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MEETING DOCUMENT

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| 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 4 July 2023 - Incoming Presidency's steering note |

With a view to the WPE on 4 July on the abovementioned proposal, delegations will find attached a Presidency steering note prepared by the incoming ES Presidency to guide the discussions.

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Steering note

WORKING PARTY ON THE ENVIRONMENT- 4 July 2023

Ambient Air Quality Directive (AAQD)

As a basis for the discussion at the WPE on 4 July, the Presidency has prepared this steering note to guide a thorough examination of the Articles and Annexes set out below, structured in the following intervention rounds:

1. Annex I
2. Proposed date of entry into force + Article 18
3. Article 21
4. Articles 16 and 17
5. Articles 24 to 26
6. Article 20

Following the WPE, the Presidency invites delegations to send written drafting proposals relating to the issues raised in this steering note by **11 July 2023 cob**.

INTERVENTION ROUND 1. Annex I. Air Quality Standards. Proposed Level of air quality standards

Continuing the political debate that took place in the Environment Council on 20 June on the level of ambition and in the WPE of 15 June, the Presidency considers that it is necessary to deepen this debate to make progress specifically on Annex I Air Quality Standards. The Presidency acknowledges the diverse range of opinions regarding the proposed new limit values and thus would like the delegations to contribute to this debate and communicate their preferences regarding the air quality standards defined in Annex I.

Delegations are invited to provide their positions on the proposed values set on Annex I, specifically from Table 1 of Section 1, Section 2, and Section 4 of the proposal. The discussion should be guided by the following tables:

A. SECTION 1 - LIMIT VALUES FOR THE PROTECTION OF HUMAN HEALTH

Table 1 – Limit values for the protection of human health to be attained by 1 January 2030

| | Commission Proposal | |
|-------------------------|----------------------------|----------------------------|
| Averaging period | Limit value | Number of occasions |
| PM_{2.5} | | |

| | | |
|--|-----------------------|---|
| 1 day | 25 µg/m ³ | not to be exceeded more than 18 times per calendar year |
| Calendar year | 10 µg/m ³ | |
| PM₁₀ | | |
| 1 day | 45 µg/m ³ | not to be exceeded more than 18 times per calendar year |
| Calendar year | 20 µg/m ³ | |
| Nitrogen dioxide (NO₂) | | |
| 1 hour | 200 µg/m ³ | not to be exceeded more than once per calendar year |
| 1 day | 50 µg/m ³ | not to be exceeded more than 18 times per calendar year |
| Calendar year | 20 µg/m ³ | |
| Sulphur dioxide (SO₂) | | |
| 1 hour | 350 µg/m ³ | not to be exceeded more than once per calendar year |
| 1 day | 50 µg/m ³ | not to be exceeded more than 18 times per calendar year |
| Calendar year | 20 µg/m ³ | |
| Benzene | | |
| Calendar year | 3,4 µg/m ³ | |
| Carbon monoxide (CO) | | |
| maximum daily 8-hour mean ⁽¹⁾ | 10 mg/m ³ | |
| 1 day | 4 mg/m ³ | not to be exceeded more than 18 times per calendar year |
| Lead (Pb) | | |
| Calendar year | 0,5 µg/m ³ | |
| Arsenic (As) | | |
| Calendar year | 6,0 ng/m ³ | |
| Cadmium (Cd) | | |
| Calendar year | 5,0 ng/m ³ | |
| Nickel (Ni) | | |
| Calendar year | 20 ng/m ³ | |
| Benzo(a)pyrene | | |
| Calendar year | 1,0 ng/m ³ | |

- (1) The maximum daily 8-hour mean concentration will be selected by examining 8-hour running averages, calculated from hourly data and updated each hour. Each 8-hour average so calculated will be assigned to the day on which it ends i.e. the first calculation period for any 1 day will be the period from 17.00 on the previous day to 1.00 on that day; the last calculation period for any 1 day will be the period from 16.00 to 24.00 on that day.

B. SECTION 2 - OZONE TARGET VALUES AND OZONE LONG-TERM OBJECTIVE

Ozone target values

| Objective | Averaging period | Commission Proposal | |
|-------------------------------|--|---------------------------------------|--|
| | | Target value | |
| Protection of human health | Maximum daily 8-hour mean ⁽¹⁾ | 120 µg/m ³ | not to be exceeded on more than 18 days per calendar year averaged over 3 years ⁽²⁾ |
| Protection of the environment | May to July | AOT40 (calculated from 1-hour values) | 18 000 µg/m ³ × h averaged over 5 years ⁽²⁾ |

(1) The maximum daily 8-hour mean concentration shall be selected by examining 8-hour running averages, calculated from hourly data and updated each hour. Each 8-hour average so calculated shall be assigned to the day on which it ends. i.e. the first calculation period for any 1 day will be the period from 17.00 on the previous day to 1.00 on that day; the last calculation period for any 1 day will be the period from 16.00 to 24.00 on the day.

(2) If the 3- or 5-year averages cannot be determined on the basis of a full and consecutive set of annual data, the minimum annual data required for checking compliance with the target values will be as follows:

- for the target value for the protection of human health: valid data for 1 year,
- for the target value for the protection of vegetation: valid data for 3 years.

Long-term objectives for ozone (O₃)

| Objective | Averaging period | Commission Proposal | |
|----------------------------|--|--------------------------------------|-----------------------------|
| | | Long-term objective | |
| Protection of human health | Maximum daily 8-hour mean within a calendar year | 100 µg/m ³ ⁽¹⁾ | |
| Protection of vegetation | May to July | AOT40 (calculated from 1 h values) | 6 000 µg/m ³ × h |

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

C. SECTION 4. ALERT AND INFORMATION THRESHOLDS. ALERT THRESHOLDS VALUES

Some delegations welcome the incorporation of new alert thresholds for PM and consider that the Commission proposal could even be more ambitious. Other delegations expressed different views and considered the thresholds very restrictive for PM_{2.5} and PM₁₀. The discussion will be guided by the following tables.

Alert thresholds for pollutants other than ozone

| | Commission Proposal |
|-------------------------------------|-----------------------|
| Pollutant | Alert threshold |
| Sulphur dioxide (SO ₂) | 500 µg/m ³ |
| Nitrogen dioxide (NO ₂) | 400 µg/m ³ |
| PM _{2.5} | 50 µg/m ³ |
| PM ₁₀ | 90 µg/m ³ |

Information and alert thresholds for ozone

| | Commission Proposal | |
|---|-----------------------|-----------------------|
| Purpose | Averaging period | Threshold |
| Information | 1 hour | 180 µg/m ³ |
| Alert | 1 hour ⁽¹⁾ | 240 µg/m ³ |
| (1) For the implementation of Article 20, the exceedance of the threshold is to be measured or predicted for 3 consecutive hours. | | |

The Presidency is seeking input from delegations on drafting proposals on Annex 1.

INTERVENTION ROUND 2. Proposed date of attainment + Article 18

A. Position on the proposed date of attainment of the revised air quality standards.

The current Commission proposal establishes limit values and ozone target values for the protection of human health to be attained by **1 January 2030**. Some delegations have expressed the difficulty of meeting this deadline. The Presidency would like feedback from delegations on the proposed deadline and alternatives.

B. Postponement of attainment deadline and exemption from the obligation to apply certain limit values. Reasons for allowing postponements.

The Presidency notes that several delegations have raised questions regarding the reasons for allowing postponements stated in Article 18(1), i.e. site-specific dispersion characteristics, orographic boundary conditions, adverse climate conditions, or transboundary contributions.

Some delegations have suggested that further reasons for allowing postponements should be considered, taking into account that for some pollutants under certain conditions it is challenging to reduce pollution levels effectively and rapidly. The Presidency would like feedback from delegations on this issue.

C. Postponement of attainment deadline and exemption from the obligation to apply certain limit values. Allowing postponement more than once.

Some delegations have suggested that the one-time postponement of 5 years may not be sufficient to address specific local situations concerning air quality limits. They propose that the postponement period could be extended for specific zones with high concentration levels.

The Presidency is seeking input from delegations on specific timelines and drafting proposals on Article 18.

INTERVENTION ROUND 3. Transboundary pollution

Article 21 states that if the transboundary transport of air pollution from one or more Member States contributes significantly to the exceedance of any limit value, ozone target value, average exposure reduction obligation or alert threshold in another Member State, the affected Member State must notify the Member States responsible for the air pollution and the Commission. Moreover, the concerned Member States should cooperate to identify the pollution sources and collaborate on joint activities, such as developing joint or coordinated air quality plans, to address and mitigate these exceedances.

Responding to questions from delegations on the current application of this Article, at previous WPE meetings the Commission has clarified that the provisions currently in force (Article 25 of Directive 2008/50/EC) have been invoked only once and this led to limited results. In addition, whereas some delegations agree with the requirement to cooperate on identifying the pollution sources and on measures to address them, several delegations have expressed reservations on the requirement to draw up joint activities to reduce exceedances.

The Presidency invites delegations to indicate their positions on the new requirements proposed in this Article.

INTERVENTION ROUND 4. Article 16 and 17

A. Article 16. Contributions from natural sources

Some delegations consider that it is necessary to establish a harmonized methodology or common criteria for the deduction of air pollution contributions from natural sources, which should be used by all Member States. Other delegations ask to maintain the reference to the guidelines for demonstrating and deducting exceedances due to natural sources as well as to include a specific reference to the European guidelines for determining the natural events to be subtracted. Those delegations also indicated that an update of those methodologies would be relevant due to the revision of the Air Quality Directives.

The Presidency would like to know the preference of delegations to have a reference to European guidelines or to an implementing act in Article 16(2).

B. Article 17, exceedances attributable to winter-sanding or winter salting of roads.

As in Article 15, some delegations consider that it is necessary to establish a harmonized methodology or common criteria for the deduction of air pollution contributions from winter-sanding or winter salting of roads.

The Presidency would like input from delegations to know if they see a need for guidance to harmonize how deduction of PM10 should be done.

INTERVENTION ROUND 5. Articles 24-26.

A. Article 24 Scope of the Delegated acts.

Some delegations have stressed the importance of the assessment thresholds in Annex II and the scope of information contained in the air quality plans referred to in Annex VIII with regard to the size of the monitoring network and the stability of the public policies conducted by the Member States to improve air quality, respectively. Therefore, they are of the view that those Annexes should be considered as essential elements of the proposal and that any amendments to them should be done through the ordinary legislative procedure. Furthermore, some delegations have requested that amendment of any of the Annexes should be subject to the ordinary legislative procedure.

The Presidency sees the following ways forward to address this issue:

1. Exclude Annex II from the scope of the delegated power under Article 24.
2. Possibility to additionally exclude other annexes such as Annex VIII (Information to be included in air quality plans for improvement in ambient air quality) and/or Annex IX (Public information).
3. Keep the scope of Article 24 as proposed by the Commission.

The Presidency would like feedback on which of the above alternatives delegations would prefer.

B. Art 25(2) Exercise of the delegation.

Article 25 (2) establishes an indefinite period for the empowerment to adopt delegated acts. Some delegations consider that it would be appropriate to limit the duration of the empowerment and include an obligation for the Commission to report on the delegation of power.

The Presidency would like input from delegations on the following points:

1. Possibility of specifying the duration of the delegated power, for example: 5 years with tacit renewal.
2. Keep the indefinite duration as in the Commission Proposal.
3. Introduce an obligation for the Commission to report the delegation of powers as follows: **“The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.”**

C. Article 26 Committee procedure

Concerning the Committee procedure in Art 26, it was suggested by one delegation to add the following closing sentence:

“Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.”

The Presidency invites delegations to comment on this inclusion.

INTERVENTION ROUND 6. Article 20

A. Art 20. Short-term action plans

Comments were received to Articles 20(1), 20(2) and 20(3) concerning the relation between short term action plans and air quality plans.

- Several proposals were received to include emergency measures referred to in Article 20(1) and 20(2) in air quality plans established pursuant to article 19. In this respect, the Presidency notes that Article 19(5) (second and fourth subparagraphs) establishes that measures referred to in Article 20(2) can be considered in air quality plans, and that air quality plans can be established in respect to different air quality standards (such as information and alert thresholds) in integrated air quality plans.
- Some concerns were received on the timing and scope for public consultation established in Article 20(3) and 20(4). For example, if the elements included in Article 20(3) concerning public participation differ from those already provided for in other EU legislation regarding public consultation/participation in planning elaboration and if this could be redundant considering other EU legislation. In this regard, it should be noted that Directive (EU) 2003/35 includes obligations for air quality plans (as its Annex I and related articles refer to Article 23 of Directive (EU) 2008/50 on air quality plans) but not to short-term action plans.

The Presidency would like to ask delegations whether this explanation is considered sufficient or if further changes are deemed necessary to Article 20 in this respect.

B. Article 20(2) regarding measures to be considered in short-term action plans.

On the second sentence of Article 20(2) regarding measures to be considered depending on the share of the main pollution source to the exceedances to be addressed, adding measures in relation to “agriculture” and “shipping” have been suggested. Regarding shipping, it should be noted that the reference to “ships at berth” was deleted, while “shipping” would be included as “transport”. As for “agriculture”, no specific proposals were received.

The Presidency invites delegations to make specific proposals on the possibility to include specific references to “agriculture” and “shipping” in Article 20(2).

C. Article 20.5 Communication to the Commission of adopted short-term plans.

One delegation has proposed that short-term action plans could be communicated in the annual report to the Commission, in which plans are currently reported according to the Directive in force, since this could be a way to reduce the number of reports. Here it should be considered that air quality plans are also to be reported within 2 months after their adoption, as per Article 19(7) of the proposal.

The Presidency invites delegations to express their views on the options on reporting of short-term action plans to the Commission.