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**Brussels, 01 February 2024**

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## **MEETING DOCUMENT**

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

With a view to the above WPE meeting on 5 February 2024, delegations will find attached a steering note prepared by the Presidency.

## **Working Party on the Environment (WPE)**

**5 February 2024**

### **Ambient Air Quality Directive (AAQD)**

#### **Presidency Steering Note**

On 5 February, the WPE will examine the outcome resulting from the third trilogue held on 23 January and the fifteen Interinstitutional technical meetings (ITMs) held so far under the Spanish and Belgium Presidencies. This steering note is composed of four sections:

1. Compromise texts provisionally agreed with the European Parliament, which need to be confirmed by the Council.
2. Yellow rows for further discussion.
3. Open items from the third trilogue.
4. Elements for further reflection in view of the final trilogue to be held on 20 February.

Delegations will have the possibility to submit written comments until **7 February, cob.**

The 4-column document and a separate document for annexes, reflecting the progress made in negotiations to date will be published on the Delegates Portal as an Addendum to the present steering note.

The Presidency would be grateful if delegations could refer to the article and row number in the 4-column document when making their comments. Annexes should be referred to by number, section, (sub) paragraph.

As two more ITMs will take place on 1 and 2 February, further information and proposals, notably on article 18, will be shared by the Presidency as soon as possible as an addendum via the Delegates Portal and orally during the WPE meeting.

The discussion during WPE will be organised as follows:

- Cluster 1: sections 1 (green rows) and 2 (yellow rows). In the interest of time, the Presidency asks delegations to react only if they have concerns or questions regarding these rows.
- Cluster 2: section 3 (open items from the 3<sup>rd</sup> trilogue)
- Cluster 3: Art. 12-13-19, AERO and annex VIII.B (section 4.1, 4.3-4)
- Cluster 4: Art. 18 (section 4.2)
- Cluster 5: Art. 27-28-29 + definition of “public concerned” (section 4.5)

The whole text has been discussed in ITMs and 61 % of the rows have been greened so far.

## 1. Greened rows since the previous WPE

For the following rows, provisional agreement has been reached with the EP:

For the following rows, the EP accepted the Council mandate: 116, 147b, 147c, 148, 156, 194, 200a, 201, 201a, 206, 207b, 209, 245, 250, 254, 256, 258, 279, 319, 321, 322 and 325c.

In the following rows, the EP dropped its additions: 152a, 246a, 249a, 253a, 265a, 265b, 265c, 267a, 268.

Row 105a: As already touched upon in the Presidency steering note for the WPE of 9/1, the EP introduced the concept of hotspots, which in the EP mandate is related to places influenced by multiple emission sources without a direct correlation with the level of the concentrations. The draft agreement clarifies instead that “hotspots” relates to the locations with the highest concentrations. With this clear definition, the concept of hotspots was also included in Annex III, A.1, Annex IV, B.2 (a) and (ca) and Annex VII, section 1, A.

Row 107: EP amendment (which is in line with the definition in the current directive).

Row 110: Combination of EP and Council amendments (in line with row 107).

Row 110a: The agreed text combines the second option as proposed during WPE on 9/1 with the condition that a combination should be below Member State-level, which was already in the Council mandate.

Row 120: EP amendment with minor changes.

Row 147e: The placeholder for the deadline for the adoption of the implementing act (“[by date]”) from the Council mandate has been moved to row 147a, where 3 years is proposed.

Row 150: 'Shall' has been kept, since this does not imply an obligation to use bio-indicators, but to consider their use.

Row 155: Textual changes, a more general reference to Annex I rather than to the tables.

Row 158: Combination of EP and Council amendments, with additional clarifications.

Row 182: Combination of EP and Council amendments. The article also refers to situations where levels are below the assessment thresholds, so this should be reflected in the title.

Row 183: Minor textual changes and a more general reference to Annex I.

Row 187: Textual changes. Deletion of the reference to human health since it relates to the protection of vegetation as well.

Row 188: Textual changes: the listing of the pollutants was replaced by a general reference to 'pollutants' and only a reference to the relevant section was done, not to the specific tables.

Row 198: Textual change related to the reorganisation of Annex I, section 4.

Row 199: Introduction of information thresholds for other pollutants than ozone.

Row 199a: EP mandate with the addition of the words 'where appropriate' to reflect Art. 20 and wording adapted in line with row 200

Row 200: Combination of EP and Council amendments.

Row 207a: Proposal adapted based on comments received during the WPE of 09/01.

Row 236: Minor textual changes.

Row 247: Combination of EP and Council amendments.

Row 249: Inclusion of EP amendments and alignment of the wording.

Row 250a: Council accepted the adapted EP mandate. This will not lead to additional obligations for MS but rather opens possibilities for MS.

Row 253: Council mandate and EP mandate are merged in accordance with the discussions at the previous WPE on 09/01.

Row 258: EP agreed with the Council's proposal, but references to the paragraphs still need to be checked.

Row 261: EP mandate was adjusted in line with the received comments of MS during the previous WPE on 09/01.

Row 266: Council mandate and EP mandate are merged. The addition of the AECO will not lead to additional obligations because the AECO is covered by the AERO.

Row 267b: Compromise based on the EP amendment but in a less prescriptive form.

Row 325: Council mandate and EP mandate are merged.

For the annexes, these parts have been greened:

- Annex I, section 2, A: the Council amendment changing the definition of AOT was not included since it would lead to a disruption in the time series compared to existing measurements (the change would lead to a one-hour shift in the measurements).
- Annex I, section 3 and section 5 C: Council mandate.
- Annex II, section 2: Council mandate.
- Annex III, A (apart from carbon monoxide, see next point), B and C: Council mandate with the inclusion of 'hotspots'.
- Annex IV, apart from C (b): Point B2 has been slightly adapted to allow the inclusion of hotspots. Some other changes following the written comments the Presidency received after the WPE of 09/1. In the table under B.4, the reference to 'sensitive population and vulnerable groups' was included in the first row, with the addition of 'as much as possible and where relevant' to avoid that existing monitoring stations would need to be replaced.
- Annex V, B, C, D and E: Council mandate.
- Annex VI: Council mandate, with merging of points 12 and 16 under A.
- Annex VII, section 1, section 2 and section 3, A and B: Council mandate with addition of hotspots in section 1, A and reformulation in section 2, B.
- Annex VIIa: As agreed in the new Coreper mandate.
- Annex IX, apart from 1(b) and 3: Inclusion of EP mandate in 1 (d), with the addition of 'as far as possible'.

## 2. Yellow rows for further discussion

All the rows in the 4 CT have been discussed at least once. Further discussion is needed for some of them. For some rows, the text only depends on the results of discussions elsewhere in the text, such as the use of the roadmap-terminology (rows 116a, 117, 130, 147a, 190, 223, 233, 238, 239, 240, 241, 242, 243 and 264) or the use of target values (instead of limit values) for metals (rows 163, 184 and 189).

Some parts of the Annexes are pending approval by the Council before they can be greened. From the Presidency's point of view, these are acceptable compromises. In the interest of time, the Presidency asks delegations to react only if they have concerns or questions regarding the proposals below::

- Annex III, A: the Council removed 'carbon monoxide' from the list of pollutants to be monitored at a traffic station, the EP wants to keep it in. This would mean that when CO-concentrations are comparable in two hotspots, one related to traffic and one related to (e.g.) industry, the monitoring station would have to be placed at the traffic location.
- Annex IV, C. b: no agreement yet, but for Council it is important that the text is not stricter than the current directive to avoid that existing stations need to be removed. We therefore propose a formulation that combines the wording from the current directive and some changes from the new proposal: *"in general, the inlet sampling point shall be between 0,5 m (the breathing zone) and 4 m above the ground. Higher positions (up to 8 m) may be necessary in some circumstances. Higher siting may also be appropriate if the station is representative of a large area (a background location). The decision to apply such higher siting shall be fully documented"*.
- Annex VII, section 3, C: EP wants to keep the text of the COM proposal.
- Annex IX, 1(b): Inclusion of the EP mandate, with a 'where possible'.
- Annex IX, 3: The EP wants to keep the text from the COM proposal. The reason for the deletion by the Council was that a situation 'where the exceedance occurs' is dealt with in part 2, but this is not entirely true since point 3 also refers to limit and target values. Moreover, 'a risk of exceedance' is much broader than the part that was deleted.

### **3. Open items from the third trilogue**

The third trilogue was held on 23 January. While for some items on the agenda compromises were found during the meeting (included in the list in section 1), no agreement was found on others. The Presidency will debrief delegations on these and in some cases would like to explore further flexibility from delegations.

#### **3.1.Art. 8 (Assessment criteria)**

Following the revised Coreper mandate from 17 January, the EP formulated a counterproposal for paragraphs 3 and 5, as shown in the table below (changes by EP compared to the Coreper mandate are marked in red).

	Council	EP (22/01)
Art. 8(3)		
144	<p>3. From 2 years after the entry into force of the implementing act referred to in paragraph 5a of this article, modelling applications or indicative measurements shall be used in addition to fixed measurements to assess the ambient air quality in all zones where the level of pollutants exceeds a relevant limit value or a target value established in Annex I.</p> <p>Where modelling applications are applied, they shall be carried out as often as appropriate but at least every 5 years.</p>	<p>3. <del>In all zones where the level of pollutants 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 may be used in addition to fixed measurements to assess the ambient air quality.</del></p> <p>From 2 years after the entry into force of the implementing act referred to in paragraph 5a of this article, modelling applications <del>or indicative measurements</del> shall be used in addition to fixed measurements to assess the ambient air quality in all zones where the level of pollutants exceeds a relevant limit value or a target value established in Annex I.</p> <p>Where modelling applications are applied, they shall be carried out as often as appropriate but at least every 5 years.</p>
145	<p>Those modelling applications or indicative measurements shall provide information on the spatial distribution of pollutants. Where modelling applications are used they shall also provide information on the spatial representativeness of fixed measurements.</p>	<p>Those modelling applications <del>or indicative measurements</del> shall provide information on the spatial distribution of pollutants. Where modelling applications are used they shall also provide information on the spatial representativeness of fixed measurements.</p>
Art. 8(5)		
147	<p>5. The results of modelling applications undertaken in accordance with paragraph 3 and 4 of this Article or paragraph 3 of Article 9 or indicative measurements shall be taken into account for the assessment of air quality with respect to the limit values and target values.</p> <p>If fixed measurements are available with an area of representativeness covering the area of exceedance calculated by the modelling application, a Member State may choose not to report the modelled exceedance as an exceedance of the relevant limit values and target values.</p> <p>If modelling applications show an exceedance of any limit value or target value</p>	<p>5. The results of modelling applications undertaken in accordance with paragraph 3 and 4 of this Article or paragraph 3 of Article 9 or indicative measurements shall be taken into account for the assessment of air quality with respect to the limit values and target values.</p> <p>If fixed measurements are available with an area of representativeness covering the area of exceedance calculated by the modelling application, a Member State may choose not to report the modelled exceedance as an exceedance of the relevant limit values and target values.</p> <p>If modelling applications show an exceedance of any limit value or target value</p>

<p>in an area of the zone not covered by fixed measurements and their area of spatial representativeness, at least one additional fixed or indicative measurement may be used in the area of the maximum concentration (when this concentration is not linked to a temporary effect) modelled in the zone. Where additional fixed measurements are used, these measurements shall be established within 2 calendar years after the exceedance was modelled. Where additional indicative measurements are used, these measurements shall be established within 1 calendar year after the exceedance was modelled. The measurements shall cover at least 1 calendar year in accordance with the minimum data coverage requirements set out in Point B of Annex V, to assess the concentration level of the relevant pollutant.</p> <p>Where a Member State chooses not to conduct any additional fixed or indicative measurements, the exceedance shown by modelling applications shall be used for air quality assessment.</p>	<p>in an area of the zone not covered by fixed measurements and their area of spatial representativeness, <del>at least one</del> additional fixed or indicative measurements <del>may</del> shall be used <del>in the area of the maximum concentration (when this concentration is not linked to a temporary effect) modelled in the zone.</del> Where additional fixed measurements are used, these measurements shall be established within <del>2 calendar years</del> 18 months after the exceedance was modelled. Where additional indicative measurements are used, these measurements shall be established within 1 calendar year after the exceedance was modelled. The measurements shall cover at least 1 calendar year in accordance with the minimum data coverage requirements set out in Point B of Annex V, to assess the concentration level of the relevant pollutant.</p> <p><del>Where a Member State chooses not to conduct any additional fixed or indicative measurements, the exceedance shown by modelling applications shall be used for air quality assessment.</del></p>
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The Presidency explained that a deadline shorter than 2 years is practically impossible for fixed measurements and that the word ‘may’ is actually an incentive to rely on modelling, which would lead to earlier action being taken rather than having to wait for the results of additional measurements. The Presidency therefore currently sees no room for flexibility to accommodate the EP’s wishes and proposes to stick to the Coreper mandate, with one minor change: it would be clearer to replace the words ‘in the area of the maximum concentration’ with the words ‘in the area of the modelled exceedance’ (since the maximum concentration should already be covered by the existing monitoring station).

### 3.2. Art. 9 (Sampling points), art. 10 (Supersites) and Annex VII section - 1 (Measurements of pollutants at supersites)

In the revised Coreper mandate, no changes were made to the monitoring requirements compared to the original mandate in art. 9. For art. 10 and the related Annex VII however, monitoring of SO<sub>2</sub> was included in both urban and rural supersites and monitoring of benzene and CO was included in urban supersites to accommodate the EP’s request.

During the third trilogue, the EP proposed a compromise package for Art. 9, 10 and annex VII:

- Council mandate for Art. 9 (which means that the EP would drop its amendment on obligatory monitoring of NH<sub>3</sub>, BC and Hg and on increasing the number of additional UFP monitoring sites);

- Council mandate for Art. 10 for rows 165, 166, 169, and the second part of 169b (which means that the EP would accept to keep the number of supersites as in the COM proposal and accept flexibilities for smaller Member States as well as for large Member States with a relatively small population);
- Deletion of the flexibility in the first part of row 169b in Art 10 (where levels are below the assessment threshold): already included in the revised Coreper mandate;
- Obligatory monitoring of CO also in rural supersites;
- Obligatory monitoring of total deposition of metals and BaP and PAH also in urban supersites.

During the trilogue, the Presidency indicated that it did not have a mandate to agree to such a package deal and that more consultation with Member States was needed. Having in mind the several points still open for the final trilogue, the Presidency is of the opinion that the EP proposal (obligatory monitoring of CO and total deposition of metals and of BaP and PAH in both urban and rural supersites in exchange for the Council mandate in article 9 and 10 should be accepted, with an adjustment for the deposition of metals, BaP and PAH to address the problem of the space needed to monitor depositions. This adjustment would be included in Table 1 of Annex VII -1, with a footnote that reads: “*Where the siting of a monitoring supersite at an urban background location does not allow for the guidelines and criteria of EMEP to apply as per Annex IV Section C point (f), the corresponding deposition measurement may be performed at a separate urban background location within the area of representativeness.*”

**Question 1. The Presidency invites delegations to indicate whether they could accept the above proposal or, if not, to motivate their objection.**

### 3.3. Annex I section 4 (Alert and information thresholds)

In its revised Coreper mandate, the Council included information thresholds for PM<sub>2.5</sub>, PM<sub>10</sub>, SO<sub>2</sub> and NO<sub>2</sub> and lowered the alert thresholds for SO<sub>2</sub> and NO<sub>2</sub>, thus already making a considerable move towards the EP. The information thresholds for PM included in the Coreper mandate were the same as the alert thresholds (50 µg/m<sup>3</sup> for PM<sub>2.5</sub> and 90 µg/m<sup>3</sup> for PM<sub>10</sub>), but to be evaluated over 24 hours instead of 3 days. The EP pushes for information thresholds that are lower (as for the value itself) than the alert thresholds and proposes 40 µg/m<sup>3</sup> for PM<sub>2.5</sub> and 70 µg/m<sup>3</sup> for PM<sub>10</sub>.

The Presidency considers its compromise proposal for PM<sub>2.5</sub> and PM<sub>10</sub> to be appropriate and that a further lowering of the information thresholds would lead to an overflow of information messages to be sent and therefore suggests sticking to the revised Coreper mandate. To avoid any misinterpretation, the Presidency would however suggest replacing the “24 hour” averaging period by “1 day”.

It should be noted that with an approach using different averaging times for the alert threshold than for the information threshold for SO<sub>2</sub> and NO<sub>2</sub>, there is a possibility that the alert threshold (to be measured over 3 hours) is triggered before the information threshold (to be measured over 1 day), which is not logical. This could be solved by taking the same approach for SO<sub>2</sub> and NO<sub>2</sub> as for PM, with the same threshold being used for information and alert threshold but on a shorter timeframe (1 hour instead of 3 hours).

Given the strong plea by the EP for further strengthening, the Presidency looked into the possibility of using lower values for the information thresholds for SO<sub>2</sub> and NO<sub>2</sub>, with values at (approximately) 75% (as is the case for O<sub>3</sub>) or 50% of the alert threshold, and concludes that the 75% approach (which would result in a threshold of 275 µg/m<sup>3</sup> for SO<sub>2</sub> and 150 µg/m<sup>3</sup> for NO<sub>2</sub>) the number of information messages would still be acceptable (based on 2022 data, the highest number would be 28 for NO<sub>2</sub> and 21 for SO<sub>2</sub>; for most Member States there would be none at all).

#### **Presidency proposal (new elements in red text):**

#### **SECTION 4 - ALERT AND INFORMATION THRESHOLDS**

##### **A. Alert thresholds**

To be measured over 3 consecutive hours in the case of sulphur dioxide and nitrogen dioxide, and over three consecutive days or less for PM<sub>10</sub> and PM<sub>2.5</sub>, at locations representative of air quality over at least 100 km<sup>2</sup> or an entire zone, whichever is the smaller.

To be measured over one hour for ozone; for the implementation of Article 20, the exceedance of the threshold is to be measured or predicted for 3 consecutive hours.

Pollutant	Averaging period	Alert threshold
Sulphur dioxide (SO <sub>2</sub> )	1 hour	350 µg/m <sup>3</sup>
Nitrogen dioxide (NO <sub>2</sub> )	1 hour	200 µg/m <sup>3</sup>
PM <sub>2.5</sub>	1 day	50 µg/m <sup>3</sup>
PM <sub>10</sub>	1 day	90 µg/m <sup>3</sup>
Ozone	1 hour	240 µg/m <sup>3</sup>

## B. Information thresholds

*To be measured over 1 hour in the case of sulphur dioxide and nitrogen dioxide and 1 day in the case of PM<sub>10</sub> and PM<sub>2.5</sub>, at locations representative of air quality over at least 100 km<sup>2</sup> or an entire zone, whichever is the smaller.*

To be measured over one hour for ozone.

Pollutant	Averaging period	Information threshold
Sulphur dioxide (SO <sub>2</sub> )	1 hour	275 µg/m <sup>3</sup>
Nitrogen dioxide (NO <sub>2</sub> )	1 hour	150 µg/m <sup>3</sup>
PM <sub>2.5</sub>	1 day	50 µg/m <sup>3</sup>
PM <sub>10</sub>	1 day	90 µg/m <sup>3</sup>
Ozone	1 hour	180 µg/m <sup>3</sup>

**Question 2.** The Presidency invites delegations to indicate whether they could accept the above proposal or, if not, to motivate their objection.

### 3.4.Art. 20

For art. 20 the remaining issue is row 246 and more specifically the provision on (not establishing) short term action plans for PM. The EP has made a counterproposal that is included in the table below.

	Council	EP
Art. 20(1)		
246	However, where there is a risk of exceedance of the alert threshold for ozone or particulate matter (PM <sub>10</sub> and PM <sub>2.5</sub> ), 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.	However, where there is a risk of exceedance of the alert threshold for ozone <del>or particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>)</del> , 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, for particulate matter (PM <sub>10</sub> and PM <sub>2.5</sub> ), the potential is severely limited, taking into account local geographical and meteorological conditions, to reduce the risk of such an exceedance, a short-term action plan may only focus on specific actions aiming at the protection of both, the general public and sensitive population and vulnerable groups, as well as easily understandable information on behavior to reduce exposure to the forecasted exceedance.

		Where a short-term action plan is not established, Member States shall inform the Commission.
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Given the strong position of many delegations during the discussion of the revised mandate in Coreper, the Presidency maintained the Council position during the third trilogue. However, the Presidency is of the view that the EP proposal takes into account the concerns expressed by Council as it recognizes the severely limited potential to reduce PM-concentrations by short term emission reduction measures during alert episodes. The Presidency would therefore propose to accept the EP proposal (in red below), with some changes (in black), also in line with proposals made in Coreper:

Where, for particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>), the potential is severely limited, taking into account local geographical and meteorological conditions **and specificities of domestic heating systems**, to reduce the risk of such an exceedance, a short-term action plan may only focus on specific actions aiming at the protection of both, the general public and sensitive population and vulnerable groups, as well as easily understandable information on **recommended** behavior to reduce exposure to the **measured or** forecasted exceedance.

**Question 3. The Presidency invites delegations to indicate if they could accept this compromise and, if not, to motivate their objection.**

### 3.5.Art. 21 (Transboundary air pollution), rows 251a-e

Although the Presidency has explained that the added paragraph 1a (rows 251a-e) is in line with provisions already included in Commission's initial proposal for art. 18, the EP cannot accept its inclusion. The reasoning of the EP is that the similarity between the language in this paragraph and the language in art. 16 and art. 17 would create an opening for transboundary pollution to be deducted completely for compliance purposes, as is the case for natural contributions or winter sanding and salting. The EP also links this paragraph with the Council amendment in art. 3.2(1) (row 70).

The Presidency understands the importance of this paragraph. In order to convince the EP to accept its content, the Presidency believes that it could be reworded and placed further down in article 21.

Building on a COM compromise proposal, the Presidency is suggesting the following: .

4a. Member States may, for a given year, identify:

- (a) zones in which transboundary transport of air pollution contributes significantly to the exceedances of limit values or target values in those zones.
- (b) average exposure territorial units, in which transboundary transport of air pollution contributes significantly to the exceedances of the level determined by the average exposure reduction obligations in those units.

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 transboundary transport of air pollution contributes significantly to the exceedances. The Commission may consider this information for the purposes of Article 18(1).

**Question 4. The Presidency invites delegations to indicate whether they could accept the above proposal or, if not, to motivate their objection.**

### **3.6.Art. 23 (Transmission of information and reporting)**

The remaining item for discussion in art. 23 is the reporting deadline in row 272. The EP insists on the COM-proposal of 4 months, whereas the Council maintains 9 months as in the current directive. The Presidency has explained to the EP at length that there are technical difficulties in reducing this deadline, that it would have a negative impact on the quality of reported data and that this only relates to reporting to the Commission and the EEA in order to assess the data for compliance purposes and to process it for the establishment of the EEA Status reports. This information is less important for the public, where online data are the primary source of information.

Since shortening the deadline is far from evident, the Presidency would primarily want to stick to the Council mandate. However, if necessary, the Presidency invites delegations to consider whether they could accept a compromise whereby the 9-month deadline would be maintained until 2029 and a 6-month deadline would only be introduced from 2030.

**Question 5. The Presidency invites delegations to indicate whether they could accept the above proposal or, if not, to motivate their objection.**

## 4. Items for discussion – expanding the Council mandate

The Presidency sees a possibility to move towards a compromise with the EP on the clusters discussed in this chapter.

### 4.1. Art. 12 (Requirements where levels are lower than the limit values, target values and average exposure concentration objectives), art. 13 (Limit values, target values and average exposure reduction obligations) and Annex I (Air quality standards)

Both paragraphs have been slightly reorganized, with a more general reference to ‘pollutants’ instead of naming all the pollutants. The final wording will depend on what is agreed between the co-legislators on the application of a target value or a limit value for metals and on the references to the WHO guidelines and will need to be streamlined throughout the text of the directive.

The main issue here is the inclusion by the EP of new limit values from 2035 on, aligned with the most recent WHO guidelines. This is not acceptable for the Council since the Impact Assessment that accompanied the COM-proposal made it clear that this is technically impossible.

Also, for the ambition level of the AERO, the Presidency intends to defend the Coreper mandate at the next trilogue. However, there are some issues with that text that would need some rewording.

The first issue has to do with the way the text is drafted. The Presidency believes that what is meant is that if for PM<sub>2.5</sub> the AEI in 2020 is lower than 12 µg/m<sup>3</sup>, a 15% reduction by 2030 is enough. When the AEI in 2020 is 12 µg/m<sup>3</sup> or higher, the AERO for 2030 is 25%. However, the text seems to say that the 15% applies when the AEI is below 12 µg/m<sup>3</sup> in 2030 - not in 2020. It is very uncommon to define the reduction obligation based on the level in the target year (instead of the base year).

The second issue is related to the approach itself. We now assume that the AERO for a year (x) depends on the AEI in year (x-10), as it is in the COM-proposal. When (again for PM<sub>2.5</sub>) the AEI in 2020 is 12 µg/m<sup>3</sup>, the AERO for 2030 is 25% and the AEI in 2030 needs to be reduced to 9 µg/m<sup>3</sup>. When the AEI in 2020 is 11,9 µg/m<sup>3</sup>, the AERO for 2030 is 15% and the AEI in 2030 needs to be reduced to 10,1 µg/m<sup>3</sup>. When the AEI is around the threshold that was introduced by the Council, it leads to a strange situation where the AEI in the target year (x) is allowed to be higher compared to a situation when the AEI in the base year (x-10) is lower.

To address this, the Presidency proposes to change the wording as follows in Annex I section 5.B:

As from 2030, the AEI shall not exceed a level that is:

#### 1. for PM<sub>2.5</sub>,

- (a) when 10 years before the AEI was < 12.0 µg/m<sup>3</sup>: 15% lower than the AEI was 10 years before or 9.0 µg/m<sup>3</sup>, whichever is the lower, unless the AEI is already no higher than the average exposure concentration objective for PM<sub>2.5</sub> defined in Section C.
- (b) when 10 years before the AEI was ≥ 12.0 µg/m<sup>3</sup>: 25% lower than the AEI was 10 years before.

#### 2. for NO<sub>2</sub>,

- (a) when 10 years before the AEI was < 20.0 µg/m<sup>3</sup>: 15% lower than the AEI was 10 years before or 15.0 µg/m<sup>3</sup>, whichever is the lower, unless the AEI is already no higher than the average exposure concentration objective for NO<sub>2</sub> defined in Section C.

(b) when 10 years before the AEI was  $\geq 20.0 \mu\text{g}/\text{m}^3$ : 25% lower than the AEI was 10 years before.

**Question 6. The Presidency invites delegations to indicate whether they could accept the above proposal or, if not, to motivate their objection.**

#### 4.2. Art. 18 (Postponement of attainment deadline and exemption from the obligation to apply certain limit values)

As this item is planned to be further discussed at ITM on 1/2, the Presidency will address this issue in an addendum to this note.

#### 4.3. Art. 19 (Air quality plans): 19(1) to 19(4)

For paragraphs 1 to 4, neither a longer timeframe than the one in the COM proposal (that is similar to the timeframe in the current directive), nor the inclusion of a possibility of not establishing a plan for ozone (row 226a) are acceptable to the EP. The establishment of an air quality plan under 19(4) (row 231) after the attainment deadline is also a red line for the EP. Regarding the update of air quality plans, the EP agreed that these plans should focus on measures and their impact (and not again include a description of the situation and responsibilities). The Commission pointed out that by changing the reference for the update of the air quality plan to the date of recording of the exceedance (both by EP and Council, rows 225, 227 and 230) the notion is lost that when the exceedance remains x years after the update of the plan, a new update would be needed.

To address these issues, a new compromise proposal was drafted by the Presidency. In this proposal, the timelines for paragraphs 1 and 3 were aligned, because these paragraphs relate to the same pollutants and to binding values (contrary to paragraph 2 which relates to target values) and thus could be integrated into one plan. For all paragraphs a planning and updating cycle of 5 years was introduced, in line with the 5-yearly classification of zones. In the proposal, this 5-year logic was extended to the establishment of an air quality plan when already a roadmap/air quality plan under 19(4) is established through the added para 3b. The approach taken for this 19(4) was already explained in the steering note for the WPE of 09/1.

The proposed text is as follows (although it refers to the preparatory air quality plans as ‘roadmap’, no decision has been taken yet on the use of this terminology; resulting timelines and comparison with the COM-proposal and Council and EP mandate are given in the annex to this note):

Rows	<b>Art 19 - Air quality plans and air quality roadmaps</b>	
224	1. Where, in given zones the levels of pollutants in ambient air exceed any limit value [or target value], laid down in Section 1 of Annex I, Member States shall establish air quality plans for those zones as soon as possible and no later than 2 years after the calendar year during which that exceedance of any limit value [or target value] was recorded. Those air quality plans shall set out appropriate measures to achieve the concerned limit value [or target value] and to keep the exceedance period as short as possible, and in any case no longer than 5 years from the end of the calendar year in which the first exceedance was recorded.	
225	Where exceedances of any limit value [or target value] persist during the fourth calendar year after the establishment or update of the air quality plan, Member States shall update the measures contained in the air quality plan as well as information on their expected impact on emissions and concentrations in the subsequent calendar year, and take additional and more effective measures to keep the exceedance period as short as possible.	
226	2. Where in a territorial unit covering at least one air quality zone, the levels of pollutants in ambient air exceed any ozone target value, laid down in Section 2 of Annex I, Member States shall establish air quality plans for those territorial units as soon as possible and no later than 2 years after the calendar year during which the exceedance of the ozone target value was recorded. Those air quality plans shall set out appropriate measures in order to achieve the ozone target value and to keep the exceedance period as short as possible.	
226a	However, Member States may refrain from establishing such air quality plans to address the exceedance for ozone when there is no significant potential to reduce ozone concentrations, considering national geographical and meteorological conditions and where the measures would entail disproportionate costs. Where an air quality plan is not established, Member States shall provide the Commission with a detailed justification, including a description of the situation following the information requested in Annex VIII, point A, points 1 to 3 and where possible also point 4, and a detailed justification of why there is no relevant potential.	However, when there is no significant potential to address the exceedance, considering national geographical and meteorological conditions and provided that its measures do not entail disproportionate costs, the air quality plan may be limited to an assessment of the situation and a justification for the absence of a potential to address the exceedance.
227	Where exceedances of any ozone target value persist during the fifth calendar year after the establishment or update of the air quality plan in the relevant territorial unit, Member States shall, where relevant without prejudice to the second subparagraph of this paragraph, update the measures contained in the air quality plan as well as information on their expected impact on emissions and concentrations in the subsequent calendar year, and take additional and more effective measures to keep the exceedance period as short as possible.	

228	For territorial units where the ozone target value is exceeded, Member States shall ensure that the relevant national air pollution control programme prepared pursuant to Article 6 of Directive (EU) 2016/2284 includes measures addressing ozone precursors covered by that directive.
229	3. Where in a given average exposure territorial unit, the average exposure reduction obligation laid down in Section 5 of Annex I is exceeded, Member States shall establish air quality plans for those average exposure territorial units as soon as possible and no later than 2 years after the calendar year during which the exceedance of the average exposure reduction obligation was recorded. Those air quality plans shall set out appropriate measures to achieve the average exposure reduction obligation and to keep the exceedance period as short as possible and in any case no longer than 5 years from the end of the calendar year in which the first exceedance was recorded.
230	Where exceedances of the average exposure reduction obligation persist during the fourth calendar year after the establishment or update of the air quality plan, Member States shall update the measures contained in the air quality plan as well as information on their expected impact on emissions and concentrations in the subsequent calendar year, and take additional and more effective measures, to keep the exceedance period as short as possible.
230a	3b. Notwithstanding paragraphs 1 to 3 of this article, when an air quality standard is exceeded and an air quality roadmap was established for the relevant air quality standard, Member States shall establish the air quality plan within 5 years after the establishment [or the last update – pending art. 18] of the air quality roadmap.
231	4. Where in 2025 and 2026, in a zone or territorial unit, the levels of any pollutant are above any limit value or target value as laid down in Table 1 of Annex I, Section 1 and Table 1 of Annex I, Section 2, the Member State concerned shall establish an air quality roadmap for that pollutant as soon as possible and no later than 31 December 2028 in order to attain the respective limit values by the expiration of the attainment deadline, without prejudice to the second subparagraph of paragraph 2 as regards ozone plans.
232	Where, for the same pollutant as referred to in the first subparagraph of this paragraph, a Member State is required to establish an air quality roadmap in accordance with that subparagraph as well as an air quality plan in accordance with paragraph 1 of this Article, it may establish a combined air quality plan in accordance with paragraphs 5, 6 and 7 of this Article and provide information on the expected impact of measures to reach compliance for each limit value it addresses, as required by Point A, points 5 and 6, of Annex VIII. Any such combined air quality plan shall set out appropriate measures to achieve all related limit values and to keep all exceedance periods as short as possible.

**Question 7. The Presidency invites delegations to indicate whether they could accept the above proposal or, if not, to motivate their objection. Presidency would also appreciate feedback on the alternative proposed for row 226a.**

#### 4.4. Art. 19(5) to 19(7) and annex VIII

The issues remaining open under 19(5) mainly depend on the decision of the roadmaps-terminology (rows 238, 239 and 240). Row 236 was slightly reformulated to clarify the meaning of ‘where appropriate’. Row 237 was not yet agreed, but the Presidency explained that not all short-term measures are relevant in the long term. Therefore, the wording ‘*shall include, where relevant*’ is proposed.

For Annex VIII, the Presidency explained that the many additions in the EP mandate seem to contradict their request for stricter deadlines and that some of the additions would make the political procedure to adopt a plan very difficult, which would again lead to more time needed. The EP intends to propose a new compromise text for parts A and Ba of Annex VIII. This text was not yet available at the time of writing.

For part B of Annex VIII, which includes a list of measures to be considered for inclusion in the plan, the Presidency drafted a compromise where a reference to relevant measures is retained. The Presidency is aware that in the current text it may not yet be clear that this is only a list for consideration and will work further on this. The extension of the list of measures will only be acceptable if it is sufficiently clear that an evaluation or justification is not needed for every single measure.

**Question 8. The Presidency invites delegations to indicate whether they could accept the above proposal or, if not, to motivate their objection.**

#### 4.5. Chapter VII - Access to justice, compensation and penalties

The Presidency is aware of the sensitivity of this chapter and the proposals below are close to the Council mandate. We have taken into account the IED final agreement and, where relevant, we have aligned the wording.

##### 4.5.1 Definition of ‘public concerned’

In order to accommodate some of the EP amendments in art 27 (rows 302 and 305), the Presidency suggests amending the definition of ‘public concerned’ (row 119) as follows:

38. ‘the public concerned’ means the **public natural or legal persons** affected or likely to be affected by, or having an interest in, the implementation of the obligations laid down in Articles **9, 19 and 20 under this directive**; for the purposes of this definition, 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;

As such, the definition is in line with the Aarhus Convention. Specifying that the public covers both natural and legal persons is also in line with the IED compromise text (since the IED has a separate definition of “public”).

With regards to the addition of a reference to Article 9, the case law of the European Court of Justice clarifies that the members of the public concerned can also challenge provisions on monitoring.

##### 4.5.2. Art. 27 – Access to justice

Regarding this article, the Presidency has identified options for moving towards the EP in rows 301, 305, 306 and 307a. 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, 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 of all decisions, acts or omissions ~~by Member States~~ concerning ~~the network design, location and relocation of sampling points under Article 9, air quality plans and air quality roadmaps referred to in Article 19, and short term action plans referred to in Article 20, of the Member State,~~ provided that any of the following conditions is met:

(a) they have a sufficient interest;

(b) they maintain the impairment of a right, where administrative procedural law of a Member State requires this as a precondition.

Member States shall determine what constitutes a sufficient interest and impairment of a right consistently with the objective of giving the public concerned wide access to justice.

To this end, the interest of any non-governmental organisation promoting ~~the environmental protection of the environment or human health which is a member of the public concerned and meeting any requirements under national law~~ shall be deemed sufficient for the purposes of the first subparagraph, point (a). Such organisations shall also be deemed to have rights capable of being impaired for the purposes of the first subparagraph, point (b).

2. *(re-introduced, changes to COM proposal in red)* ~~To have s~~standing ~~to participate~~ in the review procedure shall not be conditional on the role that the member of the public concerned played during a participatory phase of the decision-making procedures related to Article 9, 19 or 20.

3. The review procedure shall be fair, equitable, timely and not prohibitively expensive, and shall provide adequate and effective redress mechanisms, including injunctive relief as appropriate

~~3a. Member States shall determine at what stage the decisions, acts or omissions may be challenged.~~

4. This Article does not prevent Member States from requiring a preliminary review procedure before an administrative authority and does not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

5. Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures referred to in this Article.

Justification for the proposed changes:

- As for the first subparagraph of paragraph 1, there is already case law concerning the provisions on monitoring, that applies irrespective of whether there is an explicit reference to these articles here or not. The Presidency considers therefore that including these references would not be problematic.
- The last subparagraph of para 1 was, in the Council mandate, in the same form as in the IED. However, since the AAQD is not linked to the protection of the environment only but also to human health, it is appropriate to also include in the scope NGO's working on human health protection.
- As the words "meeting any requirements under national law" are included in the definition of the public concerned, it is not necessary to repeat them here.

- The reintroduction of paragraph 2 is in line with the IED compromise text and comes from the case-law of the Court of Justice (in case C-826/18, the Court ruled that *Member States may not restrict a legal right to challenge a decision of a public authority to those members of the public concerned who have intervened in the preceding administrative procedure to adopt such decision.*)
- The Presidency proposes to delete paragraph 3a as a compromise towards EP.

**Question 9. The Presidency invites delegations to indicate whether they could accept the above proposal or, if not, to motivate their objection.**

#### 4.5.3. Art. 28 - Compensation for damage to human health

Regarding this article, the Presidency has identified room for flexibility in rows 311 and 316. 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 red)* 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.

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 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.

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

#### 4.5.4. Art. 29 – Penalties

For this article, the Presidency sees limited options for moving towards the EP.

A paragraph similar to 29.2 (row 320) is included in the final agreement on the IED. The first part of the text being rather general, a (partial) re-introduction of this paragraph could be considered (in red proposed changes to COM-proposal). The ‘where applicable’ is introduced because paragraph 1 of this article leaves the possibility to apply this article to competent authorities, but here a reference to turnover is not relevant.

2. The penalties referred to in paragraph 1 shall, **where applicable**, include **administrative financial penalties** proportionate to the turnover of the legal person or to the income of the natural person having committed the violation. The level of the fines shall be calculated in such a way as to make sure that they effectively deprive the person responsible for the violation of the economic benefits derived from that violation. ~~In the case of a violation committed by a legal person, such fines shall be proportionate to the legal person’s annual turnover in the Member State concerned, taking account, inter alia, the specificities of small and medium-sized enterprises (SMEs).~~

Another possible compromise option, instead of re-introducing paragraph 2, could be to include some additional points in 29(3) (rows 321-325). As it includes the words “as applicable”, the Presidency suggests the following points:

3. Member States shall ensure that the penalties established pursuant this article give due regard to the following circumstances, as applicable:
  - (a) the nature, gravity, extent and duration of the infringement;
  - (b) *(re-introduced from COM proposal)* the intentional or negligent character of the violation;
  - (c) *(compromise between EP and Council text)* the impact on the population, including sensitive population and vulnerable groups, or the environment affected by the infringement, bearing in mind the objective of achieving a high level of protection of human health and the environment;
  - (d) the repetitive or singular character of the infringement, including any previous receipt of an admonition penalty, or administrative or criminal sanction;
  - (e) *(as an alternative to the partial reintroduction of 29.2 above)* the financial situation of the natural or legal person held responsible as indicated for example by the total turnover of the legal person held responsible or the annual income of the natural person held responsible;
  - (f) *(to take into account EP amendment under aa)* the economic benefits derived from the infringement by the natural or legal person held responsible, insofar as this can be determined.

**Question 11. The Presidency invites delegations to indicate whether they could accept the above proposal or, if not, to motivate their objection.**

## Annexes

### Timelines for the air quality plans

		COM	COUNCIL	EP	Comp
19.1	Deadline for establishment AQP	X+2	X+3	X+2	X+2
	Last year of exceedance covered by AQP	X+4	X+6	X+3	X+5
	If still exceedance in this year, update of AQP needed	X+5	X+6	X+3	X+6
	Update AQP and measures therein	X+6	X+7	X+4	X+7
	Take additional measures	X+6	X+7	X+4	
	Max. exceedance after update	Asap	Asap	X+5	Asap
	<i>If still exceedance in this year, update of AQP needed</i>				X+11
	<i>Update AQP</i>				X+12
	<i>Take additional measures after update</i>				
19.2	Deadline for establishment AQP	X+2	X+3	X+2	X+2
	Last year of exceedance covered by AQP			X+3	
	If still exceedance in this year, update of AQP needed	X+7	X+6	X+3	X+7
	Update AQP and measures therein	X+8	X+7	X+4	X+8
	Take additional measures	X+8	X+7	X+4	
	Max. exceedance after update	Asap	Asap	X+6	
	<i>If still exceedance in this year, update of AQP needed</i>				X+13
	<i>Update AQP</i>				X+14
	<i>Take additional measures after update</i>				
19.3	Deadline for establishment AQP	X+2	X+3	X+2	X+2
	Last year of exceedance covered by AQP			X+3	X+5
	If still exceedance in this year, update of AQP needed	X+7	X+6	X+3	X+6
	Update AQP and measures therein	X+8	X+7	X+4	X+7
	Take additional measures	X+8	X+7	X+4	
	Max. exceedance after update	Asap	Asap	X+5	Asap
	<i>If still exceedance in this year, update of AQP needed</i>				X+11
	<i>Update AQP</i>				X+12
	<i>Take additional measures after update</i>				
19.4/19.-1	Deadline for establishment AQP	X+2	X+3	X+2	31/12/2028
	Deadline for meeting standards	Attainment deadline	Asap	Attainment deadline	Attainment deadline

## Annex VIII.B

### 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:

- (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<sup>1a</sup>;
- (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 ~~at least~~:
  - (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 ~~in line with the most recent Euro standard, and zero-emission zones~~;
  - (v) establishing low-traffic neighbourhoods, super blocks and car-free neighbourhoods;
  - (vi) establishing car-free streets;
  - (vii) ~~introducing low speed limits~~;
  - (viii) 'last mile' zero (exhaust) emission delivery arrangements;
  - (ix) promoting car sharing and carpooling;
  - (x) ~~implementation of intelligent transport systems and digital solutions related to emissions reduction~~;
  - (xi) creation of multimodal hubs connecting various sustainable transport solutions and parking facilities;
  - (xii) 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;
  - (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 at least:
  - (i) electrifying public transport, strengthening the public transport network, ~~reducing public transport cost for citizens~~, 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) ~~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, and~~ redirecting fiscal and economic incentives towards active and shared mobility, including incentives for cycling and walking commute to work;
  - (iv) ~~planning for compact cities;~~
  - (v) 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 road~~ 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 ~~and forestry;~~
- (i) measures to protect the health of children or other sensitive population ~~and vulnerable~~ groups;
- (ia) measures ~~by health authorities~~ to encourage behavioural changes.