

FINLAND

AQD comments

Discussion on a possible joint responsibility clause

- We understand that joint responsibility refers to the fact that air quality standards and long-term zero pollution objective for air quality can only be achieved with the combination of both national or regional and EU – level measures. In other words, the emission control measures affecting air quality are needed at the both levels. The concept of joint responsibility is relevant for AQD, since the concentrations of some pollutants – especially PM 2.5 and ozone - are strongly affected by transboundary pollution. Therefore, unified emission reduction measures covering the entire EU area and globally, are needed.
- We think, that Pres proposal on Article 3.4 reflects well the concept of joint responsibility. We only transpose the obligations addressed to the Member states in to our national laws.

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

- We prefer the alternative no. 3 in the Pres steering note (which is to keep the content of the text in Article 12.4 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)

- We see that the proposed air quality standards and their entry into force as of 2030 constitute an appropriate and needed level of ambition for addressing ambient air pollution, even though there might be a need for some flexibility with regard to some pollutants. As to the flexibility we reiterate what we have stated previously:
 - Could the number of exceedances for Sulphur dioxide (SO₂), 1 hour limit value be loosen to allow some hourly exceedances, to align Sulphur dioxide limit values closer to WHO guidelines that allow 3 to 4 exceedances of the guideline values?
 - We think that benzo(a)pyrene should be included in the scope of article 18.

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

- As we have said earlier, perhaps the target values for metals and benzo(a)pyrene should be maintained until 2030.

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

- NUTS 1 level is okay for us, but we think that more flexibility is needed here in general. Therefore, we support either alternatives no. 1 or no. 2 in Pres steering note:

- alternative no. 1: Allow flexibility for Member States to use NUTS 1 or NUTS 2
- alternative no. 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

Annex I Section 2 – PODY

- We prefer option 3 in the Pres steering note (which is to keep AOT40 as both the long-term objective and target value for ozone as is the current proposal).
- Although we acknowledge that POD is biologically more relevant than AOT40, we note that POD calculation is already required under NECD every 4 years and we find overlapping legislation unnecessary here - we have concerns over the possible administrative burden. Furthermore, the complex calculations requiring modelling and meteorological data may be a complicated task for annual reporting. However, if other MSs would support this initiative we can accept it and have the needed expertise. In that case, it could be also considered if this calculation could be done centralized to ascertain harmonised approach and comparable POD values.

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

- We support alternative no. 4 in the Pres steering note (which is to maintain the Commission's proposal (measurements over three consecutive days)).
- We think that alternative no. 1 in the Pres steering note would not even be suitable, since there is not one hour limit values for PM 2.5 and PM 10.

Article 18 - Postponement of attainment deadlines

- We think that benzo(a)pyrene should be included in the scope of Article 18. This would be justified from our perspective, as the majority of benzo(a)pyrene emissions in Finland originate from small-scale burning of wood in old fireplaces during the cold winters we have. Reducing these emissions through rapid measures is challenging, among other things because of the slowness of the renewal rate of the old fireplaces.

Article 19 - Air quality plans

- We welcome the examples in the Pres steering note. We see that they clarify the proposed obligations and timeframes.
- We also support the Pres proposal where the term “recorded” would be used in the whole para1. However, we also reiterate our comment that perhaps it would be more realistic to start the calculation of the four years timeperiod from the approval of the air quality plan. We think that if the calculation of four years timeperiod starts from the year when the first exceedance was recorded, it does not take properly in to account the timeperiod for establishing the air quality plan, or the time that is needed for measures included in the air quality plan, to take effect.

Article 19(2) - Air quality plans for ozone

- We support the alternative no. 2 in the Pres steering note (which is to 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.”).
- With regard to question on the documentation we think, that it would be appropriate to include in the directive clear requirements for documenting and justifying any decisions not to establish air quality plans to attain the ozone target values. However, we believe that perhaps the same documenting requirement should be included also in to the Article 20.
- With regard to question on the appropriate territorial unit, we echo what we commented earlier: NUTS 1 level is ok for us, but we support more flexibility in general.

Article 22 & Annex IX - Public information

- We support the Pres proposal, which is to include the standard in question in to Annex VI, which is in line with our opinion.

Article 23 - Transmission of information and reporting

- With regard to reporting deadline, we support the Presidency proposal no. 3 (which is 6 months for key pollutants, 9 months for other data) but can also accept proposal no. 2 (which is 6 months for reporting of all data).
- With regard to the data included in the reporting, we would prefer another alternative not mentioned in the Pres steering note. We believe the new requirement to report data irrespective of compliance with data quality objectives, as suggested by the COM, may be valid in some cases, e.g., when data coverage is not fully within the requirement (as we have previously pointed out and other MSs have referred to) , or when the exceedance of measurement uncertainty is not substantial (which in our experience can be the case for at least one generally used NOx analyser for which the annual uncertainty is not fully within criteria due to one extreme value in TÜV type testing, although the instrument itself provides high quality data.). However, we find that the current formulation in the COM proposal may be misleading and other wording could be useful.

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

- We support the alternative no. 2 in the Pres steering note, which is to 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.



Council of the European Union
General Secretariat

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WK 8640/2023 INIT

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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on the Environment
N° Cion doc.:	ST 14217/22 + ADD 1
Subject:	Air Quality Directive: follow-up to the WPE on 15 June 2023 - comments by delegations

Following the call for comments (WK 8189/23), delegations will find attached the contributions received from the BE, IT, NL, AT, PL and FI delegations.

WK 8640/2023 INIT

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ITALY

Proposal for a Directive on ambient air quality and cleaner air for Europe (recast)

WPE 15 giugno 2023 Follow-up

Presidency steering note WK7665/2023 INIT

Chapters III, IV, V and related Annexes (I, VIII and IX)

Article 13

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

Regarding the timing foreseen for the entry into force of the new air quality standards, some concerns have to be expressed because the timelines indicated in the proposal leave a very short time between the transposition of the directive by Member States and the entry into force of the new limit values. In this way, there are no possibilities to see the effects of any new reduction measure to be implemented according to the new directive and therefore to reduce concentrations below the new limit values.

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

We request an amendment to the current text so that the new limit values for benzo(a)pyrene and heavy metals enter into force along with the other new limit values introduced by Annex I, Table 1.

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

We would prefer a greater level of flexibility by allowing Member States to decide on the territorial unit to be used, even establishing that the chosen unit is not larger than the NUTS 1 level.

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

We propose that the base year for calculating the average exposure indicator should be 2024 (three-year period 2022-2024), and the effective date for the average exposure reduction requirement should be set at 2034 (three-year period 2032-2034).

We underline that a technical problem of comparability of data could occur if big changes in the structure of the monitoring networks are introduced due to the change of the assessment thresholds in the period going from the base year and the entry into force of the reduction commitment.

Annex I Section 2 – PODY

We believe that proposal to keep AOT40 as both the long-term objective and the target value for ozone as it is in the current proposal is the most supportable. Time is needed to move towards the new standard indeed, even if such a change would be desirable. Therefore, it is considered useful at the moment to introduce the recommendation that additional measurements of PODY be made for scientific and cognitive purposes.

Article 18 - Postponement of attainment deadlines

We support the text of the directive as it stands in the proposal.

Article 19 - Air quality plans

The timelines currently given seem unrealistic, considering the time it takes to adopt a plan and see the first effects of measures put in place to reduce concentrations.

Therefore, some changes are suggested:

- providing for two years for the preparation of the plan starting from the year in which the exceedance is officially reported;
- providing for at least 4 years after the adoption of the plan for the verification of the result of the reduction measures, since it is impossible for the plan itself to be effective only one year after its adoption and the start of the implementation of the measures.

Article 19(2) - Air quality plans for ozone

We express a preference for the introduction of a similar language to that used in the current Directive 2008/50 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."*

With reference to question on the spatial extent of the areas to be used as reference for the adoption of plans, we request that more flexibility in the choice of spatial units be opted for, similar to what was expressed for the previous Article 13(3).

Article 22 & Annex IX - Public information

We still have a scrutiny reservation on this issue.

Article 23 - Transmission of information and reporting

We strongly recommend maintaining the current planned reporting timeline (9 months). It seems to be impossible to reduce the reporting timeline especially for a Country as ours where data have to be collected from 21 different administrations. Time is needed also to make the necessary technical checks (QA/QC procedures) before the official transmission of data.

We prefer that in the text it is expressed clearly that data that do not meet the uncertainty requirements can be excluded from Member States' reporting.

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

In general, it is very complex to quantify the effect in terms of concentration reduction of each individual measure. We prefer to have the possibility to provide for a cumulative assessment of the effects.

Alternatively, we may agree to consider the methodology also applied in the implementation of the NEC Directive, i.e., to provide for the possibility of assessing the effects of packages of measures, e.g., by assessing the effects of all measures acting on the same sector in total.

POLAND

Commentary to the document „Air Quality Directive: WPE on 15 June 2023 Presidency Steering note”

1. "JOINT RESPONSIBILITY" CLAUSE

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?*

PL shares concern of AT and other Member States that support AT's proposal that compliance with the proposed limit values would require significantly increased efforts at regional, national and EU level.

However, PL approaches the AT's proposal with reserve. The initiative raises objections of a formal and legal nature. The provision is too general, undefined. It is unclear who, to what extent, and for what specifically would be held responsible; in particular, it is not clear in what cases, and under what conditions, a Member State could evade its own responsibility by pointing out that the failure to fulfil its obligations was influenced by activities of another Member State or an EU institution.

A provision of a secondary law cannot oblige unspecified "EU institutions" to act. Such an obligation (specified precisely - which institution, under what circumstances, to what extent) can, in the PL's view, arise only from the Treaties.

In PL's opinion the proposed provision goes against Article 17 TEU insofar as it undermines the Commission's power of exclusive legislative initiative under that provision. While in a legislative act the Commission may be obliged to review and present legislative proposals aimed at updating the act in question, here we are dealing with a far broader obligation - an obligation to adopt (propose) acts in a number of other, unspecified areas that contribute to air pollution (transport, industry, agriculture, energy and climate are mentioned only by way of example).

2. 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.*

PL proposes the following provision of Article 12(4):

"4. Member States shall endeavour to achieve and preserve through proportionate measures the best ambient air quality and a high level of environmental and human health protection, below the assessment thresholds laid down in Annex II. "

Just as the Commission stated during the WPE on 06/06/2023 that the implementation of AAQD should not be dependent on third-party institutions (at the time it was about the CEN and the publication of standards that could later be entered into AAQD as reference methods), the PL believes that the implementation of AAQD should not be dependent on third-party (non-EU) institutions - in this case the WHO.

Also, PL proposes to maintain the phrase *"preserve through proportionate measures"* from the directive 2008/50/EC.

3. 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?

As it has already been mentioned in the forum of the WPE PL takes a negative view on the tightening of limit values and the replacement of target values with limit values to achieve in such a short time.

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.

PL takes a negative view on replacing target values with limit values to be achieved in such a short period of time.

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.

PL proposes an alternative approach - to return to determining the average exposure indicator (AEI) at the national level (as it is in the directive 2008/50/EC), rather than NUTS1 or NUTS2. In the case of both NUTS1 and NUTS2, PL could have administrative problems implementing the AEI regulations in this form.

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.

PL is in favour of extending the deadline for achieving AEROs (average exposure reduction obligations) beyond 2030.

4. 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?

PL proposes to leave the target values and long-term objectives for the protection of human health and vegetation as they are proposed in the draft AAQD, or even better to keep the current ones in Directive 2008/50/EC. It should be noted that an EC-wide (in fact global) switch of all ozone analysers is scheduled for January 1, 2024. A newly established ozone cross section would result in a systematic increase in ozone concentrations world-wide (including the European), so that all current and proposed ozone target values and long-term objectives will be exceeded more often. All assessments on ozone impact on human health (and

vegetation), including those resulting in the WHO 2021 air quality guidelines were performed using ozone analysers with current settings.

PL suggests that more information about the event could provide the Commission as JRC Ispra (together with AQUILA) is involved in the undertaking.

5. 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.

PL supports option 4.

6. 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.

PL reports the need to include benzo(a)pyrene in PM₁₀, sulphur dioxide and the reintroduction of benzene among the substances for which it will be possible to postpone the deadline for attainment of limit values referred to in Article 18 of the draft.

This is due to the fact that with the proposed tightened limit values (and target value for benzo(a)pyrene changed for limit value) for these substances, there is a serious risk of not being able to achieve the air quality standards by the deadlines.

7. 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 2035 (which is reported in 2036) 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.

PL continues to take the position that the deadline proposed by the Commission for the implementation of air quality plans, starting from the date of their adoption until the time when the obligation to prepare their update is established, is too short.

According to the timeline presented, using example No. 1, it should be inferred that Member States that will be obliged to develop and implement air quality plans by 2029 (for zones where exceedances of air quality standards are found as a result of the annual air quality assessment for 2027) will de facto have two, rather than three, years to implement the corrective measures set forth in these plans to achieve air quality standards in accordance with the Directive.

This is due to the fact that in the event that limit values are still exceeded in 2030 (practically the first year of implementation of measures specified in an air quality plan), Member States will already be obliged to prepare an update of such a plan by 2032.

Thus, Member States will not have a chance to assess the achieved material and environmental effects of the implemented measures set out in the air quality plans adopted in 2029.

Therefore, PL proposes to amend the second sentence in paragraph 1 of :

“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 fourth ~~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.”.

8. 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.

PL supports option 2.

At the same time, PL sees no need to establish additional requirements for documentation and justification for confirming the lack of need to prepare air quality plans for ozone.

9. 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.

PL agrees with the Presidency's proposal.

10. 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.

PL takes a negative view on any shortening of the data reporting deadline (the deadline should remain September 30) and strongly supports other Member States that took the floor during the WPE meeting opposing shortening of the deadline.

In a situation where the draft directive additionally forces widespread use of modelling an earlier deadline than September 30 is unrealistic.

In addition, it should be emphasized that any acceleration of data reporting to the commission is associated with a deterioration in the quality of the reported data. This could result in resubmitting corrected data to the Commission / European Environment Agency (EEA) multiple times.

The third issue is that in large Member States, especially where air quality monitoring and assessment is performed at the regional and then national level (as in PL), additional time is required for data verification, collection, analysis, processing and evaluation.

It is worth recalling here that the result of similar earlier discussions during negotiations on the original Directive 2008/50/EC among the Member States and the Commission was the agreement that unverified data – up-to-date measurement results – are sent hourly to the Commission / EEA, as specified in the Directive 2008/50/EC. On the basis of this data, the EEA already prepares reports on air quality. Hence, in Directive 2008/50/EC, in addition to the obligation to report verified data by September 30 of the year following the year for which the assessment was performed, there is an obligation to report current data to the Commission/EEA. Member States comply with the latter by sending UTD data to the EEA server every hour.

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.*

PL supports the second option. Reporting potentially erroneous data does not make sense according to PL. In addition, such data without proper expertise may be misleading.

11. 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.*

PL supports option 2.

BELGIUM

Air quality directive - suggestions following steering note wk07665

In response to the questions raised in the steering note wk07665 and following discussions on that steering note at the WPE on June 15th, we would like to share some text proposals. We do not address all questions from the steering note in this document and refer to our interventions during the WPE for our position on those other questions.

Joint responsibility clause

Belgium has always stressed the importance of ambitious source legislation at the EU-level and pleaded for a high level of ambition in these discussions. We thus share the concern that strengthening the air quality standards is only possible when this is accompanied by ambitious source legislation.

We think this is already reflected to some extent in the compromise text in document st10007/23. What is missing here is an analysis of possible gaps in European source legislation and we therefore suggest to include in art. 3 a paragraph 2b. that reads as follows:

2b. The review shall include an analysis of whether all relevant emission sources are covered by up to date emission control legislation at the Union level.

This subject is also dealt with in recital (15). Since household heating, and specifically wood stoves, are the main source of emissions of PM_{2.5} and this sector is also regulated by Union source legislation (ecodesign), we suggest to include after 'and energy generation' the words, '**in particular residential wood combustion**'.

Art. 13

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

Although we understand the concerns about 2020 being used as a base year, we think that if we want to reach the WHO guideline values by 2050 it is necessary to have a clear obligation on the reduction of background concentrations and that this needs to come into force within a short timeframe. We are in favour of sticking to the approach, the numbers and the timeframe that are included in the proposal.

2020 was a very specific year. Where the use of 2020 as a base year leads to unrealistic targets, we suggest to include, specifically for 2020, the option not to use this as a base year and for these years simply use a two years average instead of a three years average. The starting point for the AERO in 2030 will then be the average of the levels for 2018 and 2019. In 2031 the starting point will be the average of 2019 and 2021 and in 2032 it will be the average of 2021 and 2022.

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

We would prefer that these thresholds are evaluated on the basis of short term predictive modelling, with which we already have good experience. Option 2 might be a good alternative. Even when we

choose that option, it will be mostly only in the third day that actions come into force, whereas predictive modelling would allow actions to kick in from day one.

The first option is not feasible, because the reference method for PM does not allow for hourly monitoring.

Furthermore, we would like to repeat that we think that the alert threshold for PM₁₀ is too high and will hardly trigger any actions. Our suggestion is to lower it to 70 µg/m³.

Article 22 & Annex IX - Public information

We agree with the presidency's proposal, but would only suggest to change the 'corrected' in the last sentence by 'calibrated'.

Article 23 - Transmission of information and reporting

Reporting of monitoring results within 6 months is feasible, but for the reporting of modelling results or of the assessment of the monitoring data, we need the full nine months. This means we can support option 3, if 'all other data' also includes modelling and assessment.

As for the second question, we prefer option 2.

NETHERLANDS

Comments on the Presidency compromise text and steering note on the Ambient Air Quality Directive

Joint Responsibility Clause

The Netherlands has conducted a judicial analysis of the proposal regarding a joint responsibility clause. In general, in order to pursue an ambitious environmental policy, more is needed than local measures following from this directive. They must be accompanied by emission source measures, following from legislation designed for decreasing emissions. Ambitious source measures are an important means to achieving this. Below, three more concrete points:

1) A clause on joint responsibility may not lead to unclarity with regards to who is responsible for achieving the objectives of the guideline

It is very important that it should be clear that Member States remain responsible for achieving air quality targets. It should be clearly stated that, in addition, the Commission is being asked to support this by drawing up source measures at EU-level (In the case of rules that Member States cannot draw up nationally due to the internal market, the risk of thwarting EU regulations, and maintaining a level playing field). The red line for the Netherlands is that it must be clear who citizens can turn to if they feel their rights with regards to air quality have not been upheld. We do not yet see that reflected in the proposal.

2) It should be clearly stated which source measures are being considered

The measures must, of course, fit within the scope of the Ambient Air Quality Directive. That is why – also because of the previous comment – the Netherlands deems it beneficial to specify which source measures are being considered. This way, it is possible to explore more concretely the feasibility, how this mechanism should work and what is expected from whom—whereby it should be noted that Member States should still take local measures.

3) The addition to Article 3 (evaluation) in the Presidency's compromise proposal may be sufficient

With the proposal of the Presidency of 15 June with an addition to Article 3, a similar result can be achieved without the risk of weakening the responsibility of the Member States. This may also be a solution due to the limited scope of the recast.

AUSTRIA

COMMENTS: Air Quality Directive (WK 8189/2023)

AT thanks the Presidency for the horizontal discussion on a possible Joint Responsibility Clause during the last WPE meeting and the well-prepared Steering Note to guide the discussions on Art 12 to 23 and the associated annexes. Following the request by the Presidency after the WPE meeting on 15 June, AT submits the following comments on the EC's proposal for the recast of the Air Quality Directives:

Discussion on a possible joint responsibility clause

We take note of the opinions raised by the Commission and the Council Legal Service. Nonetheless, we are of the opinion that a joint responsibility clause, which aims at ensuring a coherent and ambitious source legislation and a common responsibility on all levels, is crucial in a revised Directive. We point out again that our proposal would only reflect that many regulations that are relevant for achieving air quality standards are set on EU level (ie IED, Eco Design regulations, Euro standards for vehicles) and that the impact assessment shows that MS cannot achieve the new standards with national measures only. We reiterate that our proposal is to be seen as a starting point for further discussions.

To highlight the programmatic character of a joint responsibility clause, we propose that Article 1 might be an equally well-suited provision to place the clause:

“Article 1
Objectives

[...]

4. The relevant Union institutions and the Member States shall take the necessary measures at Union and national, regional and local level, respectively, to enable the collective achievement of the air quality standards referred to in paragraph 2 and the zero pollution objective for air quality set out in paragraph 1, in particular:

(a) the introduction and regular update of any relevant legislation for sectors and activities such as transport, industry, agriculture, energy and climate that contribute to air pollution, in particular setting appropriate emissions standards for key sources of air pollution, such road transport vehicles, domestic heating installations and industrial installations and

(b) the regular update of the regulatory framework needed to act in a harmonized manner in a cost-effective way.”

Article 12

AT welcomes the clarification that the first alternative provides. Hence, we can support Options 1 or 3.

We take the opportunity to remind of our proposal that links Art 12 para 1 and 3 explicitly to taking necessary measures to maintain concentration levels below air quality standards:

“1. In zones where the levels of sulphur dioxide, nitrogen dioxide, particulate matter (PM₁₀ and PM_{2.5}), lead, benzene, carbon monoxide, arsenic, cadmium, nickel and benzo(a)pyrene in ambient air are below the respective limit values specified in Section 1 of Annex I, Member States shall **take necessary measures to** maintain the levels of those pollutants below the limit values.”

“3. In territorial units at NUTS 1 level as described in Regulation (EC) No 1059/2003 where the average exposure indicators for PM_{2.5} and NO₂ are below the respective value of the average exposure concentration objectives for those pollutants as laid down in Section 5 of Annex I, Member States shall **take necessary measures** to maintain the levels of those pollutants below the average exposure concentration objectives.”

We think that this addition is relevant for maintaining measures, which are not only helpful to meet the limit values but also enable to maintain a good air quality and to keep the track towards possible reviewed standards and the objectives as set in Article 1. In this regard, it might also be useful to define the term “measures” (definition is missing) and to distinguish between measures in air quality plans according to Chapter IV and those required to meet other objectives, in particular maintaining good air quality. Since other provisions of Chapter III (in particular Art 12 para 2 regarding ozone levels) already explicitly refer to “necessary measures”, the addition would also be consistent with the structure of Chapter III from a systematic point of view.

Article 13

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

AT generally supports the new limit values, but is also aware of the big discrepancies in air pollution concentration levels in the MS. Hence, we see a need to find possibilities to maintain the general ambition level while also looking for possibilities to cope with different circumstances in the MS.

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

AT supports the Commission’s proposal.

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

AT flags concerns regarding the principle of subsidiarity if the Directive lays down that MS are bound to specific predefined areas (ie NUTS regions) without any flexibility, as this goes beyond what is necessary to achieve the objectives of the Directive. In our view, MS should be able to define areas in the way they consider most appropriate for achieving the objectives. However, we agree that a certain degree of comparability is also favourable. Therefore, we support either Option 2 or 4.

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

AT would welcome if years that were affected by the COVID pandemic did not influence compliance assessment. As of now, we do not have concrete text proposals on how this could be best taken into account.

Annex I Section 2 - PODY

AT supports Option 3 since AOT40 is a well-established metric for assessing the impact of ozone on ecosystems and vegetation. AOT40 should also be maintained with regard to trend analyses that have been prepared over the past decades. Developing a new metric will take a considerable amount of time and we agree with the concerns raised by BE during the WPE meeting that it might not be feasible to introduce a new or parallel metric at this stage.

Article 15 & Annex I Section 4, Point A

AT supports Option 4 (maintaining the EC’s proposal). In any case, it should be avoided that short-term and non-systematic events trigger a large-scale alarm. In this context, we also note that in our experience short-term measures (Art 20) are usually not very effective, but require relatively high (i.e. administrative) efforts.

Article 18

AT supports the inclusion of B(a)P to the list of pollutants with a view to small scale heating devices and climate policies.

Article 19

AT thanks the Presidency for the clarification and the examples that have been provided in the Steering Note. We agree with the concerns that have been raised during the WPE meeting regarding the timeline for the development of air quality plans and the rather short implementation horizon for measures. We point out that in many cases, air quality measures do not take immediate effect. Hence, the proposed timeline should be reconsidered in order to ensure practical feasibility for MS' authorities that are responsible for developing plans and setting air quality measures.

We strongly welcome the proposed update mechanism. In this regard, we propose again that updates of air quality plans and measures should not be done only once, but on a regular basis (i.e. obligation to regularly evaluate plans and update them as appropriate). The implementation of the current Directive has shown that exceedances are by no means exceptional and that they persist in many cases for several years. Hence, we propose the following text changes:

"1. [...]

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 **every [two] years**, and take additional and more effective measures, **starting from** in the subsequent calendar year ~~to keep the exceedance period as short as possible.~~"

The same changes are suggested for other paragraphs insofar as updates of plans and measures are concerned.

Regarding short-term action plans (Art 20) and the obligation set out in para 5 to analyse the risk of exceeding alert thresholds, we note again that exceedances may have many possible causes, ie for particulate matter. The obligation assumes that it is possible to assess ex ante the emitters that will potentially contribute to an exceedance, which in fact is difficult and subject to many uncertainties (ie in zones that have not yet been affected by exceedances and where no precise source analysis might be available).

Article 19(2) - Air quality plans for ozone

AT questions the effectiveness of air quality plans for exceedances of ozone target values due to the transboundary nature of ozone. The effects of measures that can be implemented by MS are too small to allow for a significant/measurable change in ozone concentrations. Hence, we agree with the opinion raised during the WPE meeting that joint measures at European (and hemispheric or global) level are required and that the NEC Directive is the appropriate tool on the EU level. Only national air pollution control programmes prepared pursuant to Art. 6 the NEC Directive, together with measures for cooperation at the hemispheric scale, are appropriate to tackle ozone exceedances in an EU-wide effort. Therefore, we support Option 3 (keeping the language of the current Directive). Regarding the choice of appropriate territorial units, we point to our concerns regarding the principle of subsidiarity that have been raised above regarding the AEI and that apply mutatis mutandis.

We also note again that the last sentence of para 4 subpara 1 is incomplete (bold underlined) and that para 4 does not apply to ozone target values (strikethrough):

"Where from [insert year 2 years after entry into force of this Directive], until 31 December 2029 in a zone ~~or NUTS 1 territorial unit~~, the levels of pollutants are above any limit value to be attained by 1 January 2030 as laid down in Table 1 of Section 1 of Annex I, Member States shall establish an air

quality plan for the concerned pollutant as soon as possible and no later than 2 years after the calendar year during which the exceedance of the limit value was recorded to attain the respective limit values ~~or ozone target value~~ by the expiration of the attainment deadline.”

Article 22 & Annex IX

AT supports the Presidency’s proposal to add a reference to the EN standard 16450:2017 in Annex VI.

Regarding para 2, we propose again that the EEA should be tasked with the alignment of the European AQI and its recommendations with WHO AQG. In addition, EEA should provide MS with the possibility to include the EEA AQI in their national website via an interface. This would allow the use of all functionalities of the EEA AQI, to have a harmonised GUI and to avoid duplication of efforts.

Article 23

The transmission of information to the Commission based on last year’s validated data within 4 months is not feasible. AT strongly supports to keep the 9 months deadline of the present regulation (Option 4).

Regarding para 1 and the reporting of data that does not meet the required data quality objectives, we support Option 2 (clarification). In our view, data quality is particularly essential for public information.

Annex VIII

AT supports Option 2. Numbers for emission reductions are often not available on the level of individual measures. We note that data is necessary to enable the assessment of the impact of measures or a bundle of measures and the AQ plan in general. Therefore, only main/important (sets of) measures should be quantified and it should be left to the administration to design and merge measures in a useful way that allows for a quantification.
