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MEETING DOCUMENT

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| From: | General Secretariat of the Council |
| To: | Working Party on the Environment |
| N° Cion doc.: | ST 14217/22 + ADD 1 |
| Subject: | Air Quality Directive: WPE on 5 February 2024 - Addendum to the Presidency steering note |

With a view to the abovementioned WPE, delegations will find attached an addendum to the Presidency steering note circulated in doc. WK 1511/2024.

Working Party on the Environment (WPE)

5 February 2024

Ambient Air Quality Directive (AAQD)

Addendum to the Presidency Steering Note

This addendum to the Steering Note published on 1 of February (WK 1511/2024) contains two new sections:

1. Options to be considered for article 18
2. Corrections and additions to the original Steering note, published under WK 1511/2024

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

The amendments made by the EP to this article are:

- Concerning the reasons for postponement, the deletion of the words ‘adverse climatic conditions’ and the inclusion of the words ‘exceptional and unpreventable’ in paragraph 1;
- The inclusion of two new elements as a condition to apply for postponement with regard to the limit values to be attained by 2030:
 - requirement to meet the current limit values.
 - the inclusion of annual projections of emissions and concentrations in the roadmap/air quality plan under 19(4) and demonstrating that the new limit values will be met by the end of the postponement period.

The Council from its side made several changes, including:

- Inclusion of B(a)P and benzene as pollutants
- Extension of the period by up to 10 years
- Possibility to ask for postponement including when the roadmap/air quality plan under 19(4) indicates that more time is needed to meet the limit values.
- Inclusion of two new reasons to apply for postponement:
 - A high share of low-income households in the air quality zone concerned if the Member State in question has a national GDP per capita lower than the EU average.
 - It can be demonstrated by modelling that the limit values cannot be attained by the deadline.
- Inclusion of a safeguard: “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” (row 218a).

The Presidency considers the 10-year period as a high priority for the Council.

However, the EP, has indicated that it would only consider such extension if accompanied by much stricter conditions for granting the postponement as well as safeguards along the way.

The Presidency is aware of the sensitivity of this article and of the delicate balance achieved in the initial Council mandate.

The Presidency is also aware that it will not be possible to find agreement with the EP on this article without showing flexibility on some aspects. With the different proposals and questions below, the Presidency would like to have a better understanding of delegations' priorities and flexibilities.

Reasons for postponement

Regarding the reasons for a postponement, the Presidency proposes to insist on the reintroduction of the climatic conditions alongside the dispersion characteristics and orographic boundary conditions.

EP continues to insist on the deletion of the modelling condition.

To address the concern of several delegations and taking into account the strong opposition of Parliament to any socio-economic reference, the Presidency is of the opinion that an explicit reference to the domestic heating systems (instead of the low-income and GDP clause) could be a way forward. The Presidency sees the following formulations as possible:

Where (...) conformity with the limit values (...) cannot be achieved (...) because (...) or

- a. 'where the necessary reductions can only be achieved by replacing a considerable fraction of the existing domestic heating systems'
- b. 'in zones with a high share of [outdated] domestic heating systems [using solid fuels]'
- c. 'because of the specificities of the domestic heating systems'

Question 1. The Presidency invites delegations to indicate whether they could accept any of the above proposals.

Conditions when applying for postponement

In addition to the conditions already included in the Commission proposal (rows 215 – 218), the Presidency invites delegations to consider the following options:

- a. The inclusion of air quality projections in the roadmap/air quality plan under Article 19(4), showing that the limit values cannot be attained by the attainment deadline (2030).
- b. The inclusion of air quality projections in the roadmap/air quality plan under Article 19(4), showing that the limit values will be attained by the end of the postponement period (which is also a condition in the current directive).
- c. Stronger language in row 218 on the use of funding available

Question 2. The Presidency invites delegations to indicate whether they could accept any of the above proposals.

Guarantees during the postponement period

An extension of the reasons and the timeframe for postponement is only acceptable for the EP if safeguards are introduced that guarantee that Member States take the necessary actions to comply with the limit values by the end of the postponement period. Possible options to accommodate some of the EP's concerns include the following:

- a. Introducing a trajectory whereby:
 1. The concentrations for the relevant pollutant need to stay below the linear reduction path between 2030 and the last year of the postponement period from the limit values in Table 2 of Annex I, section 1 to the limit value in Table 1 of Annex I, section 1.

2. Same as the previous, but to be evaluated on a 3-year basis to take account of fluctuations due to e.g. meteorological conditions.
3. Adding a general statement such as “the concentrations of the relevant pollutant need to show a decreasing trend”.
- b. A periodical update of the roadmap. In line with the logic for art. 19 explained in the Steering Note (WK 1511/2024); in such case a five -yearly update seems the most appropriate frequency, which would mean that, if the roadmap is due by 31/12/2028, a first update would be needed by 31/12/2033 and, only when a 10 year postponement is granted, a second one by 31/12/2038.
- c. Establishment of a regular (annual, biennial, ...) implementation report to describe and demonstrate progress in the implementation of the measures described in the roadmap. This report should include emission projections and, where possible, air quality projections.
- d. When an implementation report shows that (important) measures are not on track, an update of the roadmap.

The Presidency is aware that the preparation of such documents would entail h an additional administrative burden but is also of the view that the introduction of some safeguards will be needed to reach a final deal with the EP.

A possible implementation of point b. and c. could be a 5-yearly update of the roadmap with an implementation report in between (2,5 years after the roadmap).

Question 3. The Presidency invites delegations to indicate whether they could accept any of the above proposals.

2. Additions and corrections to the Steering note

2.1 Article 28

Please find below the complete Presidency proposal for article 28 (para 6 was omitted in the original Steering note).

Regarding this article, the Presidency has identified room for flexibility in rows 311, 316 **and 317**. For the sake of clarity, the entire article is copied below, with the changes proposed to the Council mandate highlighted in red:

1. Member States shall ensure that, natural persons who suffer damage to human health caused by a violation of the national rules transposing the provisions of Articles 19(1) **to 19(3)**, 19(4), 20(1) and 20(2) of this Directive ~~that has been committed intentionally or negligently~~ by **an act or omission of** the competent authorities have the right to claim and obtain compensation for that damage.

5. *(re-introduced, changes to COM proposal in bold)* **Member States shall ensure that national rules and procedures relating to claims for compensation, including as concerns the burden of proof, are designed and applied in such a way that they do not render impossible or excessively difficult the exercise of the right to compensation for damage caused by a violation pursuant to paragraph 1.**

6. Member States may establish limitation periods for bringing actions for compensation as referred to in paragraph 1. Such **limitation periods shall not be less than [5] years and** shall not begin to run before the violation has ceased and the person claiming the compensation

knows, or can reasonably be expected to know, that he or she suffered damage from a violation as referred to in paragraph 1.

Justification for the proposed changes:

- The Council deleted the mention of paragraph 19(2) because in the Council mandate, Member States may refrain from establishing an AQP for ozone. However, in the Presidency's opinion, this is not contradictory to the inclusion of 19(2) under 28(1). as If there is no mandatory action plan for ozone, there would only be a violation – and thus a basis for a claim – if the Commission was not informed of the fact that no plan was established.
- The words 'committed intentionally or negligently' are not in the final agreement on the IED. Furthermore, due to the different nature of the directives, where IED is addressed to private companies and the AAQD primarily to authorities, there would be good reason to take a different approach. In the IED where this was introduced to avoid that companies who do everything that is possible and necessary would still be subject to claims, but it is hard to use this approach for the establishment of plans by competent authorities.
- The inclusion of 'act or omission' is a partial introduction of the EP amendment and would not have a substantial impact.
- Para 5 could be reintroduced in line with the final agreement for the IED. The reference to the burden of proof needs to be deleted and a small addition is suggested, again in line with the IED.
- **Para 6: the "may establish" is kept but with the reintroduction of a prescriptive limitation period (no less than 5 years or another period)**

Question 10. The Presidency invites delegations to indicate whether they could accept the above proposal or, if not, to motivate their objection.

2.2 Annex IV, B.2(g)

This text was marked in green in the annexes document contained in the document circulated on 1 February (WK 1511/2024 ADD 1), with the text as it was in the Commission proposal. In the meantime, a correction was made at the ITM of 1 February and the correct text is as follows (corrected parts in **bold**)

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

Annex IV, C, b

In its proposal in document WK1511/2024 for this part of annex IV, the Presidency did not take into account the changes to the Air Quality directive introduced by directive 2015/1480. The corrected proposal is:

*(b) in general, the inlet sampling point shall be between **0,5 m** (the breathing zone) and 4 m above the ground. Higher siting may also be appropriate if the sampling point is representative of a large area. **The decision to apply such higher siting shall be fully documented.***

2.3 Annex VIII

Following progress made in discussions on Annex VIII at the ITM of 1 February, the Presidency proposes the below compromise covering the entire annex. Changes to Council mandate are indicated in bold.

ANNEX VIII **INFORMATION TO BE INCLUDED IN AIR QUALITY PLANS AND AIR QUALITY** **ROADMAPS FOR IMPROVEMENT IN AMBIENT AIR QUALITY**

A. Information to be provided under Article 19(5)

1. Localisation of excess pollution
 - (a) region;
 - a. city/cities (maps);
 - b. sampling point(s) (map, geographical coordinates).
2. General information
 - (a) type of zone (urban, industrial, or rural area) or characteristics of the territorial unit (including urban, industrial, or rural areas);
 - (b) estimate of the polluted area (in km²) and of the population exposed to the pollution;
 - (c) concentrations or average exposure indicator of the relevant pollutant observed **from** at least 5 years prior to the exceedance **up to the most recent data, including their comparison with limit values or average exposure reduction obligation and average exposure concentration objective;**
3. Responsible authorities

Names and addresses of the competent authorities responsible for the development and implementation of air quality plans **or air quality roadmaps.**
4. Origin of pollution taking into account reporting under Directive (EU) 2016/2284 and information provided in the national air pollution control programme
 - (a) list of the main emission sources responsible for pollution;
 - (b) total quantity of emissions from these sources (in tonnes/year);
 - (c) assessment of the level of emissions (e.g. city level, regional level, national level, and transboundary contributions);
 - (d) source apportionment according to relevant sectors that contribute to the exceedance in the national air pollution control programme. -

4a. Description of the baseline scenario used as a basis for the air quality plan or air quality roadmap and the effects of non-action.

- (a) **a projected further evolution of air quality, both emissions and concentrations, assuming no change to already adopted measures ('baseline scenario'), until the attainment date;**

5. Annex I: Details of measures to reduce air pollution under point 5 Identification of effective air pollution abatement measures

- (a) listing and description of all the measures **considered set out** in the air quality plan **or air quality roadmap** including the identification of the competent authority in charge of their implementation;
- (b) quantification of emission reduction (in tonnes/year) **and, where available, concentration reductions** for each measure **or a set of related measures,** under point (a);
- (c) timetable for implementation of each measure, and responsible actors;

- ~~(d) estimate of the concentration reduction as a consequence of air quality measures, in relation to the exceedance concerned; concentration reductions for each measure or group of measures shall be estimated when appropriate;~~
- (e d) list of the information (including modelling and assessment results of measures) to reach the air quality standard concerned in accordance with Annex I.

6. Selection and expected impact of measures to reach compliance within the timelines established in Article 19

(-b) selection of measures to reach compliance with the limit values. Where the list of measures pursuant to point 5(a) includes measures with possible high potential to improve air quality, but they have not been selected for adoption, an explanation of the reasons why the measures are not selected for adoption;

(-a) quantification of emission reduction (in tonnes/year), from the combination of measures referred to in point (-b);

(a) expected quantified concentration reduction (in $\mu\text{g}/\text{m}^3$) at each sampling point in exceedance of limit values, target values or of the average exposure indicator in case of an exceedance of the average exposure reduction obligation, from the **set of** measures referred to in point **6 (-b);**

(b) estimated year of compliance per air pollutant covered by the air quality **roadmap or air quality** plan taking into account **the set of** measures referred to in point **6 (-b);**

(ba) for air quality roadmaps under Article 19(-1) and air quality plans under Article 19(1), reasons to explain how the plans or roadmaps set out measures to ensure that the exceedance period is kept as short as possible.

7. Annex 2: Further background information

- (a) climatic data;
- (b) data on topography;
- (c) information on the type of targets requiring protection in the zone, (if applicable);
- (d) listing and description of all additional measures, that unfold their full impact on ambient air pollutant concentrations in 3 years or more;
- (e) socio-economic information on the related area, in order to promote environmental equity issues and the protection of sensitive **population and vulnerable** groups.
- (f) a description of the method used and the assumptions made or data used for forecasting the evolution of air quality;**
- (e) background documents and information used for the assessment;**

7a. Annex 2a: A summary of the public information and consultation measures undertaken pursuant to Article 19(6), their results and an explanation of how these results were taken into account in the final air quality plan or air quality roadmap.

8. Annex 3: Evaluation of measures (in case of an air quality plan update)

- (a) assessment of timetable of measures from the previous air quality plan;
- (b) estimate of impact on emission reduction and pollutant concentrations of measures from the previous air quality plan.

B. Indicative list of air pollution abatement measures

1. Information concerning the status of implementation of the Directives referred to in Article 14(3), point (b), of Directive (EU) 2016/2284.

2. Information on all air pollution abatement measures that have been considered at local, regional or national level for implementation in connection with the attainment of air quality objectives, **including such as:**

(a) reduction of emissions from stationary sources by ensuring that polluting small and medium-sized stationary combustion sources (including for biomass) are fitted with emission control equipment or replaced, and that the energy efficiency of buildings is improved;

(b) reduction of emissions from vehicles through retrofitting with zero emissions powertrains and emission control equipment. The use of economic incentives to accelerate take-up shall be considered;

(c) procurement by public authorities, in line with the handbook on **environmental green** public procurement, of fuels, combustion equipment to reduce **emissions and zero-emission vehicles as defined in Article 3(1), point (m), of Regulation (EU) 2019/631 of the European Parliament and of the Council^{1a}**;

(ca) reduction of emissions through the uptake of zero- and low-emission collective and public transport vehicles and/or vehicles equipped with modern digital solutions affecting emissions reduction;

(cb) measures to improve the quality, efficiency, affordability and connectivity of collective and public transport;

(cc) measures related to the uptake and implementation of alternative fuel infrastructure;

d) measures to limit transport emissions through **urban** planning and **traffic** management, **including:**

- i. congestion pricing, **such as road pricing and mileage-based user fees;**
- ii. **choice of road materials;**
- iii. parking fees **on public land** or other economic incentives **and with differentiated fees for polluting and zero-emission vehicles;**
- iv. establishing urban vehicles access restrictions schemes, including low emission zones **and zero-emission zones;**
- v. **establishing low-traffic neighbourhoods, super blocks and car-free neighbourhoods;**
- vi. **establishing car-free streets;**
- vii. **'last mile' zero (exhaust) emission delivery arrangements;**
- viii. **promoting car sharing and carpooling;**
- ix. **implementation of intelligent transport systems**
- x. **creation of multimodal hubs connecting various sustainable transport solutions and parking facilities;**
- xi. **incentivising cycling and walking, for example by expanding space for cyclists and pedestrians, prioritising cycling and walking in infrastructure planning, expanding the network of cycling routes;**
- xii. **(xiii) planning for compact cities;**

e) measures to encourage a **modal** shift towards **active mobility** and less polluting forms of transport (**e.g walking, cycling, public transport or rail**), **including:-**

i.electrifying public transport, strengthening the public transport network, and simplifying access and use, for example through digital and interconnected booking and real-time transit information;

ii.ensuring smooth inter-modality for rural-urban commuting, for example between rail and cycling, and between cars and public transport (park and ride schemes);

iii.-redirecting fiscal and economic incentives towards active and shared mobility, including incentives for cycling and walking commute to work;

iv.scrappage schemes for the most polluting vehicles;

(f) measures to encourage a shift towards zero emissions vehicles and non-road machinery for both private and commercial applications;

(g) measures to ensure that low emission fuels are given preference in small-, medium- and large-scale stationary sources and in mobile sources;

(h) measures to reduce air pollution from industrial sources under Directive 2010/75/EU, and through the use of economic instruments such as taxes, charges or emission trading, while taking into account specificities of SMEs;

(hb) reduction of emissions from maritime and air transport through the use of alternative fuels and deployment of alternative fuels infrastructure, as well as the use of economic incentives to accelerate their take-up, and establishing specific requirements for ships and boats at berth and port traffic, while speeding-up on-shore power supply and electrification of ships and port working machinery;

(hc) measures to reduce emissions from agriculture;

i) measures to protect the health of children or other sensitive population **and vulnerable** groups;

(ia) measures to encourage behavioural changes.