



Council of the European Union
General Secretariat

**Interinstitutional files:
2022/0347 (COD)**

Brussels, 09 June 2023

WK 7665/2023 INIT

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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 15 June 2023 - Presidency steering note

With a view to the abovementioned WPE meeting, delegations will find attached a steering note prepared by the Presidency.

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Presidency Steering Note
Working Party on the Environment on 15 June 2023
Commission proposal for an Ambient Air Quality Directive

As a basis for the discussion at the next WPE on 15 June, the Presidency has prepared this steering note to guide a thorough examination of Chapters III, IV and V and related Annexes (Annex I, VIII and IX). The steering note also includes some questions to facilitate a detailed discussion on a possible joint responsibility clause that has been raised by some delegations during previous WPE meetings on this file.

Discussion on a possible joint responsibility clause

Delegations have commented that the concept of a joint or shared responsibility of the EU and Member States for compliance with future limit values and mitigation requirements should be further studied and that a clause to that effect should potentially be added to the proposed directive.

It has for example been argued that compliance with the air quality standards, in addition to local mitigation measures, will depend on sufficiently ambitious emission legislation at the EU level as well as mitigation efforts in other Member States and regions. Therefore, joint responsibility should be reflected in the directive to ensure co-ordinated policy development at the EU level and effective action for emission reduction in all regions. Specific text has been proposed as a starting point for further discussion (see e.g. Austria's comments in WK 2492/2023 INIT). It should be noted that a related proposal regarding introduction or revision of any relevant source legislation in order to contribute to achieving the proposed revised air quality standards has been reflected in Article 3 of the Presidency compromise proposal, and further that possible text on joint responsibility would introduce a change outside the scope of this recast.

To deepen the knowledge and allow for exchange on the understanding and relevance of joint responsibility in the context of air quality, the Presidency seeks input from delegations on the following questions:

1. How do you understand the concept of joint responsibility, and to what extent is it relevant for the air quality directive?
2. What should a clause on joint responsibility achieve and how would it work? What could the effects be - on air quality, in legal terms, and otherwise?
3. If relevant, how should a potential joint responsibility clause be formulated?

Article 12 - Requirements where levels are lower than the limit values, ozone target value and average exposure concentration objectives, but above the assessment thresholds

A number of delegations have raised issues relating to paragraph 4 of Article 12 regarding efforts to achieve and preserve the best ambient air quality in line with the WHO guidelines. Since the comments and proposals received point towards different solutions, the Presidency requests further feedback from delegations on how this issue can be solved and which of the alternatives below would be preferred.

1. Amend the formulation of Article 12(4) to bring it more in line with the formulation used in Article 1: “4. Member States shall endeavour to achieve and preserve the best ambient air quality and a high level of environmental and human health protection, in order to move closer to a zero pollution objective as defined in Article 1 paragraph 1 taking into account the air quality guidelines published by the WHO and below the assessment thresholds laid down in Annex II.”
2. Amend the formulation of Article 12(4) in an alternative way. If this alternative is preferred, the Presidency welcomes concrete proposals on how the text should be amended.
3. Keep the content of the text as proposed by the Commission.

Article 13 - Limit values, ozone target values and average exposure reduction obligation for the protection of human health

Article 13(1) & Annex I Section 1 – Limit values for 2030 (table 1)

The Presidency notes a range of views relating to the proposed new limit values and their level of ambition. Whilst some delegations consider the proposed levels in table 1 to be too ambitious to be met by 2030, other delegations consider it important to at the very least preserve the Commission’s proposed level of ambition. It is clear to the Presidency that further discussion is needed on the level of ambition for the proposed limit values in order to find a way forward. The Presidency is aware that the question posed is the same as for the policy debate planned for the meeting of the Environment Council on 20 June but would like to give delegations the opportunity to discuss this at the working party also.

The Presidency would like input from delegations if they consider the proposed air quality standards and their entry into force as of 2030 to constitute an appropriate level of ambition for addressing ambient air pollution?

Article 13(1) & Annex I Section 1 – Limit values before 2030 (table 2)

Some delegations have questioned whether pollutants that only have target values and not limit values in the current Air Quality Directives, should be included in Table 2 of Annex I Section 1, which contains limit values that are to be attained by the transposition deadline of the revised directive. It has been raised that if these pollutants (benzo(a)pyrene and metals) were to exceed these proposed limit values, there would be very limited time to take measures before the attainment date. It should be noted that the proposed levels in this table are based on the levels included in Directive 2004/107/EC, which were to be attained, where possible, by 2012. However, these were target values in Directive 2004/107/EC, rather than limit values as in the Commission’s proposal.

The Presidency requests further feedback from delegations on whether they support the Commission’s proposal or whether they want them to be amended.

Article 13(3) - NUTS regions for the average exposure reduction obligations

A number of delegations have raised concerns regarding the proposed use of the NUTS 1 level for the average exposure reduction obligations. It has been raised that this could lead to

increased administrative burden in some Member States since the NUTS 1 level does not always coincide with existing administrative boundaries. The Presidency sees several different alternatives:

1. Allow flexibility for Member States to use NUTS 1 or NUTS 2 regions.
2. Allow a greater level of flexibility by allowing Member States to decide on the territorial unit to be used, but that this should not be larger than the NUTS 1 level,
3. Keep the Commission's proposal with an approach based on the NUTS 1 level,
4. Discard the proposed approach based on NUTS levels and instead carry out assessment and management related to average exposure reduction obligations on the zone level.

The Presidency requests feedback from delegations on which alternative they would prefer.

Article 13(3) – entry into force of the average exposure reduction obligations

The Presidency notes that several delegations have expressed concerns regarding the proposal for the average exposure reduction obligations to come into force in 2030. The main concerns relate to the short timeframe to meet these obligations considering that 2030 will only be a few years after the revised directive is transposed into national legislation, and also that the first reference years for assessing compliance with these obligations in 2030 and 2031 would be 2020 and 2021 respectively, which were impacted by the COVID pandemic. Keeping in mind that the average exposure indicator is calculated as a three-year average (i.e. 2030 is the average of 2028, 2029 and 2030 and similarly 2020 is the average of 2018, 2019 and 2020), which means that this construction reduces the impact of one particular year.

The Presidency requests further feedback from delegations on whether there is a need to review the proposed timeframes for the average exposure reduction obligations and if so, if there are any concrete proposals for how these can be amended to address the concerns raised.

Annex I Section 2 - PODY

Section 2 of Annex I sets both a target value and a long-term objective for ozone for the protection of the environment, based on the AOT40 (Accumulated Ozone exposure over a Threshold of 40 parts per billion) metric. Some delegations have proposed that the metric PODY (Phytotoxic Ozone Dose) be included in the directive as well, since it is considered to be a more biologically relevant metric than AOT40.

There are several PODY-metrics that could be used. POD_YIAM is a vegetation-type specific PODY that requires less input data and is suitable for large-scale modelling. POD_YSPEC is a species or group of species-specific PODY that requires comprehensive input data and is suitable for detailed risk assessment. There are several POD_YIAM that may be used, for crops, trees and (semi-)natural vegetation and similarly there are several POD_YSPEC (beech, birch, spruce, potato, wheat, etc.). The generic PODY for crops (POD₃IAM) is the metric that is closest related to the AOT40 used in the current directive which corresponds to a 5 % reduction in grain yield.

The Presidency would like input on which option delegations would prefer:

1. Add PODY or replace AOT40 as a long-term objective and keep AOT40 as target value for ozone.
2. Add PODY or replace AOT40 as a long-term objective and target value for ozone.
3. Keep AOT40 as both the long-term objective and target value for ozone as is the current proposal.

The Presidency would also like input on which (if any) PODY metrics would be preferred. If delegations consider that a PODY metric should be added, the Presidency would like input on which level should be set as a target value. The Presidency would further like input on which level should be set as a long-term objective. Would, for example, the critical level in the ICP vegetation mapping manual be sufficient as a long-term objective?

Article 15 & Annex I Section 4, Point A - Exceedances of alert or information thresholds

The Presidency notes that there seems to be a relatively high level of support for the proposed introduction of alert thresholds for PM₁₀ and PM_{2.5}. However, several delegations have questioned the proposal that these should be based on measurements over three consecutive days.

The Presidency see some different alternatives for addressing this issue:

1. Harmonise the timeframe for the alert thresholds for PM₁₀ and PM_{2.5} with the timeframe for SO₂ and NO₂, i.e. change to measurements over three consecutive hours.
2. Change to measurements over one day.
3. Change to measurements over two consecutive days.
4. Maintain the Commission's proposal (measurements over three consecutive days).

The Presidency requests feedback from delegations on which alternative they would prefer.

It should be noted that, particularly if the first alternative (three consecutive hours) would be preferred by delegations, further discussion may be necessary on whether the threshold levels set out in Annex I Section 4, Point A (i.e. 50 µg/m³ for PM_{2.5} and 90 µg/m³ for PM₁₀) would need to be adjusted accordingly.

Article 18 - Postponement of attainment deadlines

A number of delegations have raised questions on the selection of pollutants for which the attainment deadline can be postponed in accordance with Article 18.

The Presidency requests feedback from delegations on which pollutants they consider appropriate to be included in addition to those pollutants (PM₁₀, PM_{2.5} and NO₂) that are included in the provision according to the Commission's proposal.

Article 19 - Air quality plans

Several delegations have commented and raised questions for clarification on the timelines for developing, implementing and updating air quality plans according to the proposal. Based on the clarification provided by the Commission, the Presidency has produced the figure below with the aim of providing an overview of the timeline related to these

requirements and also two examples showing what these requirements could mean in practice.

Overview of the proposed timeline for establishing, implementing and updating AQ plans:



Examples of how these requirements could function in practice:

Example 1

If a limit value is exceeded in 2027, the exceedance shall be reported in 2028. An AQ plan according to 19.4 shall be established by 2029 at the latest with the goal of achieving compliance by the attainment deadline of 2030. However, if the limit value is still in exceedance in 2030, an AQ plan according to Article 19(1) shall be established by 2032 and the exceedance period be kept as short as possible and, in any case, not longer than 2034. But if the limit value is still in exceedance in 2034 (which is reported in 2035) the AQ plan shall be updated and additional and more effective measures shall be taken in 2036.

Example 2

If an exceedance of a limit value is recorded for the first time in 2030, the exceedance shall be reported in 2031. An AQ plan according to Article 19(1) shall be established by 2032 at the latest with the goal that the exceedance period shall be kept as short as possible and, in any case, not longer than 2034. But if the limit value is still in exceedance in 2034 (which is reported in 2035) the AQ plan shall be updated and additional and more effective measures shall be taken in 2036.

In light of the clarification provided by the Commission and with the help of the overview and examples above, the Presidency requests feedback from delegations on whether this is adequate to address the concerns raised.

One alternative which may improve clarity in the text could be to make a minor amendment to the text in Article 19(1) so that it only refers to the first year in which an exceedance was recorded. In the Commission's proposal, the deadline for establishing an AQ plan refers to "no later than 2 years after the calendar year during which that exceedance of any limit value was recorded". Whereas the deadline for keeping the exceedance period as short as possible refers to "in any case no longer than 3 years from the end of the calendar year in which the first exceedance was reported". Following the proposed amendment, Article 19(1) would read as follows:

"Where, in given zones the levels of pollutants in ambient air exceed any limit value, laid down in Section 1 of Annex I, Member States shall establish air quality plans for those zones as soon as possible and no later than 2 years after the calendar year during which that exceedance of any limit value was recorded. Those air quality plans shall set out appropriate measures to achieve the concerned limit value and to keep the exceedance

period as short as possible, and in any case no longer than 4 years from the end of the calendar year in which the first exceedance was recorded.

Where exceedances of any limit values persist during the third calendar year after the establishment of the air quality plan, Member States shall update the air quality plan and the measures therein, and take additional and more effective measures, in the subsequent calendar year to keep the exceedance period as short as possible.”

The Presidency requests feedback from delegations on whether they would support such an amendment to clarify this provision.

Article 19(2) - Air quality plans for ozone

Article 19(2) sets out requirements for establishing air quality plans for those NUTS 1 territorial units where ozone target values are exceeded. Several delegations have raised the issue of the transboundary nature of ozone which makes it difficult or in some cases impossible to establish a plan covering individual NUTS 1 units to effectively reduce ozone levels. Being a target value, it shall be complied with where possible and measures should be taken only if they do not entail disproportionate costs. *The Presidency would therefore like input from delegations on whether the provisions regarding ozone in Article 19(2) need amending.* The Presidency sees some different alternatives regarding potential amendments:

1. Qualify the requirement in Article 19(2) by clarifying that air quality plans shall set out appropriate measures not entailing disproportionate costs in order to achieve the ozone target value where possible and to keep the exceedance period as short as possible.
2. Introduce similar language to that used in Article 20 on short-term action plans for ozone. E.g. “*Member States may refrain from establishing air quality plans for individual NUTS 1 territorial units when there is no significant potential, taking into account national geographical, meteorological and economic conditions, to address the exceedance.*”
3. Introduce similar language to that used in the current Ambient Air quality Directive (2008/50/EC). E.g. “*Member States shall, if appropriate, establish air quality plans in order to attain the ozone target values, save where not achievable through measures not entailing disproportionate costs.*”
4. Keep the Commission’s proposed text for Article 19(2).

Should the second or third alternatives be preferred by delegations, *the Presidency asks whether it would be appropriate to include clear requirements for documenting and justifying any decisions not to establish air quality plans to attain the ozone target values?*

Such documentation could for example include information on the analysis that has been conducted and information on what alternative actions the Member State will take with the aim of reducing ozone concentrations (e.g. establishment of joint or coordinated air quality plans according to Article 21 of the proposal, measures connected to the requirements of the NEC directive and CLRTAP convention, etc.).

Questions have also been raised on whether NUTS 1 territorial units are the most relevant units for establishing air quality plans for ozone. *The Presidency requests feedback from delegations on which territorial units they consider most appropriate for establishing these air quality plans in cases where they are needed.*

Article 22 & Annex IX - Public information

A number of delegations have raised questions relating to the inclusion of PM₁₀ and PM_{2.5} in the requirements related to the provision of up-to-date hourly data and an air quality index, despite the fact that the reference method for these pollutants only provides daily data and cannot provide up-to-date data. Some delegations have called for the inclusion of standard EN 16450:2017 'Ambient air - Automated measuring systems for the measurement of the concentration of particulate matter (PM₁₀; PM_{2.5})' as an alternative reference method. The Presidency notes the Commission's clarification that this standard describes how automatic measurement methods can be demonstrated as equivalent with the reference method and that it would therefore not be appropriate to refer to it as a reference method in the directive. Furthermore, the Presidency notes that the relevant network of experts on air quality measurements, AQUILA, have recommended that this standard instead be referred to in the Annex on public information or alternatively in Point B of Annex VI on demonstration of equivalence. The Presidency considers that such a reference may be better placed in Annex VI rather than Annex IX, since Annex VI is the relevant annex for issues regarding measurement methods. A reference could, however, reasonably be made in Point B of Annex VI to the use of such automatic measurement methods where it is necessary to comply with the relevant requirements on public information according to Annex IX on public information.

The Presidency requests feedback from delegations on whether they agree that it would be relevant to add a reference to the EN standard on automated measuring systems for PM in Point B of Annex VI and whether this would address the concerns raised in relation to the relevant requirements of Article 22 and Annex IX on public information.

Such a reference could be formulated as follows:

B. Demonstration of equivalence

1. A Member State may use any other method which it can demonstrate gives results equivalent to any of the reference methods referred to in Point A or, in the case of particulate matter, an automatic measurement method that meets the requirements in standard EN 16450 :2017 'Ambient air - Automated measuring systems for the measurement of the concentration of particulate matter (PM₁₀; PM_{2.5})'. The use of such automatic methods is necessary at sampling points that shall provide public information on particulate matter (PM₁₀ and PM_{2.5}) in accordance with Annex IX. Where such a method is used, the results achieved by this method must be corrected to produce results equivalent to those that would have been achieved by using the reference method.

Article 23 - Transmission of information and reporting

Several delegations have raised objections to the proposed shortening of the reporting deadline from 9 months to 4 months. The Presidency sees the following alternatives:

1. 4 months for reporting of all data (COM proposal)
2. 6 months for reporting of all data
3. Shorter deadline (e.g. 6 months) for reporting data on key pollutants, often measured with automatic measurement instruments (e.g. PM₁₀, PM_{2.5}, NO₂, SO₂, CO and O₃), and a longer deadline (e.g. 9 months) for all other data
4. 9 months for reporting of all data (current requirements)

The Presidency requests feedback from delegations on which alternative they would prefer.

Delegations have also raised questions concerning the proposed requirement to report information to the Commission irrespective of compliance with data quality objectives. This relates to an issue raised in a previous steering note for the WPE meeting on 22 May (see point 10(c) of the steering note published in doc. WK 6358 2023). The issue raised on 22 May was, however, only relating to whether data should be used for compliance checking, whereas the formulation in Article 23(1) is a boarder provision that relates to whether data should be reported to the Commission if it does not meet the required data quality objectives. The Presidency requests feedback from delegations on which of these two alternatives they would prefer:

1. Keep the Commission's proposed formulation.
2. Clarify that this provision only relates to the data quality objectives for data coverage, which would mean that data that doesn't meet the uncertainty requirements could be excluded entirely from Member States' reporting.

Annex VIII - Information to be included in air quality plans for improvement in ambient air quality

A number of delegations have raised concerns regarding the proposed requirements in Section A point 6 of Annex VIII and difficulties in providing quantification of emission reduction and concentration reduction for each individual air quality measure. It has been proposed by delegations that the concentration reduction should instead be estimated as a cumulative number for all the proposed measures. The Presidency requests feedback from delegations on which alternative they would prefer:

1. Maintain the Commission's proposal and require an estimate of the concentration reduction as a consequence of each air quality measure, in relation to the exceedance concerned.
2. Amend the requirement to require a cumulative estimate of the concentration reduction as a consequence of the air quality plan, in relation to the exceedance concerned, and, where possible, concentration reduction as a consequence of each air quality measure.