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COMMISSION STAFF WORKING DOCUMENT

Subsidiarity grid

Accompanying the document

Proposal for a Directive of the European Parliament and of the Council

on ambient air quality and cleaner air for Europe (recast)

{COM(2022) 542 final} - {SEC(2022) 542 final} - {SWD(2022) 345 final} - {SWD(2022) 545 final}

Subsidiarity Grid

1. Can the Union act? What is the legal basis and competence of the Unions' intended action?
1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?
The legal basis for the EU to act on air quality lies in Articles 191 and 192 of the Treaty on the Functioning of the European Union (TFEU), on the environment. These Articles empower the EU to act to preserve, protect, and improve the quality of the environment, protect human health and promote measures at international level to deal with regional or worldwide environmental problems. The same legal basis underpins the current Ambient Air Quality Directives. Given that this is an area of shared competence between the EU and the Member States, EU action must respect the subsidiarity principle.
1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?
In the case of environment, the Union's competence is shared.
2. Subsidiarity Principle: Why should the EU act?
2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2[1]: - Has there been a wide consultation before proposing the act? - Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at Union level?
The impact assessment on the revision of the Ambient Air Quality Directives (Directive 2008/50/EC of the European Parliament and of the Council on ambient air quality and cleaner air for Europe and 2004/107/EC of the European Parliament and of the Council relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air) was subject to a thorough stakeholder consultation process. This consultation aimed to collect supporting information, data, knowledge and views from a comprehensive range of stakeholders, to provide input for the different policy options for revising the Ambient Air Quality Directives, and to help assess the feasibility of implementing them. • The open public consultation ran for 12 weeks, as an online questionnaire with 13 introductory and 31 specific questions, hosted on the EU Survey tool. The questionnaire included issues to be covered in the impact assessment, and gathered initial views on the ambition level and potential impacts of certain options for revision of the Ambient Air Quality Directives. A total of 934 responses were received, and 116 position papers were submitted. Open questions received between 11 and 406 individual responses – 124 on average. The responses came from 23 different Member States. • The targeted survey was published on EU Survey in two parts (part 1 on policy area 1 [air quality standards] on 13 December 2021, and part 2 on policy areas 2 and 3 [governance; monitoring, modelling and air quality plans] on 13 January 2022), both with a deadline for contributions of 11 February 2022. The targeted survey sought in-depth views from organisations with an interest in or working with EU rules on air quality. Accordingly, the survey was sent out to targeted stakeholders, including relevant authorities at different levels of governance, private sector organisations, academics and civil society organisations in all EU Member States. Part 1 of the targeted stakeholder survey received in total 139

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN (viewed on 14.10.2022)

replies from 24 Member States. Part 2 of the survey received 93 replies from 22 Member States.

- The first stakeholder meeting took place on 23 September 2021 and was attended by 315 external participants, either onsite or online, from 27 Member States. The aim of the first stakeholder meeting was to gather views on shortcomings identified in the current Ambient Air Quality Directives, as well as on the ambition level for the revised legislation.
- The second stakeholder meeting on 4 April 2022 was attended by 257 external participants, either onsite or online, from 23 Member States. The aim of the meeting was to collect feedback from stakeholders for the completion of the impact assessment.
- Targeted interviews were conducted to complement the other consultation activities, in particular with representatives of regional and national public authorities, civil society & NGOs, and academia & research. The main purpose of the interviews was to fill remaining information gaps identified from the evaluation of the targeted stakeholder survey. Consequently, the interviews focused on policy area 2, notably on the feasibility, means of implementation and impacts of the various options considered.
- In addition, the impact assessment took into account: 30 ad hoc contributions (position papers, scientific studies and other documents) received from 25 different stakeholders; discussions at the third EU Clean Air Forum on 18 and 19 November 2021; feedback on the inception impact assessment from 63 stakeholders from 12 Member States; and the Fit for Future Platform opinion on the ambient air quality legislation.

The Commission requested a Eurobarometer survey to inform the revision of the Ambient Air Quality Directives and to provide an indicative comparison to parts of previous surveys, notably the 2019 Special Eurobarometer 497 on Attitudes of Europeans towards Air Quality.

The Special Eurobarometer survey was conducted between 21 March and 20 April 2022. 26 509 respondents from different social and demographic groups were interviewed in their mother tongue, on behalf of the European Commission. Citizens were asked a set of questions, including whether they feel that air quality improved or deteriorated in their country in recent years, whether they have heard of EU air quality standards, and if they think the standards should be strengthened.

The explanatory memorandum and the impact assessment (chapter 3) contain a section on the principle of subsidiarity, including qualitative and references to quantitative indicators (also see section 2.2 below).

2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the conformity with the principle of subsidiarity?

Both the explanatory memorandum and the accompanying impact assessment contain an adequate justification regarding the conformity with the principle of subsidiarity.
The objectives of this initiative cannot be sufficiently achieved at Member State level alone. This is due, firstly, to the transboundary nature of air pollution: atmospheric modelling and measurements of air pollution demonstrate beyond doubt that the pollution emitted in one Member State contributes to measured pollution in other Member States2 and that collective action is both necessary and more cost effective.

[2] See, for instance, the JRC Urban PM2.5 Atlas that analyses the sources of fine particulate matter pollution in 150 cities in the EU

Secondly, the TFEU requires policies aiming for a high level of protection, taking into account the diversity of situations across the EU.[3] The existing Ambient Air Quality Directives established minimum air quality standards throughout the EU but leave the choice of measures to the Member States, so that they can adjust these measures to specific national, regional and local circumstances. This principle is maintained in the proposed Directive, which would merge the two existing Ambient Air Quality Directives into one.
Thirdly, fairness and equality must be ensured as regards the economic implications of air pollution control measures and the ambient air quality experienced by people across the EU. Therefore, the nature and scale of the problem requires that air quality be addressed at EU level.

2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?

The objectives of the proposed action cannot be achieved sufficiently by the Member States acting alone.

(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?

Air pollutants travel across borders and air pollution concentration reductions cannot be sufficiently achieved by one Member State alone. Once air pollutants are emitted or formed in the atmosphere, they can be transported over thousands of kilometres. The scale of the issue at hand requires EU-wide action to ensure that all Member States take measures to reduce the risks to the population in each Member State. Even though the impacts of air pollution are more severe close to the emission source, the effects on air quality are not limited to the local level and cross-border pollution affects other Member States and causes health and environmental problems.

(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty[4] or significantly damage the interests of other Member States?

Minimum air quality objectives established at EU level ensure that citizens in all Member States experience similar air quality including those who might live in border regions and who might (in the absence of EU standards) experience substantially poorer air quality depending on the choices made in neighbouring states. EU action ensures fairness and effective pursuit of the Treaty objective to achieve a high level of human health and environmental protection.

(c) To what extent do Member States have the ability or possibility to enact appropriate measures?

Member States have the ability or possibility to enact the most planning and implementing the appropriate measures to ensure compliance with air quality standards. Member States can therefore choose and adapt measures in light of national, regional and local circumstances.

(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?

Improvements in air quality critically depend on action taken to address the sources of air

[3] Articles 191.2 of the Treaty on the Functioning of the European Union (TFEU)
[4] https://europa.eu/european-union/about-eu/eu-in-brief_en (viewed on 14.10.2022)

pollution, and typically require action in the transport, energy (including domestic heating) and agricultural sectors or by industry. All relevant levels of governance, including EU, national, regional and local level need to take coherent and effective actions. Atmospheric modelling shows that the air pollution emitted in one Member State also contributes to pollution in other Member States. In conclusion, the problem and its causes are present at local, regional, national and transnational level throughout the EU.

(e) Is the problem widespread across the EU or limited to a few Member States?

While action to reduce the impact of air quality has been taken, resulting in a reduced number and magnitude of exceedances, 17 Member States still report exceedances above EU limit values for at least one pollutant, and often for several for the year 2021. 97% of the urban population in the EU is exposed to levels of air pollution above WHO recommendations published in 2021.[5]
While the magnitude of the problem differs between cities and Member States, even low levels air pollution are associated with increased mortality due to cardiovascular and respiratory diseases and lung cancer.

(f) Are Member States overstretched in achieving the objectives of the planned measure?

The Member States are well used to the existing framework for manging ambient air quality in their territory. The Commission's proposal aims to build on this longstanding experience based on lessons learned when evaluating the legislation.

Overall, the impact assessment shows that benefits for society far outweigh the costs. For instance, for policy option I-2 ('closer alignment' with the 2021 WHO Air Quality Guidelines by 2030) the benefit-to-cost ratio is expected to be slightly lower (between 7.5:1 and 21:1), with total gross benefits of EUR 42 billion to EUR 121 billion in 2030, compared to a total cost of EUR 5.7 billion a year in 2030 for mitigation measures and related administrative costs.

The total administrative costs for public authorities are estimated to range from 75 to 106 million Euro per year in 2030, increasing with the stringency of the scenario, with costs in the preferred scenario estimated at 78 million Euro per year.

(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?

The policy instrument of setting common air quality standards for air pollutants is recognised by national, regional and local authorities as a key legislation for reducing air pollution.

During the stakeholder consultation national, regional and local authorities views and preferred courses have been gathered. Representatives from public authorities largely consider that it is "not feasible, for the foreseeable future" to achieve WHO recommended levels for fine particulate matter ($PM_{2.5}$) of 5 µg/m³ (annual mean) or daily levels of 15 µg/m³. Some representatives think that the $PM_{2.5}$ annual mean level should be set at 10 µg/m³ while other representatives favour an annual level of 15 µg/m³ for $PM_{2.5}$. For the average exposure indicator target, respondents from public authorities do not agree on a preferred approach. On PM_{10} levels, the representatives largely think the WHO recommended levels are not feasible in the foreseeable future, and they mostly favour a standard of 20 µg/m³ or 30 µg/m³ for annual mean levels of PM_{10}. The majority within this group is in favour of an

[5] EEA Air Quality in Europe (2020) & https://www.eea.europa.eu/data-and-maps/daviz/percentage-of-urban-population-in-13

average exposure indicator target for PM_{10} for both short and long term. For NO_2 levels, public authorities think that an annual mean level of 30 µg/m³ is the most feasible option and that the WHO recommended levels are only feasible with significant effort. The large majority considers that NO_2, $PM_{2.5}$ and PM_{10} standards should apply throughout the territory of the EU, and that the type of standard should be a limit value. For ozone levels the representatives think that the most recent WHO recommendation is feasible, without additional effort, and the majority is in favour of a level of 100 µg/m³. For all heavy metals this stakeholder group thinks that the most recent WHO recommendations are feasible without additional effort. For benzo(a)pyrene, stakeholders do not think that the WHO recommendations are feasible for the foreseeable future. Public authorities expressed largely positive feedback about periodically updating a list of air pollutants of emerging concern, establishing additional short-term EU standards for $PM_{2.5}$, expanding exposure reduction targets, establishing an agreed methodology for addressing transboundary air pollution, and obliging Member States to provide specific health information to the public. Policy measures that public authorities tended to disagree with were the introduction of a mechanism to adjust air quality standards based on technical progress, of an obligation to introduce short-term action plans for each pollutant and of a requirement for Member States to harmonise air quality plans. Public authorities were largely in favour of introducing standardised modelling quality objectives. Other policy measures that found strong support among public authorities were monitoring long-term trends via indicative measurements or modelling, establishing a protocol if a sampling point needs to be relocated, and measuring certain emerging air pollutants continuously. Refining the minimum information for air quality plans was largely welcomed, too. The policy measures that found least support by this stakeholder group were the simplification of definitions of monitoring stations and/or sampling points, and a change of the minimum number of sampling points per air quality zone.

2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of scale or effects of that action (EU added value)?

The objectives of the proposed action can be better achieved at Union level because of the scale and effects of that action.

(a) Are there clear benefits from EU level action?

Air pollution is a transboundary problem requiring collective action across Member States for cost-effective mitigation. Ambient air quality standards are one component of the Union's overall strategy to combat air pollution that also includes national air pollutant emissions commitments and various source-based emissions controls. Together these deliver protection across the EU for all citizens in an efficient manner. The EU monitoring system provides comparable high-quality data. Itis also increasingly being used by third countries, thereby also promoting an international level-playing field.

(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?

The substantial cross-border contribution to air pollution means that collective pan-European action is required if air quality is to be improved in the most economically efficient manner. All Member States are committed to make environmental information available to their citizens and the EU's system for monitoring and reporting enables this to be completed in a timely and efficient manner.

(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?

By prescribing minimum standards for air quality, the proposed Directive will continue to impose the same air quality objectives to all Member States with the freedom to go further. In this way, it will continue to help create a level playing field between the Member States and contribute to the reduction of transboundary air pollution by addressing pollution sources that usually have both local and transboundary impact. The current Ambient Air Quality Directives have contributed to the decrease of concentrations of most air pollutants over the past decade.

(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local levels)?

Action at EU-level is necessary to further reduce air pollution cost-effectively, with a view to reducing negative impacts on health and environment across the Union.

(e) Will there be improved legal clarity for those having to implement the legislation?

Yes, the proposal contains multiple improvements and clarifications of the current legal provisions, and merges requirements of the existing two Directives into one. The corresponding changes aim to improve overall EU legislation for clean air, building on the lessons learnt from the 2019 evaluation ('fitness check') of the Ambient Air Quality Directives.

3. Proportionality: How the EU should act

3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?

The principle of proportionality requires EU action to be limited in its content and form to what is necessary to achieve the objectives of the Treaties it intends to implement. It is important to match the nature and intensity of a given measure to the identified problem. The principle of proportionality is considered throughout the impact assessment and is addressed in particular when comparing the different policy options and presenting a preferred package of options.

3.2 Based on the answers to the questions below and information available from any impact assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?

The proposed action constitutes an appropriate way to achieve the intended objectives.

(a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?

The initiative is limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better. The objectives of this initiative cannot be sufficiently achieved at Member State level alone. This is due, mainly to the transboundary nature of air pollution: atmospheric modelling and measurements of air pollution demonstrate beyond doubt that the pollution emitted in one Member State contributes to

measured pollution in other Member States.
(b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?
Yes, the choice of instrument is justified as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued. The proposed instrument remains a Directive that sets EU-wide air quality standards and defines common requirements on air quality assessment but leaves the choice of measures to achieve air quality standards to the Member States. This gives Member States the possibility to adapt measures to national, regional and local circumstances.
(c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit the European action to minimum standards or use a less stringent policy instrument or approach?)
The Union is leaving the choice of measures for compliance to the Member States, who can adjust these measures to different national, regional and local circumstances, i.e. taking into account the diversity and specificity of situations across the EU.
(d) Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?
The total administrative costs are estimated to range from 75 to 106 million Euro per year in 2030, increasing with the stringency of the scenario, with costs in the preferred scenario estimated at 78 million Euro per year. Overall, the main benefits are expected to come in the form of reduced mortality and morbidity, reduced healthcare expenditure, reduced ozone-related crop yield losses, reduced absence from work due to illness and increased productivity at work. The impact assessment shows that benefits for society far outweigh the costs. Policy option I-3 ('partial alignment' with the 2021 WHO Air Quality Guidelines by 2030) has the highest benefit-to-cost ratio (between 10:1 and 28:1). Most air quality sampling points in the EU might be expected to meet the corresponding air quality standards with little additional effort. The net benefits amount to more than 29 billion EUR. For policy option I-2 ('closer alignment' with the 2021 WHO Air Quality Guidelines by 2030) the benefit-to-cost ratio is expected to be slightly lower (between 7.5:1 and 21:1), with total gross benefits of EUR 42 billion to EUR 121 billion in 2030, compared to a total cost of EUR 5.7 billion a year in 2030 for mitigation measures and related administrative costs. Some 6% of sampling points would not be expected to meet the corresponding air quality standards without additional effort at local level (or may need time extensions or exceptions). The net benefits amount to more than 36 billion EUR, i.e. 25% more than policy option I-3. Under policy option I-1 ('full alignment' with the 2021 WHO Air Quality Guidelines by 2030) the benefit-to-cost ratio also remains significantly positive (between 6:1 and 18:1). However, 71% of sampling points would not be expected to meet the corresponding air quality standards without additional effort at local level (and in many of these instances would not be able to meet these standards at all with technical feasible reductions only). The net benefits amount to more than 38 billion EUR, i.e. 5% more than policy option I-2. The annual

costs and benefits have been calculated for 2030 as a central estimate, since this is the year in which the majority of new air quality standards would need to be achieved for the first time. Costs would already arise in preceding years to ensure the new standards were met in 2030, but after 2030 they are likely to decrease as one-off investments necessary to achieve the targets will have been made already.
(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?
The Union is leaving the choice of measures for compliance to the Member States, who can adjust these measures to different national, regional and local circumstances, i.e. taking into account the diversity and specificity of situations across the EU. The proposed Directive also contains provisions on time extensions, enabling under certain conditions the taking into account of special circumstances applying in individual Member States, while respecting the Union law.