FINLAND

AQD: Comments by Finland 12.5.2023

1. **Assessment regime (Article 7) and assessment thresholds (Annex II)**
    - FI can support the Commission´s proposal, but could also be flexible on maintaing the 0.4 ng/m3 assessment threshold.

2. **Assessment criteria (Article 8)**
    - Our opinion is, that the requirement to use modelling applications in Article 8.3 and 8.5. should not cover ozone target values. However, this proposal is not mentioned in the list of Presidencys steering note 28.4.2023. From the different options in the list in steering note, we would support the proposal to leave Article 8.3 unchanged.
    - Furthermore, FI thinks that Article 8.3 should not apply before 2030, when the limit values that the provisions refer to are not yet in force.
    - On article 8.5. FI welcomes any clarifications with regard to what is meant by exceedances and especially with the timeframes.

3. **Definition of objective estimation (Article 4 point 21)**

    - FI can support the suggestion from the Precidency.

4. **Requirements on the measurement of ultrafine particles (Article 4 Point 14, Article 8 paragraph 7, Annex III Point D and Annex VII Section 3)**
    - Our opinion is that in the definition of UFP the lower size limit should be exact, in other words equal to 10 nm. Otherwise, the data collected in different MS is not going to be comparable. We can also support the inclusion of an upper size limit. We think that from the legal point the lower and upper size limits could not be moved to a technical guidance document.
    - The proposal to add the measurement of black carbon (BC) as a requirement in Article 8.7 is still valid. WHO recommends the monitoring of UFP and BC due to health effects. BC would provide important additional information related to concentrations levels and trends caused by emissions from residential wood combustion, vehicular traffic and shipping. In the Commission's proposal there is only BC monitoring in rural and urban background supersites. It would be especially important to get BC information from hot spot sites. We think that BC should be at least added as a recommendation.
    - The proposal to increase the number of measurements required for ultrafine particles (and black carbon) in Article 8.7 to give more data to support local air quality actions is also valid.

5. **Monitoring supersites (Article 10) and monitoring of mass concentration and chemical composition of PM2.5 (Annex VII Section 1)**

    - We would like to have flexibility in the number of rural background supersites. The number of rural background supersites proposed in the review of the directive could be reduced by a half (100 000 km2 → 200 000 km), keeping at least one urban and one rural supersites even in small countries.

This would mean that in Finland the number of urban and rural background supersites would be the same: one of each. In our opinion this 1:1 relation would be the right ratio at least for Finland.

- FI thinks that:
    - levoglucosan could be added as a recommendation
    - lead should be added as a requirement
    - PM oxidative potential should be a recommendation instead of a requirement
    - HNO3 could be added as a recommendation

- On our opinion, everything should not be measured at all supersites irrespective of concentration levels. We think that the requirements to monitor metal concentrations and deposition annually in all supersites might be disproportionate where concentrations are very low. This is why we suggest that the requirement to monitor metal concentrations and deposition annually would be different in rural and urban background supersites. In rural background supersites this monitoring requirement should be undertaken irrespective of concentration levels (as is required in the current legislation) , but in urban background supersites this monitoring requirement should be undertaken if the concentration levels exceed the assessment thresholds established for those pollutants.

FI CONCRETE PROPOSALS CONCERNING ARTICLES 10 and 8 :

Article 10

Article 10

Monitoring supersites

1. Each Member State shall establish at least one monitoring supersite per 10 million inhabitants at an urban background location. Member States that have fewer than 10 million inhabitants shall establish at least one monitoring supersite at an urban background location.

Each Member State shall establish at least one monitoring supersite per 200 000 km^2 at a rural background location. Member States whose territory is less than 200 000 km^2 shall establish at least one monitoring supersite at a rural background location.

2. The siting of monitoring supersites shall be determined for urban background locations and rural background locations in accordance with Point B of Annex IV.

3. All sampling points that fulfil the requirements laid down in Point B and C of Annex IV and which are installed at monitoring supersites may be taken into account for the purpose of meeting the requirements on the minimum number of sampling points for the relevant pollutants as specified in Annex III.

4. A Member State may set up in agreement with one or more neighbouring Member States to establish one or more joint monitoring supersites to meet the requirements set out in paragraph 1. This does not affect the obligation of each Member State to establish at least 1 monitoring supersite at an urban background location and 1 monitoring supersite at a rural background location.

5. Measurements at all monitoring supersites at urban background locations shall include fixed or indicative measurements of size distribution of ultrafine particles, irrespective of concentration levels. Measurements of particulate matter oxidative potential [and levoglucosan] may also be undertaken at

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

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

(b) fixed or indicative measurements of fine particulate matter ($PM_{2.5}$) for the purposes of providing, as a minimum, information on their total mass concentration and their chemical speciation concentrations on an annual average basis in accordance with Section 1 of Annex VII, irrespective of concentration levels;

(c) fixed or indicative measurements of arsenic, cadmium, lead, nickel, total gaseous mercury, benzo(a)pyrene and the other polycyclic aromatic hydrocarbons referred to in Article 8(6), and of the total deposition of arsenic, cadmium, mercury, nickel, benzo(a)pyrene and the other polycyclic aromatic hydrocarbons referred to in Article 8(6), , if the concentration levels exceed the assessment thresholds established for these pollutants at urban background supersites and irrespective of concentration levels at the rural background supersites. 7. Measurements of particulate and gaseous divalent mercury may also be undertaken at monitoring supersites at urban background locations and rural background locations.

↓ 2008/50 (adapted)
⇨ new

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

Article 8 – Black Carbon

1. Primary option: to add BC as a requirement in to Article 8.7

Article 8~~6~~

Assessment criteria

…….

7. In addition to monitoring required under Article 10, Member States shall, where applicable, monitor ultrafine particles and black carbon levels in accordance with Point D of Annex III and Section 3 of Annex VII.

ANNEX III

MINIMUM NUMBERS OF SAMPLING POINTS FOR FIXED MEASUREMENT

D. Minimum number of sampling points for fixed measurements of ultrafine particles and black carbon where high concentrations

Ultrafine particles and black carbon shall be monitored at selected locations in addition to other air pollutants. Sampling points to monitor ultrafine particles and black carbon shall coincide, where appropriate, with sampling points for particulate matter or nitrogen dioxide referred to in Point A, and be sited in accordance with Section 3 of Annex VII. For this purpose, at least 1 sampling point per 5 million inhabitants shall be established at a location where high UFP and BC concentrations are likely to occur. Member States that have fewer than 5 million inhabitants shall establish at least 1 fixed sampling point at a location where high UFP and BC concentrations are likely to occur.

Monitoring supersites at urban background or rural background locations established in accordance with Article 10 shall not be included for the purpose of meeting the requirements on the minimum number of sampling points for UFP and BC set here.

ANNEX VII

MONITORING OF MASS CONCENTRATION AND CHEMICAL COMPOSITION OF $PM_{2.5}$, OZONE PRECURSOR SUBSTANCES ULTRAFINE PARTICLES AND BLACK CARBON

SECTION 3- MEASUREMENT OF ULTRAFINE PARTICULES (UFP) AND BLACK CARBON (BC)

A. Objectives

The objective of such measurements is to ensure that adequate information is available at locations where high concentrations of UFP and BC occur that are mainly influenced by sources from air, water or road transport (such as airports, ports, roads), industrial sites or domestic heating. The information shall be appropriate to judge on enhanced levels of UFP and BC concentrations from those sources.

B. Substances

UFP and BC.

C. Siting

Sampling points shall be established in accordance with Annex IV and V at a location where high UFP and BC concentrations are likely to occur and within the main wind direction.

2. Secondary option: to add BC as a recommendation in to Article 8.7

Article 8~~6~~

Assessment criteria

…….

7. In addition to monitoring required under Article 10, Member States shall, where applicable, monitor ultrafine particles levels in accordance with Point D of Annex III and Section 3 of Annex VII, monitoring black carbon levels may also be undertaking at the same locations.

Article 8 – Ozone:

1. Primary option: to delete ozone TV from Articles 8.3 and 8.5.

Article 8~~6~~

Assessment criteria

…….

3. In all zones ~~and agglomerations~~ where the level of pollutants ~~referred to in paragraph 1 is below the upper assessment threshold~~ ⇨ exceeds a limit value ⇦ established for those pollutants ⇨ in Table 1 of Section 1 of Annex I ⇦ , ~~a combination of fixed measurements and~~ modelling ~~techniques~~ ⇨ applications ⇦ ~~and/or indicative measurements may~~ ⇨ shall ⇦ be used ⇨ in addition to fixed measurements ⇦ to assess the ambient air quality.

⇩ new

Those modelling applications shall also provide information on the spatial distribution of pollutants and on the spatial representativeness of fixed measurements.

…….

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

2. Secondary option: to leave the Article 8.3 unchanged

Council of the European Union
General Secretariat

Interinstitutional files:
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Brussels, 15 May 2023

WK 6426/2023 INIT

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CONTRIBUTION

From: To:	General Secretariat of the Council Working Party on the Environment
N° Cion doc.:	ST 14217/22 + ADD 1
Subject:	Air Quality Directive: follow-up to the WPE on 8 May 2023 - comments by delegations

Following the call for comments (WK 5892/23), delegations will find attached the contributions received from the BE, CZ, AT, ES and FI delegations on Articles 7, 8 and 10. Please note that the CZ contribution also covers Articles 24-33.

SPAIN

Proposal for a Directive of the European Parliament and of the Council on ambient air quality and cleaner air for Europe (recast)

Comments from Spain to Presidency Steering Note for articles 7, 8 and 10

1. Article 7. Assessment scheme and assessment thresholds in Annex II

With regard to the question whether to keep the threshold for assessment of BaP at 0.12 or 0.4 ng/m³, we had proposed to change it to 0.4 ng/m³, as it coincides with the lower assessment threshold currently in force. This value we believe is more consistent with the fact that for the BaP it is proposed to move from a target value to a limit value and this limit value of 1 ng/m³ has not changed from the current value. Our proposal to Annex II is:

SECTION 1 - ASSESSMENT THRESHOLDS FOR HEALTH PROTECTION

Pollutant	**Assessment threshold (annual mean, unless specified)**
$PM_{2.5}$	5 µg/m³
PM_{10}	15 µg/m³
Nitrogen dioxide (NO_2)	10 µg/m³
Sulphur dioxide (SO_2)	40 µg/m³ (24-hour mean)(1)
Benzene	1,7 µg/m³
Carbon monoxide (CO)	4 mg/m³ (24-hour mean)(1)
Lead (Pb)	0,25 µg/m³
Arsenic (As)	3,0 ng/m³
Cadmium (Cd)	2,5 ng/m³
Nickel (Ni)	10 ng/m³
Benzo(a)pyrene	~~0,12~~ **0,4** ng/m³
Ozone (O_3)	100 µg/m³ (maximum 8-hour mean)(1)

(1) 99th percentile (i.e. 3 exceedance days per year).

2. Article 8. Assessment Regime

- In relation to Article 8(3):

We believe that the proposed option of using indicative measurements rather than modelling applications is appropriate where the models are not able to meet the data quality objectives set out in Annex V.

We also believe that the criteria for the use of modelling applications need to be developed in a guidance document by the Commission on modelling applications.

As for the Article 8.3 obligations to enter into force by 2030, we believe that is necessary to develop the guidance document and the development of modelling applications. In order to be able to commit with this deadline the Commission guidelines should be ready before 2027.

- In relation to Article 8(5):

Regarding the deadlines to make the additional measurements, it is necessary to take into account that the installation of a fixed point requires at least 9 months so having more flexibility would be desirable.

As we have already mentioned in previous written comments, Article 8.5 implies that, if the modelling shows an exceedance in an area not covered by fixed measurements, additional fixed or indicative measurements must be made for at least 1 calendar year after such exceedance to assess the concentration of that pollutant. In addition, Article 19(1) and (2) provide that in areas where the level of pollutants exceeds any limit value or target value for ozone, Member States shall establish air quality plans for those areas as soon as possible and no later than 2 years after the calendar year during which such exceedance was recorded. In this regard, it is important to clarify in the Directive when air quality plans should be established after exceedance shown by the model. Would overcoming the model itself imply the need to draw up air quality plans? Or would such exceedance occur after confirmation with the additional fixed or indicative measurements of at least 1 year's duration? The legal implications of the fixed or indicative measurements to be made after the model has been exceeded are not clear in the Directive. In our view, the period of 2 years for the establishment of air quality plans provided for in Article 19 should be applied after assessing the exceedance of the model with fixed or indicative measurements of at least 1 year duration.

3. Definition of objective estimation:

We support the simplification of the definition and alignment with the definition contained in Decision 2011/850/EU (IPR): *'objective estimation data' means information on the concentration or deposition level of a specific pollutant obtained through expert analysis and may include use of statistical tools;* Also, it is very important that the inclusion of sensors is not explicitly included in the definition if they cannot meet the data quality objectives and are not reference methods, so our proposal is:

(21) 'objective estimation' means an assessment method to obtain quantitative or qualitative information on the concentration or deposition level of a pollutant through expert judgement, which may include use of ~~statistical tools,~~ remote sensing, in-situ sensors **provided these are type-approved and data quality objectives are met, and/or statistical tools**;

We believe that the simplified definition of objective estimation may have to be accompanied by the development of a guidance document by the Commission. It would be important for this guidance document to include the definition of modelling applications if they are considered as part of the statistical tools to which the definition refers.

4. Definition of spatial representativeness

We believe that to complete the definition the concept of margin of tolerance must be defined. We think that it is more appropriate for this concept to be defined in a later guide but not in the articulate since the state of the art of the models is in constant development.

5. Requirements on the measurement of ultrafine particles

In relation to the definition of ultrafine particles (Article 4.14):

- **Is flexibility required in determining the lower limit of particle size or is it preferred to be defined from the outset in the Directive?** We believe that it is necessary to establish a lower limit in the Directive in order to ensure the consistency of the data obtained by the Member States. Our scientists indicate that a lower limit of 7 or 10 nm is recommended (the latter value of 10 is the lower limit that has been included in the current proposal).
- **Do you need to add an upper particle size limit to ensure harmonisation or do you agree not to restrict the upper limit?** We consider that if we establish an upper limit, we will increase comparability. If this upper limit is established, it should include at least 500 nm particles. An upper limit of 800 nm would be desirable, in line with what ACTRIS proposes.
- **Should the incorporation of the lower and upper limits be maintained in the definition of UFPs, or should it be moved to an annex or a technical document?** We believe that the indication of the upper and lower limits of UFPs should be maintained in the text of the Directive, although we have no problem whether it is indicated in the definition in Article 4 or in an annex. We find it less appropriate to indicate this in a document or technical guidance document.

Should black carbon measurement be incorporated into ultrafine particulate measurement requirements? We are not in favour of incorporating the measurement of black carbon within Article 8 because of the disproportionate cost that this would have and because it has been seen that high concentrations of ultrafine particles are not necessarily correlated with high levels of black carbon, because it depends on the type of emission source (in industrial areas or airports it has been seen that they are not correlated). We believe that it is appropriate to keep the measurement of black carbon within the requirements of Article 10 on supersites as it is now in the proposal. In these supersites the Member States could identify points to measure both UFP and BC, at critical points to help assess the origin of ultrafine particles.

What is the preferred station density for UFP measurement? In Annex III, Point D, regarding the minimum number of sampling points for the measurement of ultrafine particles, we had already conveyed our proposal to halve the number of points from one point per 5 million inhabitants to one point for every 10 million inhabitants. Our proposal for Annex III.D Minimum number of sampling points for fixed measurements of ultrafine particles where high concentrations is the following:

> Ultrafine particles shall be monitored at selected locations in addition to other air pollutants. Sampling points to monitor ultrafine particles shall coincide, where appropriate, with sampling points for particulate matter or nitrogen dioxide referred to in Point A, and be sited in accordance with Section 3 of Annex VII. For this purpose, at least 1 sampling point per ~~5~~ **10** million inhabitants shall be established at a location where high UFP concentrations are likely to occur. Member States that have fewer than ~~5~~ **10** million inhabitants shall establish at least 1 fixed sampling point at a location where high UFP concentrations are likely to occur.

Also, in Annex VII section 3, we had indicated that the location of these sampling points should be located if possible, in places where the expected exposure of the population is the greatest (and not only linked to emission sources).

> SECTION 3- MEASUREMENT OF ULTRAFINE PARTICULES (UFP)
>
> **A. Objectives**
>
> The objective of such measurements is to ensure that adequate information is available at locations where high concentrations of UFP **to which the population is likely to be directly or indirectly exposed** occur that are mainly influenced by sources from air, water or road transport (such as airports, ports, roads), industrial sites or

domestic heating The information shall be appropriate to judge on enhanced levels of UFP concentrations from those sources.

B. Substances

UFP.

C. Siting

Sampling points shall be established in accordance with Annex IV and V at a location where high UFP concentrations **to which the population is likely to be directly or indirectly exposed exposure** are likely to occur and within the main wind direction.

6. Article 10. Supersites of control; mass concentration and chemical composition of PM2.5 (Annex VII Section 1)

How many supersites are required? Regarding the minimum number of sampling points, we had transmitted our proposal to reduce the number of points in half, going from one supersite for every 10 million inhabitants to one for every 20 million in urban hot spots, and also going from one per 100.000 km² to one for every 200.000 km² in rural locations. We propose the following change:

1. Each Member State shall establish at least one monitoring supersite per ~~10~~ **20** million inhabitants at an urban background location. Member States that have fewer than ~~10~~ **20** million inhabitants shall establish at least one monitoring supersite at an urban background location.

Each Member State shall establish at least one monitoring supersite per ~~100 000~~ **200 000** km² at a rural background location. Member States whose territory is less than ~~100 000~~ **200 000** km² shall establish at least one monitoring supersite at a rural background location.

Is the list of parameters sufficient? Should lead, levoglucosan and nitric acid be added?

We see interest on adding the levoglucosan as other Member States has proposed, since it traces the origin of the biomass burning in particulate matter.

For lead, we are not in favour of its mandatory measurement in supersites.

In relation to nitric acid, its measurement is more appropriate in the framework of air quality research groups, but we do not see it as an obligation for the Member States for its disproportionate cost.

We had also commented that the extended list of VOCs seemed appropriate to us.

As regards to gaseous mercury and divalent mercury, their measurement in supersites should be kept optional given the difficulty of measuring them.

We would also like to highlight **the need for the Directive to establish harmonised measurement techniques** for all new pollutants to ensure consistency in measurement and data collection by the Member States. We had indicated this in previous comments for the oxidative potential of particles, UFP, back carbon and ammonia.

We have also sent comments requesting clarification of the role of ACTRIS, EMEP and AQUILA in the implementation of the Directive, as we consider their role to be important.

1. 5. 2023

CZECH REPUBLIC

CZ comments on the PRES steering note (WK 5648/2023) and on articles 24 – 33, and related annexes of the proposed revision of the ambient air quality directive

CZ thanks the SE Presidency for the prepared steering note and for the opportunity to send written comments. CZ first address below the points and questions raised by the PRES in the steering note WK 5648/2023 (I.), CZ then adds comments on articles 24 – 33 of the revised directives (II).

I. CZ comments on PRES steering note (WK 5648/2023):

1. Assessment regime (Article 7) and assessment thresholds (Annex II)

Regarding the first cluster concerning assessment thresholds, CZ supports aligning all of the assessment thresholds to WHO values, as proposed by the Commission, including the threshold for benzo(a)pyrene (0,12 ng/m3). We point out that the uncertainty of such low measured concentrations will be high and the data must be interpreted with this in mind. Nevertheless, we find it very useful to have fixed measurements in zones where the air quality is most probably (taking into consideration the before mentioned uncertainty) not in line with WHO air quality guidelines. Fixed measurement produces high quality data that is necessary for air quality modelling and air quality management.

2. Assessment criteria (Article 8)

Regarding the second point concerning Art. 8, CZ adds the following: CZ is in favour of extended use of the air quality modelling. We therefore support the Art. 8.3 as proposed by the Commission, meaning that the air quality model would be used to assess the air quality whenever the limit or target values are exceeded. CZ have already established high resolution modelling for most pollutants and for this reason we would also support Art. 8.3 to apply before 2030.

CZ notes, that the uncertainties of air quality models can be enormous in some cases. CZ is therefore open to the discussion aiming at handling modelled exceedances. We point out that the text proposed by the Commission in this regard is not self-explanatory and is not very clear. Therefore, CZ would support clarifying the text of Art. 8.5 of the directive. We would also support accompanying guidance document.

3. Definition of objective estimation (Article 4 point 21)

CZ is flexible with respect to the definition of objective estimation since we primarily use fixed measurement and air quality modelling for the air quality assessment. The definition introduced in the Commission Implementing Decision 2011/850/EU is also suitable for us.

4. Definition of spatial representativeness (Article 4 point 22)

CZ is flexible regarding the definition. The definition proposed by the Commission is to some extent open to different interpretations which might be useful as it would enable MS to consider regional differences in spatial representativeness. We would also appreciate an accompanying guidance document to ensure harmonised implementation.

5. **Requirements on the measurement of ultrafine particles (Article 4 Point 14, Article 8 paragraph 7, Annex III Point D and Annex VII Section 3)**

Regarding the fifth cluster concerning the measurements of UFP we provide the following information: Regarding the definition of UFP and size limit used in the definition (or lack thereof) we are flexible, but we would welcome harmonised approach across the EU. The definition proposed by the Commission is also acceptable for us.

Concerning the proposal to add black carbon to the provisions, CZ has scrutiny reservation. Our preliminary view is that we would support optional BC measurements, however we do not see the need for additional mandatory BC measurements since BC is not a priority and it is regulated under the revised directive (no limit or target values are in place).

Regarding the UFP station density, CZ could support the text proposed by the Commission. CZ also adds that in this initial stage CZ prefers to keep the number of UFP measurements relatively low since these measurements are quite expensive and UFP is not an air quality priority at this moment (no limit or target values are in place).

6. **Monitoring supersites (Article 10) and monitoring of mass concentration and chemical composition of PM2.5 (Annex VII Section 1)**

Regarding the number of supersites, CZ could support the text proposed by the Commission. CZ is of the opinion that the number of monitoring supersites should be kept relatively low since they could deplete MS´s financial resources that ought to be used for measurements of pollutants that are regulated under the Directive (with limit or target values). CZ would welcome guidance regarding the location of such supersites since the text proposed by the Commission in this regard in the Directive is vague.

For the reasons mentioned above, CZ would support more flexible approach regarding the list of pollutants that ought to be measured at each supersite. We have scrutiny reservation; however, our preliminary view is that MS should be able to adapt the list of measured pollutants to their needs. We note that monitoring supersites will have an interesting experimental value rather than direct added value for air quality management in the near future. Therefore, the establishment of monitoring supersites should not deplete financial resources for "standard" air quality assessment.

II. CZ Comments on articles 24 – 33 and related annexes of the proposed revision of the ambient air quality directive.

Ad art. 27 (Access to justice): general comment

CZ is of the opinion that establishing mechanism to ensure access to justice to review legality of decisions, acts or the lack thereof should be handled by each individual MS with respect to their existing legal system in place. CZ notes that Art. 27 will only introduce confusion to the existing system in CZ that already allows members of the public to challenge air quality policy and decision acts issued by CZ authorities.

CZ is also worried by the fact that any non-governmental organisation shall be deemed to have a sufficient interest and shall be capable of being impaired of a right. Such access is provided sufficiently by MS' obligations arising from Aarhus convention (as a part of each Party's legal system) and its adoption into EU law (Directive 2003/4/EC, Directive 2003/35/EC etc.) as an integral part of MS' legal system.

CZ therefore supports deletion of art. 27.

Ad Art. 28 (Compensation for damage to human health): general comment

CZ points out that most pollutants do not have any safe threshold beyond which they pose no threat to human health. The damage can occur even in situations when the air quality level meets the WHO air quality guidelines. CZ therefore disagrees with the idea that it is possible to distinguish between damage to human health linked with faulty implementation of the directive and damage to human health caused by the unavoidable nature of the pollutants that can affect health negatively even in small doses that would be considered in line with the limit values or any air quality standards. CZ considers the presumption of causal link and the premise of the whole art. 28 to be nonsensical. This causal link should be always subject of proving by the plaintiff and should not be presumed to make the case easier for one party and extremely difficult for other party, namely Member States.

CZ further notes that we find it very confusing that art. 28 assists the members of the public with claiming compensation to damage linked to alert thresholds and short term action plans that aims at "just" reducing the risk of alert thresholds being exceeded or "just" shortening the duration of such exceedance, therefore not avoiding the risk completely. CZ highlights the fact that once the alert threshold is exceeded (which is unavoidable in principle) the damage is already done; therefore, it is not clear what should be compensated here and why. Short term action plans are not a magical instrument capable of reversing any damage already done.

The same is valid for air quality plans. The majority of members of the public were born in situation with no air quality standards or no air quality directive. Therefore, the damage was already done, however small the damage might be. The air quality plan is simply not capable of reversing the effect of air pollutants that are already present. Nor can we determine whether the damage is associated with air pollution level that is below or equal to WHO air quality guidelines or air pollution level exceeding the new limit values proposed from 2030.

CZ also points out that MS cannot bear the responsibility for all of the stakeholders that are involved in air pollution and policy making. For example, large share of the air pollution originates outside MS´s territory and is therefore outside the jurisdiction of such MS. CZ is sympathetic to anyone's need to seek compensation for transboundary air pollution, however, this compensation should be claimed from the MS that is responsible for it, or from the individual sources of air pollution located in such MS. The problem the with transboundary air pollution should be handled at EU level, litigations at national level are not the solution.

Moreover, CZ is of the opinion that Art. 28 is omitting responsibility of individual sources of air pollution, including members of the public that are partly responsible for the damage they are seeking to compensate. CZ is sympathetic to all the reasons why the members of the public might be unable to switch to zero polluting technologies; however, this does not make their claim valid. CZ also points out that members of the public are expected to be actively involved in creating air quality plans as stated in the revised art. 19 which would make them also partly responsible for the proposed measures that might end up not as effective as expected.

CZ is also of the opinion that the legal system in MSs could be seriously overwhelmed due to art. 28.

Furthermore, CZ highlights the fact that based on the judgement in Case C- 61/21 the ambient air quality directives must be interpreted as meaning that they are not intended to confer rights on individuals capable of entitling them to compensation from a Member State under the principle of State liability for loss and damage caused to individuals as a result of breaches of EU law attributable to that Member State. **CZ supports therefore deleting Art. 28 as a whole.**

Ad Art. 28 para 4:

This para creates unreasonable rebuttable presumption of existence of causal link between legal actions of MS and (objected) harm. Firstly, unlawful actions by a MS can be only declared by the court so the use of this para should be always preceded by the "infringement" proceeding resulting in declaration of violation of EU law. Moreover, this in fact reverses the burden of proof and disproportionally hinders the position of MSs, making it close to impossible to make its case with relevant evidence available to MSs.

Ad Art. 29 (Penalties): general comments

CZ generally supports the idea that air quality policies should be properly enforced, however, majority of provisions adopted pursuant to the directive, for example in air quality plans, are addressed to general public or to public bodies. Both of these groups have no *economic benefit* from violating these provisions as mentioned in para 2 of art. 29. The violations are often linked to insufficient budget. It is therefore not clear why they should be further punished for being incapable of financing for example low emission household heating or the establishment of low emission public district heating, as might be stated for example in the air quality plan.

CZ opposes the idea that fines or penalties are capable of helping general public or public bodies to get on the "right track" and to be involved in the "green transition". CZ is of the opinion that

MSs should first decide whether the violation was intentional. If this is not the case, MS should assist natural or legal persons to overcome the barriers responsible for such violation if possible.

CZ is worried that the revised directive strives overall to increase the number of litigations and the number of fines imposed without closely analysing the causes of such violations. CZ therefore suggests to go back to the original wording of this article.

AUSTRIA

AT COMMENTS: Air Quality Directive (WK 6149/2023)

Following the request by the Presidency after the WPE meeting on 8 May, AT submits the following comments on the Presidency Steering Note on Articles 7, 8 and 10 of the proposal for the recast of the Air Quality Directives.

On the Steering Note

1. Assessment regime (Article 7) and assessment thresholds (Annex II)

AT supports the proposal that aligns the assessment threshold with the WHO guideline level.

2. Assessment criteria (Article 8)

AT is of the opinion that it should be possible to use indicative measurements instead of modelling applications (preference for option 1). We do see a need to further develop a common understanding and sound guidance documents on modelling applications before modelling applications become a mandatory tool. Furthermore, we oppose option 3, which requires that modelling applications are used even if standards are only met by a certain margin.

Regarding the application date of the provision, we think that the time until 2030 will be needed to work and develop modelling applications. Hence, they should not apply before new requirements and air quality standards come into force.

With a view to Art 8.5, we support the proposal to further clarify the text, ie regarding what is meant by exceedances in an "*area* of the zone" not covered by fixed measurements but also regarding the timeframes and actions required. We note again that the term "*area"* is neither defined nor used elsewhere in the proposal.

3. Definition of objective estimation (Article 4 point 21)

To us, the additional benefit of the proposed definition by the Presidency is not obvious.

4. Definition of spatial representativeness (Article 4 point 22)

A common understanding of the concept is crucial to ensure a harmonized approach within the EU. Hence, we consider having a definition in the directive as useful. However, we think it is premature to include quantitative threshold levels in the definition. Instead, we propose to include an obligation to publish a solid guideline that defines the tolerance levels referred to in the definition as it stands.

We think that such an obligation is best included in Annex IV in conjunction with "*the tolerance levels and possible cut-offs for the different pollutants may change depending on the station characteristics":*

"*The Commission shall by [date] publish guidelines with pre-defined tolerance levels for the purpose of defining spatial representativeness areas."*

5. Requirements on the measurement of ultrafine particles (Article 4 Point 14, Article 8 paragraph 7, Annex III Point D and Annex VII Section 3)

AT prefers a harmonised lower size limit of 10 nm in-line with the forthcoming CEN standard. Additionally, we are of the opinion that no upper limit is required.

We support the proposal to add the measurement of BC to this requirement.

Regarding station density, we support the proposal by European Commission regarding the number of stations that are required.

6. Monitoring supersites (Article 10) and monitoring of mass concentration and chemical composition of PM2.5 (Annex VII Section 1)

Regarding the number of supersites, AT supports the proposal by the European Commission.

As proposed by AT, we are in favour of including additional monitoring of levoglucosan. Regarding HNO3, we think that further information on the additional benefit of monitoring HNO3 is required.

We are not opposing the monitoring of the OP at supersites; however, we think that guidance is needed to ensure a harmonised approach within the EU.

We support the monitoring of all parameters mentioned in Art. 10 in order to ensure a common dataset. In addition, PNSD should be monitored at rural sites as well.

Article 7

It is still not clear to us what starting point in time the phrase "*the previous 5 years*" in para. 2 refers to. We think that a clarification in the text would be helpful. We do not have a concrete text proposal as we do not know what the intention is.

Article 8 [re-submission]

Article 8.6: "*limited number of sampling points*" is not defined. We therefore suggest the following text:

"[…] monitor other relevant polycyclic aromatic hydrocarbons at ***~~a limited number of sampling points~~ the highest polluted sampling point in zones exceeding the assessment threshold, and in any case at monitoring supersites (Article 10)****."*

Art. 8.7: We point out that it is not clear what the phrase "*where applicable*" refers to. Does it link to Annex III.D in a way that additional fixed measurements for UFP is only required if there exist locations where high UFP concentrations are likely to occur (ie such as those listed in Annex VII.3)? If it is to be understood in this way, we propose to include the phrase "**at locations where high UFP concentrations are likely to occur**" directly in Art. 8.7. instead of the "where applicable". In this regard, we also note that the headline of Annex III.D seems to be incomplete (possibly missing "are likely to occur").

Article 10 [re-submission]

Art 10.2: We propose to add Annex IV.C as a requirement *("in accordance with Point B* ***and Point C*** *of Annex IV*.") since micro-scale siting criteria may also be relevant for monitoring supersites.

Annex III.A [re-submission]:

Regarding the text in Annex III A.1 that follows table 4, we note that the focus of CO on measuring contributions from transport emissions might be outdated since emissions are dominated by "*other stationary combustion*". Hence, we propose to delete CO from the listing of pollutants:

*"For nitrogen dioxide, particulate matter****~~,~~ and*** *benzene* ***~~and carbon monoxide~~****, this shall include at least* ***~~1~~ one*** *sampling point focused on measuring contribution from transport emissions."*

Annex IV.B [re-submission]:

Regarding the macroscale siting criteria contained in point 2.(c), it is not clear how the phrase "is influenced by the integrated contribution from all sources upwind of the sampling point" contributes to choosing appropriate locations since this is always the case. We propose to simplify the first two sentences:
"urban background locations shall be located so that their pollution level ~~is influenced by the integrated contribution from all sources upwind of the sampling point. The pollution level shall~~ **is** not ~~be~~ dominated by a single source unless such a situation is typical for a larger urban area."

Annex IV B. 2 g and Annex IV B 2 d after the second sentence [re-submission]:

In addition to the above-mentioned proposal on guidance regarding pre-defined tolerance levels for the concept of spatial representativeness, we also propose adding a reference to the *„Guidance Document on the estimation of Spatial Representativeness and of Exceedance Situation Indicators*".

Note: The second list of enumerations following the sentence "When defining the spatial representativeness […]" requires an upper structure unit.

Annex VII.3 [re-submission]:

Regarding point C, we propose to rephrase the sentence as follows:
"Sampling points shall be established in accordance with Annex IV and V **within the main wind direction** ~~at a location where high~~ **of major** UFP **sources** ~~concentrations are likely to occur and within the main wind direction~~."

BELGIUM

1. Assessment regime (Article 7) and assessment thresholds (Annex II)

The Presidency sees some different alternatives and would like feedback on these from the delegations:
- Retain the Commission's proposal 0.12 ng/m3, which is in line with the WHO guidelines and ensures a more consistent approach for setting assessment thresholds.
- Retain the current lower assessment threshold of 0.4 ng/m3 which would lead to lower assessment costs.

Out of these two options, we definitely prefer the first one.

Technically, a lower assessment threshold is perfectly possible (e.g. 0.06 ng/m^3). Contrary to what is suggested in the question, we don't think that the current approach to setting the assessment threshold for the pollutants for which there is no WHO guideline value is consistent. Assessment thresholds for B(a)P and benzene correspond to a 1/100,000 cancer risk, while for As and Ni those are 1/220,000 and 1/250,000, respectively. For As and Ni, the 1/100,000 risk is indicative of the limit value instead of the assessment threshold as for B(a)P and benzene.

Rather than increasing the AT for B(a)P, a lowering of the AT should be considered, depending on the outcome of the discussions on the limit value.

2. Assessment criteria (Article 8)

A number of concrete proposals have been received regarding the use of modelling applications in Article 8.3:
- Allow for indicative measurements to be used instead of modelling applications where it is judged more suitable. This could be important for providing data on spatial distribution of concentrations of certain pollutants which are more difficult to model and would also provide an alternative to Member States that are still developing their modelling capacities and capabilities.
- Remove the proposed requirement for using modelling applications in zones exceeding the LVs or ozone TV.
- Require that modelling applications are used even if standards are only met by a certain margin.
- Leave Article 8.3 unchanged.

We prefer the third option, as explained in our previous written comments, we are flexible towards the fourth option and we oppose the second option.

We agree that modelling results should be treated with caution and that compliance assessments should focus solely on measurement results, but we believe it is important that more importance is given to modelling so that knowledge and experience with modelling increases in all member states. This will improve the quality of the air quality models, which in the long term may enable the modeling to also be used to assess compliance with the limit or target values.

With regards to the first option, it is unclear to us where the indicative measurements should take place if no model results are available that indicate where the highest concentrations could occur.

We stress that it should be explicitly stated in the directive that compliance assessment will be based solely on monitoring data.

The question has also been raised whether the provisions in Article 8.3 should apply before 2030, when the limit values that the provisions refer to (Table 1 of Section 1 of Annex I) are not yet in force. The Presidency would like to gather further views on whether the delegations regard this as appropriate or whether the current values (included in Table 2 of Section 1 of Annex I of the proposal) should apply to this provision prior to 2030.

We are flexible about the entry into force of this obligation, but if we opt for it to come into force only from 2030 on, we believe there is sufficient time to fine-tune the models so that it is not necessary to use indicative measurements as an alternative method. If it is decided to have this provision enter into force before 2030, this must be done on the basis of the standards that apply at that time, and not on the basis of the limit values that only come into force in 2030, as now stated in the text.

Many delegations have raised concerns with the proposed provision in Article 8.5 regarding the handling of modelled exceedances. The Presidency would like feedback from delegations on how these concerns can best be addressed. The Presidency sees some different alternatives:
- Clarify in the text what is meant by exceedances in an area of the zone not covered by fixed measurements. The Commission has provided the clarification that this would mean areas not covered by fixed measurements and their area of spatial representativeness.
- Clarify in the text issues regarding timeframes for carrying out additional fixed or indicative measurements. Delegations have raised issues relating to timeframes for setting up new measurements following the recording of an exceedance and how many years should be allowed for this. It has also been raised that the timing of these additional measurements may impact on the development of air quality plans in the years initially following the recording of an exceedance. In this respect, the Presidency would be interested to know if delegations feel that there should be more prescriptive provisions regarding the timeframes for additional measurements and if so, would they have concrete proposals on how this could be achieved?
- Explore a different path and request that the Commission instead provide a technical guidance document or an implementing act on how modelled exceedances of air quality standards should be handled.

The clarification provided by the COM data on the "area of the zone not covered by fixed measurements" is sufficient for us, but should be included in the text of the directive itself.

The time span within which additional measurements must be established should also be clarified in the directive itself.
In this respect, we think the results of these measurements should be reported at the latest in year n+4, with n being the year in which the standard was exceeded. The logic here is:

- The exceedance is reported in year n+1
- at the latest in year n+3 additional measurements are in place
- the results of these additional measurements can be included in the reporting of year n+4

Since it will usually be clear well before the end of year n where the concentrations are too high, the modelling and preparation of the measurement campaign can already be started towards the end of year n. We would therefore even prefer that results should be reported in year n+3 rather than n+4.

3. Definition of objective estimation (Article 4 point 21)

The Presidency requests feedback on whether delegations consider that a similar definition in the Directive would be preferable and would address the concerns raised?

We agree with the suggestion to include a similar definition in the directive and elaborate it further in a technical guidance document.

4. Definition of spatial representativeness (Article 4 point 22)

the Presidency requests further input from delegations on what changes may be necessary for the definition of spatial representativeness.

We think that the definition in itself is sufficient for the directive, but that further clarification is needed in a technical guidance document, e.g. with regard to the "pre-defined tolerance levels".

5. Requirements on the measurement of ultrafine particles (Article 4 Point 14, Article 8 paragraph 7, Annex III Point D and Annex VII Section 3)

- Does there need to be some flexibility regarding the lower size limit, at least in an initial stage, so that measurement instruments already in use are not disqualified, or would delegations prefer the stricter formulation of the lower size limit (10 nm in the Commission's proposal) to ensure a harmonised approach?
- Does an upper limit need to be added to ensure greater harmonisation (one delegation suggested 100 nm) or can delegations agree with having no restriction as proposed by the Commission and recommended by WHO?
- Should the definition of ultrafine particles include specific lower and upper size limits or should this be moved to an annex or a technical guidance document?

Particulate matter consists of many small particles and much less large particles. The "total mass" of particulate matter is determined by the largest particles, "particle numbers" by the smallest (UFP).
In order to have comparable results, there should be no flexibility on the lower size limit, but there could be some on the upper size limit.
Whether an upper size limit needs to be added depends on how the proposed definition should be interpreted: does the "with no restriction on the upper limit." mean that everything above 10 nm must be measured, or that everyone can determine that upper limit themselves? In the latter case, one might opt to use 20 nm (as an example) as an upper limit, which again leads to incomparable results.

- Proposal to add the measurement of black carbon to this requirement.
- Different proposals regarding station density. One proposal received was to increase the number of measurements required to give more data to support local air quality actions. Another proposal was on the contrary to halve the number of stations required with reference to the costs and administrative burden of additional measurements.

We are flexible on BC and support the COM proposal on the number of stations.

6. Monitoring supersites (Article 10) and monitoring of mass concentration and chemical composition of PM2.5 (Annex VII Section 1)

The presidency would like input on the site density proposed in Article 10.1.

We support the COM proposal. We do think it would be useful to develop guidance on how these sites are best placed, both within a Member State when a Member State has to install several stations and between Member States to avoid, as far as possible, two bordering Member States having their supersites close to each other.

- Is the list of parameters sufficient? A number of delegations have raised the possibility of adding lead and levoglucosan. HNO3 has also been suggested. There seems to be particular concern from some delegations regarding the need to measure particulate matter oxidative potential.
- Should everything be measured at all stations, or should there be more flexibilities? A number of delegations have indicated that not all parameters are relevant in both urban and rural sites.

In order to be able to map possible correlations between parameters, we are in favor of measuring all these parameters around these locations. We would find it very useful if levoglucosan, as a tracer for biomass combustion, is added as a parameter to be measured.

BE suggestion on article 2

In preparation of the WPE of May 22nd, we are happy to share a textual suggestion on article 2. It is a strictly textual issue, we do not propose changes of the content.

This Directive ~~lays down the following measures~~:

1. ~~measures defining and establishing~~ lays down objectives for ambient air quality ~~designed~~ with the aim to avoid, prevent or reduce harmful effects on human health and the environment;
2. ~~measures~~ set~~sting~~ common methods and criteria to assess the ambient air quality in Member States;
3. lays down measures for monitoring long-term ambient air quality ~~long-term~~ trends in order to analyse the ~~and~~ impact~~s~~ of Union and national measures on ambient air quality;
4. ~~measures~~ ensur~~esing~~ that the information on ambient air quality is made available to the public;
5. lays down measures maintaining air quality where it is good and improving it in other cases;
6. ~~measures~~ promot~~esing~~ increased cooperation between Member States in reducing air pollution.