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**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251 (2) of the EC Treaty

concerning the

**common position of the Council on the adoption of a European Parliament and Council
Directive on ambient air quality and cleaner air for Europe**

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(Text with relevance for the EEA)

1. PROCEDURE

The proposal COM(2005) 447 final was transmitted to the European Parliament and the Council in accordance with the procedure provided for in Article 251 of the EC Treaty.

The European Economic and Social Committee gave its opinion on 17th May 2006.

The Committee of the Regions gave its opinion on 26th April 2006.

The European Parliament gave its opinion at first reading on 26th September 2006.

Following the opinion of the European Parliament and pursuant to Article 250(2) of the EC Treaty, the Council reached by a qualified majority political agreement on a Common Position on 23rd October 2006. The Council adopted the Common position on 25.6.2007.

2. PURPOSE OF THE COMMISSION PROPOSAL

Air pollution has very strong adverse health effects. According to the latest scientific and health evidence, presented in the Commission Communication on Thematic Strategy on Air Pollution COM(2005) 446, only exposure to fine particulate matter PM_{2.5} in ambient air is responsible for the reduction of the statistical life expectancy of average EU citizen by more than 8 months. In its proposal the Commission thus introduces specific environmental standards for fine particulate matter PM_{2.5} in ambient air. Their implementation should significantly contribute to reaching objective of the Thematic Strategy on Air Pollution which is to reduce the number of life years lost in Europe due to exposure to particulate matter by 47% in the period between 2000 and 2020.

Following on from the Commission initiative on “better regulation”, the Commission proposal for a directive on ambient air quality and cleaner air for Europe further merges the provisions of the framework and the three daughter directives on ambient

air quality together with the Council decision on the Exchange of Information into a single directive with the intention of simplifying, streamlining and reducing the volume of existing legislation. In addition the proposal revises the existing provisions so as to incorporate the experience of the Member States. For that purpose the proposal:

- (1) introduces specific monitoring requirements and new environmental objectives for fine particulate matter PM_{2.5},
- (2) provides some flexibility in the implementation by allowing, under specific conditions to be approved by the Commission, prolongation of the attainment dates for certain limit values such as for the particulate matter PM₁₀ and nitrogen dioxide,
- (3) enables the Member States to focus their efforts by allowing deduction of natural contributions when assessing compliance with the limit values.

3. COMMISSION COMMENTS

3.1. General Comments

The European Parliament gave its opinion at first reading on 26 September 2006. The Commission accepted totally, in part or in principle twenty-nine (29) of the fifty-nine (59) amendments proposed by the European Parliament in the first reading. Sixteen (16) out of twenty-nine (29) are already at least in part reflected in the common position.

The Commission accepted all amendments which would lead to further streamlining, greater clarity or improved the information given to the public: 2, 6, 11, 13, 19, 21, 26, 27, 31, 37, 39, 41, 42, 65; or broaden the scope of the review : 48.

The Commission accepted some amendments in part or in principle. For some, the Commission is of the opinion that further redrafting would provide greater clarity. The others contain changes acceptable in principle, such as for example the introduction of the concept of sliding scale for the exposure reduction target in amendment 49. Not all the provisions in these amendments can however be accepted as some would compromise the balance between ensuring the flexibility of implementation and the protection of public health.

The Commission rejected, in particular, amendments which would reduce the level of protection of public health either below the level of the existing legislation or, as regards the exposure reduction objective for fine particulate matter PM_{2.5}, below the level of ambition set in the Thematic Strategy on Air Pollution. The Commission also rejected amendments which it considers introduce requirements that could not be achieved in the specified timeframe, or limit the scope for action of the national, regional and local authorities to pursue effective implementation of the directive. The Commission assesses that combined, the Parliaments amendments would result in a lower level of ambition than the original Commission proposal.

Since September 2005, the Member States have discussed the proposal in the Council. The common position contains a significant number of changes as

compared to the Commission's original proposal. In presentational terms the text has been streamlined through modifications such as the elimination of the concentration cap concept and introduction of a single air quality plan. Some of the main elements of the Commission's original proposal, namely the assessment of air quality, new objectives on fine particulate matter PM_{2.5} and the flexibility on implementation have also been addressed. Changes are presented in more detail below. While providing some more flexibility for the implementation of the Directive, they maintain the ambition level balance with the required level of the protection of public health, as set by the original Commission proposal. Political agreement has been reached by a qualified majority, with Netherlands and Poland voting against, while Sweden abstained.

3.2. Detailed Comments

3.2.1. *Parliamentary Amendments accepted by the Commission and incorporated in full or in part in the common position.*

The content, if not the letter of the following amendments which were accepted in full, in principle or in part by the Commission is found in the common position: amendments number 1, 2, 13, 14, 19, 21, 26, 27, 29, 31, 40, 41, 42, 45, 48, and 65.

The majority of these amendments reflect the replacement of the concentration cap concept with the more established concept of the limit value. As the two concepts have the same legal consequences, this does not introduce change in substance but streamlines the text and reduces the number of different standards used.

Amendment 41 concerns the requirement for the Member State to notify penalty provisions to the Commission. The Commission accepts the Parliament proposal to delete the requirement as the same objective can be achieved following Article 33 of the Directive and the general obligation laid down in annex 10 of the EC treaty.

3.2.2. *Parliamentary Amendments accepted by the Commission but not in the common position.*

Amendment 6 concerns a recital giving strong encouragement to complement fixed measurements by modelling and indicative measurements.

Amendment 11 describes the reasoning behind the provisions set in Article 22. In the common position, these provisions are addressed in Recital 15.

Amendments 37 and 39 propose to include industrial federations to the list of relevant bodies that need to be informed under public information provisions of Articles 24 and 26. The Commission believes the inclusion makes sense and does not differ from the existing good practice.

3.2.3. *Parliamentary Amendments rejected by the Commission but part of the common position.*

Not applicable.

3.2.4. Changes made to the Proposal by the Council – Main elements

Provisions for the assessment of air quality, new objectives on fine particulate matter PM_{2.5} and provisions on the flexibility on implementation, as proposed by the Commission, have been addressed by the Council as well as by the Parliament, in particular by the amendments 45, 49, 50, 60 and 81.

Air quality assessment. The cost of monitoring has been raised as an important concern in Council. Changes in the PM₁₀ assessment thresholds and the minimum requirements for the monitoring of particulate matter have been introduced to that effect. While acknowledging the concern of Council, the Commission stressed the importance of appropriate assessment information for the level playing field when assessing compliance, for the development of policy, and for informing the effective abatement measures where needed. The PM₁₀ and PM_{2.5} assessment provisions finally laid down in the common position are a compromise and represent for the Commission the minimum requirements that will still satisfy the abovementioned objectives.

The common position has introduced major modifications to Annex III of the directive which determines in more detail the minimum requirements on how the assessment throughout the territory of the Member State has to be performed. Annex III includes a restrictive definition of specific areas where compliance with the limit values aiming at the protection of human health is not to be assessed. This should support a more harmonized approach to the assessment of compliance. The Commission will closely monitor implementation to ensure that this implementing provision will not in any way reduce protection of public health or compromise an overarching concept that the limit values apply everywhere.

Criteria for locating the sampling points for pollutants with established limit values in Annex III have also been streamlined to apply in the same manner for all pollutants. The Commission would have preferred to stay with the original proposal which is copying the provisions in the existing legislation, as the changes may bring relocation of the existing sampling points and the disruption of monitoring trends. The Commission will monitor the developments, as changes might create problems in the implementation of other provisions, such as public information, and in provision of information useful for policy development, and will readdress the issue through the regulatory committee, if necessary. However, since the limit values apply everywhere except in the explicitly defined areas, relocation of the station by itself does not change the level of protection of public health.

The common position also addresses in Annex VI the timing of compliance of the existing equipment in the monitoring network with the provisions of the new CEN standards determining the reference methods that were introduced in the Commission proposal. The Commission agrees with the introduced deadlines as they will enable cost-efficient implementation schedule for the modernisation of the network, where necessary. It however notes that with regard to the measurements used for the assessment, the data quality objectives of Annex I and provisions for demonstrating equivalence of Annex VI still fully apply.

PM_{2.5} standard. The common position replaces in Annex XIV the PM_{2.5} concentration cap of 25µg/m³, to be attained in 2010, with a two level approach

introducing a non-binding, target value with the same level in 2010, and the legally binding limit value in 2015. The exposure reduction target has been expanded from a single 20% reduction provision to a sliding scale for exposure reduction indicator with values in the 7-13 $\mu\text{g}/\text{m}^3$ range. Provisions of the common position also allow 3 different options for fixing the base exposure reduction indicator, to allow time to set proper PM_{2.5} monitoring stations. The Commission supports these modifications as they do not alter the ambition level of the Commission's proposal and will provide for more effective implementation.

The Commission considers that in the double PM_{2.5} environmental objective the exposure reduction target should be the main driver for measures, with the annual limit value serving principally as the cap to protect citizens in the most vulnerable areas. On the basis of current knowledge the Commission is of the opinion that the efforts to comply with more stringent PM_{2.5} annual limit value of 20 $\mu\text{g}/\text{m}^3$ by 2015 as proposed by amendment 50 of the Parliament would result in excessive focus on the 'hot spots', limited areas with high concentrations, at the expense of measures to reduce general exposure to the population. Amendment 49 on the other hand proposes to reduce exposure reduction target requirements for most concentration levels, which would have the overall effect of reducing the ambition level of the new PM_{2.5} standards and would fall short of achieving the health objective set in the Thematic Strategy on Air Pollution.

Flexibility on implementation. While the Commission proposal in Article 22 introduced an absolute deadline (1 Jan 2010) for prolongation of the PM₁₀ limit value attainment date, the common position sets the maximum deadline at 3 years after the directive enters into force. The common position maintains the conditions which have to be satisfied in order to be granted the prolongation. Time extension provisions for benzene and nitrogen dioxide have not been altered. The option for the fine particulate matter PM_{2.5} has been eliminated after moving the PM_{2.5} attainment date from 2010 in the original Commission proposal to 2015. The possibility to apply for a time extension for sulphur dioxide, carbon monoxide and lead have been eliminated. The Commission would prefer its original timing with regard to the PM₁₀ attainment date, but is of the opinion that such prolongation does not compromise the overall balance of the proposal. Amendment 81 by the European Parliament allows for up to 6 years after the entry into force of the directive. Such prolongation would almost certainly introduce delay in the implementation of measures, reducing the level of protection of public health in all areas with current exceedances of the PM₁₀ limit values.

3.2.5. *Changes in the text related to new Comitology procedures*

The Commission had reserved its position with regard to amendments 61-63 of the Parliament that introduce a reference to the new regulatory procedure with scrutiny by the committee established under the directive, pending the inter-institutional agreement on the common wording for the inclusion in the secondary EU legislation. A rephrased provision covering the same substance, using the last wording as agreed between the institutions in November 2006, has been introduced in the common position. It differs in scope to amendment 62, as it does not introduce regulatory procedure with scrutiny for the adoption of the implementing measures determining the additional information to be made available by the Member States pursuant to Article 27. The Commission can support these changes.

4. CONCLUSION

All EU institutions share the common objectives with regard to the protection of public health and the environment, and specifically the need for the introduction of fine particulate matter PM_{2.5} standards, including the new exposure reduction target. There has been general support to the additional flexibility on implementation as proposed by the Commission. The major impediments to achieving 1st reading agreement have been different views on the exact degree of flexibility, on the need to modify the existing particulate matter PM₁₀ standards and the stringency and legal nature of the new fine particulate matter PM_{2.5} standard.

In the common position the Member States confirmed the Commission's initial position to keep the existing standards unchanged while allowing some more flexibility with regard to achieving compliance with the particulate matter PM₁₀ limit values, and slightly modified the new PM_{2.5} standards.

The Commission can support the common position, as the balance of the Commission proposal between the strong public health concern, which calls for strong and continuous action to improve air quality in certain areas and the introduction of ambitious legally binding PM_{2.5} standards, and the flexibility introduced to facilitate implementation, has nevertheless been maintained. The common position also maintains the clear commitment to review in five years the standards related to the fine particulate matter with a view to make the exposure reduction target legally binding.

The common position includes additional provisions such as a requirement for the Commission to prepare guidance on the determination of contributions from the natural sources and winter sanding. The Commission welcomes these additions as they will facilitate more harmonized approach to the implementation of the directive across the European Union.

The Commission would have preferred that some specific provisions of the proposal, in particular those related to the minimum air quality monitoring requirements, would have been maintained. However it recognizes that the common position represents an important improvement compared to the arrangements under the existing directives and therefore supports it.