



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 23 December 2013
(OR. en)**

18167/13

**Interinstitutional File:
2013/0443 (COD)**

**ENV 1235
ENER 600
IND 388
TRANS 693
ENT 356
SAN 555
PARLNAT 325
CODEC 3086**

PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	20 December 2013
To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union

No. Cion doc.:	COM(2013) 920 final
Subject:	Proposal for a Directive of the European Parliament and of the Council on the reduction of national emissions of certain atmospheric pollutants and amending Directive 2003/35/EC

Delegations will find attached document COM(2013) 920 final.

Encl.: COM(2013) 920 final



EUROPEAN
COMMISSION

Brussels, 18.12.2013
COM(2013) 920 final

2013/0443 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on the reduction of national emissions of certain atmospheric pollutants and amending
Directive 2003/35/EC**

(Text with EEA relevance)

{SWD(2013) 531 final}
{SWD(2013) 532 final}
{SWD(2013) 537 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

General context – Grounds for and objectives of the proposal

Directive 2001/81/EC of the European Parliament and of the Council¹ set annual national emission ceilings for each Member State to be attained by 2010, covering emissions of sulphur dioxide (SO₂), nitrogen oxides (NO_x), non-methane volatile organic compounds (NMVOC) and ammonia (NH₃). These were aimed at reducing air pollution and its adverse impacts upon public health and the environment across the Union, and also at compliance with the Gothenburg Protocol.²

There is a need to review and update these requirements to address the highly significant remaining health risks and environmental impacts posed by air pollution in the Union, and to align Union law with new international commitments following a revision of the Gothenburg Protocol in 2012.

The required impact reductions are set out in the revised Thematic Strategy on Air Pollution,³ which updates the pathway towards the Union's long-term objective of reaching air quality levels that do not cause significant impacts on and risks to human health and the environment. This proposal is one of the main legislative pillars to achieve these reductions.

As well as setting out the further emission cuts needed, this proposal addresses some of the shortcomings in the implementation of the Union air policy framework and the need for enhanced co-ordination between emission reductions and air quality as well as climate change and biodiversity protection.

Given the nature and extent of the necessary modifications to Directive 2001/81/EC and the need to enhance consistency and legal clarity, the review of Directive 2001/81/EC calls for its repeal and the adoption of a new Directive (this Directive).

Consistency with other policies and objectives of the Union

The objectives of this initiative are consistent with and reinforce the Europe 2020 objectives on smart, inclusive, and sustainable growth. They should stimulate innovation that will help support green growth and maintain the competitiveness of the European economy whilst assisting the transition to a low carbon economy, protecting Europe's natural capital and capitalising on Europe's leadership in developing new green technologies.⁴ Simplification and clarification of existing policy to enable better implementation is pursued where possible in the spirit of smarter regulation.⁵ Where measures are introduced, care is taken to safeguard

¹ Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings (OJ L 309, 27.11.2001, p. 22).

² Protocol to the United Nations Economic Commission for Europe (UNECE) Convention on Long-Range Transboundary Air Pollution to abate acidification, eutrophication and ground-level ozone (1999).

³ Communication from the Commission to the Council and the European Parliament "A Clean Air Programme for Europe", COM(2013) [xxx]

⁴ Communication from the Commission "EUROPE 2020 -A strategy for smart, sustainable and inclusive growth", COM(2010) 2020 final, 3.3.2010.

⁵ Communication from the Commission "Smart Regulation in the European Union", COM(2010) 543 final, 08.10.2010.

the interests of SMEs along the "think small first" principle.⁶ Coherence has been ensured with the closely-related areas of transport, industrial, agriculture and climate change, and resource efficiency.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Consultation with interested parties

The review process drew on expertise built up over several decades of air quality assessments, management and review activities in the Union and internationally. Consulted parties included Member State authorities responsible for the implementation of the current policy framework at all administrative levels. Five stakeholder meetings were held between June 2011 and April 2013 to ensure transparency and offer opportunities for stakeholder comments and inputs. All meetings were web-streamed to enable the broadest possible participation. In parallel, two public consultations were organised: a first at the end of 2011 focused on review of the strengths and weaknesses of the existing air quality policy framework; the second on-line public consultation of all stakeholders on the main policy options available to address the remaining air quality problems in early 2013.⁷ A Eurobarometer survey seeking the view of the general public on air pollution issues was conducted and reported in 2012.⁸ The Commission and the European Environment Agency (EEA) also conducted an Air Implementation Pilot project, bringing together 12 cities from across the Union to assess local experience with implementing the air policy framework.⁹

Result of the impact assessment

Full compliance with air quality legislation can be achieved in the short to medium term by focusing on the implementation of existing policy plus Member State action. While Directive 2001/81/EC should be revised to incorporate the Union's international commitments for 2020 under the Gothenburg Protocol, more stringent reductions are not appropriate for 2020.

However, the period to 2030 is a different case. To address the outstanding health and environmental impacts requires substantially tighter emission reduction commitments. For 2030 the preferred option is 70% of the maximum feasible reduction of health impacts in 2030, further optimised for additional reductions in eutrophication and ozone. These emission reduction commitments provide a continuing trajectory towards the Union's long-term objective.

Implementation of the Gothenburg reduction commitments for 2020 entails no additional Union expenditure over the baseline. The new reduction commitments for 2030 are designed to implement the reduction of air quality impacts by 2030 established in the Communication on a Clean Air Programme for Europe. The impact assessment modelled the optimal delivery of the desired reduction, and this optimisation yielded national emission reduction commitments for the six most relevant pollutants. These reduction commitments will reduce total external costs of air pollution by €40bn (on the most conservative valuation) compared

⁶ Communication from the Commission ““Think Small First” - A “Small Business Act” for Europe” COM(2008) 394 final, 25.6.2008.

⁷ The consultation used two questionnaires: a total of 1934 individuals responded to a shorter questionnaire for the general public; for the longer questionnaire for experts and stakeholders, 371 responses were received. See http://ec.europa.eu/environment/consultations/air_pollution_en.htm

⁸ Results are available in Eurobarometer 2013.

⁹ For full results, see Report 7/2013 of the EEA..

to the €12bn in the baseline, including direct economic benefits amounting to more than €2.8 billion: €1,85bn from reduced labour productivity losses, reduced health care costs of €600m, reduced crop value losses of €230m, and reduced damage to the built environment of €120m. This compares with annual compliance costs of €3,3bn, or about one twelfth of the external cost savings. The baseline shall deliver in 2030 a reduction of health burden by 40% as compared to 2005. This proposal delivers an extra 12%, which makes a 52% reduction in total regarding health burden as compared to 2005. For eutrophication, it delivers an extra 50% on top of the baseline.

Methane ceilings under the NEC regime of the Union could bring down emissions cost-effectively although the policy would need to be consistent with Decision 406/2009/EC of the European Parliament and of the Council.¹⁰ Provisions to improve governance and align monitoring and reporting with international obligations could be included at very modest administrative cost (around €8m initial cost and €3.5m annual cost Union-wide).

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

The proposal repeals and replaces the current Union regime on the annual capping of national emissions of air pollutants, as defined in Directive 2001/81/EC. By doing so, it ensures that the national emission ceilings (NECs) set in Directive 2001/81/EC for 2010 onwards for SO₂, NO_x, NMVOC and NH₃ shall apply until 2020 and establishes new national emission reduction commitments ("reduction commitments") applicable from 2020 and 2030 for SO₂, NO_x, NMVOC, NH₃, fine particulate matter (PM_{2.5}) and methane (CH₄) as well as intermediate emission levels for the year 2025 applicable to the same pollutants.

Specific information on the main Articles and Annexes is provided below.

Articles 1, 2 and 3 specify the subject-matter and the scope of this proposal and provide definitions of key terms used therein.

In accordance with Article 4 read in combination with Annex II, Member States must limit their annual emissions of SO₂, NO_x, NMVOC, NH₃, PM_{2.5} and CH₄, to meet their reduction commitments applicable from 2020 and 2030. Furthermore, Member States must limit in 2025 their annual emissions of those pollutants to the levels defined on the basis of a linear reduction trajectory, unless this would require measures entailing disproportionate costs. Article 4 indicates what emission sources should not be accounted for.

Article 5 entitles Member States to use certain flexibilities, provided that the Commission does not object: to account for a share of NO_x, SO₂, and PM_{2.5} emission reductions achieved by international maritime traffic under certain conditions; to implement jointly their reduction commitments for CH₄; and to propose adjusted emission inventories when non-compliance with a reduction commitment (save for CH₄) results from improved inventory methodology.

Article 6 requires Member States to adopt, implement and regularly update their national air pollution control programmes (NAPCPs) describing how their reduction commitments shall be met. NAPCPs should, at least, contain the information set out in Annex III (part 2) and on

¹⁰ Decision n° 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 (OJ L 140, 5.6.2009, p. 136).

the reduction of black carbon emissions and may prescribe specific measures, as listed in Annex III (part 1), to curb PM_{2.5} and NH₃ emissions from the agricultural sector. NAPCPs shall be developed in the context of the overall air quality policy framework and shall include information on the analysis underpinning the selection of measures. Member States shall subject their NAPCPs to public consultation before their finalisation. To this end, Article 16 amends Directive 2003/35/EC of the European Parliament and of the Council¹¹ to ensure that it covers NAPCPs.

Article 7 read in combination with Annex I requires Member States to monitor air pollutant emissions and, in so doing, prepare and update, in line with the obligations and guidelines enacted under the LRTAP Convention referred to and further specified in Annex IV, national emission inventories and projections to be accompanied by an informative inventory report (IIR). Member States that apply the flexibilities under Article 5 must include relevant information in the IIR or in a separate report.

Under Article 8, Member States shall monitor, where practicable, the adverse impacts of air pollution upon water and terrestrial ecosystems, based on the modalities specified in Annex V. Member States are entitled to make use of monitoring systems established under other Union instruments.

Article 9 requires Member States to communicate to the Commission, at the dates specified in Annex I, their NAPCP and any updates and all monitoring information established in accordance with Articles 7 and 8. The Commission, assisted by the European Environment Agency and Member States, shall regularly verify the accuracy and completeness of reported national emission inventory data.

Article 10 provides that the Commission shall report every five years on the implementation of this Directive, including on the application of Article 4, paragraph 2 related to intermediate emission levels set for 2025.

Article 11 promotes the systematic, active and electronic dissemination of the information collected and processed under this proposal and refers, in that context, to the requirements established in Union law, including in Directive 2003/4/EC of the European Parliament and of the Council.¹²

Article 12 promotes cooperation between the Commission and Member States with third countries and relevant international organisations to further and better address air pollutant emissions at a global level.

Article 13 lays down the modalities of the procedure applicable under Articles 6(7), 7(9) and 8(3) to the adaptation of Annexes I, III (part 1), IV and V to scientific and technical progress through delegated acts.

Article 14 refers to the Committee examination procedure that the Commission shall use to enact implementing acts under Articles 5(6) and 6(9) and specifies that the existing Committee established under Article 29 of Directive 2008/50/EC shall be used.

¹¹ Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ L156, 25.6.2003, p. 17).

¹² Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive (OJ L 41, 14.2.2003, p. 26).

Articles 15, 17 and 19 lay down the provisions on penalties applicable to breaches of the national provisions enacted pursuant to the proposal, on the entry into force and the transposition of the proposal into Member States' legislation.

Article 18 is concerned with the repeal of Directive 2001/81/EC while specifying that the NECs it sets shall remain applicable until 31 December 2019.

Annex VI contains the correlation table.

Legal basis

As the primary objective of the proposal is the protection of the environment, in accordance with Article 191 TFUE, it is based on Article 192(1) TFUE.

Subsidiarity and proportionality principles and choice of instrument

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Union.

The objectives of the proposal cannot be sufficiently achieved by the Member States. To address the significant remaining air quality impacts in the Union, each Member State must reduce its pollutant emissions, and the cost-effective combination of reductions across Europe can only be co-ordinated at Union level. The reduction commitments identified take account not only of the domestic impacts of national emissions, but also of their transboundary impacts.

Action by the Union will better achieve the objective of the proposal. Directive 2001/81/EC sets reduction targets and minimum requirements for their implementation, while leaving Member States to determine the optimum combination of measures to achieve those reductions. That principle is maintained in this proposal, which further harmonises the requirements on national programmes and on the monitoring and reporting of emissions of air pollutants with a view to correcting shortcomings of Directive 2001/81/EC, and to complying with international commitments undertaken under the LRTAP Convention and its protocols. Although the proposal requires control of emissions at source in the agriculture sector, Member States are entitled not to implement them if they are not necessary to achieve the relevant reduction commitment.

This proposal therefore respects the subsidiarity principle.

The chosen legal instrument is a Directive as the proposal lays down objectives and obligations, while leaving sufficient flexibility to the Member States as regards the choice of measures for compliance and their detailed implementation. The proposal therefore complies with the proportionality principle.

4. BUDGETARY IMPLICATION

The Directive will be implemented using the existing budget and will not impact on the multi-annual financial framework.

5. OPTIONAL ELEMENTS

Explanatory documents

The Commission considers that explanatory documents are necessary in order to improve the quality of information on the transposition of the directive for the following reasons.

The complete and correct transposition of the Directive is essential to guarantee that its objectives (i.e. protecting human health and the environment) are achieved. Given that certain Member States already regulate emissions of air pollutants, the transposition of this directive would probably not consist of one piece of legislation, but rather, various amendments or new proposals in relevant fields. In addition, the implementation of the Directive is often highly decentralised, as the regional and local authorities are responsible for its application and, in some Member States, even for its transposition.

The above factors are likely to increase the risks of incorrect transposition and implementation of the Directive, and complicate the Commission's task of monitoring the application of Union law. Clear information with respect to the transposition of the Directive is instrumental in ensuring the conformity of national legislation with its provisions.

The requirement to provide explanatory documents may create an additional administrative burden on those Member States which do not work on this basis in any case. However, the possible additional administrative burden is proportionate to the aim pursued, namely to ensure effective transposition and fully achieve the objectives of the Directive.

In view of the above it is appropriate to ask Member States to accompany the notification of their transposition measures with one or more documents explaining the relationship between the provisions of the Directive and the corresponding parts of national transposition instruments.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the reduction of national emissions of certain atmospheric pollutants and amending Directive 2003/35/EC

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹³,

Having regard to the opinion of the Committee of the Regions¹⁴,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Significant progress has been achieved in the past 20 years in the Union in the field of anthropogenic air emissions and air quality by a dedicated Union policy, including the 2005 Communication from the Commission "Thematic Strategy on Air Pollution" ("TSAP")¹⁵. Directive 2001/81/EC of the European Parliament and of the Council¹⁶ has been instrumental in this progress by setting caps on Member States' total annual emissions for 2010 onwards of sulphur dioxide (SO₂), nitrogen oxides (NO_x), ammonia (NH₃) and volatile organic compounds other than methane (NMVOC). As a result, SO₂ emissions were reduced by 82%, NO_x emissions by 47%, NMVOC emissions by 56% and NH₃ emissions by 28% between 1990 and 2010. However, as indicated in the "Clean Air Programme for Europe" ("revised TSAP"),¹⁷ significant adverse impacts and risks remain on the environment and human health.

¹³ OJ C , , p. .

¹⁴ OJ C , , p. .

¹⁵ Communication of 21 September 2005 from the Commission to the Council and the European Parliament "Thematic Strategy on Air Pollution", COM(2005) 446 final.

¹⁶ Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants (OJ L 309, 27.11.2001, p. 22).

¹⁷ Communication from the Commission to the Council and the European Parliament "A Clean Air Programme for Europe", COM(2013) [xxx] .

- (2) The seventh Environment Action Programme¹⁸ confirms the Union's long-term objective for air policy, to achieve levels of air quality that do not give rise to significant negative impacts on and risks to human health and the environment, and calls, to that end, for full compliance with the current air quality legislation of the Union, post-2020 strategic targets and actions, enhanced efforts in areas where the population and ecosystems are exposed to high levels of air pollutants, and reinforced synergies between air quality legislation and Union's policy objectives set for climate change and biodiversity in particular.
- (3) The revised TSAP sets out new strategic objectives for the period up to 2030 with a view to moving further towards the Union's long-term objective.
- (4) Member States and the Union are parties to the 1979 United Nations Economic Commission for Europe Convention on Long-Range Transboundary Air Pollution ("LRTAP Convention")¹⁹ and to several of its Protocols, including the 1999 Gothenburg Protocol to Abate Acidification, Eutrophication and Ground-level Ozone.
- (5) As regards the year 2020 and thereafter, the revised Gothenburg Protocol accepted by the Council in Decision [xxxx/xxxx/EU]²⁰ sets out new emission reduction commitments, taking the year 2005 as a base year, for each party regarding SO₂, NO_x, NH₃, NMVOC and fine particulate matter (PM_{2.5}), promotes emission reductions of black carbon and calls for the collection and keeping of information on the adverse effects of air pollutant concentrations and depositions on human health and the environment and participation in the effects-oriented programmes under the LRTAP Convention.
- (6) The national emission ceiling regime established by Directive 2001/81/EC should therefore be revised in order to align it with the international commitments of the Union and the Member States.
- (7) Member States should implement this Directive in a way that contributes effectively to the meeting of the Union's long-term objective on air quality as supported by the guidelines of the World Health Organisation and of the Union's biodiversity and ecosystem protection objectives by reducing the levels and deposition of acidifying, eutrophifying and ozone air pollution below critical loads and levels as set out by the LRTAP Convention.
- (8) This Directive should also contribute to the achievement of the air quality objectives set in Union legislation and to the mitigation of climate change impacts by reducing emissions of short-lived climate pollutants as well as to the improvement of air quality globally.

¹⁸ Proposal for a Decision of the European Parliament and of the Council on a General Union Environment Action Programme to 2020 "Living well, within the limits of our planet", COM (2012) 710, 29.11.2012.

¹⁹ Council Decision 2003/507/EC of 13 June 2003 on the accession of the European Community, to the Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution to Abate Acidification, Eutrophication and Ground-Level Ozone (OJ L179, 17.7.2003, p. 1).

²⁰ Council Decision 2013/xxxx/EU on the acceptance of the Amendment to the 1999 Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution to Abate Acidification, Eutrophication and Ground-Level Ozone (OJ L.. p.).

- (9) Member States should comply with the emission reduction commitments set out in this Directive for 2020 and 2030. So as to ensure demonstrable progress towards the 2030 commitments, Member States should meet intermediate emission levels in 2025, set on the basis of a linear trajectory between their emission levels for 2020 and those defined by the emission reduction commitments for 2030, unless this would entail disproportionate costs. Where the 2025 emissions cannot be so limited, Member States should explain the reasons in their reports under this Directive.
- (10) Some Member States opted under the LRTAP Convention for setting emission ceilings based on fuel used regarding the transport sector. This has resulted in a lack of coherence with their overall energy consumption and statistics as well as those of the Union as a whole. Accordingly, in order to guarantee a common and coherent basis for all Member States and the Union as a whole, this Directive sets out reporting requirements and emission reduction commitments based on national energy consumption and fuel sold, which ensures further coherence with Union climate change and energy legislation.
- (11) In order to promote cost-effective achievement of the national emission reduction commitments and of the intermediate emission levels, Member States should be entitled to account for emission reductions from international maritime traffic if emissions from that sector are lower than the levels of emissions that would result from compliance with Union law standards, including the sulphur limits for fuels set in Directive 1999/32/EC of the Council.²¹ Member States should also have the possibility to jointly meet their commitments and intermediate emission levels regarding methane (CH₄) and of making use of Decision n°406/2009/EC of the European Parliament and of the Council for so doing.²² For the purpose of checking compliance with their national emission ceilings, emission reduction commitments and intermediate emission levels, Member States could adjust their national emission inventories in view of improved scientific understanding and methodologies regarding emissions. The Commission could object to the use of any of these flexibilities by a Member State, should the conditions set out in this Directive not be met.
- (12) Member States should adopt and implement a national air pollution control programme with a view to meeting their emission reduction requirements and intermediate emission levels, and to contributing effectively to the achievement of the Union air quality objectives. To this effect, Member States should take account of the need to reduce emissions in zones and agglomerations affected by excessive air pollutant concentrations and/or in those that contribute significantly to air pollution in other zones and agglomerations, including in neighbouring countries. National air pollution control programmes should, to that end, contribute to the successful implementation of air quality plans enacted under Article 23 of Directive 2008/50/EC of the European Parliament and of the Council.²³

²¹ Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels and amending Directive 93/12/EEC (OJ L 121, 11.5.1999, p. 13).

²² Decision n°406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 (OJ L 140, 5.6.2009, p. 136).

²³ Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air in Europe (OJ L 152, 11.6.2008, p. 1).

- (13) In order to reduce atmospheric NH₃ and PM_{2,5} emissions from the main contributors, national air pollution control programmes should include measures applicable to the agricultural sector. Member States should be entitled to implement measures other than those set out in this Directive with an equivalent level of environmental performance owing to specific national circumstances.
- (14) The national air pollution control programme, including the analysis supporting the identification of policies and measures, should be regularly updated.
- (15) In order to draw up well informed national air pollution control programmes and any significant updates, Member States should make those programmes and updates subject to consultation by the public and competent authorities at all levels when all options regarding policies and measures remain open. Member States should engage in transboundary consultations in case where the implementation of their programme could affect air quality in another country, in accordance with the requirements set out in Union and international legislation, including the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 1991) and its Protocol on Strategic Environmental Assessment (Kyiv, 2003), as approved by the Council.²⁴
- (16) Member States should establish and report emission inventories, projections and informative inventory reports for all air pollutants covered by this Directive, which should then enable the Union to meet its reporting duties under the LRTAP Convention and its Protocols.
- (17) In order to preserve overall consistency for the Union as a whole, Member States should ensure that their reporting to the Commission of their national emission inventories, projections and informative inventory are fully consistent with their reporting under the LRTAP Convention.
- (18) In order to assess the effectiveness of the national emission reduction commitments laid down in this Directive, Member States should also monitor, where practicable, the effects of such reductions in terrestrial and aquatic ecosystems, in accordance with internationally established guidelines and report these effects.
- (19) In line with Directive 2003/4/EC of the European Parliament and of the Council²⁵, Member States should ensure active and systematic dissemination of information by electronic means.
- (20) It is necessary to amend Directive 2003/35/EC of the European Parliament and of the Council²⁶ with a view to ensuring consistency of this Directive with the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.

²⁴ Council Decision 2008/871/EC of 20 October 2008 on the approval, on behalf of the European Community, of the Protocol on Strategic Environmental Assessment to the 1991 UN/ECE Espoo Convention on Environmental Impact Assessment in a Transboundary Context (OJ L 308, 19.11.2008, p. 33).

²⁵ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information (OJ L 41, 14.2.2003, p. 26).

²⁶ Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ L156, 25.6.2003, p. 17).

- (21) In order to take into account technical developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending the reporting guidelines set out in Annex I, as well as Part 1 of Annex III and Annexes IV and V to adapt them to technical progress. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (22) In order to ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.²⁷
- (23) Member States should lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.
- (24) With a view to the nature and extent of the modifications which should be made to Directive 2001/81/EC, that Directive should be replaced to enhance legal certainty, clarity, transparency and legislative simplification. In order to ensure continuity in improving air quality, Member States should comply with the national emission ceilings set out in Directive 2001/81/EC until the new national emission reduction commitments laid down in this Directive become applicable in 2020.
- (25) Since the objective of this Directive, namely to ensure a high level of protection of human health and the environment, cannot be sufficiently achieved by Member States, but can rather, by reason of the transboundary nature of air pollution, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (26) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents,²⁸ Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

²⁷ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13)

²⁸ OJ C 369, 17.12.2011, p. 14.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive establishes the limits for the Member States' atmospheric emissions of acidifying and eutrophying pollutants, ozone precursors, primary particulate matter and precursors of secondary particulate matter and other air pollutants and requires that national air pollution control programmes be drawn up, adopted and implemented and pollutant emissions and their impacts be monitored and reported.

Article 2

Scope

This Directive shall apply to emissions of the pollutants referred to in Annex I from all sources occurring in the territory of the Member States, their exclusive economic zones and pollution control zones.

Article 3

Definitions

For the purposes of this Directive, the following definitions shall apply:

1. "emission" means the release of a substance from a point or diffuse source into the atmosphere;
2. "ozone precursors" mean nitrogen oxides, non-methane volatile organic compounds, methane, and carbon monoxide;
3. "air quality objectives" means the limit values, target values and exposure concentration obligations for air quality set out in Directive 2008/50/EC and Directive 2004/107/EC of the European Parliament and of the Council;²⁹
4. "nitrogen oxides" (NO_x) mean nitric oxide and nitrogen dioxide, expressed as nitrogen dioxide;
5. "non-methane volatile organic compounds" (NMVOC) means all organic compounds of an anthropogenic nature, other than methane, that are capable of producing photochemical oxidants by reaction with nitrogen oxides in the presence of sunlight;
6. "PM_{2,5}" means particulate matter which passes through a size-selective inlet as defined in the reference method for the sampling and measurement of PM_{2,5}, EN 14907, with a 50 % efficiency cut-off at 2,5 µm aerodynamic diameter;

²⁹ Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air (OJ L 23, 26.1.2005, p. 3–16).

7. "national emission reduction commitment" means the reduction in emissions of a substance expressed as a percentage of emission reduction between the total of emissions released during the base year (2005) and the total of emissions released during a target calendar year that Member States must not exceed;
8. "landing and take-off cycle" means the cycle that includes taxi in and out, take-off, climb out, approach, landing and all other aircraft activities that take place below the altitude of 3000 feet;
9. "international maritime traffic" means journeys at sea and in coastal waters by water-borne vessels of all flags, save fishing vessels, that depart from the territory of one country and arrive in the territory of another country;
10. "emission control area" means a special sea area established in accordance with Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL);
11. "pollution control zone" means a sea area not exceeding 200 nautical miles from the baselines from which the breadth of the territorial sea is measured established by a Member State for the prevention, reduction and control of pollution from vessels in accordance with applicable international rules and standards;
12. "black carbon" (BC) means carbonaceous particulate matter that absorbs light.

Article 4

National emission reduction commitments

1. Member States shall, as a minimum, limit their annual anthropogenic emissions of sulphur dioxide (SO₂), nitrogen oxides (NO_x), volatile organic compounds other than methane (NMVOC), ammonia (NH₃), particulate matter (PM_{2.5}) and methane (CH₄) in accordance with the national emission reduction commitments applicable from 2020 and 2030, as laid down in Annex II.
2. Without prejudice to paragraph 1, Member States shall take all the necessary measures not entailing disproportionate costs to limit their 2025 anthropogenic emissions of SO₂, NO_x, NMVOC, NH₃, PM_{2.5} and CH₄. The levels of those emissions shall be determined on the basis of fuels sold, by a linear reduction trajectory established between their emission levels for 2020 and the emission levels defined by the emission reduction commitments for 2030.

Where the emissions for 2025 cannot be limited in accordance with the determined trajectory, the Member States shall explain the reasons in their reports submitted to the Commission in accordance with Article 9.
3. The following emissions are not accounted for the purpose of complying with paragraphs 1 and 2:
 - (a) aircraft emissions beyond the landing and take-off cycle;

- (b) emissions in the Canary Islands, the French overseas departments, Madeira, and the Azores;
- (c) emissions from national maritime traffic to and from the territories referred to in point (b);
- (d) emissions from international maritime traffic, without prejudice to Article 5(1).

Article 5

Flexibilities

1. In order to comply with the intermediate emission levels determined for 2025 in accordance with Article 4, paragraph 2, and the national emission reduction commitments set out in Annex II applicable from 2030 onwards for NO_x, SO₂ and PM_{2,5}, Member States may offset NO_x, SO₂ and PM_{2,5} emission reductions achieved by international maritime traffic against NO_x, SO₂ and PM_{2,5} emissions released by other sources in the same year, provided that they meet the following conditions:
 - (a) the emission reductions occur in the sea areas that fall within the Member States' territorial seas, exclusive economic zones or in pollution control zones if such zones have been established;
 - (b) they have adopted and implemented effective monitoring and inspection measures to ensure a proper operation of this flexibility;
 - (c) they have implemented measures to achieve lower NO_x, SO₂ and PM_{2,5} emissions from international maritime traffic than the emissions levels that would be achieved by compliance with the Union standards applicable to emissions of NO_x, SO₂ and PM_{2,5} and have demonstrated an adequate quantification of the additional emission reductions resulting from these measures;
 - (d) they have not offset more than 20% of the NO_x, SO₂ and PM_{2,5} emission reductions calculated in accordance with point (c), provided that the offset does not result in non-compliance with the national emission reduction commitments for 2020 set out in Annex II.
2. Member States may jointly implement their methane emission reduction commitments and intermediate emission levels referred to in Annex II, provided that they meet the following conditions:
 - (a) they comply with all applicable requirements and modalities enacted under Union legislation, including under Decision n°406/2009/EC of the European Parliament and of the Council.
 - (b) they have adopted and implemented effective provisions in order to ensure a proper operation of joint implementation.
3. Member States may establish adjusted annual national emission inventories for SO₂, NO_x, NH₃, NMVOC and PM_{2,5} in accordance with Annex IV where non-compliance

with their national emission reduction commitments or their intermediate emission levels would result from applying improved emission inventory methods updated in accordance with scientific knowledge.

4. Members States that intend to apply paragraphs 1, 2 and 3 shall inform the Commission by 30 September of the year preceeding the reporting year concerned. That information shall include the pollutants and sectors concerned and, where available, the magnitude of the impacts upon national emission inventories.
5. The Commission, assisted by the European Environment Agency, shall review and assess whether the use of any of the flexibilities for a particular year fulfils the relevant requirements and criteria.

Where the Commission has raised no objections within nine months from the date of receipt of the relevant report referred to in Article 7, paragraphs 4, 5 and 6, the Member State concerned shall consider the use of the flexibility applied to be accepted and valid for that year. Where the Commission considers the use of a flexibility not to be in accordance with the applicable requirements and criteria, it shall adopt a Decision and inform the Member State that it cannot be accepted.

6. The Commission may adopt implementing acts specifying the detailed rules for the use of the flexibilities as referred to in paragraphs 1, 2 and 3, in accordance with the examination procedure referred to in Article 14.

Article 6

National air pollution control programmes

1. Member States shall draw up and adopt a national air pollution control programme in accordance with Part 2 of Annex III in order to limit their annual anthropogenic emissions in accordance with Article 4.
2. When drawing up, adopting and implementing the programme referred to in paragraph 1, Member States shall:
 - (a) assess to what extent national emission sources are likely to impact air quality in their territories and neighbouring Member States using data and methodologies developed by the European Monitoring and Evaluation Programme (EMEP), where appropriate;
 - (b) take account of the need to reduce air pollutant emissions for the purpose of reaching compliance with air quality objectives in their territories and, where appropriate in neighbouring Member States;
 - (c) prioritize emission reduction measures for black carbon when taking measures to achieve their national reduction commitments for PM_{2,5};
 - (d) ensure coherence with other relevant plans and programmes established by virtue of requirements set in national or Union legislation.

Member States shall, to the extent necessary, include the emission reduction measures laid down in Part 1 of Annex III or measures having equivalent environmental effect, with a view to meeting the relevant national emission reduction commitments.

3. The national air pollution control programme shall be updated every two years.
4. Without prejudice to paragraph 3, the emission reduction policies and measures contained in the national air pollution control programme shall be updated within 12 months in either of the following cases:
 - (a) the obligations set out in Article 4 are not complied with or there is risk of non-compliance;
 - (b) Member States decide to make use of any of the flexibilities set out in Article 5.
5. Member States shall consult, in accordance with relevant Union legislation, the public and competent authorities, which, by reason of their specific environmental responsibilities in the field of air pollution, quality and management at all levels, are likely to be concerned by the implementation of the national air pollution control programmes, on their draft national air pollution control programme and any significant updates prior to their finalisation. Where appropriate, transboundary consultations shall be ensured in accordance with relevant Union legislation.
6. The Commission shall facilitate the elaboration and implementation of the programmes, where appropriate, through an exchange of good practice.
7. The Commission shall be empowered to adopt delegated acts in accordance with Article 13 in order to adapt Part 1 of Annex III to technical progress.
8. The Commission may establish guidance on the elaboration and implementation of national air pollution control programmes.
9. The Commission may also specify the format and the necessary information concerning Member States' national air pollution control programmes in the form of implementing acts. These implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14.

Article 7

Emission inventories and projections

1. Member States shall prepare and annually update national emission inventories for the pollutants set out in table A of Annex I, in accordance with the requirements set out therein.

Member States should prepare and annually update national emission inventories for the pollutants set out in table B of Annex I, in accordance with the requirements set out therein.

2. Member States shall prepare and update every two years spatially disaggregated emission inventories, large point source inventories and emission projections for the pollutants set out in table C of Annex I, in accordance with the requirements set out therein.
3. The emission inventories and projections referred to in paragraphs 1 and 2 shall be accompanied by an informative inventory report, in accordance with the requirements set out in table D of Annex I.
4. Member States that apply the flexibility under Article 5(1) shall include the following information in the informative inventory report of the year concerned:
 - (a) the quantity of emissions of NO_x, SO₂ and PM_{2,5} that would have occurred in the absence of an emission control area;
 - (b) the level of emission reductions attained in the Member State's part of the emission control area in accordance with Article 5(1)(c);
 - (c) the extent to which they apply this flexibility;
 - (d) any additional data Member States may deem appropriate to allow the Commission, assisted by the European Environment Agency, to carry out a complete assessment of the conditions under which the flexibility has been implemented.
5. Member States that opt for the flexibility under Article 5(2) shall provide a separate report allowing the Commission to review and assess whether the requirements of that provision are met.
6. Member States that opt for the flexibility under Article 5(3) shall include the information set out in Part 4 of Annex IV in the informative inventory report of the year concerned allowing the Commission to review and assess whether the requirements of that provision are met.
7. Member States shall establish the emission inventories, including adjusted emission inventories, emission projections and the informative inventory report in accordance with Annex IV.
8. The Commission, assisted by the European Environment Agency, shall annually establish and update Union-wide emission inventories, projections, and an informative inventory report for all the pollutants referred to in Annex I, on the basis of the information referred to in paragraphs 1, 2 and 3.
9. The Commission shall be empowered to adopt delegated acts in accordance with Article 13 in order to adapt Annex I in relation to reporting deadlines and Annex IV to technical and scientific progress.

Article 8

Monitoring air pollution impacts

1. Member States shall ensure, if practicable, the monitoring of adverse impacts of air pollution upon ecosystems in accordance with the requirements laid down in Annex V.
2. Member States shall, where appropriate, coordinate the monitoring of air pollution impacts with other monitoring programmes established by virtue of Union legislation, including Directive 2008/50/EC and Directive 2000/60/EC of the European Parliament and of the Council.³⁰
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 13 in order to adapt Annex V to technical and scientific progress.

Article 9

Reporting by Member States

1. Member States shall provide their national air pollution control programme to the Commission [within three months of the date referred to in Article 17, date to be inserted by OPOCE] and updates every two years thereafter.

Where a national air pollution control programme is updated under Article 6(4), the Member State concerned shall inform the Commission thereof within two months.

2. Member States shall from 2017 communicate their national emission inventories, emission projections, spatially disaggregated emission inventories, large point source inventories and reports referred to in Article 7(1), (2) and (3) and, where relevant, Article 7(4), (5) and (6), to the Commission and to the European Environmental Agency in accordance with the reporting dates set out in Annex I.

This communication shall be consistent with the reporting to the Secretariat of the LRTAP Convention.

3. Member States shall report their national emissions and projections for CH₄ in accordance with Regulation (EU) No 525/2013 of the European Parliament and of the Council.³¹
4. The Commission, assisted by the European Environment Agency and the Member States shall regularly review the national emission inventory data. This review shall involve the following:

³⁰ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ L 327, 22.12.2000, p. 1)

³¹ Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC (OJ L 165, 18.6.2013, p. 13).

- (a) checks to verify the transparency, accuracy, consistency, comparability and completeness of information submitted;
 - (b) checks to identify cases where inventory data is prepared in a manner which is inconsistent with the requirements set under international law, in particular under the LRTAP Convention;
 - (c) where appropriate, calculation of the resulting technical corrections necessary, in consultation with the Member States.
5. Member States shall report the following information referred to in Article 8 to the Commission and the European Environment Agency:
- (a) [By the date referred to in Article 17 - date to be inserted by OPOCE] and every four years thereafter, the location of the monitoring sites and the associated monitored indicators, and
 - (b) Within [one year of the date referred to in Article 17 - date to be inserted by OPOCE] and every four years thereafter, the measured values of the mandatory indicators.

Article 10

Reports by the Commission

1. The Commission shall, every five years at least, report to the European Parliament and the Council on the progress on implementing this Directive, including an assessment of its contribution to the achievement of the objectives of this Directive.
- The Commission shall in any case report as above for the year 2025, and shall also include information on the achievement of the intermediate emission levels referred to in Article 4 paragraph 2 and the reasons for any non-achievement. It shall identify the need for further action also considering the sectorial impacts of implementation.
2. The reports referred to in paragraph 1 may include an evaluation of the environmental and socioeconomic impacts of this Directive.

Article 11

Access to information

1. Member States shall, in compliance with Directive 2003/4/EC, ensure the active and systematic dissemination to the public of the following information by publishing it on a publicly accessible Internet site:
- (a) the national air pollution control programmes and any updates.
 - (b) the national emission inventories, including when occurring, the adjusted emission inventories, the national emission projections and the informative inventory reports and additional reports and information communicated to the Commission in accordance with Article 9.

2. The Commission shall, in compliance with Regulation n° 1367/2006 of the European Parliament and of the Council,³² ensure the active and systematic dissemination to the public by publishing Union-wide emission inventories, projections and informative inventory reports on a publicly accessible Internet site.

Article 12

Cooperation with third countries and coordination within international organisations

The Union and the Member States, as appropriate, shall pursue bilateral and multilateral cooperation with third countries and coordination within relevant international organisations such as the United Nations Environment Programme (UNEP), United Nations Economic Commission for Europe (UNECE), the International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO), including through the exchange of information, concerning technical and scientific research and development, with the aim of improving the basis for emission reductions.

Article 13

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Articles 6(7), 7(9) and 8(3) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Directive.
3. The delegation of power referred to in Articles 6(7), 7(9) and 8(3) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Articles 6(7), 7(9) and 8(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

³² Regulation n° 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25.09.2006, p. 13).

Article 14

Committee procedure

1. The Commission shall be assisted by the Ambient Air Quality Committee established by Article 29 of Directive 2008/50/EC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 15

Penalties

Member States shall lay down the rules on the penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

Article 16

Amendment to Directive 2003/35/EC

In Annex I of Directive 2003/35/EC, the following letter (g) shall be added:

"(g) Article 6(1) of Directive XXXX/XX/EU of the European Parliament and of the Council on the reduction of national emission for certain atmospheric pollutants and amending Directive 2003/35/EC *

* OJ L XX of XX.XX.XXXX, p. X)"

Article 17

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive [eighteen months after the entry into force - date to be inserted by OPOCE] at the latest.

They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 18

Repeal and transitional provisions

1. Directive 2001/81/EC of the European Parliament and of the Council is repealed with effect from [by the date referred to in Article 17 of this Directive - date to be inserted by OPOCE].

However, the following provisions of the repealed Directive shall continue to apply:

- (a) Article 1 and Annex I until 31 December 2019;
- (b) Article 7(1) and (2) and Article 8(1) until [the date referred to in Article 17 of this Directive - date to be inserted by OPOCE].

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex VI.

2. Until 31 December 2019, Member States may apply Article 5(3) of this Directive in relation to the ceilings under Article 4 and Annex I of Directive 2001/81/EC.

Article 19

Entry into force

This Directive shall enter into force twentieth day after that of its publication in the *Official Journal of the European Union*.

Article 20

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President