

## EURACOAL Position Paper

### Response to the proposal of the European Commission to recast the Ambient Air Quality Directives (COM(2022) 542)

The European coal industry is subject to strict EU pollution control legislation and has successfully implemented this to meet some of the world's highest standards. The coal sector has invested heavily in pollution control technologies and achieved impressive results – for example, sulphur dioxide (SO<sub>2</sub>) and oxides of nitrogen (NO<sub>x</sub>) emissions from coal use in the EU have fallen by between 60% and 90% since 1990. Here, we respond to the European Commission's latest proposal to recast the important Ambient Air Quality Directives (AAQDs). The uncertainties that the proposal introduces into the regulatory environment are not welcome and would make the European Union a less attractive location for the industrial investments needed for a cleaner and more prosperous economy.

#### **Background**

In the framework of the European Commission President's political guidelines on a zero-pollution ambition for a toxic-free environment,<sup>1</sup> the European Commission presented on 26 October 2022 a proposal for a revision and recasting of the Ambient Air Quality Directives.<sup>2</sup> The European Commission proposes tighter allowable levels of air pollutants and stricter implementation of standards. It is proposed this be achieved in the EU by:

- setting interim 2030 air quality standards aligned more closely with World Health Organization (WHO) guidelines,
- defining stricter provisions on monitoring,
- modelling and air quality plans, and
- granting far-reaching access to justice for NGOs.

The Commission cites around 300 000 premature deaths every year in the EU due to air pollution and claims in its impact assessment that the benefits to society of the proposed recast AAQD far outweigh its implementation costs. The expected benefits mainly relate to the environment, including reduced ozone-related crop yield losses, and health (*e.g.* reduced mortality and morbidity, reduced healthcare expenditure, reduced absence from work due to illness and increased productivity at work). The costs of up to €7 billion fall mainly on industry and other energy users, but are swamped by the reported benefits of up to €45 billion.<sup>3</sup>

---

<sup>1</sup> European Commission, Directorate-General for Communication, Leyen, U., *Political guidelines for the next European Commission 2019-2024*; *Opening statement in the European Parliament plenary session 16 July 2019*; *Speech in the European Parliament plenary session 27 November 2019*, Publications Office of the European Union, 2020, <https://data.europa.eu/doi/10.2775/101756>

<sup>2</sup> 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, Brussels, 26 October 2022 (2022/0347(COD))

<sup>3</sup> SWD(2022) 545 pp.47-48

## ***EURACOAL response***

EURACOAL welcomes the aim of more effective pollution control policies. We support the UN Sustainable Development Goals and the aim of creating a cleaner environment in the EU. Current legislation already sets high standards and contributes to a cleaner planet for all. Future progress will be guided by the 8<sup>th</sup> Environmental Action Programme for the period up to 2030 and further improvements made as the EU shifts away from fossil fuel combustion to meet its climate targets.

Hence, in principle, no revision of the air quality directives should be needed. We propose shortcomings should be addressed associated with their implementation and enforcement, as explained in the Commission’s review report of the air quality directives.<sup>4</sup> The report concludes that current legislation has already led to measurable improvements in air quality.

The AAQDs provide the necessary instruments to address poor air quality: if air quality standards have not yet been fully achieved, this is essentially due to a lack of transposition or poor application of EU law in member states, and not due to any weaknesses in the directives themselves.

We note also that the revised National Emission Ceilings Directive of 2016 sets ambitious mass limits for five pollutants that must be met by 2030. Member states have only just implemented this directive through national programmes that already pose a major challenge for member states and private actors.

It is important to highlight here the Commission’s proposal to link EU air quality standards to WHO guidelines, thus tilting the balance between EU air quality policy and economic activity decisively in favour of environmental objectives. An impact assessment should address whether targets derived from WHO guidelines are technically feasible and economic in the EU.

The European coal and lignite industry is already under the double pressures of implementing recent revisions to pollution control directives<sup>5</sup> and ambitious climate legislation that aims to transition away from fossil fuels over the coming years. Additional burdens would threaten the survival of companies that are still needed for energy-security reasons during the transition to cleaner energy. Any directive that would require upgrades to existing coal power plants, many of which are moving towards the end of their commercial operating lives, would shift investment away from other, long-term needs, such as renewable energy sources and CCS technologies.

## ***CHAPTER I – GENERAL PROVISIONS***

### ***Article 1 – Objectives***

EURACOAL welcomes the proposed definition of “zero pollution” as reducing air pollution “to levels no longer considered harmful to human health and natural ecosystems”. Thus, “zero pollution” does not mean zero pollutant emissions. Given that the costs of reaching zero would tend towards infinite, and the effects of “natural” pollution cannot be regulated, this is the right approach. It recognises that there are levels below which air pollution poses no risk to health or the environment.

---

<sup>4</sup> SWD(2019) 427

<sup>5</sup> Industrial Emissions Directive 2010/75/EU (recast)

### *Article 3 – Regular review*

Frequent revisions to pollution control and air quality legislation undermine trust in the stability of EU environmental law. The proposed five-year review cycle would mean EU air quality regulation was forever in a state of flux such that investors and project developers would be unable to predict the pollution control measures that might become necessary to meet evolving standards. This regulatory uncertainty would mean high risk premia for industrial investments in the EU. We suggest that instead of an exclusive focus on WHO guidelines, a risk-based approach should be taken, weighing health and environmental concerns against techno-economic considerations. Indeed, all EU law is based on a careful balance of economic, social and environmental impacts. It would be a complete rupture with such good policymaking if the AAQDs were only linked to WHO guidelines whose future revisions lie outside EU jurisdiction.

## **CHAPTER II – ASSESSMENT OF AMBIENT AIR QUALITY AND DEPOSITION RATES**

### *Article 7 – Assessment regime*

One of the pillars of EU environmental law has been flexibility, taking into account national-, local- and plant-level specificities. The proposal to replace the current upper and lower thresholds with a single assessment threshold per pollutant would not allow regional specificities to be taken into account. Such a measure would run against the subsidiarity principle.

### *Article 8 – Assessment criteria*

The Commission’s proposal to use software modelling applications to detect exceedances of emissions cannot be used alone to determine action and must be supported by real-world measurements to verify action is needed. This might require a much higher number of measurement sites, adding to the administrative burden.

### *Article 9 – Sampling points*

In principle, we are open to improved monitoring if this does not create additional administrative burdens, but rather simplifies existing measuring and reporting requirements. The European Commission’s AAQDs review report stated that “redundant provisions have been identified in the Ambient Air Quality Directives as well as elements that could reduce administrative burden in terms of air quality reporting”.<sup>6</sup> Instead, the proposed further expansion of the already substantial monitoring requirements would pose an additional burden for public authorities and companies that are still struggling to implement the latest requirements.

### *Article 10 – Monitoring supersites*

The purpose of the proposed monitoring supersites is questionable. While such sites are nice to have, we fail to see how such non-targeted monitoring can offer value for money. Investment should instead be made to monitor at sites where air quality improvements are known or suspected to be needed.

---

<sup>6</sup> SWD(2019) 427, p.85

## CHAPTER III – AMBIENT AIR QUALITY MANAGEMENT

*Article 12 – Requirements where levels are lower than the limit values, ozone target value and average exposure concentration objectives, but above the assessment thresholds*

Any policy needs to weigh the different and often conflicting targets against each other. The European Commission’s exclusive focus on WHO air quality guidelines (see also Articles 8 and 22) is surprising, as any health considerations need to be accompanied by and weighed against techno-economic considerations. Linking air quality limits only to WHO guidelines would tilt the delicate balance of air quality policy versus economic and societal activity entirely towards one side of any impact assessment, perhaps creating technically unfeasible and uneconomic targets. This could result in the premature closure of industrial plants and large-scale job losses as well as severe limits on mobility and even private life. EURACOAL rejects the exclusive references to WHO guidelines in Articles 8, 12(4) and 22(2), and proposes a more balanced mix of indicators that take into account techno-economic considerations in the EU.

*Article 16 – Contributions from natural sources*

Some emissions can be indirectly attributable to human activities, for example dust emissions following land restoration. These emissions should be regulated on the same basis as emissions from natural sources, especially as such activities add to environmental protection and climate change mitigation. The boundary between natural sources and indirect human activity cannot be clearly drawn. Farming, construction, quarrying, gravel extraction, opencast mining, recultivation and renaturation can all create new landforms – such as sandy beaches around artificial lakes – which become part of the natural world. Windborne dust from these features should not be attributed to direct human activities.

*Article 18 – Postponement of attainment deadline and exemption from the obligation to apply certain limit values*

The introduction of much stricter conditions for any postponement of the deadlines to achieve air quality limits for particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>) and nitrogen dioxide (NO<sub>2</sub>) is questionable. For example, it would provide no route to exemptions for high, transboundary pollution. EURACOAL calls for the current system to be maintained as it is proven and effective.

The stipulated “orographic boundary conditions” are too limited as ambient air is affected by many other topographic features. We propose “topographic boundary conditions” would be more appropriate.

## CHAPTER IV – PLANS

*Article 19 – Air quality plans*

Article 19(4) should be deleted. It stipulates that air quality plans must be drawn up from 2026<sup>7</sup> for zones and NUTS 1 territorial units where 2030 target limit values are exceeded. Probably in all members states these limit values are exceeded in many locations, so this proposal would result in an obligation as early as 2026 for member states to draw up air quality plans. This would overburden the planning authorities and lead to massive legal uncertainties in the approval of projects and even

---

<sup>7</sup> Two years after entry into force of the Directive.

lengthy court disputes. Overall, Article 19(4) would have a very negative impact on the construction of the new infrastructure needed to support the EU economy.

*Article 21 – Transboundary air pollution*

Article 21(5) states “Member States shall, where appropriate, endeavour to pursue co-operation with third countries, and in particular with candidate countries.” We propose the European Commission itself should be obliged to work closely with neighbouring countries on this matter. Some of the highest levels of air pollution in Europe are recorded in candidate and neighbourhood countries, often affecting EU member states. Assistance to these countries, to support their alignment with EU pollution control standards, would be a very cost-effective way of improving overall air quality for EU and neighbourhood citizens.

**CHAPTER V – INFORMATION AND REPORTING**

*Article 22 – Public information*

An air quality index that is not based on EU law is problematic. The use of WHO recommendations or those of the European Environment Agency to establish an index is not welcome as it falls outside due legal process. Such an index should be avoided as decisions on air quality are ultimately of a political nature – trade-offs must be balanced and judgements made by elected representatives, taking into consideration all the facts presented by scientific experts. This complex process cannot be short-circuited by introducing an “air quality index” that has not been politically agreed.

*Article 23 – Transmission of information and reporting*

The proposed new implementing powers in Article 23(5) on reporting air quality data and management should not be a task of the Commission, but rather for environmental monitoring experts.

The provision to publish data on ambient air “irrespective of compliance with data quality objectives laid down in Annex V” would lead to the publication of misleading information. Instead of adding these new information and reporting requirements, the recast directive should streamline existing monitoring requirements to lower the administrative burdens.

**CHAPTER VI – DELEGATED AND IMPLEMENTING ACTS**

*Article 24 – Amendments to Annexes*

The Commission proposes powers to amend annexes to take account of technical and scientific developments regarding assessment of ambient air quality (but not the limit values in Annex I).

**CHAPTER VII – ACCESS TO JUSTICE, COMPENSATION AND PENALTIES**

*Article 27 – Access to justice*

The European Commission proposals to grant access to justice to “members of the public concerned” risks creating a bureaucratic monster that overburdens courts with countless actions. Those “concerned” could include every citizen in member states as we are all concerned to a greater or lesser extent by air quality. It is thus important to establish clear criteria and boundaries to avoid NGOs

being purposefully created, perhaps even by commercial competitors, at least until the target of “zero pollution” is fulfilled by 2050.

## *Article 28 – Compensation for damage to human health*

This concerns violations by the competent authorities. The risk of being held liable and forced to pay compensation would lead to overcautious actions by the competent authorities – resulting in overly strict measures on industry. Therefore, an individual right for compensation should not be introduced.

## *Article 29 – Penalties*

The Commission proposes penalties on “violations by natural and legal persons”. The proposal says nothing about source apportionment in the (typical) situations where multiple pollution sources result in a single violation. As the directive addresses only member states and regulatory authorities, not natural or legal persons, there is no justification to impose penalties on “violations by natural and legal persons”.

## *CHAPTER VIII – TRANSITIONAL AND FINAL PROVISIONS*

### *ANNEXES*

The proposed air quality standards could only be achieved by either the de-industrialisation of the EU or by a deep industrial transformation of such magnitude that it could only be reached after 2040. The proposed limit values are thus too strict for the time being and less stringent values should be proposed. Future revisions of the directive, in the 2030s, could – after a thorough impact assessment – point towards more stringent targets.

14 March 2023