POLAND Warsaw December 15, 2022

Commentary of the Republic of Poland to the Proposal for a Directive of the European Parliament and of the Council on ambient air quality and cleaner air (amendment)

General comment:

- The draft directive of the European Parliament and of the Council on air quality and cleaner air (the so-called AAQD - Ambient Air Quality Directive) aims not only to replace the existing directives regulating air quality issues[1], but above all to introduce new requirements to the current system of air quality assessment and management.
- New requirements to improve air quality will require additional funds to be allocated for their implementation and monitoring of compliance with the new obligations, and may contribute to slowing down economic development and the liquidation of many business entities, especially in the heating sector, which are already in a very difficult situation.
- The goals adopted in the AAQD project, which primarily concern the reduction of human exposure to PM10 and PM2.5 concentrations, will exceed Poland's socio-economic capabilities, as they will be directly related to the need to radically abandon solid fuels used in households for heating purposes and replace them with ecological heating systems using e.g. renewable energy.
- It will be even more difficult since it is currently impossible to predict when the Russian military invasion of Ukraine will end, which has a direct impact on the current situation related to the change in the conditions of solid fuels, threatening energy security in Poland and the entire Europe.
- The current requirements of Directive 2008/50/EC continue to pose a major challenge for most of EU Member States in terms of achieving air quality standards for particulate matter PM10 and nitrogen dioxide (NO2). Thus, it would be reasonable for the newly drafted directive to include support mechanisms for Member States aimed at providing support in order to achieve them, rather than imposing additional, unrealistic air quality improvement objectives.
- The draft directive is not accompanied by detailed documentation (Impact Assessment) defining the effects of the implementation of requirements set out in the discussed document by individual Member States.

- **Poland raises the following objections to the AAQD project in terms of:**
  - achieving the proposed intermediate limit values for particulate matter PM10 and PM2.5, NO2, sulfur dioxide (SO2), benzene (C6H6), carbon monoxide (CO) - the values of these levels have been tightened in relation to the current limit values set

[1] EU law defining the rules for the functioning of the air quality assessment and management system:
- Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 on arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air,
- Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe.

out in the above-mentioned. Directive 2008/50/EC - by 1 January 2030, what will be extremely difficult or even impossible to implement within this period by some Member States. For example, the proposed new limit values are currently unachievable for most measuring stations (in 2021, in terms of PM2.5 dust out of 149 stations (automatic and manual) - only results from 5 would meet such an average annual standard for PM2.5 dust = 10 μg/ m3);

- unclear rules regarding the introduction of new standards for NO_2 by defining the average exposure index (AEI) for this substance and extending the provisions of the currently standardized AEI for particulate matter PM2.5;
- unjustified setting of limit values for arsenic, cadmium, nickel and benzo(a)pyrene, which have been so far standardized in Directive 2004/107/EC as target levels (concentration of substances to be achieved within a specified time by means of economically justified technical and technological);
- lack of indication of the date of introducing further tightening of the limit values for the above-mentioned substances (so-called phase II), what will not allow Member States to plan adequate corrective actions in the long term;
- forcing Member States to comply with the levels recommended by the World Health Organization (hereinafter referred to as "WHO") for selected substances, which were published in the 2021 Guidelines, as well as their subsequent updates, and the assessment thresholds that are defined for the purpose of establishing the system air quality measurements, which are specified totally unrealistic without paying any attention to the socio-economic situation of the member states;
- the need to significantly expand the air quality assessment system and mathematical modeling of the spread of air pollution, which will generate additional - very high costs of their purchase and ongoing maintenance, as well as increasing the number of employed experts to service them;
- unclear, new rules for the preparation of air protection programs (in the AAQD referred to as "air quality plans"), and new mechanisms for controlling the implementation of corrective actions specified in them, aimed at achieving air quality standards in the shortest possible time, but not longer than 3 years from the end of the calendar year in which the first exceedance was reported;
- increasing the scope of necessary information that must be included in air protection programs, e.g. resulting from other EU directives, such as Directive 2016/2284 / EU (Annex VIII to the AAQD), what will increase the costs of their preparation, and the risk of having to extend the time for their development, which may result in exceeding the deadline set for their preparation and adoption by way of a local law act, and thus the deadline for starting the implementation of adequate corrective actions resulting from them;
- expanding the group of stakeholders obligatorily involved in the preparation of air protection programs, beyond the administrative authorities responsible for air quality management in the voivodship including preparation of these programs as part of the state budget, e.g. by organizations authorized by the European Commission, including Polish and foreign NGOs, that will interfere with the preparation of programmes causing prolongation of its preparation time, as well as an increase in the cost of the entire process;
- increasing the role of cross-border cooperation in the field of local and/or voivodeship air quality management, which may result in the interference of at least local authorities of neighboring countries in the process of preparing air protection programmes, and thus extending the time and costs of their preparation;
- the proposal to include obligatory new legal tools aimed at counteracting violations of the obligations arising from the provisions of the draft, i.e. failure to meet air quality

standards in the EU, including Poland, i.e. penalties, compensation for damages, also in civil lawsuits, and ensuring mandatory access to justice what may result in the fact that public administration authorities (national, regional or local) will be forced to deal only with cases pending before administrative courts, and not with appropriate actions aimed at effective improvement of the air condition in the area under consideration:

- provisions to ensure access to justice for those wishing to challenge the implementation of this Directive, e.g. where no air quality program has been developed and exceedances of air quality standards persist (Article 27 AAQD);
- providing access to justice for people claiming compensation for health damage caused by violations of legislation setting air quality standards, air quality programmes, short-term action plans or transboundary air pollution (Article 28 AAQD);

- the need to expand the current system of informing the public and relevant government and self-government bodies about the risk of exceeding the alert levels for selected substances, which will generate additional costs for public administration bodies in this regard;
- the need to inform the public more often about the risk of exceeding the alert levels in connection with the definition of alert and information levels for all air pollutants included in the abovementioned list of substances, which may result in the society becoming indifferent to the emerging messages and warnings after some time or what may discourag citizens by possible too frequent alarms.

DENMARK

Danish comments and question for a proposal for a new Ambient Air Quality Directive

Text from Directive is kept in Times new Roaman and Questions in Segoe ul font.

General:

Is there a guide to the annotation somwhere.
E.g. some delete text are on white background - other is on grey background?

Recital (9) Fixed measurements should be mandatory in zones and agglomerations where the long-term objectives for ozone or the assessment thresholds for other pollutants are exceeded. Information from fixed measurements may be supplemented by modelling techniques and/or indicative measurements to ⌦ Modelling applications and indicative measurements, in addition to information from fixed measurements, ⌫ enable point data to be interpreted in terms of geographical distribution of concentrations. The use of ⌦ such ⌫ supplementary techniques of assessment should also allow for reduction of the required minimum number of fixed sampling points. ⇨ in zones where assessment thresholds are not exceeded. In zones where limit values or target values are exceeded, both fixed measurements and the use of modelling applications should be mandatory. 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 ⇦.

Marked text seems more restrictive than article 9 provisions?

Article ~~4~~2

Definitions

For the purposes of this Directive ⌦ , the following definitions apply ⌫ :

Question: Is there any order to list - or should it be alphabetical

(3) 'level' ~~shall mean~~ ⌦ means ⌫ the concentration of a pollutant in ambient air or the deposition thereof on surfaces in a given time;

Would this be modelled or measured concentration? Or both?

Some elaboration on this might clarify the status of modelled concentrations?

(4) ~~(b)~~ 'total ~~or bulk~~ deposition' means the total mass of pollutants which is transferred from the atmosphere to surfaces ⌦, such as ⌫ ~~(e.g.~~ soil, vegetation, water, buildings, ~~etc.)~~ in a given area within a given time;

Does deletion of 'bulk' imply that the future measurement method for this wouldn't be bulk deposition as we would believe is mostly used today?

(13) "black carbon" (BC) means equivalent black carbon (eBC) derived from optical methods.

Why does Black Carbon have double quotes "-" while e.g. ozone have single quotes: '-'
Elemental Carbon is refered in the Annexs - should it also be defined here?

(21) 'objective estimation' means an assessment method to obtain quantitative or qualitative information on the concentration or deposition level of a pollutant through expert judgement, which may include use of statistical tools, remote sensing, and in-situ sensors;

Would it be relevant to mention correlation with other (measured) pollutants in this list?

Article ~~5~~3

Responsibilities

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

(a) assessment of ambient air quality;

(b) approval of measurement systems (methods, equipment, networks and laboratories);

(c) ensuring the accuracy of measurements;

⇩ new

(d) ensuring the accuracy of modelling applications;

What would this entail?

It seems less obvious than for measurements and might benefit from a few explanatory words - or a reference to an annex with requirements?

Article 6~~4~~

Establishment of zones ~~and agglomerations~~

Member States shall establish zones ~~and agglomerations~~ throughout their territory ⇨ , including, where appropriate for the purposes of air quality assessment and management, at the level of agglomerations ⇦ . Air quality assessment and air quality management shall be carried out in all zones ~~and agglomerations~~.

Could it be clarified what is the intension with the phrase 'at the level of agglomerations'? E.g. would separate urban areas be required to be in separate zones?

Article 8~~6~~

Assessment criteria

1. Member States shall assess ambient air quality with respect to the pollutants referred to in Article 7~~5~~ in all their zones ~~and agglomerations~~, in accordance with the criteria laid down in paragraphs 2~~,~~ ~~3, and 4~~ ⇨ to 6 ⇦ of this Article and in accordance with ~~the criteria laid down in~~ Annex IV~~III~~.

2. In all zones ~~and agglomerations~~ where the level of pollutants ~~referred to in paragraph 1~~ exceeds the ~~upper~~ assessment threshold established for those pollutants, fixed measurements shall be used to assess the ambient air quality. Those fixed measurements may be supplemented by modelling ~~techniques~~ ⇨ applications ⇦ and~~/or~~ indicative measurements ⇨ to assess air quality and ⇦ to provide adequate information on the spatial distribution of ~~the ambient~~ air ⇨ pollutants ⇦ ~~quality~~ ⇨ and on the spatial representativeness of fixed measurements ⇦ .

In which cases would modelled excedances trigger a requirement for a air quality plan for the zone?

5. If modelling shows an exceedance of any limit value or ozone target value in an area of the zone not covered by fixed measurements, additional fixed or indicative measurements shall be used during at least 1 calendar year after the exceedance was recorded, to assess the concentration level of the relevant pollutant.

So the modelled exceedance is not a real exceedance, but instead trigger an requirement to measure - which will delay any action taken by several years?

Article 9~~7~~

Sampling points

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3. For zones ~~and agglomerations~~ ⇨ where the level of pollutants exceeds the relevant assessment threshold specified in Annex II, but not the respective limit values specified in Table 1 of Section 1 of Annex I, ozone target values specified in Section 2 of Annex I or critical levels specified in Section 3 of Annex I ⇦ ~~within which information from fixed measurement sampling points is supplemented by information from modelling and/or indicative measurement~~, the ~~total~~ ⇨ minimum ⇦ number of sampling points ~~specified in Section A of Annex V~~ may be reduced by up to 50 %, ⇨ in accordance with Points A and C of Annex III ⇦ provided that the following conditions are met:

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

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

⇩ new

(c) the number of indicative measurements is the same as the number of fixed measurements that are being replaced and the indicative measurements have a minimum duration of 2 months per calendar year;

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

What would be realevant indicative measurements for e.g. BaP except for measurement for shorter duration? Or PM2,5?

6. The results of modelling ⇨ applications ⇦ and~~/or~~ indicative ~~measurement~~ ⌦ measurements ⌫ shall be taken into account for the assessment of air quality with respect to the limit values ⇨ and ozone target values ⇦.

So its up to the individual reponsible authority to determine the status of various modelling results?

Why is this provision not in Article 8 on assement?

Article 10

Monitoring supersites

5. Measurements at all monitoring supersites at urban background locations shall include fixed or indicative measurements of size distribution of ultrafine particles and particulate matter oxidative potential.

Maybe include in definition - or refer to annex for further explanation?

6. Measurements at all monitoring supersites at urban background locations and rural background locations shall include at least the following:

(a) fixed measurements of particulate matter (PM_{10} and $PM_{2.5}$), nitrogen dioxide (NO_2), ozone (O_3), black carbon (BC), ammonia (NH_3) and ultrafine particles (UFP).

Why not HNO3?

8.~~(c)~~ Where appropriate, monitoring shall be coordinated with the monitoring strategy and measurement programme of the Cooperative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe (EMEP) ⇨ , the Aerosol, Clouds and Trace Gases Research Infrastructure (ACTRIS), and the monitoring of air pollution impacts undertaken under Directive (EU) 2016/2284 ⇦.

Will this (ACTRIS) network be a permanent institution/Programme?

Article 27

Access to justice

This article is similar, but different to the one in the recent proposal on Regulation on Deforestation. What is the reason for that?

How does this provision differ from the existing obligations under the Aarhus convention?

Also, council legal services recommended that this kind of provision should be in the recitals. Whats the additional benefit of having it as an article?

Article 28

Compensation for damage to human health

We have a number of questions about this provsion and will probably have maintain a scruteny reservation for some time. It would be helpfull with futher introduction to the article as the preamble is relative short taking into account that this as far as we know is a new type of provision.

Would the state become the primary responsible when local sources contribution to bad air quality?

It would be very usefull to have some examples on situations where this provision is intended to lead to compensation.

Would exceendance of limit values ny itself lead to compention?
(Recital on page 28 seems to imply that..)

Could we have some examples of damage to health where air pollution is the most likely source?

Are there examples of other directives with similar provisions?

Article 29~~30~~

Penalties

⇨ 1. Without prejudice to the obligations of Member States under Directive 2008/99/EC of the European Parliament and of the Council[1], ⇦ Member States shall lay down the rules on penalties applicable to ~~infringements~~ ⌦ violations ⌫ ⇨ by natural and legal persons, ⇦ of the national provisions adopted pursuant to this Directive and shall ⌦ ensure that those rules ⌫ ~~take all measures necessary to ensure that they~~ are implemented. The penalties provided for ⌦ shall ⌫ ~~must~~ be effective, proportionate and dissuasive. ⇨ Member States shall notify the Commission without undue delay of those rules and of any amendment thereof. ⇦

Would it be possible to give an example where penalties would apply.

What would national provisions cover?

ANNEX I

AIR QUALITY STANDARDS

SECTION 2 - OZONE TARGET VALUES AND ZONE LONG-TERM OBJECTIVES

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B. Ozone target values

Objective	Averaging period	Target value	
Protection of human health	Maximum daily 8-hour mean (1)	120 µg/m^3	not to be exceeded on more than 18 days per calendar year averaged over 3 years (2)
Protection of the environment	May to July	AOT40 (calculated from 1-hour values)	18 000 µg/m^3 × h averaged over 5 years (2)

Below we protect vegetation, but here its the broader environment. Is this intensional - and if so - why?

C. **Long-term objectives for ozone (O_3)**

Objective	Averaging period	Long-term objective	
Protection of human health	Maximum daily 8-hour mean within a calendar year	100 µg/m^3 (1)	
Protection of vegetation	May to July	AOT40 (calculated from 1 h values)	6 000 µg/m^3 × h

What is the legal implication of setting af year for the long term target (2030) - and having to parallel target values and long term targets?

ANNEX III

MINIMUM NUMBERS OF SAMPLING POINTS FOR FIXED MEASUREMENT

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Table 4 - Minimum number of sampling points for fixed measurements to assess compliance with ozone target values, long-term objectives and information and alert thresholds in zones where a 50% reduction of such measurements applies (for ozone only)

Population of zone (thousands)	**Minimum number of sampling points if the number of sampling points is reduced by up to 50% (1)**
< 250	1
< 500	1
< 1 000	1
< 1 500	2
< 2 000	2
< 2 750	3
< 3 750	3
≥ 3 750	1 additional sampling point per 4 million inhabitants

We assume headline for Table 4 is a typo - and this the the 'full' requirement, which otherwize is missing?

ANNEX IV
ASSESSMENT OF AMBIENT AIR QUALITY AND LOCATION OF SAMPLING POINTS

A. General

Ambient air quality shall be assessed in all zones as follows:

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

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

2. Compliance with the limit values directed at the protection of human health shall not be assessed at the following locations:

(a) any locations situated within areas where members of the public do not have access and there is no fixed habitation;

(b) in accordance with Article 4(1), on factory premises or at industrial sites to which all relevant provisions concerning health and safety at work apply;
(c) on the carriageway of roads; and on the central reservations of roads except where there is normally pedestrian access to the central reservation.

More a comment: This exception is somewhat contradictictionary as its not legal to measure here - and modelling would be highly influenced by local scal turbulence. However, is there any explanation for the very specific reference?

There could could a number of situations were further guidance on wther or not assessment of the air quality is relevant. E.g. would the limit values be relevant for a station with full roof, but no walls?

B. Macroscale siting of sampling points

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(b) sampling points shall in general be sited in such a way as to avoid measuring micro-environments in the immediate vicinity of the sampling point, which means that a sampling point must be sited in such a way that the air sampled is representative of air quality for a street segment no less than 100 m in length at locations measuring the contribution of road traffic and at least 250 m × 250 m at locations measuring the contribution from industrial sites or other sources such as ports or airports, where feasible;

Also more of a comment: 100 meters: This can be quite restrictive as many urban areas are very heterogenous.

250X250: What is the exact meaing of this requirement - that you should be so far from the source that there would be no significant cencentration gradient over the mentioned area?

C. Micro-scale siting of sampling points

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(b) in general, the sampling point inlet shall be between 0,5 m (the breathing zone) and 4 m above the ground. Higher siting (up to 8m) may be appropriate if the sampling point is representative of a large area (a background location) or in other specific circumstances and any derogations shall be fully documented;

Do we have any documentation for this provision. At background location it should be assumed that contrations were relative uniform up to several hundred meters in height?

D. Site selection, its review and documentation

1. The competent authorities responsible for air quality assessment shall for all zones fully document the site-selection procedures and record information to support the network design and choice of location for all monitoring sites. The design of the monitoring network shall be supported at least by either modelling or indicative measurements.

Can it be assumed that existing documentation from the ongoing programme would be one of the main sources for documentation?

9. At least every 5 years the selection criteria, network design and monitoring site locations, defined by the competent authorities in view of the requirements of this Annex, shall be reviewed to ensure they remain valid and optimal overtime. The review shall be supported at least by either modelling or indicative measurements.

Would this be the most effective approach. E.g. for trafic oriented sations it would be logical to look at trafic volumes and changes to building topography?

SPAIN

Written comments / questions on the Commission proposal and/or impact assessment – SPAIN

As requested by the Presidency during the WPE meeting on the 18 November on the Proposal for a Directive on AAQ and Clean Aire for Europe, please find below some comments on the Commission proposal and/or impact assessment.

- On the 10th of November, the European Commission (EC) published the proposal for the **new Euro 7 standards** to reduce pollutant emissions from vehicles and improve air quality. This proposal deviates from the preferred option in the impact assessment.
  The recent proposal for the Euro 7 standards sets out a reduction in emissions from light-duty vehicles and vans from 80 to 60 mg/km for NOx in diesel vehicles and maintains the NOx limits at 60 mg/km in petrol vehicles. For PM, the pre-existing limits in Euro 6 are maintained.
  In our opinion, as Euro 7 proposal does not have an environmental legal basis, it lacks the ambition needed to meet the requirements of the new proposal for the Ambient Air Quality Directive as part of the third pillar of the clean air policy framework. This less ambitious Euro 7 proposal implies weakened a third pillar, with a consequent negative effect on the achievement of the air quality directives objectives.
  Given that the proposed Ambient Air Quality (AAQ) Directive establishes much lower air quality limit values in 2030 for NO2 and PM, we would appreciate an assessment on how the new Euro 7 regulation has been evaluated in the impact assessment of the new AAQ Directive air quality standards.

  We would like to request the EC:
  1. a clarification on:
     a. why the preferred option in the impact assessment has not been the one chosen for the proposal and how , the risk of recession, inflation have been weighted against the environmental and health risk factors.
     b. how the new Euro 7 regulation has been evaluated in the impact assessment of the new AAQ Directive, with respect the new air quality standards.
  2. Its views on how this proposal would provide a sound basis to support, as a third pillar of the clean air policy framework (source legislation), Member States (MMSS) in the attainment of the much lower air quality limit values in 2030 for NO2 and PM

- We would like to highlight that the **emissions of air pollutants under the baseline scenario** used in the study to support the impact assessment for a revision of the AQQ Directive seem optimistic compared to our national emissions projections in 2030. We detected significant differences for NOx and NMVOCs as the base line in 2030 considers an approximate reduction around 25% less emissions not estimated in our national projections.
  It is true that additional policies are considered in the study (as European Commission climate targets (Fit for 55), draft proposal for the Euro 7, SECA in the Mediterranean Sea from 2025, etc) but still we would like to ask the EC:
  - Has the EC considered the consequences of choosing such an optimistic baseline in terms of possible unplanned exceedances of the proposed new AAQ limit values in 2030?

- Which draft proposal for the Euro 7 standards was use in Gains Models?

- The geographical situation of Spain results in favourable climatic and orographic conditions for the formation of **tropospheric ozone**. The new AAQ Directive proposes mandatory air quality plans if ozone target value is exceeded. However, the complexity of this pollutant and its transboundary nature makes it very difficult to identify effective local or regional measures to reduce ozone levels. In this respect, we would like to know if the EC intends to incorporate or develop more specific guidance documents on effective measures to reduce tropospheric ozone levels.
  Furthermore, article 19.2 indicates, when the level of pollutants in ambient air exceeds the ozone target value in **NUTS1 territorial unit**, MS shall establish air quality plans for those NUTS1 territorial unit. In this respect we would appreciate more information about why the NUTS1 territorial has been established, as in the case of ozone it would be more appropriate to establish air quality plans per ozone formation region depending on the particularities of each MS. In Spain, preliminary studies on the National Abatement Plan for ozone, shows four different regions that do not coincide with NUTS1 territorial units.
  Also, the implementation of the air quality plans in the NUTS1 territorial unit will entail a very high administrative burden, as domestic competences for air quality assessment and management lie on **NUTS2 regions** (Autonomous Communities).

- The AAQ Directive Proposal gives greater use to **air quality modelling applications.** As stated in article 8, in all zones and agglomerations where the level of pollutants exceeds a limit value or an ozone target value, a combination of fixed measurements and modelling applications shall be used in addition to fixed measurements to assess the ambient air quality. In this respect, current **uncertainties associated with models** (which incorporate uncertainties of emission inventories, AQ measurements, and the models themselves) are still high. First, it is necessary to make efforts to progressively reduce model uncertainties to be used in air quality assessment, especially for pollutants present in lower concentrations in ambient air. In this respect, **we would appreciate further information on:**
  - How the issue of models uncertainty for air quality assessment has been taken into account?
  - How the timescales for the evolution of air quality modelling applications and for the achievement of the new legislated air quality values have been reconciled?
  - Has the cost-benefit analysis considered the costs associated with the necessary improvements in modelling applications and the emission inventories feeding the models?

- The AAQ Directive proposal improves **access to information** and sets requirements for up to date data transmission and improved access to information for citizens. In order to provide this information for particulate matter it is necessary to use **automatic PM equipment**. Nonetheless, they are not included in the proposal as a reference method. In this point, what consideration is intended to be given in the Directive to automatic PM methods?

- The AAQ Directive proposal includes the measurement of **new pollutants not previously regulated**, such as UFPs and BC, and setting a significant number of supersites) in rural and urban background (article 10) sites and new sampling point for UFP (article 8). The implementation of new measurements and stations in accordance with the requirements of articles 8 and 10 will entail significant economic costs for MMSS, as well as a paradigm shift in the maintenance of these stations (some of the measurements, such as UFP and PNSD require much more exhaustive control and specific calibrations different from those of the

other regulated pollutants). In addition, the volume of data generated will require probably different data processing methods than the existing ones.
Furthermore, the proposal does not include a guidance on homogeneous measurement criteria and techniques to make the resulting data comparable between MS nor reference values.

For Spain the application of the criteria of Articles 8 and 10 implies the creation of:

- **5 urban background supersites** with measurement of PNSD, UFP, BC, OP, PM10, PM2.5, NO2, O3, NH3, As, Cd, Ni, BaP, PAHs, Hg(g) and PM2.5 speciation.
- **5 rural background supersites**: UFP, BC, OP, PM10, PM2.5, NO2, O3, NH3, As, Cd, Ni, BaP, HAPs, Hg(g) and PM2.5 speciation.
- **10 additional sampling points of UFP** at hotspots.

We would strongly appreciate to know:

- Which basis were used to determine the minimum number of UFP sampling points as there is still an inconsistency of the UFP-health relationship?
- Which basis were used to determine the minimum number of supersites required?
- Why there a need to measure gaseous Hg to such an extent and deposition studies and what is the interest in ambient air quality?
- Does the EC intend to incorporate or develop more specific guidance on analytical methods to make the results from the different MMSScomparable? E.g. we would advise to include the CEN and ACTRIS method in the proposal so that at least these are followed for the measurement of total UFP (CEN/TC 16976:2016 and CEN/TC 264/WG 33, and ACTRIS (2021) for total UFP).
- Does the EC intend to incorporate or develop more specific guidance on reference values for these emerging pollutants?
- We would appreciate a clarification on the term rural background: are these supersites thought to be installed in small towns in rural environments, or do they include regional background stations in rural environments but separated from the rural population, such as EMEP? It would be good to understand what is the purpose of measurements in urban and rural environment, and to define rural background for supersites.
- ACTRIS has a calibration centre for BC, UFP and PNSD that has been in operation for years. Could it be possible to include the need to calibrate equipment in that centre until the national reference laboratories do not have a calibration system?
- We believe that ACTRIS and EMEP should have an important role in the creation of supersites networks, in terms of ensuring adequate instrumentation, certification of measurements, and AQ/QC and centralisation of data, could this be more specifically be included in the proposed Directive?

- The inclusion of new **alert thresholds for particulate matter** is welcomed because of its high impact on health, in line with the work being carried out in Spain with the approval of a short-term framework action plan for ambient air pollution episodes for particulate matter below 10 microns (PM10), particulate matter below 2.5 microns (PM 2.5), nitrogen dioxide (NO2), ozone (O3) and sulphur dioxide (SO2). However, we consider that the alert thresholds for particulate matter are not ambitious enough, as daily levels above the alert threshold must be maintained for at least three days to trigger action and no reporting thresholds have been included in the legislative proposal. We would appreciate clarification on whether the establishment of these thresholds is backed up by specific health impact studies.

- According to Article 23, a **deadline of four months** is set for the submission to the EC of the air quality assessment for the previous year. In setting this deadline, has the EC taken into

account the limitations of the MS with regard to the new analytical obligations and the air quality models, which have to be based on the most up to date editions of the inventories?

- Access to justice is reinforced in the new proposal, article 28, include new obligations to MMSS in terms of **compensation for damage to human health**, we are concerned about the lack of definition of concepts such as total or partial damage to health and its consequences in terms of compensation. In this respect, we would like to know if the EC intend to incorporate or develop more specific guidance on rules and procedures to define burden of proof and damage to health.

- Regarding Annex IV, Assessment of ambient air quality and locations of sampling points, the **macroscale and micro-scale siting of sampling point** just slight changes where introduced from the previous Directive and we still consider that **more precise rules** should be established for the determination of the location of the fixed measurement points by means of a methodology that will ensure that the results are comparable and achieve a harmonised application of the standard in all MMSS. In this respect, does the EC intend to incorporate or develop more specific guidance sampling point location?

- The **data quality objectives**, set out in Annex V, establishes the maximum admissible uncertainties for ambient air quality assessment and this will pose a major challenge for compliance with the new limit values proposed. We would therefore like to know whether a specific study has been carried out at the metrological level to define them.

- In relation to the updating of the **reference methods (**Annex VI of the proposed Directive), the updated references of the applicable EN Standards are incorporated. While these standards are a reference framework, their development and revision process does not follow the same scrutiny as the development of a legislative proposal and their possible amendments could have an impact on the reference methods used and unintended effects. For example, the new edition of the standard "EN 12341:2014 Ambient air. Standardised gravimetric measurement method for the determination of the mass concentration PM10 or PM2.5 of suspended particulate matter", has been included as a reference method in the new proposal for a Directive on the assessment of particulate matter. In its new edition (due to be published in 2023) the regulatory Annex B which lists the characteristics of samplers other than the reference ones, will disappear. This change could have an impact on the current consideration of high volume samplers, currently used mostly by Spanish networks for pollutants present in low concentrations (metals and BaP in particles, which have this standard as a reference for sampling). This change in the EN 12341 standard, referred to in the draft Directive, may have a very high technical and economic impact for some MMSS. In this respect, have the effects of the ongoing amendments to the reference standards (and in particular the revised Standard 12341) been assessed? Have alternatives been considered?

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Council of the European Union
General Secretariat

Interinstitutional files:
2022/0347 (COD)

Brussels, 20 December 2022

WK 17858/2022 INIT

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CONTRIBUTION

From: To:	General Secretariat of the Council Working Party on the Environment
N° prev. doc.:	WK 16122/2022 INIT + COR1
Subject:	Air Quality Directive: WPE on 18 November 2022 - Commission proposal / IA checklist / Commission presentation - comments from delegations

Following the call for comments on the above set out with WK 16122/2022 on 22 November 2022, delegations will find attached comments from BE, BG, DK, EE, ES, HR, LT, NL, AT, PL and FI.

ESTONIA

EE questions and comments on Ambient Air Quality Directive. 19.12.2022

- We would like the Commission to elaborate the reasoning behind article 28, "Compensation for damage to human health". Member States have well established judicial systems, does the Commission see that there should be any changes in there? Similar issue is with Article 29 "Penalties".

- Article 21 tackles the issue with transboundary air pollution between Member States. What if the exceedances of limit values / target value for ozone is caused by transboundary air pollution from non-EU states?

BELGIUM

Belgian comments and questions regarding the COM proposal on the revision of the AQD

General

Although we are still scrutinizing the proposal, we are generally positive towards it and appreciate the simplification it includes for quite some aspects of the directive such as the merging of the two existing directives and the assessment thresholds. When discussing the fitness check, the main attention points for Belgium where to bring the AQ standards more in line with the WHO guidelines, to increase the role of modelling and to include alert and information thresholds for particulate matter ($PM_{2,5}$ and PM_{10}). All these points have been included to some extent, which we strongly appreciate. Ambitious air quality standards are necessary to guarantee that all member states move in the same direction and that background pollution and transboundary air pollution are reduced.

As said, we are still studying the proposal and will refine our position during the coming weeks and months, but we are happy to share our first views, ideas and questions on the proposal in order to start the discussion on the text.

By article

Recitals

- (9) (recital 14) "Modelling applications and indicative measurements, in addition to information from fixed measurements, enable point data to be interpreted in terms of geographical distribution of concentrations. The use of such supplementary techniques of assessment should also allow for reduction of the required minimum number of fixed sampling points **in zones where assessment thresholds are not exceeded.**"**:** the bold part is not in line with the text of the directive, probably it is meant to be 'where air quality limit values are not exceeded'.

Art. 1

- In §2 the 'intermediate' is confusing, since in the rest of the text the wording 'intermediate limit values' is not used. Moreover the long term objectives are not to be met by 2030, which the text seems to imply. Some rewording is needed.

Art. 3

- §2: we suggest to add a point (e): 'any relevant information submitted for this purpose to the Commission by the member states'.

Art. 4

- (8): lead is missing in this definition.
- (13) : why not use eBC everywhere in the text?
- (14): this definition is not very clear, a.o. because it doesn't include an upper size limit. A suggestion: "particles with aerodynamic equivalent diameter less than 100 nm, usually expressed in particle number concentration (number of particles per cm^3)".
- (22): what is to be understood by the pre-defined tolerance level? Where is it specified?

- (28): is the part starting from 'used to check whether' necessary?
- (29): is the part starting from 'of a territorial unit' necessary (since that is already included in definition 28)?
- A definition for bio indicators (art. 8 §8) is missing.

Art. 7

- §2: It would be clearer if the 2nd and 3rd part are moved to a separate §3.

Art. 8

- According to §2-4, air quality modelling is only obligatory when the AQ-standards are exceeded, in order to provide information on the spatial distribution of the pollution. Even though the monitoring sites should be located in an area with the highest concentrations, it is not always clear where that is. Therefore, it is very well possible that even when the monitoring stations do not show any exceedance, modelling will show some exceedances. In this view, it would make sense to make modelling obligatory as well when the standards are only met by a certain (small) margin (to be determined).
- This being said, modelling should not be used as a basis for evaluating conformity with the standards, because of its higher degree of uncertainty than measurements. Monitoring data always has to be the prime indicator. Therefore, modelling should be used as a means to identify areas where the standards are exceeded, which can be a basis for additional (temporary) monitoring.
- §5: when is a zone not covered by fixed measurements? This should be clearly described.
- §7: what is the rationale for including additional (on top of the supersites) monitoring requirements for UFP and not for BC? High concentrations of BC occur mainly at road traffic oriented monitoring stations or at locations highly dominated by woodburning emissions .

Art. 9

- §1: the two parts might as well be merged (unclear why there is a different sentence for ozone) .
- The references to the tables in point A of annex III seem to be erroneous. There are no references to tables 1 and 2.

Art. 10

- Why is lead missing in §6?
- §7: we suggest to include levoglucosan, a tracer for biomass combustion, as an optional pollutant to be monitored, in order to gather information on the level of pollution coming from domestic woodburning. Additional info: currently CEN TC264/WG21 is drafting a technical specification for the measurement of levoglucosan.

Art. 11

- The reference to point E of annex VI is not relevant, since that point E is about modelling, not about measurements.

Art. 15

- As stated in the introduction, Belgium has always pleaded for the introduction of alert and information thresholds for PM. We thus welcome the new alert thresholds.
- We suggest to lower the alert threshold for PM_{10} to maximum 70 $\mu g/m^3$.

- We suggest to introduce information thresholds for PM_{10} and $PM_{2,5}$ and to align those with the daily limit values (45 µg/m^3 for PM_{10} and 25 µg/m^3 for $PM_{2,5}$).
- The evaluation of the alert thresholds for PM should be based on measurements over three consecutive days. This implies that only when the threshold has been exceeded for at least three days, short term measures need to be taken. This long delay strongly reduces the possible effect of any short term measure. It would be more efficient if the alert thresholds is evaluated based on short term forecast-modelling and thus induce any measures taken.
- §4: member states using forecast modelling need to inform the public of any predicted exceedance, but there is no obligation for forecast modelling, which means that this article introduces some inequality.

Art. 17

- In the explanation, it is stated that this article is extended to include $PM_{2,5}$, but this seems incorrect.

Art. 18

- What is to be understood by 'site-specific dispersion characteristics'? Does this f.e. include monitoring stations in a street canyon?

Art. 19

- In the explanation on the proposal it says on p 16: "The plans will also be mandatory when it is anticipated that these standards will be exceeded." Does this reference to §4 where already before 2030 plans will need to be drafted when future AQ standards are exceeded? If not, what part of the text is referenced to?
- §2: why is there a reference to the NUTS-units, if evaluation of the ozone target values are based on the zones?
- §2: why is there a reference to the NAPCP for ozone and not for the other pollutants?
- §4, 2nd part: §1 is valid from 2030 on whereas §4 is valid until 2030, so how will it be possible to coordinate between plans for these two dispositions?
- §4: although we understand and support the rationale behind this paragraph, it seems very strict to impose an air quality plan if a future standards is exceeded by only a small margin. The use of small and decreasing tolerance margins should be considered here in order not to create a too high administrative burden.
- In §4 there is a word missing ('of the was recorded').
- Any exceedance of a limit value leads to the drafting of an air quality plan. How has to be dealt with temporary activities (construction works, social events, temporary traffic deviations,…) leading to an exceedance? If for such a situation a plan needs to be established, this leads to a high administrative burden without added value.

Art. 20

- §1: when is there a risk that the alert thresholds will be exceeded? How does this needs to be evaluated?

Art. 22

- §2: what is meant by 'build on the indices provided by the EEA'? Does this mean 'copy'?

- We suggestion to make the inclusion of SO_2 (or any pollutant) in the index optional, if concentrations are low and the subindex for that pollutant will never determine the global index.

Art. 23

- §1: what is the rationale behind the proposal to include monitoring data that does not meet the DQO for reporting?
- §2: it is not possible to report all data, especially high resolution modelling and semi-automatic monitoring data, by the end of April.

Annex I & II

For most pollutants, the WHO guideline value (for the yearly average) has been proposed as the assessment threshold. However, for As, Ni, B(a)P and C_6H_6, there is no guideline value, there are only values associated with a certain number of additional cancer cases, whereby the concentration corresponding to a 1/100.000-cancerrisk is often referred to as the WHO guideline.

For both B(a)P and C_6H_6 the concentration corresponding with a 1/100.000 cancer risk is proposed as the assessment threshold, but for As and Ni, lower values are proposed (less than half, see table below, where we include the associated risk). This leads to a situation in which a concentration associated with a (f.e.) 1/105.000-risk triggers no action at all for one pollutant (B(a)P and C_6H_6), but implies an exceedance of the limit value for another one (As).

	1/100.000 risk	**Limit value**	**Assessment threshold**
As (ng/m^3)	6,6	6,0 (1/110.000)	3,0 (1/220.000)
Ni (ng/m^3)	25	20 (1/125.000)	10 (1/250.000)
B(a)P (ng/m^3)	0,12	1,0 (1/12.000)	0,12 (1/100.000)
C_6H_6 ($\mu g/m^3$)	1,7	3,4 (1/50.000)	1,7 (1/100.000)

We understand that limit values are a compromise between science and feasibility, but a more consequent approach for the assessment threshold should be considered.

As for the limit values, what is the argument for not proposing a lower value for B(a)P and C_6H_6 (in 2021, the 1,7 $\mu g/m^3$has been met already in well over 80% of the monitoring stations)? It could be considered as a target value in addition to a less stringent limit value.

Annex III

- A, 1: the title of the second column of table 2 is not correct (the reference to the 50% reduction).
- A, 2, last sentence: the monitoring of BAT should be done by emission measurements, not by concentration measurements. We suggest to delete that sentence.
- D: a part of the title of this point is missing.

Annex IV

- B: why is lead not included in points 2 (a) (iii) and 2 (i)?
- B, 2.; (b): when sampling at locations measuring contribution from domestic heating it can be impossible to avoid measuring micro-environments. This should be reflected in the text, in order to avoid that these sampling locations are not in line with the directive. An option

could be to include a criterium for sampling points measuring the contribution of domestic heating. 250 m x 250 m is too large, this could be f.e. 25 m x 25 m.
- Additionally, it could be useful to impose a minimum requirement for sampling points measuring domestic heating (x measuring station per 10 million inhabitants).

Annex V

- For clarity, please include the word 'table' in the heading of the tables. Now it looks as if everything from page 20 on is about short-term concentrations, but the text below the table also refers to yearly averages.
- Why are criteria for measurements used for modelling mentioned separately and different from criteria for measurements used for assessment.
- In the text there are several references to the tables. It is however not specified whether that relates to de values for fixed measurements or those for indicative measurements.
- Generally, DQO for modelling are unclear. How do they relate to recommendations from Fairmode?
- How do uncertainties for objective estimation or for modelling need to be assessed when no measurements are available (in zones where the assessment threshold is not exceeded)?
- Last paragraph in point A: "The uncertainty of objective estimation shall not exceed the uncertainty for indicative measurements by more than the applicable maximum ratio and shall not exceed 85%.": it is strange that uncertainty of objective estimation is related here to indicative measurements, whereas in the tables it is related to fixed measurements. Moreover, when multiplying the ratios in the table with the relative values for fixed measurements, this is always lower than 85% which renders the "shall not exceed 85%" meaningless.

Annex VI

- A, 14: there is in the first sentence an erroneous reference to 'elemental carbon and organic carbon'.
- A: no reference method is mentioned for UFP, NH3, BC and the oxidative potential. For UFP there is already a technical specification (CEN/TS 16976:2016 and CEN/TS 17434 2020) and for NH_3 a reference method for diffuse samplers (EN17346 2020)
- C&D: the 2nd and 3rd paragraph under C are also under D and should thus be deleted under C.

Annex VII

- Some ozone precursors (such as terpenes,…) are difficult to measure especially for routine monitoring networks. Their monitoring should be limited at rural supersites

Annex VIII

- §5: "to reach compliance within 3 years after adoption of the plan": according to art. 19, compliance needs to be reached within 3 years after reporting of the exceedance.
- §5 and §6: it is neither possible nor useful to estimate the concentration reduction for every measure included in the plan. Not possible, because this is a difficult and time consuming exercise and not useful, because the impact of multiple measures cannot simple be added. We therefore suggest to include this only for the total package of selected measures.

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LITHUANIA

Written comments and questions on behalf of Lithuania
on the proposal for a Directive of the European Parliament and of the Council on ambient air quality and cleaner air for Europe (recast)
as a follow up to the call for comments (WK16122/2022 INIT)

Lithuania welcomes the European Commission's proposal for a Directive of the European Parliament and of the Council on ambient air quality and cleaner air for Europe (recast) (hereinafter – the proposal, the new AQD) and hopes that the new requirements will not only contribute to the implementation of the zero-pollution objective for air quality, but will also simplify air quality assessment procedures, better support local authorities in achieving cleaner air and bring better public information on ambient air quality.

Initial comments

Although the stricter air quality standards presented in the new AQD are in line with 2021 WHO recommendations and the vision of the future, we evaluate them cautiously, as in EU member states, including Lithuania, there are still cases of exceedances of EU air quality standards which are less strict than WHO's 2005 recommended levels.

Lithuania is still analysing the proposal, but we consider that one of the most worrying aspects of the proposal would be a compensation for damage to human health (Article 28).

We are not opposed to the proposal to ensure opportunities for natural persons to claim compensation for damage to human health and the participation of NGOs (non-governmental organisations promoting the protection of human health or the environment) in this process, while leaving flexibility for member states to harmonize these requirements with national law.
However, it should be noted that the proposal does not define and is unclear the concept of "damage to human health", the mechanism for its determination, the data on which "damage to health" will have to be based and calculated. Lithuania would like to get clarification whether this damage is understood only as violations of Articles 19, 20 and 21 of the new AQD, as referred to in Article 28 of the new AQD, which may presuppose that a particular person or group of people is suffering from damage to health, without the need for any further health data and evidence; or whether evidence and calculation of the damage still require evidence and data of damage, deterioration of people's health and other indicators. If the evidence requires data on the impairment of the health of a particular person or group of people, it should be noted that: the practical implementation mechanism for the determination of damage is not clear; what the necessary data are; how to link these data in a causal way to the breaches of Articles 19, 20 and 21 referred to in Article 28 of the new AQD, when the potential for ambient air pollution would be only one of the factors influencing the health indicators of the people (in addition to the factors of lifestyle, human genetics, nutrition, the health care system, the economic, social, etc. factors); clarifications are also needed regarding accident situations and long-term impact (+ 1 year) damage determination – tools are needed for modelling health impact from pollutants released the accidental situation.
Lithuania considers that the concept of damage to human health, the mechanism for its determination, linking of damage to health of particular persons with pollution of particular area and outline of compensation *should be regulated in common EU legislation regulating civil relations* (not in the new AQD); and on the basis of the views and suggestions provided by the European Union scientific community, in conjunction with the WHO and other competent organisations, on the concept of potential damage to the health or life of a particular person or persons from a polluted environment, the data needed for evidence, determination of the causation and assessment of causation, and the possibilities and methods for the estimations of level of damage, damage caused by acute (accidents) or chronical exposure to pollution.

Considering the proposals referred to in Articles 4, 9 and 10 and the corresponding Annexes, it is likely that Member States will have to review the locations of air quality measurement stations (and possibly establish new ones) and to measure additional pollutants in the ambient air. Therefore, it is particularly important that it would be provided a sufficient period for adaptation (including local authorities's environmental monitoring) to the new requirements and favourable opportunities to use EU funds for the measures that would be needed to achieve the goals of the new AQD (e.g. expanding the network of measuring stations, increasing the number of measurements scope, measure new pollutants, implement new models, prepare and implement air quality plans, inform the public).

Specific issues

Modelling

It is positive that the role of modelling in the assessment of air quality is emphasized in the new AQD, that might allow Member States to save financial resources in some cases (Annex IV, section D part 9). However, we suppose that, in order to enable increased use of modelling for air quality assessment:

- the application of the models in Union should be more harmonized and detailed, ensuring its better accuracy and wider application of the models. Member States have enough space for interpretation of the modelling requirements laid down in the new AQD and this might create the risk that air pollution will be overestimated or underestimated in some places;
- more precisely defined criteria and guidance is needed for modelling applications, especially in order to comply with data quality objectives;
- we would like to get clarification how to assess the exceedances of the limit values determined by modelling techniques (more detailed guidance is needed). Moreover, it is worrying that once the exceedances are determined this way, year-long measurements must be carried out, which means additional costs for Member States (Art. 8, part 5).

Air quality monitoring and assessment

Lithuania considers that it is necessary to establish harmonized methodology or criteria to deduct air pollution contributions from natural sources (Article 16; Annex I, section 5, part A).

Only the deduction of natural sources and winter sanding contribution to air quality exceedances is considered in the new AQD but not transboundary air pollution. We suggest to consider deducting transboundary air pollution contribution especially in cases when pollution is transported from non-EU countries like Russia, Belarus and etc.

Lithuania would like to get clarification whether the requirement to document or update the documentation of the site selection procedures and etc. apply also to the existing design of the monitoring network and location of sampling points (Annex IV, section D).

Questions on Impact assessment report

Lithuania would like to get clarification how were derived air pollution control costs in 2030 for Lithuania; what specific measures were assessed for each sector; which policy option (I-1, I-2 or I3) was used to calculate/estimate control costs. It is concerned that the indicated costs are quite high (doc. 4217/2022 ADD3, page 72, figure 16).

Lithuania would like to ask for clarification whether the benefits to human health and the environment were calculated for each MS separately (benefits per MS). If so, what specific benefits (human health benefit, environment, total benefits, etc.) have been calculated for Lithuania and where these specific data can be found?

THE NETHERLANDS

Questions on the Commission proposal:

1. Why does the Commission propose a daily limit value in addition to a calendar year limit value for $PM_{2,5}$ and NO_2?

2. What is the meaning of the detailed explanation of article 11? More specifically, what is meant by "(…) that requires all data to be reported and to be used for compliance assessment purposes, even if they do not meet the data quality objectives"?
    a. Could the Commission clarify what is meant by "all data"? Article 11 does not seem to address this.

3. Could the Commission clarify the articles in Chapter VII? Could the Commission specify who is responsible for paying the compensation, is that the 'competent authority'? What party is to be penalized in article 29? Should that be the 'competent authority' or also private parties?

4. How many supersites does the Commission propose to be installed in the Netherlands?

5. Is the Commission aware of the fact that by setting up the AERO for 2030 in the proposed manner, the reference years are set to be years in which Covid19-measures were cause of relative good air quality and thus are not suitable (in our opinion) as reference years?

Questions on the impact assessment:

1. Which Euro7/VII norms have been used in the impact assessment, and what does to proposal for Euro7/VII mean for the feasibility for the proposed AAQD?

AUSTRIA

AT COMMENTS: Air Quality Directive (WK 16122/22)

Following the request by the Presidency during the WPE meeting on 18 November on the Commission's proposal for the recast of the Air Quality Directives, AT submits the following initial comments on the proposal. The views presented do not prejudge any further AT position that is subject to the ongoing internal review.

General remarks

From an environmental and health perspective, AT welcomes a closer alignment of the limit values with the latest WHO guidelines. We also welcome the legal anchoring of the zero-pollution objective for air quality (Art. 1) and the formulation of clear intermediate standards for 2030 as well as the long-term vision to further improve air quality in the EU in line with scientific findings and technological development. In this context, AT considers the proposed review mechanism (Art. 3) in principle as an appropriate tool to keep the EU on track. However, AT deems necessary that the long-term vision is safeguarded by appropriate action. This entails, inter alia, additional clear(er) specifications for air quality plans (and measures contained therein) in conjunction with Art. 12 ('*non-deterioration principle'*) and the precautionary principle that generally applies in EU environmental legislation.

To achieve the set objectives, an appropriate and well-functioning mechanism with regard to developing air quality plans, measurement setting and time for implementation, as well as an enforcement system that enables MS to achieve the set objectives in good time is key.

Compliance with, in particular, the proposed limit values for $PM_{2.5}$ and NO_2 for 2030 and beyond requires significantly increased efforts at regional, national and EU level. On EU level this includes harmonised and stricter regulations for emission sources such as residential heating, motor vehicles, industry, products, agriculture, etc. Hence, AT proposes to include a '*joint responsibility clause*' as laid down, for example, in Art. 2 para. 2 of regulation (EU) 2021/1119 (European Climate Law) to ensure that appropriate action is taken on all relevant levels.

Detailed comments and questions

AT welcomes most of the proposed changes, which will further reduce the adverse impacts of air pollution on human health and the environment and improve monitoring and assessment of air quality. Nevertheless, a first analysis of the provisions has yielded (without pre-empting any further AT position) that some of the provisions should be modified to increase the positive impacts of the proposal:

Art. 4 (definitions)

The proposal gives a number of definitions, which are not clear or ambiguous. Clarifications would therefore be useful to facilitate and harmonise implementation. These definitions are, in part, phrasings that have been taken from the existing text of the Directives and which have in the past already led to differences in the implementation and ambiguities. Comments will be sent as appropriate.

Chapter II plus respective annexes

A further in-depth examination of the amended specifications for the assessment of air quality as laid down in these provisions, as well as the respective provisions in the annexes, is needed. Furthermore, AT notes that some of the proposed amendments do not eliminate ambiguities that already existed with regard to the current Directives. These ambiguities will continue to hamper harmonised implementation of the provisions. Comments will be sent as appropriate.

Art. 19 (air quality plans)

AT considers the foreseen timeline for the transposition of the Directive into national law (2 years), the implementation of the new requirements i.e. regarding the elaboration and development of air quality plans and measures ahead of 2030 (2 years), in particular in view of the strengthening of modelling requirements, as ambitious and challenging for MS with federal structures and multiple governance levels. Moreover, AT points out that in many cases, air quality measures do not take immediate effect. Hence, the proposed timeline should be reconsidered in order to ensure practical feasibility for MS' authorities responsible for developing plans and setting air quality measures.

AT welcomes the proposed update mechanism of air quality plans. However, it should be either added or clearly stated that such an update should be done on a regular basis (i.e. obligation to regularly evaluate plans and update them as appropriate), inter alia, in view of Art. 12 (as referred to above).

According to Art. 19 para. 2 and 3 an air quality plan is, inter alia, needed if an exceedance of an ozone target value occurs. Due to the continental scale of elevated ozone levels, the impact of measures implemented in NUTS 1 territorial units, and in the case of small MS even the national area, is in most cases too small to allow for a significant/measurable change of ozone concentrations. Only national air pollution control programmes prepared pursuant to Art. 6 of Directive (EU) 2016/2284, together with measures for cooperation at the hemispheric scale, are appropriate to tackle ozone exceedances in an EU-wide effort.

Art. 23 (transmission of information and reporting)

A validated data set from continuous measurements is, at least in MS with a federal governance, not available at national level 4 months after the end of a calendar year. Data from laboratory analyses may not be available until even a few months later. The transmission of information to the Commission based on last year's validated data by the end of April is therefore not feasible for AT. A timeframe of at least 8 months is considered as workable.

Art. 24 (Amendments to annexes)

In the interest of legal clarity and conformity with EU primary law, AT sees a need to analyse the provision closely in order to ensure that delegated powers do not refer to essential elements of the Directive within the meaning of Art. 290 TFEU.

Chapter VII

In accordance with the jurisdiction of the ECJ (i.e. C-237/07 and C-404/13), Art. 27 grants access to justice regarding all decisions, acts or omissions concerning air quality plans referred to in Art. 19 and short-term action plans referred to in Art. 20. AT welcomes that the proposal addresses existing jurisdiction. However, the ECJ has also ruled that individuals directly affected by the exceedance of limit values have to have access to a review procedure before a court to verify whether the sampling points located in a particular zone have been established in accordance with the criteria laid down in the directive (C-723/17). The reasoning behind why this case law has not been reflected in the proposal is not clear. However, in order to ensure legal certainty and a harmonised implementation of case law, the provision should also take into account the Court's ruling regarding sampling points. Furthermore, AT flags the need to examine the provision closely in light of the specifications of Art. 9 para. 3 of the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (*Aarhus Convention*) and the above quoted jurisdiction of the Court, respectively. In particular, it is noted that the quoted case law in recital No 39 refers to jurisdiction regarding Art. 9 para. 2 of the Aarhus Convention and that the relevant Art. 9 para. 3 of the Aarhus Convention is less restrictive regarding the requirements that are foreseen in Art. 27 para. 2 and 4. AT sees no need to go beyond these requirements.

Regarding the compensation rule for violations of rights by public authorities proposed in Art. 28, AT flags the need to analyse the proposal very carefully against the background of the principle of procedural autonomy of the MS. The TFEU does not expressly provide for the liability of MS that violate EU law and thereby cause damage. However, the Court has derived a liability claim from primary law provisions (joint cases C-46/93 and C-48/93) under certain conditions. Moreover, AT points out that there is currently a French reference for preliminary ruling pending before the Court regarding compensation claims for violations of provisions of the current Directive (C-61/21). The opinion of the advocate general suggests, inter alia, that entitlement to compensation for adverse effects to health resulting from an established exceedance of the limit values requires that the injured party proves a direct link between that adverse effect and his or her stay at a place where the respective applicable limit values were exceeded without there having been an air quality improvement plan which satisfied the requirements of the directive. AT sees no need to go beyond these requirements.

Art. 29 requires further clarification. For example, para. 2 of that article currently stipulates that 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. This might lead to considerable difficulties for the enforcement of the provision since the determination of a benefit potentially require considerable effort. Another example is the requirement foreseen in para. 3 lit. c: Criminal authorities have usually no knowledge of whether sensitive population or vulnerable groups are affected by the violation and empirical surveys require considerable effort. In addition, it is not feasible to conduct dispersion calculations in every case of violation in order to be able to determine how far the emissions caused by a violation have had an effect.

Annex IV

AT welcomes the overall intention to include additional information on the siting criteria of sampling points. However, we see a considerable need for clearer definitions and criteria to ensure comparability of measurement data within the EU. Comments will be sent as appropriate.

For example, it is not clear in which way the provisions of Annex IV could apply for modelling (as laid down in part A 1.). Provisions on the assessment of air quality by modelling should be covered by a Guidance document.

Ozone metric and precursors

AT suggests that a metric based on the "*Phytotoxic Ozone Dos*e" (POD) approach is being considered. Such an approach has been developed within the Air Convention, it is recommended according to Annex V of Directive (EU) 2016/2284, and is regarded as a more accurate method for assessing the risk by ozone to vegetation.

With some dozens of species, the list of VOC recommended for measurement (Annex VII Section 2 part B) is rather comprehensive. In order to get a minimum set of comparable VOC data from all MS, a few species might get a '*priority label'*. AQUILA and EMEP could provide for a short priority list, depending on the species' contribution to ozone formation and representativeness for relevant source categories.

Guidance Documents

Guidance documents are essential for the implementation of the Directive. Therefore, the procedure for drafting the guidance documents should involve members of the Ambient Air Quality Expert Group and experts from administration and national environment agencies. In case of drafting guidance documents, inputs by AQUILA or FAIRMODE working groups are key for a scientific-based document. AT notes that it is crucial that guidance documents are published shortly after setting the Directive into force.

FINLAND

Questions and Comments from Finland on AQD **16.12.2022**

Article 8 (Assessment criteria)

How will the harmonization and quality of data be ensured in connection with modelling? A great deal of emphasis has been given to modelling. However, its usefulness depend on initial data and the functionality of the models in the real world. Initial data is often uncertain and difficult to compile, which requires a great deal of expert resources. The evaluation of the reliability of the modelling results should be based on measurement results. it is necessary to discuss on modelling further.

Article 21 (Transboundary air pollution)

Could the Commission provide some concrete examples of measures that Member states could agree on in order to achieve the target values for ozone and the limit values for air pollutants, taking into account that these measures should not in practice become internal market barriers? Would the measures actually mean that Members states should agree on stricter emission control than what is required according to the EU- legislation? Does the Commission know some good practices with regard to the cooperation between Member States as required under this Article?

Table 2 of Annex I (Air quality standards)

Is there perhaps a mistake in this Table 2, since for example the limit values for PM 2.5 and PM 10 are the same as in the current Air quality Directive? It is also not quite clear to us what is the deadline for the limit values in Table 2? For instance does the proposed text imply that the deadline should be decided already following the forthcoming negotiations or does it refer to year 2050 or perhaps to the following regular reviews? The Table 2 should be clarified as a whole.

Article 23 (Transmission of information and reporting)

Why is time limit for reporting the information to the Commission (paragraph 2) shortened from 9 months to 4 months?

Article 27 (Access to justice)

Is access to justice under Article 27 in line with Article 9 (paragraph 2) of the Århus Convention? The decision by the competent authority to establish an air quality plan (Article 19) or short term action plan (Article 20) is not a decision within the scope of Article 6 of the Århus Convention. Is access to justice with regard to those plans an additional requirement compared to the Århus Convention?

Is access to justice under Article 27 (including the requirements for the review procedure under paragraph 3) meant to cover also all the situations where the competent authority is passive and does not comply with the requirements of the Directive? For example where the competent authority does not establish an air quality plan in the required time limit?

Article 28 (Compensation for damage to human health)

How would collective actions work in damage to human health, where claims for compensation basically require medical examinations at the individual level and the acquisition of research evidence at the individual level? Is it possible to provide causal link between certain air pollutant or emission and damage occurred to individual?

Article 29 (Penalties)

To which articles (violations) of the Directive the penalties should be linked?

Articles 28 (Compensation for damage to human health) and 29 (Penalties)

With regard to article 28 and article 29 it is important to ensure horizontal approach in relation to similar articles in other proposals for Directives (IED, UWWTD).

Article 28 and 29 contain very detailed obligations. More flexibility should be left for Member states with regard to these obligations.

BULGARIA

Written comments and questions of Bulgaria regarding the *Proposal for a Directive of the European Parliament and of the Council on ambient air quality and cleaner air for Europe* and/or *the Impact Assessment*

According to the impact assessment:

In the last few years, we have witnessed crises, the development of which can hardly be predicted, and it is now clear that overcoming them will require additional efforts. As the impact assessment was prepared before these crises started, it does not take into account the new challenges that the European Union is facing. In this regard, we consider that the base year 2020 is not typical, which in turn very likely leads to misleading conclusions and results.

As noted in the Impact assessment (IA), the Ambient Air Quality Directives are part of a comprehensive clean air policy framework, which is based on three main pillars. The first consists of the Air Quality Directives themselves, setting quality standards for concentration levels of 12 ambient air pollutants. The second is the Directive on the reduction of national emissions of certain atmospheric pollutants (the NEC Directive), which defines the commitments of each Member State to reduce emissions of key atmospheric air pollutants and their precursors acting within the EU to achieve a joint reduction in transboundary pollution. The third pillar consists of legislation setting emissions standards for key sources of air pollution, such as road transport vehicles, domestic heating installations or industrial installations. Pollution from such sources is also affected by other policies that affect key activities and sectors in areas such as transport, industry, energy, climate and agriculture. Some of these policies are part of recent initiatives undertaken under the European Green Deal, such as the Zero Pollution Action Plan, the European Climate Law and the Fit for 55 package with its energy efficiency and renewable energy actions, the Methane Strategy, Strategy for sustainable and smart mobility, Biodiversity Strategy and Farm to Fork initiative. All of these are relevant to the successful implementation of the ambient air quality directives as they affect pollutants emissions. However, regardless of this comprehensive legislative transformation, we find the scenario for achieving the set goals by 2030 too optimistic, especially if any of these policies are not fully implemented.

On the proposal for a directive:

The proposal that the requirements of the currently existing air quality directives - Directive 2008/50/EC and Directive 2004/107/EC should be regulated in only one directive is appropriate from the point of view of ensuring the uniform application of the requirements with regard to all pollutants.

The draft proposes significant changes compared to the current Directive 2008/50/EC – it proposes the introduction of stricter standards for ambient air quality, more close to those in the recommendations of the World Health Organization, published in 2021.

Article 1, Annex I

The proposed new standards for ambient air quality, which are significantly stricter than the limit values in the current legislation, raise the main question of their attainability. It should be taken into account the ongoing problems that Bulgaria has with achieving the requirements of the current legislation on some pollutants, as well as the cost of achieving new, more ambitious goals. We note that these are problems at the European Union level as well. When it comes to human health, it is not accepted and could not be talked about cost, but we have our concerns about the ambitious goals declared in the proposal and the short deadlines for their achievement. We consider the introduction of realistic and achievable goals and deadlines as a guarantee for sustainable changes.

Moreover, as stated above, in the last few years we have witnessed crises whose development can hardly be predicted and whose overcoming will require additional efforts.
It should be noted that achieving the current limit values and targets in Directive 2008/50/EC is a long and complex process, especially for Member States with unfavorable meteorological and geographical conditions. An example of this is the PM_{10} pollutant, which is problematic for the country and despite the efforts made, Bulgaria has not yet achieved full compliance with the requirements of European legislation. In addition, the main sources of PM_{10} in the country require complex measures that, while reducing pollution, should not hinder economic activity and negatively affect the social sustainability. The experience so far in the implementation of the Ambient Air Quality Directive clearly shows that compliance with the limit values is problematic for a significant number of Member States and the shortest possible time for dealing with exceedances takes years in all cases. The fact that at this stage, almost 15 years after the adoption of Directive 2008/50/EC, more than half of the Member States still have problems in meeting its requirements, is a fact that should not be ignored. In this regard it is important for Bulgaria to take a realistic path, as the experience with the current Directive has shown difficulties in meeting the requirements and subsequent infringement procedures.

We also note that the country has concerns about taking into account and deducting the transfer of pollutants from countries that are not members of the European Union.

Articles 7-10
The proposed changes in the way air quality assessment is carried out regarding the minimum requirements for pollutant monitoring, as well as for monitoring new pollutants, will be a challenge for the National Air Quality Monitoring System.
The proposed new requirements for the implementation of the monitoring activity, the mandatory modeling, the reporting of the results and the evaluation of the air quality data will be a very serious challenge in view of new investments in technical and technological terms, upgrading and alignment.

Article 16 and 17
We find it a positive aspect in the proposed Directive to continue, as until now, to have the possibility for subtracting exceedances of limit values as a result of winter sanding and salting of roads, as well as subtracting the contribution from natural sources. At the same time, we note again what was stated in the last paragraph regarding Article 1 above.

Article 18
We support the possibility for postponement by a maximum of 5 years of attainment deadline and exemption from the obligation to apply certain limit values in zones where PM and nitrogen dioxide standards cannot be achieved by the deadline, specified in Table 1, Section 1 of Annex I. We would like to receive information on the criteria for the selection of pollutants for which this option is provided.

Article 19
Paragraphs 2-4 provide, where in a given NUTS 1 territorial unit the levels of pollutants in the ambient air exceed the ozone target value, the average exposure reduction obligation for $PM_{2.5}$ and nitrogen dioxide, Member States shall establish air quality plans for these NUTS 1 territorial units. We consider that this is another level of ambient air quality management. Having in mind the administrative-territorial division of the country and the way of governing, this can lead to a significant increase of the administrative burden, not clear obligations, complicating the interaction between the competent authorities and ultimately - to problems in the implementation of the legislation.

For us, the question is how the preparation of a plan at NUTS 1 level is expected to contribute to the achievement of a particular objective and what the additional contribution will be, given the above considerations for this level of governance. We note that there is also the obligation for measures for these pollutants to be included in the Pollution Control Program under Article 6 of Directive (EU) 2016/2284, i.e. at the national level.

Article 23

It is proposed that the information on the assessment of compliance with limit values (ozone target values), average exposure reduction obligations and critical levels shall be made available to the Commission no later than 4 months after the end of each calendar year. For the reporting of the ambient air quality data this term is too short, because this activity requires technological time for analysis, which is carried out after the complete set of data are available into the National Air Quality Monitoring System.

Article 28

In the proposal are included provisions for compensation for damage to human health and the imposition of penalties. We expect the Commission to give a detailed explanation of the texts of these provisions, as the question is about the methodology of their determination and the way of their implementation.

We consider that the provisions on the reverse burden of proof should be deleted. The retention of the reverse burden of proof will not only make enforcement more difficult, but is also in danger of leading to misinterpretation, misinterpretation of rights, and making it a 'business'. In addition, we do not share the approach taken to mechanically transfer the reverse burden of proof principle from European employment law to environmental law, including in the even more private case of the Ambient Air Quality Directive.

We believe that a workable solution would be to leave the issues of penalties and compensation to the Member States' jurisdictions. In this way, national specificities, including the national legal systems in force with their substantive and procedural legal rules, and the existing liability regimes, including in the event of pollution or other environmental damage, can be most effectively accommodated.

Article 29

The text of this article raises the question of how to be ensured consistent implementation of the Ambient Air Quality Directive (recast) with Directive 2008/99/EU on the protection of the environment through criminal law.

CROATIA

Preliminary Comments of the Republic of Croatia on the Proposal for a Directive on ambient air quality and cleaner air for Europe (recast)

The Republic of Croatia welcomes the Proposal for the revision of the Directive on Air Quality and Cleaner Air for Europe (Proposal) and merging of two existing directives into one directive. We also welcome expected achievement of the projected reduction of negative impact of air pollution on human health and the environment by 2030, with the vision for post-2030.

In general, we welcome the selected preferable policy package which sets up clear air quality standards, defined as „limit values for 2030“ proposed based on the Impact Assessment, aiming to further improve air quality and to align EU Air quality standards more closely with the new World Health Organization recommendations.
However, we indicate the need to reconsider the feasibility of achieving compliance with the stricter limit values by 2030, given the fact that the significant number of Member States still have problems with reaching compliance with the current standards, especially for the particulate matters (PM_{10} and $PM_{2.5}$). We suggest a cautious approach and taking into account the lessons learned from the period of implementation of the current directives in order to avoid repetition of negative results.

We would refer to the Impact Assessment document, especially to the part that refers to the data that elaborates the basic scenario "no policy change" without policy intervention, for example for the years 2030 and 2050, including projections of emissions and concentrations of pollutants and their impact on health, and a detailed review of air quality in the EU for 2020 accomplished with additional detailed projections of air pollution according to basic assumptions in the perspective of 2030 and after 2030. In the event that certain inconsistencies or contradictions are observed in these data with the latest available official national projections of pollutant emissions made in accordance with the annual national emission inventory, we would seek for further elaboration or clarification on the assessment method and interpretation of results of the Impact Assessment.

We would emphasise the importance of taking into account specific geographical and meteorological circumstances of each Member State, notably in addressing exceedances of air quality standards due to the transboundary air pollution as well as with regards to adopting effective measures for the ozone concentrations reduction. Namely, the position of Croatia in Europe is specific due to the fact that we share borders with Member States as well as with non-EU states and such position limits us to ensure compliance only through implementing of measures at the local/national level. In a significant number of zones, in the measured background concentrations of particulate matter a high percentage of transboundary air pollution was recorded. We support further elaboration of clear provisions on the role of the European Commission and its assistance to Member States in solving problems related to cross-border air pollution issues, especially due to the lack of examples of good practice.

The Proposal defines ambitious goals through stricter air quality limit values by 2030, and it is assumed that significant resources will be required for the implementation of policies and measures to achieve these limit values. For Croatia the cost of compliance with the proposed air quality standards is estimated to be almost 0.3% of GDP, which is significantly higher than the average for the EU, which is below 0.1%. For this reason, we propose a clear link with relevant financial funds and sources dedicated and accessible for financing of adequate and efficient measures that will enable and facilitate the achievement of the proposed goals.

We express concerns regarding the successful implementation of the short-term action plans, especially in relation to their timely adoption and implementation. The proposed provisions imply the urgent involvement of all stakeholders as well as prompt assessment of air quality, emission data and potential sources of emissions.

We indicate the need to provide further clarification on the correlation of the deadlines for adoption and implementation of the air quality plans as well as on the expected date for achieving compliance taking into account ongoing infringement process.

We welcome the proposed provisions and the envisaged guidelines and/or implementing acts addressing the shortcomings of the actual directives related to enforcement and control, air quality monitoring, modelling, air quality plans and public information. We are very much looking forward to further expert and technical discussion with the aim to improve, and hereby we submit a few technical comments:

- We have strong concerns about the deadline for reporting proposed in Art. 23, which should be much longer than proposed four months after the end of each calendar year.

- Regarding Article 4.(6) we propose that reference method EN 14907 should be replaced with the new reference method for measuring $PM_{2.5}$ - EN 12341.

- Regarding Art.4.(8) - *'arsenic', 'cadmium', 'nickel' and 'benzo(a)pyrene' mean the total content of these elements and compounds in the PM10 fraction*; we suggest adding the text "*expressed as mass concentration in ambient air*" at the end of para.(8) to make it clear that it is not a percentage contribution (share) in PM_{10}

- In Annex VI.A. we propose to reconsider that the titles of all norms describing reference methods be written without specifying the year of publishing, taking into account the provisions of the Commission Directive (EU) 2015/1480 and in conjunction with relevant provision of Regulation (EC) No 765/2008 of the European Parliament and of the Council.

- In the Proposal the reference method for assessment of mercury is mentioned, but the Proposal does not envisage any target or limit vales for mercury. Given the fact that mercury is an extremely harmful substance, we suggest to consider the introduction of any relevant standard, following the guidelines of the WHO.
