersites: Article 8 and Article 10, Annex VII and related recitals: 8, 9, 10, 11 12, 13, 26, 27 and 41

CZ welcomes the increased flexibility for MS that are willing to trust the result of the modelling applications. However, we consider the requirement in art. 8.5, second subparagraph, not to consider modelled exceedances within the area of fixed measurement as too restricting. We therefore propose to add “*unless Member States choose otherwise*” in this provision. We could also support replacement of “*shall not be*” with “*may not be*”.

“8.5 ... If fixed measurements are available with an area of representativeness covering the area of exceedance calculated by the modelling application, the modelled exceedance shall [may] not be considered as an exceedance of the relevant limit values and ozone target values, unless Member States choose otherwise.”

2. Round 2. Data quality objectives: Annex V and related recital: 14

No further comments.

3. Round 3. Average exposure calculation: Annex I Section 5 and related recital: 18

Regarding the different percentages for exposure reduction targets, we could be flexible.

As for the recital 18, we suggest to soften the expression “*based on WHO recommendations*” since in our opinion the percentage reduction obligation is not particularly based in WHO literature. We suggest for example to use the expression “*to move closer towards WHO recommendations*” instead.

[Recital] “(18) *The average exposure of the population to the pollutants with the highest documented impact on human health, fine particulate matter (PM_{2.5}) and nitrogen dioxide (NO₂), should be reduced ~~based on~~ to move closer towards WHO recommendations. To this end, an average exposure reduction obligation should be introduced for those pollutants, in addition to limit values.*”

4. Round 4. Flexibility and level of ambition of the proposal: Article 18 and related recital: 30

CZ welcomes that energy poverty is added into art. 18 as a reason for postponement. We also support that postponement could be justified by results of the air quality plan modelling.

We could also be flexible towards other solution relating to energy poverty and socioeconomic aspects since we have noticed that some MS would prefer for example GDP or other indicators.

We are also mostly positive towards the period for postponement, however, we would welcome even longer postponement period, due to specific nature of some measures.

As for the recital 30, we suggest to delete the part “*notwithstanding the implementation of appropriate pollution abatement measures*” since in our opinion the postponement reasons are preventing us to implement appropriate measures. Therefore, this sentence contradicts the purpose of art. 18 and the purpose of postponement.

[Recital] “(30) *For zones where conditions are particularly difficult, it should be possible to postpone the deadline for compliance with the air quality limit values in cases where, ~~notwithstanding the~~*

~~implementation of appropriate pollution abatement measures,~~ acute compliance problems exist in specific zones and agglomerations. Any postponement for a given zone or agglomeration should be accompanied by a comprehensive plan to be assessed by the Commission to ensure compliance by the revised deadline.”

5. Round 5. Air quality plans, Article 19 and related recitals: 31, 32

We welcome the 3 year period for establishing air quality plan. The remaining 3 years for implementation (from the 6 total years mentioned in art. 19.1) is less positive to us. We find it in great contrast with art. 18 that offers 5+ years for implementation of measures.

To us, 3 years for the implementation phase of the air quality plan continues to be unacceptable. We would support longer implementation period. Ideally, we would prefer if the time period would be more open and less arbitrary since the measures of air quality plans are yet unknown, therefore, we cannot predict how many years will the implementation phase last.

We also continue to oppose the requirement to update air quality plan and to adopt its measures in “the subsequent year” as the Directive mentions in para 1, first subparagraph. We think that the Directive does not support justification for such a short deadline. We recall the justification provided by the COM that explained that the update of the plan will require less time since most of the work needed for air quality plan was already done for the original plan, therefore, the update of the plan can be done relatively quickly. If this is the case we insist on adding to the para 19.1 that para 19.5 and 19.6 do not apply to the updated air quality plans in order to signal that the updated plans require less effort.

“19.1 ... Where exceedances of any limit values persist during the ~~third~~ **sixth** calendar year after the **exceedance of the limit value was recorded** ~~establishment of the air quality plan~~, Member States shall update the **measures contained in the** air quality plan ~~and the measures therein~~, and take additional and more effective measures, in the subsequent calendar year to keep the exceedance period as short as possible. **Paragraph 5 and 6 is not applicable to the updated air quality plans.**”

On pure technical note, we would like to point out that if the period for developing and implementing air quality plan is set to N + X years, then the evaluation whether the plan needs to be updated should be carried in N+X+1 year, with the potential update in N+X+2. The current wording of second subparagraph of article 19.1 requires evaluation in the last year of implementation period (sixth year) which is in fact shortening the intended implementation period by one year and is therefore contrary to the time limit laid down in the first subparagraph.

6. Round 6. Access to justice, compensation and penalties: Art. 27 to 29 and related recitals: 39, 40

We continue to insist on full deletion of art. 27 and art. 28.

We would also prefer to retain provision relating to penalties contained in the current 2008/50 Directive instead of the proposed art. 29 of the revised Directive.

7. Round 7. Remaining recitals not discussed above: 1, 2, 3, 4, 5, 6, 4,7, 15-22, 23, 24, 25, 28, 29, 33, 34, 35, 36, 37, 38, 41, 42, 43, 44, 45

CZ is of the opinion that art. 3.5 should be incorporated into recital 7.

(7) The Commission should regularly review the scientific evidence related to pollutants, their effects on human health and the environment and technological development. Based on the review, the Commission should assess whether applicable air quality standards are still appropriate to achieve the

objectives of this Directive. The first review should be carried out by 31 ~~December 2030~~²⁸ to assess whether air quality standards need to be updated based on the latest scientific information. The Commission should also regularly assess whether the Union legislation is fit for purpose and whenever necessary the Commission should propose additional Union measures to ensure compliance with applicable air quality standards.

We also suggest to include into recital 16 that there are no safe thresholds for human health regarding the pollutants covered by this Directive. We also see the need to add in recital 16 that low income and socially disadvantaged people are more affected with pollution and that this should be taken into account while drafting and implementing air quality plans to avoid worsening the socioeconomic conditions for such people. We also note that the second sentence of this recital could lead to the conclusion that the only health impacts associated with air are attributable to ambient air, which we find confusing since indoor air quality is also important for human health.

(16) Scientific evidence shows that sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter, ~~lead~~, benzene, carbon monoxide, arsenic, cadmium, ~~lead~~, nickel, some polycyclic aromatic hydrocarbons and ozone are responsible for significant negative impacts on human health and the scientific literature indicates no save threshold below which those pollutants do not pose any risk to human health. Impact on human health and the environment occurs via concentrations in ambient air, however indoor air pollution, which is outside the scope of this Directive, is also responsible for severe health impacts. Scientific evidence also shows that low income households or socially disadvantaged people are more affected by polluted air. Member States should take this into account while drafting and implementing air quality plans to address this social aspect of air pollution and to minimise the social economic impact of the measures taken to avoid further exacerbating this phenomenon.

Given the fact that the air quality plan for ozone could be substituted with the National Air Pollution Control Programme (NAPCP) we suggest to add “if appropriate” at the end of recital 21. This would be more in line with the amendment done by the PRES in recital 31.

(21) Ozone is a transboundary pollutant formed in the atmosphere from the emission of primary pollutants addressed by Directive 2016/2284/EU of the European Parliament and of the Council. Progress towards the air quality targets and long-term objectives for ozone set in this Directive should be determined by the targets and emission reduction commitments provided for in Directive 2016/2284/EU and ~~by implementing cost-effective measures and~~ /or air quality plans, if appropriate.

Furthermore, we are still disappointed by the fact that based on art. 20 MS are required to adopt disproportioned measures focused even on temporary ban of household heating, which is unacceptable for us. We insist on removing household heating from the list of measures mentioned in art. 20 and we also insist on amending recital 33 to avoid measures such as temporary ban of domestic heating.

(33) Action plans should be drawn up indicating the measures to be taken in the short term where there is a risk of an exceedance of one or more alert thresholds in order to reduce that risk and to limit its duration. When the risk applies to one or more limit values or target values, Member States may, where appropriate, draw up such short-term action plans. Measures included in the short term action plan should be proportionate to the situation; measures with severe short term socio-economic impacts,

such as temporary ban of domestic heating, or any measures that could lead to increase of air pollutants afterwards, such as measures resulting in suboptimal operating conditions in industrial facility, should be avoided.

We welcome the inclusion of recital 45, however, in our opinion the last sentence of this recital contradicts the joint responsibility that was constructed in this recital. We suggest to delete the last sentence of this recital.

(45) Since the objective of this Directive, namely to set out air quality provisions to move the Union closer to a zero pollution objective for air quality so that within the Union air quality is progressively improved to levels no longer considered harmful to human health and natural ecosystems, cannot be sufficiently achieved by the Member States by reason of the transboundary nature of air pollutants and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. ~~In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.~~

IRELAND

Please find below comments from IE on some of the items covered in the WPE held on October 20. Our overall view is that the level of ambition set out in the original Commission proposal should be maintained in so far as possible. This Directive is vital in achieving the aim of zero pollution to air, water and soil, which is a key deliverable of the European Green Deal.

Round 1. Assessment of Ambient Air Quality and Monitoring supersites: Article 8 and Article 10, Annex VII and related recitals: 8, 9, 10, 11 12, 13, 26, 27 and 41

A8.3: Replacing the word 'shall' with 'may' seems like a retrograde step and means that the assessment criteria for zones with an exceedance are identical to those for zones without exceedances. It also reduces the ambition in this area back to the level of the 2008 Directive. We would prefer to see the requirement for modelling/indicative measurements in zones with exceedances restored.

Round 2. Data quality objectives: Annex V and related recital: 14

No comment

Round 3. Average exposure calculation: Annex I Section 5 and related recital: 18

We appreciate the PRES attempt to introduce a tiered approach so that Member States who have already made significant progress towards the AECO are, in essence, rewarded for this progress. However, we are concerned by the contribution from SE and others at the WPE that these new proposals would push back attainment of the WHO AQG levels from 2050 to 2070 or further. Therefore, we think that any decrease in ambition in this area should be minimal.

Round 4. Flexibility and level of ambition of the proposal: Article 18 and related recital: 30

The text added to Article 18.1 expands the criteria for postponement of the attainment of limit values from physical/geographical factors to include energy poverty and economic factors. While there are legitimate concerns around energy poverty, it is often those in the lower socioeconomic groups that suffer disproportionately from the impacts of air pollution, as was pointed out by NL at the WPE. Therefore, we are not sure that these are good grounds to delay the attainment of the limit values in air quality zones.

Round 5. Air quality plans, Article 19 and related recitals: 31, 32

No comment

Round 6. Access to justice, compensation and penalties: Art. 27 to 29 and related recitals: 39, 40

We would agree with the deletion of Article 27 as suggested by several MS at the WP. We are already bound by the Aarhus Convention and there is no need to duplicate the obligations in both EU legislation and in the Convention. If text from the Convention is kept in the EU legislation it will lead to two regulatory regimes applying to MS and this creates additional burdens on MS.

CROATIA

Revision of Air Quality Directive

Croatian comments on the revised Presidency compromise text (ST 13947/23)

In order to be able to consider the proposed stricter and new air quality standards in Annex I we propose the changes in the following provisions:

Article 18

In paragraph 1 we support the proposal to include average exposure reduction obligation for PM_{2,5} and NO₂ in the list of pollutants for which a postponement can be requested.

Moreover, we support that the conditions for justifying the postponement in paragraph 1 have to include, in addition to energy poverty, reference to other socio-economic circumstances in a Member State which are more of an economic nature, *e.g.* low GDP or low household income.

What we are still missing in the proposal is a mechanism addressing cross border/transboundary pollution. Member States should not be obligated to comply with certain limit values if significant contribution to the air pollution levels was coming from pollution outside of their control. In that context, we are positively scrutinizing the CZ proposal.

We request to prolong the period of postponement, by adding the third postponement of additional two years, while ensuring a regular review of the progress made.

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, please provide clarification on transitional provisions in relation to correlation between the existing air quality plans adopted in accordance with the Art 23 of actual air quality directive before the transposition date of this proposal and obligations from Art 19 of the proposal. For example, how the provisions of Article 19.1 apply to an air quality plan adopted in 2023 setting out appropriate measures to achieve compliance with the (actual) limit values by 2028 (5 year implementation period).

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. “

We are open to consider the CZ proposal on this issue.

Other comments

Article 8

Regarding Art 8, paragraphs 3, 4 and 5 we are open to enhance the role of modelling application in the compromise text closer to the initial EC proposal. As the harmonised framework for modelling will be established via implementing act in para 5a, then in the specific assessment regime(s) a clear role and mandatory application should be given to the modelling instead of keeping it only as a choice (modelling or indicative measurement).

Therefore, we propose to link the mandatory application of modelling for the purpose of Art 8.3. and 8.5. with the date of entering into force of the implementing acts in para 5a (a similar solution has been provided in the Batteries regulation).

POLAND

Commentary to the document

“Air Quality Directive: WPE on 20 October 2023 - Presidency steering note”

PL thanks the Presidency for the proposal of the directive of 17 October 2023 and all the previous proposals. We wish we had more time to work on the text.

PL has an impression that some issues have not yet been agreed. In view of the complexity of the matter and the need to refine the text of the draft directive, PL requests an additional WPE meeting before COREPER.

A few issues remain crucial for us:

1. Postponement of the proposed the air quality standards (Annex I, Section 1, Table 1) until at least 2035.
2. Derogations in Article 18 taking into account socio-economic conditions (including low income, low GDP per capita, long-term transition in power sector) and including additional pollutants: SO₂ and benzene. We prefer 10 years maximum of derogations (7 + 3 years). Proposed wording in the comments below.
3. The reintroduction of target values for benzo(a)pyrene and heavy metals in PM10.
4. Deletion of Articles 27 and 28 and restoring the wording of Article 29 as it is in the current directive (2008/50/EC).
5. Facultative measurements of the new pollutants that do not have reference methods (CEN standards).
6. Air quality modelling, measurements and assessments that are feasible and reasonable (Articles 8, 9, 19, Annex IV). Proposed wording in document WK 13003/2023 of 12 October 2023.

The following are the detailed comments and proposed amendments that were discussed at the WPE meeting on 20 October 2023.

Round 1. Assessment of Ambient Air Quality and Monitoring supersites: Article 8 and Article 10, Annex VII and related recitals: 8, 9, 10, 11 12, 13, 26, 27 and 41

Article 8

PL jointly with DK made proposals for amendments to Articles 8, 9, 19 and Annex IV. We regret that these amendments were not included in the draft directive of 17 October 2023. We ask the Presidency and Member States to reconsider Danish-Polish proposal.

A few thoughts summarising the submitted proposal: Article 8: An expert in a given Member State should ultimately decide on the classification of zones on the basis of all available data, knowledge and experience. Priority in air quality assessment should be given to results of fixed measurements (as they have the lowest uncertainty; highest data quality standards, CEN standards, reference methodologies, etc.). The results of fixed measurements may be supplemented by modelling, indicative measurements or objective estimation. Also the need to put new stations in every exceedance area in the zone was

eliminated. The exceedance should be determined by the exceedance at a measuring station (fixed measurements), if this is not the case, and the modelling results show an exceedance, a Member State should have 2 choices, either declare an exceedance immediately on the basis of modelling, or an additional station(s) and check whether there are indeed exceedances at the stations in the following years as well. Putting a station in every exceedance area that came out of the modelling is pointless, very costly and not feasible.

In Article 9, the option of indicative measurements was removed when a 50% reduction in the number of fixed measurement points is implemented, as modelling is better in that situation rather than indicative measurements.

In Article 19, conditional obligation (when feasible) for modelling for air quality plans was added, as there should be some modelling done to design remedial actions, scenarios etc.

In point B2 (g) of Annex IV the need to cover the entire zone with areas of representativeness of stations was eliminated.

In contrast, we agree with some of the changes proposed alternatively by the Presidency (details below).

In paragraphs (2) and (4) the term "level" has been substituted by a reference to the classification.

PL supports the changes. We further propose to add objective estimation as an option. The last sentence already de facto indicates the use of objective estimation using the results of indicative measurements but seems that no other types of objective estimation are included.

Paragraphs (3) and (5) has been modified to make the use of modelling applications or indicative measurements optional when the level of pollutants exceeds a limit value.

PL supports the changes. They reflect that fixed measurements have priority over modelling and indicator measurements. We propose here to add an optional objective estimation as commented above.

In addition, the wording "*when applicable*" should also refer to paragraph (4).

We also propose to delete the sentence in paragraph (5): "*If fixed measurements are available with an area of representativeness covering the area of exceedance calculated by the modelling application, the modelled exceedance shall not be considered as an exceedance of the relevant limit values and ozone target values.*", as we believe this is incorrect. This is not how air quality assessment should be done in our opinion. Station representativeness areas should not be used to delineate exceedance areas unless there is no modelling data or the modelling at that location is objectionable. The areas of exceedance should be delimited primarily by modelling results (or objective estimation based on modelling), but also not automatically, but should be determined by an expert on the basis of modelling results or other available data. In Poland the station representativeness areas are done once per 5 years for every pollutant and every averaging period based on modelling were as exceedance areas are delineated each year based on modelling / objective estimation based on modelling done every year for the purpose of the annual air quality assessment.

It should be stressed that even the area of station representativeness determined from the modelling results is not and cannot be determined from the modelling results for the year

for which the assessment is performed. There is no time for this due to the deadlines imposed by the Directive (the September reporting).

Paragraph (5), the passage beginning with: "If modelling applications show an exceedance..."

As worded, this provision is impossible to implement unless the Member States in question demonstrates in a five-year air quality assessment that all pollutants in that p.cz. are below assessment thresholds. PL would like to emphasise that it will not be able to implement this provision. This provision is also in flagrant contradiction with Annex III (minimum number of measuring stations). The number of measuring stations in the case of exceedances of limit and target values will have to be many times greater than the numbers set out in Annex III and, as pollution concentrations decrease, there will have to be more of them (the areas of exceedance will melt away and divide into smaller areas).

In addition, a new paragraph has been included so that, if a Member State decides not to carry out additional measurements, it can directly notify the exceedance. ("If a Member state chooses not to conduct...").

This paragraph is unclear. PL proposes to delete it. There is no specific time limit within which a Member State can consider the modelling results as binding. What about a situation, for example, where the Member State intended to erect a station in a particular area, but found it impossible to do so, and had not previously reported the modelling results with an exceedance?

Article 10

In urban supersites, the flexibility not to measure Annex II pollutants is made optional, so that a Member State may choose to measure them independently of their levels.

PL proposes to delete second subparagraph in paragraph 4a starting with: "A Member State may choose not to measure at urban...". PL takes a negative view on the situation where a part of Member States don't measure primary pollutants based on the results of a five-year air quality assessment (assessing compliance with assessment thresholds). A five-year air quality assessment done for zones is not appropriate for designing a measurement programme at supersites. A better solution would be to dispense all Members States with mandatory measurements of pollutants (at least some of the pollutants) that have assessment thresholds.

In addition, there is no clear provision as to how the five-year air quality assessment would be performed at these supersites in a situation where there would be no measurements there beforehand, because after all there would be no reliable data for such an assessment and at specific sampling points (locations of supersites).

A new flexibility is included for Member States where the number of rural background stations exceeds the number of urban background stations; however, it is important to remember that this flexibility only applies to new pollutants, as the current obligations of the AAQ Directive are maintained.

PL proposes to delete third subparagraph in paragraph 4a. PL also raises doubts about this provision here. Either we care about a decent supersites measurement network with a decent measurement programme or we do not. PL notes that the current wording of the supersite provisions (Article 10) is unfavourable to large Member States with a large population. PL points out that from the outset it has taken a negative view of supersite provisions going beyond what is in the current directives. PL prefers facultative measurements of new pollutants.

Annex VII

For total deposition, only indicative measures shall be done in coherence with annex V.

PL proposes to leave the choice to the Member States whether total deposition measurements at supersites are to be indicative or fixed.

Recital 9

PL proposes to reword recital 9 as shown below. This recital suggests that indicative measurements allow the data to be interpreted in terms of spatial distribution of concentrations, whereas only objective estimation based on the results of indicative measurements can possibly allow (if there is sufficient data) to obtain a spatial distribution of concentrations of pollutants. Therefore, objective estimation should be added to the list of methods in this section. PL also doubts that the indicative measurements (often carried out over a very short period of time) should really allow for a reduction of the minimum number of measurement points. PL's doubts are reflected in Danish-Polish proposal for Article 9.

Recital 9: "Fixed measurements should be mandatory in zones where assessment thresholds are exceeded. Modelling applications and indicative measurements **and objective estimation**, in addition to information from fixed measurements, enable point data to be interpreted in terms of geographical distribution of concentrations. The use of **modelling applications** ~~such supplementary techniques of assessment~~ should also allow for reduction of the required minimum number of ~~fixed~~ sampling points for fixed measurements in zones where limit values or ozone target values are met but the assessment thresholds, but not the limit values or ozone target values, are is not exceeded. In zones where limit values or ozone target values are exceeded, ~~both fixed measurements and it should be possible to the use of modelling applications~~ **or indicative measurements** ~~should be mandatory~~ **in addition to mandatory fixed measurements to assess the ambient air quality**. Additional monitoring of background concentrations and deposition of pollutants in ambient air should also be carried out to enable better understanding of pollution levels and dispersion."

Recital 11

PL proposes to reword recital 11 so that the measurements of the listed substances are not binding (as PL has repeatedly stressed these are new substances, without specific reference methods).

Recital 11: "**Member States are encouraged to measure** ~~It is important that~~ pollutants of emerging concern, such as ultrafine particles, black carbon and elemental carbon, as well as ammonia and the oxidative potential of particulate matter, ~~be monitored in order~~ to support scientific understanding of their effects on health and the environment, as recommended by the WHO."

Recital 13

PL points out that recital 13 (stating that air quality should be measured using standardised methods so that information on air quality is comparable) conflicts with the provisions on the obligation to measure new pollutants for which there are no reference methods (technical specifications are not enough).

Recital 41

Concerning recital 41, PL continues to take the view that all issues addressed in 41 apart from data reporting should be the subject of guidelines and not Commission implementing acts.

Round 2. Data quality objectives: Annex V and related recital: 14

Annex V

PL would like to point out that Annex V contains uncertainty values that AQUILA has accepted. Any tightening of these values may render the directive unenforceable at this point (which was proposed by the EP).

Annex V.A. Uncertainty for measurement and modelling applications for ambient air quality assessment

Third paragraph

PL notes here that the subject of the agreement is, inter alia, still the date for the introduction of the air quality standards in Table 1, Section 1. of Annex I. We therefore propose here to align this text with the agreed Annex I.

Fourth paragraph

PL does not support the requirement to take all measuring stations meeting data quality objectives for model evaluation. Member States should ultimately decide on this. It may happen, e.g., that a station meets the data quality objectives, but its results deviate from other stations. It can happen, e.g., that such a station is in a specific environment (e.g., a station is established according to recently added provision B 2 (ba) in Annex IV (PL still has a negative view on this provision) and it measures microenvironment – contribution of domestic heating or another station should have been moved to a different location, but still measured pollutants for a year at the old location because of high public demand). There may be different conditions and situations. The directive is not to list them all either. The specific conditions are known to Member States and they should decide.

- BC, Ammonia (NH₃), UFP, particle size number distribution of UFP, nitric acid, levoglucosan, organic carbon (OC), elemental carbon (EC), chemical composition of PM_{2.5}, PM oxidative potential: In previous drafts of the compromise text some new pollutants were added to integrate data coverage of measurements for nitric acid, levoglucosan, OC and EC, chemical composition of PM_{2.5} and PM oxidative potential. These pollutants were added to the same row as BC, ammonia, UFP and particulate size number distribution of UFP, already present in the Commission proposal. For all of them, a minimum data coverage for fixed measurements of 80% was proposed. This value is considered too high by some delegations, which propose to lower data coverage for these pollutants. For this reason, a coverage value of 45% is proposed to lower it to assimilate this data coverage to that of metals, as proposed by some delegations.

PL does not support the introduction of obligatory measurements for new pollutants, nor did it support the requirement of a high measurement coverage of the year for these substances, so we support at least such a change.

Third paragraph.

PL proposes to change the wording of the inserted text to: “and, via fixed measurements for pollutants with a minimum data coverage ~~below 80% 30% and 45%~~”, as the text wasn’t clear.

Recital: 14

PL takes the view that the mention of technical specifications in recital 14 and Annex VI is inappropriate. It suggests a solution to the lack of reference methods for new pollutants, which is not the case. Of course, Member States will look for any document they can in the absence of a reference method, but this is not how it should be.

Round 3. Average exposure calculation: Annex I Section 5 and related recital: 18

Recital: 18

PL proposes to replace the words “should be reduced based on WHO recommendations” with “should be reduced.”

It is not the AERO that follows the WHO guidelines, but the AECO.

Round 4. Flexibility and level of ambition of the proposal: Article 18 and related recital: 30

Article 18

PL thanks the Presidency for its attempt to include additional conditions in the provisions of Article 18 that are to allow Member States to apply for derogations.

At the same time, PL proposes to new wording of paragraph 1 and 2 in Article 18:

Version 1:

„1. Where, in a given zone, conformity with the limit values for particulate matter (PM10 and PM2.5), nitrogen dioxide, sulphur dioxide, benzene or target value of benzo(a)pyrene cannot be achieved by the deadlines specified in Annex I, a Member State may postpone those deadlines by a maximum of seven years for that particular zone on the conditions below for the zone to which the postponement would apply:

(a) an air quality plan is established before the end of ... [the year of the attainment in table 1 section 1 Annex I] in accordance with Article 19(4) and meeting the requirements listed in Article 19(5) to (7) for the zone to which the postponement would apply;

(b) the air quality plan referred in point (a) is supplemented by the information listed in Point B of Annex VIII related to the pollutants concerned and demonstrates how exceedance periods above the limit values will be kept as short as possible;

(c) the air quality plan referred to in point (a) outlines how the public and, in particular, sensitive population and vulnerable groups will be informed about the consequences of the postponement for human health and the environment;

(d) the air quality plan referred to in point (a) outlines how additional funding, including via relevant national and Union funding programs, will be mobilized to accelerate the improvement of air quality in the zone to which the postponement would apply.

Where, in a given zone, conformity with the limit values or the target value above cannot be achieved by an extended deadline, despite allocating significant public funds in reducing emission sources and significant air quality improvement in previous years, because of site-specific dispersion characteristics, orographic boundary conditions, adverse climatic conditions, or transboundary contributions, a long term transition of the power sector including domestic heating is needed, taking into account high proportion of low income households and low gross domestic product per capita of a Member State or if the results of the model applications carried out for the purposes of point 6(a) of Section A of Annex VIII (d) demonstrates that the limit values or the target value cannot be achieved within the deadline set out in Annex I, an extension may still be granted. Member States may then request a second postponement for a maximum additional period of 3 years provided a revised air quality plan is provided for each zone before the end of ... [five years from of the attainment date in table 1 section 1 Annex I]. The revised plan must show that the measures in the air quality plan referred in point (a) of the first subparagraph of this paragraph have been implemented and evaluate their effect.

2. Member States shall notify the Commission where, in their view, paragraph 1 is applicable, and shall communicate the any air quality plan referred to in paragraph 1 and all relevant information necessary for the Commission to assess whether the invoked reason for postponement and the conditions set out in that paragraph are satisfied. In its assessment, the Commission shall take into account estimated effects on ambient air quality in Member States, at present and in the future, of measures that have been taken by Member States as well as estimated effects on ambient air quality of Union measures.

Where the Commission has raised no objections within 9 months of receipt of that notification, the relevant conditions for the application of paragraph 1 shall be deemed to be satisfied.

If objections are raised, the Commission may require Member States to adjust or provide new air quality plans.”.

Version 2:

1. Where, in a given zone, conformity with the limit values for particulate matter (PM₁₀ and PM_{2.5}), ~~or~~ nitrogen dioxide, **sulphur dioxide, benzene or the target value of benzo(a)pyrene** cannot be achieved by the deadline specified in Table 1 of Section 1 of Annex I, **despite allocating significant public funds in reducing emission sources and significant air quality improvement in previous years, because of** site-specific dispersion characteristics, orographic boundary conditions, adverse climatic conditions, ~~or~~ transboundary contributions, **a long term transition of the power sector including domestic heating is needed, taking into account high proportion of low income households and low gross domestic product per capita of a Member State or if modelling applications results, as performed for the purposes of Annex VIII, Section A, point 6(d), show that the limit values or the target value cannot be attained within the attainment date specified in Annex I,** 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 established by the Member State and for maximum of 5 7 years,~~ if the following conditions are met:

- (a) an air quality plan is established in accordance with Article 19(4) and meeting the requirements listed in Article 19(5) to (7) for the zone to which the postponement would apply;

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

Where exceedances persist after the postponement, Member States may request a second postponement for a maximum additional period of ~~2~~ 3 years, provided that it can be demonstrated that ~~exceptional circumstances~~ **site-specific characteristics, orographic boundary conditions, adverse climatic conditions, transboundary contributions, a long term transition of the power sector including domestic heating is needed, taking into account high proportion of low income households and low gross domestic product per capita of a Member State or if modelling applications results, as performed for the purposes of Annex VIII, Section A, point 6(d),** show that the limit values or the target value cannot be attained within the attainment date specified in Annex I, as referred to in paragraph 1 continue to 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.

2. Member States shall notify the Commission where, in their view, paragraph 1 is applicable, and shall communicate the air quality plan referred to in paragraph 1 and all relevant information necessary for the Commission to assess whether the invoked reason for postponement and the conditions set out in that paragraph are satisfied. In its assessment, the Commission shall take into account estimated effects on ambient air quality in Member States, at present and in the future, of measures that have been taken by Member States as well as estimated effects on ambient air quality of Union measures.

Where the Commission has raised no objections within 9 months of receipt of that notification, the relevant conditions for the application of paragraph 1 shall be deemed to be satisfied.

If objections are raised, the Commission may require Member States to adjust or provide new air quality plans.

PL also supports adding more pollutants as well as AERO (PM2.5 and NO₂) to the Article 18.

Round 5. Air quality plans, Article 19 and related recitals: 31, 32

Article 19

PL supports the proposed amendment to extend the period for the implementation of the corrective actions set out in the air quality plans referred to in paragraph 1 to 6 years.

At the same time, PL requests a change in the wording of paragraph 2, subparagraph 3:

„Where exceedances of the ozone target value persist during the ~~fifth~~ sixth calendar year after the establishment of the air quality plan in the relevant NUTS 1 territorial unit ~~exceedance of the ozone target value was recorded~~, Member States shall establish air quality plans or update the measures contained in the air quality plan ~~and the measures therein~~, and take additional and more effective measures, in the subsequent calendar year to keep the exceedance period as short as possible.”

The proposal to change the wording of subparagraph 3 is due to the need to adapt its content to the case referred to in paragraph 2, subparagraph 2, where the possibility of not preparing an air quality plan due to exceedances of the ozone target value is specified.

In the case of paragraph 2, subparagraph 4, PL proposes to amend the wording of the provision:

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

The proposed change in the wording of paragraph 4 will allow a Member State to introduce additional measures to the National Air Pollution Control Programme during the preparation of their update. Such a solution will allow for rational spending of public funds, without the need to prepare a new Programme in the event that a Member State has only such a Programme.

Recital 31:

PL would like to thank you for the modifications made to recital 31, which are heading in the right direction. At the same time, we propose to introduce some modifications consisting in removing from the proposal the compliance of air quality plans with the programmes/plans resulting from Directive 2010/75/EU (as well as 2001/80/EC). This is due to the fact that the corrective actions specified in the air quality plans, in accordance with the proposed AAQD directive, generally do not apply to emission sources from installations covered by integrated permits:

*(31) Air quality plans should be developed and updated for zones **and territorial units** within which concentrations of pollutants in ambient air exceed the relevant air quality limit values, ~~ozone target values~~ or average exposure reduction obligations. **Air quality plans should also be developed and updated for ozone target values exceedances, provided there is significant potential under the given circumstances and provided that the measures to address the exceedance do not entail disproportionate costs.** Air pollutants are emitted from many different sources and activities. To ensure coherence between different policies, such air quality plans should where feasible be consistent with plans and programmes prepared pursuant to ~~Directive 2010/75/EU, 2001/80/EC of the European Parliament and of the Council~~¹³, Directive (EU) 2016/2284, and Directive 2002/49/EC of the European Parliament and of the Council.*

Round 6. Access to justice, compensation and penalties: Art. 27 to 29 and related recitals: 39, 40

Article 27

During the debate in the WPE on 5 October, some delegations expressed concern about the implications of paragraph 2 of this article. For this reason, the Presidency suggests deleting that paragraph.

PL thanks the Presidency for the deletion of paragraph 2. However, it is not just a question of paragraph 2 – many Member States, including PL, have a negative view on Article 27.

Formal aspect:

PL continues to take the view that the provision of Article 27 should be removed from the draft directive, due to the fact that it would not be possible to implement it directly into national environmental legislation. If this were the case, legal amendments to the judicial provisions would be necessary.

An additional risk of leaving the provision of Article 27 in the draft could be that the opposite of the intended objective is achieved. This is because we could end up with a situation where the air quality plans are challenged already at the stage of their preparation - the public consultation stage - not only by organisations and entities, as well as individuals demanding urgent improvements in air quality through the introduction of more ambitious objectives within these plans, but also by entities and individuals who will not want to agree to the air quality plans specifying measures such as the obligation to replace certain types of heating equipment or the introduction of restrictions on the use of vehicles. In such a case, it is possible that the administrative bodies responsible for preparing and adopting air quality plans for implementation will be sued in the courts, preventing the timely implementation of the corrective measures planned to be carried out under these plans.

Article 28

PL maintains its previous position on the need to remove Article 28 from the draft directive. Despite attempts by the Presidency to soften the wording of this provision, we find it unacceptable.

A similar position was also presented by other Member States, however, both in the Steering Note for the WPE meeting on 20 October this year and in the new version of the draft directive, this position was not reflected.

Regarding Art. 28, in principle, PL agrees with the approach of enabling society to pursue its rights for damages related to non-compliance with environmental protection regulations. Nevertheless, the proposed provision is imprecise as to the methods that should be used to prove that the health impairment of a specific person occurred in connection with the violation of the provisions regarding the preparation and implementation of the above-mentioned plans. This shape of the regulations excludes the possibility of their unambiguous interpretation and may lead to abuses.

Article 29

PL still proposes to restore the wording of the article on penalties from the current directive.

Recital 39

PL proposes deleting this recital.

Recital 40

Following the request to delete Articles 27 and 28, PL proposes to delete recital 40.

Round 7. Remaining recitals not discussed above

Recitals 1, 2, 3, 4, 5, 6: introduction and objectives (Art. 1)

Recital 4

PL proposes to change the year of attainment of the air quality standards to 2035.

Recital 5

PL sees serious problems in the implementation of Article 29 in its current wording (we are in favour of restoring the wording of the Article on penalties from the current directives) therefore PL calls for the deletion of the wording: "and the polluter pays principle", as this principle may be currently abused and misinterpreted.

Recitals 4, 7: review (Art. 3)

Recital 4

comment as above.

Recital 7

PL still advocates postponing the first review until later than 2030.

Recital 34: transboundary pollution (Art. 21)

PL proposes to replace 'and to be invited' in relation to the Commission with 'and may be invited'.

Recitals 35, 36, 37: information and reporting (Art. 23)

Recital 35

PL has a negative view on the inserted text. Information on health impacts should primarily be provided by the Commission and the European Environment Agency from the WHO. This is not explicitly stated here.

Recitals 41, 42: implementing and delegated acts (Art. 25 and 26)

Recital 41

Concerning recital 41, PL is still of the opinion that all issues addressed in 41, apart from data reporting, should be dealt with in guidelines and not in implementing acts.

Recital 42

Regarding recital 42, PL is in favour of not giving the Commission the power to adopt delegated acts (so that revisions of this Directive are adopted through the ordinary procedure), and therefore PL is in favour of the recital being redrafted as applied.

Recital 45: subsidiarity and proportionality

PL proposes to delete recital 45 as, based on the discussion at the meeting of 20 October 2023, it concerns joint responsibility clause.

Other provisions mentioned in the note but not assigned to the agenda:

Article 4

PL proposes to leave the term "zone", so that there is the possibility to choose such an area for the calculation of AEI (average exposure indicator), AERO, etc.

We also maintain the request for the flexibility for choosing the areas in which the AEI would be calculated.

Definition (38) on public concerned has been aligned with the IED and Article 27, which only refers to Articles 19 and 20.

PL agrees with the narrowing of the definition to Articles 19 and 20, while we believe that still the definition as it stands (including the addition of 'shall be deemed to have an interest') may lead to NGOs effectively blocking action to improve air quality by, for example, blocking the adoption of air quality plans. As a result, this may lead to a failure to achieve the objectives of the Directive (Article 1) by the deadlines set.

Article 24

PL continues to support the request that any amendments to the Directive should be made through the ordinary legislative procedure. At the same time, we support the amendment - deletion of the text (which we had previously requested for reasons of consistency with the rest of the text - deletion of Annex IX).

FRANCE

NOTE DES AUTORITÉS FRANÇAISES

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

Les autorités françaises remercient la Présidence espagnole pour le texte de compromis allant dans le bon sens. Dans la continuité du groupe du 20 octobre, elles souhaitent faire part des commentaires suivants.

Article 18 : Report d'échéance

Les autorités françaises rappellent **être favorables à l'ajout du critère tenant compte des résultats des modélisations, telles que réalisées dans le cadre des plans qualité de l'air** (Annexe VIII, section A point 6 (d)), montrant que les valeurs limites ne peuvent pas être atteintes selon l'échéance fixée à l'annexe I.

Elles soulignent à nouveau que dans la mesure où la possibilité d'un second report d'une durée de 3 ans ne comprend pas ce critère lié aux résultats de la modélisation, il est **indispensable que la durée maximale pour le premier report soit de 7 ans et non 5 ans**, laissant ainsi une flexibilité indispensable pour le déploiement des mesures plus complexe sur ces zones spécifiques. Elles **soulignent également que, au regard de l'ambition portée par le texte au sein de l'annexe I, le critère lié à la modélisation devrait également permettre de pouvoir bénéficier d'un second report de 3 ans tout en portant à 7 ans la durée du premier report.**

Les autorités françaises rappellent enfin leur demande **d'insérer la réduction d'exposition moyenne au sein de l'article 18.**

L'ensemble de ces flexibilités sont nécessaires afin d'obtenir un équilibre d'ensemble du texte vis-à-vis de l'ambition des objectifs visés au sein de l'annexe I.

Annexe I section 5 : réduction d'exposition moyenne

Les autorités françaises rappellent **être favorables à l'approche par palier** inscrite dans le cadre du texte de compromis (annexe I section 5) concernant la réduction d'exposition moyenne. Elles souhaitent que **les pourcentages de réduction d'exposition à hauteur de 25% et 15% proposés soient revus respectivement à 15% et 10%.**

Article 19 et annexe VIII : Plans qualité de l'air

Les autorités françaises rappellent être **défavorables au fait de tenir compte au sein du point 1, 2, 3 de l'article 19 de la date d'enregistrement du dépassement et non de la date du rapportage du**

dépassement. Elles soulignent également que le **délai pour le déploiement des mesures au sein du plan qualité de l'air doit être plus conséquent en portant ce dernier à 8 ans suivant l'enregistrement** du dépassement et non pas 6 ans tel que proposé au point 1 de l'article 19. Cette proposition permet de laisser 5 ans à l'Etat membre à partir de l'établissement du plan pour mettre en œuvre les mesures et leur permettre de porter leurs fruits sur la qualité de l'air, et ainsi diminuer le nombre de situations où un dépassement serait persistant faute d'un temps suffisant au départ pour conduire les actions dans leur totalité.

Les autorités françaises **soulignent également qu'il convient d'optimiser la coordination entre un plan qualité de l'air préventif inscrit au point 4 de l'article 19 et un plan qualité de l'air réalisé en cas de dépassement d'une valeur limite ou de la valeur cible pour l'ozone au point 1 de l'article 19.** La durée de mise en œuvre de ces deux typologies de plans doit être portée à **5 ans.** A ce titre les autorités françaises **sont favorables à l'ajout proposé par la Belgique au sein du point 1 de l'article 19** : « 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 ».

Les autorités françaises rappellent qu'il est nécessaire d'ajouter une phrase en début d'annexe VIII précisant que le contenu des plans constitue des points à traiter en fonction des enjeux locaux et qu'il convient que l'Etat membre, qui souhaite adapter ce dernier, le justifie dûment au sein du plan transmis à la Commission. La justification transmise par l'Etat membre permet de parer à toute dérive car nécessite de justifier à partir d'éléments factuels en lien avec la situation locale les motifs qui ont conduit à adapter le contenu proposé.

Article 8 – Critères d'évaluation

Les autorités françaises rappellent être **favorables au remplacement de « shall » par « may » au point 3 de l'article 8** concernant l'utilisation de la modélisation ou de mesures indicatives en cas de dépassement d'une valeur limite identifié par l'intermédiaire de mesures fixes.

Les autorités françaises rappellent également **leur demande consistant à encadrer au sein du point 3 de l'article 8 les mesures indicatives ainsi qu'au sein du point 5 de l'article 8 les mesures complémentaires (fixes ou indicatives)** qui pourraient être réalisées post-modélisation **afin qu'elles restent proportionnées par rapport à l'objectif visé** :

- **l'utilisation des mesures indicatives complémentaires doit être restreinte aux parties d'une zone non couvertes par de la mesure fixe présentant une forte densité de population**, c'est-à-dire prioriser là où l'impact en termes d'exposition de la population pourrait être le plus important ;
- **les mesures fixes ou indicatives demandées à l'article 8.5 suite à de la modélisation doivent être implantées uniquement sur les parties d'une zone présentant une forte densité de population et où la modélisation montre une concentration maximale pour le polluant concerné** afin de se concentrer sur les parties qui pourraient présenter le plus d'impacts sanitaires et environnementaux.

A ce titre, elles rappellent leur proposition de nouvelles formulations :

Article 8.3 : « 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 may be used in addition to fixed measurements to assess the ambient air quality. ***The use of indicative measurements is restricted to densely populated parts of the zone which are not covered by fixed measurements.*** (...) »

Article 8.5 : « If modelling applications shows an exceedance of any limit value or ozone target value in an area of the zone not covered by fixed measurements and their area of spatial representativeness, additional fixed or indicative measurements shall ***only be used on the parts of the zone with the highest concentrations identified through modelling applications, provided that they are densely populated.*** (...) »

Article 10 – supersites et annexe VII section 1

Les autorités françaises rappellent leur demande consistant à laisser le choix aux Etats membres entre la fraction $PM_{2,5}$ et la fraction PM_1 pour la mesure de la composition chimique justifiée à l'issue des différents groupes et rappelé dans les commentaires post groupe du 5 octobre.

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

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

French authorities thank the spanish Presidency for the compromise text which is going in the right direction. Followin the last group, they wish to make the following comments.

Article 18 : Postponement

French authorities emphasize **to be in favour of the addition of the critérium related to modeling, as those done for air quality plans** (Annex VIII, section A, point 6 (d)), indicating that limit values cannot be reached regarding deadline of Annex I.

French authorities stress once again that, insofar as the possibility of a second 3-year postponement does not include this criterion linked to the results of modelling, **it is essential that the maximum duration for the first postponement should be 7 years and not 5 years**, thus leaving essential flexibility for the more complex implementation of measures in these specific areas. **Regarding the ambition of objectives of Annex I**, French authorities also point out that the **modelling criterion should permit to benefit from a second postponement of 3 years while increasing the duration of the first postponement to 7 years**.

French authorities also recall **their request to include average exposure reduction in article 18**.

All of these flexibilities are necessary in order to achieve a balance with the ambitious objectives set out in Annex I.

Annex I section 5 : average exposure reduction

French authorities are **in favour of the staged approach in the compromise texte** (annex I section 5) regarding the average exposure reduction. They wish that **corresponding pourcentage of 25% and 15% can be reduced to respectively 15% and 10%**.

Article 19 et annexe VIII : Air quality plans

French authorities reiterate **their opposition to take into account in points 1, 2 and 3 of Article 19 the date of registration of the exceedance and not the date of reporting**. French authorities also emphasize that **the deadline for the deployment of measures under the air quality plan should be extended to 8 years from the date on which the exceedance was recorded, rather than 6 years as proposed in point 1 of article 19**. This proposal allows Member states a delay of 5 years from the establishment of the plan to implement the measures and allow them to improve air quality, and thus reducing the number of situations where an exceedance would persist due to lack of sufficient time to entirely carry out the actions.

French authorities also **emphasise the need to optimise coordination between preventive air quality plan under point 4 of article 19 and an air quality plan drawn up in the event of a limit value or target value for ozone being exceeded under point 1 of article 19**. The implementation period for these two types of plan should be extended to 5 years. French authorities are thus **in favour of the addition proposed by Belgium to point 1 of Article 19** : « 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 ».

French authorities point out that **it is necessary to add a sentence at the beginning of annex VIII specifying that the content of the plans can be adapt with local issues and that Member states, who wishe to do so, should duly justify this within the plan sent to Commission.** The justification provided by Member states helps to avoid any drift, as the reasons for adapting the proposed content has to be justified on the basis of factual information relating to the local situation.

Article 8 – Assessment criteria

French authorities are **in favour of the replacement of « shall » by « may » in point 3 of article 8** regarding use of modelling or indicative measurements in case of exceedance of the limit value identified with fixed measurements.

French authorities also reiterate **their request to provide a framework for indicative measurements of point 3 of article 8 and for additionnal measurements (fixed or indicative) following modelling of point 5 of article 8 in order to remain proportionate in relation to the objective sought :**

- **the use of additional indicative measurements (point 3 of article 8) must be restricted to densely populated parts of an area not covered by fixed measurements, i.e. prioritising areas where the impact in terms of population exposure could be the most important;**
- **the additionnal fixed or indicative measurements requested in article 8.5 following modelling must be installed only in those parts of a zone with a high population density and where the modelling shows a maximum concentration for the pollutant concerned, in order to concentrate on those parts which could have the most important impact on health and environment.**

In this regard, they reiterate their proposal for new formulations :

Article 8.3 : « 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 may be used in addition to fixed measurements to assess the ambient air quality. ***The use of indicative measurements is restricted to densely populated parts of the zone which are not covered by fixed measurements.*** (...) »

Article 8.5 : « If modelling applications shows an exceedance of any limit value or ozone target value in an area of the zone not covered by fixed measurements and their area of spatial representativeness, additional fixed or indicative measurements shall ***only be used on the parts of the zone with the highest concentrations identified through modelling applications, provided that they are densely populated.*** (...) »

Article 10 : super sites

French authorities recall their request for the possibility to choose between PM_{2,5} or PM₁ fraction for the chemical composition as justified during the groups and recall in the comments following the group of 5 october.

Proposal of the CZ following up WPE meeting held on 20th of October 2023 concerning transboundary air pollution

CZ proposal is highlighted in red and is introduced to the PRES compromised proposal 1394/23

As mentioned at the WPE on 20 October, we share with you our proposal regarding transboundary air pollution. We kindly ask the Member States and the Presidency to consider the following amendments addressing the issue as follows:

- Introduction of a new definition in Article 4(35a),
- Amendment of Articles 21 and 23,
- Amendment of recitals (25) and (34).

The explanations are provided for each Article separately.

The proposal included here is our preferred solution for the transboundary issue, CZ however remains open to other proposals that would have similar outcomes.

Definition in Article 4(35a)

CZ reiterates, that it is necessary to establish a definition of transboundary pollution in order to make clear that such pollution is out of influence of the MS that is receiving such pollution. Accordingly, CZ proposes a new definition in Article 4 (35a). Since CZ has a lot of sympathy for MS suffering from pollution from countries outside EU territory and from maritime shipping, CZ has incorporated such pollution sources in the newly proposed definition:

Article 4 (35a) “contribution from transboundary sources” means emissions of pollutants associated with human activity that contributes to the level of pollution in a given zone or in an average exposure territorial unit that cannot be influenced by measures taken by a Member State on which territory the given zone or average exposure territorial unit is located. For the purposes of this Directive, contribution from transboundary sources shall encompass emissions of pollutants from sources located within the Union as well as outside the Union’s territory including emissions of pollutants associated with international maritime shipping.

Amendment of Article 21 and 23:

Exceedances caused by transboundary pollution should be acknowledged and MS should strive to adopt coordinated actions, if possible. However, given the fact that MS are not in the position to enforce implementation of measures outside their territory, the MS should not bear any responsibility for transboundary pollution. We agree with the argument of the Commission that the effects of transboundary pollution will continue to negatively affect the population in absence of any action. However, if there is no possibility for the Member State to address the pollution source, such negative impact will unfortunately continue irrespective of measures taken on the territory of the affected Member State.

In this respect, CZ proposes to amend Article 21 and introduce a mechanism to inform the Commission about zones and average exposure territorial units where exceedances can be attributed to

transboundary contribution. Such exceedances should not be considered as exceedances. CZ does not propose any subtraction of transboundary pollution; the aim is to avoid future infringement procedures caused by pollution that is out of influence of MS. CZ also proposes to establish new reporting obligation under Article 23 (2) (iii) to connected to changes in Article 21.

Article 21

Transboundary air pollution

1. Where ~~contribution from~~ transboundary ~~sources transport of air pollution from one or more Member State contributes~~ influences significantly ~~to the exceedance of any compliance with~~ limit value, ozone target value, average exposure reduction obligation or alert threshold, ~~the affected in another Member State, the latter shall~~ may notify the Member States from which the air pollution originated and the Commission thereof.

1a. Member States may, for a given year, identify:

(a) zones where exceedances of limit values and/or ozone target value are attributable to contribution of transboundary sources as defined in Article 4 (35a).

(b) average exposure territorial units, where exceedances of the level determined by the average exposure reduction obligations are attributable to contribution of transboundary sources as defined in Article 4 (35a).

Member States may provide the Commission with the lists of any such zones and average exposure territorial units together with information on concentrations and the evidence demonstrating that the exceedances are attributable to transboundary sources.

Where the Commission has been informed of an exceedance attributable to transboundary sources in accordance with second subparagraph, that exceedance shall not be considered as an exceedance for the purposes of this Directive.

1b. The Commission may provide, by means of implementing acts, further technical details on the demonstration of exceedances attributable to transboundary sources.

Those implementing acts shall be adopted [by date] in accordance with the examination procedure referred to in Article 26(2).

1c. Without prejudice to paragraph 1a, Member States concerned shall cooperate with each other, with the technical support of the Commission to identify the sources of air pollution and the measures to be taken to address those sources, and draw up coordinated ~~joint~~ activities, such as the preparation of ~~joint or~~ coordinated air quality plans pursuant to Article 19, in order to remove such exceedances.

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

If the pollution originates from pollution sources located outside the Union territory, including international maritime shipping, the Commission may seek cooperation with relevant third countries in order to find possible solutions.

2. The Commission shall be informed of, and invited to be present and to assist in any cooperation referred to in paragraph 1 of this Article. Where appropriate, the Commission shall, taking into account the reports established pursuant to Article 11 of Directive (EU) 2016/2284, consider whether further action shall be taken at Union level in order to reduce precursor emissions responsible for transboundary pollution.
3. Member States shall, if appropriate pursuant to Article 20, prepare and implement coordinated joint short-term action plans covering neighbouring zones in other Member States. Member States shall ensure that neighbouring zones in other Member States receive all appropriate information regarding these short-term action plans without undue delay.
4. Where the information threshold or alert thresholds are exceeded in zones close to national borders, information on these exceedances shall be provided as soon as possible to the competent authorities in the neighbouring Member States concerned. That information shall also be made available to the public.
5. In drawing up plans as provided for in paragraphs 1 and 3 and in informing the public as referred to in paragraph 4, Member States shall, where appropriate, endeavour to pursue cooperation with third countries, and in particular with candidate countries. Member States may request technical support from the Commission where appropriate.

Article 23

Transmission of information and reporting

(...)

2. For the specific purpose of assessing compliance with the limit values, ozone target values, average exposure reduction obligations and critical levels, the information referred to in paragraph 1 shall be made available to the Commission no later than 49 months after the end of each calendar year and shall include:
 - (a) the changes made in that year to the list and delimitation of zones established under Article 6 or any ~~NUTS 1~~ average exposure territorial unit;
 - (b) the list of zones ~~and NUTS 1~~ average exposure territorial units and the levels of pollutants assessed. For zones in which the levels of one or more pollutants are higher than the limit values or critical levels, as well as for ~~NUTS 1~~ territorial units where the levels of one or more pollutants are higher than the ozone target values or average exposure reduction obligations:
 - (i) the dates and periods when such levels were observed;
 - (ii) if appropriate, an assessment on contributions from natural sources and from re-suspension of particulates following winter sanding or winter salting of roads to the levels assessed, as declared to the Commission under Articles 16 and 17.

(iii) if appropriate, an assessment on contributions from transboundary sources for the purposes mentioned under paragraph 1a of Article 21.

(...)

Recitals:

CZ hereby proposes to reinforce the transboundary air pollution issue also in recitals 25 and 34.

(25) ~~Where air quality status should be maintained where it is already good, it should be maintained~~ or improved. Where the standards for ambient air quality laid down in this Directive are at risk of not being met, or have not been met, Member States should ~~take adopt immediate action appropriate measures~~ in order to ~~reduce the pollution originating on their territory and~~ comply with the limit values, average exposure reduction obligations and critical levels, and where possible, to attain the ozone target values and long-term objectives. Member States should adopt and implement such measures as soon as possible with respect to their economic capabilities and with respect to the need to make the transition towards compliance fair, especially with respect to people who are or could become socially and economically disadvantaged.

(34) As the Third Clean Air Outlook confirmed, the pollution has no boundaries and is shared across the Union. Moreover, in most Member States a significant share of pollution is generated outside their territory. Furthermore, according to the Third Clean Air Outlook, the significance of non-EU pollution sources is projected to rise. The nature of transboundary air pollution prevents Member States to address this pollution using local, regional or national measures; such pollution is also outside Member States' administrative powers and jurisdiction. Nevertheless, Member States should strive to cooperate with one another if, following significant pollution originating in another Member State, the level of a pollutant exceeds, or is likely to exceed, any limit value, ozone target value, average exposure reduction obligation or alert threshold. The transboundary nature of specific pollutants, such as ozone and particulate matter, may require coordination between neighbouring Member States in drawing up and implementing coordinated air quality plans and short-term action plans and in informing the public. Where appropriate, Member States should pursue cooperation with third countries, with particular emphasis on the early involvement of candidate countries. The Commission should be ~~timely~~ informed in a timely manner of, and be invited to be present and assist in, any such cooperation, and it may provide technical support to Member States upon request where appropriate. The Commission should analyse information gathered from Member States, as well as other relevant data available, in order to determine whether the transboundary air pollution influences significantly noncompliance with air quality standards. If this is the case, the Commission should propose, if appropriate, further action to be taken on the Union level.

SWEDEN

Comments following WPE meeting on 20th October 2023

Sweden would like to thank the Presidency for all their hard work during the last few weeks and for the new compromise proposal. Following the WPE on the 20th October Sweden would like to make the following comments.

Sweden is generally quite happy with the text as it now stands and, while we would have preferred a more ambitious text in a number of aspects, we understand the need to move forward in the spirit of compromise at this stage in the negotiations.

We can accept the majority of changes in the latest text, but believe there are a small number of issues where adjustments are required. These are dealt with below under “Major issues”. There are also so more minor issues, where further considerations may be beneficial.

Major issues

1. Article 8 on modelling

Sweden welcomes the proposed change in Article 8.5, which gives MS the choice to report modelled exceedances without having to confirm these with measurements. However, it is very unfortunate that the progress that has been made on Article 8.5 in the past few meetings has now been completely undone, by making modelling optional in Article 8.3.

We have severe concerns about making modelling fully optional in 8.3. We have heard concerns from other MS in regard of modelling during the process but though that the concerns mainly were solved with your compromise proposal before the last WPE. In our opinion, the new proposal takes it a bit too far.

Modelling is a vital tool for air quality assessment and is required for designing effective AQ plans and assessment regimes. It therefore makes sense that modelling is required in zones with high pollution levels and exceedances of the limit values.

Modelling should be encouraged and incentivised in the Directive, but the change in 8.3 actually does the reverse. There will instead be a clear incentive not to conduct modelling, since MS that do may be punished by having to apply the provisions in Artikel 8.5. This will negatively affect harmonisation of AQ assessment approaches within the EU and creates problems with fair treatment of MS and proportionality of the assessment provisions.

Sweden therefore strongly encourages the Presidency to revert back to “shall” in 8.3 and that the related addition of “when applicable” in 8.5 is also removed. We believe that this would provide a solid basis for optimising and harmonising air quality assessment within the EU, and we also note that fact that flexibility had already been introduced in a previous compromise proposal to cater for Member States still developing their modelling capabilities.

Finally, if the majority decision within the Council is to keep 8.3 as it is in the current proposal, where modelling is optional, then Sweden would argue that 8.3 no longer serves any purpose, since it would be no different to 8.2 in practice. We would also argue that 8.5 should be removed as a consequence of making modelling optional, so that it does not act as a disincentive for MS to conduct valuable modelling of AQ. Article 8.5a should

however be kept regardless and we also note that the original 9.6 would need to be reinstated if 8.5 were to be deleted.

2. Average exposure indicator

Sweden supported Annex I as it was in the last compromise proposal (for WPE 5th October) and were clear that we would not approve any further watering down of the ambition in this Annex. The change made to the AERO in Section 5.B of Annex I is considered to be a significant reduction of the ambition of the proposal. We therefore have large difficulties to accept these changes. We are not against a staged approach as such, it could indeed be a helpful tool. But when doing the calculations, it is apparent that a change from 25 to 15 % would mean that WHO guideline for NO₂ and PM_{2.5} is not met by 2050. We need an approach which sets us on the track to fulfill the zero pollution objective as set out in Article 1.

3. Transboundary air pollution

During the meeting one delegation made a proposal that Member States should be able to deduct transboundary air pollution from their reported concentrations of air pollutants. Sweden awaits to see the concrete proposals to see if this could be accommodated in an appropriate way, but we see already very clear and significant risks with such an approach.

Sweden understands the challenge of transboundary air pollution, and have under many decades, advocated for a high level of ambition in efforts to address this both within the EU and the UNECE CLRTAP.

Rather than contributing to further reducing transboundary air pollution, we feel however that introducing a mechanism for subtracting transboundary pollution, could in fact lead to the opposite since it would, in effect, be reducing the ambition of the proposal significantly. That is, unless the proposed limit values are also revised to be much more stringent to reflect the fact that they would only be related to local and regional pollution.

It is vital that the presence of transboundary pollution is not used as a way to justify not developing AQ plans and carrying out measures to address local and regional sources of emissions. Such measures are key to tackling local hotspots, where pollution levels are often highest. Local and regional measures are also important in the context of transboundary pollution, since these sources also contribute significantly to the level of transboundary pollution within the EU.

Sweden can therefore not support any proposal where deduction of transboundary air pollution is possible. Other proposals that could increase the effectiveness of efforts to reduce transboundary pollution within the EU, without the risk of impacting negatively on local and regional air quality management, would however be considered with interest.

4. Level of flexibility provided by Article 18

The addition of “modelling applications results... show that the limit values cannot be attained...” is too broad to be appropriate as a condition for postponement. The addition in the German non-paper adding “including all reasonable and proportional measures” is a step in the right direction but it still leaves it open to interpretation e.g. on what is reasonable. This could be a possibility to use only in areas where the proposed limit values

were unattainable with maximum feasible reduction in the commission impact assessment but not in other areas.

Generally, Sweden believes that the conditions in article 18 should be limited to those which the member state cannot influence themselves. In any case, all postponements must be combined with clear requirements to carry out effective actions to improve air quality and, where possible, to remove the condition that made the postponement necessary. We would therefore like to add text to further clarify that the commission may, during the postponement, monitor progress towards meeting the relevant limit value. In cases where implementation of effective measures is not undertaken, the commission should be able to warn and ultimately end the postponement.

Minor points

1. Annex V

Model evaluation

Sweden would like to thank the Presidency taking our previous concerns on Annex V on board. We are now generally pleased with this Annex but we have a few further comments to raise on some of the new additions.

We are particularly happy to see that the text previously proposed by the Presidency regarding model evaluation has been deleted. This is important since it went against what has been agreed within the FAIRMODE and CEN expert communities following many years of discussion on how modelling applications should be evaluated. It is important that no further changes are made to this provision.

Measurement uncertainties before 2030

Sweden also supports the addition of text on the application of measurement uncertainties before 2030 in the third para. This is important so that measurement uncertainties remain appropriate before 2030 when the current standards are still in place. It could, however, be useful to clarify that for PM_{2.5} and NO₂/NO_x that stated uncertainties that would apply before 2030 (25 % and 15 % respectively) are only relating to fixed measurements.

New column with data coverage requirements for ozone and related NO and NO₂

Sweden is unsure of the added value of a new column with data coverage requirements for ozone and related NO and NO₂. This could complicate things unnecessarily since NO is not mentioned in the relevant measurement requirement in Article 9.4a, but only in Annex VII as an ozone precursor, for which there are no related data coverage requirements. A simpler approach, as proposed in the original Commission text, could be more beneficial.

Use of random measurements

Sweden questions if the proposed change regarding random measurements is entirely appropriate. We understand that this is limited to certain pollutants, such as B(a)P and metals. However, it seems questionable that in zones where levels of these pollutants are high enough that fixed measurements are required, that it should be possible to replace these fixed measurements with random measurements which only have to meet the data quality objectives for indicative measurements. We question also whether these random measurements could be classed as fixed measurements, if they only meet the measurement uncertainties and data coverage for indicative measurements, but fail the data quality objectives for fixed measurements?

2. Article 10 and recital 12

Sweden regrets the inclusion of the text referring to the assessment threshold in 10.4a. We note that the PRCY sees the need to keep this flexibility and also the amendment to make it clear that MS can still choose to carry out measurements even below the assessment thresholds. If this text is to stay, we would at least like to see one addition as a compromise.

We think it should be made clear that the assessment thresholds should be compared to the highest measured concentration at all stations within the country, and not only at the urban supersite. The rationale is that it is not appropriate to only compare to the concentration at urban supersites. This would also ensure that supersites are not located with the aim of avoiding measurement requirements, instead of locating them in the most relevant areas to assess the effects of air pollutants on human health.

Sweden would also like to see a reference ACTRIS as measurements at rural supersites also should, where possible, also be consistent with measurements carried out in ACTRIS.

3. Article 19

Sweden would like to reiterate that we still have difficulties understanding the need to delay the timelines for developing and implementing AQ plans. Sweden supported the original timelines as proposed by the Commission. It is unfortunate that the timeline for implementing plans was further extended in the latest proposal, but Sweden can accept the Presidency's proposal as a compromise.

4. Artikel 27 – 29

Sweden can accept the proposed deletion of 27.2. We can also support the deletion of the full article as proposed by several MS.

Regarding article 28 Sweden still prefers to delete the article, but can also show flexibility to have it included.

Sweden would also like to thanks the Presidency for the clarification provided during the meeting regarding the target of the provisions of Article 29.

5. Annex IX and recital 35

We note that the recital 35 states that Up-to-date information on concentrations of **all** regulated pollutants in ambient air should also be readily available to the public. We agree entirely with this, but it could be questioned whether this is now in line with Annex IX. We have previously pointed out that the proposed change to Annex IX has weakened requirements for UTD data compared to the current directive. We note that a small addition has now been made to Annex IX, which is a step in the right direction, but it is still not sufficient to ensure the availability of UTD data within the EU. Since recital 35 is taken from the current directive, a change to this recital would be a step in the wrong direction leading to possible less information regarding air pollution reaching the public. We would therefore like recital 35 to remain unchanged but for Annex IX to instead be reverted to the commission proposal.

6. Joint responsibility

Regarding the proposal to joint responsibility Sweden would like to reiterate that there must not be any legal uncertainty regarding that member states are responsible for their air quality.

7. Editorial comments

The following change should be made in recital 28:

“The risks posed by air pollution to vegetation and natural ecosystems ~~is~~ are most important...”

The following change should be made in recital 33:

“...When the risk applies to one or more limit values or ozone target values, Member States may, where appropriate, draw up such short-term action plans.”

AUSTRIA

COMMENTS: Air Quality Directive (WK 13656/2023)

AT thanks the ES Presidency for the efforts that have been undertaken to reach a compromise agreement on a Council position as soon as possible.

With rising concern, however, we notice a gradual weakening of the ambition level in the course of the negotiations and losing sight of the intention to move towards a Zero Pollution target in 2050. Considering the remaining timeline for negotiations, we are able to accept the proposed modifications. We repeat, however, that we cannot support changes to the proposed limit values in Annex I.

Following the request by the Presidency after the last WPE meeting on 20 October, AT submits the following comments:

Article 3 (joint responsibility, DE proposal)

AT expressly supports the German text proposal regarding a joint responsibility clause as presented and provided in writing during the WPE meeting on 20 October.

Article 4 para 38 ('public concerned')

With regard to the definition of the '*public concerned*', which is relevant for the transposition of the access to justice clause in Art 27, we would like to point out two remaining concerns:

Firstly, from an editorial point of view, we note that a part of the text (highlighted in white below; i.e. '*; for the purposes of this definition,*') that has been copied from the general approach of the IED with the aim of aligning the provisions is missing and should be added:

*"(38) 'the public concerned' means the public affected or likely to be affected by ~~exceedances of air quality standards~~, or having an interest in, ~~the decision-making procedures related to the implementation of the obligations under this Directive~~ **laid down in Articles 19 and 20; for the purposes of this definition;** ~~including non-governmental organisations promoting the protection of human health or the environment and meeting any requirements under national law~~ **shall be deemed to have an interest;***

Secondly, on the substance and from a legal point of view, we question whether it is appropriate to refer to the 'public concerned' for the purpose of transposing Art 9 para 3 of the Aarhus Convention (AC) into Art 27 of the Directive. Art 9 para 3 AC¹ refers to the wider/general '**(members of the) public**' (in contrast to Art 9 para 2 AC – which is relevant for the IED but not for the AQD – that refers to '(members of the) public concerned'). Hence, in our view it could be necessary to adapt the definition (and the references in Art 27) accordingly.

In this context we also note that the ECJ has ruled i.e. in Case C-404/13 (*Client Earth*, paragraph 56) that '**natural or legal persons directly concerned** by the limit values being exceeded must be in a position to require the competent authorities, if necessary by bringing an action before the courts having jurisdiction, to establish an air quality plan which complies with the second subparagraph of Article 23(1) of Directive 2008/50, where a Member State has failed to secure compliance with the requirements of the second subparagraph of Article 13(1) of Directive 2008/50 and has not applied for a postponement of the deadline as provided for by Article 22 of the directive (see, by analogy, judgment in *Janecek*, EU:C:2008:447, paragraph 39).'

¹ 3. In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, ***where they meet the criteria, if any, laid down in its national law, members of the public*** have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.

We further note that the ruling does not make any reference to the AC as such and that ‘*directly concerned*’ in the sense of ECJ jurisprudence may not necessarily be congruent with the ‘public concerned’ in the context of the AC. The ECJ’s ruling, however, could be understood as laying down criteria for the ‘members of the public’ (as referred to in Article 9 para 3 AC) that have to be met in order to be entitled to access to justice. Thus, we are of the opinion that this should be duly respected and reflected in the definition of Art 4 para 38.

Therefore, we would like to ask the CLS to check whether the proposed definition needs adjustment in the light of the requirements Art 9 para 3 AC as well as the jurisprudence of the ECJ. In our view (pending further examination), a possible solution could be to add ‘directly’ in accordance with EJC jurisprudence into the definition:

*“(38) ‘the public **directly** concerned’ means the public affected or likely to be affected by exceedances of air quality standards, or having an interest in, ~~the decision-making procedures related to the implementation of the obligations under this Directive~~ **laid down in Articles 19 and 20; for the purposes of this definition;** **for the purposes of this definition,** including non-governmental organisations promoting the protection of human health or the environment and meeting any requirements under national law **shall be deemed to have an interest;**”*

Article 8 para 2 Assessment criteria

As we already mentioned during the WPE, we are very critical towards the proposed amendment in Art 8 para 2 as regards the phrase ‘classified as above the assessment thresholds **but below the limit values**’. In our view, the provision now reads as if there is no longer an obligation for fixed measurement if limit values are exceeded. We cannot support such a proposal and insist on retaining the previous version of the text and would politely insist on Presidency checking this text again.

We also note that the change from ‘*shall*’ to ‘*may*’ in Art 8 para 3 would merely maintain the status quo of the current Directive. Hence, we would prefer keeping ‘*shall*’, since the option to either use in addition modelling or indicative measurements already provides sufficient flexibility.

Annex I, AERO

We are critical towards the weakening of the AERO (Average Exposure Reduction Obligation) in the Presidency Proposal, but in the spirit of compromise (especially with a view to adopting a Council position as soon as possible) can accept the proposed changes.

Article 18

In principle, we can accept the additional changes of the Presidency in Art 18 in order to reach a compromise. We are, however, rather critical towards further opening up the scope of the requirements for time extensions as requested by several MS in the last WPE meeting.

With regard to the new criterion of taking into account ‘modelling applications results’ that show that limit values cannot be attained, we see a potential risk of improper use of this clause at least until the EC has provided (harmonized) technical details for modelling applications (Art 8 para 5a). Therefore, as a minimum prerequisite, the underlying modelling assumptions should be notified to the EC in a transparent and comprehensive manner.

Article 19

AT thanks the Presidency for taking into account our concerns regarding the preparation of plans for ozone ahead of 2030 in para 4.

Corresponding language should also be added in recital No 32, e.g.:

*(32) Air quality plans should also be prepared ahead of 2030 where there is a risk that Member States will not attain the limit values or ozone target values by that date in order to ensure that levels of pollutants are reduced accordingly. **Regarding ozone, Member States may refrain from establishing plans under the same conditions as provided for ozone target value exceedances after 2030.***

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 welcomes the deletion of para 2 and thanks the Presidency for taking our concerns into account. Regarding the suitability of the term ‘(members of the) public concerned’ (Art 9 para 2 AC) vs. ‘(members of the) public’ (Art 9 para 3 AC), we have already commented above that further legal examination would be required to ensure that reference is made to the appropriate/correct term. Furthermore, we point out that recital No 39 needs amendment. In particular, we note that none of the references that are made with regard to ECJ case law (i.e. C 826/18 and C-416/10) are relevant for Art 9 para 3 AC, as they explicitly refer to Art 9 para 2 AC. Therefore, we suggest that the appropriate findings of the ECJ, in particular from the judgment C-664/15 (*Protect*), are cited instead.

Recital No 39 should read as follows:

(39) Article 9 paragraph 3 of the Aarhus Convention provides that each party to that Convention is to ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment. As clarified by the case-law of the Court of Justice¹⁶, the review procedures referred to in Article 9 paragraph 3 of that Convention may thus be subject to ‘criteria’, from which it follows that, in principle, Member States may, in the context of the discretion they have in that regard, establish procedural rules setting out conditions that must be satisfied in order to be able to pursue such review procedures.

As specifically clarified by the case law of the Court of Justice¹⁷, Article 9 paragraph 3 of that Convention does not preclude a rule imposing a time limit, obliging the effective exercise, from the administrative procedure stage, of the right of a party to the procedure to submit objections regarding compliance with the relevant rules of environmental law. In addition, any review procedure should be fair, equitable, timely and not prohibitively expensive, and provide for adequate and effective redress mechanisms, including injunctive relief as appropriate.

Furthermore, the Court of Justice¹⁸ has ruled without reference to the Convention that natural or legal persons directly concerned by the limit values being exceeded must be in a position to require the competent authorities, if necessary by bringing an action before the courts having jurisdiction, to establish an air quality plan where a Member State has failed to secure compliance with the limit values and has not applied for a postponement of the deadline.

footnote 16: Case C–826/18, Judgment of the Court (First Chamber) of 14 January 2021; LB and Others v College van burgemeester en wethouders van de gemeente Echt-Susteren; paragraph 49.

footnote 17: Case C–664/15, Judgment of the Court (Second Chamber) of 20 December 2017; Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation v Bezirkshauptmannschaft Gmünd; paragraph 88.

footnote 18: Case C-404/13, Judgment of the Court (Second Chamber) of 19 November 2014; Client Earth v the Secretary of State for the Environment, Food and Rural Affairs; paragraph 56.

Article 28: Compensation for damage to human health

We welcome all the changes that have been introduced so far. However, we are still of the opinion that – since it is a political decision of the co-legislators to include such a provision into the Directive – Art 28 should be fully deleted.

Article 29. Sanctions

Since we have repeatedly questioned the enforceability of para. 3 lit. c, we support the SI proposal to at least modify the provision such that it does not refer to specific groups, which – in most cases – cannot be specified by authorities responsible for sanctioning for practical reasons and without disproportionate effort.

Recital 45

We welcome the reinstatement of the recital. We suggest that ‘the Treaty’ is cited as the Treaty on European Union (TEU) (similar to the way it has been done in recital 5 in relation to the TFEU):

(45) Since the objective of this Directive, namely to set out air quality provisions to move the Union closer to a zero pollution objective for air quality so that within the Union air quality is progressively improved to levels no longer considered harmful to human health and natural ecosystems, cannot be sufficiently achieved by the Member States by reason of the transboundary nature of air pollutants and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty of European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.



Council of the European Union
General Secretariat

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

Brussels, 26 October 2023

WK 13906/2023 INIT

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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on the Environment
N° Cion doc.:	ST 14217/22 + ADD 1
Subject:	Air Quality Directive: Follow-up to the WPE on 20 October 2023 - comments from delegations

Following the call for comments on the above set out with WK 13656/2023, delegations will find attached comments from BG, CZ, DE, IE, FR (followed by a courtesy translation), HR, IT, NL, AT, PL, PT, SK and SE.

WK 13906/2023 INIT

LIMITE

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ITALY

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

Presidency compromise text 2023/13947

WPE 20 October 2023 – Follow up

Article 4

Definition 14: we are happy with the new version of the definition of UFP but, without changing the meaning of the text, we think that the definition would be more correct in the following wording:

“‘ultrafine particles’ (UFP) means particles with a diameter less than or equal to 100 nm; *UFP are measured as **number concentration, that is number of particles per cubic centimetre (cm³)**, for...*”

Article 8

We appreciate the Presidency taking into account our proposal for changing the text of article 8, thought with the aim of increasing the interpretative clarity of the article.

Nevertheless, having replaced "shall" with "may" in the current wording of paragraph 3, it seems that paragraphs 2 and 3 now contain essentially the same provisions. If so, to avoid ambiguities of interpretation, we suggest that the two paragraphs be merged, with the following changes:

- remove the expression "but below the respective limits values" at the beginning of paragraph 2;
- delete paragraph 3, which contains redundant provisions at this point.

The amended text would read as follows:

2. In all zones classified as over the assessment thresholds ~~but below the respective limits values~~ established for those pollutants, fixed measurements shall be used to assess the ambient air quality. Those fixed measurements may be supplemented by modelling applications 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 may be used in addition to fixed measurements to assess the ambient air quality.~~

~~Those modelling applications or indicative measurements 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.~~

Article 10

In paragraph 1, it seems that “10 000 km²” at the beginning of the sentence is mentioned by mistake; we suggest to delete the expression “whose territory is over 10 000 km²”:

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 over 10

000 km² but less than 100 000 km² shall establish at least one monitoring supersite at a rural background location.

Article 13 and Annex I

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. As mentioned also in the recital n. 20, Table 2 should be a summary of the current standards and not innovative.

Therefore we propose to end Table 2 after lead and to introduce an additional Table with metals and benzo(a)pyrene; the text will contain a Table 2.a and a Table 2.b.

Table 2.a: Limit values for the protection of human health to be attained by [INSERT TRANSPOSITION DEADLINE]

Table 2 – Limit values for the protection of human health to be attained by [INSERT TRANSPOSITION DEADLINE]

Averaging period	Limit value
PM_{2.5}	
Calendar year	25 µg/m ³
PM₁₀	
1 day	50 µg/m ³ not to be exceeded more than 35 times per calendar year
Calendar year	40 µg/m ³

13947/23		SH/bsl	62
ANNEX	TREE.1.A	LIMITE	EN

Nitrogen dioxide (NO₂)	
1 hour	200 µg/m ³ not to be exceeded more than 18 times per calendar year
Calendar year	40 µg/m ³
Sulphur dioxide (SO₂)	
1 hour	350 µg/m ³ not to be exceeded more than 24 times per calendar year
1 day	125 µg/m ³ not to be exceeded more than 3 times per calendar year
Benzene	
Calendar year	5 µg/m ³
Carbon monoxide (CO)	
maximum daily 8-hour mean ⁽¹⁾	10 mg/m ³
Lead (Pb)	
Calendar year	0,5 µg/m ³

Table 2.b: Target values for the protection of human health to be attained by [INSERT TRANSPOSITION DEADLINE]

Arsenic (As)	
Calendar year	6,0 ng/m ³
Cadmium (Cd)	
Calendar year	5,0 ng/m ³
Nickel (Ni)	
Calendar year	20 ng/m ³
Benzo(a)pyrene	
Calendar year	1,0 ng/m ³

Article 18

Regarding the exemptions of article 18, the procedure provided for in the current wording still seems to contain some elements that make their application difficult.

It is not clear what could happen in the event that the technical assessment and the plan scenarios demonstrate the impossibility of achieving the new limit values in the maximum period, set by the article at 5 years. Could the Commission, in this case, grant the request?

There remains, moreover, the difficulty of preparing multiple applications and multiple plans within a few years in order to apply for a possible renewal of the derogation after the first 5 years of application of the reduction measures.

Therefore, we continue to prefer the granting of a single derogation, the duration of which is defined by the technical assessment of the air quality plan.

Periodic comparisons with the European Commission could be imposed during the derogation period in order to verify the implementation of the plan and the progress achieved, for instance after 5 years of implementation of the plan.

The first paragraph will read as follows (suggested changes in bold):

Where, in a given zone, conformity with the limit values for particulate matter (PM₁₀ and PM_{2.5}), 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, transboundary contributions, energy poverty as defined in Directive (EU) 2023/1791 of the European Parliament and of the Council or if modelling applications results, as performed for the purposes of Annex VIII, Section A, point 6(d), show that the limit values cannot be attained within the attainment date specified in Annex I, 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 ~~and for maximum of 5 years~~, if the following conditions are met:

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

(d) *the air quality plan referred to in point (a) outlines how additional funding, including via relevant national and Union funding programmes, will be mobilised to accelerate the improvement of air quality in the zone to which the postponement would apply.*

During the period of exemption, Member States shall demonstrate that the measures in the air quality plan referred in point (a) of the first subparagraph of this paragraph have been implemented; periodic consultations with the Commission can be foreseen at this scope.

In this case, the last sentence of paragraph 1, referred to the possibility of a second derogation, could be removed.

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 meteorological conditions; we suggest to add the following sentence:

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

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**”.

PORTUGAL

Ambient Air Quality Directive (AAQD)

Follow-up to the Working Party on Environment of 20th October 2023

Comments from PT

Portugal welcomes the efforts of the ES presidency in drafting a revised compromise text and can generally agree with the changes proposed by the presidency and with the text presented in document ST13947. There are, however, some comments which are still of high importance to us and that we would like to share.

Following the request by the Presidency after the last WPE meeting on 20 October (WK 13656/2023), Portugal submits the following comments on the compromise text (ST13947/2023), which we wish to emphasize.

Article 8 - Assessment criteria

Portugal agrees with the changes proposed by the ES PRES in article 8.

Regarding paragraph 5 we believe the wording added to the third sentence “and their area of spatial representativeness” is not necessary since if a fixed measurement does not occur , it may not make sense to refer its area of representativeness.

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

Portugal welcomes the proposed changes in article 18, which constitute another step in the right direction, but still maintains some reservations regarding the deadline and the reasons that may justify the demand for postponement.

Portugal is of the opinion that greater flexibility should be added to paragraph 1 of article 18, allowing the inclusion of additional reasons, such as the fact that there are no adequate and proportionate measures to be implemented in a short period of time, and the adverse conditions in territorial planning.

There are structural measures (e.g., the reorganization of road networks, relocation of infrastructures, or the development of public transport infrastructures) whose translation into spatial planning instruments take time to implement as does their subsequent implementation in the territory.

Article 19 - Air quality plans

Portugal welcomes the PRES proposals in article 19 of 3 years for the preparation of the air quality plan and a total period of 6 years for compliance (article 19(1), 19(2), 19(3) and 19(4)) which meet our concerns, as well as the wording proposal in Article 19(2) regarding the requirement to inform the Commission when an air quality plan is not established for ozone.

Article 27 - Access to justice

PT maintains a scrutiny reserve on the issue of this article. Portugal appreciates the PRES effort to amend Article 27, however, we share the opinion this article has no added value and alternatively would prefer to add reference to the Aarhus Convention in the recitals instead of article 27 as was already proposed by other MS. This has been the agreed solution in most of the recent files (as are the examples of the Drinking Water Directive, the European Climate Law, and all the files in the Fit for 55 package).

Article 28 - Compensation for damage to human health

Portugal, as other MS, maintains the support to the deletion of this article.

Portugal takes a very critical view of the compensation provision set out in Article 28 (1) which is linked to breaches of duty por e.g., failure to draw up an air quality plan (Article 19(1), 19(3), 19 (4)) and a short-term action plan (Article 20(1) and 20(2)), for which the causal effect of specific harm to human health is generally unlikely to be verifiable.

It should also be noted that Portugal considers that the content of the text is not clear with regard to the specific violation of Article 19(1), 19(3) and 19(4), and Article 20(1) and 19(2) contained in Article 28(1), and it is not clear whether this includes situations such as failure to meet the deadlines for the adoption of an air quality plan, the content of an incomplete air quality plan, the air quality plan not adequate and effective to achieve legal compliance, long deadlines established to achieve compliance, etc...

Furthermore, Article 28(1) refers to duties of the state and not those responsible for pollutant emissions and it is unlikely that it will be possible to establish and verify a causal relationship between the effect of violating these duties and any specific harm to human health.

The main benefits expected from the intermediate limite values proposed in the Directive in question are related to health, including the reduction of mortality and morbidity, health care expenditure and absence from work due to illness and the increase in productivity at work. However, a total absence of health impacts can probably only be achieved with full alignment with the 2021 WHO guidelines on air quality which now can't still be achieved.

Studies prior to this proposal concluded that this alignment currently is not possible as it represents excessive costs and, in many cases, it would not be possible to comply with these standards only based on viable reductions technically.

So, the plans subject to compensation within the scope of the proposal in Article 28 are drawn up with a view to achieving those intermediate air quality objectives to be provided within the scope of this proposal.

Portugal considers very difficult, if not impossible, to relate the violation of Article 19(1), 19(3) and 19(4) and Article 20(1) and 20(2) (failure to draw up quality plans air and short-term plans within the stipulated deadlines) with damage and consequences for human health, with no guarantees that the implementation of the measures recommended therein will prevent such damage.

Furthermore, although the objective of the measures established in the plans is to improve air quality and their implementation leads to air quality levels with lower impacts on human health, the air quality objectives that are intended to be achieved do not yet guarantee the total absence of health effects, not corresponding to WHO guidelines for the reasons explained above.

As this directive establishes intermediate values, it alone would not provide a basis for citizens to call for compensation as air quality plans at this stage do not aim to achieve WHO guidelines.

It should also be noted that establishing a causal link between air quality and disease of an individual is in itself complex and it seems not reasonable to consider that in our days is possible to establish an unequivocal relationship between the levels of pollutants in the ambient air and the occurrence of a certain health problem, since there are numerous factors in addition to the quality of the ambient air that determine the health status of an individual, which includes, e.g., their exposure to indoor air, their lifestyle habits, their diet and sometimes genetic characteristics.

The issue of claims and compensation for health problems based on the deterioration of environmental conditions should be left to other instruments closer to a factual or scientific basis on which the causal link can be established between the violation and the occurrence of the damage, namely legislation aimed sources of pollutants.

It should be noted that, according to Portugal's analysis, the provision of article 28 of the Directive in question is of a completely different nature, for example, from the provision contained in the proposed revision of the Industrial Emissions Directive. This Directive deals with concentrations of pollutants in ambient air, therefore, the responsibility of the Member State and not of natural (legal) persons who do not comply with an emission limit value.

In this aspect, Portugal does not see the need to go beyond the State responsibility requirements that were developed by the ECJ based on the EU treaties and which it considers sufficient for compensation claims in the respective cases.

Although Portugal supports the ambition of the diploma and the need to converge with WHO guidelines, and welcome the changes proposed in the compromise text of Article 28 as a step in the right direction, understands that the associated sanctioning and compensatory regime is disproportionate and could place MS in a situation of atual non-compliance and that's why it keeps the request of total deletion of article 28.

Article 29 - Penalties

Portugal maintains a scrutiny reserve on the issue of this article.

NETHERLANDS

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

Written comments on the compromise text of the Spanish Presidency

Article 18:

- ➔ The Netherlands considers it will best to replace “energy poverty” in this list of reasons with “disproportionate costs”. We think this covers a lot of problems that member states might have attaining the deadlines. For ozone, in article 19 disproportionate costs are a legitimate reason not to make an air quality plan, this criterion could also be applied in this article. It is also stated in the Treaty of the Functioning of the EU (TFEU) article 191 point 5, that this is a legitimate reason for temporary derogation. This would also mean a condition as point E: “Member States should demonstrate that disproportionate costs should have to be made to attain limit values”.
- ➔ We are also of the opinion that modelling results should be deleted from this paragraph. In theory, it is possible that a model shows that limit values are not attainable purely because the model is based on input containing measures that are not ambitious enough.
- ➔ We would like to delete the possibility of the extension of the derogation period after the first period of five years. It must be prevented that there are still areas in the EU after 2035 where the IT4 limit value will not be respected. This is even more important since the remaining time to work towards zero pollution will become too short. If the Council nevertheless decides in favor for a second extension period, its length should be as short as possible and by no means longer than 2 years.
- ➔

Article 27:

- ➔ For these articles, we think that coherence with the texts currently being negotiated for the Industrial Emissions Directive is important.
 - ➔ The text of article 28, paragraph 1 needs a slight adjustment, to streamline it with recital 40. Natural persons should not be ‘*entitled to compensation*’, but ‘*have the right to claim and obtain compensation for that damage*’.
 - ➔ The text of recital 40 would even be better if we change ‘*are able to claim and obtain compensation*’ into ‘*have the right to claim and obtain compensation*’.
 - ➔ We have a text proposal for article 28, paragraph 1 (NL proposal in red):
“Member States shall ensure that, natural persons who suffer damage to human health caused by a violation of the national rules transposing the provisions of the of Articles 19(1), 19(3), to 19(4), 20(1) and 20(2), 21(1) second sub-paragraph and 21(3) of this Directive that has been committed intentionally or negligently by the competent authorities, *have the right to claim and obtain compensation for that damage are entitled to compensation* in accordance with this article and in accordance with national procedures.”
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SLOVAKIA

Comments to the Working Party on Environment

on 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

The Slovak Republic welcomes the new Presidency compromise text as set in doc. ST 13947/23 and can agree with many suggested changes. As expressed during the Working Party on Environment held on 20th of October 2023, Slovak Republic would like to suggest some amendments to the Presidency compromise text:

Annex 1 Section 5 (AVERAGE EXPOSURE REDUCTION OBLIGATION FOR PM2.5 AND NO2) and Article 4 paragraph 28 (average exposure indicator)

On the Annex I Section 5 Point A “Average exposure indicator“ the Slovak Republic would like to suggest an alignment with the definition of designated sampling points used under EEA reporting, where the words “urban background locations” should be change to “urban and suburban locations” and the words “over all sampling points” to words “over designated sampling points”. Therefore, the first two sentences should read as follows:

A. Average exposure indicator

*The Average Exposure Indicator expressed in µg/m³ (AEI) shall be based upon measurements in urban **and suburban** background locations in given average exposure territorial units ~~at~~ NUTS+ level throughout the territory of a Member State. It shall be assessed as a 3-calendar-year running annual mean concentration averaged **over designated sampling** points of the relevant pollutant established pursuant to Point B of Annex III in each average exposure territorial unit.*

Likewise, the definition of average exposure indicator in Article 4 paragraph 28 should read:

*(28) ‘average exposure indicator’ means an average level determined on the basis of measurements at urban **and suburban** 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.*

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

Slovak Republic welcomes the changes made in this Article but similarly to the changes in Article 18 we should also consider the socio-economic impacts under the Article 13. In this context we would like to suggest (alike the Czech Republic) an amendment to the paragraph 1:

*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 (PM10 and PM2.5), 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.

Article 20 (Short-term action plans)

The Slovak Republic is not convinced about the necessity to establish short-term action plans, especially when it comes to smog situations caused by the PMs. Smog situations are caused by meteorological conditions and the need for heat in households. Given that it is not possible to turn off household heating, there are currently no short-term measures that could end the PM smog situation. In this context, the Slovak Republic would like to suggest following change in paragraph 1:

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

*However, where there is a risk of exceedance of the alert threshold for ozone, **or PM**, Member States may refrain from establishing such short-term action plans when there is no significant potential, taking into account national geographical, meteorological and economic conditions, to reduce the risk, duration or severity of such an exceedance. Where a short-term action plan is not established, Member States shall inform the Commission.*
