



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 5 June 2007

**Interinstitutional File:
2005/0183 (COD)**

**16477/06
ADD 1**

**ENV 686
ENER 311
IND 101
TRANS 328
ENT 148
CODEC 1507**

DRAFT STATEMENT OF THE COUNCIL'S REASONS

Subject: COMMON POSITION adopted by the Council with a view to the adoption of a Directive of the European Parliament and of the Council on ambient air quality and cleaner air for Europe

DRAFT STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 21 September 2005, the Commission¹ presented to the Council its proposal for a Directive on ambient air quality and cleaner air for Europe.
2. The European Parliament² gave its Opinion on 26 September 2006.

The Economic and Social Committee³ adopted its Opinion on 17 May 2006.

The Committee of the Regions⁴ delivered its Opinion on 26 April 2006.

3. On [28 June 2007], the Council adopted its common position.

II. OBJECTIVE

The purpose of the proposal is to consolidate existing ambient air quality legislation into a single directive. Furthermore, the proposal has some new elements:

- introduction of provisions on fine particles (PM_{2.5}) in order to integrate the latest health and scientific developments;
- possibility for time limited derogations from the existing and future limit values taking effect as from 1 January 2005 and 1 January 2010 respectively. Such derogations may only be granted under strict conditions and the Member States are required to establish special air quality plans and to take appropriate measures in order to ensure compliance.

¹ Doc. 14335/05 - COM(2005) 447 final.

² Not yet published in the OJ.

³ OJ C 195, 18.08.2006, p. 84-87.

⁴ OJ C 206, 29.08.2006, p.1-4.

III. ANALYSIS OF THE COMMON POSITION

1. General

Almost half of the 59 European Parliament's first-reading amendments, were incorporated into the Council's common position either verbatim, in part or in spirit. The remaining amendments were considered unnecessary and/or undesirable by the Council.

In particular, the common position presents the following major changes of substance:

- a non-binding target value for PM_{2,5} in 2010 to be replaced by a binding limit value in 2015 (25µg/m³ for both target value and limit value);
- the possibility to postpone attainment of the limit value for PM₁₀ until three years after entry into force of this Directive;
- the possibility to postpone the deadlines for nitrogen dioxide (NO₂) and benzene by a maximum of five years (until 1 January 2015);
- the principle that limit values should apply everywhere, but in certain locations compliance with limit values should not be assessed.

The following sections describe the changes of substance and the Council's reaction to the European Parliament's amendments.

2. Assessment of air quality (Articles 5 to 11)

The common position is not consistent with amendments 16 and 17. The Council believes that **modelling techniques** should not be compulsory but an option for Member States, taking in principle amendments 2, 3 and 6.. It also believes that daily measurements should not be mandatory where there are no daily limit values, as proposed in amendments 18 and 20.

The common position is not consistent with amendment 22 since the Council believes that, in practice, it will be very difficult to guarantee that Commission and Member States will be able to ensure the uniform application of the criteria for selecting **sampling points**.

3. Air quality management (Articles 12 to 22, Annexes III and XIV)

In its Articles 15 and 16, the common position establishes a two stage approach for the regulation of **fine particles** (PM_{2.5}), taking on board, fully or partly, amendments 13, 27, 31, 40 and 48. Amendment 29 was accepted in principle and a clear legal distinction between the target value and the limit value for PM_{2.5} was introduced in the common position. The Council cannot accept amendment 50: Annex XIV of the common position establishes the value of 25µg/m³ for both target value and limit value for fine particles.

Article 15 was modified and is now referring to a national PM_{2.5} **exposure reduction target** for the protection of human health. The calculation of the national exposure reduction target was revised in order to ensure differentiation among Member States, taking into consideration their concentration levels. Amendment 49 was taken in principle.

In its Article 21, the common position gives to Member States the possibility for subtracting exceedances attributable to **winter-sanding or -salting of roads**, being consistent with amendment 26. However, amendment 25 is in contradiction with the purpose of this article because it would eliminate the possibility of using the derogation: PM_{2.5} levels are affected by road-sanding to some extent in all cases. The common position is not consistent with amendments 24 and 60 since Section A of Annex III was redrafted maintaining the principle that limit values apply everywhere.

Amendment 81 is not acceptable for the Council that envisages, in the common position, the possibility to postpone the attainment of the limit value for PM₁₀ until three years after the entry into force of the air quality directive. For nitrogen dioxide and benzene, the deadlines can be postponed by a maximum of five years. Moreover, the European Parliament proposes in this amendment that the relevant conditions to assess the need for the postponement of deadlines take into consideration the adoption of **additional Community measures** to help Member States to meet the relevant target and limit values. The Council believes that it is very difficult to demonstrate the link between the non entry into force of the Community measures aiming at reducing emissions and the non attainment of the target and limit values. For the same reason, amendments 83 and 84 are not acceptable.

Amendment 66 is not appropriate for a recital.

4. Air Quality Plans (Articles 23 to 25)

Amendment 32 was not taken on board. Measures pursuant to Article 24 can already be included in the **air quality plans**. Proposals concerning **industrial installations** and application of best available techniques could not be accepted. The Council concluded that the application of the best available techniques in IPPC installations may not be enough in all cases. Therefore, amendments 10 and 33 would require changes to some provisions (namely Article 10) of the IPPC Directive.

Concerning amendments 35 and 36, the Council decided that Member States should draw up short-term action plans when there is a risk that one or more of the alert thresholds will be exceeded. For ozone, the obligation is linked to the actual potential to reduce the risk, duration or severity of such an exceedance. Member States may, on a voluntary basis, draw up short-term action plans if the limit values or target values are exceeded.

5. Information and reporting (Articles 26 to 28)

The Council believes that if the relevant information is made available to the public, it is not necessary to specify the **industrial federations** as proposed in European Parliament's amendments 37 and 39.

The common position, in its Article 24, paragraph 4, includes the Commission's obligation to publish examples of **best practices** for the drawing of short-term action plans, two years after the entry into force of the directive. Amendment 38 was taken in part and principle.

6. Final provisions (Articles 29 to 35)

The common position is consistent with amendment 41. The Council also believes that the Commission should not be notified of the **penalties** for infringements of domestic provisions.

Article 32 is consistent with amendment 42. The **review clause** was broadened and modified in order to include the possibility to introduce a legally binding exposure reduction obligation for PM_{2.5} and to review the provisions of other pollutants, as appropriate. In Article 33 of the common position, the Council proposes that Member States bring into force all the necessary provisions to comply with the air quality directive by 24 months – not 12 months as suggested by the European Parliament in amendment 44 – after its entry into force. Amendment 64 is not acceptable.

7. Other

- In recital 2, the common position takes on board part of amendment 1 referring to the **emission of pollutants at source**. In what concerns the second part related to the establishment of emission rules, the Council considers that it is not directly related to the enacting terms of this Directive. For the same reason, the common position is not consistent with the second part of amendment 7.

- The common position includes, in Article 2, a definition on contributions from **natural sources**, consistent with amendment 14.
- Articles 12 and 18 of the common position are already taking on board the idea of compatibility with **sustainable development**, consistent with amendments 4, 9 and 65.
- Amendment 82 is not acceptable for the Council since Member States have decided not to reopen the **existing limit values**.
- The Council reduced the **monitoring requirements** by optimising total PM assessment (PM₁₀ and PM_{2.5}) in Annex V of the common position. Amendment 45 was taken in part and in principle.
- Amendment 51 was not taken on board because the inclusion of specific **financial resources** aiming at meeting air quality standards in the information to be provided with the air quality plans is a measure difficult to implement.
- Amendment 52 was not taken on board. The Council has chosen a lighter system of **reporting**, emphasizing appropriate local, regional and national levels.
- Amendments 61, 62 and 63 were taken in principle, since the common position is already aligned with the provisions of the new **comitology** procedure with scrutiny.

IV. CONCLUSION

The Council believes that the common position represents a balanced package that would provide for a strong improvement of air quality in Europe and for sufficient flexibility for Member States that, despite their efforts, cannot meet the air quality standards. It looks forward to constructive discussions with the European Parliament with a view to the adoption of this Directive, as soon as possible.
