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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on the Environment
N° Cion doc.:	ST 14217/22 + ADD 1
Subject:	Air Quality Directive: WPE on 9 January 2024 - Presidency steering note

With a view to the above WPE meeting on 9 January 2024, delegations will find attached a steering note prepared by the Presidency.

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Working Party on the Environment (WPE)

9 January 2024

Ambient Air Quality Directive (AAQD)

Presidency Steering Note

On 9 January, the WPE will examine the outcome resulting from the six Interinstitutional technical meetings (ITMs) held so far under the Spanish Presidency. There will be two blocks of debate:

1. Provisional compromise texts provisionally agreed with the European Parliament, which need to be confirmed by the Council.
2. Elements for further reflection in view of future negotiations.

For the first block the Presidency kindly asks delegations to review and confirm the provisional pre-agreed text. For the second block, the Presidency will invite delegations to express their views and to submit written comments until 11 January, cob.

The 4-column document and a separate document for annexes, reflecting the progress made in negotiations to date have already been distributed on delegates portal as WK 17182/23. The Presidency would be grateful if delegations could refer to the article and row number in the 4-column document when making their comments. Annexes should be referred to by number, section, (sub) paragraph.

As the first ITM under the BE Presidency will be held on 8 January, further information and other elements to be discussed at the WPE may be shared by the Presidency orally during the WPE meeting.

The discussion during WPE will be organised as follows:

- Cluster 1: Green rows and yellow rows pending agreement by the Council listed under section 1. In the interest of time, Presidency asks delegations to react only if they have concerns, or questions regarding these rows.
- Cluster 2: Section 2.1 – Art. 15, art. 20, annex I section D and annex VIIIa (Information and alert thresholds and short-term action plans)
- Cluster 3: Sections 2.2-5 – Art 19 (roadmaps) + transversal issues: hotspots, air quality standards, average exposure territorial units.
- Cluster 4: Section 2.6 – Monitoring and modelling (article 7-10)
- Cluster 5: Sections 2.7-10 – Art 21, 23, 24, 26, Chapter VII

In the ITM's so far 59 % of the lines have been covered (without annexes) and 43 % of the rows already discussed have been greened.

For the following green rows, the EP has accepted the Council text : 1-3, 5-11, 13, 23, 36, 43, 46-47, 53, 54, 55-57, 61-65, 67, 69, 73, 77, 78, 80-82, 83-94, 96-105, 106, 108, 109, 112-115, 118, 121, 122, 126-129, 131, 132-137, 139-143, 151, 152, 153, 154, 157, 159-161, 163a, 164, 167, 168, 176-181, 185, 187, 191, 192, 195-197, 202-205, 208, 210-212, 213, 220-222, 234-235, 244, 248, 251, 252, 257, 259, 260, 263, 265, 269, 270-271, 273, 275-278, 280-284, 286, 288-290, 293, 294, 296, 297, 299, 300, 304, 307, 308-310, 326-330, 332-343.

The following rows have been greened on the basis of the EP text, as they present only minor reformulations of the Council mandate: 262, 265, 269.

Regarding the annexes, several sections, paragraphs and sentences have been greened as well. Details can be found in the document WK 17182/23.

1. Yellow rows pending agreement by the Council

For the following rows a provisional agreement has been reached with the EP, pending confirmation by the Council. The Presidency proposes that the Council accept the text proposed either in column 4 “draft agreement” or column 5 “comments” for the following reasons:

- Row 60 (art. 1 (3)): The EP's amendment was included, without referring to sectoral policies
- Row 66 (art. 2, first paragraph, point (4)): EP mandate has been reworded to reflect the wording in art.22.
- Row 68 (art. 2, first paragraph, point (6)): EP mandate has been reworded, using the same terminology as in art. 5
- Row 74 (art. 3 (2), third subparagraph, point (a)): Wording combines EP Mandate and Council mandate. Union bodies refers to a.o. EEA and JRC.
- Row 77a (art. 3 (2), third subparagraph, point (da)): Wording combines EP Mandate and Council mandate.
- Row 77b (art. 3(2), third subparagraph, point (db)): The suggestion is to keep both (db) and (f).
- Row 95 (art. 4, first paragraph, point (14)): text from the Council mandate has been slightly changed, replacing ";" by ",where" because a definition should only be one sentence.
- Row 120a (art. 4, first paragraph, point (40)): it is suggested to delete the reference to abiotic assays from the definition, in order not to limit the techniques measuring this variable.
- Row 123 (art. 5, first paragraph, point (a)) (to be read together with row 124): EP amendment for row 124 has been included here, since this is more appropriate.
- Row 125 (art. 5, first paragraph, point (c)): the first part of the EP amendment has been included, since this is a task to be fulfilled. The part referring to DQO has not been included, since it is not in line with the provision to also report data that don't meet the DQO.
- Row 131a (art. 5, first paragraph, point (ia)): as this is an obligation under the directive, it makes sense to designate a competent authority.
- Row 138 (art. 7(2), first subparagraph): small rewording, where ‘relevant to the ambient concentrations’ has been replaced by ‘impacting the ambient concentrations’.
- Row 158 (art. 9(3), point (c)): the Council mandate and the EP text have been merged, which means that the Council mandate has been supplemented by the demand that the indicative measurements need to be equally distributed over the calendar year.
- Row 163 (art. 9(7)): Reformulation based on the Council mandate, where a reference to target values has been included (pending further discussion on that issue). The ‘supported by modelling results’ is complemented with ‘indicative measurements’ and is moved to before the ‘wherever possible’. The model results that were used for the establishment of the (original) monitoring network can be used for this purpose.
- Row 206 (art. 16(2)): Only the part that the natural contribution could not have been prevented is taken over from the EP text.

- Row 207 (art. 16(3)): the EP amendment has been adapted to reflect current practices. COM will only contact a MS when information is missing.
- Row 207a (art. 16(3a), first subparagraph) (+ row 207b): Further specifications of the Implementing Act have been included.
- Row 212a (art. 17(3a), first subparagraph) (+ row 212b): The council text has been extended to clarify that the implementing act will also cover the information to be provided by MS.
- Row 253 (art. 21(1), second subparagraph): discussed later in this steering note
- Row 255 (art. 21(2)): The EP amendment has been partly included (not 'oversee'). The part that is included confirms current practices.
- Row 261 (art. 22(1)): The listing of who should be informed is extended in line with the EP mandate.
- Row 262a (art. 22(1), point (aa)): the information requested is already available, member states now need to make it accessible (which could be done by referring to the EEA data viewer). COM has proposed a compromise text.
- Annex III, A.2: the phrase on BAT has been reintroduced, but with a 'may' instead of 'shall', thus keeping both the reference to BAT and flexibility for MS.
- Annex IV, A.2.(c): The EP amendment has been slightly reformulated. It is logical to treat cycling access the same way as pedestrian access.
- Annex IV, B.2.(a)(ii): inclusion of the EP amendment, clarification.
- Annex IV, B.2.(e): reformulation to align the text with (c).
- Annex IV, D.2: part of the EP amendment is included, this part of the text is already included in the current directive (added by directive 2015/1480).
- Annex IV, D.3: reformulation of the EP amendment in line with the approach throughout the directive.
- Annex IV, D.9: part of the EP amendment is included; this makes explicit what is already included the first part of this text.
- Annex V, E. (b): EP proposal for a new 10a under annex IV, point D has been partly included here (since this is the more appropriate place for that text).
- Annex IX, 2. (d) and (da): combination of Council and EP amendments

For the following rows, agreement by the EP is still pending: 148 (in principle EP accepts move to Art. 9), 253a (deletion) + 254, 258, 268

Also for the following rows, agreement is still pending, but further discussion is needed in ITMs : 72, 75, 76, 76a, 77c, 79, 82a, 110, 116, 120, 146, 149, 152a, 155, 156, 163b, 165, 166, 169, 209, 265a, 265b, 265c, 266, 267, 267a, 267b, 272, 274, 279, 285, 287, 291, 292, 295, 298, 331, 331^a.

2. Items for discussion – expanding the Council mandate

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

2.1. Art. 15, art. 20, annex I section 4 and annex VIIIa (Information and alert thresholds and short-term action plans)

2.1.1. Art. 15

Compared to the COM proposal, the Council included the possibility to evaluate the thresholds on the basis of forecasting and it reformulated the timing for informing the public from ‘within a few hours’ to ‘within the shortest possible timeframe’. The EP reorganised section D of annex I and thus the references thereto in art. 15. We will discuss this under annex I. The EP elaborated on how the informing should be done and what information should be given. When an information threshold is exceeded, informing should be directed towards sensitive groups, whereas it should be directed to the general public when an alert threshold is exceeded. The EP also includes a reference to the measures included in the short-term action plan established under art. 20.

On the proposal for a new art. 15(2a) (row 199a), the Presidency thinks that this explains the goal of the short-term action plan and would therefore be acceptable. Since art. 20 does not require the establishment of such a plan under all conditions, it seems however appropriate to add ‘where applicable’ (text in red = EP text, text in purple = addition by the Presidency):

2a. Where any alert threshold laid down in Section 4, Point A, of Annex I is exceeded, Member States shall, where applicable, implement without undue delay the emergency measures indicated in the short-term action plans drawn up under Article 20.

The additions of the EP in art. 15(3) (row 200) and 15(4) (row 201) seem to be reasonable. The Presidency suggests to merge the texts of the Council and of the EP for these two paragraphs as follows:

3. Where any alert threshold or any information laid down in Section 4 of Annex I is exceeded, or, when appropriate, if it is predicted to be exceeded based on modelling applications or other forecasting tools, Member States shall take the necessary steps to inform the public within the shortest possible timeframe, in accordance with point 2 and 3 of Annex IX, *in a coherent and easily understandable manner, providing detailed information about the severity of the exceedance and the associated health impacts, as well as suggestions for the protection of the population, with a special focus on sensitive population and vulnerable groups. Member States shall make* use of different media and communication channels and *ensure* broad public access. *When an information threshold is exceeded, particular attention will be given to informing sensitive population and vulnerable groups.*

Delegations are requested to express their views on:

1. The proposed text for art. 15(2a).
2. The proposed text for art. 15(3).

2.1.2. Art. 20 + annex VIIIa

The Council expanded the possibility for not drawing up a short-term action plan to PM and included its reporting in the yearly reporting round instead of 2 months after its adoption. The EP from its side included an obligation to display information on symptoms associated with air pollution in the vicinity of communities of sensitive population and vulnerable groups and included in a new annex VIIIa a list

of measures to be considered in a short-term action plan. The EP added the possibility for MS to request the COM to provide assistance and the possibility for the COM to establish guidelines on drawing up these plans. The list of organisations to whom the action plan should be made available was extended and it is specified that modelling shall be used in order to evaluate the risk of an exceedance of the alert threshold.

Art. 20(1) (row 246) has not yet been discussed with the EP. The primary option is evidently to defend the Council mandate. In case this is not acceptable, the Presidency suggests as a fallback-option to complement the EP mandate with the following text, that includes elements from row 246a that were added by the EP.

“Where, for particulate matter (PM10 and PM2.5), the potential to reduce the risk of such an exceedance is severely limited, taking into account national geographical, meteorological and economic conditions, a short-term action plan should include the best possible measures to reduce the duration or severity of such an exceedance, to reduce the exposure and to inform the public about the risk of exceedances and its effects. This shall include easily understandable information on behaviour to reduce exposure to the forecasted exceedance.”

Given the discussions in WPE on modelling, it is clear that the added 20(4a) (row 249a) is not acceptable for the Council.

Annex VIIIa as suggested by the EP reads:

ANNEX VIIIa: EMERGENCY MEASURES TO BE CONSIDERED FOR INCLUSION IN THE SHORT-TERM ACTION PLANS REQUIRED UNDER ARTICLE 20

1. ***Measures to be taken in the short term aimed at addressing the sources which contribute to the risk of the relevant limit values, target values or alert threshold being exceeded:***
 - (a) restricting the circulation of vehicles;***
 - (b) low-fare or fare-free public transportation;***
 - (c) implementing stricter emission limits;***
 - (d) suspending operations at construction works;***
 - (e) street cleaning;***
 - (f) flexible work arrangements;***
 - (g) introducing driving restrictions around locations frequented by sensitive population and vulnerable groups.***
2. ***Proactive steps to be taken in order to provide specific air pollution, health and health protection information, both to the general public and to sensitive population and vulnerable groups, by means of easily accessible, online or offline communication channels, as soon as exceedances of information and alert thresholds and of limit values and target values are projected.***

Given that the listed measures are only recommendations, the Presidency sees no principled objections against this annex. The Presidency would however propose to:

- In the first line, change ‘measures to be taken’ by ‘measures to be considered’ for consistency
- Delete (c) since this is not relevant in the short term

- Delete point 2. (proactive steps to be taken) since these are not aimed at reducing concentrations and these dispositions are already covered under art. 22.

Delegations are requested to express their views on:

3. The proposed fallback-option for art. 20(1) second subparagraph (row 246)
4. The inclusion of the suggested new annex VIIIa (t) and the measures included in it; taking into account the suggestions by the Presidency.
5. The additions by the EP in art. 20(4) (row 249).
6. The newly added art. 20(5a) on the establishment of guidelines regarding short-term action plans (row 250a).

2.1.3. Annex I section 4

The Council only made a minor change to this annex (allowing to evaluate the alert thresholds for PM on a shorter timescale than 3 days), the EP added information thresholds for SO₂, NO₂ and PM, strengthened the alert thresholds for SO₂ and NO₂ and increased the timescale for the ozone information threshold to 3 hours. By rearranging the annex, the EP changed some other provisions. The tables below compare the provisions as they are in the Council mandate and the EP mandate.

Alert thresholds (µg/m³)

	COUNCIL			EP		
	Threshold	Timescale	Area	Threshold	Timescale	Area
SO ₂	500	3h	100 km ² or AQ zone	200	3h	100 km ² or AQ zone
NO ₂	400	3h	100 km ² or AQ zone	100	3h	100 km ² or AQ zone
PM _{2,5}	50	3d	100 km ² or AQ zone	50	3d	100 km ² or AQ zone
PM ₁₀	90	3d	100 km ² or AQ zone	90	3d	100 km ² or AQ zone
O ₃	240	1h/3h for art. 20	Not specified	240	3h	100 km ² or AQ zone

Information thresholds (µg/m³)

	COU			EP		
	Threshold	Timescale	Area	Threshold	Timescale	Area
SO ₂				40	24h	Not specified
NO ₂				25	24h	Not specified
PM _{2,5}				15	24h	Not specified
PM ₁₀				45	24h	Not specified
O ₃	180	1h	Not specified	180	3h	Not specified

Delegations are requested to express their views on:

7. Lowering the alert thresholds for SO₂ and NO₂ to respectively 350 and 200 µg/m³ (aligning them with the hourly limit value for these pollutants) (area 100 km² or AQ zone whichever smaller)
8. Introducing information thresholds for SO₂ and NO₂ at 100 µg/m³ for both (aligning them with 2 times the daily limit value for these pollutants) and to be evaluated over 24h, (area 100 km² or AQ zone whichever smaller)
9. Introducing information thresholds for PM₁₀ and PM_{2.5} at respectively 90 and 5 µg/m³ (same levels as the alert thresholds, being twice the daily limit value) and to be evaluated over 24h (area 100 km² or AQ zone whichever smaller).

2.2. Art. 19 (Air quality roadmaps)

During the WPE on 24/11 many questions were raised on the ‘air quality roadmaps’ and the differences with the preparatory air quality plans (AQP) as proposed by the COM in art. 19(4) (rows 231-232). The EP explained that there is no difference with these plans and that the contents of the roadmap are exactly the same as those of the AQP under 19(4). The EP changed the name and moved paragraph 19(4) from the COM-proposal forward to emphasize the importance of these AQP under 19(4)/roadmaps.

Both plans are of a different nature, where AQP under 19(4)/roadmaps are preparatory in order to meet a future standard by the attainment deadline, and AQP under 19(1)-19(3) are to be established in response to an exceedance with the aim of meeting the standard as soon as possible. And whereas the AQP under 19(4)/roadmaps are the basis for the postponement in art. 18, the AQP under 19(1) – 19(3) are only to be established after the postponement period. Even though there is no difference regarding the content, the described differences might be good reasons for using different terminology.

Apart from that, the EP made two changes to the COM-proposal regarding the timing of these roadmaps:

- Art. 19 would already apply from 3 months after the entry into force of the Directive;
- Art. 19(-1) (row 223a) refers to the values recorded for the preceding calendar year.

The Council on the other hand extended the deadline for drafting a plan to 3 years instead of 2 years.

If the Directive would be published at the end of 2024 and enters into force at the end of 2024, this would result in the following timelines:

	COM	COUNCIL	EP
Transposition of art. 19	End 2026 (2 years after entry into force)	End 2026 (2 years after entry into force)	Beginning 2025 (3 months after entry into force)
Reference year for roadmap	2027 (first year after transposition)	2027 (first year after transposition)	2024 (year preceding transposition)
Deadline for establishment roadmap	End 2029 (2 years after exceedance)	End 2030 (3 years after exceedance)	End 2026 (2 years after exceedance)

Since contrary to the AQP, a roadmap is not due in response to an exceedance, there are arguments for having less stringent timings on the roadmap. However, when deciding on the appropriate timing for the roadmap, it needs to be taken into account that this roadmap is a prerequisite for obtaining a postponement under art. 18. Since art. 18(2) states that the COM can raise objections to the requested postponement within 9 months (row 220), it seems appropriate to have the roadmap established by the end of 2028 at the latest. MS would then have clarity on whether or not they can get the postponement

before the end of 2029. Since the drafting of the roadmap is a one-time effort (with no update required as is the case for the AQP under 19(1)), it might be clearer to refer to absolute dates rather than relative dates (“x years after ...”). This would also be the case for the reference year for the roadmap, where 2025 seems the most obvious choice (meaning that a roadmap needs to be established when there is an exceedance of the future standard in 2025. Data for 2025 are reported by the end of September 2026, which would leave 27 months for the establishment of the AQP under 19(4)/roadmap (or more, since it will mostly be clear well before that date that there is an exceedance).

It could be considered to use more than one year as a reference (e.g.. 2024 and 2025 or 2025 and 2026) and require an AQP under 19(4)/roadmap only when there is an exceedance in both years, thus avoiding e.g. that it needs to be established due to temporary conditions (e.g.. constructions works, unfavourable meteorological conditions). As a reminder, when there is a structural air quality problem the AQP under 19(4)/roadmap will be needed anyway to obtain the postponement under art. 18.

The Presidency would like to hear the positions of delegations on the following:

- 10. Whether they have a strong preference for the wording used (either ‘air quality plan’ or ‘air quality roadmap’) and on the positioning of the text (either as the first or the fourth paragraph in art. 19).**
- 11. The acceptability of having 2025 and/or another year as a reference year for the roadmap, with the deadline for establishing the roadmap by the end of 2028.**

2.3. Air pollution hotspots

The EP introduces in article 4 a new definition 24a for ‘air pollution hotspots’ (row 105a): ‘air pollution hotspot’ means a place and where the pollution level is strongly influenced by the emissions from heavy pollution sources such as, but not limited to, nearby congested and heavily trafficked roads, motorways or other highways, a single industrial source or an industrial area with many sources, ports, airports, intensive residential heating, or a combination thereof;

References to this concept are thereafter introduced by the EP in these parts of the text:

- Annex III, A.1 (three times) where it twice replaces ‘the area with the highest concentrations’
- Annex IV, B.2(a)(i), where the text also refers to ‘the areas within zones with the highest concentrations’
- Annex IV, B.2(ca) – see new text proposal in doc wk17182
- Annex VII, section 1, A & section 1, C
- Annex VIII, A.2
- Annex VIII, B.2(ha)

This item will be discussed with the EP at the ITM of 8/1. Depending on the outcome of that discussion, a compromise approach might be suggested in a room document during the WPE.

2.4. Air quality standards

The EP introduces in article 4 a new definition 1a for ‘air quality standards’ (row 82a): ‘*air quality standards*’ means *limit values, target values, average exposure reduction obligations, average exposure concentration objectives, critical levels, information thresholds and alert thresholds*;

In order to evaluate whether it is appropriate to introduce the suggested definition, the table below shows where in the text there is a reference to ‘air quality standards’ and what standards this reference could cover ((EP) means text added by the EP, (COUNCIL) means text added by the Council).

	Limit value	Target value	AERO	AECO	Critical level	Information threshold	Alert threshold	Long term objective
Art. 1.2	X	X	X	X	X	X	X	X
Art. 3.2	X	X	X	X	X	X	X	X
Art. 3.2(db) (EP)	X	X	X	X	X	X	X	X
Art. 3.4	X	X	X	X	X	X	X	X
Art. 3.5 (COUNCIL)	X	X	X	X	X	X	X	X
Art. 4.38	X	X	X	X	X	X	X	X
Art. 13.7	X	X	X	X	X	X	X	X
Art. 19.4	X	X	X					
Art. 27.1 (EP)	X	X	X					
Annex V.A & AA (EP)	X	X	X	X	X	X	X	X
Annex IX.1 (c)(iii)	X	X			X			

Whereas in most parts of the text, the introduction of the definition seems acceptable and would clarify what is meant by the reference to ‘air quality standards’ (and then it seems a good idea to also include the long term objectives in the definition), this reference would lead to problems in art. 19.4, art. 27.1 (text introduced by the EP and still under discussion) and in Annex IX.1. In Art. 19 and Annex IX this can easily be solved by referring to the specific standards. For art. 27 this has to be dealt with in the discussion of that text.

12. Delegations are requested to express their views on the described approach.

2.5. Average exposure territorial units

The EP accepted the idea of referring to ‘average exposure territorial units’ (AETU) throughout the text, instead of referring to the applicable NUTS-level. What is still open for discussion is how these AETU will be defined. According to the EP mandate, this should be at NUTS 2-level, whereas for the Council this is “NUTS 1 level or a part thereof, or where the average exposure indicator in a NUTS 1 territorial unit is shown to be influenced by other NUTS 1 territorial units within a Member State, a larger territorial unit covering the related units, provided that it is below the NUTS 0 unit for that Member State”. The EP clarified that it proposes NUTS 2 since it considers this level to be comparable across member states. The EP does not want to go beyond NUTS 1.

In the compromise text that was discussed at the WPE on 18/9/2023 (ST12848/23), it was suggested to use NUTS 1 level or a part thereof or where the average exposure indicator in a given NUTS1 territorial unit with an area below 1000 km² is influenced by other NUTS1 territorial units, a larger territorial unit covering the related NUTS 1 units within the same Member State may be used for the average exposure indicator determination. Whereas this approach was acceptable for most Member States, there were some pleas to raise the 1.000 km²-criterion or to go beyond NUTS 1 without criterion in the surface area.

Given the message from the EP that they do not want to go beyond NUTS 1 and are attached to comparability, the Presidency sees 2 compromise options. The first is to re-install the approach from ST12848/23 but sticking to the NUTS-approach and raising the surface-criterion to [3.000 / 5.000] km². This doesn’t really address comparability, since there are large differences in the sizes of the NUTS 1 regions. A second option is to use a combination of NUTS and surface criteria, which would also allow to combine NUTS 1 and NUTS 2 regions. The definitions would be:

Option 1

‘average exposure territorial unit’ means a territorial unit at NUTS 1 level or at a higher NUTS level as described in Regulation (EC) No 1059/2003 of the European Parliament and of the Council, used to determine the average exposure indicator, or where the NUTS 1 territorial unit has an area below [3000 / 5000] km², a larger territorial unit covering the related NUTS 1 unit and an adjacent NUTS 1 unit.

Option 2

‘average exposure territorial unit’ means part of the territory of a Member State designated by that Member State for the purposes of determining the average exposure indicator, corresponding to a NUTS 1 or a NUTS 2 region as described in Regulation (EC) No 1059/2003 of the European Parliament and of the Council or a combination of two or more adjacent NUTS1 or NUTS2 regions, provided that their total combined size is no more than 85.000 km².

Option 2 is more flexible than option 1. Since at this moment, it is not clear what will be acceptable for the EP, the Presidency would like to hear the delegations’ positions on:

13. Option 1 as described above.

14. Option 2 as described above.

2.6. Monitoring & modelling (art. 7-10)

The requirements of these articles were not yet discussed in detail during ITM. The EP expressed some rather general positions. Based on that, the Presidency identified some possible compromise proposals.

Apart from some minor rewording (see row 138 in chapter 1 of this note), there was an agreement on the text of the Council mandate for Art. 7 (Assessment regime, Rows 135-140).

2.6.1. Assessment criteria (Art. 8)

The EP agreed with the Council mandate to move paragraphs 6 and 7 to Art. 9 (Rows 114+145 & 163a+163b), so we will discuss these under Art. 9.

The Implementing Act (rows 147a-147e) that was added by the Council will be discussed once there is more clarity on the rest on this article.

Both the Council and the EP made fundamental changes in Art. 8 compared to the COM-proposal.

The major differences between the positions of Council and EP are:

- 8(3) (rows 144-145): The Council deleted the obligation to use modelling in a zone where the level is above the limit value or target value, whereas the EP wants to stick to the COM-proposal;
- 8(4) (row 146): The Council wants to stick to the COM-proposal for zones where the level is below the assessment thresholds, allowing modelling, indicative measurements, objective estimation or a combination thereof. The EP deleted the possibility of using objective estimation (which it did throughout the text) and imposes both modelling and indicative measurements (and not a choice between them);

- 8(5) (row 147): In the COM-proposal additional fixed or indicative measurements were to be used during at least one year in areas where modelling showed exceedances if these areas were not covered by fixed measurements. The EP expanded this logic to exceedances shown by indicative measurements, allowing only additional fixed measurements. The EP specified that the fixed measurements have to be installed within 6 months after the recording of the exceedance. The Council also included such a timing but chose 2 years. The Council added text to specify that modelled exceedances should not be used for compliance assessment unless a Member State chooses so (and as a consequence doesn't need to establish additional monitoring).
- 8(8) (row 150): the EP wants to stick to the COM-proposal that says that the use of bio-indicators shall be considered, whereas the Council changed this to "may be considered".

Given the large differences between the positions of the co-legislators, compromise options need to be explored. The EP already indicated that it could agree with keeping a role for objective estimation, but also made it clear that they would insist on a strong role for modelling. The Presidency sees some possibilities for working towards a compromise, on which it would like to get feedback from Member States on its acceptability. As it was clear from discussions within the Council that the use of modelling as such for compliance assessment (without the possibility to revert to additional measurements) is a red line for many Member States, none of the Presidency compromise suggestions crosses that line.

The Presidency identified some possible compromise options. It needs to be stressed that if 8(3) would be re-inserted and referred to in 8(5), this will never lead to additional cases of non-compliance since 8(3) only relates to zones that are already non-compliant based on data from monitoring stations.

Regarding the deadline for installing new monitoring stations under 8(5), it is clear that a 2-year period for fixed measurements is necessary. For indicative measurements however, a shorter period might be possible and including a shorter period for these could be an (additional) argument to include indicative measurements here. The EP proposes a timing of 6 months, but a somewhat longer period (1 year) might be more realistic.

Apart from options with regards to art. 8 itself, an option where modelling is introduced in art. 7 (independent on how the concentrations relate to the limit or target values) is also proposed (which would then replace modelling obligations under art. 8). This modelling could then be used for determining the spatial representativeness of monitoring stations. It could be considered for the whole member state or only for those zones that are classified as below the assessment threshold.

The Presidency would like to hear the positions of delegations on the following compromise options:

For Art. 8(3):

- 15. Re-introduction of the COM-proposal for 8(3) (with consequential reference to 8(3) in 8(5)).**
- 16. Re-introduction of the COM-proposal for 8(3), whereby the obligation for additional modelling would only enter into force 2 years after the publication of the Implementing Act referred to in 8(5a).**
- 17. Re-introduction of the COM-proposal for 8(3), with clarification that additional modelling is only needed on a 5-yearly basis (where the 5 years is aligned with the timing in 7(2)).**
- 18. Re-introduction of the COM-proposal for 8(3) but allowing also the use of indicative measurements instead of modelling (in which case there would be no need to delay this as in the two options above).**
- 19. The introduction of a periodical modelling (e.g.. every 5 years) in art. 7 [for the whole Member State/for zones above the assessment threshold] from 2 years after the publication of the Implementing Act referred to in 8(5a).**

For Art. 8(5):

- 20. Deletion of the reference to indicative measurements in the third paragraph, thus allowing only fixed measurements when a model (or – see option 4 - indicative measurements) shows exceedances not covered by other fixed measurements.**
- 21. Inclusion of a shorter deadline of [6 months/1 year] for the additional monitoring in case indicative measurements are used.**

For Art. 8(8):

- 22. Changing the ‘may’ again to ‘shall’. The wording ‘shall be considered’, does not imply any direct obligation on the use of bio-indicators, only an obligation to consider their use.**

2.6.2. Sampling points (Art. 9)

For already a large part of this article, there is an agreement and some of the rows remaining open are due to other issues that need to be solved (e.g. the reference to target values in row 155 and the reference to sensitive groups in row 152a). Other differences are:

- The use of ‘and’ or ‘or’ in 9(3)a (row 156) on the use of modelling and/or indicative measurements when reducing the number of fixed measurements. A similar provision is already included in the current Directive and this also leaves the choice between the two techniques (or a combination thereof).
- The deletion of 9(6) (row 162) on the use of results from modelling and indicative measurements, but this is clarified in art. 8.
- The formulation of art. 9(7) (row 163) on relocation of sampling points – see discussion on yellow rows.
- Additional monitoring requirements for UFP, BC, NH₃ and Hg in 9(9) in combination with annex III point D (EP amendment in row 149).

For the latter point the Council wants to stick to the COM-proposal of having one additional monitoring station for UFP per 5 million inhabitants and to include the possibility, without obligation, to monitor BC at these same sites. The EP raised the number of monitoring stations for UFP to one per one million inhabitants and included that same number of sites – obligatory- for BC, Hg and NH₃. It was clear from discussions in WPE that the additional monitoring for NH₃ and Hg at supersites should be enough (and that these pollutants should not be added to the requirement relating to UFP in Article 9). However, there might be some room for flexibility for the other pollutants. Therefore, the Presidency would like to hear the delegations’ positions on the following compromise options:

23. One obligatory sampling point per 5 million inhabitants for both UFP and BC

24. Raising the number of monitoring stations even more to accommodate the EP mandate. If so, what number would be acceptable?

2.6.3. Supersites (Art. 10)

For the monitoring supersites, the Council moved the list of pollutants to be monitored to the annex, which was principally agreed on by the EP. Apart from that, the Council introduced some flexibilities (for small MS, for pollutants below the assessment threshold at urban background locations and for MS that have more rural than urban sites). The Council added some pollutants to the list and made the monitoring of some pollutants only recommended. The EP on the other hand raised the number of urban supersites to 1 per 2 million inhabitants instead of 1 per 10 million inhabitants and made the use of fixed measurements obligatory for all pollutants. It also included SO₂, CO and deposition of benzene (the “deposition” is probably a mistake since this is not something that is monitored normally) as pollutants to be monitored at supersites.

From the discussion in WPE, the Presidency understands that there is no room for flexibility for raising the number of supersites. Also, the flexibility for smaller MS is considered a red line.

The table below compares the obligations on the pollutants to be monitored on the different supersites according to the COM-proposal (COM), the Council mandate (COUNCIL) and the EP amendments (EP).

(FM = fixed measurements, IM = indicative measurements, recomm = recommended only, open = no technique specified)

	Urban			Rural		
	COM	COUNCIL	EP	COM	COUNCIL	EP
PM ₁₀ , PM _{2,5} , UFP, BC	FM	FM	FM	FM	FM	FM
SO ₂ , CO			FM			FM
NO ₂ , O ₃	FM	FM	FM	FM	FM	FM
Size distribution UFP	FM or IM	FM or IM	FM		FM or IM – recomm	FM
BaP, PAH	FM or IM	FM or IM	FM	FM or IM	FM or IM	FM
As, Cd, Ni	FM or IM	FM or IM	FM	FM or IM	FM or IM	FM
Pb		FM or IM			FM or IM	
Chem. comp. PM _{2,5}	FM or IM	FM or IM	FM	FM or IM	FM or IM	FM
NH ₃	FM	FM or IM - recomm	FM	FM	FM	FM
Deposition of BaP, PAH	FM or IM	IM - recomm	FM	FM or IM	IM	FM
Deposition of As, Cd, Hg, Ni	FM or IM	IM - recomm	FM	FM or IM	IM	FM
Deposition of Pb		IM - recomm	FM		IM	FM
Deposition of benzene			FM			FM
Total gaseous Hg	FM or IM	FM or IM - recomm	FM	FM or IM	FM or IM	FM
PMOP	FM or IM	FM or IM - recomm	FM		FM or IM – recomm	FM
Levoglucosan		FM or IM - recomm			FM or IM – recomm	
Particulate and gaseous divalent Hg	Open - voluntary	FM or IM - recomm	Open	Open - voluntary	FM or IM – recomm	Open
Nitric acid		FM or IM - recomm			FM or IM – recomm	

In our view, since all Member States already monitor SO₂, the inclusion of the monitoring of SO₂ in urban supersites would possibly not have a large impact. From a scientific point of view, the monitoring of size distribution UFP in rural sites, NH₃ in urban sites and oxidative potential of PM seems most relevant. The Presidency sees a possible path to compromise with the obligatory monitoring of (some of) the pollutants listed above. Secondly, since the EP included additional monitoring obligations for BC, NH₃ and Hg in art. 9, it can be considered that these are the pollutants of most concern for the EP. Finally, the monitoring of deposition needs some space and is therefore far less evident in urban sites, the Presidency therefore considers that this needs to stay recommended.

The main advantage of fixed measurements (FM) over indicative measurements (IM) is its smaller uncertainty and larger data coverage, the main disadvantage is the (sometimes significantly) higher cost. An argument to plea for FM could be that it allows to establish associations between pollutants, which will be much more difficult if IM are used, when these IM are performed at different times for the different pollutants or for the different locations. A compromise to cure this, could be to require that the IM are conducted during the same periods during the calendar year for the different pollutants and/or the different sites. If a selection needs to be made on parameters to be monitored by fixed measurements, size distribution UFP would be a prime candidate since this is monitored automatically. The other pollutants are mostly monitored using semi-automatic monitoring devices which means that a transition to fixed measurements would lead to additional costs (with little added scientific value).

As this issue will be discussed with the EP during the ITM on 8/1, specific questions concerning the pollutants and monitoring techniques will be addressed in a separate room document. On a more general level, the Presidency would like to hear the delegations' positions on the following compromise options:

- 25. Making the monitoring of NH₃ and Hg in urban supersites obligatory instead of recommended.**
- 26. The inclusion of a new para 10(5a): “Where member states use indicative measurements for several pollutants at one or more supersites, member states shall conduct these measurements during the same period, where possible.”**

2.7. Art. 21 (Transboundary air pollution)

Whereas both the EP and the Council made some amendments to art. 21, their positions don't differ fundamentally. In general, the EP pleads for more binding obligations, whereas the Council leaves more freedom to the MS.

The addition by the Council of Art. 21(1a), (row 252a – 252e) has not been discussed yet, so for now there is no reason to change the Council mandate on this.

Both the Council and the EP included some specifications in the second subparagraph of 21(1). In the 4 column-table (row 253) a draft agreement is included. However, there are some issues of linguistic nature with the text. We would therefore invite delegations to comment on the text that follows (COM compromise text), that combines amendments from Council and EP (text in red is where it differs from the Council mandate).

1b. The Member States concerned shall cooperate with each other, **including by establishing joint teams of experts and** with the technical support of the Commission, to identify the sources of air pollution, **contributions of those sources in each Member State concerned to exceedances in another Member State** and the measures to be taken **individually and in coordination with other Member States** to address those sources, and draw up coordinated activities, such as the coordination of air quality plans pursuant to Article 19, in which each Member State concerned shall address pollution sources located in its territory, in order to remove such exceedances.

Row 256 will be dealt with pending the agreement on row 253 and row 256a will be dealt with together with art. 29.

The Presidency would like to hear the delegations' positions on the following compromise options:

27. The above text proposal for art.21(1) second subparagraph (row 253).

2.8. Art. 23 (Transmission of information and reporting) & Art. 26 (Committee procedure)

Issues remaining open at this point are the inclusion of the reference to 'average exposure concentration objectives' in art. 23(2) (row 272), the deadline for reporting in that same article and the deletion of 'as appropriate' in art. 23(5) (row 279).

It was explained to the EP that there is no added value in the addition of the 'average exposure concentration objectives' and the EP is reflecting on it. This is in our view not a major issue since if it would be kept, this information will be made available anyway for the assessment of the AERO.

Concerning the deadline for reporting, it was explained to the EP that a shorter deadline than 9 months is not feasible especially for pollutants that are not monitored automatically and for modelling.

2.9. Art. 24 (Amendments to Annexes)

Whereas in the EP mandate the COM is empowered to adopt delegated acts amending Annex II to XI, the Council limited this power to Annex III to VII (row 285). The EP wants to have as many annexes in here as possible.

Given the strong link between annex II and annex I, there is a strong argument for keeping annex II out of the empowerment. For (mainly) annex VIII (and annex VIIIa) and annex IX, the Presidency sees these annexes as more of a technical nature than annexes I and II.

Delegations are requested to express their views on:

28. The inclusion of annex VIII and annex VIIIa in the empowerment.

29. The inclusion of annex IX in the empowerment.

2.10. Chapter VII Access to justice, compensation and penalties (art. 27-29)

So far, chapter VII has not been discussed at ITM level.

At the second trilogue, Parliament indicated that Article 28 (Compensation for damage to human health) is of particular importance to them. Presidency is aware of the importance of this chapter and will work in further ITM meetings to align the wording of this key provision as much as possible with the IED final compromise text (ST 16939/23).

30. Presidency would be happy to hear any further flexibilities that delegations might have regarding this chapter.