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WK 2122/2024 INIT

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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on the Environment
N° Cion doc.:	ST 14217/22 + ADD 1
Subject:	Air Quality Directive: Follow-up to the WPE on 5 February 2024 - comments from delegations

Following the call for comments on the above set out with WK 1873/2024, delegations will find attached comments from CZ, DK, DE, IE, ES, FR, HR, IT, LV, MT, NL, AT, PT, SK, FI and SE.

WK 2122/2024 INIT

LIMITE

EN

CZECH REPUBLIC

Written comment regarding WPE held on 5th February 2024

+ = support

- = Oppose

+/- = somewhat flexible or neither support nor oppose

Subject	Row 4- column table	Article, paragraph or Annex	Steering note questions	Delegation position	Additional comments
Green/Yellow rows	/	/	/	-	<p>Article 4(24), row 105a (definition of air pollution hotspot): CZ understands that the intention of the newly introduced definition of hotspot is to replace the expression “<i>area with the highest concentration</i>” of the original directive with the expression “<i>air pollution hotspot</i>” proposed by the EP. However, we find the word “<i>hotspot</i>” as unfitting. Hotspot is terminus technicus meaning area with significance, whatever this significance may be. Many clean air quality zones do not have any “<i>hotspots</i>”, they just have locations that are relatively more polluted compared to the rest of the zone. Therefore, the expression “<i>hotspot</i>” brings negative connotation. Moreover, the expression “<i>hotspot</i>” is not used consistently throughout the directive. For example, the footnote of Table 4 in Annex III still contains “<i>highest concentrations of ozone is likely to occur</i>”, also Section D in Annex III contains “<i>measurements of ultrafine particles where high concentrations are likely to occur</i>”, so the directive mismatches hotspots and areas with the highest concentration in a very strange way. We do not support that and we suggest to revert to the original expression throughout the directive.</p> <p>Regarding <u>air quality roadmap</u> (row 116a, 130, 223, 233, 238, 239,</p>

					240, 241, 242, 243, 264) we still remain negative since we still do not see any added value and it does not make the text any clearer.
Sampling points and supersites	Rows 163b (=149), 165, 166, 169, 169b	Art 9, art 10, Annex VII -1	Question 1	+/-	CZ could show flexibility regarding CO measurements on rural supersites and deposition of metals and PAH (polycyclic aromatic hydrocarbons) in urban supersites. However apart from the PAH measurements, the concentrations of these pollutants can be expected at very low levels, therefore, the added value is questionable , especially CO measurements on rural supersites.
Alert and information thresholds	/	Annex I section 4	Question 2	+/-	<p>In order to achieve compromise, we can show some flexibility regarding information threshold for nitrogen dioxide (new information threshold 150 µg/m³) and sulphur dioxide (new information threshold 275 µg/m³). Nevertheless, we note that every threshold is set differently (some correspond to limit values, some correspond to certain % of limit values) therefore the thresholds are very random.</p> <p>We also do not see it as useful to assess information thresholds based on one hour means, this could lead in our opinion to triggering the information thresholds every other hour. We suggest 3 hours instead. The fact that alert threshold could be triggered before information threshold is not a problem in our opinion (in such situations both thresholds could be considered as triggered simultaneously).</p> <p>We do not object the proposal to replace “24 hours” with “1 day” concerning the averaging period. We also support the introduction of the column named “Averaging period”.</p>
Short term action plans	Row 246	Art 20(1)	Question 3	+	We can support the text proposed by PRES that is building on the EP counterproposal.
Transboundary air pollution	Rows 251a - e	Art 21(-1b)	Question 4	-	<p>We can accept moving the art. 21.1a further down and placing it in a new art. 21.4a. We can also support the rewording.</p> <p>However, we strongly oppose the intention to delete the expression “exceedances are attributable to transboundary sources which are out of the influence of the Member State</p>

				<p>affected.” included in the General Approach. This sentence states something that is factually correct, so we do not see the need to delete it. This is very important to us.</p> <p>We do not agree with EP that this wording could create an opening for transboundary pollution to be deducted completely, similarly to art. 16 and 17. Such mechanism is clearly not supported by the text of art. 21 (compared art. 16(3) (where the term “deduction” is used) or art. 17(3) (refraining from establishing AQP is clearly mentioned in this art.)). Furthermore, the proposal of art. 21.1a was clearly linked to art. 18(1) that does not allow any deduction.</p> <p>On the contrary, the reluctance of the EP to recognize the simple fact that MSs cannot influence transboundary pollution could be interpreted as a potential opening for the idea that MSs are indeed solely responsible for pollution originating outside their territory, even though they cannot influence it at all, which is absolutely unacceptable for us.</p> <p>We therefore insist on the following amendment that brings back the critical sentence into the art. 21.4a.</p> <p><i>21.4a. Member States may, for a given year, identify:</i></p> <p><i>(a) zones in which transboundary transport of air pollution contributes significantly to the exceedances of limit values or target values in those zones.</i></p> <p><i>(b) average exposure territorial units, in which transboundary transport of air pollution contributes significantly to the exceedances of the level determined by the average exposure reduction obligations in those units.</i></p> <p><i>Member States may provide the Commission with the lists of any such zones and average exposure territorial units together with information on concentrations and the evidence demonstrating that transboundary transport of air pollution <u>which is out of the influence of the Member State affected</u> contributes significantly to the exceedances. The Commission may consider this information for the purposes of Article 18(1).</i></p>
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Transmission of information and reporting	Row 272	Art 23(3)	Question 5	-	We do not see shorter reporting deadline as feasible, we cannot support neither 4 nor 6 months as a new deadline.
Limit values, target values, AECO, AERO	/	Annex I section 5.B	Question 6	+	<p>We support the intention of the PRES to clarify exposure reduction obligation (Annex I Section 5B). The best solution could be in our opinion to define “base level AEI” to signify that the exposure reduction obligation for 2030 should be set with respect to a certain base level recorded 10 years before. This would eliminate the expression “when 10 years before” proposed by the PRES which is a bit ponderous.</p> <p>We propose for example the following:</p> <p><i>Annex I Section 5</i></p> <p><i>A. Average exposure indicator</i></p> <p><i>The Average Exposure Indicator expressed in $\mu\text{g}/\text{m}^3$ (AEI) shall be based upon measurements in urban background locations in average exposure territorial units throughout the territory of a Member State. It shall be assessed as a 3-calendar-year running annual mean concentration averaged over all sampling points of the relevant pollutant established pursuant to Point B of Annex III in each average exposure territorial unit. The AEI for a particular year shall be the mean concentration of that same year and the preceding 2 years.</i></p> <p><i>Where Member States identify exceedances attributable to natural sources, contributions from natural sources shall be deducted before calculating the AEI.</i></p> <p><i>The AEI <u>base level</u> is used for the examination of whether the average exposure reduction obligation is met <u>from 2030 onwards</u>. <u>AEI base level shall also determine the reduction target under point B. AEI base level shall be calculated as a 3-calendar-year running annual mean concentration measured 10 years prior 2030 and averaged over all sampling points of the relevant pollutant established pursuant to Point B of Annex III.</u></i></p>
Postponement and	Row 214	Art 18 (1)	Addendum	+	We can be slightly positive towards replacing the reference to GDP with a reference to domestic heating, we favour option c).

exemptions			question 1		However, household heating will not be the only factor influencing the achievement of new limit values. The overall lack of financial resources and poverty will be influential as well.
Postponement and exemptions	Rows 215 - 218	Art 18 (1) (a) - (d)	Addendum question 2	+	MS would need to make an air quality projection demonstrating that the limit values cannot be achieved till 2030 and another projection demonstrating that the limit values will be achieved later in the future in order to be able to justify postponement and to require new attainment deadline. Both of these projections are essentials for air quality plans therefore option a) and b) are reasonable condition for art. 18.
Postponement and exemptions	New	Art 18 (3)	Addendum question 3	+/-	Regarding the safeguards to guarantee that the air quality plan will deliver the projected results at the end of the postponement period we do not support the idea to rely on declining trend since natural disasters and other major events might happen. We could however support regular reports demonstrating progress in the implementation (option c), and update of the air quality plan update based on these reports (option d). So, we are slightly positive towards c) and d).
Air quality plans	Rows 224 - 232	Art 19(1) - 19(4)	Question 7	+	Regarding art. 19, we can support the proposed changes in order to achieve compromise with the Parliament. Nevertheless, we remain sceptical concerning shorter deadline for implementation of the measures of the air quality plans (art. 19.1). Regarding row 226a we prefer the second (right) column.
Air quality plans	Rows 233, 236 - 240	Art 19(5) - 19(7), Annex VIII	Question 8	+/-	We would prefer not to complicate air quality plans any further, therefore any additional information that should be included or considered in these plans based on Annex VIII should be worded in a soft language (e.g. may include, shall include if appropriate ...). We would like to point out that nearly all suggested measures are focused on means of transportation, which is absolutely irrelevant for eastern MS and the problem of household heating that we have in common.
Access to justice	Rows 301, 305, 306, 307a	Art 27	Question 9	-	We do not support any changes of art. 27 at this moment, based on our preliminary analysis, the proposed text is highly burdensome to MS. We note that PRES proposed text that goes

					beyond the Aarhus convention and beyond cited legal cases.
Compensation	Rows 311, 316	Art 28	Question 10	-	We do not support any changes that go beyond the General approach. We identified many risks that the proposed text might bring. For example, the expression “that has been committed intentionally or negligently” must be kept in order to ensure that standard legal procedures apply to the compensation of damage.
Penalties	Rows 320, 321-325	Art 29	Question 11	-	We do not support partial reintroduction of para 3 of art. 29. Fines and the whole art. 29 should be kept as flexible as possible since MS should be allowed to implement in line with the established national legal requirements. In case of CZ, this article would mostly target low income, socially disadvantaged groups that are currently operating the most polluting boilers and these people need help rather than being fined and deprived as suggested by the proposal. The reference to economic benefit and the financial situation are therefore irrelevant.

DENMARK

Table Member State's comments on steering note questions

+ = support

- = Oppose

/ = No comments

Subject	Row 4-column table	Article, paragraph or Annex	Steering note questions	Delegation position	Additional comments
Green/Yellow rows	/	/	/	+	Siting criteria in Annex IV – (up to 8 meters) - is not from current directive and should be deleted.
Sampling points and supersites	Rows 163b (=149), 165, 166, 169, 169b	Art 9, art 10, Annex VII -1	Question 1	+	We could support to delete indicative measurements in 8.3
Alert and information thresholds	/	Annex I section 4	Question 2	+	
Short term action plans	Row 246	Art 20(1)	Question 3	+	<p>The addition: <i>and specificities of domestic heating systems</i></p> <p>Is a little odd. It should be evident that turning of heating during winter time is not a good idea for overall health.</p> <p>If text is needed it could read like:</p> <p><i>and the fact that renewal of domestic heating systems are a long term proces</i></p>
Transboundary air pollution	Rows 251a - e	Art 21(-1b)	Question 4	+	

Transmission of information and reporting	Row 272	Art 23(3)	Question 5	+	Denmark can support 4 month for monitor data and 6 month for other information.
Limit values, target values, AECO, AERO	/	Annex I section 5.B	Question 6	+	
Postponement and exemptions	Row 214	Art 18 (1)	Addendum question 1	+	<p>We would prefer a)</p> <p>Or something al long the line: 'where the necessary reductions can only be achieved by a long term upgrade of the domestic heating sector'</p> <p>His is more generic to reflect that its not only upgrade of solid fuels systems, but also fuel switch/heat pumps/district heating</p>
Postponement and exemptions	Rows 215 - 218	Art 18 (1) (a) - (d)	Addendum question 2	+	<p>Prefer a or b</p> <p>Text should reflect that projections should include potential measures and that extension should be as short as possible:</p> <p>The inclusion of air quality projections in the roadmap/air quality plan under Article 19(4), showing that the limit values will be attained as soon as possible and no later than the end of the postponement period (which is also a condition in the current directive).</p>
Postponement and exemptions	New	Art 18 (3)	Addendum question 3	+	<p>We would prefer b) or c)</p> <p>We would suggest to include an update of Art. 18.2 to make revised AQP (road maps) subject to Commission approval as a condition for keeping the extension.</p> <p>We believe that we need to meet the EP here a bid more here than implied in the steering note as we have firm positions on so many articles.</p>

Air quality plans	Rows 224 - 232	Art 19(1) - 19(4)	Question 7	+	
Air quality plans	Rows 233, 236 - 240	Art 19(5) - 19(7), Annex VIII	Question 8	+	
Access to justice	Rows 301, 305, 306, 307a	Art 27	Question 9	/	
Compensation	Rows 311, 316	Art 28	Question 10	+	Changes to 28.1 are problematic: 'that has been committed intentionally or negligently' This text should be kept
Penalties	Rows 320, 321-325	Art 29	Question 11	/	Scrutiny for now

GERMANY

Table Member State's comments on steering note questions

+ = support

- = Oppose

/ = No comments

Subject	Row 4-column table	Article, paragraph or Annex	Steering note questions	Delegation position	Additional comments
Green/Yellow rows	/	/	/		<ul style="list-style-type: none"> - Annex III, A: Germany can accept this proposal. - Annex IV, C. b: Germany cannot support this proposal. Aside from ensuring the continuity of measurements, it is also necessary to make sure new and old stations measure based on the same criteria. - Annex VII, section 3, C: The Council position is preferred. Germany can, however, support the original Commission proposal. - Annex IX, 1(b): The inclusion of the EP mandate should not be supported without amendments. Germany proposes a reference to the air quality index here. - Annex IX, 3: Germany is flexible in this regard as the difference between the Council and the EP does not result in any relevant additional effort.
Sampling points and supersites	Rows 163b (=149), 165, 166, 169, 169b	Art 9, art 10, Annex VII -1	Question 1	/	<ul style="list-style-type: none"> - The monitoring of CO can be supported as this is straightforward and cost-effective. - The monitoring of deposition is viewed critically. As described in the steering note, monitoring at urban

					background locations may be difficult, so that if monitoring BaP and PAK is unavoidable, it is essential to include the footnote proposed by the Presidency.
Alert and information thresholds	/	Annex I section 4	Question 2	+	<ul style="list-style-type: none"> - Germany can support the Presidency's proposal on the alert and information thresholds, including replacing "24 hours" with "1 day".
Short term action plans	Row 246	Art 20(1)	Question 3	/	<ul style="list-style-type: none"> - Germany here remains in favour of the Council position thus far, but can support the Presidency's proposal. - Germany once again conversely suggests amending Article 20 (1), to clarify that a short-term action plan is only necessary when there is a substantial risk, in order to reduce unnecessary bureaucracy.
Transboundary air pollution	Rows 251a - e	Art 21(-1b)	Question 4	+	<ul style="list-style-type: none"> - Germany can support the Presidency's proposal.
Transmission of information and reporting	Row 272	Art 23(3)	Question 5	-	<ul style="list-style-type: none"> - The Council position should be maintained here: Reducing the deadline for submitting the report is not possible, not even from 2030. - Germany here shares the opinion of the Presidency that no relevant information will be withheld from the public, and that if the deadline is reduced, the quality of reported data will be negatively impacted.
Limit values, target values, AECO, AERO	/	Annex I section 5.B	Question 6	-	<p>Limit values/target values</p> <ul style="list-style-type: none"> - Germany shares the Presidency's assessment that the limit values called for by the EP in alignment with the WHO guideline values from 2035 must be rejected as

					<p>compliance is not possible. Instead, gradual alignment with the WHO's guideline values as a non-binding long-term aspiration (i.e. explicitly not as limit values) could be integrated into the Directive in Annex I.</p> <ul style="list-style-type: none"> - Germany can support the changes highlighted in green in Articles 12 and 13. <p>AERO</p> <ul style="list-style-type: none"> - These are Germany's core concerns. - In principle, Germany welcomes making adjustments to the approach to AERO. - According to the assessment of the German Environment Agency (UBA), even on the basis of the Council position of 8.11, the AERO requirements cannot, however, be complied with in every federal state. For this reason, Germany cannot under any circumstances support stricter provisions. - The first proposed change in the steering note is that the concentration (PM_{2.5}, NO₂) in the base year, in contrast to that of the target year, should be decisive in defining the percentage for reduction. As the concentration in the base year is higher than in the target year, many areas that would only have to make a 15% reduction according to the Council position, would now have to make a 25% reduction. Germany cannot support this stricter provision in light of the fact that even the lower percentage is not achievable in some areas. Changing the approach would only be acceptable if the threshold values were increased accordingly. - The second proposed change refers to adding a fixed concentration as an additional requirement for the use of the lower level. Germany also rejects this stricter provision as some areas would then have to make reductions significantly higher than 15% in order to
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					<p>reach the new threshold of 9 µg/m³ (PM_{2.5}) or 15 µg/m³ (NO₂) in the target year.</p> <ul style="list-style-type: none"> - Facilitating compliance instead requires a third level with a 10% reduction (PM_{2.5}) for cases in which the value in the target year is under 10.0 µg/m³. If the change is made to the base year, the concentration value would need to be increased accordingly. - The approach to AERO should also be adjusted as follows: <ul style="list-style-type: none"> o The introduction of a fixed baseline period, as the current dynamic approach, which refers to the period 10 years before, incentivises taking measures as late as possible. With the dynamic approach, Member States that take early action are exposed to a much higher risk of infringement proceedings. On the other hand, Member States that do not take measures for a long time are exposed to a much lower risk. Germany rejects the dynamic approach. o The obligation should not be permanently extended automatically, but limited to the period up to 2040. Specifications for the period beyond 2040 should be defined in the next amendment of the Air Quality Directive, as no reliable estimates are currently available for the period after 2040. <p>In addition, a possibility to obtain a postponement of the deadline should be created, in the event that compliance is demonstrably infeasible.</p>
Postponement and exemptions	Row 214	Art 18 (1)	Addendum question 1	+	<ul style="list-style-type: none"> - Good air quality is extremely important for the health of everyone in the EU. - Germany therefore rejects exemption provisions on the basis of the economic power of Member States and in

					<p>regions where the majority of people live on low incomes.</p> <ul style="list-style-type: none"> - Germany is also concerned that this provision sets an example for other directives and regulations, and could lead to different levels of protection in such cases. Thus far, an important principle in the EU has been that everyone has the same right to protection. A two-tier system must not exist here. - For this reason, Germany supports the Presidency's proposal to replace this exemption (socio-economic criteria in the form of the GDP clause) and would like to express its gratitude for this. - Germany can accept variants a and b. Variant c is in contrast very vague and would need further clarification. - Any additional proposals for exemption provisions made by the Presidency can continue to be discussed openly. - This support will, however, only be provided under the following two conditions: - It is imperative that the option for postponement of deadline by a total of 10 years provided for in the Council position be retained. - In connection with modelling and the postponements of deadlines, the Council proposal (in both Article 18 ["...or if modelling applications results, as performed for the purposes of Annex VIII, Section A, point 6(d), show that the limit values cannot be attained within the attainment date specified in Table 1 of Section 1 of Annex I"] and Article 8 (5a)(c)), about reasonable and proportionate measures in modelling must be retained.
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Postponement and exemptions	Rows 215 - 218	Art 18 (1) (a) - (d)	Addendum question 2	+	<ul style="list-style-type: none"> - Of the conditions described, letter (a) seems acceptable. - Germany considers letter (b) not acceptable, as this would mean that postponement would not be granted in cases where compliance with the limit value is not feasible within the postponement period (i.e. by 2040). This would result in a Member State being legally bound to comply with a limit value even though this would not be feasible either by 2030, or by 2040. I.e. the very areas which have the greatest need for postponement are excluded. - Letter (c) can only be assessed on the basis of more precise wording. Here, the extent to which additional financial resources can contribute to compliance depends on the individual case. In some cases, the problem is not related to financing, but to the question of which measures are possible, reasonable and proportionate in their implementation. In Germany's view, the use of more specific language by the EP on the use of funding does not constitute any strengthening but rather repetition.
Postponement and exemptions	New	Art 18 (3)	Addendum question 3	+	<ul style="list-style-type: none"> - Germany views the options for additional guarantees proposed by the Presidency as constructive and positive. - In so far as the exemption for modelling is retained without restrictions, Germany can also accept additional guarantees. Germany favours the wording of letter (a), point 3, as it gives consideration to the flexibility needed against the background of normal annual fluctuations. Letter (a), point 2 would also likely be acceptable with restrictions, whereby specific details would have to be discussed. Germany, however, finds letter (a), point 1 too restrictive and

					<p>rejects it. Letters (b) and (d) cannot yet be supported without changes, but a regular implementation report, as described in (c), on the implementation of measures and with a reporting interval of at least two years is acceptable.</p> <ul style="list-style-type: none"> - Germany continues to view the roadmaps critically. It also views the introduction of additional obligatory reporting at yearly intervals critically. - - Updating the air quality plan should, however, only be necessary if: <ul style="list-style-type: none"> o obvious deviations from the trend have occurred o or there is a substantial risk of non-compliance at the end of the granted deadline postponement.
Air quality plans	Rows 224 - 232	Article 19 (4)	Question 7	/	<ul style="list-style-type: none"> - The proposed shortening of the deadlines is viewed critically, as shorter deadlines are generally associated with additional costs and – in so far as implementing a change of EU directives/regulations, national laws or ordinances is required (particularly for AERO compliance) – it will also be necessary to observe appropriate advance notice and transition periods. - On 226a: Although Germany clearly prefers the Council position, an accommodation is possible with regard to the compromise proposed by the Presidency as long as the reference to Annex VIII.A point 4 is deleted. Ozone arises from a complex process involving chemical precursors and is not actually emitted. It can be assumed that there is no significant mitigation potential at national or even local levels. - Row 231: 2027 should be made a possible base year in addition to the years 2025 and 2026. This would reduce red tape because, due to continuously improving air

					<p>quality, fewer areas would have to create an air quality plan.</p> <ul style="list-style-type: none"> -
Air quality plans	Rows 233, 236 - 240	Art 19(5) - 19(7), Annex VIII	Question 8	/	<ul style="list-style-type: none"> - On the term “air quality roadmap”, assessment [/]: In general, Germany’s position here is critical, but flexibility can be signalled. - On row 237, assessment [/]: Germany is not in favour of the insertion of “shall include, where relevant”, and instead prefers insertion of “shall include, where appropriate”. - On Annex VIII.B: Germany can support the proposed extension of Article VIII.B as long as the extension is a list of potential measures to take that does not require the implementation of specific measures. -
Access to justice	Rows 301, 305, 306, 307a	Article 6 (27)	Question 9	-	<p>4.5.1 Definition of ‘public concerned’</p> <ul style="list-style-type: none"> - The changes in row 119 are acceptable to Germany. <p>4.5.2 Art. 27 – Access to justice</p> <ul style="list-style-type: none"> - Regarding the list of associations entitled to initiate action in paragraph 1b, we suggest referring to environmental organisations and health organisations focused on environment-related impacts on human health (...organisation promoting the protection of the environment or environment-related human health which is...) - Germany is in favour of retaining the Council position. In particular, the deletion of paragraph 2 as proposed in the Council position should be retained. <i>Reasoning: The ECJ jurisprudence differentiates with regard to the provisions for access to justice on the</i>

					<p><i>basis of cases that fall under Article 9 (2) of the Aarhus Convention (AC) and those that fall under Article 9 (3) AC. Access to justice according to the IED falls under Article 9 (2) AC, while access to justice in regard to air quality plans has, to date, been oriented to the standards of Article 9 (3) AC.</i></p> <p>If the intent is to maintain this distinction,</p> <ul style="list-style-type: none"> ○ the standard of assessment (currently in (1): “to challenge the substantive or procedural legality”) would have to be limited to the infringement of environment-related laws and regulations and ○ paragraph 2 would have to be deleted. <p>In order to move closer to the EP, there could be a certain flexibility regarding alignment with the existing ECJ jurisprudence. In Case C-873/19, the ECJ clarified that Article 9 (3) of the Aarhus Convention in conjunction with Article 47 of the Charter of Fundamental Rights does not allow any limitations on the substance of action where non-compliance with environmental law is at issue.</p>
Compensation	Rows 311, 316	Article 6 (28)	Question 10	-	<ul style="list-style-type: none"> - Germany wishes to retain the Council’s insertions in paragraph 1 (fault requirement; “that has been committed intentionally or negligently”). - The deletion of the reversal of the burden of proof in paragraph 4 needs to be maintained. - The provisions on limitation periods in Article 28 (6) should be deleted in their entirety. Regulating limitation on actions should be left up to national legislation. At the least, the limitation period should not be more than three years and begin when the person claiming compensation knows or can reasonably be expected to know of the violation. The proposal suggesting that the limitation period

					<p>should first begin to run at the end of the violation and not with the establishment of the claim is not acceptable. If this were to be implemented, some claims that are established and are known to the claimant would only be subject to the limitation period after a very long time or not at all.</p> <p>-</p>
Penalties	Rows 320, 321-325	Article 6 (29)	Question 11	-	<p>- Paragraph 2 The Council position should be maintained here. Deletion of the income-related financial penalties ("or to the income of the natural person") is absolutely essential. These are not compatible with Germany's national legal framework as laid down in the Act on Regulatory Offences (Gesetz über Ordnungswidrigkeiten, OWiG).</p> <p>- Paragraph 3 Germany prefers the Council position here.</p> <p>Letter (b): Germany has the following concerns about the criterion "the intentional or negligent character of the violation": instead of "intent" or "negligence", this criterion should include language about "degree of fault" because there are different degrees of intent and negligence or fault. This allows penalties tailored to the individual case. Suggested language and reasoning: Since there are different degrees of intent and negligence instead of "intent or negligence", the term "the degree of fault" should be used.</p> <p>○ Letter (d): Suggested language and reasoning: It must be taken into account</p>

					<div data-bbox="1187 143 1500 510">PUBLIC</div> <p>that previous penalties that would be recorded in a register must be deleted at some point. Entries in a register that have already been deleted or are due for deletion (or fictitious entries if there was a register for this) due to comparable infringements may not be considered as an aggravating circumstance. The Member States should therefore have more lee-way here (Suggestion for the end of the sentence: “, where appropriate”).</p> <ul style="list-style-type: none"> ○ Letter (e): Suggested language: “where appropriate the financial strength...” Reasoning: The financial strength of the infringer may be taken into account when assessing fines. However, in the case of minor offenses, the financial circumstances are generally not taken into account.
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IRELAND

Table Member State's comments on steering note questions

+ = support

- = Oppose

/ = No comments

Subject	Row 4-column table	Article, paragraph or Annex	Steering note questions	Delegation position	Additional comments
Green/Yellow rows	/	/	/	+	
Sampling points and supersites	Rows 163b (=149), 165, 166, 169, 169b	Art 9, art 10, Annex VII -1	Question 1	+	We can support the proposal regarding the monitoring of CO in rural supersites and the monitoring of total deposition of metals and BaP and PAH in urban supersites. However, we question the added value of measuring CO in rural supersites.
Alert and information thresholds	/	Annex I section 4	Question 2	+	We can support the proposal on alert and information thresholds although we share the concerns raised by some Member States at the WPE on Feb 5 that the 1 hour averaging periods may cause difficulties if there are short-lived equipment malfunctions.
Short term action plans	Row 246	Art 20(1)	Question 3	+	We can support this.
Transboundary air pollution	Rows 251a - e	Art 21(-1b)	Question 4	+	We can support this.
Transmission of information and reporting	Row 272	Art 23(3)	Question 5	-	We can not support this. The 9-month timeline should be maintained as this is required in order to correctly process the data from laboratory based monitoring and also from modelling applications. Also, given the new pollutants added in this directive, there will be an increased reliance on laboratory based measurements so moving to 6 months after 2030 would be even more difficult.

Limit values, target values, AECO, AERO	/	Annex I section 5.B	Question 6	+	We agree with the Presidency that the EP move for full WHO alignment by 2035 should be resisted. We could accept full alignment but only after 2040. We accept the changes proposed by the Presidency regarding the wording on how the AERO is applied.
Postponement and exemptions	Row 214	Art 18 (1)	Addendum question 1	+	We can be flexible on these questions, bearing in mind the comments made by the Commission at the WPE on Feb 5 that this article is a top priority for the EP and that they are unlikely to show too much flexibility.
Postponement and exemptions	Rows 215 - 218	Art 18 (1) (a) - (d)	Addendum question 2	+	
Postponement and exemptions	New	Art 18 (3)	Addendum question 3	+	
Air quality plans	Rows 224 - 232	Art 19(1) - 19(4)	Question 7	+	
Air quality plans	Rows 233, 236 - 240	Art 19(5) - 19(7), Annex VIII	Question 8	+	
Access to justice	Rows 301, 305, 306, 307a	Art 27	Question 9		We are still scrutinising and would prefer to maintain the Council mandate on these issues for now.
Compensation	Rows 311, 316	Art 28	Question 10		
Penalties	Rows 320, 321-325	Art 29	Question 11		

SPAIN

Table Member State's comments on steering note questions

+ = support

- = Oppose

/ = No comments

Subject	Row 4-column table	Article, paragraph or Annex	Steering note questions	Delegation position	Additional comments
Green/Yellow rows	/	Annex III.A.	/	+	Regarding EP's request to maintain carbon monoxide (<i>at least one sampling point focused on measuring contribution to transport emissions also for CO</i>), we prefer the text of the Council mandate. Nevertheless, we could be flexible in order to move forward in the negotiations with the EP.
Sampling points and supersites	Rows 163b (=149), 165, 166, 169, 169b	Art 9, art 10, Annex VII -1	Question 1	- For mandatory CO measurement in rural supersites and metal depositions and BaP and PAH in urban supersites	The EP's proposal implies higher costs, as CO has to be measured in rural supersites and metal depositions, BaP and PAH in urban supersites. In addition, CO and metal depositions, BaP and PAH are already measured in current sites. Therefore, we don't see the added value of these additional measurements at supersites. Thus, we prefer to maintain their measurement as voluntary, as proposed by the Council. Nevertheless, we could have some flexibility for measuring CO at rural supersites in order to reach an agreement with the EP.
Alert and information thresholds	/	Annex I section 4	Question 2	- For NO2 information threshold	We have analyzed the new alert and information thresholds proposed by the Presidency and concluded that the proposed NO2 information threshold would mean informing the population on a very significant number of

					<p>occasions, losing the purpose of the information threshold. To avoid this, we propose the NO2 information threshold to be measured over 3 consecutive hours, as for the alert threshold. An alternative wording would be:</p> <p>B. Information thresholds</p> <p><i>To be measured over 1 hour in the case of sulphur dioxide, and 1 hour over 3 consecutive hours in the case of nitrogen dioxide and 1 day in the case of PM10 and PM2.5, at locations representative of air quality over at least 100 km2 or an entire zone, whichever is the smaller.</i></p>
Short term action plans	Row 246	Art 20(1)	Question 3	+	We can accept the Presidency compromise text.
Transboundary air pollution	Rows 251a - e	Art 21(-1b)	Question 4	+	We can accept the Presidency proposal.
Transmission of information and reporting	Row 272	Art 23(3)	Question 5	-	We believe that the most appropriate timeframe is 9 months for reporting. However, in order to facilitate the negotiation, we could accept not less than 6 months.
Limit values, target values, AECO, AERO	/	Annex I section 5.B	Question 6	-	In relation to Annex I. B of the AERO for PM2.5, we have a comment on the Presidency's proposal regarding the addition of the phrase " or 9.0 µg/m3, whichever is lower ". This change means delaying the AERO compliance year for MMSS with relatively low PM2.5 concentrations to the time of entry into force of the new Directive. In our view, the Council mandate sufficiently preserves the spirit of PM2.5 progressive phase-down, so we prefer the Council mandate.
Postponement and exemptions	Row 214	Art 18 (1)	Addendum question 1		On the reasons for postponement: We prefer option a) <i>'where the necessary reductions can only be achieved by replacing a considerable fraction of the existing domestic heating systems'</i>)

Postponement and exemptions	Rows 215 - 218	Art 18 (1) (a) - (d)	Addendum question 2		On the Conditions when applying for postponement we prefer option b) <i>The inclusion of air quality projections in the roadmap/air quality plan under Article 19(4), showing that the limit values will be attained by the end of the postponement period (which is also a condition in the current directive).</i>
Postponement and exemptions	New	Art 18 (3)	Addendum question 3		On the Guarantees during the postponement period we prefer option c) for the following reasons: - option a) (the trajectory): the linear reduction path may not reflect a reduction even when the measures are working well, as their effects can be observed with a certain delay. - option b) (a periodical update of the roadmap): has a considerable administrative burden.
Air quality plans	Rows 224 - 232	Art 19(1) - 19(4)	Question 7	+	We can be flexible with the Presidency proposal presented in Annex I regarding the timing for plans and roadmaps. As for row 226a, we suggest the following alternative to the Presidency's proposal: <u>19.2 Subparagraph 2:</u> <u>By way of derogation of paragraph 2</u> , when there is no significant potential to address the exceedance, considering national geographical and meteorological conditions and provided that its measures do not entail disproportionate costs, <u>the air quality plan may be replaced by an assessment of the situation and a justification for the absence of a potential to address the exceedance.</u>
Air quality plans	Rows 233, 236 - 240	Art 19(5) - 19(7), Annex VIII	Question 8	- With some of the additions of the EP in	We have a proposal for a slight change in definition (35a) in Article 4 for air quality roadmaps, as we consider that it should be clearer in the definition that the purpose of the

				annex VIII.A (4a and 6)	<p>roadmap is to contribute to a future compliance at the time of entry into force of the limit values. Our proposal is:</p> <p>Row 116a. (35a) ‘air quality roadmap’ means an air quality plan, adopted ahead of the attainment deadline of limit values that sets out policies and measures in order to comply with those limit values <u>within the attainment deadline</u>;</p> <p>Point 6. Explaining why certain measures have not been selected seems to us to be a disproportionate and unnecessary burden. We propose to delete the sentence: <i>“Where the list of measures pursuant to point 5(a) includes measures with possible high potential to improve air quality, but they have not been selected for adoption, an explanation of the reasons why the measures are not selected for adoption”</i></p> <p>Annex VIII.B The indicative measures added by the EP seem unnecessary to us. However, in the interest of reaching consensus, we can be flexible as long as the text is strengthened to make it clear that this is an example list of merely indicative measures.</p>
Access to justice	Rows 301, 305, 306, 307a	Art 27	Question 9	/	
Compensation	Rows 311, 316	Art 28	Question 10	-	<p><u>In article 28.1:</u> We cannot support the deletion of the reference to intentionality and negligence. We consider the introduction of Article 19(2) to be problematic since ozone has a complex chemistry and is very much affected by transboundary pollution.</p>

Penalties	Rows 320, 321-325	Art 29	Question 11	-	We cannot support the reintroduction of Article 29(2) and the linking of penalties to turnover of the legal person or to the income of the natural person having committed the violation.
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FRANCE

NOTE DES AUTORITÉS FRANÇAISES

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

Les autorités françaises remercient la Présidence Belge pour les échanges lors du groupe du 5 février 2024 et rappellent, en préambule, leur appui à la Présidence dans le cadre des trilogues en cours pour trouver un équilibre entre les objectifs fixés et les nécessaires flexibilités relatives à la mise en œuvre des dispositions, dans l'optique d'aboutir à une législation à la fois ambitieuse et efficace en matière de qualité de l'air. A ce titre, elles soutiennent la Présidence concernant le maintien du mandat du Conseil sur les valeurs limites de l'annexe I et leurs échéances respectives (2030, puis au plus tard 2050 pour les valeurs recommandées par l'OMS) qui va de pair avec les modalités de report de l'article 18.

En ce qui concerne les motifs possibles de report inscrits à l'article 18, les autorités françaises sont particulièrement attachées à celui relatif aux résultats des modélisations montrant qu'une valeur limite ne peut être atteinte à échéance fixée pour une zone en particulier. Cette approche prospective est fondée sur des hypothèses détaillées spécifiques à la zone concernée qui devront être explicitées et argumentées par les Etats membres dans le cadre du plan qualité de l'air soumis à l'accord de la Commission selon les dispositions du point 2 de l'article 18. Suite aux derniers échanges entre la Présidence et le Parlement, les autorités françaises proposent d'expliciter davantage dans le cadre du point 2 de l'article 18 le contrôle attendu de la Commission au sujet des projections fournies par les Etats membres, et d'autre part d'introduire dans le texte du point 1 de l'article 18 ainsi que dans le considérant n°30 le caractère exceptionnel des demandes de reports par l'intermédiaire des formulations révisées suivantes du mandat du Conseil (modifications indiquées en gras dans le texte):

- Ligne 40/considérant n°30 : « For zones where conditions are particularly difficult, it should be **exceptionally** possible to postpone the deadline for compliance with the air quality limit values [...] »
- Ligne 214/article 18 (point 1) : 1. Where, in a given zone, conformity with the limit values for particulate matter (PM10 and PM2.5) or, nitrogen dioxide , benzo(a)pyrene or benzene cannot **exceptionally** be achieved by the deadline specified in Table 1 of Section 1 of Annex I [...] »
- Ligne 219/article 18 (point 2) : « Member States shall notify the Commission where, in their view, paragraph 1 is applicable, and shall communicate the air quality plan referred to in paragraph 1 and all relevant information necessary for the Commission to assess whether the invoked reason for postponement and the conditions set out in that paragraph are satisfied. **Regarding the projections results from modelling applications showing that the limit values cannot be attained within the attainment date as specified in Table 1 of Section 1 of Annex**

1, Members states shall justify in the information transmitted to the Commission the methods as well as the data used to obtain these projections. »

Les autorités françaises ont également noté qu'un consensus reste à trouver concernant l'article 19 portant sur les plans qualité de l'air. Ces dernières peuvent ainsi se montrer flexibles quant à la question des délais propres à l'établissement, voir la mise à jour, des plans qualité de l'air sous réserve :

- du maintien du critère lié à la modélisation précédemment évoqué dans le cadre de l'article 18 ;
- de la possibilité de pouvoir exonérer de feuille de route les territoires pour lesquels des actions déjà prévues permettront d'atteindre les valeurs limites d'ici 2030. Tel que formulé lors du dernier groupe, et afin de pouvoir pleinement soutenir la Présidence au sujet des feuilles de route, les autorités françaises proposent de prévoir au sein du point 4 de l'article 19 l'exonération de réaliser des feuilles de route avant le 31 décembre 2028, si l'Etat membre transmet à la Commission avant fin 2027 une étude permettant de justifier que les mesures prévues sur un territoire donné permettront d'atteindre les valeurs limites ou cibles au plus tard en 2030.
- de l'absence de complexification du contenu des plans, tel que déjà signalé dans les cadre des précédents groupes, en privilégiant celui de l'annexe VIII retenu dans le mandat du Conseil. Si toutefois des compromis sont à trouver sur cette annexe avec le Parlement, les autorités françaises soulignent le caractère essentiel à minima des amendements suivants à partir de l'annexe VIII de la note de cadrage révisée par la Présidence pour le groupe du 5 février dernier (ref. WK 1511/2024 : modifications indiquées en gras dans le texte) :

Point A

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

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

Le terme "attainment date" est peu clair tenant compte du fait que les valeurs limites peuvent être atteintes avant la fin de la mise en œuvre d'un plan qualité de l'air ou la feuille de route. Ainsi retenir la date d'atteinte des valeurs limites, et non celle de la fin du plan ou de la feuille de route, dans le cadre des projections conduira les Etats membres à devoir faire évoluer les hypothèses pour chaque année plutôt que sur une période du plan/de la feuille de route, ce qui implique des coûts supplémentaires (temps homme et financement) ainsi qu'une marge d'erreur plus importante liée aux simplifications des données annuelles qui pourraient en découler (linéarisation des baisses de concentration par exemple). Ces modélisations annuelles moins fiables que celles réalisées sur la période de mise en œuvre du plan ou de la feuille de route peuvent conduire in fine à une perte de confiance des parties prenantes et ainsi avoir des effets contreproductifs. Il convient donc de remplacer la mention « *until the attainment date* » par « *until the final date of the air quality plan or the roadmap* ».

“5. Identification of effective air pollution abatement measures

- (a) listing and description of all the measures **considered set out** in the air quality plan or air quality roadmap including the identification of the competent authority in charge of their implementation;

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

- (b) ~~(b) selection of measures to reach compliance with the limit values. Where the list of measures pursuant to point 5(a) includes measures with possible high potential to improve air quality, but they have not been selected for adoption, an explanation of the reasons why the measures are not selected for adoption;~~
- (c) ~~(a) quantification of emission reduction (in tonne/year), from the combination of measures referred to in point (b);"~~

Une lecture large de toutes les mesures "envisagées", couplée à la longue liste de mesures proposées au point B, amènerait à un trop grand risque de contentieux multiples, nécessitant de justifier les raisons ayant conduit à ne pas étudier telle ou telle mesure (voir également les commentaires portant sur le point B). Par ailleurs, la détermination du potentiel pour améliorer la qualité de l'air des mesures nécessiterait des évaluations mesures par mesures auxquelles les autorités françaises se sont déjà opposées en raison du coût important et parfois de l'impossibilité technique d'isoler une mesure par rapport à une autre en cas de co-bénéfices. Le point (-a) est inutile dès lors que le point (b) couvre déjà la quantification de la réduction d'émissions des mesures établie dans le plan.

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

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

Les autorités françaises ne sont pas favorables à ce point (sans en faire une ligne rouge) car cela semble être une source importante de contentieux futurs sans apporter de plus-value sur la qualité de l'air puisque la nécessité de contenir le dépassement à une période la plus courte possible est déjà prévue par la directive. L'amendement reviendrait à en apporter la justification a priori dans le plan plutôt qu'a posteriori en cas de contentieux.

Point B

Les autorités françaises remercient la Présidence pour le remplacement de "including" par "such as", et à titre de compromis, peuvent donc accepter les modifications proposées à cette partie. Elles notent toutefois un décalage important en termes de nombre de mesures entre les différents secteurs contributeurs. Elles notent aussi que toutes ces mesures ne sont pas pertinentes pour tous les polluants. Plus largement, elles estiment que l'objectif de la directive est de définir des objectifs, et que les Etats membres doivent être laissés libres des moyens à mettre en œuvre pour y parvenir.

Concernant l'article 8, les autorités françaises rappellent leur soutien à la Présidence concernant sa proposition de maintenir le mandat du Conseil obtenu en COREPER et transmettent, suite au groupe, leur proposition de modification du point 5 (ligne 147) consistant à préciser que si la concentration maximale se situe déjà dans la zone de représentativité d'un point de mesure fixe, l'ajout d'une nouvelle station n'est pas exigée : « If modelling applications show an exceedance of any limit value or target value in an area of the zone not covered by fixed measurements and their area of spatial representativeness, at least one additional fixed or indicative measurement may be used in the area of the maximum concentration (when this concentration is not linked to a temporary effect) modelled in the zone **except when this modelled concentration occurs in the zone of representativeness of a fixed measurement** ».

Concernant les lignes surlignées en jaune et les questions 1 à 10 posées par la Présidence dans sa note de cadrage, les autorités françaises font part des commentaires suivants :

+ = Favorable

- = Défavorable

/ = Réserve

Sujet	Ligne, colonne, tableau	Article, paragraphe or Annex	Questions de la note de cadrage	Position des autorités françaises	Commentaires complémentaires
Lignes jaunes	/	/	/	Annexe III, A : + Annexe IV.C : - Annexe VII, section 3 : + sous réserve de l'ajout demandé par les autorités françaises voir commentaires Annexe IX don't point 3 : +	Annexe III, A : les autorités françaises acceptent la proposition de compromis de la Présidence, visant à ce que lorsque les concentrations de CO sont comparables dans 2 points noirs comprenant un point de mesure trafic, la station de mesure soit située en trafic ; Annexe IV.C : les autorités françaises réitérent leur désaccord avec la proposition d'implantation de points de mesure, d'une façon générale, à des niveaux pouvant être inférieurs à 1,5 m (elle s'oppose donc en particulier à des points de mesure entre 0,5 à 1,5m), qui entraînerait une forte variabilité et une absence de comparabilité des points de mesure. La proposition de la Présidence concernant les positions plus hautes du point IV.C ne pose pas de difficultés. Annexe VII, section 3 : le Parlement européen souhaite rester sur la proposition de la Commission pour la localisation des stations de mesure des PUF, c'est à dire sans préciser qu'elles doivent se situer sous le vent des principales sources de PUF, mais simplement en indiquant qu'elles doivent se situer là où des concentrations élevées de PUF sont attendues. Les autorités françaises peuvent accepter cette proposition de la Présidence, sous réserve d'un ajout de la mention

					<p>d'une exposition potentielle des populations ;</p> <p>Annexe IX : la Présidence propose que soit mise à disposition du public, la comparaison des concentrations mesurées de tous les polluants aux valeurs les plus récentes recommandées par l'OMS, en plus des valeurs de ces polluants. Les autorités françaises acceptent la proposition de la Présidence ;</p> <p>Annexe IX, 3 : les autorités françaises acceptent la proposition de la Présidence.</p>
Points d'échantillonnage et supersites	Ligne 163b (=149), 165, 166, 169, 169b	Art 9, art 10, Annexe VII -1	Question 1	-	<p>Les autorités françaises ne sont pas favorables au pack proposé par le Parlement européen sur deux points :</p> <ul style="list-style-type: none"> - la surveillance obligatoire du CO dans les supersites ruraux, qui n'est techniquement pas justifiée en raison de ses sources d'émissions ; - la surveillance obligatoire des métaux, BaP, et PAH dans les supersites urbains, car il n'y a aucune plus-value à mesurer les dépôts de ces substances en milieu urbain et que cette surveillance entraînerait un coût non justifié. Elle indiquent que la note de bas de page ajoutée à l'annexe VII section 1, n'est pas cohérente, car par construction il n'y pas de station urbaine EMEP.
Seuils d'information et d'alerte	/	Annexe I section 4	Question 2	+	Les autorités françaises acceptent les abaissments des seuils d'information pour le SO2 et le NO2 à titre de compromis.
Plans d'action à court terme	Ligne 246	Art 20(1)	Question 3	+	Les autorités françaises acceptent la proposition de rédaction proposée par la Présidence concernant les cas limitant les plans

					d'action à court terme pour les particules afin de faire preuve de flexibilité.
Pollution transfrontalière	Ligne 251a - e	Art 21(-1b)	Question 4	-	L'ajout du terme « significatif » est problématique, car trop restrictif. Une contribution transfrontalière, même si elle reste d'ampleur modérée et dans la mesure où elle est entièrement subie par un Etat membre, doit pouvoir être prise en compte par la Commission dans le cadre de l'article 18(1).
Transmission et rapportage	Ligne 272	Art 23(3)	Question 5	-	Toute proposition de réduction de ce délai est incompatible avec la densification des données qui seront à remonter à la Commission au regard de la proposition, qui nécessitent de plus un important travail de vérification, de rigueur, de qualité.
Valeurs limites et valeurs cibles, AERO	/	Annexe I section 5.B	Question 6	/	Les autorités françaises comprennent l'objectif poursuivi par la Présidence, en particulier pour utiliser la concentration observée sur la date de départ pour définir la trajectoire de réduction de l'IEM, mais qu'il convient dans ce cas de revoir les seuils et valeurs en cohérence, pour maintenir un niveau d'ambition équivalent.
Report et dérogation	Ligne 214	Art 18 (1)	Addendum question 1	-	Les autorités françaises ne sont pas favorables à cette flexibilité qui semble ouvrir des possibilités de report trop importantes.
Report et dérogation	Lignes 215 - 218	Art 18 (1) (a) - (d)	Addendum question 2	(a) + (b) / (c) Réserve en attente de clarification	Les autorités françaises soulignent l'importance de maintenir une possibilité de report fondée sur les projections de qualité de l'air. Elle indiquera sa forte préférence pour le point a), qui est cohérent avec les propositions déjà formulées par les autorités françaises.
Report et dérogation	Nouveau	Art 18 (3)	Addendum question 3	a)1) and a)2) – a)3 flexible sous conditions (voir commentaires)	Les autorités françaises sont contre les propositions a)1) et a)2) qui sont à la fois trop contraignantes et lourdes d'un point de vue administratif et coûteuses compte tenu des demandes de projections en émissions et concentrations. Une trajectoire linéaire n'est par ailleurs pas nécessairement pertinente

				<p>b) flexible si 5 ans</p> <p>c) voir commentaires</p> <p>d) -</p>	<p>compte tenu du temps souvent nécessaire entre la mise en œuvre d'actions et l'observation des effets concrets sur les niveaux de polluants.</p> <p>Elles sont flexibles sur le point a)3) <u>sous réserve toutefois que cette trajectoire de réduction s'applique sur une moyenne sur 3 ans afin de prendre en compte les éventuelles anomalies en raison d'années particulières (météorologie particulièrement défavorable une année par exemple).</u></p> <p>Les autorités françaises sont flexibles sur le point b), pour une durée de mise à jour régulière tous les 5 ans telle que suggérée par la Présidence.</p> <p>Point c), AF flexibles pour réaliser un suivi de mise en œuvre des actions du plan qualité de l'air tous les 2,5 ans, à la triple condition de : i/ supprimer toute nécessité de réaliser un rapportage à la Commission européenne ; ii/ supprimer la nécessité de réaliser des projections en émissions*; iii/ supprimer la nécessité de réaliser des projections en concentrations*.</p> <p><i>*à réserver pour la mise à jour réalisée tous les 5 ans, certaines mesures nécessitant plus de temps pour conduire à des effets en matière de qualité de l'air.</i></p> <p>Les autorités françaises sont contre le point d) en raison de la subjectivité pour apprécier si des mesures sont « importantes » et « pas dans la bonne voie ». Un bilan de la mise en œuvre tous les 2,5 ans et une mise à jour du plan qualité de l'air tous les 5 ans, comme évoqué dans les précédentes questions, apparaît apporter des garanties pour réajuster si nécessaire des actions dont la mise en œuvre apparaîtrait difficile.</p> <p>Elles soulignent également l'importance d'avoir l'appellation</p>
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					feuille de route proposée par le Parlement dans le cadre de l'article 18 et 19 (a 4) à dissocier des plans qualité de l'air à réaliser en cas de dépassement d'une valeur limite ou valeur cible.
Plans qualité de l'air	Lignes 224 - 232	Art 19(1) - 19(4)	Question 7	Lignes 225, 227, 230 – Ligne 226a : cf commentaires Ligne 230a / Ligne 231 : cf. commentaires	<p>Ligne 225, 227, 230: les autorités françaises souhaitent supprimer les mots « <i>information on their expected impact on emissions and concentrations</i> ».</p> <p>Ligne 226a : A titre de compromis, les autorités françaises peuvent être flexibles sur l'option 1 (colonne de gauche dans la note de cadrage complémentaire), qui paraît plus proche de l'esprit du compromis du Conseil à condition qu'il soit précisé que la Commission n'est pas en position de refuser la justification de l'Etat membre.</p> <p>S'agissant de l'option 2 (colonne de droite), la mention des coûts disproportionné paraît peu claire. Cette option 2 est par ailleurs beaucoup plus contraignante puisqu'elle peut nécessiter de suivre le schéma classique d'élaboration des plans, y compris avec une consultation publique. Les autorités françaises y sont défavorables</p> <p>Ligne 231 : des délais importants sont nécessaires à l'établissement de feuilles de route et pour un certain nombre de territoires au sein desquels les actions déjà prévues permettront d'atteindre les valeurs limites d'ici 2030, le vrai enjeu des feuilles de routes sera d'aller plus loin : sur ces territoires, il n'apparaît pas pertinent de contraindre les Etats membres sur les modalités de réalisation de ces feuilles de route, au risque de rendre inutile pour la qualité de l'air, voire contreproductif, car démobilisant pour les parties prenantes au niveau local, et chronophage pour les Etats membres la réalisation de ces</p>

					<p>feuilles de route (alors que d'autres territoires nécessiteront d'être mobilisés très rapidement et avec des actions ambitieuses pour atteindre les valeurs limites 2030). Les autorités françaises proposent de prévoir au sein du point 4 de l'article 19 l'exonération de réaliser des feuilles de route avant le 31 décembre 2028, si l'Etat membre transmet à la Commission avant fin 2027 une étude permettant de justifier que les mesures prévues sur un territoire donné permettront d'atteindre les valeurs limites ou cibles au plus tard en 2030.</p>
Plans qualité de l'air	Lignes 233, 236 - 240	Art 19(5) - 19(7), Annex VIII	Question 8	Ligne 236 : - Annexe VIII : voir commentaires détaillés	<p>Ligne 236 : opposition à la suppression de « <i>where appropriate</i> »</p> <p>Annexe VIII : voir commentaires détaillés et propositions d'amendements exposés plus en amont dans la présente note.</p>
Accès à la justice	Lignes 301, 305, 306, 307a	Art 27	Question 9	+ à l'exception de l'ajout explicite de « the network design, location, and relocation of sampling points under article 9 ».	Les autorités françaises peuvent faire preuve de flexibilité quant aux propositions de la Présidence concernant l'accès à la justice, à l'exception de l'ajout explicite de « the network design, location, and relocation of sampling points under article 9 ».
indemnisation	Lignes 311, 316	Art 28	Question 10	+	Les autorités françaises peuvent faire preuve de flexibilité quant aux propositions de la Présidence concernant la compensation.
Sanctions	Lignes 320, 321-325	Art 29	Question 11	+	Les autorités françaises peuvent faire preuve de flexibilité quant aux propositions de la Présidence concernant la compensation.

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

The French authorities would like to thank the Belgian Presidency for the discussions held during the group meeting on 5 February 2024 and, as a preamble, would like to reiterate their support for the Presidency within the framework of the dialogues currently underway to find a balance between the objectives set and the necessary flexibility regarding the implementation of the provisions, with a view to achieving legislation that is both ambitious and effective in terms of air quality. In this respect, they support the Presidency regarding the maintenance of the Council's mandate on the limit values in Annex I and their respective deadlines (2030, then 2050 at the latest for the values recommended by the WHO), which goes hand in hand with the arrangements for postponing Article 18.

With regard to the possible reasons for postponement set out in Article 18, the French authorities are particularly attached to the one relating to the results of modelling showing that a limit value cannot be achieved by the deadline set for a particular zone. This forward-looking approach is based on detailed assumptions specific to the zone concerned, which will have to be explained and substantiated by the Member States as part of the air quality plan submitted to the Commission for approval in accordance with the provisions of point 2 of Article 18. Following the latest exchanges between the Presidency and Parliament, the French authorities propose to make more explicit in point 2 of Article 18 the control expected of the Commission with regard to the projections provided by the Member States, and also to introduce into the text of point 1 of Article 18 and in recital 30 the exceptional nature of requests for carryovers through the following revised wording of the Council mandate (changes indicated in bold in the text):

- Row 214/article 18 (point 1) : 1. Where, in a given zone, conformity with the limit values for particulate matter (PM₁₀ and PM_{2.5}) or, nitrogen dioxide, benzo(a)pyrene or benzene cannot ***exceptionally*** be achieved by the deadline specified in Table 1 of Section 1 of Annex I [...] »
- Row 40/recital n°30 : « For zones where conditions are particularly difficult, it should be ***exceptionally*** possible to postpone the deadline for compliance with the air quality limit values [...] »
- Row 219/article 18 (point 2) : « Member States shall notify the Commission where, in their view, paragraph 1 is applicable, and shall communicate the air quality plan referred to in paragraph 1 and all relevant information necessary for the Commission to assess whether the invoked reason for postponement and the conditions set out in that paragraph are satisfied. ***Regarding the projections results from modelling applications showing that the limit values cannot be attained within the attainment date as specified in Table 1 of Section 1 of Annex 1, Members states shall justify in the information transmitted to the Commission the methods as well as the data used to obtain these projections.*** »

The French authorities have also noted that a consensus has yet to be reached on Article 19 concerning air quality plans. They can therefore be flexible on the question of deadlines for drawing up and updating air quality plans, provided that :

- the maintenance of the modelling criterion previously mentioned in article 18 ;
- the possibility of being able to exempt from the roadmap territories for which actions already planned will enable the limit values to be reached by 2030. As formulated during the last working group, and in order to be able to fully support the Presidency on the subject of roadmaps, the French authorities propose that point 4 of Article 19 should provide for exemption from the requirement to produce roadmaps before 31 December 2028, if the

Member State sends the Commission before the end of 2027 a study justifying that the measures planned for a given territory will enable the limit or target values to be reached by 2030 at the latest ;

- that the content of the plans should not be made more complex, as has already been pointed out by previous groups, and that priority should be given to the content of Annex VIII as set out in the Council's mandate. If, however, compromises have to be found with the Parliament on this annex, the French authorities stress the essential nature of at least the following amendments based on Annex VIII of the framework note revised by the Presidency for the group of 5 February (ref. WK 1511/2024: amendments indicated in bold in the text):

Point A

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

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

The term "attainment date" is unclear, given that the limit values may be reached before the end of the implementation of an air quality plan or roadmap. Thus, using the date of attainment of the limit values, and not that of the end of the plan or roadmap, in the projections will mean that the Member States will have to change the assumptions for each year rather than over a period of the plan/roadmap, which implies additional costs (human time and funding) as well as a greater margin of error linked to the simplifications of the annual data that could result (linearisation of concentration reductions, for example). Such annual modelling, which is less reliable than that carried out over the period of implementation of the plan or roadmap, may ultimately lead to a loss of confidence on the part of stakeholders and thus have counterproductive effects. The words "until the attainment date" should therefore be replaced by "until the final date of the air quality plan or the roadmap".

"5. Identification of effective air pollution abatement measures

- (a) listing and description of all the measures **considered set out** in the air quality plan or air quality roadmap including the identification of the competent authority in charge of their implementation;

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

- ~~(b) (-b) selection of measures to reach compliance with the limit values. Where the list of measures pursuant to point 5(a) includes measures with possible high potential to improve air quality, but they have not been selected for adoption, an explanation of the reasons why the measures are not selected for adoption;~~
- (c) ~~(-a) quantification of emission reduction (in tonne/year), from the combination of measures referred to in point (b);"~~

A broad reading of all the "envisaged" measures, coupled with the long list of measures proposed in point B, would lead to too great a risk of multiple disputes, requiring justification of the reasons for not studying a particular measure (see also the comments on point B). In addition, determining the potential of measures to improve air quality would require measure-by-measure assessments, to which the French authorities have already objected due to the high cost and sometimes the technical impossibility of isolating one measure from another in the event of co-benefits. Point (-a) is

unnecessary as point (b) already covers the quantification of the reduction in emissions from the measures set out in the plan.

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

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

The French authorities are not in favour of this point (without making it a red line) because it seems to be a major source of future litigation without providing any added value in terms of air quality, since the need to limit exceedances to the shortest possible period is already provided for in the directive. The amendment would mean that the justification for this would be included in the plan beforehand, rather than afterwards in the event of litigation.

Point B

The French authorities thank the Presidency for replacing "including" with "such as", and as a compromise can therefore accept the proposed changes to this section. They note, however, that there is a significant discrepancy in the number of measures between the various contributing sectors. They also note that not all of these measures are relevant to all pollutants. More generally, they believe that the aim of the directive is to define objectives, and that the Member States must be left free to decide on the means of achieving them.

With regard to Article 8, the French authorities reiterate their support for the Presidency's proposal to maintain the Council's mandate obtained in COREPER and, following the Group's discussions, forward their proposal to amend point 5 (line 147) to specify that if the maximum concentration is already within the zone of representativeness of a fixed measurement point, the addition of a new station is not required: "If modelling applications show an exceedance of any limit value or target value in an area of the zone not covered by fixed measurements and their area of spatial representativeness, at least one additional fixed or indicative measurement may be used in the area of the maximum concentration (when this concentration is not linked to a temporary effect) modelled in the zone except when this modelled concentration occurs in the zone of representativeness of a fixed measurement".

With regard to the lines highlighted in yellow and questions 1 to 10 posed by the Presidency in its framework note, the French authorities have the following comments to make:

+ = in favour

- = not in favour

/ = reserve

Subject	Row 4-column table	Article, paragraph or Annex	Steering note questions	Delegation position	Additional comments
Yellow rows	/	/	/	Annex III, A : + Annex IV.C : - Annex VII, section 3 : + subject to the addition requested by the French authorities see comments Annex IX don't point 3 : +	<p>Annex III, A : The French authorities accept the Presidency's compromise proposal that when CO concentrations are comparable in 2 black spots that include a traffic measurement point, the measurement station should be located in traffic</p> <p>Annex IV.C : the French authorities reiterate their disagreement with the proposal to set up measuring points, in general, at levels that may be lower than 1.5 m (they are therefore particularly opposed to measuring points between 0.5 and 1.5 m), which would lead to considerable variability and a lack of comparability between measuring points. The Presidency's proposal concerning the higher positions in point IV.C does not raise any difficulties.</p> <p>Annex VII, section 3 : The European Parliament wishes to remain with the Commission's proposal for the location of UFP measuring stations, i.e. without specifying that they must be located downwind of the main sources of UFP, but simply indicating that they must be located where high concentrations of UFP are expected. The French authorities can accept the Presidency's proposal, subject to the addition of a reference to the potential exposure of populations;</p> <p>Annex IX : the Presidency proposes that a comparison of the measured concentrations of all the following substances be made available to the</p>

					public pollutants to the most recent values recommended by the WHO, in addition to the values for these pollutants. The French authorities accept the Presidency's proposal; Annex IX, 3 : the French authorities accept the Presidency's proposal.
Sampling points and supersites	Rows 163b (=149), 165, 166, 169, 169b	Art 9, art 10, Annex VII -1	Question 1	-	The French authorities are not in favour of the package proposed by the European Parliament on two points: <ul style="list-style-type: none"> - compulsory monitoring of CO in rural supersites, which is not technically justified because of the sources of its emissions; - mandatory monitoring of metals, BaP and PAH in urban supersites, as there is no added value in measuring the deposition of these substances in urban environments and such monitoring would entail an unjustified cost. They point out that the footnote added to section 1 of Annex VII is not consistent, as there is no urban EMEP station by construction.
Alert and information thresholds	/	Annex I section 4	Question 2	+	The French authorities accept the lowering of the information thresholds for SO ₂ and NO ₂ as a compromise.
Short term action plans	Row 246	Art 20(1)	Question 3	+	The French authorities accept the proposed wording put forward by the Presidency concerning the cases limiting short-term action plans for particulate matter in order to allow flexibility.
Transboundary air pollution	Rows 251a - e	Art 21(-1b)	Question 4	-	The addition of the term "significant" is problematic, as it is too restrictive. A cross-border contribution, even if it remains moderate in scale and insofar as it is borne entirely by a Member State, must be able to be taken into account by the Commission in the context of Article 18(1).
Transmission of information	Row 272	Art 23(3)	Question 5	-	Any proposal to reduce this timeframe is incompatible with the increased volume of data that will

and reporting					have to be sent to the Commission under the proposal, which will also require extensive verification work to ensure quality.
Limit values, target values, AECO, AERO	/	Annex I section 5.B	Question 6	/	The French authorities understand the objective pursued by the Presidency, in particular to use the concentration observed on the starting date to define the EMI reduction trajectory, but that in this case the thresholds and values should be revised to be consistent, in order to maintain an equivalent level of ambition.
Postponement and exemptions	Row 214	Art 18 (1)	Addendum question 1	-	The French authorities are not in favour of this flexibility, which seems to open up excessive carryover possibilities.
Postponement and exemptions	Rows 215 - 218	Art 18 (1) (a) - (d)	Addendum question 2	(d) + (e) / (f) Reserve pending clarification	The French authorities stress the importance of maintaining the possibility of deferral based on air quality projections. It will indicate its strong preference for point a), which is consistent with the proposals already made by the French authorities.
Postponement and exemptions	New	Art 18 (3)	Addendum question 3	a)1) and a)2) – a)3 flexible subject to conditions (see comments) b) flexible if 5 years c) see comments d) -	<p>The French authorities are opposed to proposals a)1) and a)2), which are both too restrictive and cumbersome from an administrative point of view and costly in view of the requests for emission and concentration projections. Moreover, a linear trajectory is not necessarily relevant given the time often required between the implementation of actions and the observation of concrete effects on pollutant levels.</p> <p>They are flexible on point a)3), provided that this reduction trajectory is applied over a 3-year average in order to take into account any anomalies due to particular years (particularly unfavourable weather conditions in one year, for example).</p>

					<p>The French authorities are flexible on point b), for a regular update every 5 years as suggested by the Presidency.</p> <p>Point c), flexible FA for monitoring the implementation of air quality plan actions every 2.5 years, on the threefold condition of: i/ eliminating any need to report to the European Commission; ii/ eliminating the need to carry out emission projections*; iii/ eliminating the need to carry out concentration projections*.</p> <p>*To be reserved for the update carried out every 5 years, as certain measures require more time to have an impact on air quality.</p> <p>The French authorities are opposed to point d) because of the subjectivity involved in assessing whether measures are "important" and "not on the right track". A review of implementation every 2.5 years and an update of the air quality plan every 5 years, as mentioned in the previous questions, would appear to provide guarantees for readjusting, if necessary, actions that appear difficult to implement.</p> <p>They also stress the importance of having the name roadmap proposed by Parliament in the context of Articles 18 and 19 (a 4) to be dissociated from the air quality plans to be drawn up in the event of a limit value or target value being exceeded.</p>
Air quality plans	Rows 224 - 232	Art 19(1) - 19(4)	Question 7	Row 225, 227, 230 – Row 226a : see comments Row 230a / Row 231 : see comments	<p>Row 225, 227, 230: the French authorities wish to delete the words "information on their expected impact on emissions and concentrations".</p> <p>Row 226a: As a compromise, the French authorities can be flexible on option 1 (left-hand column in the additional framework note), which seems closer to the spirit of the</p>

					<p>Council compromise, provided that it is specified that the Commission is not in a position to refuse the Member State's justification.</p> <p>With regard to option 2 (right-hand column), the reference to disproportionate costs seems unclear. Option 2 is also much more restrictive, since it may require the traditional procedure for drawing up plans to be followed, including public consultation. The French authorities are against this option.</p> <p>Row 231 : Considerable time is needed to draw up roadmaps, and for a number of areas where the actions already planned will enable the limit values to be reached by 2030, the real challenge of the roadmaps will be to go further: for these territories, it does not seem appropriate to constrain the Member States on the methods for implementing these roadmaps, at the risk of making the implementation of these roadmaps useless for air quality, or even counterproductive, as it would demotivate the stakeholders at local level and be time-consuming for the Member States (whereas other territories will need to be mobilised very quickly and with ambitious actions in order to achieve the 2030 limit values).</p> <p>The French authorities are proposing that point 4 of Article 19 should exempt Member States from having to produce roadmaps before 31 December 2028, if the Member State sends the Commission before the end of 2027 a study justifying that the measures planned for a given territory will enable the limit or target values to be achieved by 2030 at the latest.</p>
Air quality plans	Rows 233, 236 - 240	Art 19(5) - 19(7), Annex VIII	Question 8	Row 236 : - Annex VIII : see	Row 236: opposition to the deletion of "where appropriate".

				detailed comments	Annex VIII: see detailed comments and proposed amendments set out earlier in this note.
Access to justice	Rows 301, 305, 306, 307a	Art 27	Question 9	+ with the exception of the explicit addition of « the network design, location, and relocation of sampling points under article 9 ».	The French authorities can show flexibility with regard to the Presidency's proposals concerning access to justice, with the exception of the explicit addition of "the network design, location, and relocation of sampling points under article 9"
Compensation	Rows 311, 316	Art 28	Question 10	+	The French authorities can show flexibility with regard to the Presidency's proposals concerning compensation.
Penalties	Rows 320, 321-325	Art 29	Question 11	+	The French authorities can show flexibility with regard to the Presidency's proposals concerning compensation.

CROATIA

Table – comments on steering note questions

Subject	Row 4- column table	Article, paragraph or Annex	Steering note questions	Delegation position	Additional comments
Green rows	/	/	/	+/-	Row 105a: we have concerns about introducing the concept of hotspots. – definition is not completely clear although the concept of hotspots was also included in Annex III, A.1, Annex IV, B.2 (a) and (ca) and Annex VII, section 1, A.
Yellow rows				+/-	We have scrutiny for Annex IV, C. b - <i>“in general, the inlet sampling point shall be between 0,5 m (the breathing zone) and 4 m above the ground. Higher positions (up to 8 m) may be necessary in some circumstances. Higher siting may also be appropriate if the station is representative of a large area (a background location). The decision to apply such higher siting shall be fully documented”</i> .
Art. 8 (Assessment criteria)					We agree with one minor change - to replace the words ‘in the area of the maximum concentration’ with the words ‘in the area of the modelled exceedance’ However, although the Presidency sees no room for flexibility to accommodate the EP’s wishes and proposes to stick to the Coreper mandate we are flexible to support obligation for modelling to enter into force 2 years after publication of Implementing Acts.
Sampling points and supersites	Rows 163b (=149), 165,	Art 9, art 10, Annex VII -1	Question 1	+/-	We are flexible to proposed monitoring of SO ₂ to be included in both urban and rural supersites and monitoring

	166, 169, 169b				<p>of benzene and CO in urban supersites to accommodate the EP's request - Art. 10 and the related Annex VII.</p> <p>On the EP proposed compromise package for Art. 9, 10 and annex VII:</p> <ul style="list-style-type: none"> - We can support Council mandate for Art. 9. – non-obligatory monitoring of NH₃, BC and Hg and keeping the agreed number of additional UFP monitoring sites. - We support Council mandate for Art. 10 for rows 165, 166, 169, and the second part of 169b - We do not support deletion of the flexibility in the first part of row 169b in Art 10 - where levels are below the assessment threshold. See our comments sent after WPE held on 5 January. We believe that the option of measurements (flexibility) should be left at the measuring stations where the concentrations are below the assessment threshold requesting a minimum of 2 years of measurements during 5 years. - We have an objection on obligatory monitoring of CO also in rural supersites - even in urban sites measurement of CO show very low concentrations. Such measurement might be a waste of resources considering that concentrations at rural sites could be even below the device's detection limit. - However, we propose to include BC measurements as obligatory instead of CO, as compromise - We have scrutiny on obligatory monitoring of total deposition of metals and BaP and PAH also in urban supersites.
Alert and information thresholds	/	Annex I section 4	Question 2	-	We do not support lower alert threshold for SO ₂ and NO ₂ , new information threshold for SO ₂ and NO ₂ and new

					<p>information thresholds for PM. We support 3 hour averaging period for SO2 and NO2.</p> <p>We would like to emphasise that informing public on such demanding alert and information threshold might result on informing on failure results and lead to counterproductive situation in practice with no added values. Regarding exceeding the thresholds for PM, if the contribution is from a natural source there is no measure that can be taken to reduce the contribution except to take measures to reduce the exposure of the population.</p>
Short term action plans	Row 246	Art 20(1)	Question 3	+	<p>We can support proposed agreement. However, we see such approach as an administrative burden for MS. Instead of STAP, we propose to introduce obligation of establishing general Protocols for specific pollutants and zone, focusing only on specific actions to be taken aiming at the protection of different group of populations. Such Protocol should be established as a general protection mechanism to be applied in the event of an exceedance, and it should be established before the exceedance occurs. Also, the protocol once established, disseminated and published should be valid and in application for a longer period.</p>
Transboundary air pollution	Rows 251a - e	Art 21(-1b)	Question 4	+/-	<p>Scrutiny reservation</p> <p>We seek for further clarification the last sentence : <i>Member States may provide the Commission with the lists of any such zones and average exposure territorial units together with information on concentrations and the evidence demonstrating that transboundary transport of air pollution contributes significantly to the exceedances. <u>The Commission may consider this information for the purposes of Article 18(1).</u></i></p>

Transmission of information and reporting	Row 272	Art 23(3)	Question 5	+	We could accept a compromise whereby the 9-month deadline would be maintained until 2029 and a 6-month deadline would only be introduced from 2030.
Limit values, target values, AECO, AERO	/	Annex I section 5.B	Question 6	+/-	<p>The inclusion by the EP of new limit values from 2035 and aligned with the most recent WHO guidelines is not acceptable.</p> <p>For the ambition level of the AERO, we support an approach to defence the Coreper mandate at the next dialogue.</p> <p>We can agree with the text proposed by the Presidency - changed wording in Annex I section 5.B aiming to clarify terms (baseline and target year and levels). However, we have concern regarding the AECO and the deadlines for reaching such ambition targets.</p>
Postponement and exemptions	Row 214	Art 18 (1)	Addendum question 1	+/-	<ul style="list-style-type: none"> - We request keeping 10-year postponement period and B(a)P in Art 18. - Reasons – reintroduction of “<i>climatic conditions</i>” - Among proposed options instead “socio-economic” reference we would be in favour of point a) since it has direct link to an actions for reduction of emissions (replacing considerable fraction of existing domestic heating systems). Also, point c) as more general formulations is acceptable.
Postponement and exemptions	Rows 215 - 218	Art 18 (1) (a) - (d)	Addendum question 2	+/-	<p>Conditions</p> <p>Air quality projections – points a) and b) are not acceptable – we see such new obligation as additional burden – Air quality projections are not mandatory under the NECD. Point c) is welcomed.</p>
Postponement and exemptions	New	Art 18 (3)	Addendum question 3	+/-	<p>Guarantees</p> <p>a) point 3. might be accepted however points 1. and 2. are not acceptable – linear reduction is too demanding.</p> <p>b), c) and d) – we are flexible for proposed options.</p>

Air quality plans	Rows 224 - 232	Art 19(1) - 19(4)	Question 7	+/-	<p>We support the Council Mandate and keeping possibility of refraining from establishing AQ Plan for ozone in 226a.</p> <p>Scrutiny reservation on the roadmaps.</p> <p>We have concerns regarding the year 2025 as reference year for the roadmap and the year 2028 for establishing of the roadmap. We have concerns that it would not be feasible due to the transposition deadline which is end of 2026. The reason for concern is of legal and procedural nature (ultra vires doctrine) – establishing of the roadmap cannot be considered as obligation at the national level before the transposition process is completed.</p> <p>We would be in favour to consider some flexibility and to use more than one year as a reference (2025 or 2026) with the deadline for establishing of the roadmap by the end of 2028 or by the end of March 2029 still enabling MS to have clarity on whether they can get the postponement before the end of 2029.</p>
Air quality plans	Rows 233, 236 - 240	Art 19(5) - 19(7), Annex VIII	Question 8	+/-	EP amendments of Annex VIII – only if the list of measures is recommended for considerations.
Access to justice	Rows 301, 305, 306, 307a	Art 27	Question 9	+/-	We support keeping the Council mandate.
Compensation	Rows 311, 316	Art 28	Question 10	-	Negative scrutiny, big concern is deletion of subjective elements (intentionally or negligently) in para 1.
Penalties	Rows 320, 321-325	Art 29	Question 11	+/-	Scrutiny reservation

ITALY

Table Member State's comments on steering note questions

+ = support

- = Oppose

/ = No comments

Subject	Row 4- column table	Article, paragraph or Annex	Steering note questions	Delegation position	Additional comments
Yellow rows		Annex VII, 3			The Council text seems to be clearer, but we are flexible
Yellow rows		Annex IX, 3		-	The proposed integration of the text does not seem necessary. Point 1 (and not point 2, as mentioned in the steering note) already includes a requirement for information on exceedances of limit and target values, so it is not clear why this provision should be repeated in point 3 as well
Sampling points and supersites	Rows 163b (=149), 165, 166, 169, 169b	Art 9, art 10, Annex VII -1	Question 1	+ (-)	General support to the proposal. Some perplexity on mandatory monitoring of CO in rural sites, not so much from the burdens associated with this additional monitoring but from the <u>technical feasibility</u> of monitoring CO in rural sites, where levels are extremely low
Alert and information thresholds	/	Annex I section 4	Question 2	(-) +	We believe that information thresholds should be numbers that are at least equal to the limit values; therefore, we would prefer not to decrease their values for NO2 and SO2. In any case, if necessary to reach a compromise, we are flexible on the proposal. With reference to the alert thresholds for PM, it should be better expressed that there is a difference in the timing for the exceedances of the information and alert thresholds (one day and three days).

Short term action plans	Row 246	Art 20(1)	Question 3	- +	<p>We believe that when exceedances are due to domestic heating there is no reason for not implementing action plans, but we can be flexible.</p> <p>With reference to the second part of the proposal, as a compromise, we suggest a different formulation: “Where [...] a short-term action plan may only focus on easily understandable information on behaviour to reduce exposure to the forecasted exceedance in order to protect the general public and sensitive population and vulnerable groups”.</p> <p>Rational: the action plan should not focus on possible actions to reduce emissions (which cannot be identified), but on informing the sensitive population, including suggesting behaviours to be implemented to increase their protection.</p>
Transboundary air pollution	Rows 251a - e	Art 21(-1b)	Question 4	/	
Transmission of information and reporting	Row 272	Art 23(3)	Question 5	-	No flexibility on this point. The 9 months period is essential to ensure the transmission of validated, good-quality data; it does not appear feasible to reduce this timeline, based on the experience of implementing the current directives.
Limit values, target values, AECO, AERO	/	Annex I section 5.B	Question 6	/	To increase the clarity of text we suggest to change the words “particular year” with “baseline year”
Postponement and exemptions	Row 214	Art 18 (1)	Addendum question 1	+	<p>We would like to maintain in the text the reference to climatic conditions, to the 10 years derogation and to the use of modelling applications to demonstrate the impossibility to comply with the limit values in the timeframe set by the directive.</p> <p>Regarding the three suggested options, we express a preference for option a.</p>
Postponement and exemptions	Rows 215 - 218	Art 18 (1) (a) - (d)	Addendum question 2	+	Support to point a; opposition to options b and c
Postponement and exemptions	New	Art 18 (3)	Addendum question 3		Point a: we support option 3 since concentrations are subject to fluctuation with weather-climate conditions (particularly for

					<p>PM) therefore a longer period is necessary to observe their reductions.</p> <p>Point b: flexible but providing for a single update in 2034 and not two, which are too onerous.</p> <p>Point c: we support the Presidency's proposal to have a report every 2.5 years</p> <p>Point d: no since the update is already foreseen in point b</p>
Air quality plans	Rows 224 - 232	Art 19(1) - 19(4)	Question 7	/	Flexible. Regarding row 226a, preference for original text: we believe that the simplified version proposed by the Presidency does not increase the clarity of the text.
Air quality plans	Rows 233, 236 - 240	Art 19(5) - 19(7), Annex VIII	Question 8	+	Support to the proposals on rows 236 and 237 referring to the relationship between action plans and air quality plans. We can also support the changes to Annex VIII Part B as long as, as stated by the Presidency, it is clear that the measures are intended to be non-mandatory and there is no need to justify any choice of non-implementation.
Access to justice	Rows 301, 305, 306, 307a	Art 27	Question 9	/	
Compensation	Rows 311, 316	Art 28	Question 10	/	
Penalties	Rows 320, 321-325	Art 29	Question 11	+ -	Preference for the first solution but with a change: in the second paragraph it is necessary to remove the reference to the level of penalties and replace it with a reference to the setting up of appropriate instruments to obtain the recovery of the benefits obtained from the violation. In practice, considering the Italian legislative system, it would not be possible setting penalties equal to the level of the benefit obtained; an alternative could be providing for the creation of instruments (not necessarily financial penalties) to recover the amounts obtained (e.g., through subsequent recovery).

LATVIA

Air Quality Directive

Comments on (WK 1511/2024 INIT, WK 1511/2024 ADD 2)

+ = support

- = Oppose

/ = No comments

Subject	Row 4- column table	Article, paragraph or Annex	Steering note questions	Delegation position	Additional comments
Green/Yellow rows	/	/	/	-	<p>We have a doubts regarding the practical implementation of the following elements included in the 4 column table:</p> <p>- for MS with population below 2 million we strongly advocate for keeping the possibility to combine additional UFP measurements with UFP measurements at supersites, by including the following wording in Annex III, section D: <i><u>“For Member States with less than 2 million inhabitants, monitoring supersites at urban background or rural background locations established in accordance with Article 10 can be included for the purpose of meeting the requirements on the minimum number of sampling points for UFP set here.”</u></i></p> <p>- Article 22 (4) - Row 269: We doubt whether information can be made available to the public by means of easily accessible media and communication channels in a coherent and easily understandable manner in accordance with Directive 2007/2/EC1.</p> <p>- Annex IV Section B (f): we don't understand the need for mandatory requirement to set sampling points for assessment of pollution from industrial sources, ports, airports in a way that the application of BAT can be monitored. BAT conclusions include limited number of industrial activities and do not</p>

					<p>include ports, airports and smaller industrial activities that also causes air pollution. Thus we don't see the justification for mandatory implementation of this provision.</p> <p><u>Suggested proposal:</u></p> <p><i>"(f) where the objective is to assess the contributions of from industrial sources, ports or airports are to be assessed, at least 1 one sampling point shall be installed downwind from the main source within the relevant predominant wind direction of the source in the nearest residential area. Where the background concentration is not known, an additional sampling point shall be situated upwind of the main source opposite of the relevant predominant within the main wind direction. The sampling points for assessment of large industrial installations according to Directive 2010/75/EU (IED) shall be sited such that the application of BAT can be monitored;"</i></p> <p>- Annex IX Point 3: we prefer Council's mandate to avoid unnecessary administrative burden and informing the public too frequently.</p>
Sampling points and supersites	Rows 163b (=149), 165, 166, 169, 169b	Art 9, art 10, Annex VII -1	Question 1	-/+	<p>We are sceptical about inclusion of mandatory measurements of CO in rural supersites.</p> <p>As a compromise we can accept the obligatory monitoring of total deposition of metals and BaP and PAH also in urban supersites.</p> <p>We are ready to support the EP amendments regarding the increase of number of monitoring supersites (row 165).</p> <p>Nonetheless, it would be important to keep the wording according to the Council mandate in the first sentence of Article 10 (4a), second subparagraph (row 169 b) concerning measurements of pollutants below assessment threshold:</p> <p><i>"A Member State may choose not to measure at urban background stations pollutants that are below their respective</i></p>

					<p><i>assessment threshold set in Annex II. The levels of pollutants that are not measured shall be assessed at such supersite at least every 5 years."</i></p> <p>We don't see the added value of wasting resources on the measurement of substances for which the long-term measurements have shown that their concentrations are very low. There is no well-argued justification for wasting the state budget and EU funds in this way.</p> <p>As there are given only two years for the implementation of these provisions and setting new stations, we see these requirements as very challenging and regret that there is no appropriate transitional period set for successful implementation of new requirements.</p> <p>In summary, for Latvia the EP proposal (obligatory monitoring of CO and total deposition of metals and of BaP and PAH in both urban and rural supersites) in exchange for the Council mandate in article 9 and 10, brings no added value.</p>
Alert and information thresholds	/	Annex I section 4	Question 2	-	<p>We don't see any rational arguments for setting alert threshold for NO₂ (200 µg/m³ measured over one hour) at the same level as limit value set for NO₂ included in Annex I.</p>
Short term action plans	Row 246	Art 20(1)	Question 3	+	<p>As a compromise we can accept PRES proposal, but it is still not clear what is meant by "<i>specific actions</i>" aiming at the protection of both, the general public and sensitive population and vulnerable groups, if the main reason is household heating and small combustion plants that are widely used during the heating season.</p> <p><u>Suggested proposal:</u> <i>"Where, for particulate matter (PM10 and PM2.5), the potential is severely limited, taking into account local geographical and meteorological conditions and specificities of domestic heating</i></p>

					<i>systems, to reduce the risk of such an exceedance, a short-term action plan may contribute Air quality action plan elaborated according to Article 19 (1) and mainly focus on information of public about only focus on specific actions aiming at the protection of both, the general public and sensitive population and vulnerable groups, as well as easily understandable information on recommended behavior to reduce exposure to the measured or forecasted exceedance."</i>
Transboundary air pollution	Rows 251a - e	Art 21(-1b)	Question 4	+	
Transmission of information and reporting	Row 272	Art 23(3)	Question 5	+	We can also accept earlier deadlines for 6-month reporting.
Limit values, target values, AECO, AERO	/	Annex I section 5.B	Question 6	+	
Postponement and exemptions	Row 214	Art 18 (1)	Addendum question 1	+	<p>We support option a) and b).</p> <p>During negotiations it could be stressed that the use of biomass solid fuel is considered to be a climate-friendly solution and in the recent years has been promoted to phase out EU's dependency on fossil fuels.</p> <p>To facilitate the replacement of old biomass heating appliances and to promote the use of other technologies, significant additional investments and sufficient transitional period is needed.</p>
Postponement and exemptions	Rows 215 - 218	Art 18 (1) (a) - (d)	Addendum question 2	+	We prefer option a) or b) .
Postponement and exemptions	New	Art 18 (3)	Addendum question 3	+	We prefer option a)3 or b) .
Air quality plans	Rows 224 - 232	Art 19(1) - 19(4)	Question 7	+	<p>We can accept PRES proposal for Article 19 (2), first subparagraph (a) (row - 226 a).</p> <p>As a compromise we can accept deadlines suggested by PRES. Nevertheless, we see this as very challenging to implement these requirements in the deadlines suggested by PRES.</p>

Air quality plans	Rows 233, 236 - 240	Art 19(5) - 19(7), Annex VIII	Question 8	-	<p>We don't support amendments proposed in Article 19 (5) first subparagraph point (c) (row 236) and the deletion of "where appropriate" as this doesn't give enough flexibility to MS.</p> <p><u>Suggested proposal:</u> <i>"(c) information on abatement measures listed in Point B, Point 2 of Annex VIII, if according to the assessment of Air quality plan these abatement measures are chosen for implementation/are considered to be cost – efficient".</i>"</p>
Access to justice	Rows 301, 305, 306, 307a	Art 27	Question 9	+	
Compensation	Rows 311, 316	Art 28	Question 10	-	<p>We strongly prefer Council' mandate. Moreover, we have always been very sceptical regarding the inclusion of this Article in this Directive. Thus, any further changes are not welcome.</p>
Penalties	Rows 320, 321-325	Art 29	Question 11	-	<p>We prefer Council's mandate.</p> <p>At the same time we still do not understand, how such penalties will be applied for private companies and natural persons if Air Quality Directive mainly sets tasks and requirements for competent authorities (development and implementation of air quality plans, monitoring, public information etc).</p>

MALTA

Written Comments on the Ambient Air Quality Directive

Malta would like to thank the Belgian PRES for the steering note and the new compromises being proposed. Following the WPE on the 5th February and the call for comments requested by the PRES in *WK1873/2024/INIT*, Malta would like to put forward some comments that are in line with the WPE discussions.

Malta would like to reiterate that we could not support the EP's proposal to attain intermediate limit values (LVs) by 2030 and more ambitious LVs to be attained by 2035. Although MT understands the EP's position to push towards more ambitious LVs, MT will find it very difficult to attain the Council's proposed LVs by 2030, let alone the EP's proposal (and alignment to WHO guidelines) by 2035. As we have repeatedly outlined, the attainment of such targets requires drastic changes in road transport policy, which will have an impact on low-income families. Furthermore, MT does not have many options for alternative mobility. In this context, we appreciate the PRES's determination in backing the Council Mandated position on LVs.

Malta would like to point out that we have no reservations or concerns on the green rows highlighted in the latest 4-column document.

Subject	Row 4-column table	Article, paragraph or Annex	Steering note questions	Delegation position	Additional comments
Yellow rows	Row 72	Art 3(2)	N/A	Malta cannot support the EP Mandate and the proposal for full alignment with the WHO guidelines. As previously stated, we already face great difficulties in attaining the limit values agreed upon in the Council Mandate. Further reductions in the limit values will bring about additional burden on low-income families particularly since a reform in the road transport sector would need to take place, considering also that we have very limited land transport options.	

	Row 75	Article 3(2) subparagraph 3 , point (b)	N/A	Malta can support the EP's proposal of including behavioural changes and fiscal policies in the CION review. However, this shall be done at MS level not in an EU wide approach in order to take into consideration the behaviour and fiscal policy needs of each MS, particularly small Mediterranean nations like Malta.	
	Row 146	Art 8(4)	N/A	Malta prefers the flexibility offered by the Council Mandate and would prefer to retain that text rather than the EP Mandate text.	
	Row 186	Art 12(4)	N/A	Malta does not support the EP Mandate position and fully supports the text proposed in the Council Mandate. Endeavouring to achieve the most recent WHO guidelines will put added burden on MS that are already struggling to meet the proposed limit values. This will also have legal implications for such MS if such guidelines are not met.	
	Row 193	Art 13(6)	N/A	Malta does not support the EP position on intermediate limit values and limit values.	
	Row 246	Art 20(1), second subparagraph	N/A	Malta prefers to retain the Council Mandate text with reference to particulate matter.	
	Row 331/331a	Art 31(1), first subparagraph and first subparagraph (a)	N/A	Malta does not support the changes proposed by the EP and would strongly support the Council Mandate position. MS need to have enough time to carry out the necessary changes to their monitoring network, which is quite administratively burdensome already. Therefore, 2 years are required to make the necessary changes for the relevant articles to enter into	

				force. Additionally, Malta is against the periods suggested by EP for Article 19, particularly the clauses that trigger AQPs by 3 months after the date of entry into force. Considering that now MS shall prepare AQ plans when there are exceedances to the 2030 LVs ahead of the 2030 attainment deadline, MS need time to make the necessary updates in order to start planning for the implementation of the AQPs.	
Sampling points and supersites	Rows 163b (=149), 165, 166, 169, 169b	Art 9, art 10, Annex VII -1	Question 1	On Articles, 9 and 10 on sampling points and supersites and in reply to question 1, Malta supports other MS stating that they do not see the need for the additional monitoring of pollutants at supersites, as there is no benefit, however in the spirit of compromise we can agree to the suggestions proposed by the PRES.	
Alert and information thresholds	/	Annex I section 4	Question 2	Concerning Question 2 related to alert thresholds, MT would like to request clarification on the averaging periods for alert thresholds for SO ₂ and NO ₂ since the text refers to 3 consecutive hours, and the table refers to 1 hour. The same applies for PM, whereby the text specifies an averaging period of 3 days whilst the table refers to 1-day averaging period. Concerning information thresholds, Malta can support the changes in the concentrations, however, would prefer that for NO ₂ , the averaging period is 3 hours in order to rule out that the exceedance is not related to any equipment malfunction but an actual exceedance. A 3-hour	

				average would be more realistic in cases of true exceedances.	
Short term action plans	Row 246	Art 20(1)	Question 3	Regarding Article 20 and Question 3 MT can support both the EP proposal as well as the proposed text by the PRES, referring to domestic heating.	Row 246 - Article 20(1), second subparagraph – Malta prefers to retain the Council Mandate text with reference to particulate matter.
Transboundary air pollution	Rows 251a - e	Art 21(-1b)	Question 4	On Article 21 and question 4, MT can support the PRES proposal.	
Transmission of information and reporting	Row 272	Art 23(3)	Question 5	On article 23 and Question 5, MT would like to retain the text in the original Council Mandate concerning reporting on the 9 th month. Due to the reasons that the PRES has already mentioned and the fact that MT relies on foreign laboratories for analysis of data, MT will be unable to report beforehand. In this context, we cannot support the compromise text.	<p>Malta is not in a position to support reporting on the 4th month as suggested by the EP nor on the 6th month from 2030 onwards as suggested by the latest PRES compromise text. Malta is strongly in favour of keeping the reporting period as it is currently in the Council Mandate (i.e. 9th month – September or every year).</p> <p>The E2a data flow already provides up to date information on the standard regulated pollutants (gases and PM) hence preliminary information on possible non-compliance with LVs is available soon after the end of the preceding year.</p>

Limit values, target values, AECO, AERO	/	Annex I section 5.B	Question 6	<p>Concerning Question 6, MT agrees with the PRES's opinion that the WHO limit values cannot be attained by 2035, and in concerning AEROs we can agree in principle with a staged approach based on the AEI of 10 years prior. However, the introduction of the additional AERO thresholds of $9 \mu\text{g}/\text{m}^3$ for $\text{PM}_{2.5}$ and $15 \mu\text{g}/\text{m}^3$ for NO_2, respectively, complicates matter even further.</p> <p>Hence, considering also the proposal by Germany, the following AERO should be aimed for:</p> <p><i>For $\text{PM}_{2.5}$</i></p> <p><i>10% reduction if AEI is $\leq 10 \mu\text{g}/\text{m}^3$, unless the AEI is already no higher than the average exposure concentration objective defined in Section C,</i></p> <p><i>15% reduction if AEI is $>10 \mu\text{g}/\text{m}^3$ but $\leq 12 \mu\text{g}/\text{m}^3$ and</i></p> <p><i>25% reduction if AEI is $\geq 12 \mu\text{g}/\text{m}^3$</i></p> <p><i>For NO_2</i></p> <p><i>15% reduction if AEI is $\leq 20 \mu\text{g}/\text{m}^3$ unless the AEI is already no higher than the average exposure concentration objective defined in Section C,</i></p> <p><i>25% reduction if AEI is $> 20 \mu\text{g}/\text{m}^3$</i></p>	
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Postponement and exemptions	Row 214	Art 18 (1)	Addendum question 1	<p>Malta appreciates the efforts of the PRES concerning a compromise on Article 18. With regards to Question 1 of the addendum to the steering note, Malta would like to point out that whilst appreciating the situation which several MS face concerning domestic heating, this proposal does not address Malta's problem, which is related to road transport. In this light, Malta's first preference would be to refer to '<i>socio-economic considerations</i>' in its general context. However, since the EP is strongly opposed to inclusion of socio-economic references, MT proposes to add the following text:</p> <p><i>'limited purchasing power of low emission vehicles and limited land transport options'</i></p>	<p>Furthermore, MT would like to once again reiterate that we cannot support the EP's proposal to attain intermediate limit values (LVs) by 2030 and more ambitious LVs to be attained by 2035. Although MT understands the EP's position to push towards more ambitious LVs, MT will find it very difficult to manage to attain the Council's proposed LVs by 2030, let alone the EP's proposal (and alignment to WHO guidelines) by 2035. As we have already outlined, the attainment of such targets requires drastic changes in road transport policy, and we are already very limited in terms of options for alternative mobility.</p>
	Rows 215 - 218	Art 18 (1) (a) - (d)	Addendum question 2	<p>Concerning Question 2 Malta can agree in principles to the proposals and would tend to consider option (b) as more favourable.</p>	
	New	Art 18 (3)	Addendum question 3	<p>Concerning Question 3 Malta can accept in principle the proposed compromise noting however, that these requirements will be very burdensome on MS. In this context, option A3 is the most favourable from our end but we are open to accept other options in the spirit of compromise with the EP.</p> <p>Furthermore, considering that we will face great difficulties in attaining the LV proposed for 2030</p>	

				<p>in the Council Mandate, we would like to reiterate that the 10-year possibility for postponement is very important for us. After hearing the various positions of MS during the last WPE, we can offer some flexibility and agree with the position taken by the Netherlands during the meeting whereby the postponement years are split into two 5-yearly postponement targets. It is however important that the 10-year period is retained, irrespective of how this is divided. We acknowledge that this may add administrative and financial burdens for us particularly since we are also showing flexibility to the additional conditions and guarantees that the PRES are proposing to give to the EP. We believe that the proposals by the PRES should be enough to ascertain that MS do their utmost to comply with the LVs following the attainment of the postponement.</p>	
Air quality plans	Rows 224 - 232	Art 19(1) - 19(4)	Question 7	<p>Concerning Article 19 and Question 7, Malta still has reservations on the proposed timeframes. Considering that air quality plans need to be drafted in collaboration with different entities that concern various thematises, preparing them and publishing them within 2 years from recorded exceedance (i.e. would actually mean one year from reported exceedance) is next to impossible. Additionally ensuring that it is fully implemented by 3 years later is very difficult for Malta as drastic long-term measures targeting road transport are</p>	<p>As for Row 226a, MT can accept either text even though the below text is preferred:</p> <p><i>However, when there is no significant potential to address the exceedance, considering national geographical and meteorological conditions and provided that its measures do not entail disproportionate costs, the air</i></p>

				required. In this context, the Council Mandate proposal is still preferred.	<i>quality plan may be limited to an assessment of the situation and a justification for the absence of a potential to address the exceedance.</i>
Air quality plans	Rows 233, 236 - 240	Art 19(5) - 19(7), Annex VIII	Question 8	<ul style="list-style-type: none"> Row 223a – Article 19(1), Row 233/237-240 – Article 19(5), Row 243 – Article 19(7) – – Malta can agree in principle to the general concept of roadmaps but is not in agreement with the timeframes proposed. Row 240a – Article 19(5a) – Malta may support the EP position. 	On the concept of roadmaps proposed by the EP, in principle Malta can agree with the general concept of roadmaps, however, the timeframes associated with the preparation of such roadmaps, is considered unrealistic as this will increase burden on MS when there are other provisions (such as new monitoring requirements) that are considered of greater priority in the short term.
Access to justice	Rows 301, 305, 306, 307a	Art 27	Question 9	<p>We support the PRES proposal for Row 38, except for the reference of Article 9, which we would like to have removed.</p> <p>Row 301: MT prefers the Council Mandate text</p> <p>Row 305: MT prefers the Council Mandate text</p> <p>Row 306: MT would prefer its deletion as per Council Mandate, or can accept the Commission proposal</p>	

				Row 307a: MT prefers the Council Mandate text (i.e. reintroduction of paragraph 3a).	
Compensation	Rows 311, 316	Art 28	Question 10	<p>Row 311: MT prefers Council Mandate since Article 19(2) was not included.</p> <p>Row 316: MT prefers the Council Mandate text (i.e. deletion)</p>	
Penalties	Rows 320, 321-325	Art 29	Question 11	<p>Row 320: prefer Council Mandate (i.e. deletion)</p> <p>Row 323: prefer Council Mandate (i.e. deletion)</p> <p>Row 324: i.e. para (c) – to support proposal as per PRES steering note (i.e. compromise between EP & Council text). Para (e) and (f) of PRES steering note not supported.</p>	Row 322a - Article 29(3), point (aa) - Malta can support EP mandate

NETHERLANDS

Table Member State's comments on steering note questions

+ = support

- = Oppose

/ = No comments

Subject	Row 4-column table	Article, paragraph or Annex	Steering note questions	Delegation position	Additional comments
Green/Yellow rows	/	/	/	+	<ul style="list-style-type: none"> The Netherlands can agree with the compromise proposals of the Presidency; the yellow rows can be made green rows.
Sampling points and supersites	Rows 163b (=149), 165, 166, 169, 169b	Art 9, art 10, Annex VII -1	Question 1	+	<ul style="list-style-type: none"> We do agree with the presidency's proposal on article 8.3, including the minor change. We agree also with the presidency that the proposal for articles 9 and 10 can be accepted, with the small change and the additional footnote.
Alert and information thresholds	/	Annex I section 4	Question 2	+	<ul style="list-style-type: none"> We can agree with the proposed changes.
Short term action plans	Row 246	Art 20(1)	Question 3	+/-	<ul style="list-style-type: none"> We would rather agree with the counterproposal the European Parliament suggested. We are not in favour of specifically mentioning the domestic heating systems, because we think this would remove the incentive to modernize these into systems that do emit far less particulate matter. All emissions should be decreased, in the spirit of this directive, be it traffic, industrial, agricultural or heating emissions. Moreover, the problem of short periods with high concentrations of pollutants arises from the

					<p>combination of high emissions on the one hand, with local geographical and meteorological conditions on the other hand. These last two conditions are the ones conditions that cannot be tackled, and should be the only conditions to be mentioned in this paragraph, just as the EP proposes.</p>
Transboundary air pollution	Rows 251a - e	Art 21(-1b)	Question 4	+ -	<ul style="list-style-type: none"> • It is no surprise that the Netherlands agrees to a certain extent with the fear of the European Parliament: The additions of the Council mandate could create an opening for transboundary air pollution to be seen as an easy reason for derogations. This must be avoided, because it is against the spirit of this directive. Exceedances are almost always the result of various emission sources, close and far away, which must be tackled both. • Although the Presidency proposal can be seen as an improvement of the wording in order to seek a compromise with the European Parliament, the Netherlands would also like to ask the Council to reconsider the need of this particulate part of the Council position. As the European Parliament has pointed out that transboundary air pollution is already a criterion for a derogation under article 16 and this article – in combination with the coordination mechanisms in article 21 – should deliver the desired outcome that when the derogation period expires, the air quality in all zones will be in compliance with the air quality limit values. So, in our view, this part of the Council position can be traded off in negotiations with the European Parliament.

Transmission of information and reporting	Row 272	Art 23(3)	Question 5	+	<ul style="list-style-type: none"> We are in favour of keeping a nine-month deadline. Six months would be possible from a certain moment, if necessary for reaching a compromise.
Limit values, target values, AECO, AERO	/	Annex I section 5.B	Question 6	+/-	<ul style="list-style-type: none"> The Netherlands can accept the rewording of the Presidency, which is less ambiguous. However, it will – again – be no surprise that we are sceptical about the chance the European Parliament will accept the Council position, in which the original Average Exposure Reduction Obligations from the Commission were watered down. We think that if – from a certain level (12 micrograms per cubic metre for PM2.5 and 20 micrograms per cubic metre for NOx)– the obligation will decrease to only 15 % reduction in ten years, we will not be able to reach the WHO guidelines in 2050. The AERO approach should be our path towards Zero pollution in 2050, and we should aim higher. It would be good to return to 25 % as our AERO.
Postponement and exemptions	Row 214	Art 18 (1)	Addendum question 1	+/-	<ul style="list-style-type: none"> The Netherlands thinks it would be better to accept a removal of any reference to domestic heating systems being a valid reason for postponing the attainment deadline. If this is not feasible in the quest for a compromise, we prefer option A, because it explicitly points to what measures should be taken.
Postponement and exemptions	Rows 215 - 218	Art 18 (1) (a) - (d)	Addendum question 2	+	<ul style="list-style-type: none"> The options A and B could both work, with a light preference for option B. For C we have no strong opinion.

Postponement and exemptions	New	Art 18 (3)	Addendum question 3	+	<ul style="list-style-type: none"> • We understand the EP's position and therefore can accept the proposals for compromise. • For part a, we prefer option 3, but it could be better defined, for example by adding a time period of 3 years over which the trend has to show. • We also support part b, c and d. It would even be better to build in a stronger control mechanism, for example splitting the ten year postponement period in two periods: 5+5 years.
Air quality plans	Rows 224 - 232	Art 19(1) - 19(4)	Question 7	+	<ul style="list-style-type: none"> • For the Netherlands, this is a acceptable compromise. If possible, it would be helpful to include the table in the annex of the steering note in an annex of the directive (or any other appropriate place), to prevent confusion in the future.
Air quality plans	Rows 233, 236 - 240	Art 19(5) - 19(7), Annex VIII	Question 8	+	<ul style="list-style-type: none"> • We can accept the proposal.
Access to justice	Rows 301, 305, 306, 307a	Art 27	Question 9	+	<ul style="list-style-type: none"> • The Netherlands can accept the proposals of the Presidency, as they closely follow the provisions in the Industrial Emissions Directive (negotiations finished) and the Urban Wastewater Directive (currently under negotiation).
Compensation	Rows 311, 316	Art 28	Question 10	+	<ul style="list-style-type: none"> • The Netherlands can accept the proposals of the Presidency.
Penalties	Rows 320, 321-325	Art 29	Question 11	+/-	<ul style="list-style-type: none"> • The Netherlands thinks that we should refrain from adding the points e and f to paragraph 3 of this article. For the Industrial Emissions Directive this kind of provisions do make sense, because the penalties are geared towards large companies with large turnover,

					that should 'feel the pain' of a penalty. In this directive, penalties are foreseen for public authorities who are not doing what they should do. For these authorities, we should not aim for high penalties. Those authorities will sometimes have small budgets, consisting of public money.
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AUSTRIA

COMMENTS: Air Quality Directive (WK 1873/2024)

AT thanks the BE Presidency for the well-prepared steering note and preparation of discussions held during the WPE on 5 February 2024. We fully support the Presidency's efforts to reach a good compromise with Parliament.

Following the request by the Presidency, AT only submits substantive comments on remaining crucial items that continue to rise concern (in particular regarding Chapter VII) and are, therefore, important to us:

Green / Yellow rows (+)

Question 1, sampling points and supersites (+)

In the spirit of compromise, AT can support the change to the Council mandate in Art. 8 as well as the compromise package for Art. 9, 10 and Annex VII.

We do, however, share the concerns raised about the reasonableness of the proposed additional measurements in the package and would prefer BC measurement instead as suggested by another MS in the WPE meeting.

Question 2, alert and information thresholds (+)

Regarding the newly introduced columns with the heading "*averaging period*", we note that they contain exactly the same information for both, information and alert thresholds. Therefore, it appears that an identical approach is taken for both thresholds. We kindly ask the Presidency to review the wording of the text in Annex I Section 4 and to clarify it in light of the approach taken and described in the steering note. It is important to us that provisions are laid down as clearly and unambiguously as possible.

Question 3, short term action plans (+)

It remains important to us that the possibility to not establish short-term action plans for PM is kept in the text. We are, however, flexible regarding the proposed conditions.

Question 4, transboundary air pollution (+)

/

Question 5, transmission of information and reporting (-)

AT **opposes** the shortening of the reporting deadline.

Justification: As a MS with federal governance, AT requires some time to prepare a validated data set from continuous measurements. Data from laboratory analyses may not be available until even a few months later. The transmission of information based on last year's validated data by less than 9 months is not feasible for AT.

Question 6, limit values, target values, AECO, AERO (+)

/

Addendum Question 1 to 3, Postponement and exemptions (+)

AT supports adding additional conditions and safeguards to Art 18. We think that it is important to ensure that demonstrable progress towards the achievement of the new AQ standards is made during the postponement period. We could also support the splitting of the maximum period into two periods.

Regarding the proposed guarantees, we prefer Option b (periodical update of the plan/roadmap established ahead of 2030). The update period should be fit for purpose; we suggest 3 years.

Option a (introduction of a trajectory) is not favourable to us, since the introduction of a trajectory after reaching an attainment deadline constitutes in our view a dilution of the AQ standards that are to be met by 2030. However, we could support the introduction of such a trajectory ahead of 2030 to ensure attainment by 2030 (i.e. in a plan/roadmap that is prepared ahead of 2030 because levels are above the new AQ standards in order to ensure that attainment by 2030 is achieved). Adding a general statement as proposed in Option a3 (“the concentrations of the relevant pollutant need to show a decreasing trend”), however, is considered a sensible additional safeguard.

AT is also flexible towards restricting the reasons that allow for postponement. In this regard, we could also support the EP’s proposal to delete the modelling condition.

Question 7, Air quality plans (+)

AT can be flexible regarding the proposed timelines.

Regarding the establishment of plans for ozone (row 226a), it remains important to us that the possibility to not establish a plan is kept. Hence, we prefer Option 1 that still allows refraining from establishing ozone plans.

In case Option 2 is considered, we cannot support having plans for Ozone on the zone level and suggest adding a lower size limit of 85 000 km² in row 226 in line with the provisional agreement on the definition of the average exposure territorial unit:

- 226 2. Where in a territorial unit covering at least ~~one air quality zone~~ **85.000 km²**, the levels of pollutants in ambient air exceed any ozone target value, laid down in Section 2 of Annex I, Member States shall establish air quality plans for those territorial units as soon as possible and no later than 2 years after the calendar year during which the exceedance of the ozone target value was recorded. Those air quality plans shall set out appropriate measures in order to achieve the ozone target value and to keep the exceedance period as short as possible.

Question 8, Air quality plans (+)

AT continues to see no benefit in simply changing the terminology from plans (that are to be prepared ahead of 2030) to roadmaps, but can show flexibility in the spirit of compromise.

Regarding the proposals for Annex VIII part A, it is important for us that the additions are enforceable and do not lead to disproportionate bureaucracy.

Regarding the proposals for Annex VIII part B, we can be flexible as long as it remains clear that the list is of indicative nature.

Questions 9, Access to Justice (-)

AT has still remaining concerns about the provisions contained in Art 4 para 38 (definition of “public concerned”) and Art 27 (access to justice) that mainly stem from the legal requirements of the Aarhus Convention (AC) and the jurisdiction of the ECJ. As pointed out repeatedly, we only consider the conditions laid down in Art 9 para 3 AC relevant in the context of the AQD. A transposition of conditions relevant for Art 9 para 2 AC is considered as a violation of international obligations.

With regard to the definition of the “*public concerned*” (*note*: a term that the AC uses specifically in the context of Art 9 para 2), we consider the term itself too restrictive and, therefore, not in line with Art 9 para 3 AC, which refers to “members of the public” in general. However, Art 9 para 3 AC allows for criteria that members of the public have to meet in order to be granted access to justice. In this regard, we are of the opinion that the ECJ’s case law (i.e. the reference to “natural or legal persons directly affected by the exceedance of limit values”) constitutes such a criterion, which should, therefore, be reflected in the definition instead. We also note in this regard that NGOs are covered already by the term “*legal persons*”. Hence, the second part of the definition could be deleted since it is also repeated in Art 27 itself, where it is appropriate to make the link to the interest (i.e. “shall be deemed to have an interest”). Moreover, we note that it is in line with Art 9

para 3 AC to restrict access to justice to NGOs that fulfil certain criteria (in particular “promoting the protection of human health or the environment and meeting any requirements under national law”).

In light of the above, we suggest the following changes (highlighted in **bold and yellow**) to the definition in Art 4 para 38 (row 119):

119 38. ‘the public **concerned**’ means ~~the public~~ **natural or legal persons** **directly** affected or likely to be **directly** affected by, or having an interest in, the implementation of the obligations laid down in Articles 9, 10, 19 and 20 ~~under this directive; for the purposes of this definition, non-governmental organisations promoting the protection of human health or the environment and meeting any requirements under national law shall be deemed to have an interest;~~

Regarding Art 27, we particularly welcome the alignment of the provision with the case law of the ECJ in case C-723/17 (*Craeynest*) regarding sampling points. We have already pointed out several times that it would be necessary to reflect this ruling in the text. We note, however, that it could also be required to grant access to justice regarding supersites, as they also constitute sampling points. Hence, we added Art 10 to the list of provisions. However, we are of the opinion that the ECJ’s ruling on the verifiability of the required number and positioning of sampling points could be better reflected. Instead of referring vaguely to “*the network design*”, reference should be made to (provisions of) Annexes that contain the relevant obligations regarding the number and positioning of sampling points (i.e. Annexes III and IV). We also think that “relocation” is already covered by the term “location”.

Furthermore, we **oppose the reintroduction of Art 27 para 2**. Our general negative view on this paragraph remains unchanged as we are still convinced that Art 9 para 3 AC is the relevant provision to consider for the AQD (and not Art 9 para 2). The ruling of the ECJ in case law C-826/18 (cited in the steering note), specifically refers to Art 9 para 2 AC (i.e. refer to para 58 of the ruling) and is *not relevant* in our case. Therefore, we insist on the deletion of para 2.

In light of the above, we suggest the following changes (highlighted in **bold and yellow**) to the text of Art 27 :

1. Member States shall ensure that, in accordance with their national legal system, members of the public **concerned** have access to a review procedure before a court of law, or another independent and impartial body established by law, to challenge the substantive or procedural legality of all decisions, acts or omissions ~~by Member States concerning the network design, location and relocation number~~ **of sampling points under Article 9 and 10 in accordance with the relevant criteria laid down in Annexes III and IV**, air quality plans ~~and air quality roadmaps~~ referred to in Article 19, and short term action plans referred to in Article 20, ~~of the Member State~~, provided that any of the following conditions is met:

(a) they have a sufficient interest;

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

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

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

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

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

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

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

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

Question 10, Compensation (-)

AT **opposes** all changes that are (re-)introduced in Art 28. We still believe that there is no necessity to include any such provision in the AQD (as is the ECJ, C-61/21). The Council Mandate as agreed in Coreper in November 2023 is the maximum version of such a provision that we could support in the spirit of compromise.

It is particularly important that the **fault criterion** in para 1 ("that has been committed intentionally and negligently") **is kept** in the text. Of equal importance is that the burden of proof is not reversed to the detriment of MS. Furthermore, any provision regarding "limitation periods" has to respect specificities laid down in national law in light of the principles of equivalence and effectiveness.

We strongly support sticking to the Council Mandate and specifically **oppose the deletion of the fault criterion in para 1 and the introduction of any specification regarding the limitation period in para 6.**

Question 11, Penalties (/)

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PORTUGAL

WORKING PARTY ON THE ENVIRONMENT- 05 February 2024

Ambient Air Quality Directive (AAQD)

(WK 1511/2024; WK 1511-ADD01/2024, WK 1511-ADD02/2024 and WK 1511-ADD03/2024)

Following the invitation by the Presidency to examine the compromise proposals on the documents WK1511/2024 and WK1511-ADD02/2024, seeking in view of the fourth trilogue, Portugal is hereby submitting its comments on the questions set out in the documents mentioned above.

General Comments

Portugal would like to highlight our concern regarding Article 13 and Annex I about the EP's proposal to include, from 2035 onwards, new limit values in line with the latest WHO guidelines, which we consider to be unacceptable given that the impact assessment that accompanied the COM proposal states that it is not technically possible.

Portugal is concerned about any potential changes that may occur to the Council's mandate regarding Articles 18 and 28. Additionally, all amendments introducing increased administrative burden and additional costs beyond those already inherent in the proposed Council mandate are a source of concern. This is particularly evident in terms of unnecessary requirements within the scope of the air quality assessment.

Table with Portugal comments on steering note questions

+ = Support

- = Oppose

/ = No comments

Subject	Row 4-column table	Article, paragraph or Annex	Steering note questions	Delegation position	Additional comments
Yellow rows	/	Annex IV, C. b	/	-	PT does not understand the rationale for changing to 0.5 m, an height very close to the ground in Annex IV, C.b. agreement. The text of the PRES mandate (ST15236/2023) refers " <i>in general, the inlet sampling point shall be between 1,5 m (the breathing zone) ...</i> " insted 0,5 m.
Sampling points and supersites	Rows 163b (=149), 165, 166, 169, 169b	Art 9, art 10, Annex VII - 1	Question 1	+ -	PT can accept the PRES BE proposal on the articles 9 and 10 and Annex VII, Section 1, although has already mentioned, considers the proposal entails disproportionate costs compared to the benefits.
Alert and information thresholds	/	Annex I section 4	Question 2	+	Portugal can accept the PRES BE proposal on Section 4 of Annex I concerning information thresholds for SO ₂ and NO ₂ .
Short term action plans	Row 246	Art 20(1)	Question 3	-	PT can not accept the changes proposed by the Belgium Presidency on row 246 (art. 20(1)) and is of opinion that should be kept the text of the Council mandate. If a PM alert threshold is exceeded because a natural event is occurring, there are no possible measures to reduce the duration or severity of that exceedance and the only measure to be taken is to reduce the exposure of the population and to inform the public about the risk of exceedances and its effects. These actions are already ensured by the provisions of article 22 therefore no short-term action plan is needed.

Transboundary air pollution	Rows 251a - e	Art 21(-1b)	Question 4	/ +	PT can accept the PRES BE proposal for the inclusion of paragraph 4a in article 21.
Transmission of information and reporting	Row 272	Art 23(3)	Question 5	+ -	As regard article 23, the row 272, PT strongly prefers the Council position but can accept the PRES BE proposal of compromise whereby the 9-month deadline would be maintained until 2029 and a 6-month deadline would only be introduced from 2030.
Limit values, target values, AECO, AERO	/	Annex I section 5.B	Question 6	+	PT can accept the PRES BE proposal changing the wording to change the wording in Section 5.B of Annex I.
Postponement and exemptions	Row 214	Art 18 (1)	Addendum question 1	+	PT can accept the PRES BE proposes stated in a. – “where the necessary reductions can only be achieved by replacing a considerable fraction of the existing domestic heating systems” or c. – “because of the specificities of the domestic heating systems”.
Postponement and exemptions	Rows 215 - 218	Art 18 (1) (a) - (d)	Addendum question 2	+	PT can accept the PRES BE propose stated in a. – “The inclusion of air quality projections in the roadmap/air quality plan under Article 19(4), showing that the limit values cannot be attained by the attainment deadline (2030).” or b. - a.”The inclusion of air quality projections in the roadmap/air quality plan under Article 19(4), showing that the limit values will be attained by the end of the postponement period (which is also a condition in the current directive)”
Postponement and exemptions	New	Art 18 (3)	Addendum question 3	+ -	<i>PT is of opinion that new requirements should not be added because this would entail disproportionated additional administrative burden. However, PT can consider accepting a combination of the propose in point c. changing the timeframe to 3 years: “Establishment a regular (annual, biennial, triannual...) implementation report to describe and demonstrate progress in the implementation of the measures described in the roadmap. This report should include emission projections and, where possible, air quality projections” with the propose in point d. “When an implementation report shows that</i>

					<i>(important) measures are not on track, an update of the roadmap”.</i>
Air quality plans	Rows 224 - 232	Art 19(1) - 19(4)	Question 7	-	<p>PT is of opinion that the propose of the Council mandate must be maintained and can not accept the PRES BE proposal on article 19, paragraphs 1 to 4 (Row 224, 225, 226, 226a, 227, 228, 229, 230, 230a, 231 e 232).</p> <p>Regarding deadlines PT can not accept the time reductions namely the time to establish air quality plans -after exceded a limit value, a target value, or an average exposure reduction obligation - as well as for the establishing additional measures. The need to interact with stakeholders from the different sectors with which it is necessary to negotiate emission reduction measures and the constraints of the political procedure to adopt a plan have shown that the proposed deadlines are not sufficient for all the actions necessary for the preparation and approval of this type of plans.</p> <p>In addition PT can not agree with the exclusion of the possibility of not establishing a plan for ozone (row 226a) as it is not resonable to establish an air quality plan when there is no significant potential, considering national geographical and meteorological conditions, and entailes disproportionate costs to address the exceedance, even if it is limited to an assessment of the situation and a justification for the absence of a potential to address the exceedance.</p>
Air quality plans	Rows 233, 236 - 240	Art 19(5) - 19(7), Annex VIII	Question 8	+	PT could accept the PRES BE proposal on part B os Annex VIII, as long as this is only a list for consideration and that an evaluation or justification is not needed for every single measure.
Access to justice	Rows 301, 305, 306, 307a	Art 27	Question 9	-	Regarding article 27, PT can not accept the inclusion of article 9 in paragraph 1 since the “network design, location and relocation of sampling points” are technical tasks that require in-depth knowledge and whose adoption and implementation

					entail costs and for which the entities responsible are the better able to make the right decisions. Application of the article 9 criteria comprises highly technical and very complex aspects that require an integrated assessment and the articulation of several variables that are difficult to understand by the public (background knowledge is needed to reach the rational of choosing a sampling point). PT prefers the text of the Council mandate.
Compensation	Rows 311, 316	Art 28	Question 10	-	PT cannot accept any change to the Council proposal and as stated previously, is of opinion that article 28 should be deleted for the reasons already mentioned in previous documents. It should also be noted that the activation of a compensation mechanism at this stage, in which the limit values to be required cannot yet be compatible with the values recommended by the WHO (due to the need for a progressive trajectory) will discredit the standard, because the obligations under Articles 19(1), 19(3), 19(4), 20(1) and 20(2) aim to establish measures to comply with a limit value that is higher than the value recommended by the WHO, therefore cannot guarantee the absence of health effects. The difficulty in establishing the causal link between poor air quality and health damage that PT has already developed in previous comments are also arguments to remove article 28.
Penalties	Rows 320, 321-325	Art 29	Question 11	-	PT can not accept the PRES BE proposal and prefers the text of the Council proposal.

SLOVAKIA

Comments to the steering note questions

+ = support

- = Oppose

/ = No comments

Subject	Row 4-column table	Article, paragraph or Annex	Steering note questions	Delegation position	Additional comments
Green/Yellow rows	/	/	/		
Sampling points and supersites	Rows 163b (=149), 165, 166, 169, 169b	Art 9, art 10, Annex VII -1	Question 1	+	<p>SK recommends keeping the Council's mandate. The basic problem of modelling is that it needs input data, and the more correct input data there is, the more accurate and correct the modelling outputs are. Without a sufficient number of monitoring points and inputs from other information sources, there is a high chance of overlooking a local "hotspot". As a possible way to strengthen the role of modelling, we see the introduction of conditions under which it is possible to replace monitoring with modelling - e.g. limits on spatial resolution, value uncertainty, but also regular campaign monitoring to verify the preservation of the condition, if the previous monitoring confirmed the modelling outputs.</p> <p>However, SK can show flexibility towards the compromise package proposed by the EP.</p> <p>For SK it is crucial not to measure the BC, ammonia, oxidative potential of PMs and Hg because:</p> <ol style="list-style-type: none"> 1) Measurements for which there are currently no approved reference standard methods, procedures or reference materials (black carbon – BC, ammonia (these two are in preparation) and especially PM

					<p>oxidation potential (for which nothing exists) *should* not be mandatory , until it is clearly agreed what standard methods and materials are to be used, to ensure uniformity and accuracy of measurement.</p> <p>2) the main source of mercury (Hg) is at the moment the burning of municipal waste and heating with solid fuel, especially coal, so if it were necessary to proceed with mandatory monitoring of Hg over time, it would be necessary to prefer measurement at city stations. than on a rural background, where the main source is long-distance transmission.</p>
Alert and information thresholds	/	Annex I section 4	Question 2	+	SK is open to further decrease of alert and information thresholds and can support the PRES proposal
Short term action plans	Row 246	Art 20(1)	Question 3	+	For SK the most ideal solution would be to have an exception introduced for certain situations when it is not possible to take specific short-term measures, but as part of a compromise, SK can support the PRES proposal, where the preparation of short-term plans will be mandatory in every situation (Article 20), but the proposed measures can only be of a behavioural nature.
Transboundary air pollution	Rows 251a - e	Art 21(-1b)	Question 4		
Transmission of information and reporting	Row 272	Art 23(3)	Question 5	-	SK strongly prefers to keep the Council mandate with 9 months period.
Limit values, target values, AECO, AERO	/	Annex I section 5.B	Question 6		

Postponement and exemptions	Row 214	Art 18 (1)	Addendum question 1	+	SK can support the PRES proposals
Postponement and exemptions	Rows 215 - 218	Art 18 (1) (a) - (d)	Addendum question 2	+	SK can support the PRES proposals.
Postponement and exemptions	New	Art 18 (3)	Addendum question 3		
Air quality plans	Rows 224 - 232	Art 19(1) - 19(4)	Question 7	+	SK can support the PRES proposals
Air quality plans	Rows 233, 236 - 240	Art 19(5) - 19(7), Annex VIII	Question 8	+	SK can support the PRES proposals if the list of measures remains indicative.
Access to justice Prístup k spravodlivosti	Rows 301, 305, 306, 307a	Art 27	Question 9	-	SK does not support proposed changes and recommends keeping the Council mandate.
Compensation	Rows 311, 316	Art 28	Question 10		
Penalties	Rows 320, 321-325	Art 29	Question 11		

FINLAND

Table Member State's comments on steering note questions

+ = support

- = Oppose

/ = No comments

Subject	Row 4-column table	Article, paragraph or Annex	Steering note questions	Delegation position+n	Additional comments
Green/Yellow rows	/	/		+	
Sampling points and supersites	Rows 163b (=149), 165, 166, 169, 169b	Art 9, art 10, Annex VII -1	Question 1	+/-	We do not see that the measurements of carbon monoxide (CO) and deposition of metals and PAHs provide much added value, provided that, e.g., the concentrations of CO have declined and are well below assessment thresholds. We would hope for a different solution and would have rather supported obligatory BC measurements, but in order to not delay the process, can accept this new requirement. However, it is very important to us that indicative measurements for CO can be used, as it would be important to be able to utilise the ICOS measurements) for this with, e.g., Picarro instrument.
Alert and information thresholds	/	Annex I section 4	Question 2	+/-	<p>Alert thresholds:</p> <p>We could accept the proposal on alert thresholds. We wish to also point out that for PM10 and PM2.5, it might be good to stress in the text that the exceedance is calculated for 3 hours/days <u>from</u> 1 hour/1 day averaging results presented in the Table. It might be confusing to the reader to quickly look at the Tables, when it might give the impression that both alert and information thresholds are calculated for 1 hour/day. <i>Our concrete proposal to clarify the Table A is in the end of this document.</i></p> <p>Information thresholds:</p>

					<p>We are concerned about the averaging period of the proposed information thresholds for SO2 and NO2. We find the averaging period for one hour too tight, and would prefer three hours as in the Council mandate. One hour averaging period might exceed just because of the malfunctioning of the instrument, and the duration of 3 hours would leave time to ensure that the measured excess is real, and if it is real, whether the situation is very local or occurring in the 100 km2 area or larger.</p>
Short term action plans	Row 246	Art 20(1)	Question 3	+	
Transboundary air pollution	Rows 251a - e	Art 21(-1b)	Question 4	+	
Transmission of information and reporting	Row 272	Art 23(3)	Question 5	+	<p>We could accept the Pres compromise proposal concerning the reporting deadline under article 23. However, it must be stressed that six months is challenging to report the pollutants that are not measured online and require laboratory analysis.</p>
Limit values, target values, AECO, AERO	/	Annex I section 5.B	Question 6	+	
Postponement and exemptions	Row 214	Art 18 (1)	Addendum question 1	+	<p>Regarding Art 18 it is important to us that that benzo(a)pyrene is included in the list of pollutants as in the Council mandate and that the reasons for the postponement covers "adverse climatic conditions" as in the COM proposal and in the Council mandate. However, we could support the postponement for only five years as in the COM proposal, or a postponement for 5-10 years, or any solution where the time limit of 10 years would be divided in two (for example 5 years + 5 years or 5 years + 3 years).</p> <p>With reference to the above, we can be quite flexible with the Addendum questions 1-3 and options under them. However, regarding question 3 concerning guarantees during the</p>

					postponement, we feel that option a) including introducing a trajectory seems challenging.
Postponement and exemptions	Rows 215 - 218	Art 18 (1) (a) - (d)	Addendum question 2	+	see above
Postponement and exemptions	New	Art 18 (3)	Addendum question 3	+	see above
Air quality plans	Rows 224 - 232	Art 19(1) - 19(4)	Question 7	+	
Air quality plans	Rows 233, 236 - 240	Art 19(5) - 19(7), Annex VIII	Question 8	+	
Access to justice	Rows 301, 305, 306, 307a	Art 27	Question 9	+/-	<p>Based on the EU case law, we could support including reference to Article 9 in the definition of public concerned and in Art 27.1. However, we think that in Art 27 the last subparagraph of para 1 should be modified, in order to make it more in line with the Århus Convention (Art 9.2). For example, it is important to include “requirements under national law” when referring to organisations promoting environmental protection or human health. <i>Our concrete proposal on the last subparagraph of para 1 in Art 27 is in the end of the document.</i></p> <p>We also want to point out, that for us it is important to keep para 4 (which is based on the Art 9.2 of the Århus Convention) included in art 27. Para 4 states that <i>“This Article does not prevent Member States from requiring a preliminary review procedure before an administrative authority and does not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.”</i></p>
Compensation	Rows 311, 316	Art 28	Question 10	+/-	<p>We could accept the proposed changes in para 1 and 5. However, can not accept the proposed change in para 6 concerning a specific limitation period of less than 5 years. This would be contrary to our national legislation. We would like to stick to the Council mandate in para 6, because it leaves flexibility for Member States in order to enable the</p>

					transposition to be carried out in a manner appropriate to the Member state's national legal systems
Penalties	Rows 320, 321-325	Art 29	Question 11	+/-	<p>Regarding Art 29, we want to point out that it is very important to leave flexibility for Member States in order to enable the transposition to be carried out in a manner appropriate to the Member state's national legal systems. We do not support changes, which seems to narrow national flexibility for example on selecting the type of penalties (administrative penalties or criminal penalties) suitable in our national legal system. Therefore, we call for an outcome as close to Council mandate as possible.</p> <p>With reference to the above, we also want to point out during the negotiations COM has stated that Member States can decide whether the "legal person" under 29 covers authorities or not. We think that this outcome should be included in the resitals or in Art 29. This is extremely important, because according to our national legal system administrative fines can not be imposed on authorities. Therefore, we propose that almost a similar solution as in Art 83.7 of General Data Protection Regulation (EU) 2016/679 would be considered in this directive. Here is our concrete proposal on this: <i>"Each Member State may lay down rules on whether legal person under 29 covers public authorities and to what extent administrative fines under article 29 may be imposed on public authorities."</i></p> <p>With reference to the above, we can not support the inclusion of the following obligation in para 2: <i>" 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"</i>. This would create a confiscatory fine, which would be against the basic principles of our national legal system. In Finland, confiscation is not a punishment and may not be used as a punitive measure.</p>

					<p>Questions on confiscation should be dealt with in the instruments of judicial cooperation in criminal matters, like in the pending proposal for a Directive on asset recovery and confiscation. If need be, a reference to “the economic benefits derived from their infringements” might be included to para 3 among the factors relevant to the penalties. Therefore, in the spirit of compromise we could support point f) in para 3, if the obligation creating confiscatory fine in para 2 would be deleted.</p> <p>In the spirit of compromise, we could also support the idea of point c) in para 3, because almost similar point is included in the latest IED version. However, we propose that it would be written as in the latest IED version: “the population or the environment affected by the infringement, bearing in mind the impact of the infringement on the objective of achieving a high level of protection of human health and the environment”.</p> <p>In the spirit of compromise, we could also support support point e) in para 3.</p>
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1) Our concrete proposal to clarify the Table A (related to question 2)

A. Alert thresholds

To be measured over 3 consecutive hours in the case of sulphur dioxide and nitrogen dioxide, and over three consecutive days or less for PM₁₀ and PM_{2.5}, at locations representative of air quality over at least 100 km² or an entire zone, whichever is the smaller.

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

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

Pollutant	Averaging Measurement period	Alert threshold
Sulphur dioxide (SO ₂)	1 3 hour*	350 µg/m ³
Nitrogen dioxide (NO ₂)	1 3 hour*	200 µg/m ³
PM _{2.5}	1 3 day**	50 µg/m ³
PM ₁₀	1 3 day**	90 µg/m ³
Ozone	1 hour	240 µg/m ³

* Calculated from one-hour values.

** Calculated from 1 day values.

2) Our concrete proposal on the last subparagraph of para 1 in Art 27 (related to question 9)

Art. 27 – Access to justice

1. Member States shall ensure that, in accordance with their national legal system, members of the public concerned have access to a review procedure before a court of law, or another independent and impartial body established by law, to challenge the substantive or procedural legality of all decisions, acts or omissions by Member States concerning the network design, location and relocation of sampling points under Article 9, air quality plans and air quality roadmaps referred to in Article 19, and short term action plans referred to in Article 20, of the Member State, provided that any of the following conditions is met:

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

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

To this end, the interest of any non-governmental organisation promoting the environmental protection of the environment or human health which is a member of the public concerned and meeting any requirements under national law shall be deemed sufficient for the

purposes of the first subparagraph, point (a). Such organisations shall also be deemed to have rights capable of being impaired for the purposes of the first subparagraph, point (b).

To this end, any non-governmental organization promoting environmental protection or human health and meeting any requirements under national law, shall be deemed to have sufficient interest for the purposes of the first subparagraph, point (a) and to have rights capable of being impaired for the purposes of the first subparagraph, point (b).

SWEDEN

Comments on steering note questions from 5 February

+ = support

- = Oppose

/ = No comments

Subject	Row 4-column table	Article, paragraph or Annex	Steering note questions	Delegation position	Additional comments
Green/Yellow rows	/	/	/	+	
Sampling points and supersites	Rows 163b (=149), 165, 166, 169, 169b	Art 9, art 10, Annex VII -1	Question 1	+/-	<p>Sweden supports the deletion of the first part of row 169b.</p> <p>As a compromise, Sweden can accept a requirement to measure CO in rural supersites with a choice between fixed or indicative measurements, since this should allow us to take advantage of synergies with already existing networks and use ICOS measurements of CO in rural locations for this purpose.</p> <p>Sweden is very skeptical of a requirement to measure total deposition of metals, BaP and PAH at urban supersites. Such measurements are for assessing exposure through food production, which is primarily relevant in rural areas. This is stated clearly in Annex IV, section B, para 2.a. “(iii) for arsenic, cadmium, lead, mercury, nickel and polycyclic aromatic hydrocarbons, the deposition rates representing the indirect exposure of the population through the food chain;”. We also think the need for the Presidency’s proposed footnote showcases that deposition measurements in urban areas are highly impractical and often not feasible.</p> <p>We would also like to recall Sweden’s willingness to accept</p>

					a requirement to measure BC together with UFP in hotspot stations. Sweden believes that this would have been a more appropriate compromise than urban measurements of deposition, since these measurements would have a clear added value to justify the additional cost.
Alert and information thresholds	/	Annex I section 4	Question 2	(-)	Sweden prefers the revised Coreper mandate, which we believe is well balanced with regard to the information and alert thresholds. Our main concern with the compromise proposal is that using single one-hour values for the information thresholds could risk that information to the public is given based on failure in the measurement. It would be more appropriate to give a slightly longer timeframe in order to significantly reduce this risk.
Short term action plans	Row 246	Art 20(1)	Question 3	+	
Transboundary air pollution	Rows 251a - e	Art 21(-1b)	Question 4	+	
Transmission of information and reporting	Row 272	Art 23(3)	Question 5	*	As a compromise, Sweden could accept a more flexible wording such as "member states shall endeavour to make the information available no later than 6 months...". Sweden could also agree to a requirement to, from 2030, make information available after 6 months for measurements relating to the Air Quality Standards. We believe that it would make sense to prioritize verification and reporting of these data. However, it is important to keep 9 months for other measurement data, such as those from measurements of unregulated pollutants at supersites, and for modelling and objective estimation.
Limit values, target values, AECO, AERO	/	Annex I section 5.B	Question 6	+	
Postponement and exemptions	Row 214	Art 18 (1)	Addendum question 1	+	
Postponement and exemptions	Rows 215 - 218	Art 18 (1) (a) - (d)	Addendum question 2	+	

Postponement and exemptions	New	Art 18 (3)	Addendum question 3	+	<p>In general Sweden welcome, in line with position at Coreper, a regular follow-up during the period for postponement, and can show flexibility to the solution for such regular follow-up.</p> <p>Point a: we would prefer option 3 (a general statement), since a requirement related to a linear reduction might be difficult to interpret.</p> <p>Point b: A periodical update of the roadmap seems reasonable, and a five yearly cycle seems appropriate as it would be in line with what is proposed for normal action plans.</p> <p>Point c: The introduction of a requirement for regular implementation report could give an important safeguard to ensure an effective implementation of measures and improvement of air quality. An update for example every three years, could be a good balance between extra administrative burden and the time it takes to implement measures, but Sweden could also support every 2.5 years.</p> <p>Point d: support the Presidency's proposal.</p>
Air quality plans	Rows 224 - 232	Art 19(1) - 19(4)	Question 7	+	<p>Sweden supports the proposed compromise for Article 19, which we believe is well balanced. We in particular welcome the proposed deadlines for establishment, implementation and revision of the air quality plans that we think is more appropriate than the extensions proposed in the Council mandate.</p> <p>Regarding the questions on the alternatives for row 226a we would prefer the first alternative where the MS must provide a more detailed justification for why an AQ plan for ozone is not established. This seems more appropriate and practical than the second alternative to retain a requirement for an AQ plan, but in a much more limited form and without a requirement to include any actual measures.</p>
Air quality plans	Rows 233, 236 - 240	Art 19(5) - 19(7), Annex VIII	Question 8	+	<p>As a compromise, Sweden can accept the proposed changes in Annex VIII. We are of the opinion that some of these additions are too prescriptive and could be better covered in guidance. However, the changes for example in point A of Annex VIII are aspects that anyway need to be included in AQ plans and are related to existing reporting requirements in the IPR decision. However, a suggestion would be to move Annex VIII.A, point 5(c) under point 6, since it makes more sense to include a timetable for implementation only for selected measures, rather than for all considered measures.</p>

Access to justice	Rows 301, 305, 306, 307a	Art 27	Question 9	+/-	<p>We can accept the proposed amendments except the inclusion of “or human health” in row 305. This inclusion is problematic based on the definition of “environmental organizations” in national law and we have problems to foresee how this amendment would inflict on our national regulation.</p> <p>“Environmental organizations' right to speak is regulated horizontally in the national legislation. The interest of human health is also already satisfied by the environmental interest in accordance with the wording of the council's proposal.</p>
Compensation	Rows 311, 316	Art 28	Question 10	-	<p>We do not support the deletion of “that has been committed intentionally or negligently” in row 311. This deletion cannot be compensated by the inclusion of “an act or omission of”, as proposed.</p> <p>In our view this proposal would go against the principles of civil liability that apply in general. The proposed deletion also risks entailing strict liability for damages for the competent authorities and could end up being very costly for the competent authorities. The damage regulated in art. 28, and which triggers liability for damages, with the deletion proposed by the Presidency, could lead to that authorities must pay for damages even if they did not make a mistake.</p> <p>As part of an overall compromise Sweden can accept the proposal in row 317 under the condition that such a limitations period is no less than 5 years.</p>
Penalties	Rows 320, 321-325	Art 29	Question 11	-	<p>Sweden does not support any reference to penalties being based on turnover or income. Such a system is far too administrative for concerned authorities. It's important to acknowledge the difference with IED which often target companies and we find it difficult to see when it would be relevant to consider turnover in relation to this directive. We would therefore like to stick firmly to the Council mandate or as a last fall-back delete the first part of the first option <i>“The penalties referred to in paragraph 1 shall, where applicable, include administrative-fincancial penalties proportionate to the turnover of the legal person or to the income of the natural person having committed the violation.”</i></p>